

IN THE SUPREME COURT OF THE STATE OF IDAHO

SECURITY INVESTOR FUND LLC,)	
and SECURITY FINANCIAL FUND LLC,)	
	)	SUPREME COURT
PLAINTIFFS-APPELLANTS,	)	CASE NO. 45969
)	
VS.)	
)	
BRIAN CRUMB,)	
)	
DEFENDANT-RESPONDENT,)	
)	
JENNIFER O'CALLAGHAN, BRIAN)	
O'CALLAGHAN, JITINVEST LLC,)	
SPIRIT ELEMENTS INC, and TODD)	
A REEVE,)	
)	
DEFENDANTS)	
<hr/>		

CLERK'S RECORD ON APPEAL

ARTHUR M. BISTLINE
1423 N Government Way
Coeur d'Alene, ID 83814

DARRIN L MURPHEY
402 W Canfield Ave, Suite 2
Coeur d'Alene, ID 83815

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

KOOTENAI COUNTY DISTRICT COURT

CASE SUMMARY
CASE NO. CV-2017-5541

Security Investor Fund LLC, Security Financial Fund LLC §
 vs. §
Brian Crumb, Jennifer O'Callaghan, Brian O'Callaghan, Jitinvest LLC, Spirit Elements Inc, Todd A Reeve §

Location: **Kootenai County District Court**
 Judicial Officer: **Christensen, Richard S.**
 Filed on: **07/19/2017**

CASE INFORMATION

Bonds

Cash Bond \$361.50
 5/21/2018 Posted
 Counts: 1

Cash Bond \$100.00
 4/12/2018 Posted
 Counts: 1

Case Type: **AA- All Initial District Court Filings (Not E, F, and H1)**

Case Status: **04/05/2018 Appealed Case - Supreme Court Appeal**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number CV-2017-5541
 Court Kootenai County District Court
 Date Assigned 07/19/2017
 Judicial Officer Christensen, Richard S.

PARTY INFORMATION

Plaintiff

Security Financial Fund LLC

Lead Attorneys

Bistline, Arthur Mooney
Retained
 208-665-7270(W)

Security Investor Fund LLC

Bistline, Arthur Mooney
Retained
 208-665-7270(W)

Defendant

Crumb, Brian

Murphey, Darrin Leroy
Retained
 208-446-1620(W)

Jitinvest LLC

O'Callaghan, Brian

Varallo, Christopher George
Retained
 509-624-5265(W)

O'Callaghan, Jennifer

Varallo, Christopher George
Retained
 509-624-5265(W)

Reeve, Todd A

Spirit Elements Inc

DATE

EVENTS & ORDERS OF THE COURT

















INDEX

07/19/2017 New Case Filed Other Claims
New Case Filed - Other Claims

07/19/2017 ROA - Converted Event
Filing: AA- All initial civil case filings in District Court of any type not listed in categories E, F and H(1) Paid by: Bistline, Arthur Mooney (attorney for Security Investor Fund LLC) Receipt number: 0027137 Dated: 7/19/2017 Amount: \$221.00 (Check) For: Security Investor

CASE SUMMARY
CASE NO. CV-2017-5541


Fund LLC (plaintiff)


- 07/19/2017  Complaint Filed
- 07/19/2017  Summons Issued
- *Brian Crumb*
- 07/19/2017  Summons Issued
- *Jennifer O'Callaghan*
- 07/19/2017  Summons Issued
- *Brian O'Callaghan*
- 07/19/2017  Summons Issued
- *Jitinvest LLC*
- 07/19/2017  Summons Issued
- *Spirit Elements, Inc.*
- 07/19/2017  Summons Issued
- *Todd A. Reeve*
- 07/24/2017  Civil Case Information Sheet
- 07/25/2017  Affidavit of Service
- 07/26/2017  Acknowledgment of Service
Acceptance of Service - Jitinvest LLC 07/24/17
- 07/27/2017 ROA - Converted Event
Filing: 11 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Schlotthauer, Brent Garold (attorney for Crumb, Brian) Receipt number: 0028333 Dated: 7/27/2017 Amount: \$136.00 (Check) For: Crumb, Brian (defendant)
- 07/27/2017  Notice of Appearance
- 07/31/2017  Notice of Appearance
- 08/02/2017 ROA - Converted Event
Filing: 11 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Varallo, Christopher George (attorney for O'Callaghan, Jennifer) Receipt number: 0029074 Dated: 8/2/2017 Amount: \$136.00 (E-payment) For: O'Callaghan, Brian (defendant) and O'Callaghan, Jennifer (defendant)
- 08/03/2017  Acknowledgment of Service
Acceptance of Service - Spirit Elements, Inc. 07/31/17
- 08/04/2017 Acknowledgment of Service
Acceptance of Service - 7/31/17 - T.A.R.
- 08/18/2017  Acknowledgment of Service
Acceptance of Service - C Varallo obo Defendants - 08/17/17
- 08/22/2017  Notice of Service
- 09/05/2017  Answer


CASE SUMMARY
CASE NO. CV-2017-5541

09/11/2017 Hearing Scheduled
Hearing Scheduled (Scheduling Conference 10/02/2017 03:00 PM)


09/11/2017 Notice of Hearing

09/19/2017  Miscellaneous
Scheduling Form - Christopher G Varallo

09/21/2017  Notice of Service
of Defendant Crumb's Answers and Responses to Plaintiffs' First Set of Interrogatories, Requests for Production and Requests for Admissions to Defendant Brian Crumb

09/25/2017  Miscellaneous
Plaintiff's Scheduling Form - Arthur M. Bistline


09/26/2017 ROA - Converted Event
Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Terry Receipt number: 0036500 Dated: 9/26/2017 Amount: \$15.00 (E-payment)


09/26/2017  Notice of Service


10/02/2017 Hearing Vacated
Hearing result for Scheduling Conference scheduled on 10/02/2017 03:00 PM: Hearing Vacated


10/02/2017 DC Hearing Held: Court Reporter: # of Pages:
*District Court Hearing Held
Court Reporter: Keri Veare
Number of Transcript Pages for this hearing estimated: under 100 pages*


10/02/2017 **CANCELED Scheduling Conference (3:00 PM)** (Judicial Officer: Christensen, Richard S.)
*Vacated
Hearing result for Scheduling Conference scheduled on 10/02/2017 03:00 PM: Hearing Vacated*


10/02/2017  Court Minutes

10/03/2017  Affidavit
of Arthur M. Bistline in Support of Motion for Summary Judgment

10/03/2017  Affidavit
Corrected Affidavit of Arthur M. Bistline in Support of Motion for Summary Judgment

10/03/2017  Declaration
of Richard J. Abbey

10/03/2017  Declaration
of Roger Glessner

10/03/2017  Motion for Summary Judgment
Plaintiffs' Motion For Summary Judgment













10/04/2017 Hearing Scheduled
Hearing Scheduled (Scheduling Conference 02/26/2018 03:00 PM)

10/04/2017 Hearing Vacated
Hearing result for Court Trial Scheduled scheduled on 04/02/2018 09:00 AM: Hearing Vacated 3 Day Court Trial

KOOTENAI COUNTY DISTRICT COURT










CASE SUMMARY
CASE NO. CV-2017-5541

TRIALS ARE SCHEDULED FOR A TWO WEEK PERIOD

- 10/04/2017 Hearing Vacated
Hearing result for Scheduling Conference scheduled on 02/26/2018 03:00 PM: Hearing Vacated
- 10/04/2017 Hearing Scheduled
Hearing Scheduled (Court Trial Scheduled 08/06/2018 09:00 AM) 3 Day Court Trial
- TRIALS ARE SCHEDULED FOR A TWO WEEK PERIOD*
- 10/04/2017 Hearing Scheduled
Hearing Scheduled (Scheduling Conference 07/02/2018 03:00 PM)
- 10/04/2017  Notice
of Scheduling Conference/Trial
- 10/04/2017  Notice
Amended Notice of Pretrial Conference/Trial
- 10/05/2017 Hearing Scheduled
Hearing Scheduled (Motion for Summary Judgment 12/05/2017 03:00 PM) Set by Art Bistline
- 10/05/2017  Notice of Hearing
- 10/10/2017  Order
Mediation Order
- 10/17/2017  Notice of Service
of Defendant Brian Crumb's First Set of Interrogatories and Requests for Production to Plaintiff Security Financial Fund LLC
- 10/25/2017  Notice of Service
of Defendant Crumb's Answers and Responses to Plaintiffs' Second Set of Interrogatories, Requests for Production and Requests for Admissions to Defendant Brian Crumb
- 10/26/2017  Notice of Service
- 11/06/2017 Hearing Scheduled
Hearing Scheduled (Motion for Summary Judgment 12/05/2017 03:00 PM) set by DA
- 11/07/2017  Declaration
of Brian Crumb in Support of Defendant Brian Crumb's Motion for Summary Judgment
- 11/07/2017  Declaration
of Darrin L. Murphey in Support of Defendant Brian Crumb's Motion for Summary Judgment
- 11/07/2017  Memorandum In Support of Motion
Defendant Brian Crumb's Memorandum In Support Of Motion for Summary Judgment
- 11/07/2017  Miscellaneous
Concise Statement of Facts in Support of Defendant Brian Curmb's Motion for Summary Judgment
- 11/07/2017  Motion for Summary Judgment
Defendant Brian Crumb's Motion For Summary Judgment

KOOTENAI COUNTY DISTRICT COURT

CASE SUMMARY
CASE NO. CV-2017-5541













- 11/07/2017  Notice of Hearing
Re: Defendant Brian Crumb's Motion for Summary Judgment
- 11/08/2017  Notice of Service
- 11/21/2017  Response
Plaintiff's Response to Defendant's for Summary Judgment
- 11/21/2017  Declaration
of Richard J. Abbey
- 11/21/2017  Declaration
of Zacharie Eifler
- 11/21/2017  Response
Defendant Brian Crumb's Response To Plaintiffs' Motion For Summary Judgment
- 11/28/2017  Memorandum In Support of Motion
Reply Memorandum In Support Of Defendant Brian Crumb's Motion for Summary Judgment
- 12/05/2017 DC Hearing Held: Court Reporter: # of Pages:
*Hearing result for Motion for Summary Judgment scheduled on 12/05/2017 03:00 PM:
District Court Hearing Held
Court Reporter: Keri Veare
Number of Transcript Pages for this hearing estimated: Less than 100*
- 12/05/2017 DC Hearing Held: Court Reporter: # of Pages:
*Hearing result for Motion for Summary Judgment scheduled on 12/05/2017 03:00 PM:
District Court Hearing Held
Court Reporter: Keri Veare
Number of Transcript Pages for this hearing estimated: under 100 pages*
- 12/05/2017 **Motion for Summary Judgment (3:00 PM)** (Judicial Officer: Christensen, Richard S.)
*Set by Art Bistline Hearing result for Motion for Summary Judgment scheduled on 12/05/2017
03:00 PM: District Court Hearing Held
Court Reporter: Keri Veare
Number of Transcript Pages for this hearing estimated: Less than 100*
- 12/05/2017 **Motion for Summary Judgment (3:00 PM)** (Judicial Officer: Christensen, Richard S.)
*set by DA Hearing result for Motion for Summary Judgment scheduled on 12/05/2017 03:00
PM: District Court Hearing Held
Court Reporter: Keri Veare
Number of Transcript Pages for this hearing estimated: under 100 pages*
- 12/05/2017  Court Minutes
- 01/10/2018  Decision or Opinion
*Memorandum Decision and Order on Plaintiffs' and Defendant Crumb's Cross Motions for
Summary Judgment*
- 01/12/2018 Hearing Scheduled
Hearing Scheduled (Motion to Reconsider 02/15/2018 03:00 PM)
- 01/18/2018 Hearing Vacated
*Hearing result for Court Trial Scheduled scheduled on 08/06/2018 09:00 AM: Hearing
Vacated 3 Day Court Trial*

TRIALS ARE SCHEDULED FOR A TWO WEEK PERIOD
- 01/18/2018 Hearing Vacated

CASE SUMMARY

CASE NO. CV-2017-5541






Hearing result for Scheduling Conference scheduled on 07/02/2018 03:00 PM: Hearing Vacated




- 01/19/2018 Civil Disposition Entered
Civil Disposition entered for: Crumb, Brian, Defendant; Security Financial Fund LLC, Plaintiff. Filing date: 1/19/2018
- 01/19/2018  Judgment
- 01/19/2018 **Dismissed With Prejudice**
Party (Security Financial Fund LLC)
Party (Crumb, Brian)
- 01/22/2018  Motion
for Attorney Fees
- 01/22/2018  Memorandum
of Costs
- 01/22/2018  Memorandum In Support of Motion
for Attorney Fees
- 02/01/2018  Motion
Plaintiffs' Motion to Reconsider
- 02/01/2018  Notice of Hearing
- 02/02/2018  Motion
Plaintiff's Motion to Alter and/or amend Judgment
- 02/05/2018  Objection
Plaintiff's Objection to Defendant, Brian Crumb's Motion for Attorney Fees and Costs
- 02/08/2018  Memorandum
Defendant Brian Crumb's Memorandum in Response to Plaintiffs' Motion to Reconsider
- 02/12/2018 Hearing Scheduled
Hearing Scheduled (Motion 03/08/2018 03:00 PM) Attorney Fees - Murphy
- 02/13/2018  Notice of Hearing
RE: Defendant Brian Crumb's Motion for Attorney Fees, and Plaintiffs' Objection to Defendant, Brian Crumb's Motion for Attorney Fees and Costs
- 02/15/2018 **Motion for Reconsideration (3:00 PM)** (Judicial Officer: Christensen, Richard S.)
Hearing result for Motion to Reconsider scheduled on 02/15/2018 03:00 PM: District Court Hearing Held
Court Reporter: Keri Veare
Number of Transcript Pages for this hearing estimated: Under 100 Pages
- 02/15/2018  Court Minutes
- 02/16/2018 DC Hearing Held: Court Reporter: # of Pages:
Hearing result for Motion to Reconsider scheduled on 02/15/2018 03:00 PM: District Court Hearing Held
Court Reporter: Keri Veare
Number of Transcript Pages for this hearing estimated: Under 100 Pages
- 02/22/2018  Decision or Opinion

KOOTENAI COUNTY DISTRICT COURT

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Memorandum Decision and Order re: Plaintiff's Motion to Reconsider

- 02/26/2018 **CANCELED Scheduling Conference (3:00 PM)** (Judicial Officer: Christensen, Richard S.)
Vacated
Hearing result for Scheduling Conference scheduled on 02/26/2018 03:00 PM: Hearing Vacated
- 03/06/2018 Continued
Hearing result for Motion scheduled on 03/08/2018 03:00 PM: Continued Attorney Fees - Murphy
- 03/06/2018 Hearing Scheduled
Hearing Scheduled (Motion 04/12/2018 03:00 PM) Attorney Fees and Reconsideration Murphy - 30 minutes
- 03/08/2018 **Motion Hearing (3:00 PM)** (Judicial Officer: Christensen, Richard S.)
Attorney Fees - Murphy Hearing result for Motion scheduled on 03/08/2018 03:00 PM: Continued
- 03/08/2018  **Memorandum**
in Support of Motion for Attorney Fees in Defending Plaintiff's Motion to Reconsider
- 03/08/2018  **Memorandum**
Verified Memorandum in Support of Motion for Attorney Fees in Defending Plaintiff's Motion to Reconsider
- 03/08/2018  **Motion**
for Attorney Fees in Defending Plaintiff's Motion to Reconsider
- 03/08/2018  **Notice of Hearing**
Re: Motion for Attorney Fees in Defending Plaintiff's Motion to Reconsider
- 03/09/2018  **Notice of Hearing**
Amended Notice of Hearing Re: Defendant Brian Crumb's Motion for Attorney Fees, and Plaintiffs' Objection to Defendant, Brian Crumb;s Motion for Attorney Fees and Costs
- 04/02/2018 **CANCELED Court Trial (9:00 AM)** (Judicial Officer: Christensen, Richard S.)
Vacated
3 Day Court Trial

TRIALS ARE SCHEDULED FOR A TWO WEEK PERIOD Hearing result for Court Trial Scheduled scheduled on 04/02/2018 09:00 AM: Hearing Vacated
- 04/05/2018  **Notice of Appeal**
To Supreme Court
- 04/05/2018 Appeal Filed in Supreme Court
- 04/10/2018  **Reply**
REPLY TO PLAINTIFFS' OBJECTION TO DEF BRIAN CRUMB MTN FOR ATTY FEES
- 04/12/2018 **Motion Hearing (3:00 PM)** (Judicial Officer: Christensen, Richard S.)
Attorney Fees and Reconsideration
Murphy - 30 minutes
- 04/12/2018  **Court Minutes**
- 04/12/2018 DC Hearing Held: Court Reporter: # of Pages:
Court Reporter Keri Veare
Under 100 pages

KOOTENAI COUNTY DISTRICT COURT

CASE SUMMARY
CASE No. CV-2017-5541

04/19/2018	 Request <i>Request for Transcript - Brian Crumb</i>
04/25/2018	 Decision or Opinion <i>Memorandum Decision and Order re: Attorney fees</i>
05/21/2018	 Appeal Filed in Supreme Court <i>Notice of Cross Appeal</i>
07/02/2018	CANCELED Scheduling Conference (3:00 PM) (Judicial Officer: Christensen, Richard S.) <i>Vacated</i> <i>Hearing result for Scheduling Conference scheduled on 07/02/2018 03:00 PM: Hearing Vacated</i>
08/06/2018	CANCELED Court Trial (9:00 AM) (Judicial Officer: Christensen, Richard S.) <i>Vacated</i> <i>3 Day Court Trial</i> <i>TRIALS ARE SCHEDULED FOR A TWO WEEK PERIOD Hearing result for Court Trial Scheduled scheduled on 08/06/2018 09:00 AM: Hearing Vacated</i>

DATE	FINANCIAL INFORMATION
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Defendant Crumb, Brian	
Total Charges	265.00
Total Payments and Credits	265.00
Balance Due as of 6/12/2018	0.00
Defendant O'Callaghan, Brian	
Total Charges	136.00
Total Payments and Credits	136.00
Balance Due as of 6/12/2018	0.00
Defendant O'Callaghan, Jennifer	
Total Charges	0.00
Total Payments and Credits	0.00
Balance Due as of 6/12/2018	0.00
Other Party Unknown Payor	
Total Charges	15.00
Total Payments and Credits	15.00
Balance Due as of 6/12/2018	0.00
Plaintiff Security Investor Fund LLC	
Total Charges	350.00
Total Payments and Credits	350.00
Balance Due as of 6/12/2018	0.00
Defendant Crumb, Brian	
Civil Cash Bond Account Type Balance as of 6/12/2018	361.50
Plaintiff Security Investor Fund LLC	
Civil Cash Bond Account Type Balance as of 6/12/2018	100.00

 ORIGINAL

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED: 27137

2017 JUL 19 PM 12: 03

CLERK DISTRICT COURT

DEPUTY 

ARTHUR M. BISTLINE
BISTLINE LAW, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814
(208) 665-7270
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ISB: 5216

Attorneys for Plaintiffs

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

Security Investor Fund LLC, Security Financial
Fund LLC,

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinest LLC, Spirit Elements,
Inc, and Todd A. Reeve,

Defendants.

Case No. CV-2017- 554

COMPLAINT

FILING FEE: \$221.00

FEE CATEGORY: A.A.

Come now Plaintiffs Security Financial Fund LLC and Security Investor Fund LLC
complaining of Brian Crumb, and would respectfully show:

I. PARTIES

1. Plaintiffs and Defendants own property in the Fritz-Heath Forest Tracts (Second)
subdivision (hereinafter, "FRITZ-HEATH") located in Post Falls, Idaho.

2. Plaintiff Security Financial Fund LLC and Security Investor Fund are Idaho
Limited Liability Company's.

3. Defendant Spirit Elements Inc. is a Colorado Corporation and an innocent
landowner who is joined as a party only as the owner of FRITZ-HEATH Lot 1, Block B, which
contains a portion of the engineered road that is subject to this lawsuit passes. Defendant Spirit

RICH CHRISTENSEN

Elements Inc. may be served by certified mail at: SPIRIT ELEMENTS INC PROJECT LIVING INC, 6525 Gunpark Drive, #370-249, Boulder, CO, 80301.

4. Defendant Brian Crumb is an Idaho resident who may be personally served at 5022 E Shoreline Drive, Post Falls, Idaho

5. Defendant Jitinvest LLC is an innocent landowner who is joined as a party only as the owner of FRITZ-HEATH Lot 1, Block A, which contains a portion of the engineered road that is subject to this lawsuit passes. Defendant Jinvest LLC may be served by certified mail at: JITINVEST LLC, P.O. Box 265, Rockwall, Texas 74087.

6. Defendants Jennifer and Brian O'Callaghan are innocent landowners who are joined only because they are the owners of FRITZ-HEATH Lot 2, Block A, which contains a portion of the engineered road that is subject to this lawsuit. Jennifer and Brian O'Callaghan may be served by certified mail at 1410 South Cody Road, Coeur d'Alene, ID, 83814.

7. Defendant Todd A. Reeve is an innocent landowner who is joined only because he is the owner of FRITZ-HEATH Lot 3, Block A, which contains a portion of the engineered road that is subject of this lawsuit. Defendant Todd A. Reeve is a resident of the State of Washington, who may be served by certified mail at: P.O. BOX 731402, Puyallup, WA, 98373-0090.

II. BACKGROUND FACTS

1. On or about 2005, Brian Crumb (hereinafter referred to as "Crumb") began developing the Fritz-Heath Forest Tracts (Second) subdivision (hereinafter, "FRITZ-HEATH") located in Post Falls, Kootenai County, Idaho.

2. Crumb operated through Abbey & Crumb LLC, an Idaho limited liability company.

3. Crumb cleverly circumvented Kootenai County's subdivision platting process by utilizing logging roads (that could never meet Kootenai County standards for a residential subdivision), as the basis for subdividing 200 acres of steep mountain property into a residential subdivision with eighteen lots ranging in size from ten to twenty acres.

4. Thereafter, Crumb retained engineers to design an engineered road from Mellick Road (a public road) to all FRITZ-HEATH lots, because he knew that the logging roads would not suffice for residential purposes.

5. On or about 2006, Crumb's engineers informed him that it would be cheaper for Abbey & Crumb LLC to provide access from Mellick Road to FRITZ-HEATH by placing the engineered road on a small portion of adjoining property that is owned by Crumb (hereinafter "CRUMB ENTRANCE PARCEL").

6. Thus, in order to reduce road construction costs, Crumb connected FRITZ-HEATH to Mellick Road through the CRUMB ENTRANCE PARCEL rather than directly to Mellick Road.

7. A portion of the engineered road has been completed and is hereafter referred to as the "PHASE I ROAD" (*See Exhibit A*).

8. Kootenai County has approved the PHASE I ROAD for residential purposes through the first four lots (Block A, Lots 1, 2, 3 and 4).

9. THE PHASE I ROAD begins on Mellick Road and passes through the CRUMB ENTRANCE PARCEL, and then moves higher up through FRITZ-HEATH Lot 1, Block A (Jitinvest LLC), FRITZ-HEATH Lot 2 Block A (O'Callahan); FRITZ-HEATH Lot 3 Block A (Reeve), Lot 4 Block A (Plaintiff Security Financial Fund LLC) and then travels through Lot 1, Block B (Plaintiff Spirit Elements LLC).

10. Through either incompetence or fraud, Crumb never filed a written easement to

all FRITZ-HEATH Lots giving them access through the CRUMB ENTRANCE PARCEL.

11. This lawsuit is brought by land owners who purchased FRITZ-HEATH lots reasonably believing that they could access their land by using the PHASE I ROAD, which passes through the CRUMB ENTRANCE PARCEL.

12. Plaintiffs were not advised when they purchased FRITZ-HEATH Lots that Crumb had failed to properly record a written access easement to all FRITZ-HEATH owners.

13. Only recently, did Crumb make the surprise announcement that he intends to selectively grant easements to FRITZ-HEATH owners, including himself, his mother, and Crumb's direct supervisor at the Post Falls Highway District, to whom Crumb recently sold a FRITZ-HEATH Lot, but that he will withhold easements from other FRITZ-HEATH owners in an apparent effort to extract compensation for his perceived losses as a developer of FRITZ-HEATH.

14. Crumb's actions are particularly egregious given that (on information and belief) Crumb testified on May 29, 2014 that all FRITZ-HEATH landowners had access over the CRUMB ENTRANCE PARCEL.

III. CAUSES OF ACTION

A. Breach of Contract and Fraud.

Crumb's conduct constitutes breach of contract and/or fraud. As a developer of FRITZ-HEATH, Crumb intentionally placed the subdivisions entrance on THE CRUMB ENTRANCE PARCEL in order to save road construction costs. Crumb is bound by an express or implied contract with all FRITZ-HEATH landowners to provide them access to FRITZ-HEATH through the CRUMB ENTRANCE PARCEL. Crumb never informed FRITZ-HEATH landowners of his failure to grant a written easement to all FRITZ-HEATH landowners prior to their purchase of FRITZ-HEATH lots. Further, Crumb never informed them of his plan to

extract additional payments from them at a later time. Crumb's failure to inform FRITZ-HEATH owners of the lack of easement constitutes fraud to those FRITZ-HEATH owners who he has failed to provide with such an easement.

B. Declaratory Judgment

Plaintiffs seek a declaratory judgment declaring that:

All FRITZ-HEATH landowners have a forty (40) foot wide access easement over the PHASE I ROAD, which includes the CRUMB ENTRANCE PARCEL.

The easement includes the right to install and maintain an entrance gate, and place signage related to FRITZ-HEATH.

IV. ATTORNEYS FEES

15. Plaintiffs have been required to retain the services of an attorney in this commercial dispute solely as a result of Crumb's incompetency, fraud, or breach of contract, and are entitled to an award of their reasonable attorneys fees incurred in this matter.

V. GENERAL

16. Because of Defendants' actions, Plaintiffs have incurred damages in an amount in excess of TEN THOUSAND DOLLARS AND NO/100 (\$10,000.00) to be proved at trial.

WHEREFORE, Plaintiffs pray that this Court enter Judgment granting Plaintiffs the relief requested above, which is incorporated here as if set forth in full.

DATED this 19th day of July, 2017.

BISTLINE LAW, PLLC



ARTHUR M. BISTLINE
Attorney for Plaintiffs

VERIFICATION

STATE OF IDAHO)
) ss.
County of ADA)

STEPHEN HOWELL, being first duly sworn, upon oath, deposes and says:

Managing Member
I am the ~~President~~ of Security Investor Fund LLC and Security Financial Fund LLC and the above referenced Plaintiffs in the above-entitled action and named in the foregoing Complaint, and have read the contents thereof, and believe the same to be accurate and complete to the best of my knowledge, information and belief.

SECURITY INVESTOR FUND LLC, an
Idaho Limited Liability Company

SECURITY FINANCIAL FUND LLC, an
Idaho Limited Liability Company

Stephen Howell
By: Stephen Howell
Its: ~~President~~ *Managing Member*

Stephen Howell
By: Stephen Howell
Its: ~~President~~ *Managing Member*

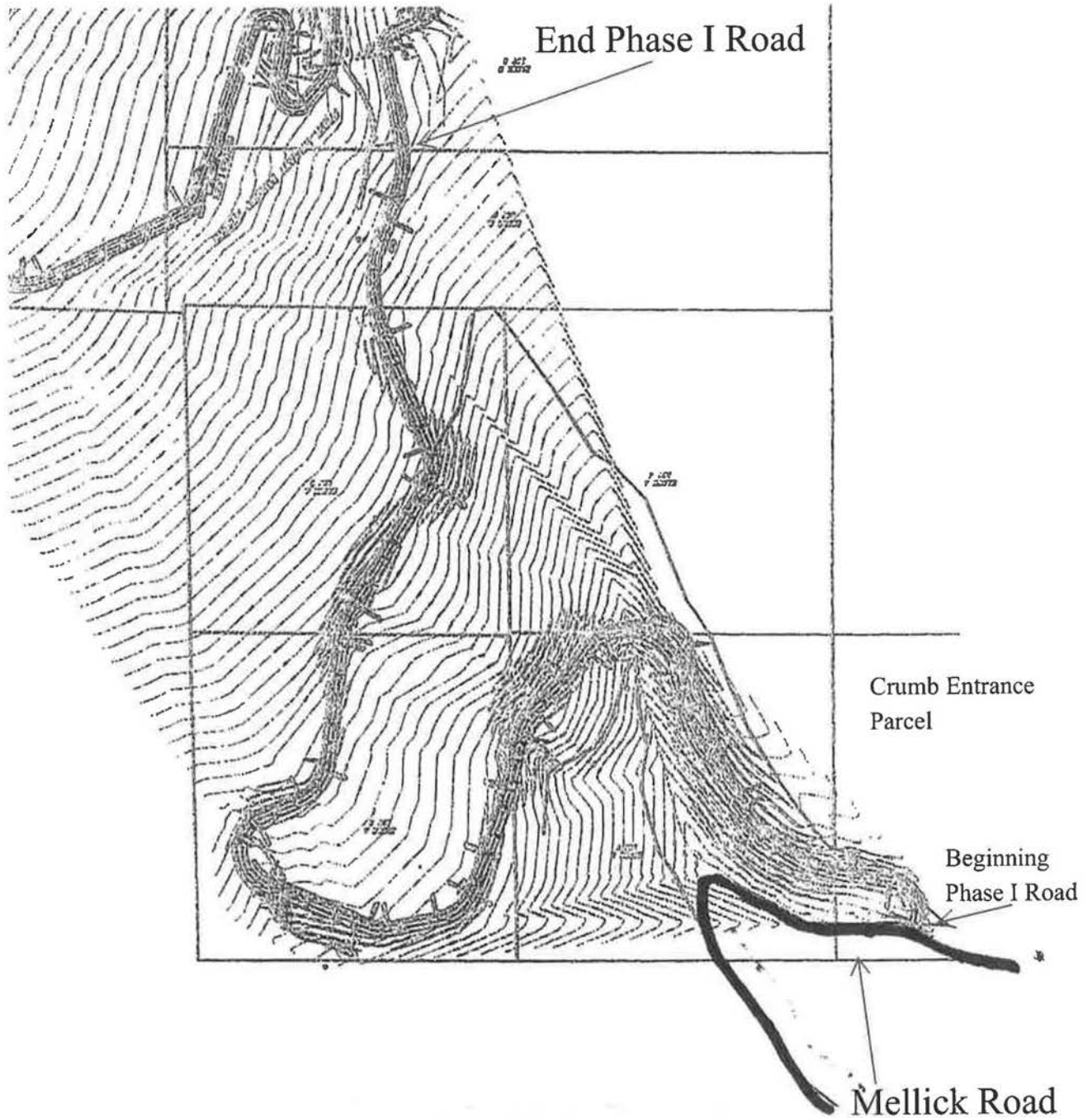
SUBSCRIBED AND SWORN to before me this 18 day of July, 2017.



Daisy Gonzalez
Notary Public for Idaho
Residing at: 7700 W Fairview Ave Boise, ID
Commission Expires: 01/29/2022

EXHIBIT "A"

Phase I Road



124
STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: *prev pd*

2017 SEP -5 PM 1:37

CLERK DISTRICT COURT
[Signature]
DEPUTY

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BRENT G. SCHLOTTHAUER
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Coeur, d'Alene, ID 83816-0808
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ISBA# 6104

Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial Fund LLC	)	Case No. CV 2017-5541
)	
Plaintiffs,	)	ANSWER
)	
v.)	
)	
Brian Crumb, Jennifer O'Callaghan and Brian O'Callaghan, Jitinvest LLC, Spirit Elements, LLC, and Todd A. Reve,)	
)	
Defendants,)	
)	

Defendant BRIAN CRUMB, by and through his attorneys of record, Darrin L. Murphey, of Murphey Law Office, PLLC, and Brent G. Schlotthauer, of Vasseur and Schlotthauer, PLLC,
ANSWER - 1

for Answer to the Complaint, admits, denies, and alleges as follows:

I. PARTIES

1. In answer to paragraph 1, Defendant Crumb admits that he owns property in the Fritz-Heath Forest Second Amended Tracts. Defendant Crumb is without knowledge sufficient to form a belief as to the remaining allegations of paragraph 1, and therefore denies the same.

2. Defendant Crumb is without knowledge sufficient to for a belief as to the allegations of paragraphs 2, 3 and 5-7, and therefore denies the same.

3. In answer to paragraph 4, Defendant Crumb admits that he is an Idaho resident residing in Post Falls, Idaho, and that he may or may not be served at the address described. Defendant Crumb denies the remaining allegations of paragraph 4.

II. BACKGROUND FACTS

1. In answer to paragraph 1, Defendant Crumb admits that he was a member of Abbey & Crumb Developments, LLC, which filed its Articles of Organization of Limited Liability Company with the Idaho Secretary of State on July 25, 2005, until he withdrew from said Company on or about September 26, 2006, and that during that time said Company did work on continuing to develop the then existing Fritz-Heath Forest Second Amended Tracts located in Post Falls, Kootenai County, Idaho. Defendant Crumb denies the remaining allegations of paragraph 1.

2. In answer to paragraph 2, Defendant Crumb admits that he was a member of Abbey & Crumb Developments, LLC, an Idaho limited liability company, which filed its Articles of Organization of Limited Liability Company with the Idaho Secretary of State on July 25, 2005, until he withdrew from said Company on or about September 26, 2006. Defendant

ANSWER - 2

Crumb denies the remaining allegations of paragraph 2.

3. Defendant Crumb denies paragraphs 3, 6, 7, 9, 11, 14.

4. In answer to paragraph 4, Defendant Crumb admits that Abbey & Crumb Developments, LLC retained an engineer to perform certain engineering services concerning a potential road from Mellick Road to lots in the Fritz-Heath Forest Second Amended Tracts. Defendant Crumb denies the remaining allegations of paragraph 4.

5. In answer to paragraph 5, Defendant Crumb is aware that in 2006 Abbey & Crumb Developments, LLC was informed that it would be cheaper to build a road over and across Defendant Crumb's property rather than in the location described in the Plat. Defendant Crumb denies the remaining allegations of paragraph 5.

6. Defendant Crumb is without knowledge sufficient to for a belief as to the allegations of paragraph 8, and therefore denies the same.

7. In answer to paragraph 10, Defendant Crumb admits that he has not filed or recorded an instrument granting an easement over and across his property to all of the lots in the Fritz-Heath Forest Second Amended Tracts, as he has no contractual or other legal obligation to do such. Defendant Crumb denies the remaining allegations of paragraph 10.

8. In answer to paragraph 12, Defendant Crumb admits that he has not filed or recorded an instrument granting an easement over and across his property to all of the lots in the Fritz-Heath Forest Second Amended Tracts, as he has no contractual or other legal obligation to do such. Defendant Crumb is without knowledge sufficient to for a belief as to the remaining allegations of paragraph 12, and therefore denies the same.

9. In answer to paragraph 13, Defendant Crumb admits that he has granted or

ANSWER - 3

promised to grant easements over and across his property to certain lot owners in the Fritz-Heath Forest Second Amended Tracts, including himself, his mother and friend and supervisor at the Post Falls Highway District. Defendant Crumb denies the remaining allegations of paragraph 13.

III. CAUSES OF ACTION

A. Breach of Contract and Fraud.

1. In answer to the unnumbered paragraph, Defendant Crumb admits that he was a member of Abbey & Crumb Developments, LLC, which filed its Articles of Organization of Limited Liability Company with the Idaho Secretary of State on July 25, 2005, until he withdrew from said Company on or about September 26, 2006, and that during that time said Company did work on continuing to develop the then existing Fritz-Heath Forest Second Amended Tracts. Defendant admits that he did not promise Plaintiffs that he would grant them an easement over and across his property prior to Plaintiffs' purchase of lots in the Fritz-Heath Forest Second Amended Tracts. Defendant Crumb denies the remaining allegations of the unnumbered paragraph.

B. Declaratory Judgment.

1. Defendant Crumb denies the allegations of the unnumbered paragraphs.

IV. ATTORNEYS FEES

1. Defendant Crumb denies paragraph 15.

V. GENERAL

1. Defendant Crumb denies paragraph 16.

ANSWER - 4

AFFIRMATIVE DEFENSES

Defendant Crumb, by way of affirmative defense, alleges as follows:

1. The Complaint fails to state a claim against Defendant Crumb upon which relief can be granted.
2. The Complaint is precluded by the statute of limitations, including but not limited to the limitations contained in Idaho Code §§ 5-216, 217, 218 and 224.
3. The Complaint is precluded by the statute of frauds.
4. The Complaint is precluded on the grounds of assumption of risk.
5. Plaintiffs lack standing for part or all of their claims.
6. The Complaint is precluded on the grounds of failure of consideration.
7. The Complaint is precluded on the grounds of failure of contract or privity of contract.
8. The Complaint is precluded on the grounds of violation of public policy.
9. The Complaint is precluded on the grounds of unclean hands.
10. The Complaint is precluded on the grounds of laches.
11. The Complaint is precluded on the grounds of waiver.
12. The Complaint is precluded on the grounds of estoppel.
13. Plaintiffs failed to plead any cause of action of fraud with particularity as required by IRCP 9(b).
14. Plaintiffs' damages, if any, were proximately caused by the plaintiffs own negligence, or action for which Defendant Crumb has no legal responsibility.

ANSWER - 5

15. Plaintiffs' damages, if any, were proximately caused by the wrongful conduct, negligence, or actions of others for which Defendant Crumb has no legal responsibility.

16. Plaintiffs failed to mitigate their damages, if any.

17. Plaintiffs' claim for declaratory relief, if granted, would be contrary to law.

18. Defendant Crumb reserves the right to seek amendment to this Answer to Complaint upon further discovery and a more definite statement of Plaintiffs' claims.

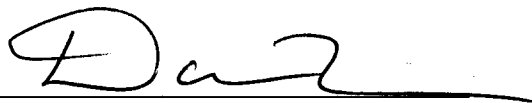
PRAYER FOR RELIEF

WHEREFORE, Defendant Crumb prays for entry of judgment as follows:

1. That Plaintiffs' Complaint be dismissed with prejudice and that Plaintiffs take nothing thereby;
2. For an award of attorney fees and costs incurred herein; and
3. For such other and further relief as the court considers just and proper.

DATED this 1st day of September, 2017.

MURPHEY LAW OFFICE, PLLC

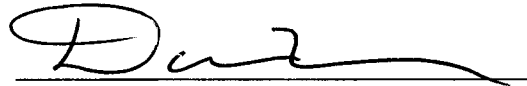
By 
Darrin L. Murphey,
Attorney for Brian Crumb

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the X^{5th} 4th day of September, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 665-7290
- ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
nichole@bistlinelaw.com; sharon@bistlinelaw.com


Darrin L. Murphey

ANSWER - 7

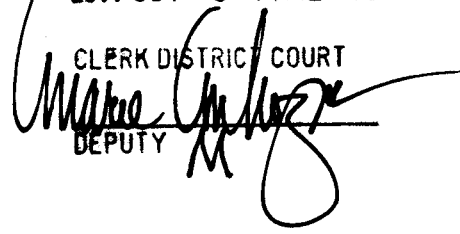
ARTHUR M. BISTLINE
BISTLINE LAW, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814
(208) 665-7270
(208) 665-7290 (fax)
arthur@bistlinelaw.com
ISB: 5216

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED: #281 #240

2017 OCT -3 PM 12: 48

CLERK DISTRICT COURT

DEPUTY



Attorneys for Plaintiffs

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

Security Investor Fund LLC, Security Financial
Fund LLC,

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
Inc, and Todd A. Reeve,

Defendants.

Case No. CV-2017-5541

AFFIDAVIT OF ARTHUR M. BISTLINE IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

STATE OF IDAHO)
) ss.
County of Kootenai)

ARTHUR M. BISTLINE, being duly sworn on oath, deposes and states:

1. I am the Attorney for the Plaintiffs, SECURITY INVESTOR FUND LLC and SECURITY FINANCIAL FUND LLC and am competent to testify to and have personal knowledge of the facts set forth herein, except as to those matters stated on information and belief.


2. Attached are true and correct copies of the excerpts of the deposition transcript of Brian Crumb take on May 29, 2014.

AFFIDAVIT OF ARTHUR M. BISTLINE IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT -1

FURTHER AFFIANT SAYETH NAUGHT.

By: 
ARTHUR M. BISTLINE

SUBSCRIBED AND SWORN to before me this 3 day of October, 2017.


Notary Public for Idaho
Residing at: Post Falls ID
Commission Expires: 4-11-2023

AFFIDAVIT OF ARTHUR M. BISTLINE IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT -2

CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of ~~September~~^{October}, 2017, I served a true and correct copy of foregoing AFFIDAVIT OF ARTHUR M. BISTLINE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to the following:

Darin L. Murphy
Attorney at Law
701 Front Avenue, #101
Cocur d'Alene, ID 83816

U.S. Mail
 Certified mail
 Overnight mail
 Facsimile: (208)667-7625
 Hand Delivery

Todd A. Reeve
P.O. Box 731402
Puyallup, WA 98373-0090

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Spirit Elements, Inc. Project Living
Inc.
Attn: Seth A. Chernoff
6525 Gunpark Drive, #370-249
Boulder, CO 80301

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Jitinvest LLC
Attn: Dale Adcma
P.O. Box 265
Rockwall, TX 74087

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Christopher Varallo
WITHERSPOON KELLEY
422 W. Riverside Avenue, Ste. 1100
Spokane, WA 99201-0300

U.S. Mail
 Certified mail
 Overnight mail
 Facsimile: (509)458-2728
 Hand Delivery


NICHOLE CANSINO

ORIGINAL

STATE OF IDAHO
COUNTY OF KOOTENAI } ss
FILED:

ARTHUR M. BISTLINE
BISTLINE LAW, PLLC
1205 N. 3rd Street
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(208) 665-7270
(208) 665-7290 (fax)
arthur@bistlinelaw.com
ISB: 5216

2017 OCT -3 PM 2:30
CLERK DISTRICT COURT
Maria Lopez
DEPUTY

Attorneys for Plaintiffs

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

Security Investor Fund LLC, Security Financial
Fund LLC,

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
Inc, and Todd A. Reeve,

Defendants.

Case No. CV-2017-5541

CORRECTED AFFIDAVIT OF ARTHUR M.
BISTLINE IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

STATE OF IDAHO)
) ss.
County of Kootenai)

ARTHUR M. BISTLINE, being duly sworn on oath, deposes and states:

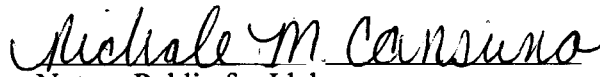
1. I am the Attorney for the Plaintiffs, SECURITY INVESTOR FUND LLC and SECURITY FINANCIAL FUND LLC and am competent to testify to and have personal knowledge of the facts set forth herein, except as to those matters stated on information and belief.

2. Exhibits to the previously filed affidavit were inadvertently omitted. Attached are true and correct copies of the excerpts of the deposition transcript of Brian Crumb take on May 29, 2014.
FURTHER AFFIANT SAYETH NAUGHT.

By: 
ARTHUR M. BISTLINE

SUBSCRIBED AND SWORN to before me this 3 day of October, 2017.

NICHOLE M. CANSINO
NOTARY PUBLIC
STATE OF IDAHO


Notary Public for Idaho
Residing at: Post Falls ID
Commission Expires: 4-11-2023

CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of ~~September~~^{October}, 2017, I served a true and correct copy of foregoing CORRECTED AFFIDAVIT OF ARTHUR M. BISTLINE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to the following:

Darin L. Murphy
Attorney at Law
701 Front Avenue, #101
Coeur d'Alene, ID 83816

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Nichole Cansino
NICHOLE CANSINO

1 like, I don't buy it.

2 MS. O'DOWD: I'm just going to object again
3 for speculation.

4 BY MS. STINES:

5 Q. No. 5, it's not relevant but it states, "Item
6 1 in section 4 (line 77 & 78) is voided." What -- do
7 you know what that -- what does that mean?

8 A. I don't.

9 Q. Okay. No. 6, "Legal description of subject
10 property is Fritz Heath Forest 2nd Amended Tracts Lot
11 13, Block B." And that's -- is that the legal
12 description of the parcel the Lenharts were purchasing?

13 A. Correct.

14 Q. No. 7, "Power and Phone to be installed under
15 roads at the time roads are completed and not prior to
16 closing." What was that offer point necessary for?

17 A. Basically you don't build roads and then dig
18 them up again to put power and phone in. And if it's
19 not feasible, if the roads aren't in prior to closing,
20 there's no sense in putting power in if you have to
21 still build roads.

22 Q. So at the time the Lenharts were purchasing
23 their property, there was no power to the parcel; is
24 that right?

25 A. Correct.

1 to Richard.

2 Q. About what?

3 A. About going across all the property
4 including -- including Seth's.

5 Q. And what -- for what purpose would you have
6 those conversations?

7 A. Because I still have property up there. I'm
8 still friends with Richard Abbey. And I still try to
9 help him out with whatever I can do to finish building
10 the roads.

11 Q. Have you requested permission to cross Mr. --
12 or Abbey's property to access your property?

13 A. I didn't think I needed to ask permission.

14 Q. Has he ever told you that you couldn't use
15 the road to get to your house or to your property?

16 A. No.

17 Q. Do you have permission to use these roads to
18 access your properties?

19 A. Yes.

20 Q. Has Mr. Abbey ever to your knowledge told any
21 other property owner on Monument Ridge that they cannot
22 use this property to access?

23 A. No.

24 We've had numerous conversations about that.

25 Q. And what is the result of those

1 conversations?

2 A. The result of the conversation is when we
3 first developed Abbey -- or first started Abbey & Crumb
4 Developments and actually bought the property, it was
5 our -- it was for us to build roads with everybody has
6 access and nobody will be denied. And it's -- you
7 know, it's wrote up in I believe the CC&Rs, which I
8 don't have a copy of them. I'm no longer in Abbey &
9 Crumb Developments. All that stuff was given to
10 Richard.

11 Plus it's -- I believe it's also in the
12 purchase of Fritz Heath Forest Tracts that, you know,
13 there's basically easement going through them all.

14 Q. But you don't remember who Abbey & Crumb
15 purchased the 200 acres from?

16 A. I don't know. Some billionaire.

17 MS. STINES: I want to show you one more map.
18 We'll mark it as Exhibit 4.

19 (Whereupon, Deposition Exhibit No. 4 was
20 marked for identification.)

21 THE WITNESS: I know Fritz is part of his
22 name. I don't remember if it's his first or last.

23 BY MS. STINES:

24 Q. Oh, it was named after a guy named Fritz?

25 A. Yes.

1 this easement?

2 A. It was, like, 2010.

3 Q. And at that point, was it as soon as this
4 engineered section of the road was completed?

5 A. Say that again.

6 Q. Well, did they ask you for this easement in
7 connection with the completion of this phased portion
8 of the road build out that we see in Exhibit 1?

9 A. I think they just wanted it to make sure they
10 had easement up in -- up into their property from off
11 of the public road that came up to access the 200 acres
12 and Fritz Heath. Because the entrance of -- what we
13 call the entrance of the 200 acres of Fritz Heath
14 goes -- starts on Frankie's and my property.

15 Q. Have you granted an access and roadway use
16 easement to any other property owners?

17 A. Anybody that wants it.

18 Q. Has anyone else asked you for an easement?

19 A. Yes.

20 Q. Who else has asked you?

21 A. Richard Abbey.

22 Q. And have you given an easement to Richard
23 Abbey?

24 A. Verbal, yes.

25 Q. But you haven't drawn up something like

1 A. No, I don't know that.

2 Q. You don't know.

3 Did Richard Abbey -- did he tell you that he
4 received any calls like this from the Lenharts or their
5 counsel?

6 A. Actually, he said that Lenharts called him
7 first and when they couldn't get what they wanted from
8 Richard, he told them, you know, you need to talk to
9 Brian; it's his property.

10 Q. In these calls, did you tell Michael and
11 Jennifer that it was your position that they had access
12 to their property?

13 A. Yes. Numerous times.

14 Q. Numerous times in those phone calls?

15 A. Yes.

16 Q. And did you --

17 A. And I also let them know that I thought it
18 was morally and ethically wrong to ask for me to write
19 something up to say that you do not have access or
20 easement when our whole -- I guess our whole idea from
21 the beginning of Abbey & Crumb Developments was
22 everybody would have access and easement because it
23 went through that piece of property.

24 Q. You told them that?

25 A. Yes.

1 Q. And was any of that compensation ever paid to
2 you?

3 A. No.

4 Q. And did you ever have any discussions with
5 your other partners, and in particular Richard Abbey,
6 about why that never came to fruition?

7 A. It was obvious the economy went in the
8 toilet, and we -- they weren't selling any more lots.
9 So I felt that I'd rather have them spend the money on
10 the road to that than pay me.

11 Q. So you voluntarily gave up the agreement to
12 receive compensation for ...

13 A. Yeah, if that's the way you want to put it.

14 Q. And is it still possible that you could
15 receive compensation from Abbey & Crumb Developments
16 for use of that portion of the 11.72 acres?

17 A. I guess.

18 Q. So I'm going to talk a little bit now about
19 the Lenharts. And we have discussed earlier the
20 purchase and sale agreement. And if you could find
21 that exhibit now. I believe it's Exhibit 2 in our
22 stack here.

23 A. (Complying.)

24 Q. Okay. So can you identify for me just for
25 the record again what the date of the purchase and sale

 ORIGINAL

STATE OF IDAHO
COUNTY OF KOOTENAI } ss
FILED:

2017 OCT -3 PM 2:30

CLERK DISTRICT COURT

DEPUTY

ARTHUR M. BISTLINE
BISTLINE LAW, PLLC
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Coeur d'Alene, ID 83814
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arthur@bistlinelaw.com
ISB: 5216

Attorneys for Plaintiffs

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

Security Investor Fund LLC, Security Financial
Fund LLC,

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
Inc, and Todd A. Reeve,

Defendants.

Case No. CV-2017-5541

DECLARATION OF ROGER GLESSNER

DECLARATION

I, Roger J. Glessner, do solemnly affirm that the foregoing facts are within my personal knowledge and are true and correct:

1. My name is Roger J. Glessner. I am an engineering technician. In 2005, I was a principal of Inland Northwest Consultants (hereinafter, "INC") when Brian Crumb approached me about building an access road from Mellick Road into the FRITZ-HEATH FOREST TRACTS (2ND) subdivision (hereinafter "FRITZ-HEATH").

2. After our initial meeting, Inland Northwest Consultants drafted the "Mellick Road Extension Improvements Agreement" dated September 26, 2005, a true and correct copy of which is attached hereto as "Exhibit A". I could not locate a signed copy

ROGER J. GLESSNER DECLARATION -PAGE 1

of the agreement because INC's older documents are in storage, but I believe that the agreement was signed.

3. Eventually, it was decided that the FRITZ-HEATH would be connected to Mellick Road by using a 40 foot right-of way over a small portion of Brian Crumb's adjoining property. Use of the 40 foot right of over Brian Crumb's property provided an easier, and cheaper, access into the FRITZ-HEATH than connecting directly to Mellick. Accordingly, INC drew up engineering drawings for entrance into the FRITZ-HEATH using a 40 foot right of way over Brian Crumb's property, a true and correct copy of these engineering drawings are attached hereto as "Exhibit B."

4. INC submitted a Building Permit Application to Kootenai County to construct the planned road shown on "Exhibit B" I personally signed the first page of the Building Permit Application, which is attached hereto as "Exhibit C." As part of the Building Permit Application, INC also obtained a letter from the Post Falls Highway District indicating that Mr. Crumb had permission to use Mellick Road to access his property that adjoined the FRITZ-HEATH. That letter is attached hereto as "Exhibit D."

5. Upon Kootenai County approval of the Building Permit Application referenced above, INC surveyed, flagged, and (from an engineering perspective) oversaw the construction of the 40 foot right of way through Brian Crumb's property.

6. I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

Dated: September 21st 2016.


Roger J. Glessner

CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of October, 2017, I served a true and correct copy of foregoing DECLARATION OF ROGER GLESSNER by the method indicated below, and addressed to the following:

Darin L. Murphy
Attorney at Law
701 Front Avenue, #101
Coeur d'Alene, ID 83816

U.S. Mail
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 Facsimile: (208)667-7625
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Spokane, WA 99201-0300

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NICHOLE CANSINO

EXHIBIT A

Mellick Road Extension Improvements September 26, 2005

Inland Northwest Consultants is pleased to provide you with a proposal for engineering and surveying services for your property on Mellick Road within the Fritz Heath Tracts.

Based on our meeting on September 23, 2005:

The format of this proposal is meant to outline the various tasks to create and process engineered road improvement plans through agency approval, and provide construction staking/management services for the required improvements to Mellick Road. To this end, we offer this proposal to be inclusive of all engineering and surveying services as follows:

Task 1 – Topography and Boundary Resolution: INC proposes to gather adequate field data to generate a complete set of engineering plans for the improvements as discussed during our meeting. INC will perform the required field work to generate the required contours and road topography. Additionally, at this time, we will perform all required surveying to resolve your property boundary for roadway development purposes.

Estimated Range = \$ 6,000.00 to \$ 8,000.00

Task 2 – Improvement Plans: INC will coordinate with the applicable agencies, and the required key personal of the Post Falls Highway District, to prepare a preliminary “Site Disturbance Plan” and “Storm Water Management Plan” for the improvements of Mellick Road. INC will finalize the design and prepare a set of final Improvement Plans, for Mellick Road, for submittal to all reviewing agencies. Design and plans will address any comments. All revisions and meetings required by reviewing agencies to obtain Improvement Plan approval are included as a portion of this task.

Estimated Range = \$ 9,000.00 to \$ 10,000.00

Task 3 – Storm Water Pollution Prevention Plan: INC will prepare the “SWPPP” in accordance with the (EPA) regulations and the requirements of Kootenai County Site Disturbance Ordinances.

Estimated Range = \$ 3,500.00 to \$ 4,500.00

Task 4 – Construction Staking Services: INC will perform Construction Staking per the approved Improvement Plans for Mellick Road. Staking includes slope staking, rough grades, sub-grade top of ballast, if required, sub-grade red tops and top of rock. Staking is for one time only. Any requested re-staking, or additional staking, not noted above will be performed and billed at our standard hourly rate and is outside the scope of this proposal.

Estimated Range = \$ 27,000 to \$ 30,000.00

TOTAL LUMP SUM PRICE FOR TASKS 1-4:

Estimated Range = \$ 45,500.00 to \$ 52,000.00

\$ 5,000 deposit require

*This project will be billed on an approximate percentage completion based upon labor and materials costs. Please note that this proposal is for surveying and engineering services only as outlined above, and does not include any permit, application or other fees, soils engineering or testing, studies or analyses, bond premiums, title reports, ownership reports or any other costs that may be associated with the project other than as noted in the above scope. INC may submit some application fees on your behalf with the understanding that you will reimburse INC for these fees and that they are not included in the cost of this proposal. This price is effective through October 26, 2005.

Our office will provide monthly progress billings through completion of the project. Any extra services provided (outside the project scope as shown), will be authorized prior to commencement of extra work (request of work constitutes authorization) and will be billed at our standard hourly rate and noted as an extra expense on the invoice. The required deposit will be applied to the final invoice.

Thank you for your consideration of our proposal. If this proposal is acceptable to you, please sign and date as indicated below and return to our office.

Best Regards,
Inland Northwest Consultants

Chad J. Johnson, P.L.S.

Date:

Brian Crumb

Date:

Address

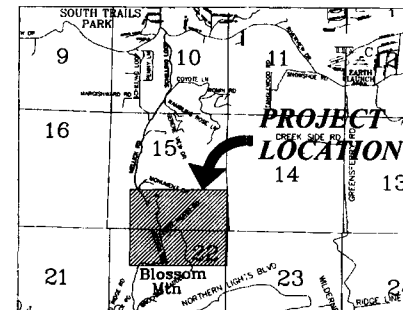
Phone/Fax

EXHIBIT B

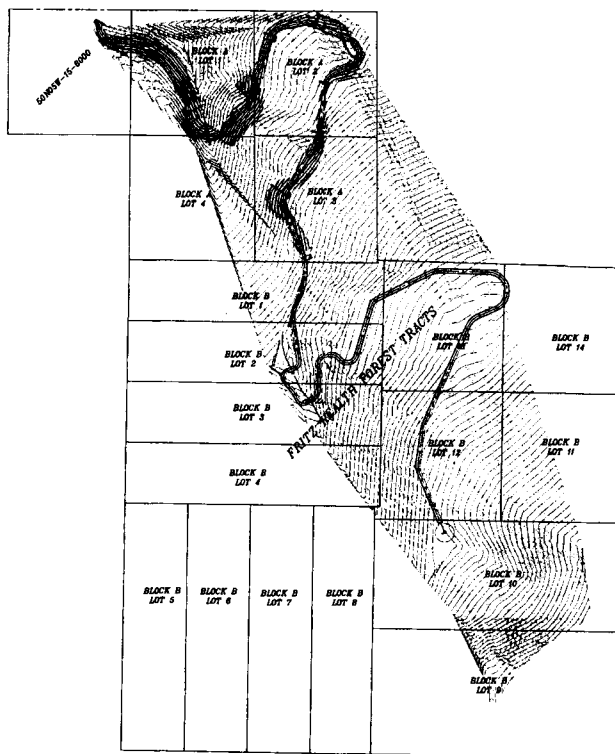
STORMWATER / EROSION CONTROL PLAN FOR MONUMENT RIDGE DRIVE KOOTENAI COUNTY, IDAHO

APPROVED
By: *DH 7/11/08*
KOOTENAI COUNTY
BUILDING AND PLANNING DEPT

Revised
Office
Copy
#47036



VICINITY MAP
NO SCALE



SHEET INDEX

- T 1 COVERSHEET WITH SHEET INDEX & VICINITY MAP
- DV1 STORM WATER MANAGEMENT OVERVIEW
- C 1 ROAD PROFILE (STA: 0+00-11+00)
- C 2 ROAD PROFILE (STA: 11+00-20+00)
- C 3 ROAD PROFILE (STA: 20+00-27+50)
- C 4 ROAD PROFILE (STA: 27+50-33+00)
- D 1 STANDARD DETAILS
- D 2 STANDARD DETAILS
- D 3 STANDARD DETAILS AND ROAD SECTIONS

Z:\DATABASE\pca\INP080993\RDG\CADD\SHEET\080992-11.dwg 7/11/2008 4:52:45 PM PST

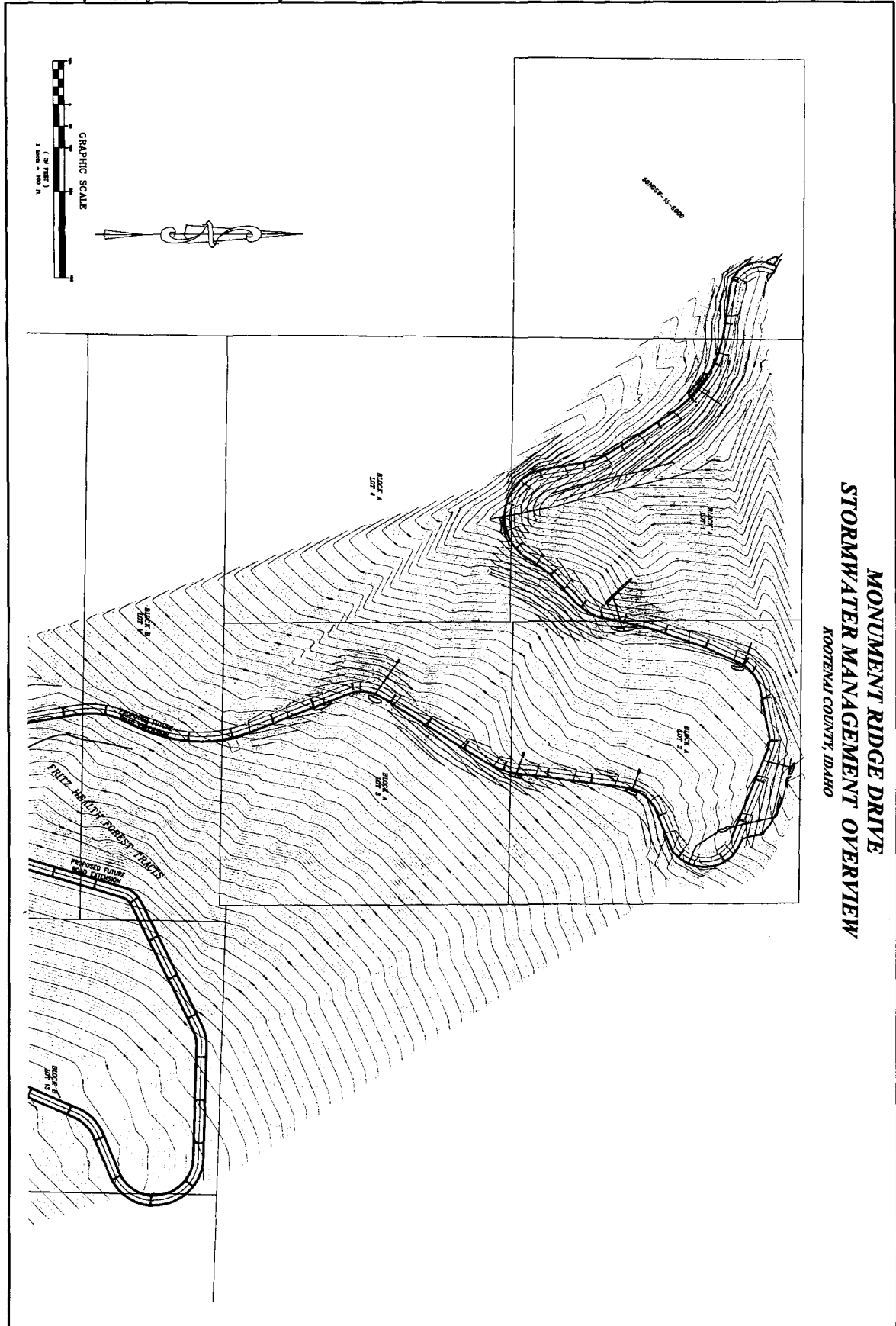
John A. ...



INLAND NORTHWEST CONSULTANTS
ENGINEERS • SURVEYORS • PLANNERS
 1296 Polston Avenue, Suite B, Post Falls, Idaho 83854
 PHONE (208) 773-8370 www.incnorthwest.com FAX (208) 777-2128


MARK	DATE	DESCRIPTION

T1

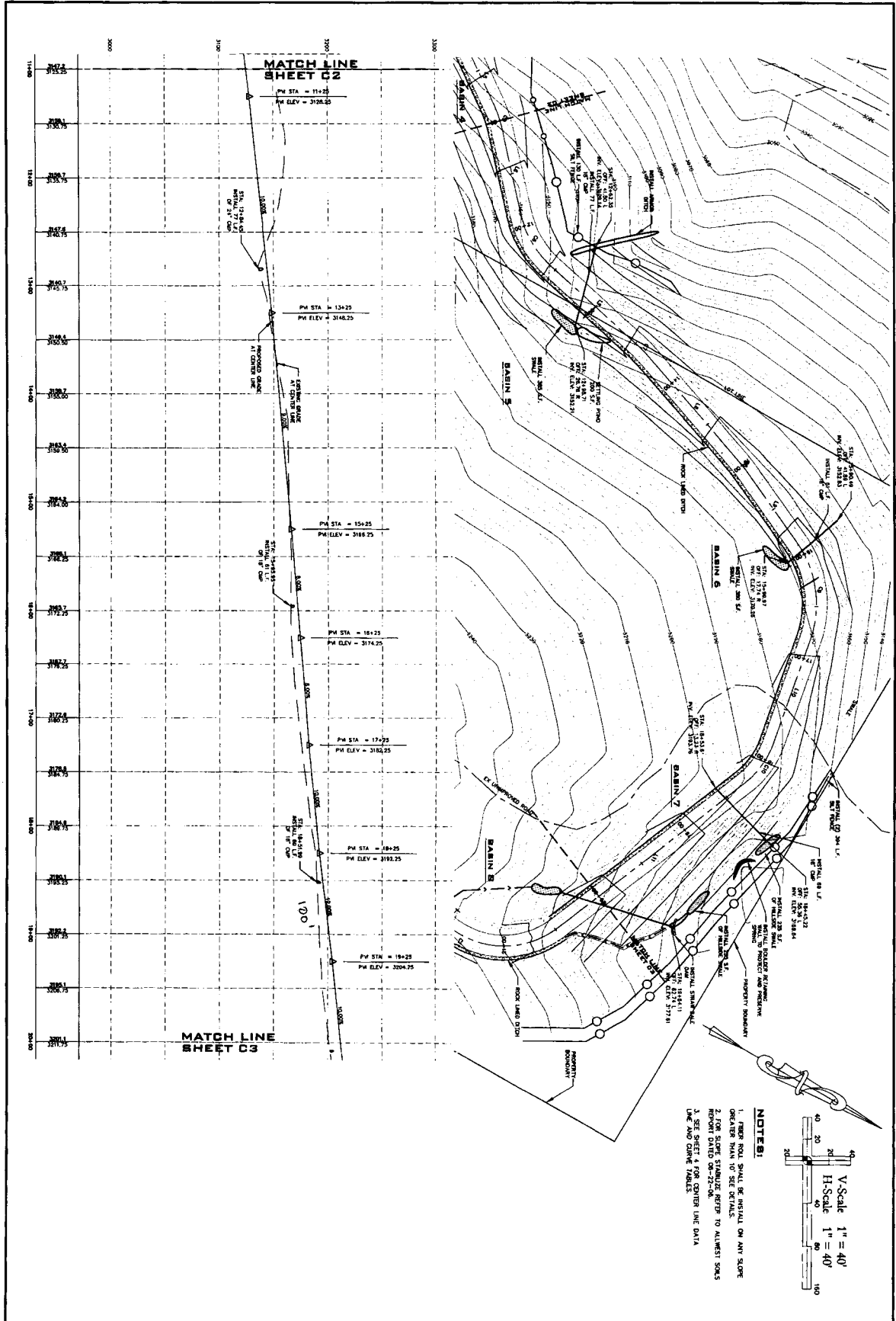


**MONUMENT RIDGE DRIVE
STORMWATER MANAGEMENT OVERVIEW**
KOOTENAI COUNTY, IDAHO

MARK	DATE	DESCRIPTION

7/14/06

 1234 Palms Ave., Ste. B
 Pocatello, Idaho 83204
 PHONE (208) 777-3128
 FAX (208) 777-3128
 www.kootenaiinc.com


 Kootenai County, Idaho
 44 of 355

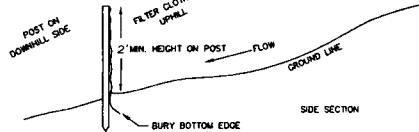
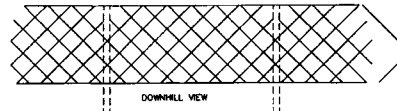


DATE	7/14/06	
DESIGNED BY	...	
CHECKED BY	...	
IN CHARGE	...	
PROJECT NO.	05299	
SHEET TITLE	ROAD TYPHOID	
MARK	DATE	DESCRIPTION

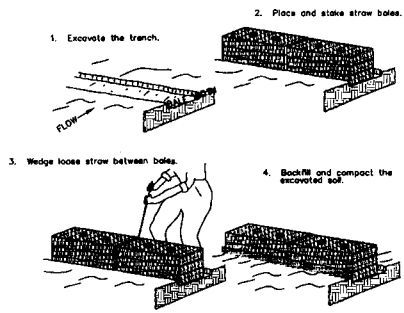
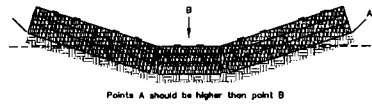
MONUMENT RIDGE DRIVE
STA: 11+00 TO STA: 20+00
 KOOTENAI COUNTY, IDAHO



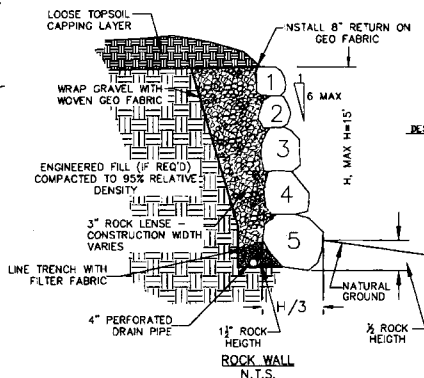
1206 Polaris Ave., Ste. B
 Pocatello, Idaho 83254
 PHONE (208) 777-6779
 FAX (208) 777-2128
 www.asdcorporate.com



SILT FENCE DETAIL
N.T.S.



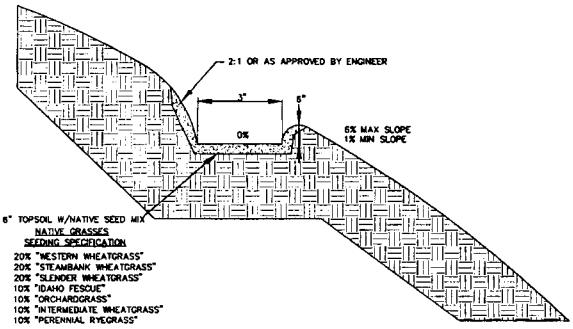
STRAW BALE BARRIER DETAIL
N.T.S.



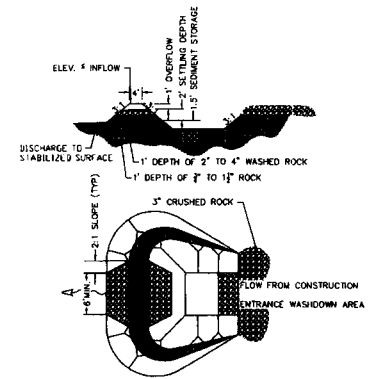
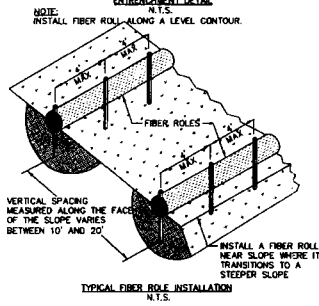
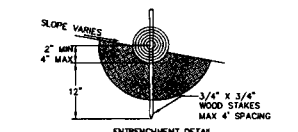
NOTE: CARE SHALL BE TAKEN TO ENSURE TIGHT, INTERLOCKING FIT OF ALL STONES.

ROCK DESIGNATION TABLE

DESIGNATION	SIZE	WEIGHT	DIAMETER
1	1-MAN	50-200	12-18"
2	2-MAN	200-700	18-28"
3	3-MAN	700-2000	28-36"
4	4-MAN	2000-4000	36-48"
5	5-MAN	4000-6000	48-54"
6	6-MAN	6000-8000	54-60"



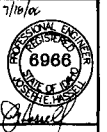
HILLSIDE SWALE DETAIL
N.T.S.



NOTE: 1. SEDIMENT STORAGE MINIMUM VOLUME SHALL BE MAINTAINED AT ALL TIMES DURING CONSTRUCTION, UNTIL & SOIL STABILIZATION HAS BEEN ACCOMPLISHED.



2000 Monument Ave., Ste. 200
Pocatello, Idaho 83424
TEL: (208) 777-7178
FAX: (208) 777-7178
www.monumentridge.com



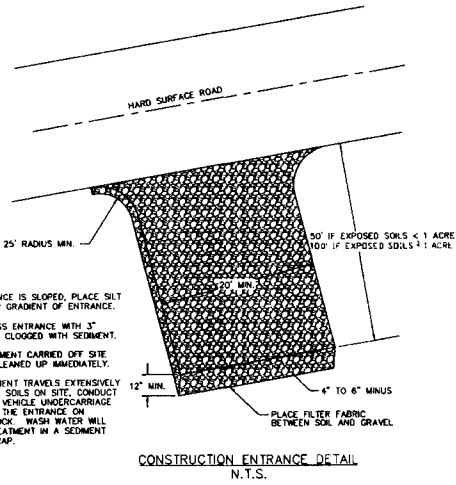
MONUMENT RIDGE DRIVE
STANDARD DETAILS
KOOTENAI COUNTY, IDAHO

MARK	DATE	DESCRIPTION

ISSUE DATE: 07/10/08
DRAWN BY: RLS, JH
CHECKED BY:
DWG FILE: 7-01-3
PROJ. #: 7705-280
SHEET TITLE:
STANDARD
DETAILS

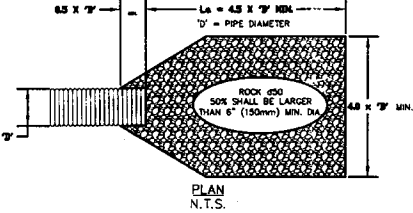
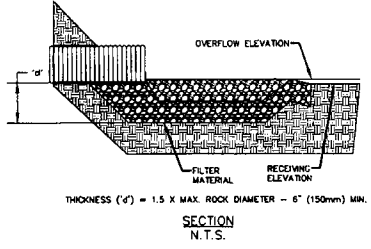
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Z:\DATABASE\Pro\NF\05299\DWG\CIVIL\SHEETS\05299-01-2.dwg 7/14/2006 4:29:11 PM PST



- NOTES:**
1. IF ENTRANCE IS SLOPED, PLACE SILT FENCE DOWN GRADIENT OF ENTRANCE.
 2. TOP DRESS ENTRANCE WITH 3" MINUS WHEN CLOSSED WITH SEDIMENT.
 3. ANY SEDIMENT CARRIED OFF SITE SHALL BE CLEANED UP IMMEDIATELY.
 4. IF EQUIPMENT TRAVELS EXTENSIVELY ON EXPOSED SOILS ON SITE, CONDUCT A TIRE AND VEHICLE UNDERCARRIAGE WASH NEAR THE ENTRANCE ON CRUSHED ROCK. WASH WATER WILL REQUIRE TREATMENT IN A SEDIMENT POND OR TRAP.

CONSTRUCTION ENTRANCE DETAIL
N.T.S.

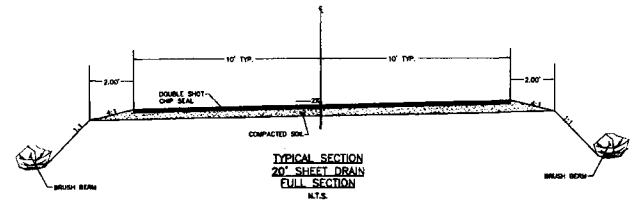


- NOTES:**
1. L_a = LENGTH OF APRON. DISTANCE L_a SHALL BE OF SUFFICIENT LENGTH TO DISSIPATE ENERGY.
 2. APRON SHALL BE SET AT A ZERO GRADE AND ALIGNED STRAIGHT.
 3. FILTER MATERIAL SHALL BE FILTER FABRIC OR 6" (150mm) THICK MINIMUM GRADED GRAVEL LAYER.

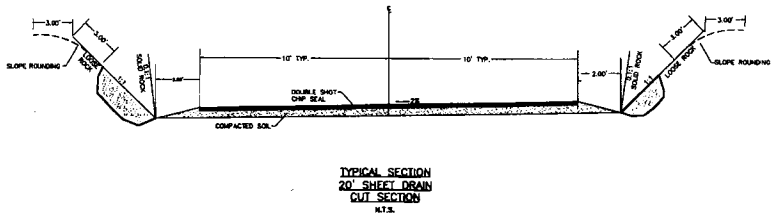
ENERGY DISSIPATOR
N.T.S.

EROSION / SEDIMENT CONTROL NOTES:

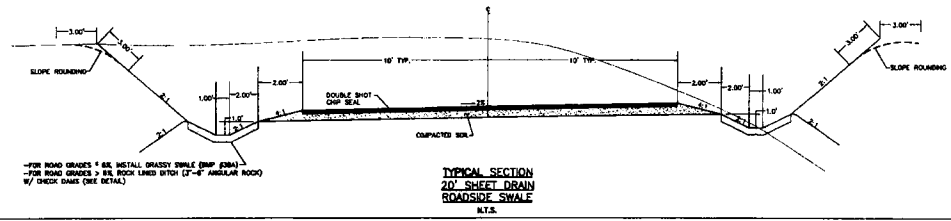
1. THERE SHALL BE SILT FENCE PLACED AROUND ALL STOCKPILES OF SOIL ON SITE.
2. ALL EXPOSED SOIL TO BE LEFT FOR MORE THEN 48 HOURS SHALL BE COVERED WITH STRAW FOR DUST AND EROSION CONTROL.
3. WHEN GRADING IS FINISHED, ALL EXPOSED AREAS SHALL BE SEEDDED PER LANDSCAPE PLAN.
4. ALL OF THE ABOVE CONTROLS SHALL BE IN PLACE WITH IN 14 DAYS OF LOCALIZED GRADING COMPLETION AND/OR 48 HOURS BEFORE A RAIN EVENT OF 0.25" OR MORE.
5. THE CONTRACTOR SHALL PERFORM A INSPECTION OF TEMPORARY BMP'S AFTER EACH STORM EVENT.



TYPICAL SECTION
20' SHEET DRAIN
FULL SECTION
N.T.S.



TYPICAL SECTION
20' SHEET DRAIN
CUT SECTION
N.T.S.



TYPICAL SECTION
20' SHEET DRAIN
ROADSIDE SWALE
N.T.S.

-FOR ROAD GRADES > 8% METALL GRASSY SWALE (BMP 5BMT)
-FOR ROAD GRADES > 8% ROCK LINED SWALE (7'-6\"/>



1200 Idaho Falls, ID 83401
Phone: (208) 746-2754
Fax: (208) 746-2752
www.monumentridge.com



MONUMENT RIDGE DRIVE
STANDARD DETAILS
KOOTENAI COUNTY, IDAHO

NO.	DATE	DESCRIPTION

DATE: 07/14/06
DRAWN BY: BJC, JHM
CHECKED BY:
TWO FILE: 1-01-3
PROJ. # 7105-290

SHEET TITLE:
STANDARD
DETAILS

D3

EXHIBIT C

BUILDING PERMIT APPLICATION

Jurisdiction of Kootenai County, Idaho

No. 42036

Owner: ABBEY & CRUMB DEVELOPMENTS LLC Phone: (208) 699 2838
 Address: PO BOX 3540 POST FALLS, ID83877

Serial: 256310 Plan: 42036 Date:
 Parcel #: 0-2729-00A-001-0 S 15 T 50N R 05W
 Legal: FRITZ HBATH FOREST TR 2ND (AMND), LT 1 BLK A

Contract: ABBEY & CRUMB DEV Ph: (208) 699 2838 REG#:
 M Condt: Ph: ()
 Job Add: 1869 S MELLIACK RD, POST FALLS 83854
 Directs: W 190, LF SPOKANE ST, LF RIVERVIEW, RT SCHILLING LOOP,
 TO MELLIACK RD, TO SITE 2 MI ON LF

Value: P: PC: M: Total: 0
 Size:
 OCC Typ: 24 SITE DISTURBANCE *Retaining Wall's* OCC Group: OCC Load:
 Constr:
 Zoning: RURAL Health:

Comment: 10.051 AC (4622 S35) MUST MBET ACCESS REQ (4409 H)

CV-4307-01B (4609 #145) (4622 #35) (2320 & 201,894')

SPECIAL CONDITIONS	SIZE	Valuation of work	Permit Fee (4609)
620 sq ft Ret Wall	620 sq ft	\$ 6300	\$ 190
		Mechanical Fee (4622)	Plan Check Fee (4617)
		\$	\$ 42
		Invest. Fee (4622)	Total Fee
		\$	\$
Type of Const.	Deposit (4617/4622)	Deposit (4622)	Receipt #
	\$ 45	\$ 25	633855
Occ/Div Group	U	Issued	Receipt #
		10-12-06	35251
Size of Bldg. (Total) Sq. Ft.		No. of Stories	Occ Load

CALL FOR INSPECTION 448-1040

ACCEPTED BY	DATE	PLANS CHECKED BY	CHECKED DATE	APPROVED BY
JL	4/4/06	Crumb	4/6/06	RA

NOTICE
 Separate permits are required for electrical or plumbing.

This permit becomes null and void if work or construction authorized is not commenced within 180 days, or if construction or work is suspended or abandoned for period of 180 days at any time after work is commenced. Monthly scheduled inspections are proof of continued activity on the permit. If suspended or noted in violation, Official may grant one 6-month extension.

I hereby certify that I have read and examined this application and have the same to be true and correct. All provisions of laws and ordinances governing this type of work shall be complied with relative provided herein or not. The granting of a permit does not constitute any liability on the part of the permitting authority or the local law enforcement agency of the commencement of construction.

By having this permit or certificate, or by accepting the same, the applicant understands that the applicant is responsible for the safety of the work and the safety of the public. The applicant shall be responsible for the safety of the work and the safety of the public. The applicant shall be responsible for the safety of the work and the safety of the public.

Ray Crumb 6-6-06
Ray Crumb

APPROVAL SIGNATURES REQUIRED

HIGHWAY DISTRICT

SEPTIC/SEWER DIST.

FIRE DEPT.

ELEVATION CERTIFICATE

SITE DISTURBANCE

DEPT. OF M.H.

OTHER *Recorded Easement*

COMMENTS: *OK Rev BH Heavy dist allow*

EXHIBIT D

POST FALLS HIGHWAY DISTRICT
E. 5629 SELTICE WAY
POST FALLS, IDAHO 83854
(208) 765-3717

JUL 19 2006

July 11, 2006

Kootenai County Planning & Zoning
PO Box 9000
Coeur d'Alene, Idaho 83816-9000

RE: Brian Crumb - Mellick Road

To Whom It May Concern:

This letter is your notification that Brian Crumb is entitled to use Mellick Road and to access his property from it.

If you have any questions, please do not hesitate to contact me at the above number.

Thank you.

Sincerely,

POST FALLS HIGHWAY DISTRICT

K. D. Brownberger
Kevin D. Brownberger
Road Supervisor

ORIGINAL

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 155

2017 OCT -3 PM 2:29

CLERK DISTRICT COURT

DEPUTY

ARTHUR M. BISTLINE
BISTLINE LAW, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814
(208) 665-7270
(208) 665-7290 (fax)
arthur@bistlinelaw.com
ISB: 5216

Attorneys for Plaintiffs

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

Security Investor Fund LLC, Security Financial
Fund LLC,

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
Inc, and Todd A. Reeve,

Defendants.

Case No. CV-2017-5541

PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiffs, SECURITY INVESTOR FUND LLC and SECURITY
FINANCIAL FUND LLC, and pursuant to the Idaho Rules of Civil Procedure 56(c), files
this Motion for Summary Judgment.

I. SUMMARY OF MOTION

Brian Crumb and his family were members of Abbey & Crumb LLC, which
developed the FRITZ-HEATH FOREST TRACTS (2ND) subdivision (hereinafter,
"FRITZ HEATH") located in Post Falls, Idaho. In 2006, Brian Crumb and his wife,
Frankie Crumb, agreed to place the entrance road into the FRITZ-HEATH using a forty

(40) foot right of way on their adjoining property (hereinafter, "CRUMB ENTRANCE"). Kootenai County approved a building permit to build the road on the forty (40) foot right of way through the CRUMB ENTRANCE based upon engineering plans which Abbey & Crumb LLC's engineers submitted to Kootenai County. The Post Falls Fire District annexed the FRITZ-HEATH into its district for fire protection based upon the forty (40) foot right of way running through the CRUMB ENTRANCE.

Brain Crumb admits that he agreed to place the FRITZ-HEATH entrance on the CRUMB ENTRANCE. On May 29, 2014, Brian Crumb testified under oath that "everybody has access and nobody will be denied" and that he would give an easement to "anyone that wants it." This lawsuit was brought after Brian Crumb informed Kootenai County that certain FRITZ-HEATH owners did not have permission to use the CRUMB ENTRANCE.

II. SUMMARY JUDGMENT EVIDENCE

Plaintiffs' rely upon the following summary judgment evidence attached hereto:

EXHIBIT 1 - CRUMB'S ANSWERS TO FIRST SET OF DISCOVERY

EXHIBIT 2 - CRUMB'S DEPOSITION TRANSCRIPT

III. UNCONTESTED PERTIENT FACTS

1. Abbey & Crumb LLC was formed on July 25, 2005 by five (5) members, each having a 20% membership interest. The members were Brian Crumb, his wife, Frankie Crumb, and mother Marian Crumb, together with Richard J. Abbey, and his wife Kerri Ann Abbey. *See* Richard Abbey Declaration, ¶ 2.

2. The five members formed Abbey & Crumb LLC for the purpose of developing the Fritz-Heath Forest Tracts (2nd) Subdivision (hereinafter, "FRITZ-HEATH"), which consisted of about 200 acres of mountain property, divided into eighteen (18) residential lots, located on Blossom Mountain in Post Falls, Idaho. *See* Richard Abbey Declaration, ¶ 3.

3. Brian Crumb and Frankie Crumb drafted the FRITZ-HEATH Restrictive Covenants ("FRITZ CC&Rs") which were approved and signed by all Abbey & Crumb LLC members and filed on the record in Kootenai County, Idaho on January 5, 2016. The FRITZ CC&R's called for maintenance of a common road. *See* Richard Abbey Declaration, ¶ 4.

4. Abbey & Crumb LLC originally owned all FRITZ- HEATH those currently involved in this lawsuit. *See* Richard Abbey Declaration, ¶ 5.

5. Abbey & Crumb LLC still owns FRITZ-HEATH Lot 10, Bloc. other FRITZ-HEATH lots were sold or transferred to others. In 2006, four FRITZ-HEATH lots were transferred to Brian Crumb, Frankie Crumb, and Marian Crumb (Brian Crumb's mother) when they sold their membership interest in Abbey & Crumb LLC. *See* Richard Abbey Declaration, ¶ 6.

6. In 2006, Abbey & Crumb LLC, retained an engineering firm named Inland Northwest Consultants (hereinafter, "INC") to design and supervise construction of an engineered road connecting Mellick Road (a public road) to the FRITZ-HEATH. INC informed Abbey & Crumb LLC that it would be cheaper to construct the entrance road into the FRITZ-HEATH by using a forty (40) foot right of way on an adjoining property owned by Brian Crumb and Frankie Crumb, described as the Northeast 1/4, Lot

↑
2006

3, Township 50 North, Range 5 West, Boise Meridian, Kootenai County, Idaho.

(hereinafter, the "CRUMB ENTRANCE"). See Richard Abbey Declaration, ¶ 6 and Crumb Answer to Request for Admission No. 1 (Exhibit 1).

7. Exhibit A to Plaintiffs' Complaint (See Richard Abbey Declaration "Exhibit E") shows INC's drawings of an engineered road on a forty (40) foot right of way through the CRUMB ENTRANCE used to connect the FRITZ-HEATH to Mellick Road. The road travels through the CRUMB ENTRANCE and through the four lower FRITZ-HEATH lots (owned by parties Security Financial Fund LLC, Jitinvest LLC, O'Callahans, and Reeves) and reaches Lot 1, Block B (owned by party Spirit Elements, Inc.) (hereinafter referred to as the "Phase 1 Road"). The "Phase I Road" is used as the primary access to these lots. See Richard Abbey Declaration, ¶ 8.

8. In 2006, Brian and Frankie Crumb expressly agreed that Abbey & Crumb LLC would place the entrance to the FRITZ-HEATH on a forty (40) foot right of way through the CRUMB ENTRANCE to be used as the permanent, perpetual, access to FRITZ-HEATH for the benefit of all FRITZ-HEATH landowners. See Richard Abbey Declaration, ¶ 9.

9. Brian Crumb admits to this agreement in a September 15, 2016 e-mail as follows:

INC said this can't be done with just the 200 acres being used. It could but would not be cost effective because of too many switchbacks. The cost to build all the switchbacks, plus the loss of land on a lot of lots would not be worth doing for what we could get out of these lots. It was said that if we came from the 12 acre parcel that my wife and I just happen to own, it could be done for a lot less money and a lot less disturbance to the land and would be worth doing and we could make some money selling the lots. So it was agreed that we would make the

entrance for the 200 acres on Frankie's and my 12 acres parcel (where the double green gate is now).

See Richard Abbey Declaration, ¶ 9.

10. Abbey & Crumb LLC accepted Brian and Frankie Crumb's offer to build the FRITZ-HEATH entrance on their adjoining property. All members of Abbey & Crumb LLC concurred with the decision to place the FRITZ-HEATH entrance on Brian and Frankie Crumb's adjoining property. See Richard Abbey Declaration, ¶ 10.

11. Abbey & Crumb LLC named the road "Monument Ridge Drive" and obtained from Kootenai County a Building Permit to build the entrance into the FRITZ-HEATH using a forty (40) foot right of way through the CRUMB ENTRANCE. See Richard Abbey Declaration, ¶ 11; Roger Glessner Declaration ¶ 4.

12. Pursuant to engineering plans and a Kootenai County Building Permit, the "Phase 1 Road" was built utilizing the CRUMB ENTRANCE. Brian Crumb personally worked on the CRUMB ENTRANCE, and personally directed the cutting of trees on the CRUMB ENTRANCE, using chainsaws purchased by Abbey & Crumb LLC for that purpose. See Richard Abbey Declaration, ¶¶ 11-12.

13. In late 2006, the Crumbs entered into an "Agreement of Members to Transfer and Withdraw" and sold their membership interest in Abbey & Crumb LLC to Richard and Keri Abbey in exchange for four FRITZ-HEATH lots. See Richard Abbey Declaration, ¶ 13.

14. The Buyout Agreement specifically required Abbey & Crumb LLC to **"complete the road building work and to provide ingress and egress access to each lot"** as follows:

Road and Utilities to FRITZ FOREST: parties agree that it will be the obligation and responsibility of the LLC to complete the road building work and to provide ingress and egress to each lot . . .

See Richard Abbey Declaration, ¶ 14.

15. Brian Crumb, Frankie Crumb and Marian Crumb signed the foregoing Agreement which contractually obligated Abbey & Crumb LLC, among other things, to complete the road to the FRITZ-HEATH lots using the CRUMB ENTRANCE. In November, 2016, Kootenai County gave final sign-off and approved the "Phase I Road." See Richard Abbey Declaration, ¶ 15.

16. The Crumbs were fully aware that the Kootenai County Site Disturbance Permit showed the CRUMB ENTRNACE providing access to all FRITZ-HEATH lots. The Crumb's contractual requirement for Abbey & Crumb LLC to "complete the road building work and to provide ingress and egress to each [FRITZ-HEATH] lot" could only be accomplished by using the forty (40) foot right of way through the CRUMB ENTRANCE. See Richard Abbey Declaration, ¶ 16.

17. In or around 2006, the FRITZ-HEATH and was annexed into the Post Falls Fire District, at the request of Brian Crumb and Abbey & Crumb LLC, based upon the forty (40) foot right of way as shown on INC's engineer drawings. To this day, the Post Falls Fire District insists on having a key, or combination, to the lock on the gate at the CRUMB ENTRANCE, so that it can provide emergency services to FRITZ-HEATH lots. See Richard Abbey Declaration, ¶ 17.

18. The FRITZ CC&Rs drafted by Brian Crumb and Frankie Crumb are meaningless without the CRUMB ENTRANCE, because entrance into the FRITZ-

HEATH is necessary to create a need for "road maintenance" or the other activities set forth in the FRITZ CCRs. See Richard Abbey Declaration, ¶ 18.

19. The Crumbs failed to record the "Exhibit A" to the FRITZ CC&Rs which was to show the road through the FRITZ-HEATH. However, the "Exhibit A" that should have been recorded by the Crumbs clearly shows a right of way through the CRUMB ENTRANCE. See Richard Abbey Declaration, ¶ 19.

20. On September 15, 2015, Brian Crumb sent an e-mail admitting that the FRITZ-HEATH entrance was placed on the CRUMB ENTRANCE PARCEL so that **"we could make some money selling the lots"** but indicating that he might be "owed" something. The Brian Crumb e-mail reads:

On Thursday, September 15, 2016 8:43 AM, Brian Crumb <bdc4268@yahoo.com> wrote:

Zac,

Still no input from Steve Howell, Seth Chernoff or Dale Adema. What are their thoughts? You also mentioned in your first email (which is no longer available to read, why not?) that by me doing this, my benefits will greatly outweigh any losses, plus I get to help everyone out. How so? What are my benefits? I feel now in the last email that I am being held hostage. That if I don't grant easement through my 12 acres, that no one will grant easement through theirs to me. I don't think we want to play this game.

— Just so every ones knows, when this all got started, (Richard, correct me if I miss anything or am wrong on anything) The engineering firm, INC said this can't be done with just the 200 acres being used. It could but would not be cost effective because of to many switchbacks. The cost to build all the switchbacks, plus the loss of land on a lot of lots would not be worth doing for what we could get out of these lots. It was said that if we came from the 12 acre parcel that my wife and I just happen to own, it could be done for a lot less money and a lot less disturbance to the land and would be worth doing and we could make some money selling the lots. So it was agreed that we would make the entrance for the 200 acres on Frankie's and my 12 acres parcel (where the double green gate is now). Us partners on the 200 talked about doing this and agreed Frankie and I would be compensated for the land

we will loose and also taking away my entrance to our 12 acre parcel. I would now have to find another way into my own property. Frankie and I owned the 10 acres directly to the west of our 12 acres and when we sold it, we wrote in that we gave up all road access thru it. Now that we just gave up our only entrance into our own property, we needed to get compensated for it. That has never come about. We have not got one dime for us giving up some of our property and our entrance to our 12 acres so that all of you can have a good entrance into the 200. Yes, it did benefit us as well, now it is easier to get up to our property on the 200, but now I have had to purchase and easement from the person we sold the 10 acres to the west of the 12 acres from. I keep paying out money and doing things and nothing coming in from anyone on the 200 except my mom and Gary Bremer, and Gary doesn't even own property in the 200. Doesn't make sense to me why I keep doing this. You say I get to help every one out. What is every one doing to help someone else out? And I'm not talking helping me. I'm talking the other land owners. Richard as never given up on this project, where most other developers gave up and moved on, he still plugs away at this. Yes, it has been very slow and people have lost their property, but the way I see it EVERYONE on the 200 needs to work together, and not just by giving easements, but by putting money up to get this road done as well. It's not going to get done on it's own. What good is your property if you can't get to it? To me a lot of people want something for nothing. There are very few of us who have put up our time and money into the 200 and others are just sitting back waiting for a free ride. At this point, Frank Hill has an easement to one lot. I am giving an easement thru the 12 acres when we sell our own property on the 200. Gary Bremer, Zac and my mom will have easements, I am writing them up now, but that is as far as it goes right now. If I die, or sell the 12 acres, the rest I don't know what your going to do. The person we are looking at selling lot 14 bulk b to is the same person that wants the 12 acres. He knows about the easement issue, we talked to a land use attorney, and said he would welcome being in control of the 200. He will change the gate out and only a few lots will have the key, the rest of you can go the old way. These are my thoughts and concerns. Lets here from the rest of the people. And to everyone, I have no problem at all signing a new easement thru our lots on the 200 acres along with everyone else. That is the way it is written in the CCR's and the way it should be any way. I just have a problem with giving everyone easements thru my 12 acres when some have done nothing to help out on the 200. I will give an easement thru our 12 acres to only the original purchaser of property that Abbey & Crumb Developments sold to in the beginning, but everyone has lost their property. You can say what you want about me, I'm just being honest in what I have seen go on up here. If you have a problem with that, you need to get more involved with the 200.

Brian

See Richard Abbey Declaration, ¶ 20. Crumb Request for Admission No. 8 (Exhibit 1).

21. On May 29, 2014, Brian Crumb gave deposition testimony in a suit entitled *Michael A. Lenhart Jr. and Jennifer Lenhart, vs. Transition Title & Escrow, Inc.*, Case No. CV-13-5442, in The District Court of The First Judicial District, Kootenai County, State of Idaho. Defendant produced Brian Crumb's testimony in response to Plaintiff's Request for Production, and a true and correct copy is attached hereto as Exhibit 2. Therein, Brian Crumb refuted the Lenhart's claim alleging that they lacked access to their FRITZ-HEATH lot through the CRUMB PARCEL, by testifying that "everybody has access and nobody will be denied" and that he would give an easement to "anyone that wants it" Crumb Dep. at 59:20-50:13; 67:3-24 (Exhibit 2). Crumb further testified that:

Q. In these calls, did you tell Michael and Jennifer that it was your position that they had access to their property?

A. Yes. Numerous times.

Q. - Numerous times in those phone calls?

A. - Yes.

Q. And did you –

A. And I also let them know that I thought it was morally and ethically wrong to ask for me to write something up to say that you do not have access or easement when our whole -- I guess our whole idea from the beginning of Abbey & Crumb Developments was everybody would have access and easement because it went through that piece of property.

Q. You told them that?

A. Yes.

Crumb Dep. 73:10-25 (Exhibit 2).

22. Any effort by Brian or Frankie Crumb to prevent FRITZ-HEATH owners from using the CRUMB ENTRANCE PARCEL is a breach of their agreement to place the FRITZ-HEATH entrance road on Brian and Frankie Crumb's property as a perpetual access into the FRITZ-HEATH. *See* Richard Abbey Declaration, ¶ 21.

23. Brian Crumb states in his September 15, 2016 that he intends to selectively grant easements to himself, his mother and "Mike" Monette, who is Brian Crumb's boss at the Post Falls Highway District. Also, he states that he intends to grant an easement to his friend "Gary" Bremer, who owns an adjoining lot to FRITZ-HEATH, but does not actually own a FRITZ-HEATH lot. *See* Richard Abbey Declaration, ¶ 22.

24. In July 2017, Brian Crumb informed Kootenai County that Jitinvest LLC lacked an easement over the CRUMB ENTRANCE PARCEL which led to revocation of Jitinvest LLC's site disturbance permit. This lawsuit promptly followed. *See* Richard Abbey Declaration, ¶ 23, and Plaintiff's Response to Request for Admission No. 7 (Exhibit 1).

25. FRITZ-HEATH landowners are intended beneficiaries of the express agreement that the 40 foot right of way through the CRUMB ENTRANCE would be used as permanent access to FRITZ-HEATH. The agreement was not made for benevolent reasons but, in the words of Brian Crumb, so that **"we could make some money selling the lots."** The CRUMB ENTRANCE was part of the **"commonly used infrastructure . . . benefiting the Lots within Fritz Heath"** described in

Paragraph 24 of the FRITZ CC&Rs, which are essentially meaningless without access through the CRUMB ENTRNACE. See Richard Abbey Declaration, ¶ 24.

26. Any attempt by Brian or Frankie Crumb to deny FRITZ-HEATH landowners access over the CRUMB ENTRNACE PARCEL is a breach of their express agreement to allow all FRITZ-HEATH owners to perpetually access their lots through that parcel. See Richard Abbey Declaration, ¶ 25).

III. ARGUMENT AND AUTHORITY

A. Brian and Frankie Crumb Granted an Express 40 foot Right of Way over the Crumb Parcel.

An easement is the right to use the land of another for a specific purpose that is not inconsistent with the general use of the property by the owner. *Akers v. D.L. White Const., Inc.* 142 Idaho 293, 301, 127 P.3d 196, 204 (2005). An express easement, being an interest in real property, may only be created by a written instrument. *Shultz v. Atkins*, 97 Idaho 770, 773, 554 P.2d 948, 951 (1976) (citing I.C. § 9-503; *McReynolds v. Harrigfeld*, 26 Idaho 26, 140 P. 1096 (1914)). However, an express easement can also be created orally.

In *Bob Daniels and Sons v. Weaver*, 106 Idaho 535, 681 P.2d 1010 (Ct.App.1984) (review denied) we stated, in a case involving the grant of an easement pursuant to an oral agreement, that an oral agreement may be removed from the strictures of the statute of frauds by part or full performance. This exception is grounded in equity. *International Business Machines Corp. v. Lawhorn*, 106 Idaho 194, 677 P.2d 507 (Ct.App.1984). This exception protects a party who demonstrates reliance upon an oral contract by acts that would not have been done except for the contract. *International Business Machines Corp., supra*.

Christensen v. Ruffing,
117 Idaho 1047, 1050, 793
P.2d 720, 723 (Ct. App.
1990)

"No particular forms or words of art are necessary [to create an express easement]; it is necessary only that the parties make clear their intention to establish a servitude."

Benninger v. Derifield, 142 Idaho 486, 489, 129 P3d. 1235, 1238 (2006) (quoting *Seccombe v. Weeks*, 115 Idaho 433, 436, 767 P.2d 276, 279 (Ct.App.1989)).

Brian Crumb and Frankie Crumb created an express forty (40) foot right of way easement over the CRUMB ENTRANCE by virtue of an oral agreement that was fully performed. The road was built where it was built. Furthermore, the oral agreement is evidenced in numerous writings and testified to by Brian Crumb himself under oath. The buy-out agreement between the members of Abbey & Crumb LLC references finishing a road on a forty (40) foot right of way through the Crumb's property for providing access to the FRITZ-HEATH.

Kootenai County public safety is now intertwined with the forty (40) foot right of way easement. FRITZ-HEATH was incorporated into the Post Falls Fire District based upon the right of way, and Kootenai County approved the building permit to construct the road based upon the right of way. The Crumbs drafted and publicly recorded FRITZ CCR's which should have included "Exhibit A" showing the forty (40) foot right of way. The Crumb's failure to publicly record "Exhibit A" does not diminish its significance as a writing that created an express easement. Finally, Brian Crumb has admitted in writing, and in sworn testimony, that he intended his adjoining property be used a permanent entrance to the FRITZ-HEATH.

Brian Crumb claims in his answers to discovery that he was verbally promised \$200,000 by Abbey & Crumb LLC for an easement over his property:

Abbey & Crumb Developments, LLC and Defendant Crumb then verbally agreed that upon the receipt of payment in the amount of \$200,000 to Defendant Crumb, defendant Crumb would grant easements to the lots in teh Fritz-Heath Forest Second Amended Tracts for use as a road over and across defendant Crumb's adjacent property.

Plaintiff's Response to Interrogatory No. 1 (Exhibit 1).

Unfortunately for Mr. Crumb, the "Agreement of Members to Transfer and Withdraw" fails to mention such compensation, and purports to be the complete agreement of the parties. See Richard Abbey Declaration, ¶ 14. Further, Brian Crumb testified that there was a verbal agreement "like 50,000 or something, a hundred thousand" but that it never came to fruition because:

Q. And did you ever have any discussions with your other partners, and in particular Richard Abbey, about why that never came to fruition?

A. It was obvious the economy went in the toilet, and we -- they weren't selling any more lots. So I felt that I'd rather have them spend the money on the road to that than pay me.

Q. So you voluntarily gave up the agreement to receive compensation for ...

A. Yeah, if that's the way you want to put it.

Q. And is it still possible that you could receive compensation from Abbey & Crumb Developments for use of that portion of the 11.72 acres?

A. I guess.

Crumb Depo. 114:4-17.

Even if Crumb were able to show that he is entitled to compensation from Abbey & Crumb LLC for use of the CRUMB ENTRANCE, that is between Brian Crumb and Abbey & Crumb LLC, and does not preclude summary judgment. The undisputed facts show that an express forty (40) foot right of way easement was created by Brian and Frankie Crumb, through their property, for the benefit of all FRITZ-HEATH landowners.

B. An Express Easement forty (40) foot wide should be Declared over the Phase I Road.

All parties to this suit are using the Phase I Road as the primary entrance to their property. Richard Abbey Declaration, ¶ 8. Only Brian Crumb objects to an express forty (40) easement being declared over the Phase I Road. The fact that Brian Crumb agreed to the right of way so that **"we could make some money selling the lots"** precludes him from seeking additional compensation from FRITZ-HEATH landowners.

WHEREFORE, Plaintiffs pray that this Court enter Judgment that an express forty (40) foot easement exists over the "Phase 1 Road" for the benefit of FRITZ-HEATH landowners, and for all other relief requested above, which is incorporated here as if set forth in full.

DATED this 3 day of October, 2017.

BISTLINE LAW, PLLC



ARTHUR M. BISTLINE
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of September, 2017, I served a true and correct copy of foregoing PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to the following:

Darin L. Murphy	<input type="checkbox"/>	U.S. Mail
Attorney at Law	<input type="checkbox"/>	Certified mail
701 Front Avenue, #101	<input type="checkbox"/>	Overnight mail
Coeur d'Alene, ID 83816	<input type="checkbox"/>	Facsimile: (208)667-7625
	<input checked="" type="checkbox"/>	Hand Delivery

Todd A. Reeve	<input checked="" type="checkbox"/>	U.S. Mail
P.O. Box 731402	<input type="checkbox"/>	Certified mail
Puyallup, WA 98373-0090	<input type="checkbox"/>	Overnight mail
	<input type="checkbox"/>	Facsimile:
	<input type="checkbox"/>	Hand Delivery

Spirit Elements, Inc. Project Living Inc.	<input checked="" type="checkbox"/>	U.S. Mail
Attn: Seth A. Chernoff	<input type="checkbox"/>	Certified mail
6525 Gunpark Drive, #370-249	<input type="checkbox"/>	Overnight mail
Boulder, CO 80301	<input type="checkbox"/>	Facsimile:
	<input type="checkbox"/>	Hand Delivery

Jitinvest LLC	<input checked="" type="checkbox"/>	U.S. Mail
Attn: Dale Adema	<input type="checkbox"/>	Certified mail
P.O. Box 265	<input type="checkbox"/>	Overnight mail
Rockwall, TX 74087	<input type="checkbox"/>	Facsimile:
	<input type="checkbox"/>	Hand Delivery

Christopher Varallo	<input checked="" type="checkbox"/>	U.S. Mail
WITHERSPOON KELLEY	<input type="checkbox"/>	Certified mail
422 W. Riverside Avenue, Ste. 1100	<input type="checkbox"/>	Overnight mail
Spokane, WA 99201-0300	<input type="checkbox"/>	Facsimile: (509)458-2728
	<input type="checkbox"/>	Hand Delivery


NICHOLE CANSINO

EXHIBIT 1

DARRIN L. MURPHEY
Murphey Law Office, PLLC
402 West Canfield Avenue, Suite 2
Coeur d'Alene, ID 83815
Telephone: (208) 667-7621
Facsimile: (208) 667-7625
ISBA# 6221

BRENT G. SCHLOTTHAUER
VASSEUR & SCHLOTTHAUER, PLLC
409 Coeur d'Alene Avenue
P.O. Box 808
Coeur, d'Alene, ID 83816-0808
Telephone: (208) 664-4457
Facsimile: (208) 765-4702
ISBA# 6104

Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial Fund LLC	)	Case No. CV 2017-5541
)	
Plaintiffs,	)	DEFENDANT CRUMB'S ANSWERS AND
	)	RESPONSES TO PLAINTIFFS' FIRST SET
v.	)	OF INTERROGATORIES, REQUESTS
	)	FOR PRODUCTION AND REQUESTS
Brian Crumb, Jennifer O'Callaghan and Brian O'Callaghan, Jitinvest LLC, Spirit Elements, LLC, and Todd A. Reve,	)	FOR ADMISSIONS TO DEFENDANT
	)	BRIAN CRUMB
)	
Defendants,)	
)	

Defendant BRIAN CRUMB, by and through his attorneys of record, Darrin L. Murphey,

DEFENDANT CRUMB'S ANSWERS AND RESPONSES TO PLAINTIFFS' FIRST SET OF
INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSIONS TO
DEFENDANT BRIAN CRUMB - 1

of Murphey Law Office, PLLC, and Brent G. Schlotthauer, of Vasseur and Schlotthauer, PLLC, and in accordance with Idaho Rules of Civil Procedure hereby answers and responds to Plaintiffs' First Set of Interrogatories, Requests for Production and Requests for Admissions to Defendant Brian Crumb, as follows:

REQUEST FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1: Admit that Defendant, Brian Crumb is a record owner of a lot adjoining the FRITZ-HEATH FOREST TRACT (Second) subdivision (hereinafter "FRITZ-HEATH") described generally as NE 1/4 Lot 3 Township 50 North, Range 5 West, Boise Meridian, Section 15, Kootenai County, Idaho.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 2: Admit that in or about 2004, Brian Crumb agreed to place the access road to the FRITZ-HEATH subdivision on his property adjoining the FRITZ-HEATH.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 3: Admit that at the time Brian Crumb agreed to place the access road to the FRITZ-HEATH subdivision on his property adjoining the FRITZ-HEATH, he intended, at a later time, to extract compensation from FRITZ-HEATH landowners for use of the access road.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 4: Admit that, at the time Brian Crumb agreed to place the access road to the FRITZ-HEATH subdivision on his adjoining property, he intended

DEFENDANT CRUMB'S ANSWERS AND RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSIONS TO DEFENDANT BRIAN CRUMB - 2

that FRITZ-HEATH landowners would use the access road without paying Brian Crumb compensation for use of the access road.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 5: Admit that at the time Brian Crumb agreed to place the access road to the FRITZ-HEATH subdivision on his adjoining property, that he intended to dedicate the access road for the benefit of the FRITZ-HEATH subdivision and its landowners.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 6: Admit that in 2017, Brian Crumb informed others that he is entitled to compensation from some FRITZ-HEATH landowners for using the access road to the FRITZ-HEATH that was constructed on his adjoining property.

RESPONSE: Admit that Brian Crumb informed others that he is willing to grant an easement over and across the property described in Request for Admission No. 1 to landowners in the Fritz-Heath Forest Second Amended Tracts subdivision upon the receipt of reasonable compensation for said easement.

REQUEST FOR ADMISSION NO. 7: Admit that in 2017, Brian Crumb informed Kootenai County that some FRITZ-HEATH landowners did not have an easement to use the access road to the FRITZ-HEATH that was constructed on his adjoining property.

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 8: Admit that on or about September 15, 2015, Brian Crumb sent the following e-mail stating that:

DEFENDANT CRUMB'S ANSWERS AND RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSIONS TO DEFENDANT BRIAN CRUMB - 3

On Thursday, September 15, 2016 8:43 AM, Brian Crumb
<bdc4268@yahoo.com> wrote:

Zac,

Still no input from Steve Howell, Seth Chernoff or Dale Adema. What are their thoughts? You also mentioned in your first email (which is no longer available to read, why not?) that by me doing this, my benefits will greatly outweigh any losses, plus I get to help everyone out. How so? What are my benefits? I feel now in the last email that I am being held hostage. That if I don't grant easement through my 12 acres, that no one will grant easement through theirs to me. I don't think we want to play this game.

Just so every ones knows, when this all got started, (Richard, correct me if I miss anything or am wrong on anything) The engineering firm, INC said this can't be done with just the 200 acres being used. It could but would not be cost effective because of to many switchbacks. The cost to build all the switchbacks, plus the loss of land on a lot of lots would not be worth doing for what we could get out of these lots. It was said that if we came from the 12 acre parcel that my wife and I just happen to own, it could be done for a lot less money and a lot less disturbance to the land and would be worth doing and we could make some money selling the lots. So it was agreed that we would make the entrance for the 200 acres on Frankie's and my 12 acres parcel (where the double green gate is now). Us partners on the 200 talked about doing this and agreed Frankie and I would be compensated for the land we will loose and also taking away my entrance to our 12 acre parcel. I would now have to find another way into my own property. Frankie and I owned the 10 acres directly to the west of our 12 acres and when we sold it, we wrote in that we gave up all road access thru it. Now that we just gave up our only entrance into our own property, we needed to get compensated for it. That has never come about. We have not got one dime for us giving up some of our property and our entrance to our 12 acres so that all of you can have a good entrance into the 200. Yes, it did benefit us as well, now it is easier to get up to our property on the 200, but now I have had to purchase and easement from the person we sold the 10 acres to the west of the 12 acres from. I keep paying out money and doing things and nothing coming in from anyone on the 200 except my mom and Gary Bremer, and Gary doesn't even own property in the 200. Doesn't make sense to me why I keep doing this. You say I get to help every one out. What is every one doing to help someone else out? And I'm not talking helping me. I'm talking the other land owners. Richard as never given up on this project, where most other developers gave up and moved on, he still plugs away at this. Yes, it has been very slow and people have lost their property, but the way I see it EVERYONE on the 200 needs to work together, and not just by giving

DEFENDANT CRUMB'S ANSWERS AND RESPONSES TO PLAINTIFFS' FIRST SET OF
INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSIONS TO
DEFENDANT BRIAN CRUMB - 4

easements, but by putting money up to get this road done as well. It's not going to get done on it's own. What good is your property if you can't get to it? To me a lot of people want something for nothing. There are very few of us who have put up our time and money into the 200 and others are just sitting back waiting for a free ride. At this point, Frank Hill has an easement to one lot. I am giving an easement thru the 12 acres when we sell our own property on the 200. Gary Bremer, Zac and my mom will have easements, I am writing them up now, but that is as far as it goes right now. If I die, or sell the 12 acres, the rest I don't know what your going to do. The person we are looking at selling lot 14 bulk b to is the same person that wants the 12 acres. He knows about the easement issue, we talked to a land use attorney, and said he would welcome being in control of the 200. He will change the gate out and only a few lots will have the key, the rest of you can go the old way. These are my thoughts and concerns. Lets here from the rest of the people. And to everyone, I have no problem at all signing a new easement thru our lots on the 200 acres along with everyone else. That is the way it is written in the CCR's and the way it should be any way. I just have a problem with giving everyone easements thru my 12 acres when some have done nothing to help out on the 200. I will give an easement thru our 12 acres to only the original purchaser of property that Abbey & Crumb Developments sold to in the beginning, but everyone has lost their property. You can say what you want about me, I'm just being honest in what I have seen go on up here. If you have a problem with that, you need to get more involved with the 200.

Brian

RESPONSE: Admit.

REQUEST FOR ADMISSION NO. 9: Admit that, on or about May 15, 2015, Brian

Crumb sent an e-mail to Richard Abbey stating that:

The only way she will let you continue is to have a written and recorded easement from the owners of the property where the "John Mack Road" is over to her lot 5 blk B FHFT. BUT until then, do not drive on or across lot 5 blk B FHFT. These are her wishes.

OBJECTION: The referenced excerpt from an email is not the complete email communication. Defendant Crumb further objects on the grounds that the email is not relevant nor likely to lead to the discovery of admissible evidence. The email concerns a communication

DEFENDANT CRUMB'S ANSWERS AND RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSIONS TO DEFENDANT BRIAN CRUMB - 5

relayed by Defendant Crumb between his mother, Marian Crumb and Richard Abbey regarding a trespass by Richard Abbey on Marian Crumb's property and negotiating an easement between Richard Abbey and Marian Crumb over property wholly unrelated to Plaintiffs' lawsuit.

RESPONSE: Without waiving said objection, Defendant Crumb admits that the email is an excerpt from an email sent by Defendant Crumb. Defendant Crumb denies that the excerpt is the complete email from Defendant Crumb.

INTERROGATORIES

INTERROGATORY NO. 1: Please explain in detail why Brian Crumb is entitled to compensation from some FRITZ-HEATH landowners for using the access road to the FRITZ-HEATH that was constructed on Brian Crumb's adjoining property.

RESPONSE: Defendant Crumb was a member of Abbey & Crumb Developments, LLC, which filed its Articles of Organization of Limited Liability Company with the Idaho Secretary of State on July 25, 2005, until he withdrew from the Company on or about September 26, 2006. During that time, Abbey & Crumb Developments, LLC worked on continuing to develop the then existing Fritz-Heath Forest Second Amended Tracts subdivision, including selling lots. During that time, the engineering firm retained by Abbey & Crumb Developments, LLC recommended relocating the entrance road to the development to a point farther up Mellick Road from the location of the road that was originally laid out, to Defendant Crumb's adjacent property, in order to save the Company development costs and provide more convenient access to the lots. Abbey & Crumb Developments, LLC and Defendant Crumb then verbally agreed that upon the receipt of payment in the amount of \$200,000.00 to Defendant Crumb, Defendant

DEFENDANT CRUMB'S ANSWERS AND RESPONSES TO PLAINTIFFS' FIRST SET OF
INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSIONS TO
DEFENDANT BRIAN CRUMB - 6

Crumb would grant easements to the lots in the Fritz-Heath Forest Second Amended Tracts for use as a road over and across Defendant Crumb's adjacent property.

During the time that Defendant Crumb was a member Abbey & Crumb Developments, LLC, four (4) lots were sold from the Fritz-Heath Forest Second Amended Tracts. Although Defendant Crumb had not yet received the agreed upon compensation from Abbey & Crumb Developments, LLC for an easement over and across his adjacent property, Defendant Crumb verbally promised the four (4) original purchasers that he would grant an easement over and across his adjacent property if the original purchaser desired an easement and provided Defendant Crumb with an easement instrument acceptable in form. Only one (1) of the four (4) original purchasers requested and provided an easement instrument to Defendant Crumb. Defendant Crumb did not extend such a promise to the three (3) successor owners of the four (4) original purchasers, nor did Defendant Crumb extend the promise to purchasers of lots after he withdrew from Abbey & Crumb Developments, LLC on or about September 26, 2006, other than to lots owned by Defendant Crumb, his mother and a friend. Defendant Crumb likewise did not make any such promise to the Plaintiffs.

INTERROGATORY NO. 2: Please explain in detail why Brian Crumb agreed to the placement of the access road to the FRITZ-HEATH on his adjoining property.

RESPONSE: Please see Response to Interrogatory No. 1.

INTERROGATORY NO. 3: Please explain in detail what type of compensation Brian Crumb is seeking from FRITZ-HEATH landowners for using the access road to the FRITZ-HEATH constructed on his adjoining property.

DEFENDANT CRUMB'S ANSWERS AND RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSIONS TO DEFENDANT BRIAN CRUMB - 7

RESPONSE: Reasonable compensation.

INTERROGATORY NO. 4: Please explain in detail why a "written and recorded easement" was requested prior to travel "on or across lot 5, blk B" as reflected in the e-mail set forth in Request for Admission No. 9.

OBJECTION: The referenced excerpt from an email is not the complete email communication, and is not relevant nor likely to lead to the discovery of admissible evidence. The email concerns a communication relayed by Defendant Crumb between his mother, Marian Crumb and Richard Abbey regarding a trespass by Mr. Abbey on Marian Crumb's property, and negotiating an easement between Richard Abbey and Marian Crumb over property wholly unrelated to Plaintiffs' lawsuit.

RESPONSE: Without waiving said objection, Plaintiffs will need to ask Marian Crumb.

INTERROGATORY NO. 5: Please explain in detail why you did not record an easement allowing FRITZ-HEATH land owners to use the access road on your adjoining property to access their FRITZ-HEATH lots.

RESPONSE: Defendant Crumb was not paid for an easement, and he did not have a legal obligation to grant or record an easement over and across his adjacent property.

INTERROGATORY NO. 6: Please explain in detail all efforts taken by you to notify FRITZ-HEATH land owners that you failed to record an easement on the access road to the FRITZ-HEATH constructed on your adjoining property.

RESPONSE: Defendant Crumb was not paid for an easement, and he did not have any legal obligation to grant or record an easement over and across his adjacent property, nor did

DEFENDANT CRUMB'S ANSWERS AND RESPONSES TO PLAINTIFFS' FIRST SET OF
INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSIONS TO
DEFENDANT BRIAN CRUMB - 8

Defendant Crumb have an obligation to inform the lot owners what easements were or were not recorded.

REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce all documents, including electronic mail, which discuss the access road to FRITZ-HEATH constructed on Brian Crumb's adjoining property.

RESPONSE: See attached.

REQUEST FOR PRODUCTION NO. 2: Please produce all documents, including electronic mail, to or from, Kootenai County, which discuss the access road to FRITZ-HEATH constructed on Brian Crumb's adjoining property.

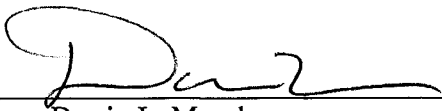
RESPONSE: None.

REQUEST FOR PRODUCTION NO. 3: Please produce all documents, including electronic mail, to or from, Kootenai County, which reflect Brian Crumb commenting on the site disturbance plans for Lots 1 and 3, Block B, of the FRITZ-HEATH subdivision.

RESPONSE: None.

DATED this 20th day of September, 2017.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

DEFENDANT CRUMB'S ANSWERS AND RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSIONS TO DEFENDANT BRIAN CRUMB - 9

STATE OF IDAHO)
 : ss.
County of Kootenai)

Defendant BRIAN CRUMB being first duly sworn on oath, deposes and says:

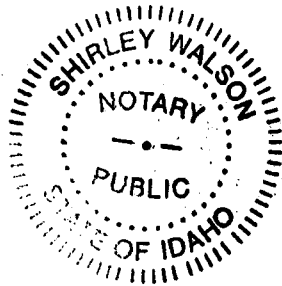
That he is a defendant in the above-entitled action and that he has read the foregoing answers and responses to interrogatories and request for admissions and knows the contents thereof, and believes the same to be true.

DATED this 20th day of September, 2017.

Brian Crumb
Brian Crumb

SUBSCRIBED AND SWORN to before me this 20th day of September, 2017.

(SEAL)



Shirley Walson
Notary Public for Idaho
Residing at Hayden
Commission Expires: 7-24-20

DEFENDANT CRUMB'S ANSWERS AND RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION AND REQUESTS FOR ADMISSIONS TO DEFENDANT BRIAN CRUMB - 10

EXHIBIT 2

1 like, I don't buy it.

2 MS. O'DOWD: I'm just going to object again
3 for speculation.

4 BY MS. STINES:

5 Q. No. 5, it's not relevant but it states, "Item
6 1 in section 4 (line 77 & 78) is voided." What -- do
7 you know what that -- what does that mean?

8 A. I don't.

9 Q. Okay. No. 6, "Legal description of subject
10 property is Fritz Heath Forest 2nd Amended Tracts Lot
11 13, Block B." And that's -- is that the legal
12 description of the parcel the Lenharts were purchasing?

13 A. Correct.

14 Q. No. 7, "Power and Phone to be installed under
15 roads at the time roads are completed and not prior to
16 closing." What was that offer point necessary for?

17 A. Basically you don't build roads and then dig
18 them up again to put power and phone in. And if it's
19 not feasible, if the roads aren't in prior to closing,
20 there's no sense in putting power in if you have to
21 still build roads.

22 Q. So at the time the Lenharts were purchasing
23 their property, there was no power to the parcel; is
24 that right?

25 A. Correct.

1 to Richard.

2 Q. About what?

3 A. About going across all the property
4 including -- including Seth's.

5 Q. And what -- for what purpose would you have
6 those conversations?

7 A. Because I still have property up there. I'm
8 still friends with Richard Abbey. And I still try to
9 help him out with whatever I can do to finish building
10 the roads.

11 Q. Have you requested permission to cross Mr. --
12 or Abbey's property to access your property?

13 A. I didn't think I needed to ask permission.

14 Q. Has he ever told you that you couldn't use
15 the road to get to your house or to your property?

16 A. No.

17 Q. Do you have permission to use these roads to
18 access your properties?

19 A. Yes.

20 Q. Has Mr. Abbey ever to your knowledge told any
21 other property owner on Monument Ridge that they cannot
22 use this property to access?

23 A. No.

24 We've had numerous conversations about that.

25 Q. And what is the result of those

1 conversations?

2 A. The result of the conversation is when we
3 first developed Abbey -- or first started Abbey & Crumb
4 Developments and actually bought the property, it was
5 our -- it was for us to build roads with everybody has
6 access and nobody will be denied. And it's -- you
7 know, it's wrote up in I believe the CC&Rs, which I
8 don't have a copy of them. I'm no longer in Abbey &
9 Crumb Developments. All that stuff was given to
10 Richard.

11 Plus it's -- I believe it's also in the
12 purchase of Fritz Heath Forest Tracts that, you know,
13 there's basically easement going through them all.

14 Q. But you don't remember who Abbey & Crumb
15 purchased the 200 acres from?

16 A. I don't know. Some billionaire.

17 MS. STINES: I want to show you one more map.
18 We'll mark it as Exhibit 4.

19 (Whereupon, Deposition Exhibit No. 4 was
20 marked for identification.)

21 THE WITNESS: I know Fritz is part of his
22 name. I don't remember if it's his first or last.

23 BY MS. STINES:

24 Q. Oh, it was named after a guy named Fritz?

25 A. Yes.

1 this easement?

2 A. It was, like, 2010.

3 Q. And at that point, was it as soon as this
4 engineered section of the road was completed?

5 A. Say that again.

6 Q. Well, did they ask you for this easement in
7 connection with the completion of this phased portion
8 of the road build out that we see in Exhibit 1?

9 A. I think they just wanted it to make sure they
10 had easement up in -- up into their property from off
11 of the public road that came up to access the 200 acres
12 and Fritz Heath. Because the entrance of -- what we
13 call the entrance of the 200 acres of Fritz Heath
14 goes -- starts on Frankie's and my property.

15 Q. Have you granted an access and roadway use
16 easement to any other property owners?

17 A. Anybody that wants it.

18 Q. Has anyone else asked you for an easement?

19 A. Yes.

20 Q. Who else has asked you?

21 A. Richard Abbey.

22 Q. And have you given an easement to Richard
23 Abbey?

24 A. Verbal, yes.

25 Q. But you haven't drawn up something like

1 A. No, I don't know that.

2 Q. You don't know.

3 Did Richard Abbey -- did he tell you that he
4 received any calls like this from the Lenharts or their
5 counsel?

6 A. Actually, he said that Lenharts called him
7 first and when they couldn't get what they wanted from
8 Richard, he told them, you know, you need to talk to
9 Brian; it's his property.

10 Q. In these calls, did you tell Michael and
11 Jennifer that it was your position that they had access
12 to their property?

13 A. Yes. Numerous times.

14 Q. Numerous times in those phone calls?

15 A. Yes.

16 Q. And did you --

17 A. And I also let them know that I thought it
18 was morally and ethically wrong to ask for me to write
19 something up to say that you do not have access or
20 easement when our whole -- I guess our whole idea from
21 the beginning of Abbey & Crumb Developments was
22 everybody would have access and easement because it
23 went through that piece of property.

24 Q. You told them that?

25 A. Yes.

1 Q. And was any of that compensation ever paid to
2 you?

3 A. No.

4 Q. And did you ever have any discussions with
5 your other partners, and in particular Richard Abbey,
6 about why that never came to fruition?

7 A. It was obvious the economy went in the
8 toilet, and we -- they weren't selling any more lots.
9 So I felt that I'd rather have them spend the money on
10 the road to that than pay me.

11 Q. So you voluntarily gave up the agreement to
12 receive compensation for ...

13 A. Yeah, if that's the way you want to put it.

14 Q. And is it still possible that you could
15 receive compensation from Abbey & Crumb Developments
16 for use of that portion of the 11.72 acres?

17 A. I guess.

18 Q. So I'm going to talk a little bit now about
19 the Lenharts. And we have discussed earlier the
20 purchase and sale agreement. And if you could find
21 that exhibit now. I believe it's Exhibit 2 in our
22 stack here.

23 A. (Complying.)

24 Q. Okay. So can you identify for me just for
25 the record again what the date of the purchase and sale

FIRST JUDICIAL DISTRICT COURT, STATE OF IDAHO
IN AND FOR THE COUNTY OF KOOTENAI
324 W. GARDEN AVENUE
COEUR D'ALENE, IDAHO 83816-9000

FILED 10/4/2017 AT 11:52 AM
STATE OF IDAHO, COUNTY OF KOOTENAI SS
CLERK OF THE DISTRICT COURT

BY  DEPUTY

SECURITY INVESTOR FUND LLC, ETAL.)

VS.)

BRIAN CRUMB, ETAL.)

Case No: CV-2017-0005541

NOTICE OF PRE-TRIAL CONFERENCE AND TRIAL

NOTICE IS HEREBY GIVEN that the above-entitled case is hereby set for:

Scheduling Conference

Monday, February 26, 2018 at 03:00 PM

Judge: Rich Christensen

**Court Trial Scheduled
3 Day Court Trial**

Monday, April 2, 2018 at 09:00 AM

TRIALS ARE SCHEDULED FOR A TWO WEEK PERIOD

Judge: Rich Christensen

Additional Presiding Judges: Barbara Buchanan; Rich Christensen; Fred Gibler; Lansing L. Haynes; Charles W. Hosack; John P. Luster; Cynthia K.C. Meyer; John T. Mitchell; Benjamin Simpson; Steven Verby; Scott Wayman.

I certify that copies of this Notice were served as follows on Wednesday, October 4, 2017.

CHRISTOPHER GEORGE VARALLO
422 W RIVERSIDE AVE STE 1100
SPOKANE, WA 99201

XXXFaxed 509-458-2728

DARRIN L. MURPHEY, PRIVATE CASES
402 WEST CANFIELD AVENUE, SUITE 2
COEUR D'ALENE, ID 83815

XXX Faxed 208-667-7625

BRENT GAROLD SCHLOTTHAUER
PO BOX 808
COEUR D'ALENE, ID 83816-0808

XXXFaxed 208-765-4702

ARTHUR MOONEY BISTLINE
1205 N 3RD ST
COEUR D'ALENE, ID 83814

XXX Faxed 208-665-7290

Dated: Wednesday, October 4, 2017
Jim Brannon
Clerk Of The District Court

By:  Deputy Clerk

PRETRIAL ORDER

In order to assist with the trial of this matter **IT IS HEREBY ORDERED** that:

1. DISCOVERY:

All written discovery shall be initiated so that timely responses shall be completed thirty-five (35) days before trial. The last day for taking any discovery depositions shall be twenty-one (21) days before trial.

2. EXPERT WITNESSES:

Not later than one hundred sixty eight (168) days (24 weeks) before trial, Plaintiff(s) shall disclose all experts to be called at trial. Not later than one hundred twelve (112) days (16 weeks) before trial, Defendant(s) shall disclose all experts to be called at trial. Such disclosure shall consist of at least the information required to be disclosed pursuant to I.R.C.P. 26(b)(4)(A)(1)(i) for individuals retained or specially employed to provide expert testimony in the case or who are employees of the party. For individuals with knowledge of relevant facts not acquired in preparation for trial and who have not been retained or specially employed to provide expert testimony such disclosure shall comply with I.R.C.P. 26(b)(4)(A)(1)(ii). Notice of compliance shall be contemporaneously filed with the Court.

3. PRETRIAL MOTIONS:

Motions for summary judgment shall be timely filed so as to be heard not later than eighty four (84) days (12 weeks) before trial. (NOTICE: DUE TO COURT CONGESTION IT IS ADVISABLE TO CONTACT THE COURT FOR SCHEDULING SUMMARY JUDGMENT MOTIONS AT LEAST THREE (3) MONTHS PRIOR TO HEARING.) Motions in limine concerning designated witnesses and exhibits shall be submitted in writing at least seven (7) days before trial. The last day for hearing all other pretrial motions including other motions in limine shall be twenty-one (21) days before trial.

4. MOTIONS FOR SUMMARY JUDGMENT:

There shall be served and filed with each motion for summary judgment a separate concise statement, together with a reference to the record, of each of the material facts as to which the moving party contends there are no genuine issues of dispute. Any

party opposing the motion shall, not later than fourteen (14) days after the service of the motion for summary judgment and the statement of facts, serve and file a separate concise statement, together with a reference to the record, setting forth all material facts as to which it is contended there exist genuine issues necessary to be litigated.

In determining any motion for summary judgment, the Court may assume that the facts as claimed by the moving party are admitted to exist without controversy, except and to the extent that such facts are asserted to be actually in good faith controverted by a statement filed in opposition to the motion.

5. DISCOVERY DISPUTES:

Unless otherwise ordered, the Court will not entertain any discovery motion, except those brought by a person appearing pro se and those brought pursuant to I.R.C.P. 26(c) by a person who is not a party, unless counsel for the moving party files with the Court, at the time of filing the motion, a statement showing that the lawyer making the motion has made a reasonable effort to reach agreement with opposing counsel on the matters set forth in the motion. *A “reasonable effort” must include attempts to contact opposing counsel by telephone or in person. Sending written or electronic correspondence without attempts of personal voice contact will not be deemed a “reasonable effort.”* The motion shall not refer the Court to other documents in the file. For example, if the sufficiency of an answer to an interrogatory is in issue, the motion shall contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party’s contentions, separately stated.

6. EXHIBITS AND EXHIBIT LISTS:

Exhibit lists and copies of exhibits shall be prepared and exchanged between parties and filed with the Clerk at least fourteen (14) days before trial. The original exhibits should be filed with the Clerk at the time of trial. Using the attached form, each party shall prepare a list of exhibits, it expects to offer. Two copies of the exhibit list are to be filed with the Clerk, and a copy is to be provided to opposing parties. Exhibits should be listed in the order that the party anticipates they will be offered. Exhibit labels can be obtained from the Court Clerk. Each party shall affix labels to their exhibits before trial. After the labels are marked and attached to the original exhibit, copies should be made. Plaintiff’s exhibits should be marked in numerical sequence.

Defendant's exhibits should be marked in alphabetical sequence. The civil action number of the case and the date of the trial should also be placed on each of the exhibit labels. It is expected that each party will have a copy of all exhibits to be used at trial.

7. LIST OF WITNESSES:

Witness lists shall be prepared and exchanged between parties and filed with the Clerk at least fourteen (14) days before trial. Each party shall provide opposing parties with a list of the party's witnesses and shall provide the Court with two copies of each list of witnesses. Witnesses should be listed in the order they are anticipated to be called.

8. JURY INSTRUCTIONS:

Jury instructions shall be prepared and exchanged between the parties and filed with the Clerk at least seven (7) days before trial. The Court has prepared stock instructions covering the Idaho Jury Instructions listed on the attached sheet. Copies may be obtained from the Court. The parties shall meet in good faith to agree on a statement of claims instruction which shall be submitted to the Court with the other proposed instructions. In the absence of agreement, each party shall submit their own statement of claims instruction. All instructions shall be prepared in accordance with I.R.C.P. 51(a).

9. BRIEFS AND MEMORANDA:

In addition to any original brief or memorandum filed with the Clerk of Court, a copy shall be provided to the Court. To the extent counsel rely on legal authorities not contained in the Idaho Reports, a copy of each case or authority cited shall be attached to the Court's copy of the brief or memorandum.

10. TRIAL BRIEFS:

Trial briefs shall be prepared and exchanged between the parties and filed with the Clerk at least seven (7) days before trial.

11. PROPOSED FINDINGS AND CONCLUSIONS:

If the trial is to the Court, each party shall at least seven (7) days prior to trial file with the opposing parties and the Court, proposed Findings of Fact and Conclusions of Law Supporting their position.

12. MODIFICATION:

This Pretrial Order may be modified by stipulation of the parties upon entry of an order by the Court approving such stipulation. Any party may, upon motion and for good

cause shown, seek leave of Court modifying the terms of this order, upon such terms and conditions as the Court deems fit. Any party may request a pretrial conference pursuant to I.R.C.P. 16(i).

13. SANCTIONS FOR NONCONFORMANCE:

Failure to timely comply in all respects with the provisions of this order shall subject non-complying parties to sanctions pursuant to I.R.C.P. Rule 16(i), which may include:

(a) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing designated matters in evidence;

(b) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(c) In lieu of any of the foregoing orders or in addition thereto, an order threatening as a contempt of Court the failure to comply;

(d) In lieu or in addition to any other sanction, the Judge shall require the party or the attorney representing such party or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the Judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

14. MEDIATION

The parties to this lawsuit are hereby ordered to participate in good faith mediation at a mutually agreeable date and report jointly to the Court in writing at least sixty (60) days prior to the trial date, setting forth the results of the mediation session. In the event that the parties are unable to come to an agreement as to the choice of a mediator, the Court will choose the mediator from the Idaho Supreme Court roster.

IT IS FURTHER ORDERED that any vacation or continuation of the trial date shall not change or alter any of the discovery or disclosure dates established by the initial trial setting. Any party may, upon motion and for good cause shown, request that the discovery and disclosure dates be altered on vacation or continuance of the trial date.

Rich Christensen

Rich Christensen. District Judge.

LIST OF EXHIBITS

CASE NUMBER: _____ DATE _____

TITLE OF CASE _____ VS. _____

_____ Plaintiff's Exhibits (List Numerically)

_____ Defendant's Exhibits (List Alphabetically)

_____ Third Party Exhibits (State Party)

_____ Additional Defendants (Contact Judge's Clerk for Directions)

#	Description	Admitted/ Admitted By Stip	Offered	Refused	Reserve Ruling

Hon. Rich Christensen
District Judge

Civil Stock
Instructions
(Revised 05-07-93)

CIVIL STOCK NO. SUBJECT

SOURCE

- | | | |
|----|--|--------------|
| 1. | Juror's Duties | IDJI 100-1 |
| 2. | Claims Not Evidence | IDJI 108 |
| 3. | Burden Of Proof | IDJI 112 |
| 4. | Direct & Circumstantial | IDJI 123 Mod |
| 5. | Expert Testimony | IDJI 124 |
| 6. | Jurors Not to Discuss | IDJI 109 |
| 7. | Depositions Evidence (If Deposition
Testimony is Anticipated) | IDJI 125 |

ISSUE INSTRUCTIONS

- | | | |
|-----|--|--------------|
| 8. | Damage Instruction: Doesn't imply injury | IDJI 900 |
| 9. | Communication with the Court | IDJI 141 |
| 10. | Quotient Verdict | IDJI 143 |
| 11. | How to Deliberate | IDJI 140 Mod |
| 12. | Filling Out Verdict | IDJI 144 Mod |

2017 NOV -7 PM 4:08

CLERK DISTRICT COURT

[Handwritten signature]
DEPUTY
M

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Telephone: (208) 667-7621
Facsimile: (208) 667-7625
ISBA# 6221

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Facsimile: (208) 765-4702
ISBA# 6104

Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial
Fund LLC

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
LLC, and Todd A. Reeve,

Defendants,

) Case No. CV 2017-5541

)

) DECLARATION OF BRIAN CRUMB IN
) SUPPORT OF DEFENDANT BRIAN
) CRUMB'S MOTION FOR SUMMARY
) JUDGMENT

)

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)

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)

BRIAN CRUMB states as follows:

1. I am one of the above named defendants, that I am over the age of eighteen (18)

DECLARATION OF BRIAN CRUMB IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR
SUMMARY JUDGMENT - 1

years of age, and make this declaration based upon my own personal knowledge.

2. I was one of the original members of Abbey & Crumb Developments, LLC (herein “Abbey & Crumb”), which filed its Articles of Organization of Limited Liability Company with the Idaho Secretary of State on July 25, 2005.

3. I withdrew from Abbey & Crumb just more than a year later, on or about September 26, 2006.

4. That on or about October 7, 2003, several years prior to becoming a member of Abbey & Crumb, my wife and I purchased a parcel of real property adjacent to the Fritz Heath Tracts, described as the North half of the East half of Government Lot 3 in Section 15, Township 50 North, Range 5 West, Boise Meridian, Kootenai County, State of Idaho (herein the “Crumb Property”).

5. During the time that I was a member of Abbey & Crumb, the Company worked on continuing to develop the then existing Fritz Heath Forest Second Amended Tracts subdivision, located on Blossom Mountain in Post Falls, Idaho (herein “Fritz Heath Tracts”).

6. That attached hereto as Exhibit “A” is a true and correct copy of the Amendment to the Fritz Heath Tracts, Idaho State Code Plat, duly recorded in the records of Kootenai County at Book I, Page 75B, as Instrument No. 1548649, on August 3, 1998.

7. That attached hereto as Exhibit “B” is a true and correct copy of the Second Amendment to the Fritz Heath Tracts, Idaho State Code Plat, duly recorded in the records of Kootenai County at Book J, Page 200, as Instrument No. 1951580, on May 23, 2005.

8. The Amendment and Second Amendment to the Fritz Heath Tracts depict a road to

DECLARATION OF BRIAN CRUMB IN SUPPORT OF DEFENDANT BRIAN CRUMB’S MOTION FOR SUMMARY JUDGMENT - 2

the Fritz Heath Tracts from Mellick Road, a public road that intersects and crosses over the northern boundary line of the Fritz Heath Tracts, to each of the lots within the Fritz Heath Tracts. The Amendment and Second Amendment to the Fritz Heath Tracts do not and did not depict a road from Mellick Road, over and across the Crumb Property, and into the Fritz Heath Tracts, and no such road existed when I was a member of Abbey & Crumb.

9. That in an effort to advertise lots for sale within the Fritz Heath Tracts, in the fall of 2005 Abbey & Crumb placed a large four (4) foot by eight (8) foot advertisement sign/billboard at the entrance of and within the Fritz Heath Tracts at the location of where Mellick Road intersects with the road within the Fritz Heath Tracts as described in Exhibit "A" and Exhibit "B", and the sign/billboard remained at that location until sometime after I withdrew from Abbey & Crumb. A true and correct copy of an image of the sign/billboard is attached hereto as Exhibit "C". The sign/billboard depicted a road to the Fritz Heath Tracts from Mellick Road, a public road that intersects and crosses over the northern boundary line of the Fritz Heath Tracts, to each of the lots within the Fritz Heath Tracts, in the same or substantially similar location as the road depicted in the Amendment and Second Amendment to the Fritz Heath Tracts. The sign/billboard did not depict a road from Mellick Road, over and across the Crumb Property, and into the Fritz Heath Tracts, and no such road existed.

10. That advertisements were also placed on the internet to market the lots in the Fritz Heath Tracts when I was a member of Abbey & Crumb. The advertising materials also depicted a road to the Fritz Heath Tracts from Mellick Road, a public road that intersects and crosses over the northern boundary line of the Fritz Heath Tracts, to each of the lots within the Fritz Heath

DECLARATION OF BRIAN CRUMB IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 3

Tracts, in the same or substantially similar location as the road depicted in the Amendment and Second Amendment to the Fritz Heath Tracts, and the sign/billboard described above. A true and correct copy of the only portion of such internet advertising yet located is attached hereto as Exhibit "D". The internet advertising was used in the fall of 2005 until sometime after I withdrew from Abbey & Crumb. The internet advertising did not depict a road from Mellick Road, over and across the Crumb Property, and into the Fritz Heath Tracts, and no such road existed.

11. That when I was a member of Abbey & Crumb, the Fritz Heath Tracts were annexed into the Kootenai County Fire & Rescue District. That attached hereto as Exhibit "E" is a true and correct copy of the Order annexing the Fritz Heath Tracts into the Kootenai County Fire & Rescue District, duly recorded in the records of Kootenai County as Instrument No. 1994106, on November 8, 2005. The Order includes an annexation map depicting a road in a location substantially similar to that set forth in the Amendment (Exhibit "A") and Second Amendment (Exhibit "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard (Exhibit "C") placed at the entrance to the Fritz Heath Tracts, and the internet advertising materials. The annexation map did not depict a road from Mellick Road, over and across the Crumb Property, and into the Fritz Heath Tracts, and no such road existed.

12. That with the assistance of Mimi Fisher, Abbey & Crumb's realtor, who provided CC&R's from other subdivisions, Richard Abbey, my wife and I drafted the CC&R's for the Fritz Heath Tracts together, which were recorded on January 5, 2016. The CC&R's state, at paragraph 24, that a road easement "on each lot" is shown in an attached exhibit. However, no

DECLARATION OF BRIAN CRUMB IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 4

exhibit was attached. The document that should have been attached to the CC&R's was a document depicting a road in the location of the only road providing access to the Fritz Heath Tracts, as set forth in the Amendment (Exhibit "A") and Second Amendment (Exhibit "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard (Exhibit "C") placed at the entrance to the Fritz Heath Tracts, and the internet advertising materials (Exhibit "D"), and the Kootenai County Fire & Rescue Annexation Order Map (Exhibit "E"). There was no road over and across the Crumb Property to the Fritz Heath Tracts when the CC&R's were recorded.

13. That I did not file or record, nor did I authorize anyone to file or record on my behalf, any documents with Kootenai County or any other agency indicating that I granted Abbey & Crumb or the Fritz Heath Tracts an easement over and across the Crumb Property, other than the specific easements described herein. Any statements or filings by Richard Abbey or anyone else otherwise were not authorized and are void. It appears that when the engineer filed a permit with Kootenai County to build a road within the Fritz Heath Tracts, he informed Kootenai County that no easements were necessary, including over and across the Crumb Parcel. It is accurate that the Crumb Parcel had access to Mellick Road in 2006, as such access existed prior to my ownership of the Crumb Parcel, and has nothing to do with access to the Fritz Heath Tracts. However, if a permit for a road was intended over and across the Crumb Parcel, it was not accurate to represent to the County that no easement was necessary over and across the Crumb Property, nor was it accurate to represent that there was an easement over and across the Crumb Property to the Fritz Heath Tracts, because no such easement was ever granted or recorded.

DECLARATION OF BRIAN CRUMB IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 5

14. That during the time that I was a member of Abbey & Crumb, an engineering firm retained by Abbey & Crumb recommended relocating the entrance road to the Fritz Heath Tracts to a point farther up Mellick Road from the location of the road that was depicted in the Amendment (Exhibit "A") and Second Amendment (Exhibit "B") to the Fritz Heath Tracts, which would proceed over and across the Crumb Property. At that time, I discussed with and offered Richard Abbey that upon receipt of payment from Abbey & Crumb in the amount of \$200,000, I would grant easements to the lots in the Fritz Heath Tracts for use as a road over and across the Crumb Property.

15. Attorney Romer Brown advised me to not sign any documents granting or agreeing to grant any easement over and across the Crumb Property, unless and until I received the agreed upon consideration. I did not and would not have signed any documents granting or agreeing to grant any easement over and across the Crumb Property, unless and until I received the agreed upon consideration.

16. I did not receive \$200,000 or any payment or any other consideration whatsoever for an easement over and across the Crumb Property from Abbey & Crumb.

17. That on September 26, 2006, I withdrew from Abbey & Crumb, executing along with all of the other members, including Richard Abbey, a certain Agreement of Members of Abbey & Crumb as to Transfer of Assets and Withdrawal of Members Interest, a true and correct copy of which is attached hereto as Exhibit "F" (herein "Member Withdrawal Agreement").

18. The Member Withdrawal Agreement was the entire and complete agreement of the parties, and includes a merger clause, which states:

DECLARATION OF BRIAN CRUMB IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 6

ENTIRE AGREEMENT OF THE PARTIES: It is agreed, this is the entire agreement of the parties, and any amendment or additions to the Agreement must be in written form similar in form to this agreement, with all parties signing said Amendment.

19. The Member Withdrawal Agreement makes no mention whatsoever of me granting an easement over and across the Crumb Property, because no such agreement was consummated, as I was not paid \$200,000 in consideration. Based on the advice of attorney Romer Brown, I did not and would not have signed any document granting or agreeing to grant any easement over and across the Crumb Property, unless and until I received the agreed upon consideration.

20. That when I withdrew from Abbey & Crumb on September 26, 2006, there was no passable road over and across the Crumb Property to the Fritz Heath Tracts. The only passable road to and through the Fritz Heath Tracts was the road depicted on the Amendment (Exhibit "A") and Second Amendment (Exhibit "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard (Exhibit "C") placed at the entrance to the Fritz Heath Tracts, the internet advertising materials (Exhibit "D"), and the map attached to the annexation Order, annexing the Fritz Heath Tracts into the Kootenai County Fire & Rescue District (Exhibit "E").

21. That in 2005, prior to Abbey & Crumb purchasing the Fritz Heath Tracts, and thereafter during the time I was a member of Abbey & Crumb, I drove my vehicle over and across the Fritz Heath Tracts numerous times on the only passable road to and through the Fritz Heath Tracts, which was the road depicted on the Amendment (Exhibit "A") and Second Amendment (Exhibit "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard (Exhibit "C") placed at the entrance to the Fritz Heath Tracts, the internet advertising materials (Exhibit "D"), and the map attached to the annexation Order, annexing the

DECLARATION OF BRIAN CRUMB IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 7

Fritz Heath Tracts into the Kootenai County Fire & Rescue District (Exhibit "E").

22. That during the time I was a member of Abbey & Crumb, it was impossible for anyone to drive a vehicle over and across the Crumb Property to access the Fritz Heath Tracts. The only passable road to and through the Fritz Heath Tracts was the road from Mellick Road, where it intersects and crosses over the northern boundary line of the Fritz Heath Tracts, to each of the lots within the Fritz Heath Tracts, as depicted on the Amendment (Exhibit "A") and Second Amendment (Exhibit "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard (Exhibit "C") placed at the entrance to the Fritz Heath Tracts, the internet advertising materials (Exhibit "D"), and the map attached to the annexation Order, annexing the Fritz Heath Tracts into the Kootenai County Fire & Rescue District (Exhibit "E").

23. That at the time I left Abbey & Crumb on September 26, 2006, the lots in the Fritz Heath Tracts, including the lots now owned by Plaintiffs, could have used the only passable road to and through the Fritz Heath Tracts, the road from Mellick Road, where it intersects and crosses over the northern boundary line of the Fritz Heath Tracts, to each of the lots within the Fritz Heath Tracts, as depicted on the Amendment (Exhibit "A") and Second Amendment (Exhibit "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard (Exhibit "C") placed at the entrance to the Fritz Heath Tracts, the internet advertising materials (Exhibit "D"), and the map attached to the annexation Order, annexing the Fritz Heath Tracts into the Kootenai County Fire & Rescue District (Exhibit "E").

24. That during the time that I was a member of Abbey & Crumb, four (4) lots were sold from the Fritz Heath Tracts. Having no legal obligation to do so, I verbally promised the four (4)

DECLARATION OF BRIAN CRUMB IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 8

original purchasers that I would grant an easement over and across the Crumb Property, if the original purchaser desired an easement and provided me with an easement instrument acceptable in form. Only one (1) of the four (4) original purchasers requested and provided an easement instrument. I did not extend such a promise to the three (3) successor owners of the four (4) original purchasers, nor did I extend the promise to purchasers of lots after I withdrew from Abbey & Crumb on or about September 26, 2006, other than to lots owned by me, my mother and a friend. I made no such promise whatsoever to the Plaintiffs.

25. I have not discussed with, promised, represented or suggested in any manner whatsoever to Plaintiffs that I granted or was going to grant Plaintiffs an easement over and across the Crumb Property.

26. Plaintiffs have not paid me any consideration whatsoever for an easement over and across the Crumb Property.

27. Plaintiffs have not performed any improvements on the road over and across the Crumb Property.

28. Richard Abbey has always been aware that I did not sign an easement or agreement to provide an easement to Abbey & Crumb and the lots of the Fritz Heath Tracts, and certainly since September 26, 2006, the date I withdrew from the Company and executed the Member Withdrawal Agreement. In fact, on October 10, 2011, I forwarded an email to Richard Abbey, with an unsigned statement attached, which I was asked to sign on behalf of the Lenharts, one of the lot purchasers when I was a member of Abbey & Crumb, concerning access to the Lenharts' lot within the Fritz Heath Tracts, a true and correct copy of which is attached hereto as Exhibit

DECLARATION OF BRIAN CRUMB IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 9

“G”. I did not sign the statement because it was inaccurate in part, but it did accurately describe that the Lenharts did not have legal access across the Crumb Property, as no easement was signed and recorded. In addition, the Lenharts stated in a letter dated January 31, 2013, a true and correct copy of which is attached hereto as Exhibit “H”, that there was never any signed and recorded easement over and across the Crumb Property, and that they had been informed by Richard Abbey that I was going to charge people if they wanted to cross my land.

29. I understand from a review of Plaintiffs’ discovery responses that they obtained their lots within the Fritz Heath Tracts by agreeing to a deed in lieu of foreclosure, apparently for a default on a loan to Richard Abbey and Abbey & Crumb after I withdrew from the Company on September 26, 2006. Plaintiffs allege in their verified Complaint at paragraph 12 that they were not advised when they “purchased” lots in the Fritz Heath Tracts that easements over and across the Crumb Property were not recorded. That is not my fault. Abbey & Crumb did not enter into any loan or other agreement with Plaintiffs when I was a member of Abbey & Crumb. I did not sell or transfer any lots to Plaintiffs. I did not offer, promise, or otherwise agree to grant an easement to Plaintiffs over and across the Crumb Property. Plaintiffs could have easily searched the records of the Kootenai County Recorder’s Office, which show that the lots they “purchased” or were utilizing as security did not and do not have an easement over and across the Crumb Property. Plaintiffs’ dispute is with Richard Abbey, not me. It would be inequitable and unjust for the court to grant Plaintiffs an easement over and across the Crumb Property.

I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DECLARATION OF BRIAN CRUMB IN SUPPORT OF DEFENDANT BRIAN CRUMB’S MOTION FOR SUMMARY JUDGMENT - 10

DATED this 6th day of November, 2017.

By Brian Crumb
BRIAN CRUMB

DECLARATION OF BRIAN CRUMB IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 11

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 7th day of November, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 665-7290
- ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
nichole@bistlinelaw.com; sharon@bistlinelaw.com

Christopher G. Varallo
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (509) 458-2728
- ELECTRONIC MEANS (pursuant to written consent):


Darrin L. Murphey

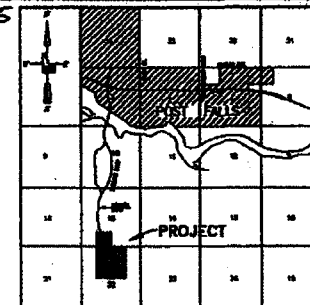
DECLARATION OF BRIAN CRUMB IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 12

EXHIBIT “A”

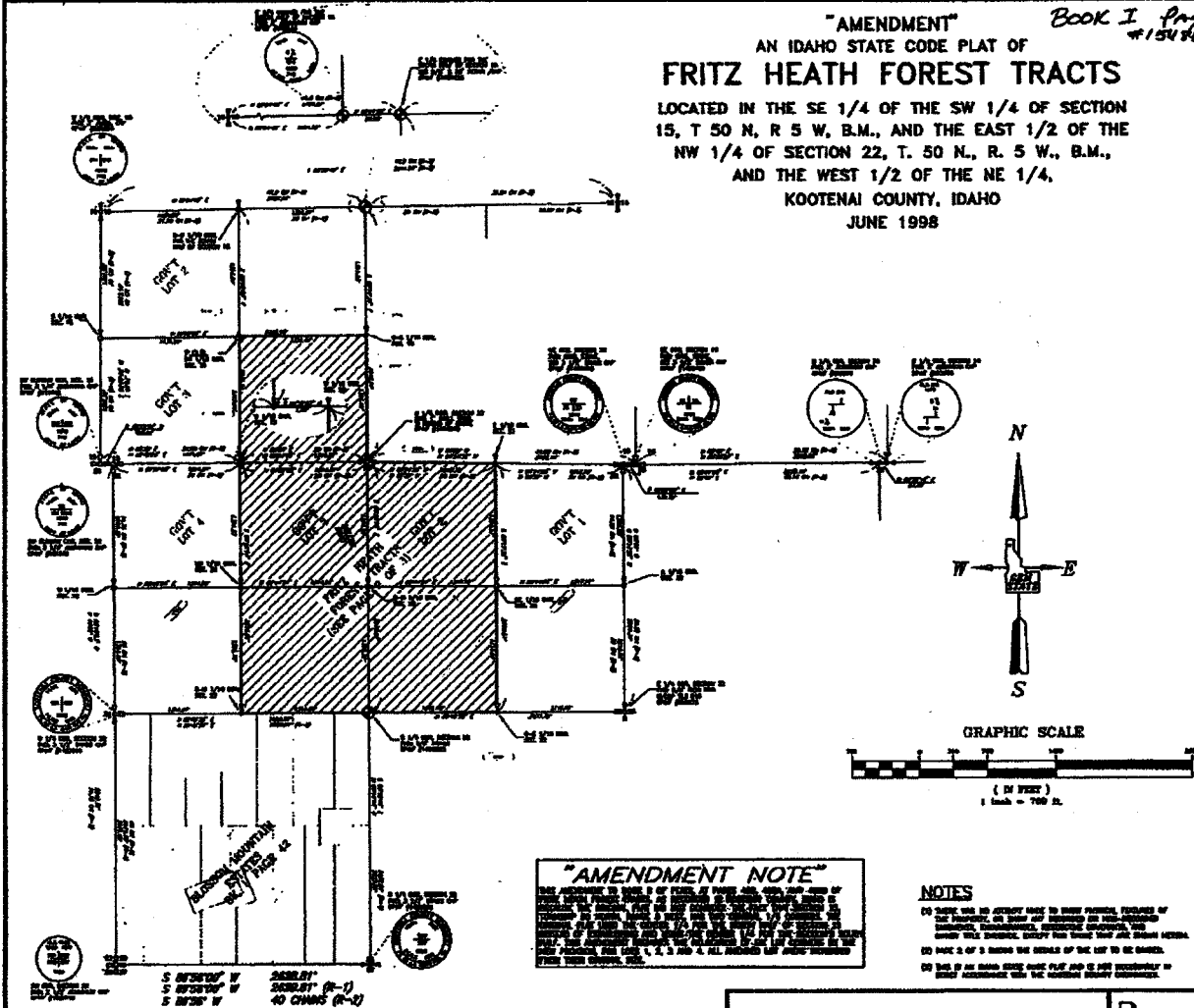
"AMENDMENT"
AN IDAHO STATE CODE PLAT OF
FRITZ HEATH FOREST TRACTS

*BOOK I Page 75
#1502649*

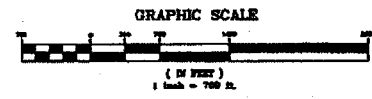
LOCATED IN THE SE 1/4 OF THE SW 1/4 OF SECTION 15, T 50 N, R 5 W, B.M., AND THE EAST 1/2 OF THE NW 1/4 OF SECTION 22, T. 50 N., R. 5 W., B.M., AND THE WEST 1/2 OF THE NE 1/4, KOOTENAI COUNTY, IDAHO
JUNE 1998



VICINITY MAP
NO SCALE



- LEGEND**
- + SECTION CORNER - FOUND AS MARKED
 - BOUNDARY SECTION - FOUND AS MARKED
 - ◆ CORNER CORNER - SEE SURVEY FOR DETAILS
 - CLOSURE CORNER - FOUND AS MARKED
 - I SECTION CORNER - SET 1/2" OF BROWN BROWN PLASTIC CAP MARKED THIS TRACT PLATED YEAR
 - I SECTION CORNER - PAINTED, MARKED NOT BE FOUND
 - ▲ POINT OF BEGINNING - SET 1/2" OF BROWN BROWN PLASTIC CAP MARKED THIS TRACT PLATED YEAR
 - SECTION CORNER - PAINTED, MARKED NOT BE FOUND
 - C - T - FOUND PLATERS



BASIS OF BEARING
FROM THE SURVEY OF THE STATE OF IDAHO, T. 50 N., R. 5 W., B.M., AND THE EAST 1/2 OF THE NW 1/4 OF SECTION 22, T. 50 N., R. 5 W., B.M., AND THE WEST 1/2 OF THE NE 1/4, KOOTENAI COUNTY, IDAHO

"AMENDMENT NOTE"
THIS PLAT AMENDS THE SURVEY OF THE STATE OF IDAHO, T. 50 N., R. 5 W., B.M., AND THE EAST 1/2 OF THE NW 1/4 OF SECTION 22, T. 50 N., R. 5 W., B.M., AND THE WEST 1/2 OF THE NE 1/4, KOOTENAI COUNTY, IDAHO, DATED JUNE 1998, BY AMENDING THE BEARINGS AND DISTANCES OF THE TRACTS DESCRIBED THEREIN TO BE THE BEARINGS AND DISTANCES AS SHOWN ON THIS PLAT.

NOTES
NO PART OF THIS PLAT IS TO BE CONSIDERED VALID UNLESS IT IS RECORDED IN THE PUBLIC RECORDS OF THE COUNTY CLERK OF KOOTENAI COUNTY, IDAHO.
NO PART OF THIS PLAT IS TO BE CONSIDERED VALID UNLESS IT IS RECORDED IN THE PUBLIC RECORDS OF THE COUNTY CLERK OF KOOTENAI COUNTY, IDAHO.

REFERENCES
P-1-0 PLAT OF "FRITZ HEATH FOREST TRACTS" OF JOHN B. FRITZ, DATED 1988, FILED IN BOOK 1 OF PAGE 75 OF RECORDS, COUNTY CLERK OFFICE.
P-2-0 OLD LINES AND MARKS FROM SURVEYS IN 1988-1989, BY W. CLAYTON WELLS.
P-3-0 RECORDS OF SURVEY BY EDWARD G. BRADSHAW, JR. 1988, FILED IN BOOK 1 OF PAGE 75, AS REFERENCED BY THIS PLAT.

S 89°50' W 268.21' SECTION 15 (R-1)
S 89°50' W 268.21' SECTION 22 (R-2)
S 89°50' W 40 CHAINS (R-3)
BASIS OF BEARING

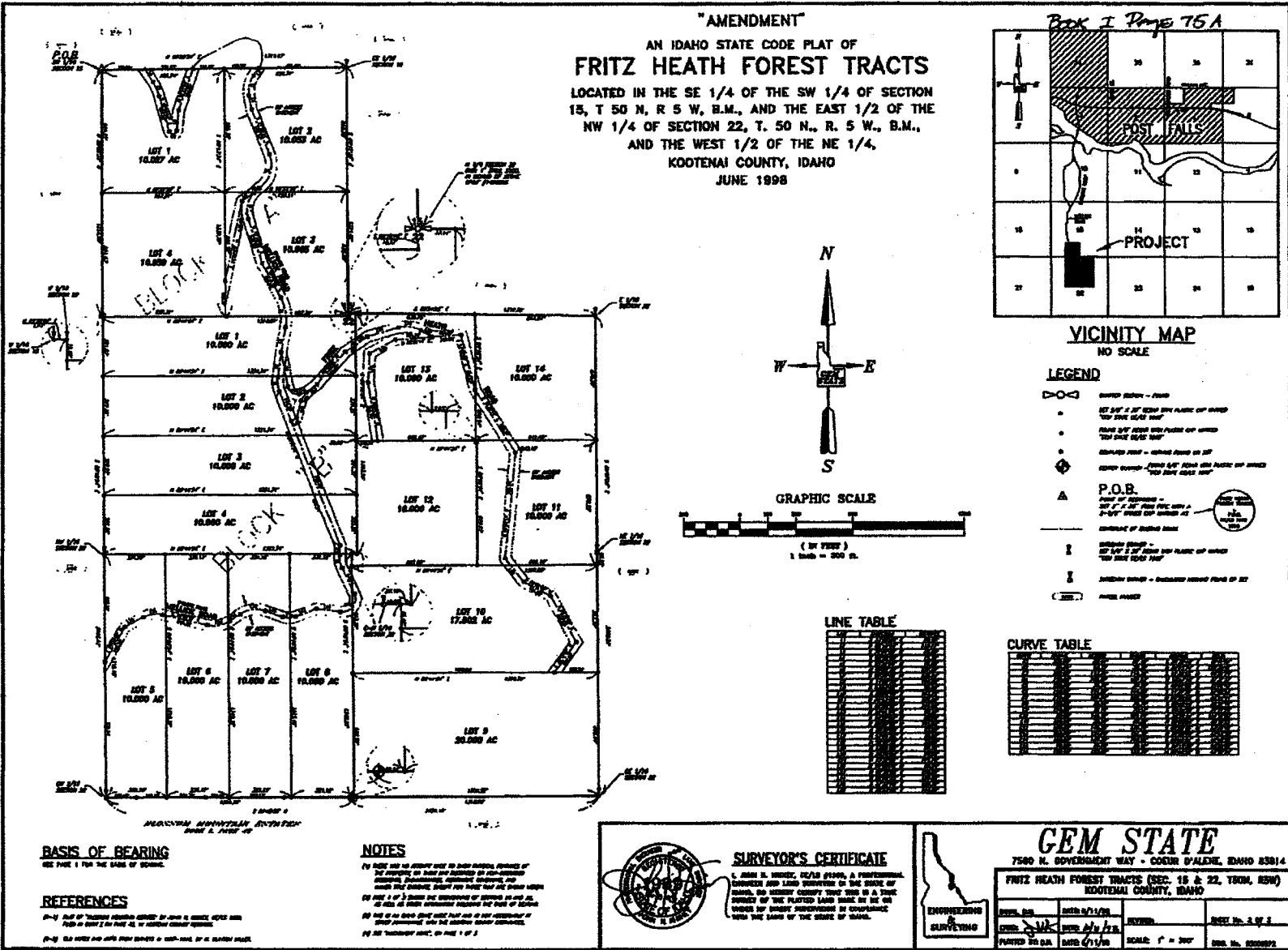


SURVEYOR'S CERTIFICATE
I, JOHN G. DUNN, GEM STATE, A PROFESSIONAL SURVEYOR AND LAND SURVEYOR IN THE STATE OF IDAHO, DO HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE SURVEY OF THE STATE OF IDAHO, T. 50 N., R. 5 W., B.M., AND THE EAST 1/2 OF THE NW 1/4 OF SECTION 22, T. 50 N., R. 5 W., B.M., AND THE WEST 1/2 OF THE NE 1/4, KOOTENAI COUNTY, IDAHO, DATED JUNE 1998, AS SHOWN ON THIS PLAT.

GEM STATE
7560 N. GOVERNMENT WAY • COEUR D'ALENE, IDAHO 83814

FRITZ HEATH FOREST TRACTS (SEC. 15 & 22, T50N, R5W) KOOTENAI COUNTY, IDAHO

DATE: 06/19/98	DRAWN BY: JLD	CHECKED BY: JLD	SCALE: 1" = 700'
PRINTED TO: []	DATE: 06/19/98	SCALE: 1" = 700'	NO. 00000001



"AMENDMENT"
 AN IDAHO STATE CODE PLAT OF
FRITZ HEATH FOREST TRACTS
 LOCATED IN THE SE 1/4 OF THE SW 1/4 OF SECTION
 15, T 50 N, R 5 W, B.M., AND THE EAST 1/2 OF THE
 NW 1/4 OF SECTION 22, T. 50 N., R. 5 W., B.M.,
 AND THE WEST 1/2 OF THE NE 1/4,
 KOOTENAI COUNTY, IDAHO
 JUNE 1998

Book I Page 75 B
#154844

KOOTENAI COUNTY BOARD OF COMMISSIONERS

THE PLAT MEETS THE REQUIREMENTS OF THE KOOTENAI COUNTY SUBDIVISION
 ORDINANCE AND THE CONDITIONS IMPOSED BY THIS BOARD. AND IS HEREBY

DATED THIS 14th DAY OF July, 1998.

R. L. Brantner
 CHAIRMAN, BOARD OF COMMISSIONERS, KOOTENAI COUNTY, IDAHO.

ACCEPTED AND APPROVED FOR FILING

COUNTY TREASURER'S CERTIFICATE

I HEREBY CERTIFY THAT THE TAXES DUE FOR THE PROPERTY DESCRIBED IN THE
 OWNERS CERTIFICATE AND DEDICATION HAVE BEEN PAID THROUGH Dec. 31, 1997

DATED THIS 27th DAY OF July, 1998.

Jessamine L. Ashcroft
 KOOTENAI COUNTY TREASURER

COUNTY SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE EXAMINED THE MENON PLAT AND CHECKED THE PLAT
 COMPUTATIONS THEREON AND HAVE DETERMINED THAT THE REQUIREMENTS OF THE
 STATE CODE PERTAINING TO PLATS AND SURVEYS HAVE BEEN MET.

DATED THIS 27th DAY OF July, 1998.

R. L. Brantner
 KOOTENAI COUNTY SURVEYOR

NOTARY PUBLIC CERTIFICATE

ACKNOWLEDGMENT
 STATE OF WASHINGTON } S.S.
 COUNTY OF SPRING

Carol T. Johnson, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE,
 DO HEREBY CERTIFY THAT ON THIS 27th DAY OF July, 1998, BEFORE ME,
 PERSONALLY APPEARED ALVIN J. WOLFF, GENERAL PARTNER FOR POST FALLS PARTNERS, A
 WASHINGTON LIMITED PARTNERSHIP, KNOWN TO ME TO BE THE PERSON(S) WHO
 EXECUTED THE AFORESAID OWNERS CERTIFICATE, AND CONSENT TO RECORD
 IN WITNESS WHEREOF, I HAVE HEREBY SET MY HAND AND NOTARY SEAL THE DAY AND YEAR
 OF THIS CERTIFICATE FIRST ABOVE WRITTEN.

NOTARY PUBLIC FOR STATE OF WASHINGTON
 RESIDING AT 1822 2nd St
 COMMISSION EXPIRES 4/1/2000



OWNERS CERTIFICATE

BE IT KNOWN BY THESE PRESENTS THAT POST FALLS PARTNERS, A WASHINGTON LIMITED
 PARTNERSHIP, HEREBY CERTIFY THAT THEY OWN AND HAVE LEGAL BUT THE LAND DESCRIBED IN
 THE MENON PLAT TO BE KNOWN AS "FRITZ HEATH FOREST TRACTS", A PARCEL OF LAND LOCATED
 IN THE SE 1/4 OF THE SW 1/4 OF SECTION 15, TOWNSHIP 50 NORTH, RANGE 5 WEST,
 AND CORNER LOTS 2 AND 3, SE 1/4 OF THE SW 1/4, AND SE 1/4 OF THE NW 1/4
 OF SECTION 22, ALL IN TOWNSHIP 50 NORTH, RANGE 5 WEST OF THE RANGE
 HEREFIN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCED AT A 2" ALUMINUM COP MARKING THE WEST CORNER CORNER OF SECTION
 15, TOWNSHIP 50 NORTH, RANGE 5 WEST, BEING MORE OR LESS 2074.00 FEET SOUTH
 879.40 FEET A DISTANCE OF 2722.87 FEET FROM A 3/4" IRON NAILING THE CENTER
 CORNER CORNER FOR THE SOUTH HALF OF SAID SECTION 15; BEING SOUTH 879.40 FEET
 WEST A DISTANCE OF 2074.00 FEET TO A POINT BEING THE NORTH SOUTHWEST (1/4) CORNER
 CORNER OF SAID SECTION 15; THENCE NORTH 8922.24' EAST A DISTANCE OF 140.00
 FEET TO A 2-1/2" IRON COP MARKING THE SE CORNER CORNER - P.O.B. - CLASS
 200 - 100' MARKING THE SOUTHWEST CORNER (1/4) CORNER OF SAID SECTION 15,
 AND BEING THE TRUE POINT OF THIS DESCRIPTION;

THENCE NORTH 8922.24' EAST A DISTANCE OF 131.67 FEET TO A 5/8" IRON NAILING
 THE CENTER-SOUTH CORNER (1/16) CORNER OF SAID SECTION 15;

THENCE NORTH 0917.26' EAST A DISTANCE OF 1321.48 FEET TO A 1" IRON NAILING
 MARKING THE NORTH CORNER (1/4) CORNER OF SECTION 22, TOWNSHIP 50 NORTH,
 RANGE 5 WEST, BEING HEREBY;

THENCE NORTH 8924.25' EAST A DISTANCE OF 1377.78 FEET TO A 5/8" IRON NAILING
 THE EAST CORNER (1/16) CORNER OF SAID SECTION 22;

THENCE SOUTH 0917.26' EAST A DISTANCE OF 2802.51 FEET TO A 5/8" IRON NAILING
 THE CENTER-EAST CORNER (1/16) CORNER OF SAID SECTION 22;

THENCE SOUTH 8949.25' WEST A DISTANCE OF 2021.18 FEET TO A 5/8" IRON NAILING
 THE CENTER-WEST CORNER (1/16) CORNER OF SAID SECTION 22;

THENCE NORTH 0919.26' WEST A DISTANCE OF 2818.44 FEET TO A 5/8" IRON NAILING
 THE WEST CORNER (1/16) CORNER OF SAID SECTION 22;

THENCE NORTH 8937.25' WEST A DISTANCE OF 148 FEET TO A 5/8" IRON NAILING
 THE WEST CORNER (1/16) CORNER OF SAID SECTION 15;

THENCE NORTH 8937.25' WEST A DISTANCE OF 1348.80 FEET TO THE TRUE
 POINT-OF-BEGINNING.

THE PLAT CONTAINS 197.897 ACRES OF LAND MORE OR LESS.

BE IT FURTHER KNOWN THAT WHEN FOR THIS PLAT IS TO BE PROVIDED BY GENERAL
 WELLS.

THIS IS AN IDAHO STATE CODE PLAT AND IS NOT NECESSARILY IN STRICT ACCORDANCE WITH
 THE KOOTENAI COUNTY ORDINANCES.

A SHORTHAND REPRESENTATION, ACCORDING TO IDAHO CODE 89-1226 TO 89-1228, IS
 DEPOSITED ON THIS PLAT, AND INCLUDING, INCLUDING, OR PARTS THEREOF, SHALL BE CHECKED
 WITH SAID SHORTHAND REPRESENTATION REQUIREMENTS THE SURVEYOR AND LETTER.

Alvin J. Wolff, Sr.
 GENERAL PARTNER

KOOTENAI COUNTY RECORDER

Requested by: POST FALLS PARTNERS
 THE PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER
 OF KOOTENAI COUNTY, IDAHO, THIS 27th DAY OF AUGUST, 1998
 AT 10:46 A.M. IN BOOK 2 OF PLATS, PAGE 154844

Donald J. Gabel / L. Woodruff
 REC. \$11.00
 KOOTENAI COUNTY RECORDER

"SEE AMENDMENT NOTE ON PAGE 1 OF 3"

GEM STATE
 7580 N. GOVERNMENT HWY. • COEUR D'ALENE, IDAHO 83814

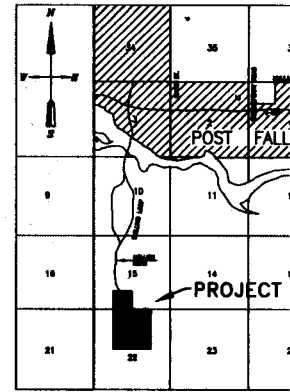
FRITZ HEATH FOREST TRACTS (SEC. 15 & 22, T50N, R5W)
 KOOTENAI COUNTY, IDAHO

DATE: <u>8/10/98</u>	REV: <u>8/10/98</u>	NUMBER: _____	SHEET NO. <u>3 OF 3</u>
OWNER: <u>POST FALLS PARTNERS</u>	DATE: <u>8/10/98</u>	SCALE: <u>N/A</u>	DATE: _____
PLATTED BY: <u>DAM</u>	DATE: <u>8/11/98</u>	RECORD: <u>N/A</u>	DATE: _____

EXHIBIT “B”

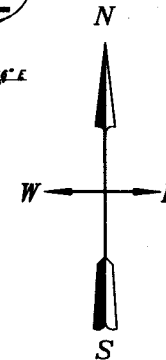
"2ND AMENDMENT" AN IDAHO STATE CODE PLAT OF FRITZ HEATH FOREST TRACTS

LOCATED IN THE SE 1/4 OF THE SW 1/4 OF SECTION 15,
T.50N., R.5W., B.M., AND THE EAST 1/2 OF THE NW 1/4 AND
THE WEST 1/2 OF THE NE 1/4 OF SECTION 22, T.50N., R.5W., B.M.,
KOOTENAI COUNTY, IDAHO
OCTOBER 2004

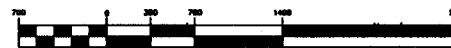


VICINITY MAP
NO SCALE

- LEGEND**
- SECTION CORNER - FOUND AS NOTED
 - QUARTER SECTION - FOUND AS NOTED
 - CENTER QUARTER - SEE DRAWING FOR DETAIL
 - CLOSING CORNER - FOUND AS NOTED
 - SIXTEENTH CORNER - SET 5/8" x 30" IRON PIPE WITH PLASTIC CAP W/ "IDA STATE CE/LS 1988"
 - SIXTEENTH CORNER - CALCULATED, NOTHING
 - P.O.B. POINT OF BEGINNING - SET 2" x 30" IRON PIPE WITH A 2-1/2" BRASS CAP MARKED AS
 - PANEL NUMBER



GRAPHIC SCALE



(IN FEET)
1 inch = 700 ft.

BASIS OF BEARING

BASIS OF BEARING IS S 89°56'00" W FROM A 2" ALUMINUM CAP MARKING THE S 1/4 CORNER OF SECTION 22, TOWNHIP 50 NORTH, RANGE 5 WEST, BOISE MERIDIAN, TO A 2 1/2" ALUMINUM CAP MARKING THE SOUTHWEST CORNER OF SAID SECTION 22 PER (R-2).

REFERENCES

- (R-1) PLAT OF "BLISSON MOUNTAIN ESTATES" BY JOHN H. KIBNEY, IN BOOK I ON PAGE 42, IN KOOTENAI COUNTY RECORDS.
- (R-2) OLD NOTES AND MAPS FROM SURVEYS IN 1907-1910, I
- (R-3) RECORD OF SURVEY BY EDWARD G. SCHROEDER, LS 4884, IN 385, AS INSTRUMENT #047880, KOOTENAI COUNTY RECORDS.
- (R-4) RECORD OF SURVEY BY ALAN V. KIBNEY, PLS 874, FILED IN AS INSTRUMENT #158488, KOOTENAI COUNTY RECORDS.

NOTES

- (1) THERE WAS NO ATTEMPT MADE TO SHOW PHYSICAL FEATURES OF THE PROPERTY. ANY UNRECORDED OR NON-RECORDED EASEMENTS, ENCUMBRANCES, RESERVATIONS, COVENANTS, AND OTHER TRADING RIGHTS, EXCEPT FOR THOSE THAT ARE SHOWN HEREON.
- (2) PAGE 2 OF 3 SHOWS THE DETAILS OF THE LOT TO BE DIVIDED.
- (3) THIS IS AN IDAHO STATE CODE PLAT AND IS NOT NECESSARILY IN STRICT ACCORDANCE WITH THE KOOTENAI COUNTY ORDINANCES.
- (4) ALL REFERENCE TO "IDA STATE" HAS BEEN REMOVED BECAUSE THE TERM IS NO LONGER IN EXISTENCE.

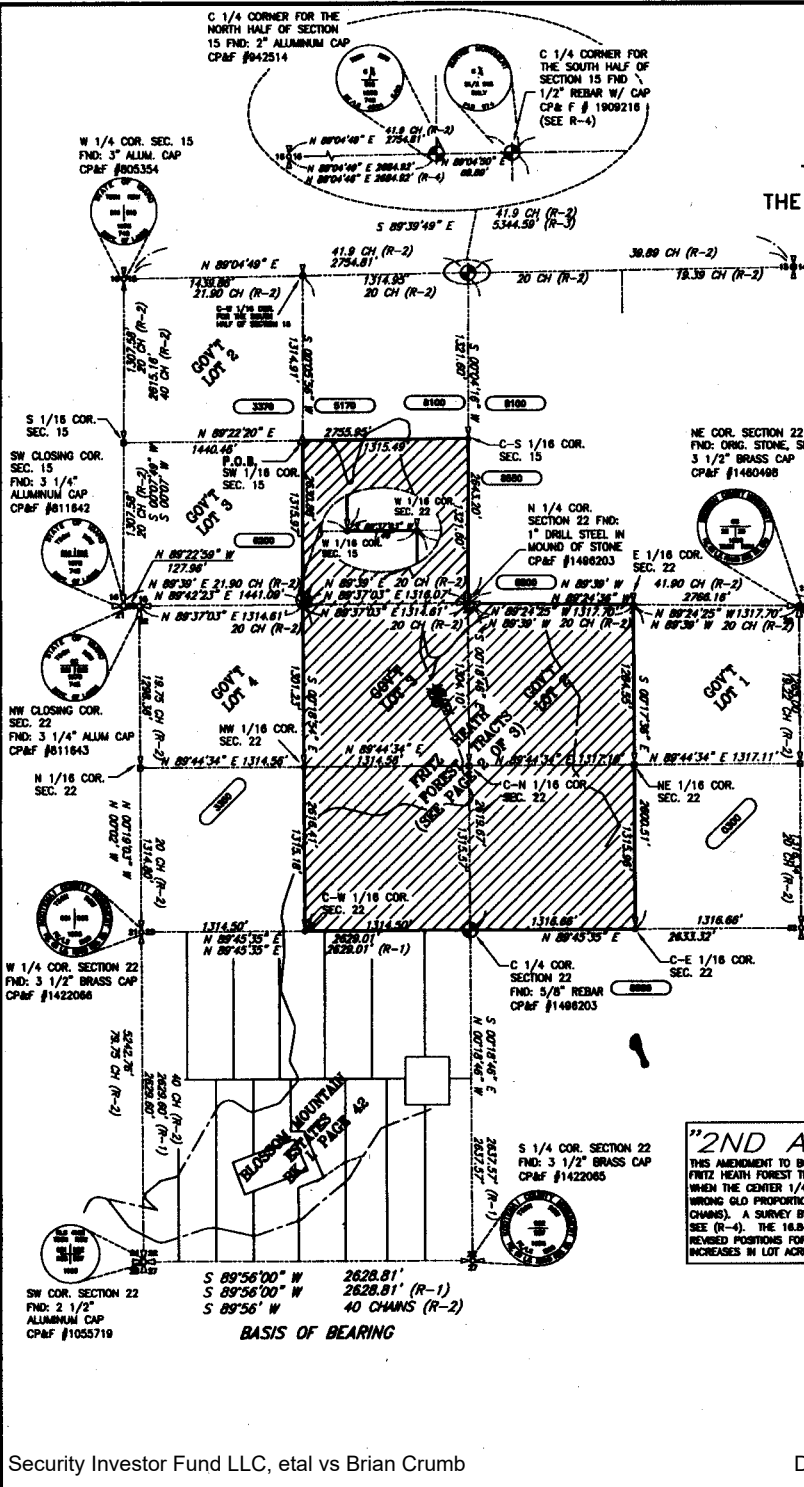
"2ND AMENDMENT NOTE"
THIS AMENDMENT TO BOOK 1 OF PLATS, AT PAGES 75, 75A, AND 75B OF AMENDED FRITZ HEATH FOREST TRACTS, AS RECORDED IN KOOTENAI COUNTY, IDAHO IS BECAUSE THE CORNER 1/4 OF THE SOUTH HALF OF SECTION 15 WAS CALCULATED, THE WRONG OLD PROPORTIONING DISTANCE WAS USED (19.39 CHAINS INSTEAD OF 19.30 CHAINS). A SURVEY BY A. KIBNEY WAS RECORDED THAT DOCUMENTS THE ERROR. SEE (R-4). THE 18.84 FOOT DIFFERENCE IN CENTER 1/4 POSITIONING CREATED REVERSED POSITIONS FOR SIX CORNERS OF THE PLAT'S LOTS IN BLOCK A AND MINOR INCREASES IN LOT ACRESAGES.

SURVEYOR'S CERTIFICATE

I, JOHN H. KIBNEY, CE/LS #1868, A PROFESSIONAL ENGINEER AND LAND SURVEYOR IN THE STATE OF IDAHO, DO HEREBY CERTIFY THAT THIS IS A TRUE SURVEY OF THE PLATTED LAND MADE BY ME OR UNDER MY DIRECT SUPERVISION IN COMPLIANCE WITH THE LAWS OF THE STATE OF IDAHO.

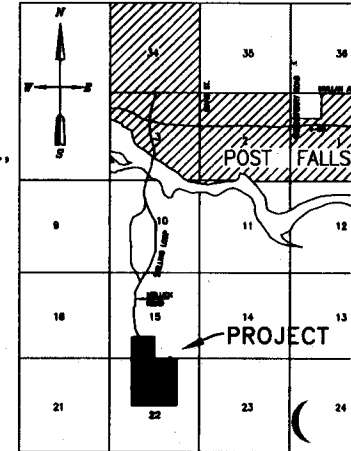


FRITZ HEATH FOREST TRACTS (SEC 15 & 22) KOOTENAI COUNTY, IDAHO			
DRWN: DJA	DATE: OCT 2004	REVISED: 10/24/2004	
CHRD: JMK	DATE: OCT 2004		
PLOTTED BY: GJV	DATE: 10/29/2004	SCALE: 1" = 700'	



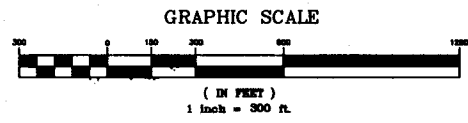
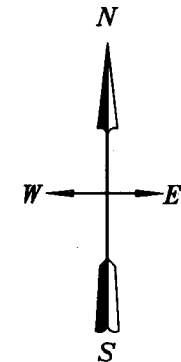
"2ND AMENDMENT" Books Page 200A
 AN IDAHO STATE CODE PLAT OF
FRITZ HEATH FOREST TRACTS

LOCATED IN THE SE 1/4 OF THE SW 1/4 OF SECTION 15,
 T.50N., R.5W., B.M., AND THE EAST 1/2 OF THE NW 1/4 AND
 THE WEST 1/2 OF THE NE 1/4 OF SECTION 22, T.50N., R.5W., B.M.,
 KOOTENAI COUNTY, IDAHO
 OCTOBER 2004



VICINITY MAP
 NO SCALE

- LEGEND**
- QUARTER SECTION - FOUND
 - SET 5/8" X 30" REBAR WITH PLASTIC CAP "NEW STATE OF IDAHO"
 - FOUND 5/8" REBAR WITH PLASTIC CAP "NEW STATE OF IDAHO"
 - COMPUTER POINT - NOTHING FOUND ON
 - CENTER QUARTER - FOUND 5/8" REBAR WITH PLASTIC CAP "NEW STATE OF IDAHO"
 - P.O.B. - POINT OF BEGINNING - SET 3/4" X 30" REBAR WITH A 2-1/2" BRASS CAP MARKED AS
 - CENTERLINE OF EXISTING ROAD
 - SETBACK CORNER - SET 5/8" X 30" REBAR WITH PLASTIC CAP "NEW STATE OF IDAHO"
 - SETBACK CORNER - CALCULATED NORTH
 - PARCEL NUMBER

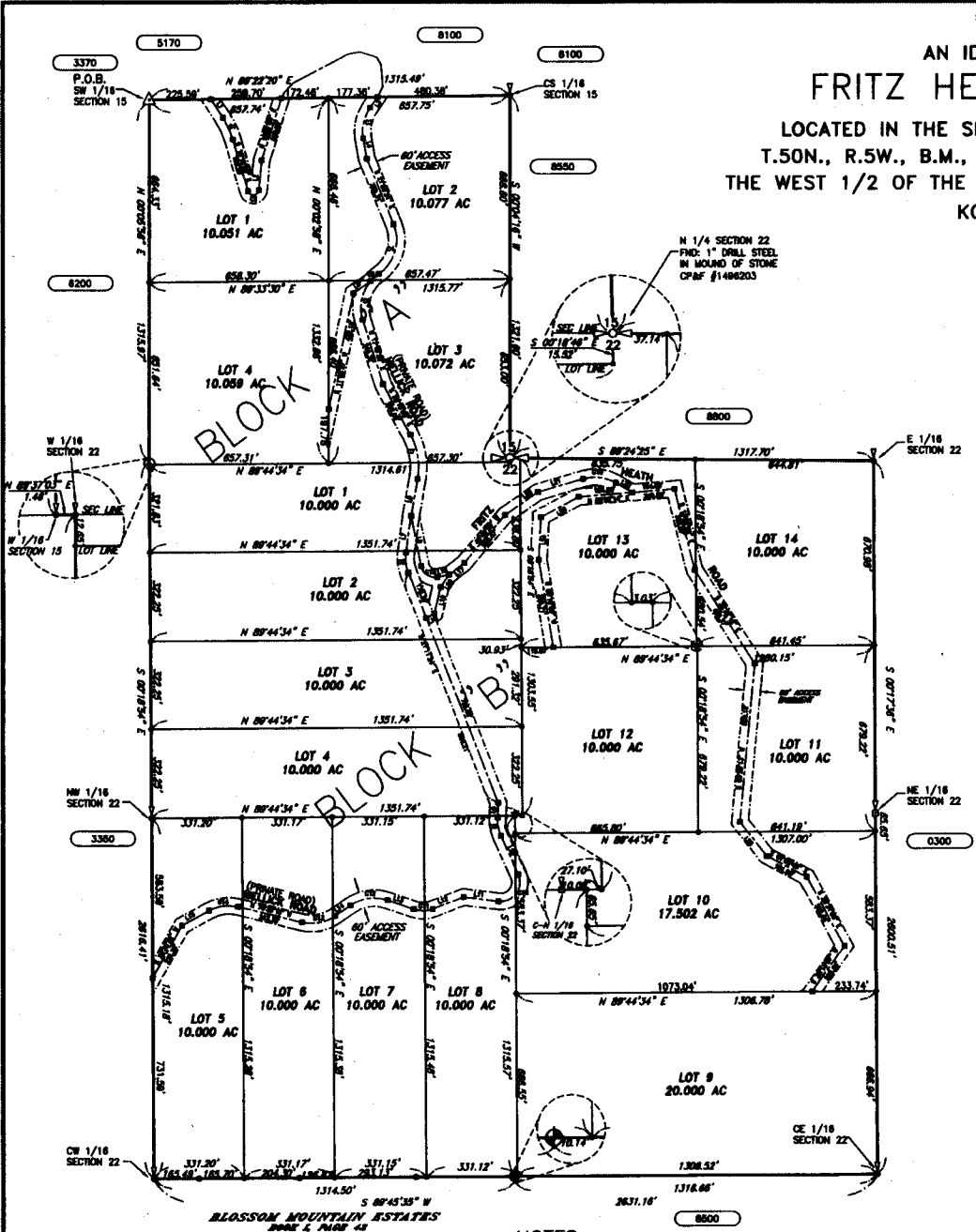


LINE TABLE

LINE	DIRECTION	DISTANCE
L1	S 33°00'00" E	80.73
L2	N 02°10'14" E	110.17
L3	S 35°00'00" E	26.40
L4	S 02°00'00" E	26.40
L5	S 52°30'00" E	26.40
L6	N 06°30'00" E	137.19
L7	S 07°30'00" E	133.24
L8	S 11°00'00" E	128.00
L9	S 21°00'00" E	128.00
L10	S 23°00'00" E	128.00
L11	N 06°30'00" W	128.00
L12	S 06°30'00" W	128.00
L13	N 7°30'00" W	128.00
L14	S 25°30'00" E	87.61
L15	S 81°30'10" W	111.53
L16	N 28°30'00" E	43.00
L17	N 20°00'00" E	20.00
L18	N 15°00'00" E	20.00
L19	N 15°00'00" E	20.00
L20	N 32°30'00" E	54.53
L21	N 22°30'00" E	171.71
L22	N 59°10'00" E	68.20
L23	N 61°00'00" E	123.00
L24	N 62°00'00" E	123.00
L25	S 37°31'20" E	120.50
L26	N 54°30'00" E	144.00

CURVE TABLE

CURVE	ARC LENGTH	CHORD	CHORD BEARING
C1	300.00	87.41	87.70
C2	200.00	24.41	83.10
C3	200.00	114.70	S 12°28'00" E
C4	150.00	200.00	N 18°24'18" E
C5	150.00	30.00	S 40°01'00" E
C6	150.00	124.80	S 71°32'00" E
C7	150.00	75.74	S 08°35'00" E
C8	150.00	71.19	S 10°30'00" E
C9	150.00	121.80	N 30°28'00" E
C10	150.00	86.80	N 09°10'00" E
C11	150.00	20.00	N 09°10'00" E
C12	150.00	121.80	N 22°28'00" E
C13	150.00	104.80	S 62°28'31" E
C14	150.00	20.00	S 50°12'00" E
C15	150.00	120.12	N 02°48'30" E
C16	150.00	120.12	N 02°48'30" E



- NOTES**
- (1) THERE WAS NO ATTEMPT MADE TO SHOW PHYSICAL FEATURES OF THE PROPERTY, OR MARK ANY EXISTING OR UNRECORDED EASEMENTS, ENCUMBRANCES, OR OTHER CLAIMS, AND OTHER TABLES, EXCEPT FOR THOSE THAT ARE SHOWN HEREIN.
 - (2) PAGE 1 OF 3 SHOWS THE DIMENSIONS OF BLOSSOM MOUNTAIN ESTATES AS WELL AS OTHER INFORMATION RELATING TO THE BOUND OF BLOSSOM.
 - (3) THIS IS AN IDEAL STATE CODE PLAT AND IS NOT NECESSARILY AN EXACT ACCORDANCE WITH THE SECTION CHAIN DIMENSIONS.
 - (4) SEE "2ND AMENDMENT NOTE", ON PAGE 1 OF 3
 - (5) ALL REFERENCE TO "THIS COUNTY" HAS BEEN REWRITTEN BECAUSE OF PLACKET No 45969 FROM AN UNLAWFUL IN DISTANCE.



SURVEYOR'S CERTIFICATE

I, JOHN H. KINNEY, CE/LS #1989, A PROFESSIONAL ENGINEER AND LAND SURVEYOR IN THE STATE OF IDAHO, DO HEREBY CERTIFY THAT THIS IS A TRUE SURVEY OF THE PLATTED LAND MADE BY ME OR UNDER MY DIRECT SUPERVISION IN COMPLIANCE WITH THE LAWS OF THE STATE OF IDAHO.

BASIS OF BEARING
 SEE PAGE 1 FOR THE BASIS OF BEARING.

REFERENCES
 SEE PAGE 1 FOR THE REFERENCES.

FRITZ HEATH FOREST TRACTS (SEC 15 & KOOTENAI COUNTY, IDAHO)

DRAWN BY: J.C.V.	DATE: OCT 2004	REVISED: 10/24/2004
CHECKED BY: J.C.V.	DATE: OCT 2004	
PLOTTED BY: J.C.V.	DATE: 10/28/2004	SCALE: 1" = 300'

"2ND AMENDMENT"
 AN IDAHO STATE CODE PLAT OF
FRITZ HEATH FOREST TRACTS
 LOCATED IN THE SE 1/4 OF THE SW 1/4 OF SECTION 15,
 T.50N., R.5W., B.M., AND THE EAST 1/2 OF THE NW 1/4 AND
 THE WEST 1/2 OF THE NE 1/4 OF SECTION 22, T.50N., R.5W., B.M.,
 KOOTENAI COUNTY, IDAHO
 OCTOBER 2004

KOOTENAI COUNTY BOARD OF COMMISSIONERS

THE PLAT MEETS THE REQUIREMENTS OF THE KOOTENAI COUNTY SUBDIVISION ORDINANCE AND THE CONDITIONS IMPOSED BY THIS BOARD, AND IS HEREBY

DATED THIS 17 DAY OF MAY, 2005.

[Signature]
 CHAIRMAN, BOARD OF COMMISSIONERS, KOOTENAI COUNTY, IDAHO.

ACCEPTED AND APPROVED FOR FILING.

COUNTY TREASURER'S CERTIFICATE

I HEREBY CERTIFY THAT THE TAXES DUE FOR THE PROPERTY DESCRIBED IN THE OWNERS CERTIFICATE AND DEDICATION HAVE BEEN PAID. Thru May 4

DATED THIS 4 DAY OF May, 2005.

[Signature]
 KOOTENAI COUNTY TREASURER

COUNTY SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT I HAVE EXAMINED THE HEREIN PLAT AND CHECKED THE PLAT COMPUTATIONS THEREON AND HAVE DETERMINED THAT THE REQUIREMENTS OF THE STATE CODE PERTAINING TO PLATS AND SURVEYS HAVE BEEN MET.

DATED THIS 5th DAY OF May, 2005.

[Signature]
 KOOTENAI COUNTY SURVEYOR
 BRUCE ANDERSON

NOTARY PUBLIC CERTIFICATE

ACKNOWLEDGEMENT
 STATE OF Arizona } S.S.
 COUNTY OF Maricopa

I, Margaret Madson, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, DO HEREBY CERTIFY THAT ON THIS 25th DAY OF April, 2005, BEFORE ME, PERSONALLY APPEARED ALVIN J. WOLFF JR AND EUGENIA E WOLFF, HUSBAND AND WIFE, KNOWN TO ME TO BE THE PERSON(S) WHO EXECUTED THE AFOREGOING OWNERS CERTIFICATE, AND CONSENT TO RECORD IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND NOTARY SEAL THE DAY AND YEAR OF THIS CERTIFICATE FIRST ABOVE WRITTEN.

NOTARY PUBLIC FOR STATE OF Arizona

RESIDING AT Maricopa County

COMMISSION EXPIRES 11/19/2006



State of Idaho
KOOTENAI COUNTY RECORDER

At the request of: Alvin J Wolff Jr + Eugenia E Wolff
 THE PLAT WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER
 OF KOOTENAI COUNTY, IDAHO, THIS 23rd DAY OF May 2005
 AT 12:14 P.M. IN BOOK 5 OF PLATS, PAGE 200200A + 200B

[Signature]
 KOOTENAI COUNTY RECORDER
 Fee \$11.00
 # 1951580



SURVEYOR'S CERTIFICATE

I, JOHN H. KINNEY, CE/LS #1988, A PROFESSIONAL ENGINEER AND LAND SURVEYOR IN THE STATE OF IDAHO, DO HEREBY CERTIFY THAT THIS IS A TRUE SURVEY OF THE PLATTED LAND MADE BY ME OR UNDER MY DIRECT SUPERVISION IN COMPLIANCE WITH THE LAWS OF THE STATE OF IDAHO.

OWNERS CERTIFICATE

BE IT KNOWN BY THESE PRESENT THAT ALVIN J. WOLFF JR AND EUGENIA E. AND WIFE, HEREBY CERTIFY THAT THEY OWN AND HAVE LAID OUT THE LAND WITHIN PLAT TO BE KNOWN AS "FRITZ HEATH FOREST TRACTS", A PARCEL OF THE SE 1/4 OF THE SW 1/4 OF SECTION 15, TOWNSHIP 50 NORTH, RANGE GOVERNMENT LOTS 2 AND 3, SW 1/4 OF THE NW 1/4, AND SE 1/4 OF TH SECTION 22, ALL IN TOWNSHIP 50 NORTH, RANGE 5 WEST OF THE BOISE MERIDIAN, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 3" ALUMINUM CAP MARKING THE WEST QUARTER CORNER TOWNSHIP 50 NORTH, RANGE 5 WEST, BOISE MERIDIAN, SAID POINT BEARS S WEST A DISTANCE OF 2754.81 FEET FROM A 5/8" REBAR MARKING THE CED CORNER FOR THE SOUTH HALF OF SAID SECTION 15;

THENCE, SOUTH 00°07'49" WEST A DISTANCE OF 1307.58 FEET TO A POINT SIXTEENTH (1/16) CORNER OF SAID SECTION 15;

THENCE, NORTH 89°22'20" EAST A DISTANCE OF 1440.46 FEET TO A POINT MARKED "FRITZ HEATH FOREST TRACTS - P.O.B. - CE/LS 1969" MARKING THE WEST SIXTEENTH (1/16) CORNER OF SAID SECTION 15, AND THIS DESCRIPTION;

THENCE, NORTH 89°22'20" EAST A DISTANCE OF 1315.49 FEET TO A 5/8" F CENTER-SOUTH SIXTEENTH (1/16) CORNER OF SAID SECTION 15;

THENCE, SOUTH 00°04'16" EAST A DISTANCE OF 1321.60 FEET TO A 1" DRW THE NORTH QUARTER (1/4) CORNER OF SECTION 22, TOWNSHIP 50 NORTH, BOISE MERIDIAN; THENCE, SOUTH 89°24'25" EAST A DISTANCE OF 1317.70 FEET MARKING THE EAST SIXTEENTH (1/16) CORNER OF SAID SECTION 22;

THENCE, SOUTH 00°17'38" EAST A DISTANCE OF 2800.51 FEET TO A 5/8" F CENTER-EAST SIXTEENTH (1/16) CORNER OF SAID SECTION 22;

THENCE, SOUTH 89°45'35" WEST A DISTANCE OF 2631.16 FEET TO A 5/8" F CENTER-WEST SIXTEENTH (1/16) CORNER OF SAID SECTION 22;

THENCE, NORTH 00°18'54" WEST A DISTANCE OF 2818.41 FEET TO A 5/8" F WEST SIXTEENTH (1/16) CORNER OF SAID SECTION 22;

THENCE, SOUTH 89°37'03" WEST A DISTANCE OF 1.48 FEET TO A 5/8" REB WEST SIXTEENTH (1/16) CORNER OF SAID SECTION 15;

THENCE, NORTH 00°05'56" WEST A DISTANCE OF 1315.97 FEET TO THE TRU POINT-OF-BEGINNING.

THIS PLAT CONTAINS 197.761 ACRES OF LAND MORE OR LESS.

BE IT FURTHER KNOWN THAT WATER FOR THIS PLAT IS TO BE PROVIDED BY THIS IS AN IDAHO STATE CODE PLAT AND IS NOT NECESSARILY IN STRICT AC KOOTENAI COUNTY ORDINANCES.

A SANITARY RESTRICTIONS, ACCORDING TO IDAHO CODE 50-1326 TO 50-132 THIS PLAT.

NO BUILDINGS, DWELLINGS, OR SHELTERS SHALL BE ERRECTED UNLESS ALL REQUIREMENTS ARE SATISFIED AND LIFTED.

[Signature] 4/28/05
 ALVIN J. WOLFF JR DATE

[Signature] 4/28/05
 EUGENIA E. WOLFF DATE

"SEE 2ND AMENDMENT NOTE ON PAGE

FRITZ HEATH FOREST TRACTS (SEC 15 & KOOTENAI COUNTY, IDAHO)			
DRWN. DJA	DATE: OCT 2004	REVISED: 2/15/2005	
CHRD: JHK	DATE: OCT 2004		
PLOTTED BY: CJV	DATE: 2/15/2005	SCALE:	

EXHIBIT “C”

Monument Ridge

Spokane River and Lake Views, some with Creeks

◆ 18 Parcels available in 3 phases

- ◆ 20 acres
- ◆ 15 acres
- ◆ 10 acres
- ◆ 6 Parcels per phase, once 50% of phase is sold, road construction begins
- ◆ Power & Phone
- ◆ Perk Tested
- ◆ Multiple Home Sites on every parcel
- ◆ County maintained roads upon completion of each phase

◆ CCRs

- ◆ No Manufactured Homes
- ◆ 1800 Square Foot Minimum Home
- ◆ No Hunting
- ◆ Architectural Committee

◆ Location

- ◆ 9 minutes south of I-90
- ◆ 25 minutes to Spokane
- ◆ 18 minutes to Coeur d'Alene



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at Northwest GMAC Real Estate

call **208-661-9457** for more info
www.KirkandMimi.com

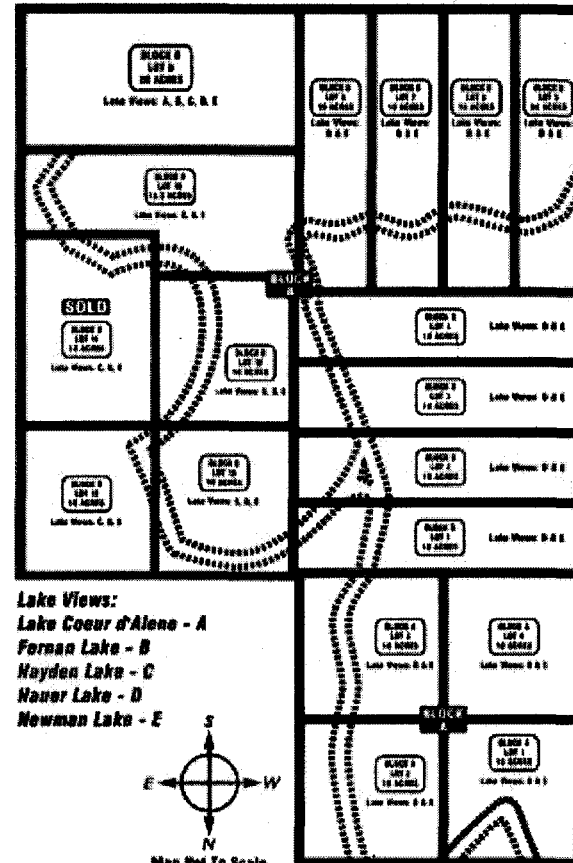
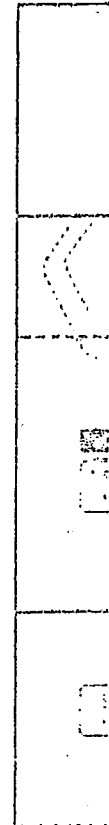


EXHIBIT “D”

Monument

Spokane River and Lake Views, some with Creeks

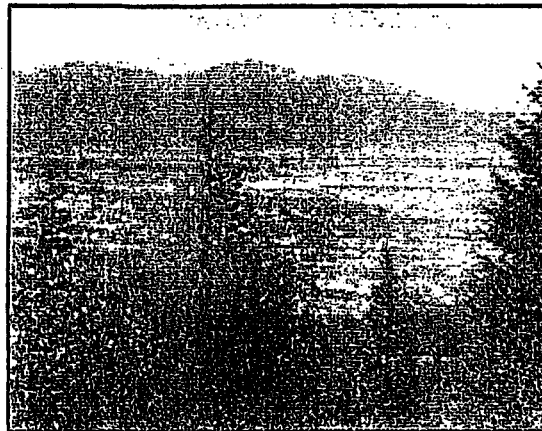
- ❖ 18 Parcels available in 3 phases
 - ❖ 20 acres
 - ❖ 15 acres
 - ❖ 10 acres
 - ❖ 6 Parcels per phase, once 50% of phase is sold, road construction begins
 - ❖ Power & Phone
 - ❖ Perk Tested
 - ❖ Multiple Home Sites on every parcel
 - ❖ County maintained roads upon completion of each phase
- ❖ CCRs
 - ❖ No Manufactured Homes
 - ❖ 1800 Square Foot Minimum Home
 - ❖ No Hunting
 - ❖ Architectural Committee
- ❖ Location
 - ❖ 9 minutes south of I-90
 - ❖ 25 minutes to Spokane
 - ❖ 18 minutes to Coeur d'Alene



Lake View
 Lake Coeur
 Spokane LA
 Hwy 200 E
 Blaine WA
 99009

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 at Northwest GMAC Real Estate
 call 208-661-9457 for more info
 www.KirkandMimi.com

**DEPOSITION
 EXHIBIT**
 CRUMB #7



**DEPOSITION
EXHIBIT**

CRUMB #8

S MELLICK LT 1 BLK A, Post Falls, ID 83854
List #05-9099

Incredible lake, valley and river views from this 10 acre view parcel, just minutes to the freeway onramp in Post Falls. Multiple building sites, perc tested for a minimum 4 bedroom home, creek on property, wildlife, and LOCATION, LOCATION, LOCATION! Please see attached documentation for future plans regarding cc&rs, roads, power & phone.

Agent/Agency Information

Listing Office: GMAC Real Estate Northwest
Office phone: (208) 667.1505
Fax: (208) 667.0210

Contract Information

Status	Active	Book Section	Acreage 10+
Area	02-Post Falls	List Price	225,000
Type of Contract	Exclusive Right to Sell, Full Servi	Office Ad #	15-502A
Property Type	Vacant Land		

General Property Description

Realtor.COM Type	Land	Lot Acres	10.02
Lot Type 1	Residential	Lot Type 2	Lake/River View
Lake/River Name	Spokane River		

Legal and Taxes

Legal	FRITZ HEATH FOREST AMENDED TR, L T 1 BLK A		
Tax Bill/Serial #	213800	Parcel Number	0-2728-00A-001-0
School District	Post Falls - 273	Zoning	RES
Taxes	21.02	Tax Year	2004
Taxes Reflect 1	Timber Exemption		
Directions	From Seltice, South on Spokane street, Rt at fork to W. Riverview, Left on Schilling Loop, Right on Mellick		
Subdivision	N/A		

Address

County: Kootenai

Details

View:	Territorial; Lake; Mountain; River	Railroad:	Not Available
Lot Features:	Sloping; Steep; Wooded	Flood Zone:	No
Fence:	None	Aircraft Flight Zone:	No
Road:	Private Maintained; None, See Remarks	Fire Protection Dist:	Yes
Water:	Creek; None, See Remarks	Terms Considered:	Cash Out
Sewer:	See Remarks	Showing Instructions:	Beware of Animals; See Remarks
Timber:	All	Association Info:	Association: Yes; CC&R's; Association Fee: TBD
Natural Gas:	Not Available	Lien/LID:	Liens: No
Electricity:	Available	Loan Information:	Assume Loan: No
Telephone:	Available	Misc:	Sec: 15; Twn: 50N; Rng#: 5; RngD: WBM

Information is deemed to be reliable, but is not guaranteed. See copyright notice.

EXHIBIT “E”

THE MATTER OF THE PETITION TO ANNEX)
CERTAIN PROPERTIES INTO THE)
KOOTENAI COUNTY FIRE & RESCUE DISTRICT)

ORDER

A petition has been filed by one (4) property owners to annex certain real property known as Parcel Nos. 0-2729-00B-001-0; 0-2729-00B-002-0; 0-2729-00B-003-0; 0-2729-00B-004-0; 0-2729-00B-005-0; 0-2729-00B-006-0; 0-2729-00B-007-0; 0-2729-00B-008-0; 0-2729-00B-009-0; 0-2729-00B-010-0; 0-2729-00B-011-0; 0-2729-00B-012-0; 0-2729-00B-013-0; 0-2729-00B-014-0 into the Kootenai County Fire & Rescue District. Notice of said hearing has been given by publication within the District on July 25, 2005 as provided for by law;

The Public Hearing was held on October 10, 2005 at which time the Fire District Commissioners entertained public comments, and after having given full consideration to the matter, unanimously approved the Petition for Annexation; and

The Board of Commissioners of the Kootenai County Fire & Rescue District has certified the results of said hearings in the form of an Order containing the attached legal description of the property to be annexed to the Kootenai County Fire & Rescue District and has forwarded said order to the County Commissioners of Kootenai County; and

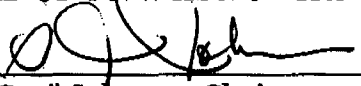
Further, it appears that the Kootenai County Fire & Rescue District has complied with all requirements of the law for annexation of the described real property;

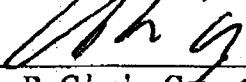
NOW, THEREFORE, IT IS HEREBY ORDERED that the annexation petitioned for by the owners be and hereby is granted.

IT IS FURTHER ORDERED that the boundaries of the Kootenai County Fire & Rescue District be amended so as to include the real property which is described in the attached Exhibit A.

Dated this 1st day of November 2005, by order of the Kootenai County Board of Commissioners.

KOOTENAI COUNTY
BOARD OF COMMISSIONERS


S. J. "Gus" Johnson, Chairman


Elmer R. Currie, Commissioner


Katie Brodie, Commissioner

ATTEST:
DANIEL J. ENGLISH, CLERK

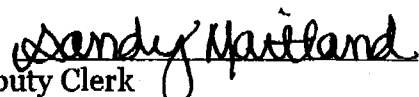
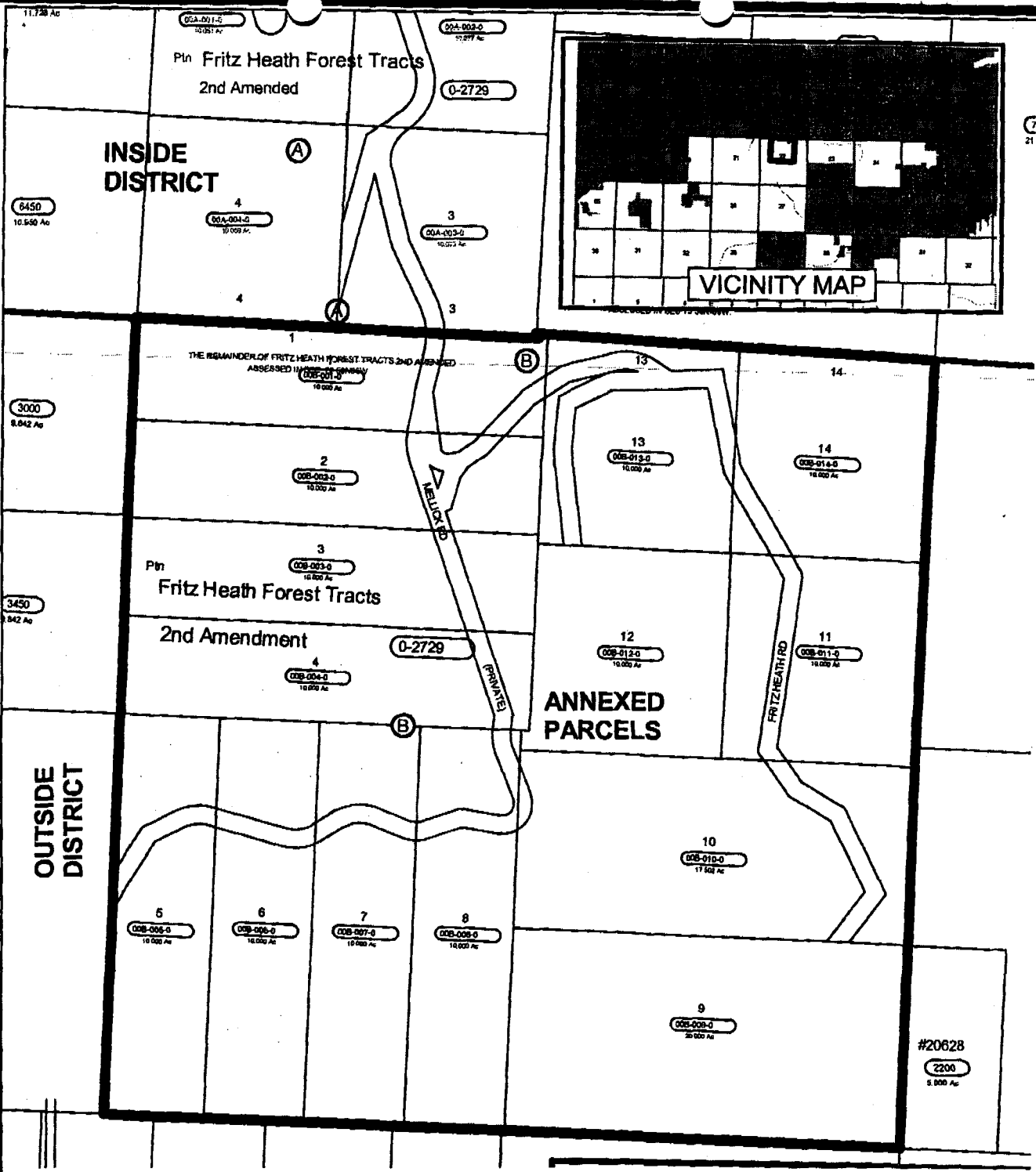
By: 
Deputy Clerk

Exhibit A**Property Descriptions for Parcels Annexed into Kootenai County Fire & Rescue on 10/10/05**

1. CRUMB, MARIAN B Property (0-2729-00B-001-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 1 BLK B
In Section 22, Township 50 North, Range 5 W.B.M
2. CRUMB, MARIAN B Property (0-2729-00B-002-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 2 BLK B
In Section 22, Township 50 North, Range 5 W.B.M
3. CRUMB, MARIAN B Property (0-2729-00B-003-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 3 BLK B
In Section 22, Township 50 North, Range 5 W.B.M
4. CRUMB, MARIAN B Property (0-2729-00B-004-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 4 BLK B
In Section 22, Township 50 North, Range 5 W.B.M
5. CRUMB, MARIAN B Property (0-2729-00B-005-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 5 BLK B
In Section 22, Township 50 North, Range 5 W.B.M
6. CRUMB, MARIAN B Property (0-2729-00B-006-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 6 BLK B
In Section 22, Township 50 North, Range 5 W.B.M
7. CRUMB, MARIAN B Property (0-2729-00B-007-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 7 BLK B
In Section 22, Township 50 North, Range 5 W.B.M
8. CRUMB, MARIAN B Property (0-2729-00B-008-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 8 BLK B
In Section 22, Township 50 North, Range 5 W.B.M
9. CRUMB, MARIAN B Property (0-2729-00B-009-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 9 BLK B
In Section 22, Township 50 North, Range 5 W.B.M
10. CRUMB, MARIAN B Property (0-2729-00B-010-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 10 BLK B
In Section 22, Township 50 North, Range 5 W.B.M
11. CRUMB, MARIAN B Property (0-2729-00B-011-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 11 BLK B
In Section 22, Township 50 North, Range 5 W.B.M
12. CRUMB, MARIAN B Property (0-2729-00B-012-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 12 BLK B
In Section 22, Township 50 North, Range 5 W.B.M
13. CRUMB, MARIAN B Property (0-2729-00B-013-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 13 BLK B
In Section 22, Township 50 North, Range 5 W.B.M
14. CRUMB, MARIAN B Property (0-2729-00B-014-0, TCA 035-000)
FRITZ HEATH FOREST TR 2ND (AMND), LT 14 BLK B
In Section 22, Township 50 North, Range 5 W.B.M

1994106



Annexed Property by Parcel ID: 0-2729-00B-001-0, 002-0, 003-0, 004-0, 005-0, 006-0, 007-0, 008-0, 009-0, 010-0, 011-0, 012-0, 013-0 & 014-0
 From TCA 035-000 to TCA 073-000



Annexation Map

Section 22, Township 50N, Range 05 W.B.M.
 District: Kootenai County Fire & Rescue
 BOCC ORDER/ Date:
 Year Effective: 2006

This map is to be used for reference purposes only, and the County is not responsible for any inaccuracies contained herein.

Kootenai County

Geographic Information Services

P O Box 9000
 N 451 Government Way
 Coeur d'Alene, ID 83816-9000
 e-mail: kcmmap@co.kootenai.id.us
 www.co.kootenai.id.us

Prepared by: Tony Harbison
 Project Filename: Kootenai_Fire_rescue_4.apr
 Plot File:

Kootenai County Fire & Rescue

1994106

P.O. Box 2200
Post Falls, ID 83877
Bus. Tel. (208) 676-8739
Fax # (208) 676-0558
kootenaifire.com

KOOTENAI COUNTY FIRE & RESCUE BOARD OF COMMISSIONERS

In Re:)
)
)
_____)

ORDER

On the 10th of October 2005, at 6:00P.M., the Kootenai County Fire & Rescue District's Board of Commissioners conducted a Public Hearing, after duly advertising and conforming to the requirements of Idaho Code 31-1411, to consider one (1) Petition of a certain property located within the County of Kootenai, to annex real property into the Kootenai County Fire & Rescue District. **Property Owners requesting Annexation into the Fire District are Petitioners Richard Abbey, Brian and Marian Crumb.** The land sought to be annexed is located in Kootenai County, Idaho, and more particularly described on "Petition for Annexation" attached hereto, and by this reference incorporated herein.

The Kootenai County Fire & Rescue District's Board of Commissioners reviewed the "Petition for Annexation," which was found to be conforming with respect to Idaho Code Section 31-1411, entertained public comments at said hearing, and after having given full consideration to the matter, unanimously approved the Petition for Annexation.

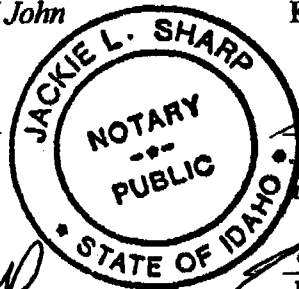
Accordingly, it is hereby ordered by the Kootenai County Fire & Rescue District's Board of Commissioners, that the above-described land has been unanimously approved for annexation. It is further ordered, that a certified copy of this Order, along with an accurate and complete legal description of the one (1) annexed property, shall be delivered to the Board of County Commissioners, Kootenai County, State of Idaho, so that the same can be recorded upon the tax rolls of Kootenai County.

DATED this 10th Day of October 2005.



Richard Nordstrom-Chairman of the Board
Kootenai County Fire & Rescue

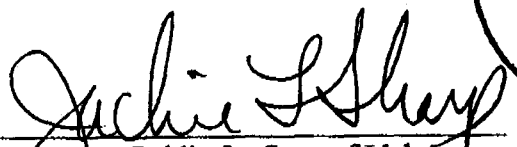

Marie Kling, Commissioner
Kootenai County Fire & Rescue

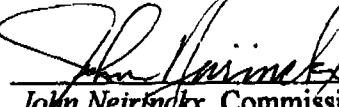
Subscribed and sworn to before me
this 10th day of October 2005, personally
known to me: *Richard Nordstrom, Marie Kling,
Joe Doellefeld, Keith Hutcheson and John
Neirinckx.*




Joe Doellefeld, Commissioner
Kootenai County Fire & Rescue


Keith Hutcheson, Commissioner
Kootenai County Fire & Rescue


Notary Public for State of Idaho
MY COMMISSION EXPIRES
September 1, 2007
BONDED THRU NOTARY PUBLIC UNDERWRITERS


John Neirinckx, Commissioner
Kootenai County Fire & Rescue

Reside in Kootenai County, Id.

Kootenai County Fire & Rescue

Administration Office

1994106

P.O. Box 2200
Post Falls, ID 83877
Ph # (208) 676-8739
Fax # (208) 676-0558

PETITION FOR ANNEXATION INTO KOOTENAI COUNTY FIRE & RESCUE

TO: THE COMMISSIONERS OF KOOTENAI COUNTY FIRE & RESCUE

WHEREAS, the Kootenai County Fire & Rescue Fire Protection District is now and has since its inception, been charged with providing fire protection to the property owners within its' designated district bounds; and

WHEREAS, the real property hereinafter described is not within that district but adjoins the same; and

WHEREAS, your Petitioner(s) is/are the legal owner(s) or contract purchaser(s) of all the land described herein below.

NOW, THEREFORE, your Petitioner(s) respectfully submits this Petition in accordance with the provisions of Title 31, Chapter 14, Idaho Code and specifically, Section 31-1411 thereof, requesting that the same be heard to consider the annexation of the following described real property into Kootenai County Fire & Rescue Fire Protection District.

LEGAL DESCRIPTION:

157.5
ACRES
to Annex

PLEASE PRINT PHYSICAL ADDRESS:

~~lots 1, 2, 3, 4, block A, and~~ Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14,
Block B, Fritz Heath Forest Amended Tracts, according to the plat recorded
in book "I" of Plats, pages 75, 75A, and 75B, records of Kootenai County
State of Idaho. Sec. 22 Twp. 50 N. R. 5 W. B. M.

PLEASE PRINT MEETS AND BOUNDS DESCRIPTION:

Lots 1, 2, 3, and 4 block A, Fritz Heath Forest Amended Tracts,
according to the plat recorded in book "I" of Plats, pages 75, 75A, 75B,
records of Kootenai County, State of Idaho - Sec. 15 Twp. 50 N. R. 5 W. B. M.

and upon final hearing thereof, your Petitioner(s) prays that the same be approved and the real property as hereinbefore described be annexed into Kootenai County Fire & Rescue.

1994106

DATED this 25th day of August, 2005

Marian Blum
PETITIONER SIGNATURE

x
PETITIONER SIGNATURE

Marian B. Crumb
PRINTED NAME

x
PRINTED NAME

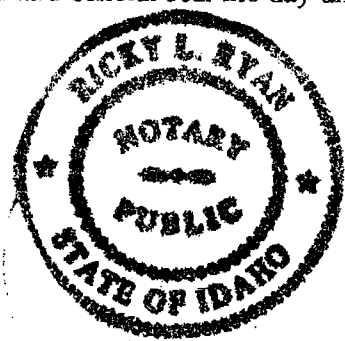
STATE OF IDAHO)
) SS.

County of Kootenai)

On this 25th day of Aug., 20 05, before me, a Notary Public in and for said state, personally appeared MARIAN B. CRUMB (and ~~known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.~~)

IN WITNESS THEREOF, I have hereunto set my hand and official seal the day and year first above written.

Ricky L. Ryan
Notary Public for Idaho
Residing at Hayden Lk. Id.
6/10/11



DATED this 25th day of August, 2005

Frankie McFeron-Crumb
PETITIONER SIGNATURE

x B. D. Crumb
PETITIONER SIGNATURE

Frankie McFeron-Crumb
PRINTED NAME

x Brian D. Crumb
PRINTED NAME

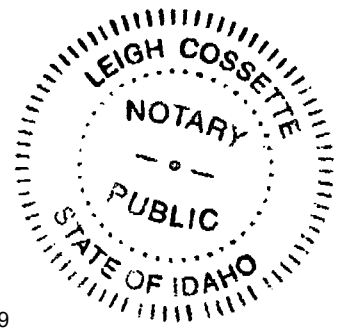
STATE OF IDAHO)
) SS.

County of Kootenai)

On this 25th day of August, 20 05, before me, a Notary Public in and for said state, personally appeared Frankie McFeron-Crumb (and Brian Crumb) ~~known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same.~~

IN WITNESS THEREOF, I have hereunto set my hand and official seal the day and year first above written.

Leigh Cossette
Notary Public for Idaho
Residing at Good Falls
2/17/06



(Notary Commission Expiration Date)

1994106

DATED this 25th day of August, 2005.

[Signature]
PETITIONER SIGNATURE

x _____ x
PETITIONER SIGNATURE

RICHARD ARBEY
PRINTED NAME

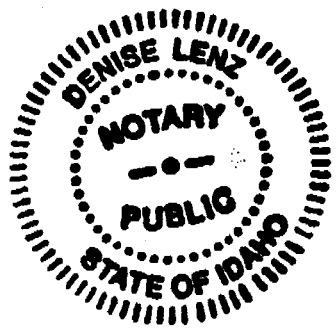
x _____ x
PRINTED NAME

STATE OF IDAHO)
) SS.
County of Kootenai)

On this 25th day of Aug, 2005, before me, a Notary Public in and for said state, personally appeared Richard J. Vatland (~~and~~) [Signature] known to me to be the person(s) whose ~~name(s)~~ is subscribed to the within instrument and acknowledged to me that ~~he~~/she/they executed the same.

IN WITNESS THEREOF, I have hereunto set my hand and official seal the day and year first above written.

Denise Lenz
Notary Public for Idaho
Residing at Rathdrum ID
1/5/11
(Notary Commission Expiration Date)



KOOTENAI COUNTY FIRE & RESCUE:

- Richard Mordstrom President
- John Huinck Commissioner
- [Signature] Commissioner
- [Signature] Commissioner
- Marie Kling Commissioner

ATTEST: John Huinck
Secretary of Kootenai County Fire & Rescue

STATE OF IDAHO)
) SS.
County of Kootenai)

On this 10th day of October, 2005, before me, a Notary Public in and for said State, personally appeared the Board of Commissioners of Kootenai County Fire & Rescue, a corporation authorized by the laws of the State of Idaho that executed the

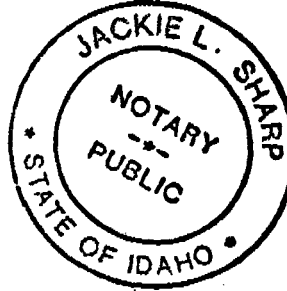
KCFR_FP_Amexation.doc
Updated 05 03 05

1994106

foregoing instrument and acknowledged to me that said corporation authorized by the laws of the State of Idaho executed the same.

IN WITNESS THEREOF I have hereunto set my hand and official seal the day and year above written.

Jackie L. Sharp
Notary Public for Idaho
Residing at Kootenai County Idaho
MY COMMISSION EXPIRES
September 1, 2007
~~SCHEPHERD NOTARY PUBLIC UNDERWRITERS~~
(Notary Commission Expiration Date)



Owner: Abbey and Crumb Developments, LLC.
Mailing Address: P.O. Box 3540
Post Falls, ID 83877
Phone #: 208-699-2838

- Kootenai Co. Assessment
- Map
- Property Description
- Physical Address
- Mailing Address
- Check

DATE OF ANNEXATION: Oct. 10, 2005

STATE OF IDAHO
COUNTY OF KOOTENAI
AT THE REQUEST OF
KC. Commissioners

2005 NOV -8 A 9:19

DANIEL J. ENGLISH DNW

DEPUTY
FEES NC

8 pages

K: FR, FP, Annexation.doc
Updated 05/03/05

EXHIBIT “F”

COPY

**AGREEMENT OF MEMBERS
OF ABBEY & CRUMB DEVELOPMENTS, LLC,
AS TO TRANSFER OF ASSETS AND WITHDRAWAL
OF MEMBERS INTEREST**

COMES NOW, the following corporate members of ABBEY & CRUMB DEVELOPMENTS, LLC, an Idaho Limited Liability Company, to wit: BRIAN D. CRUMB, FRANKIE MCFERON CRUMB, MARIAN B. CRUMB, RICHARD J. ABBEY and KERI ANN ABBEY, and hereby mutually agree, covenant, transfer and assign their respective asset interests in the said corporation, pursuant to Paragraph 7.2 Consent to Transfer, Page 13, of the Limited Liability Company Operating Agreement of ABBEY & CRUMB DEVELOPMENTS, LLC., as follows:

WITHDRAWAL OF MEMBERS: The parties mutually agree that BRIAN D. CRUMB, FRANKIE MCFERON CRUMB and MARIAN B. CRUMB, will withdraw as members of ABBEY & CRUMB DEVELOPMENTS, LLC, effective upon the completion and transfer of the assets of the corporation to said withdrawing members. That RICHARD J. ABBEY and KERI ANN ABBEY will continue to be members of the LLC, after the division of assets and the withdrawal of the above set forth members.

DIVISION OF CORPORATE ASSETS: The parties mutually agree that the corporation is the owner of certain described assets which will be equitably divided by and between the parties, pursuant to this Agreement. That said parties agree the distribution and division of assets as set forth herein are fair, reasonable, and equitable, based on the withdrawal of the above named members and the continued membership of the ABBEYS.

The following real property lots owned by the LLC shall be transferred by Corporate Deed from the LLC to the below named parties, to wit:

Real Property:

- A) Lot 1, Block A, Fritz Heath Forest Second Amended Tracts according to the Plat recorded in Book "J" of Plats, Page 200, et seq., Records of Kootenai County, Idaho, to be conveyed to Marian Crumb, a single person.

- B) Lot 3, Block A, Fritz Heath Forest Second Amended Tracts according to the Plat recorded in Book "J" of Plats, Page 200, et seq., Records of Kootenai County, Idaho to be conveyed to Brian Crumb and Frankie McFeron Crumb, as husband and wife.

- C) Lot 1, Block B , Fritz Heath Forest Second Amended Tracts according to the Plat recorded in Book "J" of Plats, Page 200, et seq., Records of Kootenai County, Idaho to be conveyed to Marian Crumb, a single person.
- D) Lot 5, Block B, Fritz Heath Forest Second Amended Tracts according to the Plat recorded in Book "J" of Plats, Page 200, et seq., Records of Kootenai County, Idaho to be conveyed to Marian Crumb, a single person.
- E) Lot 8, Block B, Fritz Heath Forest Second Amended Tracts according to the Plat recorded in Book "J" of Plats, Page 200, et seq., Records of Kootenai County, Idaho to be conveyed to Brian Crumb and Frankie McFeron Crumb, as husband and wife.
- F) Lots 2, 3, 4, 6, 7, 9 and 10, Block B, Fritz Heath Forest Second Amended Tracts, according to the Plat recorded in Book "J" of Plats, Page 200, et seq., Records of Kootenai County, Idaho, will remain as assets of the corporation.(LLC).

For income tax purposes, the transfer of the real property to the above named individuals, is a division of the corporate assets to accommodate in an equitable manner, the withdrawal of members of the LLC, and should not be considered a sale of corporate assets.

CASH MONEY: It is agreed the corporate (LLC) checking account has a bank balance which needs to be divided, based on the withdrawal of the above named three (3) members. The parties herein agree from the corporate (LLC) bank account, the sum of Twenty Five Thousand and No/100's (\$25,000.00) Dollars is to be paid and delivered to Brian Crumb and Frankie McFeron Crumb. That the sum of Twenty Thousand and No/100's (\$20,000.00) Dollars is to be paid form the corporate (LLC) bank account to MARIAN CRUMB. The remaining balance in the corporate bank account is to remain an asset of the corporation.

ACCOUNTS RECEIVABLE-PROMISSORY NOTE: It is mutually agreed, the LLC is the holder of a Promissory Note secured by a Deed of Trust, dated December 30, 2005, in the original sum of THIRTEEN THOUSAND AND NO/100'S (\$13,000.00) DOLLARS, together with interest thereon at the rate of six per cent (6%) per annum, due and payable at the rate of \$125.00 or more per month, with the debtor being William J. Bozlee Jr., and Sandra D. Bozlee, husband and wife. That said Promissory Note shall remain an asset of the LLC, as an

Account Receivable, as concerns this transaction described herein.

DEBTS OF THE CORPORATION: It is agreed that at the time of this Agreement, to the knowledge of the undersigned parties, no corporate debts are outstanding and owing to any third parties. The parties recognize a future debt for engineering work done by INC (Inland Northwest Consultants), 1296 Polston Avenue, Suite B, Post Falls, Idaho 83854, may become owing, which will remain the responsibility of the LLC for payment purposes of said debt, as is a debt to be owed to Clark, Anderson, and McNelis & Co, PA, which is to be paid 1/3 each by the married couples and 1/3 by Marian B. Crumb.

PERSONAL PROPERTY: The parties agree, all the remaining personal property assets of the corporation, except one of two Stihl Chain Saws, Model #MS 361C, will remain assets of the corporation, with one of said two chain saws, to be delivered to BRIAN CRUMB.

CLOSING OF TRANSACTION: The parties desire and intend to execute this Agreement and the Quitclaim Deed (corporate deeds) and deliver the checks to transfer the money to the withdrawing partners as soon as possible and not to exceed the 26th day of September, 2006.

CORPORATE MINUTES AND RESIGNATION STATEMENTS The parties agree, corporate minutes authorizing the transactions described herein shall be drafted and executed as well as Statements of Resignations by the Withdrawing members. Articles of Amendment for the corporation, reflecting that RICHARD J. ABBEY and KERI ANN ABBEY, with an address of PO Box 853, Hayden, Idaho 83835, shall be the LLC members with RICHARD J. ABBEY to be the registered agent at the address of 8359 Audubon Drive, Hayden, Idaho 83835,. That the corporate mailing address of PO Box 3540, Post Falls, Idaho 83877, shall remain the same.

CORPORATE STOCK CERTIFICATES: The withdrawing members each agree to endorse the back of their individual Stock Certificates and surrender them to RICHARD or KERI ABBEY, to be placed in the corporate book showing said Stock Certificate no longer exists in said individuals names.

TAX CONSEQUENCES: The parties agree they have consulted with CURTIS CLARK, CPA and he has discussed this transaction with them individually, as to the tax consequences and the parties understand they will accept any and all tax consequences, if any, individually, and as a corporation to those remaining members based on the terms and conditions contained in this Agreement.

ROAD AND UTILITIES TO FRITZ FOREST: The parties agree that it will be the obligation and responsibility of the LLC to complete the road building work and to provide ingress and egress

and responsibility of the LLC to complete the road building work and to provide ingress and egress access to each lot as well as provide electric power and telephone access to all lots contained in Block "A" and "B" of Fritz Heath Forest Second Amended Tracts. That it will further be the obligation of the LLC to enforce the Restrictive Covenants governing said described lots and blocks contained in the subdivision.

ENTIRE AGREEMENT OF THE PARTIES: It is agreed, this is the entire agreement of the parties, and any amendment or additions to the Agreement must be in written form similar in form to this Agreement, with all parties signing said Amendment.

DEFAULT: If any legal action is commenced by any party against another party, as a result of this transaction, the prevailing party in any lawsuit shall be entitled to their reasonable attorneys fees and court costs.

SUCCESSOR AND ASSIGNS: This Agreement shall be binding on the heirs, personal representatives, successors and assigns of any party signing this Agreement.

GOVERNING LAWS: The parties agree any legal action commenced as a result of this Agreement shall be brought in Kootenai County, Idaho, and no other jurisdiction

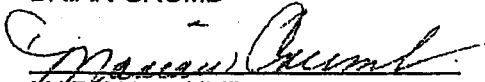
DATED this 26th day of Sept., 2006.



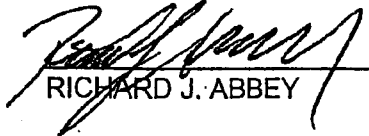
BRIAN CRUMB



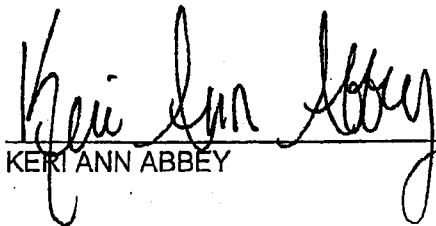
FRANKIE MCFERON CRUMB



MARIAN CRUMB



RICHARD J. ABBEY



KERI ANN ABBEY

EXHIBIT “G”

Subject: Fw: Lenhart

From: Brian Crumb (bdc4268@yahoo.com)

To: rkabbey@gmail.com;

Date: Monday, October 10, 2011 2:21 PM

----- Forwarded Message -----

From: James Magnuson <jim@magnusononline.com>

To: bdc4268@yahoo.com

Sent: Monday, October 10, 2011 2:02 PM

Subject: FW: Lenhart

Dear Mr. Crumb,

If this meets with your approval, please sign and return. You can e mail the signed statement or fax to 208 6661700 or mail back to Jim Magnuson P O Box 2288 CDA ID 83816. Thanks Jim

Stephanie Belden @
H. James Magnuson
(208) 666-1596

If you received this email in error, please reply to me and delete your copy immediately. It may contain attorney-client, privileged and/or confidential information and should not be reproduced or distributed in any way. Thank you.

Attachments

- Crumb Statement.doc (24.00KB)

I, Brian Crumb, along with my wife own a 12-acre parcel of property that is accessed from Mellick Road, which is a county public road. I am familiar with the 10-acre parcel that Michael A. Lenhart, Jr., and Jennifer Lenhart (the "Lenharts") own in the Fritz Heath Second Amended Forest Tracts as I am a former partner with Richard Abbey in Abbey & Crumb Developments, LLC, the entity that developed the Fritz Heath Second Amended Forest Tracts. The Lenharts own Lot 13, Block B, Fritz Heath Forest Tracts 2nd Amendment. The only way for the Lenharts or anyone to access the Lenhart parcel is to cross my property. The Lenharts do not have legal access across my property and, as such, there is no legal access to the Lenhart property.

Dated: _____, 2011.

BRIAN CRUMB

EXHIBIT “H”

January 31, 2013

Michael & Jennifer Lenhart
4914 Richmond Avenue
Fremont, Ca 94536
Claim No: 383000

Ryan Forrest
Fidelity National Title
2111 South 67th Street, Suite 210
Omaha, NE 68106

Dear Mr. Forrest:

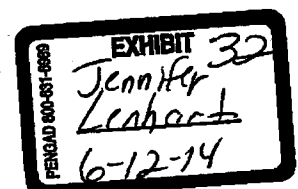
Our realtor's name is Deb Saunders with Coldwell Banker Schneidmiller Realty. Her email is dsaunders@coldwellbanker-idaho.com, cell is 1-208-775-3391. The title officer is with Alliance title Kristin Scott. Her email is Kristin_Scott@alliancetitle.com, phone number is 1-208-667-3402. She is the officer who researched the plats and has the information with regards to no easements or access recorded on anything. There is also no road maintenance recorded. She also informed Deb they could not offer us title insurance because of the problems associated with the property.

Brian Krumb owns one of the properties we need to cross. He has had a falling out with his partner, Richard Abbey. There were never any papers recorded or signed between the two partners that anyone can cross over his land to reach the development. We have tried for over three years, with help from our attorney and personally talking to him on the phone, to get him to sign paperwork that we do or do not have access across his land. He will not commit to anything. Richard Abbey told us Brian Krumb stated he was going to charge people if they wanted to cross his land. When we tried to sell the land, this was a big sticking point for our buyer. He didn't want to buy land that potentially had problems. If you need any paperwork, our realtor would be happy to furnish them or she can let us know what you need if she doesn't have it.

Thank you for looking at this matter again.

Sincerely,

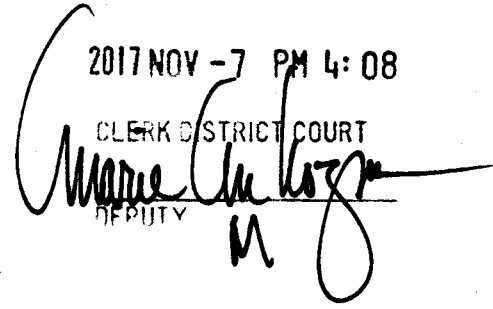
Michael & Jennifer Lenhart



2017 NOV -7 PM 4: 08

CLERK DISTRICT COURT

DEPUTY



DARRIN L. MURPHEY
Murphey Law Office, PLLC
402 West Canfield Avenue, Suite 2
Coeur d'Alene, ID 83815
Telephone: (208) 667-7621
Facsimile: (208) 667-7625
ISBA# 6221

BRENT G. SCHLOTTHAUER
VASSEUR & SCHLOTTHAUER, PLLC
409 Coeur d'Alene Avenue
P.O. Box 808
Coeur, d'Alene, ID 83816-0808
Telephone: (208) 664-4457
Facsimile: (208) 765-4702
ISBA# 6104

Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial
Fund LLC

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
LLC, and Todd A. Reeve,

Defendants,

) Case No. CV 2017-5541

)

) DECLARATION OF DARRIN L.
) MURPHEY IN SUPPORT OF
) DEFENDANT BRIAN CRUMB'S MOTION
) FOR SUMMARY JUDGMENT

)

)

)

)

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DARRIN L. MURPHEY states as follows:

1. I am over the age of eighteen (18) years of age, and make this declaration based

DECLARATION OF DARRIN L. MURPHEY IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION
FOR SUMMARY JUDGMENT - 1

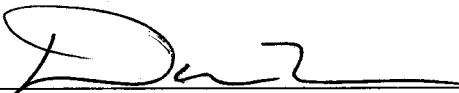
upon my own personal knowledge.

2. That I am one of the attorneys of record for the Defendant Brian Crumb.
3. That attached hereto as Exhibit "A" is a true and correct copy of Plaintiffs' Answers to Defendant Brian Crumb's First Set of Interrogatories and Requests for Production, excluding attachments.

I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 7th day of November, 2017.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

DECLARATION OF DARRIN L. MURPHEY IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of November, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 665-7290
- ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
nichole@bistlinelaw.com; sharon@bistlinelaw.com

Christopher G. Varallo
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (509) 458-2728
- ELECTRONIC MEANS (pursuant to written consent):



Darrin L. Murphey

DECLARATION OF DARRIN L. MURPHEY IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION
FOR SUMMARY JUDGMENT - 3

EXHIBIT “A”

ARTHUR M. BISTLINE
BISTLINE LAW, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814
(208) 665-7270
(208) 665-7290 (fax)
arthur@bistlinelaw.com
ISB: 5216

Attorneys for Plaintiffs

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

Security Investor Fund LLC and Security
Financial Fund LLC

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
LLC, and Todd A. Reeve,

Defendants.

)Case No. CV 2017-5541
)
)
)

)PLAINTIFFS' ANSWERS TO
)DEFENDANT BRIAN CRUMB'S FIRST
)SET OF INTERROGATORIES AND
)REQUESTS FOR PRODUCTION
)
)
)
)
)
)
)

Plaintiffs, SECURITY FINANCIAL FUND LLC and SECURITY INVESTOR FUND
LLC (collectively referred to as "SECURITY") and provides the following answers to
Interrogatories and Requests for Production of Documents accordance with the provisions of
Rules 33 and 34 of the Idaho Rules of Civil Procedure.

INTERROGATORY NO. 1: Please set forth the name, address, and telephone number
of each and every individual known to you who has knowledge or who purports to have

PLAINTIFFS' ANSWERS TO DEFENDANT BRIAN CRUMB'S FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION - Page 1

knowledge of any of the facts of this case. By this Interrogatory we seek the names and addresses of all individuals who have knowledge or purport to have knowledge of the facts of this case which pertain to the allegations contained in your Complaint.

ANSWER:

Brian and Frankie Crumb
5022 East Shoreline Drive
Post Falls, Idaho

Steven Howell
P.O. Box 191160
Boise, Idaho 83719
(208) 870-3933

Chad Howell
c/o Steven Howell
P.O. Box 191160
Boise, Idaho 83719
(208) 870-3933

Richard Abbey
P.O. Box 853
Hayden, Idaho 83835
(208) 755-0488

Dale Adema
P.O. Box 265
Rockwall, Texas 74087
(214) 771-1172

Levi Basinger, Planner II
Kootenai County Development
451 Government Way
Coeur d'Alene, Idaho 83816
(208) 446-1070

Zachary Eifler
979 S. Greensferry Rd.

PLAINTIFFS' ANSWERS TO DEPENDANT BRIAN CRUMB'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION - Page 2

Post Falls, Idaho 83843
(208) 661-7213

Frank L. Hill
6675 Mediterranean Drive
Unit 3404
McKinney, Texas 75070
(208) 596-6006

Lloyd Morris
2866 W. Marcellie Drive
Coeur D'Alene, Idaho 83815
828-712-4955

INTERROGATORY NO. 2: Please set forth the names of those persons having knowledge of the facts of the case whom you may call as witnesses at trial.

ANSWER: See answer to Interrogatory No. 1 which is incorporated herein as if fully set forth.

INTERROGATORY NO. 3: Please identify in full and complete detail each and every document, writing, photograph, or other physical evidence which you intend to offer as an exhibit in the trial of this matter.

ANSWER: Objection. Such a request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Subject to this objection, Plaintiff intends to offer as exhibits the documents attached to its Motion for Summary Judgment dated October 3, 2017, and may introduce documents produced by Brian Crumb in this litigation.

INTERROGATORY NO. 4: Please identify the name of each person whom you expect to call as an expert witness at trial. For each such person identified, please state the subject

matter on which the expert is expected to testify, the substance of the opinions to which the expert is expected to testify, and the underlying facts and data upon which the expert opinions are based, in conformity with Rule 705, I.R.E.

ANSWER: None at this time.

INTERROGATORY NO. 5: For each and every person you have identified in answer to Interrogatory No. 4 above, set forth the qualifications, professional experience, and background of the individual.

ANSWER: Not applicable.

INTERROGATORY NO. 6: Please identify in full and complete detail each and every document, writing, or other physical evidence which relates to your claims in this lawsuit.

ANSWER: Objection. Such a request is overly broad and unduly burdensome. Subject to this objection, the documents attached to its Motion for Summary Judgment dated October 3, 2017 relate to this lawsuit, and all documents produced by Brian Crumb. Also, the Declaration of Lloyd Morris which is attached.

INTERROGATORY NO. 7: Please describe each statement, oral or written, made by Defendant Brian Crumb which relates to any of the issues involved in this action.

ANSWER: Plaintiffs incorporate all statements, writings, and conduct of Brian Crumb referenced in their Motion for Summary Judgment filed October 3, 2017. Also, the statements made by Brian Crumb as set forth in the attached Declaration of Lloyd Morris which is attached.

INTERROGATORY NO. 8: Please describe each and every agreement between you, including the members and managers of your company, and the companies, corporations and

partnerships in which such members, managers, principals or partners hold a financial interest, and Richard Abbey, Abbey & Crumb Developments, LLC, or Monument Ridge, LLC.

ANSWER: Objection. Such a request is overly broad and unduly burdensome. Subject to this objection, in late 2006, Richard Abbey approached Chad Howell concerning the possibility of Abbey & Crumb LLC borrowing money from Security for development of the FRITZ-HEATH FORREST TRACTS (2nd) which consisted of approximately 200 acres of land divided into eighteen (18) lots. Security's due diligence included Chad Howell driving the FRITZ-HEATH several times. Chad Howell also reviewed engineering drawings, the Kootenai County site disturbance permit, the FRITZ-HEATH CC&Rs, and confirmed that the Post Falls Fire District had annexed the FRITZ-HEATH.

No specific mention was made as to the Crumb Entrance Parcel, nor was there a need to make special mention of it, since the forty (40) foot right of way was incorporated into the Kootenai County site disturbance permit, was the basis for Post Falls Fire District protection, and was referenced in the FRITZ-HEATH CC&Rs which spoke of a common road through the subdivision. Security would never have agreed to loan Abbey & Crumb LLC \$1,240,728.00 for development of the FRITZ-HEATH, had Security been aware that Brian Crumb would later attempt to extort compensation for using the entrance to the FRITZ-HEATH which he himself placed on his property. Security will seek at least \$700,000 in damages against Brian Crumb in the event that a forty (40) foot right of way easement is not declared over his property.

INTERROGATORY NO. 9: Please describe with particularity any and all debts and obligations of Richard Abbey, Abbey & Crumb Developments, LLC, or Monument Ridge, LLC,

PLAINTIFFS' ANSWERS TO DEFENDANT BRIAN CRUMB'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION - Page 5

to you, the members and managers of your company, and the companies, corporations and partnerships in which such members, managers, principals or partners hold a financial interest.

ANSWER: None at this time. Security accepted deeds in lieu of foreclosure rather than foreclose on the Abbey & Crumb property that was held as collateral.

REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce a copy of each document identified in your answer to Interrogatories.

RESPONSE: See documents attached to Plaintiffs' Motion for Summary Judgment and documents produced by Brian Crumb and Declaration of Lloyd Morris.

REQUEST FOR PRODUCTION NO. 2: Please produce any and all written or otherwise recorded statements obtained from persons with knowledge of the allegations contained in your Complaint.

RESPONSE: See Declaration of Lloyd Morris which is attached, the Declaration of Richard Abbey and Declaration of Roger Glessner attached to Plaintiffs' Motion for Summary Judgment, and the oral deposition of Brian Crumb produced by Brian Crumb and attached, in part, to Plaintiffs' Motion for Summary Judgment.

REQUEST FOR PRODUCTION NO. 3: Please produce a copy of all documents, writings, letters, correspondence, e-mail or other electronically stored information sent by you to Abbey & Crumb Developments, LLC, Monument Ridge, LLC, or Richard Abbey, his agent, representative, or legal counsel.

RESPONSE: Objection. Such a request is overly broad and unduly burdensome, and

not reasonably calculated to lead to the discovery of relevant evidence. Subject to this objection, as stated in Interrogatory No. 8, nothing related to the forty (40) foot right of way over Brian Crumb's property.

REQUEST FOR PRODUCTION NO. 4: Please produce a copy of all documents, writings, letters, correspondence, e-mail or other electronically stored information sent to you by Abbey & Crumb Developments, LLC, Monument Ridge, LLC, or Richard Abbey, his agent, representative, or legal counsel.

RESPONSE: Objection. Such a request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Subject to this objection, as stated in Interrogatory No. 8, no mention was ever made of the forty (40) foot right of way over Brian Crumb's property, nor was there a need under the circumstances.

REQUEST FOR PRODUCTION NO. 5: Please produce a copy of all documents, writings, letters, correspondence, e-mail or other electronically stored information sent by you to any of the defendants, their agent, representative, or legal counsel.

RESPONSE: None, other than documents related to this case that were served as required by the Idaho Rules of Civil Procedure.

REQUEST FOR PRODUCTION NO. 6: Please produce a copy of all documents, writings, letters, correspondence, e-mail or other electronically stored information sent to you by any of the defendants, their agent, representative, or legal counsel.

RESPONSE: None, other than the Acceptance of Service by Defendants Jitinvest LLC, Todd Reeve, and Spirit Elements.

PLAINTIFFS' ANSWERS TO DEFENDANT BRIAN CRUMB'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION - Page 7

REQUEST FOR PRODUCTION NO. 7: Please produce a copy of all documents, writings, letters, correspondence, e-mail or other electronically stored information sent by you to any of the owners of property in the Fritz-Heath Forest Second Amended Tracts, their agent, representative, or legal counsel.

RESPONSE: Objection. Such a request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence.

REQUEST FOR PRODUCTION NO. 8: Please produce a copy of all documents, writings, letters, correspondence, e-mail or other electronically stored information sent to you by any of the owners of property in the Fritz-Heath Forest Second Amended Tracts, their agent, representative, or legal counsel.

RESPONSE: Objection. Such a request is overly broad and unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence.

REQUEST FOR PRODUCTION NO. 9: Please produce a copy of the contract you allege in your Complaint was breached by Defendant Brian Crumb.

RESPONSE: See Motion for Summary Judgment filed October 3, 2017. Plaintiffs contend that the documents referenced therein, and those attached as exhibits, show that Defendant Brian Crumb agreed that his property adjoining the Fritz-Heath would be used as permanent access to the Fritz-Heath for all Fritz-Heath owners. Fritz-Heath owners are beneficiaries of such agreement.

REQUEST FOR PRODUCTION NO. 10: Please produce a copy of all documents, writings, letters, correspondence, e-mail or other electronically stored information describing or

relating to the contract you allege in your Complaint was breached by Defendant Brian Crumb.

RESPONSE: See exhibits attached to Plaintiff's Motion for Summary Judgment filed October 3, 2017, and documents produced by Brian Crumb.

REQUEST FOR PRODUCTION NO. 11: Please produce a copy of all documents, writings, bills, invoices, receipts, letters, correspondence, e-mail or other electronically stored information relating to the alleged easement over and across Defendant Brian Crumb's property as described in your Complaint.

RESPONSE: See exhibits attached to Plaintiffs' Motion for Summary Judgment filed October 3, 2017, and documents produced by Brian Crumb.

REQUEST FOR PRODUCTION NO. 12: Please produce any and all documents or things which you may or will introduce at the trial of this action.

RESPONSE: See documents attached to Plaintiffs' Motion for Summary Judgment filed October 3, 2017, and possibly documents produced by Brian Crumb.

REQUEST FOR PRODUCTION NO. 13: Please produce any and all documents received, reviewed, relied upon, or generated by every expert who may be expected to testify at trial.

RESPONSE: None at this time.

REQUEST FOR PRODUCTION NO. 14: Please provide copies of any and all documents supporting your answer to Interrogatory No. 3 as set forth above.

RESPONSE: See Response to Interrogatory No. 3.

REQUEST FOR PRODUCTION NO. 15: Please provide copies of any and all

PLAINTIFFS' ANSWERS TO DEFENDANT BRIAN CRUMB'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION - Page 9

documents, writings, letters, correspondence, e-mail or other electronically stored information related to your purchase of the property described in the Complaint.

RESPONSE: Objection. Such a request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence. Subject to this objection, Security never "purchased" the property described in this suit, but accepted a deed in lieu of foreclosure.

REQUEST FOR PRODUCTION NO. 16: Please provide copies of any and all title reports, policies or similar documents concerning your property described in the Complaint.

RESPONSE: Objection. Such a request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of relevant evidence.

DATED this 24 day of October, 2017.

BISTLINE LAW, PLLC


ARTHUR M. BISTLINE
Attorney for Plaintiffs

PLAINTIFFS' ANSWERS TO DEFENDANT BRIAN CRUMB'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION - Page 10

VERIFICATION

STATE OF IDAHO)
) ss.
County of ADA)

STEPHEN HOWELL, being first duly sworn, upon oath, deposes and says:

Managing Member
I am the ~~President~~ of Security Investor Fund LLC and Security Financial Fund LLC and the above referenced Plaintiffs in the above-entitled action and named in the foregoing Complaint, and have read the foregoing Answers to Interrogatories and Request for Production, and believe the same to be accurate and complete to the best of my knowledge, information and belief.

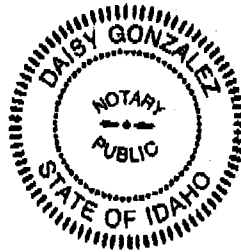
SECURITY INVESTOR FUND LLC, an
Idaho Limited Liability Company

SECURITY FINANCIAL FUND LLC, an
Idaho Limited Liability Company

Stephen Howell
By: Stephen Howell
Its: ~~President~~ *Managing Member*

Stephen Howell
By: Stephen Howell
Its: ~~President~~ *Managing Member*

SUBSCRIBED AND SWORN to before me this 26 day of October, 2017.

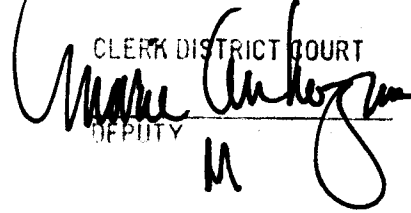


Daisy Gonzalez
Notary Public for Idaho
Residing at: 700 W. Fairview Ave Boise, ID 83704
Commission Expires: 01/29/2022

2017 NOV -7 PM 4: 08

CLERK DISTRICT COURT

DEPUTY



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Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial
Fund LLC

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
LLC, and Todd A. Reeve,

Defendants,

) Case No. CV 2017-5541

)
) DEFENDANT BRIAN CRUMB'S
) MEMORANDUM IN SUPPORT OF
) MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant Brian Crumb, by and through his attorneys of record, Darrin L.

Murphey, of Murphey Law Office, PLLC, and Brent G. Schlotthauer, of Vasseur and

DEFENDANT BRIAN CRUMB'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 1

Schlotthauer, PLLC, and pursuant to Rule 56, I.R.C.P., hereby submits Defendant Brian Crumb's Memorandum in Support of Motion for Summary Judgment.

I. FACTS

See Concise Statement of Facts in Support of Defendant Brian Crumb's Motion for Summary Judgment, filed contemporaneously herewith.

II. STANDARD IN NON-JURY CASES ON CROSS MOTIONS FOR SUMMARY JUDGMENT

Summary judgment is appropriate only when the pleadings, depositions, affidavits and admissions on file show that there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. I.R.C.P. 56. "Generally, when considering a motion for summary judgment, a court 'liberally construes the record in a light most favorable to the party opposing the motion and draws all reasonable inferences and conclusions in that party's favor.'" Drew v. Sorensen, 133 Idaho 534, 537, 989 P.2d 276, 279 (1999) (quoting Brooks v. Logan, 130 Idaho 574, 576, 944 P.2d 709, 711 (1997)). "The general rule for reviewing grants of summary judgments does not apply where the parties below filed cross motions for summary judgment, each relying on the same facts, issues and theories." Walker v. Hollinger, 132 Idaho 172, 176, 968 P.2d 661, 665 (1998).

"Where ... both parties file motions for summary judgment relying on the same facts, issues and theories, the parties essentially stipulate that there is no genuine issue of material fact which would preclude the district court from entering summary judgment." Brown v. Perkins, 129 Idaho 189, 191, 923 P.2d 434, 436 (1996). When the evidentiary facts are undisputed, leaving the dispute only as to inferences, the judge, as the trier of fact, may resolve the conflict between the inferences. Riverside Dev. Co. v. Ritchie, 103 Idaho 515, 518-19, 650 P.2d 657, 661 (1982). The test

DEFENDANT BRIAN CRUMB'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 2

for reviewing the inferences drawn by the district court is whether the record reasonably supports the inferences. *Id.* at 518-20, 650 P.2d at 662.

Walker, 132 Idaho at 176, 968 P.2d at 665.

III. ARGUMENT

A. Plaintiffs' Complaint is barred by the Statute of Frauds.

Plaintiffs allege in their verified Complaint that they were not advised, apparently by Richard Abbey when Plaintiffs loaned money to Abbey and Abbey & Crumb after Crumb withdrew from Abbey & Crumb on September 26, 2006, that when Plaintiffs "purchased" lots in the Fritz Heath Tracts that easements over and across the Crumb Property were not recorded. (Complaint ¶ 12). Rather than searching the County Recorder's Office for an easement over and across the Crumb Property to the Fritz Heath Tracts, which show that no such easement exists, Plaintiffs allege that they believed there was an easement over and across the Crumb Property to the lots they obtained by deed in lieu of foreclosure, based on driving a road that did not exist over and across the Crumb Property, recorded public documents that did not show a road over and across the Crumb Parcel, and documents submitted to the County planning department that did not show that there was a recorded easement over and across the Crumb Property. (Murphey Dec., Ex. A, Answer to Interrogatory No. 8). Plaintiffs then allege in their Motion for Summary Judgment that they are seeking to enforce as third party beneficiaries an alleged oral agreement, made prior to and with consideration paid prior to Crumb's withdrawal from Abbey & Crumb on September 26, 2006, by and between Crumb and Abbey & Crumb, to grant an easement across the Crumb Parcel to the Fritz Heath Tracts. Notwithstanding that no consideration was paid to

DEFENDANT BRIAN CRUMB'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 3

Crumb for an easement over and across the Crumb Parcel, any such agreement is barred by the Statute of Frauds.

Certain agreements to be in writing. **In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent.** Evidence, therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:

...
4. **An agreement for the leasing, for a longer period than one (1) year, or for the sale, of real property, or of an interest therein,** and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

...
Idaho Code § 9-505(4)(emphasis added). Easements are interests in real property subject to the Statute of Frauds. Bob Daniels and Sons v. Weaver, 106 Idaho 535, 541, 681 P.2d 1010, 1016 (Ct.App. 1984).

“Failure to comply with the statute of frauds renders an oral agreement unenforceable both in an action at law for damages and in a suit in equity for specific performance.” Hoffman v. S V Co., Inc., 102 Idaho 187, 190, 628 P.2d 218, 221 (1981); Weaver, 106 Idaho at 541, 681 P.2d at 1016; Mickelsen Const., Inc. v. Horrocks, 154 Idaho 396, 401, 299 P.3d 203, 208 (2013); Wakelam v. Hagood, 151 Idaho 688, 691, 263 P.3d 742, 745 (2011); Ray v. Frasure, 146 Idaho 625, 628, 200 P.3d 1174, 1177 (2009); Bauchman-Kingston Partnership, LP v. Haroldsen, 149 Idaho 87, 91, 233 P.3d 18, 22 (2008); Lexington Heights Development, LLC v. Crandlemire, 140 Idaho 276, 285, 92 P.3d 526, 535 (2004); Hemingway v. Gruener, 106 Idaho 422, 424, 679 P.2d 1140, 1142 (1984).

“An easement established by unwritten agreement is merely a license, revocable by the

DEFENDANT BRIAN CRUMB’S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 4

licensor.” Weaver, 106 Idaho at 542, 681 P.2d at 1017 (Ct.App. 1984) (*citing* Howes v. Barmon, 11 Idaho 64, 81 P. 48 (1905)). The rule is based on the proposition that “a parol license to impress real property with a servitude cannot be perpetual or irrevocable, on account of the prohibitions of the statute of frauds, and the parties not having complied with the requirements of the statute, they will be presumed to have dealt in conformity with law, and therefore to have intended a license rather than an easement.” Howes, 11 Idaho 64, 81 P. at 50. This is the rule required by public policy which “prevents the burdening of land with restrictions founded upon oral agreements easily misunderstood.” *Id.*

Although the law presumes that parties act in conformance of the law, equity will compel specific performance where the party invoking the court’s aid has parted with consideration, has suffered irreparable damage, that failure to enforce the oral agreement amounts to fraud, and that the status quo of the party seeking enforcement will change if the easement is not enforced. Howes, 11 Idaho 64, 81 P. at 50. The Idaho appellate courts have more recently described the equitable doctrine as part performance and equitable estoppel.

“Before an oral agreement to convey land will be specifically enforced, the underlying contract must be proven by clear and convincing evidence.” Bear Island Water Ass’n, Inc. v. Brown, 125 Idaho 717, 722, 874 P.2d 528, 533 (1994) (*citing* Anderson v. Whipple, 71 Idaho 112, 123, 227 P.2d 351, 358 (1951)); Rice v. Rigley, 7 Idaho 115, 61 P. 290, 294 (1900)(the oral agreement “must be so clear and certain as to leave no well-founded doubt in the mind of the court.”). “Further, the proof must show that the contract is complete, definite and certain in all its material terms, or that it contains provisions which were capable in themselves of being

DEFENDANT BRIAN CRUMB’S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 5

reduced to certainty.” *Id.* The material terms which must be identified in a contract to convey land include the parties to the contract, the subject matter of the contract, the **price or consideration**, and a description of the property.” *Id.* (emphasis added) (citing Hoffman, 102 Idaho at 190, 628 P.2d at 221). “There can be no part performance of an agreement that was never made.” Brown, 125 Idaho at 723, 874 P.2d at 534.

“To be enforceable, a contract must provide a price or a means of determining the price.” Haroldsen, 149 Idaho at 93, 233 P.3d at 24 (citing Garmo v. Clanton, 97 Idaho 696, 699, 551 P.2d 1332, 1335 (1976)). In Haroldsen, the Supreme Court affirmed the district court’s summary judgment dismissal of plaintiff’s lawsuit, holding that where the consideration is ambiguous, not agreed upon or disputed by the parties, the equitable doctrine of part performance is not available to enforce an agreement that is otherwise invalid under the Statute of Frauds. *Id.*

“[U]nder Idaho law part performance per se does not remove a contract from the operation of the statute of frauds. Rather, ‘[t]he doctrine of part performance is best understood as a specific form of the more general principle of equitable estoppel.’” Treasure Valley Gastroenterology Specialists, P.A. v. Woods, 135 Idaho 485, 489, 20 P.3d 21, 25 (2001) (quoting Frantz v. Parke, 111 Idaho 1005, 1009, 729 P.2d 1068, 1072 (Ct.App.1986)) See also Wing v. Munns, 123 Idaho 493, 500, 849 P.2d 954, 961 (Ct.App.1992). “Therefore, the question whether part performance allows [one party to an otherwise unenforceable oral agreement] to avoid application of the statute of frauds depends upon whether the part performance is such as to equitably estop [the other party to an otherwise unenforceable oral agreement] from relying upon the statute as a defense.” Woods, 135 Idaho at 489-490, 20 P.3d at 25-26.

DEFENDANT BRIAN CRUMB’S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 6

The Court in Woods, then directed the analysis to equitable estoppel, setting forth the elements of equitable estoppel with respect to the party to be estopped, as follows:

... (1) Conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: (1) **Lack of knowledge and of the means of knowledge of the truth as to the facts in question[;]** (2) **reliance upon the conduct of the party estopped;** and (3) **action based thereon of such a character as to change his position prejudicially.**

Woods, 135 Idaho at 490, 20 P.3d at 26 (emphasis added) (*quoting* Tew v. Manwaring, 94 Idaho 50, 53, 480 P.2d 896, 899 (1971); Charpentier v. Welch, 74 Idaho 242, 248, 259 P.2d 814, 817 (1953); Frantz, 111 Idaho at 1010, 729 P.2d at 1073); Hoffman, 102 Idaho at 192, 628 P.2d at 223.

1. As a matter of law, Plaintiffs cannot enforce an alleged oral agreement for an easement that is invalid under the Statute of Frauds.

As a matter of law, the failure to comply with the Statute of Frauds is a complete bar to an action by a third party beneficiary. Plaintiffs are claiming to be a third party beneficiary to an alleged oral agreement to grant an easement over and across the Crumb Property. Plaintiffs' Motion for Summary Judgment, p. 10, ¶ 25. In order for a third party to enforce a contract, the contract itself must be enforceable. 17A Am. Jur. 2d Contracts § 436 (2017). "Failure to comply with the statute of frauds renders an oral agreement unenforceable both in an action at law for damages and in a suit in equity for specific performance." Hoffman, 102 Idaho at 190,

DEFENDANT BRIAN CRUMB'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 7

628 P.2d at 221; Weaver, 106 Idaho at 541, 681 P.2d at 1016; Horrocks, 154 Idaho at 401, 299 P.3d at 208; Wakelam, 151 Idaho at 691, 263 P.3d at 745; Ray, 146 Idaho at 628, 200 P.3d at 1177; Haroldsen, 149 Idaho at 91, 233 P.3d at 22; Crandlemire, 140 Idaho at 285, 92 P.3d at 535; Hemingway, 106 Idaho at 424, 679 P.2d at 1142. “[T]he failure to comply with the Statute of Frauds is a bar to an action by an alleged third-party beneficiary.” Hanrihan v. Parker, 19 Misc.2d 467, 470, 192 N.Y.S.2d 2, 5 (1959). As such, Plaintiffs’ third party beneficiary claim fails as a matter of law, and Plaintiffs’ Complaint should be dismissed.

2. Even assuming that an oral agreement for an easement could be enforced in equity by a third party, Plaintiffs have not alleged, nor can they show facts supporting such a claim.

Notwithstanding that the law does not allow a third party to enforce in equity an agreement that is otherwise unenforceable under the Statute of Frauds, Plaintiffs cannot show facts allowing enforcement of such a claim. Price or consideration is a material term that must be proven by clear and convincing evidence. Brown, 125 Idaho at 722, 874 P.2d at 533; Hoffman, 102 Idaho at 190, 628 P.2d at 221.

Prior to Crumb’s withdrawal from Abbey & Crumb on September 26, 2006, Crumb then verbally offered that upon Crumb’s receipt of payment from Abbey & Crumb in the amount of \$200,000, Crumb would grant easements to the lots in the Fritz Heath Tracts for use as a road over and across the Crumb Property. That offer was never consummated in that Crumb never received \$200,000, and on September 26, 2006, Crumb withdrew from Abbey & Crumb. Plaintiffs argue that there was agreement between Crumb and Abbey & Crumb prior to Crumb withdrawing from Abbey & Crumb on September 26, 2006, for an easement over and across the

Crumb Property, but Plaintiffs disagree that Abbey & Crumb agreed to pay Crumb \$200,000 in consideration. “There can be no part performance of an agreement that was never made.” Brown, 125 Idaho at 723, 874 P.2d at 534. Moreover, where, as here, the consideration or price is ambiguous or not agreed upon or disputed by the parties, the equitable doctrine of part performance is not available to enforce an agreement that is otherwise invalid under the Statute of Frauds. *Id.* As such, Crumb’s Motion for Summary Judgment should be granted, dismissing Plaintiffs’ Complaint.

The Supreme Court has instructed that “the question whether part performance allows [one party to an otherwise unenforceable oral agreement] to avoid application of the statute of frauds depends upon whether the part performance is such as to equitably estop [the other party to an otherwise unenforceable oral agreement] from relying upon the statute as a defense.” Woods, 135 Idaho at 489-490, 20 P.3d at 25-26. Even assuming Plaintiffs allegation that they were unaware that Crumb had not recorded an easement over the Crumb Property as he had allegedly agreed, it is undisputed that Crumb did not discuss with, promise, represent or suggest in any manner whatsoever to Plaintiffs that he granted or was going to grant them an easement over and across the Crumb Property.

Moreover, Plaintiffs cannot show that they had a “[l]ack of knowledge and of the means of knowledge of the truth as to the facts in question”. Woods, 135 Idaho at 490, 20 P.3d at 26. It is undisputed that when Plaintiffs acquired their property, which was by deed in lieu of foreclosure for default on a loan by Abbey and his Company, that no easement was recorded granting access over and across the Crumb Property. Plaintiffs allege in their verified Complaint

that they were not advised when the “purchased” lots in the Fritz Heath Tracts that Crumb had failed to properly record a written access easement. (Complaint, ¶ 12).

“It has long been established that a purchaser is charged with every fact shown by the records and is presumed to know every other fact which an examination suggested by the records would have disclosed.” Kalange v. Rencher, 136 Idaho 192, 195-96, 30 P.3d 970, 973-74 (2001) (citing Cordova v. Hood, 17 Wall. 1, 84 U.S. 1, 21 L.Ed. 587 (1873); Northwestern Bank v. Freeman, 171 U.S. 620, 19 S.Ct. 36, 43 L.Ed. 307 (1898)). “One claiming title to lands is chargeable with notice of every matter affecting the estate, which appears on the face of any recorded deed forming an essential link in his chain of title, and also with notice of such matters as might be learned by inquiry which the recitals in such instruments made it a duty to pursue.” *Id.* (citing Glover v. Brown, 32 Idaho 426, 184 P. 649 (1919)). Plaintiffs could have searched the records of the Kootenai County Recorder’s Office. Plaintiffs cannot argue, as a matter of law, that they lacked such knowledge and lacked the means of knowledge of the truth of the facts in question. Woods, 135 Idaho at 490, 20 P.3d at 26. Plaintiffs were on constructive notice when they loaned money to Abbey and when they acquired property from Abbey that no easement was recorded over and across the Crumb Property to Plaintiffs’ lots. Any alleged reliance by Plaintiffs otherwise was unjustified and Plaintiffs cannot show that they change their position prejudicially. Plaintiffs have not paid Crumb any consideration whatsoever for an easement over and across the Crumb Parcel. As such, Crumb’s Motion for Summary Judgment should be granted, dismissing Plaintiffs’ Complaint.

DEFENDANT BRIAN CRUMB’S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 10

B. Plaintiffs' Complaint is Precluded by the Member Withdrawal Agreement.

The Member Withdrawal Agreement is a fully integrated contract that precludes enforcement of an alleged oral agreement to grant an easement over and across Crumb's adjacent property.

If a written contract is complete upon its face and unambiguous, no fraud or mistake being alleged, extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to, or detract from the terms of the contract. Kimbrough v. Reed, 130 Idaho 512, 943 P.2d 1232 (1997). A written contract that contains a merger clause is complete upon its face. *Id.*; Chambers v. Thomas, 123 Idaho 69, 844 P.2d 698 (1992); Valley Bank v. Christensen, 119 Idaho 496, 808 P.2d 415 (1991). The purpose of a merger clause is to establish that the parties have agreed that the contract contains the parties' entire agreement. The merger clause is not merely a factor to consider in deciding whether the agreement is integrated; it proves the agreement is integrated. To hold otherwise would require the parties to list in the contract everything upon which they had not agreed and hope that such list covers every possible prior or contemporaneous agreement that could later be alleged.

Howard v. Perry, 141 Idaho 139, 141-42, 106 P.3d 465, 467-68 (2005).

Plaintiffs allege that in 2006, when Crumb was a member of Abbey & Crumb, and prior to Crumb's withdrawal from Abbey & Crumb on September 26, 2006, that Crumb agreed to grant an easement over and across the Crumb Property. Crumb followed the advice of attorney Romer Brown, who presumably was aware of the Statute of Frauds, who advised Crumb to not sign any documents granting or agreeing to grant any easement over and across the Crumb Property, unless and until he received the consideration upon which his offer to grant an easement was based. Crumb's offer was never consummated in that Crumb did not receive \$200,000 in consideration from Abbey & Crumb, and Crumb withdrew from the Company on

DEFENDANT BRIAN CRUMB'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 11

September 26, 2006. As such, no documents granting or agreeing to grant any easement over and across Crumb's property were ever drafted, yet alone signed.

In withdrawing from Abbey & Crumb, the members executed the Member Withdrawal Agreement. The Member Withdrawal Agreement includes a merger clause, which states:

ENTIRE AGREEMENT OF THE PARTIES: It is agreed, this is the entire agreement of the parties, and any amendment or additions to the Agreement must be in written form similar in form to this agreement, with all parties signing said Amendment.

The Member Withdrawal Agreement is complete upon its face and unambiguous. The Member Withdrawal Agreement makes no mention whatsoever of an obligation on the part of Crumb to grant an easement over his existing property, and Plaintiffs attempt to offer self serving parol evidence of an agreement otherwise is barred as a matter of law. Perry, 141 Idaho at 141-42, 106 P.3d at 467-68. As such, Crumb's Motion for Summary Judgment should be granted, dismissing Plaintiffs' Complaint.

C. Plaintiffs' Complaint is Precluded by the Statute of Limitations.

The statute of limitations on a written contract is five (5) years, Idaho Code § 5-216, on an oral contract is four (4) years, Idaho Code § 5-216, on a fraud or mistake is three (3) years, Idaho Code § 5-218, and for other relief is four (4) years, Idaho Code § 5-224. The alleged oral agreement to grant an easement over and across the Crumb Property was made in 2006. Subsequently, Crumb withdrew from Abbey & Crumb on September 26, 2006. No easements were granted by Crumb to Abbey & Crumb within (5) years from the date Crumb entered into the alleged oral agreement to grant an easement over the Crumb Property, or more importantly, from the date Crumb withdrew from Abbey & Crumb.

DEFENDANT BRIAN CRUMB'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 12

Moreover, on October 10, 2011, Crumb forwarded an email to Abbey, with an unsigned statement attached, which Crumb was asked to sign on behalf of one of the purchasers of a Fritz Heath Tracts Lot when Crumb was a member of Abbey & Crumb concerning access over and across the Crumb Property. Crumb did not sign the statement because it was inaccurate in part, but it did accurately describe that the lot purchaser did not have legal access over and across the Crumb Property, as no easement was signed and recorded. In addition, that same lot purchaser stated in a letter dated January 31, 2013, that there was never any signed and recorded easement over and across the Crumb Property, and that the lot purchaser had been informed by Abbey that Crumb was going to charge people if they wanted to cross my land. Abbey was clearly aware in 2006, and was certainly on notice in 2011 and January of 2013 that a lot owner within his development did not have a recorded easement over and across the Crumb Property.

Likewise, Plaintiffs were on constrictive notice in the fall of 2006, when Plaintiffs apparently loaned money to Abbey and Abbey & Crumb sometime after Crumb withdrew from Abbey & Crumb on September 26, 2006, that no easement was recorded over and across the Crumb Property to the Fritz Heath Tracts. Notwithstanding that Plaintiffs were on constructive notice that no easement was recorded on the Crumb Property, if Plaintiffs believed an easement should have been recorded based on some agreement by Crumb prior to his withdrawal from Abbey & Crumb on September 26, 2006, Plaintiffs' should not have waited eleven years later to file a lawsuit. As such, Plaintiffs' Complaint is time barred.

IV. CONCLUSION

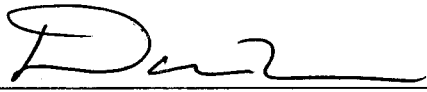
Based on the foregoing, Defendant Brian Crumb respectfully requests that the court

DEFENDANT BRIAN CRUMB'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 13

GRANT its Motion for Summary Judgment, dismissing Plaintiffs' Complaint, and DENY Plaintiffs' Motion for Summary Judgment.

DATED this 7th day of November, 2017.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

DEFENDANT BRIAN CRUMB'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 14

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 7th day of November, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 665-7290
- ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
nichole@bistlinelaw.com; sharon@bistlinelaw.com

Christopher G. Varallo
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

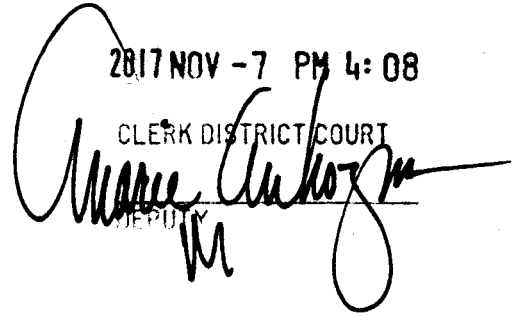
- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (509) 458-2728
- ELECTRONIC MEANS (pursuant to written consent):


Darrin L. Murphey

DEFENDANT BRIAN CRUMB'S MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT - 15

2017 NOV -7 PM 4:08

CLERK DISTRICT COURT



DARRIN L. MURPHEY
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Facsimile: (208) 667-7625
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Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial
Fund LLC

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
LLC, and Todd A. Reeve,

Defendants,

) Case No. CV 2017-5541

)

) CONCISE STATEMENT OF FACTS IN
) SUPPORT OF DEFENDANT BRIAN
) CRUMB'S MOTION FOR SUMMARY
) JUDGMENT

)

)

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COMES NOW Defendant Brian Crumb, by and through his attorneys of record, Darrin L.

Murphey, of Murphey Law Office, PLLC, and Brent G. Schlotthauer, of Vasseur and

CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR
SUMMARY JUDGMENT - 1

Schlotthauer, PLLC, and pursuant to Rule 56, I.R.C.P., hereby submits the following Concise Statement of in Support of Defendant Brian Crumb's Motion for Summary Judgment:

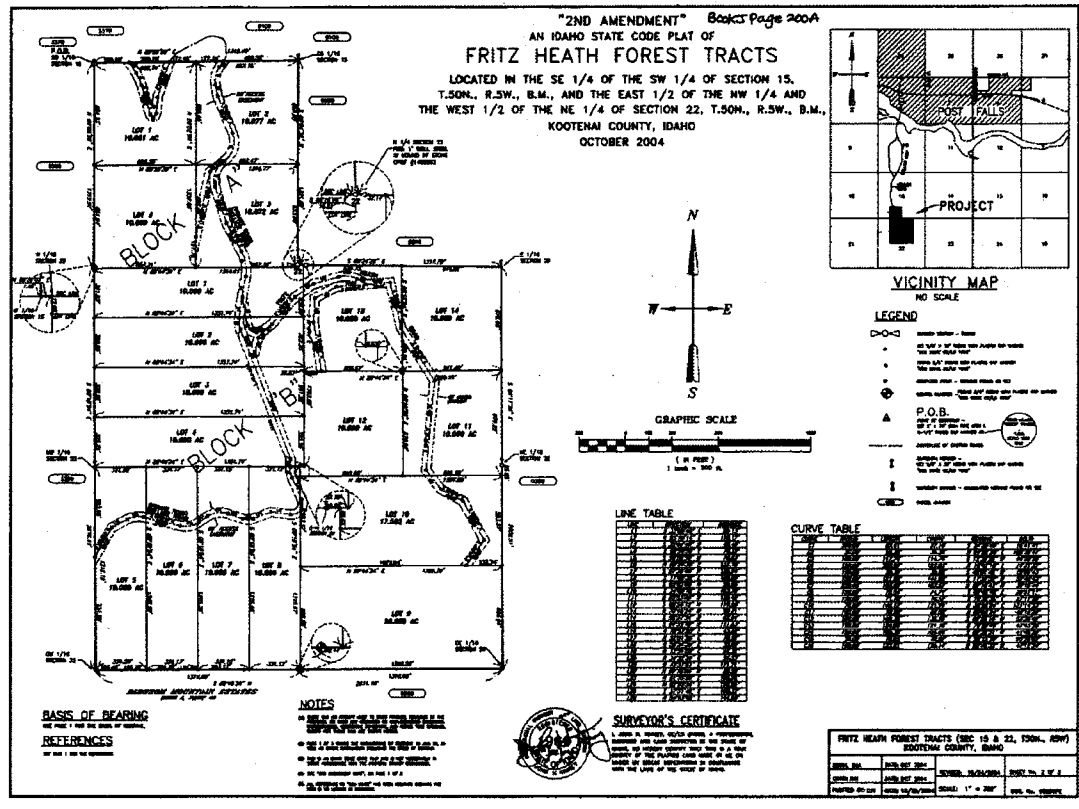
1. Defendant Brian Crumb (herein "Crumb") was one of the original members of Abbey & Crumb Developments, LLC (herein "Abbey & Crumb"), which filed its Articles of Organization of Limited Liability Company with the Idaho Secretary of State on July 25, 2005, until he withdrew from Abbey & Crumb just more than a year later, on or about September 26, 2006. (Crumb Dec., ¶¶ 2-3).

2. On or about October 7, 2003, several years prior to Crumb becoming a member of Abbey & Crumb, Crumb purchased a parcel of real property adjacent to the Fritz Heath Tracts (herein the "Crumb Property"). (Crumb Dec., ¶ 4).

3. During the time that Crumb was a member of Abbey & Crumb, the Company worked on continuing to develop the then existing Fritz Heath Forest Second Amended Tracts subdivision, located on Blossom Mountain in Post Falls, Idaho (herein "Fritz Heath Tracts"). (Crumb Dec., ¶¶ 5-7, Exs. "A" and "B").

4. The Fritz Heath Tracts is an Idaho Code Plat, which on the August 3, 1998 Amendment and the May 23, 2005 Second Amendment depict a road to the Fritz Heath Tracts from Mellick Road, a public road that intersects and crosses over the northern boundary line of the Fritz Heath Tracts, to each of the lots within the Fritz Heath Tracts. Below is a copy of Book J, Page 200A:

CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 2



The Amendment and Second Amendment to the Fritz Heath Tracts do not and did not depict a road from Mellick Road, over and across the Crumb Property, and into the Fritz Heath Tracts, and no such road existed when Crumb was a member of Abbey & Crumb. (Crumb Dec., ¶¶ 6-8, Exs. “A” and “B”).

5. That in an effort to advertise lots for sale within the Fritz Heath Tracts, in the fall of 2005, Abbey & Crumb placed a large four (4) foot by eight (8) foot advertisement sign/billboard at the entrance of and within the Fritz Heath Tracts at the location of where Mellick Road intersects with the road within the Fritz Heath Tracts as described in the Amendment (Crumb Dec., Ex. “A”) and Second Amendment (Crumb Dec., Ex. “B”) to the Fritz Heath Tracts, and the sign/billboard remained at that location until sometime after Crumb

CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB’S MOTION FOR SUMMARY JUDGMENT - 3

withdrew from Abbey & Crumb. The sign/billboard depicted a road to the Fritz Heath Tracts from Mellick Road, where it intersects and crosses over the northern boundary line of the Fritz Heath Tracts, to each of the lots within the Fritz Heath Tracts, in the same or substantially similar location as the road depicted in the Amendment and Second Amendment to the Fritz Heath Tracts. Below is a copy of the sign/billboard:

Monument Ridge

Spokane River and Lake Views, some with Creeks

- ◆ 18 Parcels available in 3 phases
 - ◆ 20 acres
 - ◆ 15 acres
 - ◆ 10 acres
 - ◆ 6 Parcels per phase, once 50% of phase is sold, road construction begins
 - ◆ Power & Phone
 - ◆ Perk Tested
 - ◆ Multiple Home Sites on every parcel
 - ◆ County maintained roads upon completion of each phase
- ◆ CCRs
 - ◆ No Manufactured Homes
 - ◆ 1800 Square Foot Minimum Home
 - ◆ No Hunting
 - ◆ Architectural Committee
- ◆ Location
 - ◆ 9 minutes south of I-90
 - ◆ 25 minutes to Spokane
 - ◆ 18 minutes to Coeur d'Alene

**brought to you by Kirk & Mimi Fisher
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call 208-661-9457 for more info
www.KirkandMimi.com

The sign/billboard did not depict a road from Mellick Road, over and across the Crumb Property, and into the Fritz Heath Tracts, and no such road existed. (Crumb Dec., ¶ 9, Ex. "C").

6. That advertisements were also placed on the internet to market the lots in the Fritz Heath Tracts when Crumb was a member of Abbey & Crumb. The advertising materials also depicted a road to the Fritz Heath Tracts from Mellick Road, where it intersects and crosses over

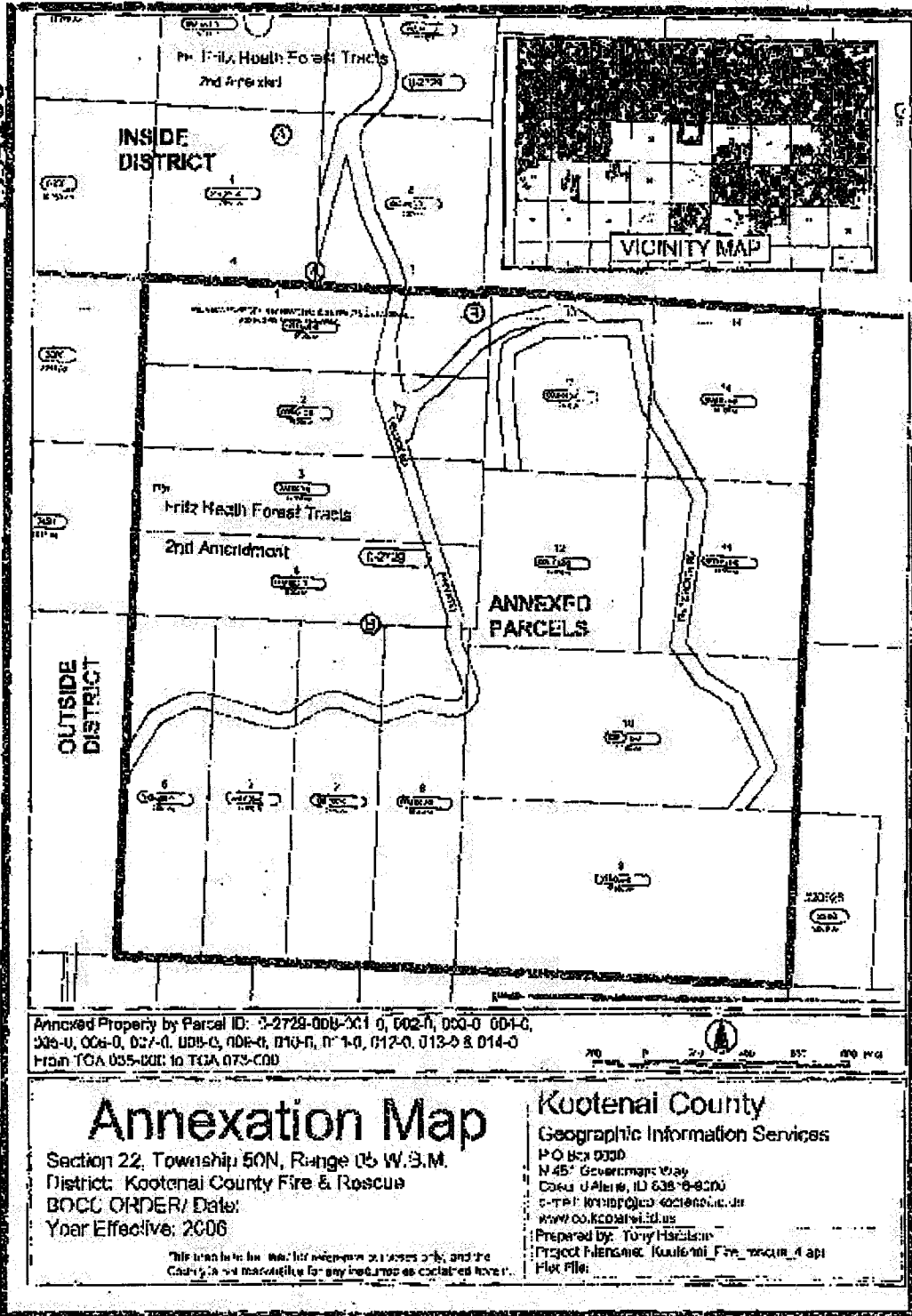
CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 4

the northern boundary line of the Fritz Heath Tracts, to each of the lots within the Fritz Heath Tracts, in the same or substantially similar location as the road depicted in the Amendment and Second Amendment to the Fritz Heath Tracts, and the sign/billboard described above. The internet advertising was used in the fall of 2005 until sometime after Crumb withdrew from Abbey & Crumb. The internet advertising did not depict a road from Mellick Road, over and across the Crumb Property, and into the Fritz Heath Tracts, and no such road existed. (Crumb Dec., ¶ 10, Ex. "D").

7. That when Crumb was a member of Abbey & Crumb, the Fritz Heath Tracts were annexed into the Kootenai County Fire & Rescue District. The an annexation Order included a map depicting a road in a location substantially similar to that set forth in the Amendment (Crumb Dec., Ex. "A") and Second Amendment (Crumb Dec., Ex. "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard (Crumb Dec., Ex. "C") placed at the entrance to the Fritz Heath Tracts, and the internet advertising materials. Below is a copy of the map:

CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 5

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CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 6

The annexation map did not depict a road from Mellick Road, over and across the Crumb Property, and into the Fritz Heath Tracts, and no such road existed. (Crumb Dec., ¶ 11, Ex. "E").

8. That with the assistance of Abbey & Crumb's realtor, Richard Abbey, Crumb and his wife drafted the CC&R's for the Fritz Heath Tracts together, which were recorded on January 5, 2016. The CC&R's state, at paragraph 24, that a road easement "on each lot" is shown in an attached exhibit. However, no exhibit was attached. The document that should have been attached to the CC&R's was a document depicting a road in the location of the only road providing access to the Fritz Heath Tracts, as set forth in the Amendment (Crumb Dec., Ex. "A") and Second Amendment (Crumb Dec., Ex. "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard (Crumb Dec., Ex. "C") placed at the entrance to the Fritz Heath Tracts, and the internet advertising materials (Crumb Dec., Ex. "D"), and the Kootenai County Fire & Rescue Annexation Order Map (Crumb Dec., Ex. "E"). There was no road over and across the Crumb Property to the Fritz Heath Tracts when the CC&R's were recorded. (Crumb Dec., ¶ 12). "In 2006, . . . Abbey & Crumb LLC, retained an engineering firm named Inland Northwest Consultants (hereinafter, "INC") to design and supervise construction of an engineered road from Mellick Road (a public road) through the FRITZ-HEATH for the purpose of providing residential access to the subdivision. Thereafter, INC informed Abbey & Crumb that it would be much cheaper to construct the entrance road into the FRITZ-HEATH by using a forty (40) foot right of way on an adjoining property owned by Brian Crumb". (Abbey Dec., ¶ 7). The drawings from the engineers are dated July of 2006, several months after the date the CC&R's were recorded, January 5, 2006. (Glessner Dec., Ex "B").

CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 7

9. That Crumb did not file or record, nor did Crumb authorize anyone to file or record on his behalf, any documents with Kootenai County or any other agency indicating that Crumb granted Abbey & Crumb or the Fritz Heath Tracts an easement over and across the Crumb Property. Any statements or filings by Richard Abbey or anyone else otherwise were not authorized and are void. It appears that when the engineer filed a permit with Kootenai County to build a road within the Fritz Heath Tracts, he informed Kootenai County that no easements were necessary, including over and across the Crumb Parcel. It is accurate that the Crumb Parcel had access to Mellick Road in 2006, as such access existed prior to Crumb's ownership of the Crumb Parcel, and has nothing to do with access to the Fritz Heath Tracts. However, if a permit for a road was intended over and across the Crumb Parcel, it was not accurate to represent to the County that no easement was necessary over and across the Crumb Property, nor was it accurate to represent that there was an easement over and across the Crumb Property to the Fritz Heath Tracts, because no such easement was ever granted or recorded. (Crumb Dec., ¶ 13).

10. That during the time that Crumb was a member of Abbey & Crumb, an engineering firm retained by Abbey & Crumb recommended relocating the entrance road to the Fritz Heath Tracts to a point farther up Mellick Road from the location of the road that was depicted in the Amendment (Crumb Dec., Ex. "A") and Second Amendment (Crumb Dec., Ex. "B") to the Fritz Heath Tracts, which would proceed over and across the Crumb Property. At that time, Crumb discussed with and offered Richard Abbey that upon receipt of payment from Abbey & Crumb in the amount of \$200,000, Crumb would grant easements to the lots in the Fritz Heath Tracts for use as a road over and across the Crumb Property. (Crumb Dec., ¶ 14).

CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 8

11. Crumb, based on the advice of attorney Romer Brown, did not and would not have signed any documents granting or agreeing to grant any easement over and across the Crumb Property, unless and until Crumb received the agreed upon consideration. (Crumb Dec., ¶ 15).

12. Crumb did not receive \$200,000 or any payment or any other consideration whatsoever for an easement over and across the Crumb Property from Abbey & Crumb. (Crumb Dec., ¶ 16).

13. On September 26, 2006, Crumb withdrew from Abbey & Crumb, executing along with all of the other members, including Richard Abbey, a certain Agreement of Members of Abbey & Crumb as to Transfer of Assets and Withdrawal of Members Interest (herein "Member Withdrawal Agreement"). (Crumb Dec., ¶ 17, Ex. "F").

14. The Member Withdrawal Agreement was the entire and complete agreement of the parties, and includes a merger clause, which states:

ENTIRE AGREEMENT OF THE PARTIES: It is agreed, this is the entire agreement of the parties, and any amendment or additions to the Agreement must be in written form similar in form to this agreement, with all parties signing said Amendment.

(Crumb Dec., ¶ 18, Ex. "F").

15. The Member Withdrawal Agreement makes no mention whatsoever of Crumb granting an easement over and across the Crumb Property, because no such agreement was consummated, as Crumb was not paid \$200,000 in consideration. Based on the advice of attorney Romer Brown, Crumb did not and would not have signed any document granting or agreeing to grant any easement over and across the Crumb Property, unless and until Crumb

CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 9

received the agreed upon consideration. (Crumb Dec., ¶ 19, Ex. "F").

16. That when Crumb withdrew from Abbey & Crumb on September 26, 2006, there was no passable road over and across the Crumb Property to the Fritz Heath Tracts. The only passable road to and through the Fritz Heath Tracts was the road depicted on the Amendment (Crumb Dec., Ex. "A") and Second Amendment (Crumb Dec., Ex. "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard (Crumb Dec., Ex. "C") placed at the entrance to the Fritz Heath Tracts, the internet advertising materials (Crumb Dec., Ex. "D"), and the map attached to the annexation Order, annexing the Fritz Heath Tracts into the Kootenai County Fire & Rescue District (Crumb Dec., Ex. "E"). (Crumb Dec., ¶ 20).

17. That in 2005, prior to Abbey & Crumb purchasing the Fritz Heath Tracts, and thereafter during the time Crumb was a member of Abbey & Crumb, Crumb drove his vehicle over and across the Fritz Heath Tracts numerous times on the only passable road to and through the Fritz Heath Tracts, which was the road depicted on the Amendment (Crumb Dec., Ex. "A") and Second Amendment (Crumb Dec., Ex. "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard (Crumb Dec., Ex. "C") placed at the entrance to the Fritz Heath Tracts, the internet advertising materials (Crumb Dec., Ex. "D"), and the map attached to the annexation Order, annexing the Fritz Heath Tracts into the Kootenai County Fire & Rescue District (Crumb Dec., Ex. "E"). (Crumb Dec., ¶ 21).

18. That during the time Crumb was a member of Abbey & Crumb, it was impossible for anyone to drive a vehicle over and across the Crumb Property to access the Fritz Heath Tracts. The only passable road to and through the Fritz Heath Tracts was the road depicted on

CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 10

the Amendment (Crumb Dec., Ex. "A") and Second Amendment (Crumb Dec., Ex. "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard (Crumb Dec., Ex. "C") placed at the entrance to the Fritz Heath Tracts, the internet advertising materials (Crumb Dec., Ex. "D"), and the map attached to the annexation Order, annexing the Fritz Heath Tracts into the Kootenai County Fire & Rescue District (Crumb Dec., Ex. "E"). (Crumb Dec., ¶ 22).

19. That at the time Crumb left Abbey & Crumb on September 26, 2006, and thereafter, the lots in the Fritz Heath Tracts, including the lots now owned by Plaintiffs, could have used the only passable road to and through the Fritz Heath Tracts, which was the road depicted on the Amendment (Crumb Dec., Ex. "A") and Second Amendment (Crumb Dec., Ex. "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard (Crumb Dec., Ex. "C") placed at the entrance to the Fritz Heath Tracts, the internet advertising materials (Crumb Dec., Ex. "D"), and the map attached to the annexation Order, annexing the Fritz Heath Tracts into the Kootenai County Fire & Rescue District (Crumb Dec., Ex. "E"). (Crumb Dec., ¶ 23).

20. That during the time that Crumb was a member of Abbey & Crumb, four (4) lots were sold from the Fritz Heath Tracts. Having no legal obligation to do so, Crumb verbally promised the four (4) original purchasers that he would grant an easement over and across the Crumb Property, if the original purchaser desired an easement and provided Crumb with an easement instrument acceptable in form. Only one (1) of the four (4) original purchasers requested and provided an easement instrument. Crumb did not extend such a promise to the three (3) successor owners of the four (4) original purchasers, nor did Crumb extend the promise to purchasers of lots after he withdrew from Abbey & Crumb on or about September 26, 2006,

CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 11

other than to lots owned by Crumb, his mother and a friend. Crumb made no such promise whatsoever to the Plaintiffs. (Crumb Dec., ¶ 24).

21. Crumb did not discuss with, promise, represent or suggested in any manner whatsoever to Plaintiffs that he had granted or was going to grant Plaintiffs an easement over and across the Crumb Property. (Crumb Dec., ¶ 25).

22. Plaintiffs have not paid Crumb any consideration whatsoever for an easement over and across the Crumb Property. (Crumb Dec., ¶ 26).

23. Plaintiffs have not performed any improvements on the road over and across the Crumb Property. (Crumb Dec., ¶ 27).

24. Richard Abbey has always been aware that Crumb did not sign an easement or agreement to provide an easement to Abbey & Crumb and the lots of the Fritz Heath Tracts, and certainly since September 26, 2006, the date Crumb withdrew from the Company and executed the Member Withdrawal Agreement. In fact, on October 10, 2011, Crumb forwarded an email to Richard Abbey, with an unsigned statement attached, which Crumb was asked to sign on behalf of the Lenharts, one of the lot purchasers when Crumb was a member of Abbey & Crumb, concerning access to the Lenharts' lot within the Fritz Heath Tracts. Crumb did not sign the statement because it was inaccurate in part, but it did accurately describe that the Lenharts did not have legal access across the Crumb Property, as no easement was signed and recorded. In addition, the Lenharts stated in a letter dated January 31, 2013, that there was never any signed and recorded easement over and across the Crumb Property, and that they had been informed by Richard Abbey that Crumb was going to charge people if they wanted to cross Crumb's land.

CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 12

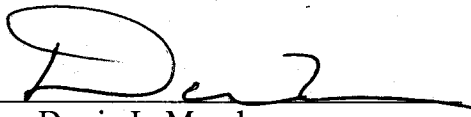
(Crumb Dec., ¶ 28, Exs. G and H).

25. Although Plaintiffs allege in their verified Complaint that they purchased their lots, Plaintiffs state in their discovery responses that they obtained their lots within the Fritz Heath Tracts by agreeing to a deed in lieu of foreclosure, apparently for a default on a loan to Richard Abbey and Abbey & Crumb after Crumb withdrew from the Company on September 26, 2006. (Crumb Dec., ¶ 29; Murphey Dec., Ex. A, Answer to Interrogatory No. 8).

26. Plaintiffs allege in their verified Complaint at paragraph 12 that they were not advised when they “purchased” lots in the Fritz Heath Tracts that easements over and across the Crumb Property were not recorded. However, that is not Crumb’s fault. Abbey & Crumb did not enter into any loan or other agreement with Plaintiffs when Crumb was a member of Abbey & Crumb. Crumb did not sell or transfer any lots to Plaintiffs. Crumb did not offer, promise, or otherwise agree to grant an easement to Plaintiffs over and across the Crumb Property. Plaintiffs could have easily searched the records of the Kootenai County Recorder’s Office, which show that the lots they “purchased” or were utilizing as security did not and do not have an easement over and across the Crumb Property. Plaintiffs’ dispute is with Richard Abbey, not Crumb. It would be inequitable and unjust for the court to grant Plaintiffs an easement over and across the Crumb Property.

DATED this 7th day of November, 2017.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB’S MOTION FOR SUMMARY JUDGMENT - 13

CERTIFICATE OF SERVICE

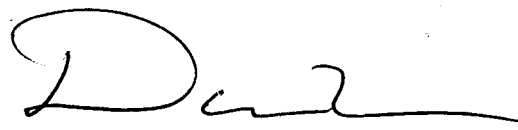
I HEREBY CERTIFY that on the 7th day of November, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

- U.S. MAIL
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- ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
nichole@bistlinelaw.com; sharon@bistlinelaw.com

Christopher G. Varallo
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

- U.S. MAIL
- HAND DELIVERED
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- TELECOPY (FAX) to: (509) 458-2728
- ELECTRONIC MEANS (pursuant to written consent):



Darrin L. Murphey

CONCISE STATEMENT OF FACTS IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 14

2017 NOV -7 PM 4: 08

CLERK DISTRICT COURT

[Handwritten Signature]
DEPUTY
M

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Telephone: (208) 664-4457
Facsimile: (208) 765-4702
ISBA# 6104

Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial
Fund LLC

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
LLC, and Todd A. Reeve,

Defendants,

) Case No. CV 2017-5541
)

) DEFENDANT BRIAN CRUMB'S MOTION
) FOR SUMMARY JUDGMENT
)

COMES NOW Defendant Brian Crumb, by and through his attorney of record, Darrin L.
Murphey of Murphey Law Office, PLLC, pursuant to Rule 56 of the Idaho Rules of Civil

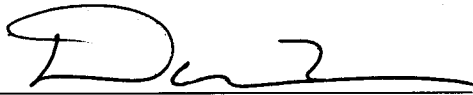
DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 1

Procedure, and hereby moves this Court for an Order directing entry of Summary Judgment. This motion is based upon Defendant Brian Crumb's Memorandum in Support of Motion for Summary Judgment, the Declarations filed contemporaneously herewith, and the Court's files and records, all of which show that there is no genuine issue as to any material fact and that Plaintiff is entitled to a Judgment as a matter of law.

Defendant requests oral argument.

DATED this 7th day of November, 2017.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 2

CERTIFICATE OF SERVICE

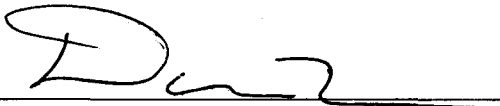
I HEREBY CERTIFY that on the 2th day of November, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
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STATE OF IDAHO }
COUNTY OF KOOTENAI } SS

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[Signature]
DEPUTY

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

Security Investor Fund LLC, Security Financial
Fund LLC,

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
Inc, and Todd A. Reeve.

Defendants.

Case No. CV-2017-5541

PLAINTIFFS' RESPONSE TO
DEFENDANT'S FOR SUMMARY
JUDGMENT

COMES NOW, Plaintiffs and pursuant to Idaho Rule of Civil Procedure 56(c), file this
Response to Defendant's Motion for Summary Judgment:

I. SUMMARY JUDGMENT EVIDENCE.

Plaintiffs rely upon the following summary judgment evidence:

1. Declaration of Richard J. Abbey filed with Plaintiffs' Motion for Summary Judgment.
2. Declaration of Roger Glessner filed with Plaintiffs' Motion for Summary Judgment.

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT -1

3. **Declaration of Brian Crumb filed with Defendant's Motion for Summary Judgment**
4. **Declaration of Zacharie Eifler filed contemporaneously.**
5. **Declaration of Richard J. Abbey filed contemporaneously.**

II. UNCONTESTED PERTIENT FACT.

The foregoing summary judgment evidence establishes that Plaintiffs are entitled to a judgment as a matter of law and that Defendant (hereinafter referred to as "Crumb"), Brian Crumb's Motion for Summary Judgment should be denied. Plaintiffs' and Crumb's evidence both show that Crumb agreed to the construction of an access road on Crumb's adjoining property to serve as the entrance into the FRITZ-HEATH subdivision. Crumb's own words leave no doubt about this agreement: **"So it was agreed that we would make the entrance for the 200 acres on Frankie's and my 12 acres parcel (where the double green gate is now)."** See Richard Abbey Declaration, ¶ 9, (Exhibit A). Crumb's motive for providing access to the FRITZ-HEATH subdivision was so that **"we could make some money selling the lots."** See Richard Abbey Declaration, ¶ 9 (Exhibit A). The entrance was not built as an entrance for Crumb's adjoining property - but only for the "200 acres" constituting the FRITZ-HEATH subdivision.

Crumb candidly admits that the road was actually built on his adjoining lot and that he and his family members have benefited as a result: **"Yes, it did benefit us as well, now it is easier to get up to our property on the 200."** See Richard Abbey Declaration, ¶ 20, (Exhibit A) and Crumb's Request for Admission No. 8 (Exhibit C). This benefit comes as a result of the four (4) FRITZ-HEATH lots transferred to Brian Crumb, Frankie Crumb, and Marian Crumb

(Brian Crumb's mother) when they sold their Abbey & Crumb membership interest. See Richard Abbey Declaration, ¶ 6. (Exhibit A).

Crumb has received substantial consideration for allowing the access road to be built on his adjoining property. The Declaration of Richard Abbey establishes that the cost of building the entrance road on Crumb's adjoining property was approximately \$45,000.00. Abbey Declaration ¶ 3. Crumb confirms that a substantial amount of work was required to build the entrance on his adjoining property when he states: "[t]hat at the time I was a member of Abbey & Crumb, it was impossible for anyone to drive a vehicle over and across the Crumb Property to Access the Fritz Heath tracts." Crumb Declaration ¶ 23.

Crumb takes pains to establish that the old entrance to the FRITZ-HEATH was drivable in 2006. See Crumb Motion ¶¶ 17-19. Tellingly, Crumb fails to explain that the new access road destroyed the old access road into the FRITZ-HEATH. The Declaration of Zacharie Eifler ¶ 4, and Declaration of Richard Abbey ¶ 3, show that the new Crumb access road destroyed the old drivable access into the FRITZ-HEATH - which is now under thirty (30) feet of fill and boulders in places.

Lastly, Crumb waited more than ten (10) years, until July 2017, to exclude lot owners in the FRITZ-HEATH subdivision from using the road to access their lots. Abbey Declaration ¶ 4.

III. ARGUMENT AND AUTHORITY.

A. Express Easement.

A valid express easement must identify the land subject to the easement and express the intent of the parties. *Hodgins v. Sales*, 139 Idaho 225, 233, 76 P.3d 969, 977 (2003) (citing *Nw. Pipeline Corp. v. Forrest Weaver Farm, Inc.* 103 Idaho 180, 181, 646 P.2d 442, 423 (1982)).

Thus, while specific words are not required to create an express easement, the writing must make

clear the parties' "intention to establish a servitude." *Coward*, 150 Idaho at 287, 246 P.3d at 396 (quoting *Capstar Radio Operating Co. v. Lawrence*, 143 Idaho 704, 707, 152 P.3d 575, 578 (2007)(*Capstar I*)). The "primary goal is to seek and give effect to the real intention of the parties." *Porter v. Bassett* 146 Idaho 399, 404, 195 P.3d 1212, 1217 (2008) (quoting *Benninger v. Derifield*, 142 Idaho 486, 489, 129 P.3d 1235, 1238 (2006)).

Here, the "intention of the parties" is demonstrated primarily by the fact that the road was constructed with the full knowledge and consent of Crumb. It is further demonstrated by numerous written documents showing an intent to create a permanent access into the FRITZ-HEATH. See Plaintiffs' Motion for Summary Judgment. Crumb's contractual requirement for Abbey & Crumb LLC to "complete the road building work and to provide ingress and egress to each [FRITZ-HEATH] lot" could only be accomplished by using Crumb's adjoining property - given that the old access was destroyed. Crumb does not dispute the fact that the Post Falls Fire District, to this day, insists on having a key, or combination, to the lock on the gate which Crumb describes as "**where the double green gate is now**" to provide emergency services to FRITZ-HEATH lots. See Richard Abbey Declaration, ¶ 17, (Exhibit A). Crumb simply ignores the fact that an expensive road was built on his property in 2006, which Kootenai County approved based upon his agreement to place the road there.

The location of the easement is established by the engineered road that Crumb knew was being prepared as well as by the existing road on his property that has been used for ten (10) years. "An indefinite express easement is defined by the intent of the parties as demonstrated by the easement's initial use." *Ruddy-Lamarca v. Dalton Gardens Irr. Dist.*, 153 Idaho 754, 756, 291 P.3d 437, 439 (2012) citing *Coulsen v. Aberdeen-Springfield Canal Co.*, 47 Idaho 619, 629,

277 P. 542, 545 (1929); see also *Reynolds Irr. Dist. v. Sproat*, 69 Idaho 315, 334, 206 P.2d 774, 786 (1948).

B. Statute of Frauds Exception.

Even if Plaintiffs have not established an express written easement over Crumb's lot, Idaho law clearly provides that an express easement can be established by oral agreement.

Christensen v. Ruffing, 117 Idaho 1047, 1050, 793 P.2d 720, 723 (Ct. App. 1990). The Idaho code makes an exception to the statute of frauds when there is part performance:

9-504. Exceptions to preceding section. The preceding section must not be construed to affect the power of a testator in the disposition of his real property by a last will and testament, nor to prevent any trust from arising or being extinguished by implication or operation of law, nor to abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof. Idaho Code § 9-505(4).

See *Hoke v. Neyada, Inc.*, 387 P.3d 118, 161 Idaho 450 (Idaho 2016). Furthermore, when there has been full performance, issues of equity and estoppel are not relevant. "We agree with the conclusion of the Trial Court, albeit on the ground that the oral agreement was performed rather than on a general invocation of "equity." We hold that the oral agreement was not rendered unenforceable by the Statute of Frauds." *Christensen v. Ruffing*, 117 Idaho 1047, 1050, 793 P.2d 720, 723 (Ct. App. 1990). In any event, it is clear that Abby & Crumb did rely upon Crumb's offer to place the access road on their property, destroyed the old road, and spent \$45,000.00 to construct a new one. Equity, although not relevant at this point, would dictate that Crumb not be allowed to invoke the Statute of Frauds.

This exception protects a party who demonstrates reliance upon an oral contract by acts that would not have been done except for the contract. *International Business Machines Corp., supra*. Unlike

the holding in *Weaver*, the Trial Court here found that Christensen made a particularized showing of reliance by demonstrating that the location of her house was determined by the location of the access road. The trial court also expressly held that this conduct was solely referable to the oral agreement. *Id.*

Crumb's dubious claim that there was a verbal agreement to pay him \$200,000.00 does not prevent Summary Judgment.¹ Crumb like Plaintiffs, is alleging that an agreement was reached to place the access road on his property. Clearly Crumb's version of the agreement did not contemplate Crumb being paid \$200,000.00 before the road was started and completed because the road was started and completed without Crumb being paid anything.

The only dispute in this case pertains to the consideration to be paid for the access road and Crumb has neither sought to collect \$200,000.00 from Abbey & Crumb nor sought to rescind the purported verbal agreement. The consideration Crumb seeks has nothing to do with the fact that the parties agreed to construct the entrance to the development on Crumb's adjoining parcel. Crumb cannot equitably claim that he, his family and friends should benefit from the entrance road, while denying access to other FRITZ-HEATH owners. The entrance road was built at great expense for the entire FRITZ-HEATH - not just for Crumb and his friends. Further, the old access road into the FRITZ-HEATH can no longer be used.

C. Statute of Limitations.

Crumb argues the Statute of Limitations bars Plaintiffs' cause of action. Until very recently, Crumb allowed access to anyone who wanted to use the entrance. He has known for ten (10) years that FRITZ-HEATH landowners used his property to access their properties. It is

¹ Crumb's claim of a verbal agreement defies all logic. Conveniently, it was made with no other witnesses present except Crumb and Richard Abbey. However, that would mean the verbal agreement could not possibly have been approved by a majority of Abbey & Crumb members. Further, it is not mentioned in the "Agreement of Members to Transfer and Withdraw" which purports to be the entire agreement of the parties. Finally, it is inconsistent with Crumb's prior deposition testimony, and is barred by the Statute of Limitations.

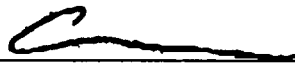
Crumb who has a Statute of Limitations problem if he does not file suit to stop access within 20 years. See Idaho Code 5-203.

Furthermore, Plaintiffs were not aware that Crumb was claiming that he could control the access until just over a year ago even though the access had been used for quite some time. If any Statute of Limitations does apply to Plaintiffs' claims, that statute would not have started to run until Plaintiffs were on notice of the dispute regarding the easement.

WHEREFORE, Plaintiffs pray that this Court deny Defendant's Motion for Summary Judgment and declare that an express forty (40) foot right of way exists over the "Phase 1 Road" for the benefit of FRITZ-HEATH landowners, and for all other relief requested above, which is incorporated here as if set forth in full.

DATED this 21st day of November, 2017.

BISTLINE LAW, PLLC



ARTHUR M. BISTLINE
Attorney for Plaintiffs

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT -7

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of November, 2017, I served a true and correct copy of foregoing PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT by the method indicated below, and addressed to the following:

Darin L. Murphy
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- Overnight mail
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Puyallup, WA 98373-0090

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Boulder, CO 80301

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Jitinvest LLC
Attn: Dale Adema
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Rockwall, TX 75087

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STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
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DEPUTY

Attorneys for Plaintiffs

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

Security Investor Fund LLC, Security Financial
Fund LLC,

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
Inc, and Todd A. Reeve,

Defendants.

Case No. CV-2017-5541

DECLARATION OF RICHARD J. ABBEY

DECLARATION

I, Richard J. Abbey, do solemnly affirm that the foregoing facts are within my
personal knowledge and are true and correct:

1. My name is Richard J. Abbey. My family and I reside on Blossom
Mountain, Post Falls, Idaho. I am the managing member of Monument Ridge, LLC, f/k/a
Abbey & Crumb LLC, which constructed the entrance road to the FRITZ-HEATH on
Brian Crumb's adjoining property in 2006 ("CRUMB ACCESS ROAD").

2. I have reviewed the Declaration of Brian Crumb in this case, and agree
with his statement that the old entrance into the FRITZ-HEATH ("OLD ROAD") could
be driven in 2006. The OLD ROAD was pre-existing logging road which was too steep

DECLARATION OF RICHARD ABBEY -1

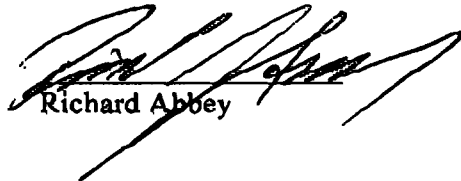
to provide good drivable access into the FRITZ-HEATH, but it at least provided some access in dry weather.

3. The construction of the CRUMB ACCESS ROAD destroyed parts of the OLD ROAD. The FRITZ-HEATH can no longer be accessed from the OLD ROAD because, in places, it is covered by 20-35 feet of fill which makes it impossible to drive. Abbey & Crumb LLC spent approximately \$45,000.00 on Crumb's adjoining lot utilizing bulldozers, excavators, and dump trucks, to move the large amount of rock and material required to make the CRUMB ACCESS ROAD.

4. All property owners have the code to access the CRUMB ACCESS ROAD and do use it.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

Dated: November 20, 2017.


Richard Abbey

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of November, 2017, I served a true and correct copy of foregoing DECLARATION OF RICHARD ABBEY by the method indicated below, and addressed to the following:

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STATE OF IDAHO }
COUNTY OF KOOTENAI } SS

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CLERK DISTRICT COURT
Marie [Signature]
DEPUTY
ps

Attorneys for Plaintiffs

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

Security Investor Fund LLC, Security Financial
Fund LLC,

Case No. CV-2017-5541

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinest LLC, Spirit Elements,
Inc, and Todd A. Reeve,

DECLARATION OF ZACHARIE EIFLER

Defendants.

DECLARATION

I, Zacharie Eifler, do solemnly affirm that the foregoing facts are within my
personal knowledge and are true and correct:

1. My name is Zacharie Eifler and I reside at 979 S. Greensferry Rd.
Post Falls, Idaho 83854. My wife and I own a lot in the Fritz-Heath Forest Tracts (2nd)
subdivision ("FRITZ-HEATH") on Blossom Mountain, Post Falls, Idaho.

2. In 2006--2007, I was working for Inland Northwest Consultants ("INC") as a Survey Technician and worked many hours on the FRITZ-HEATH project. As a result of my survey work on the FRITZ-HEATH and ownership of a FRITZ-HEATH lot, I am very familiar with the old access road to the FRITZ-HEATH ("OLD ROAD") that was used prior to the new engineered road that was built on Brian Crumb's adjoining lot and is currently used ("CRUMB ACCESS ROAD").

3. The OLD ROAD used old logging roads and was too steep to provide good drivable access into the FRITZ-HEATH. I was fully aware of INC's recommendation to build an engineered road on Brian Crumb's adjoining lot in order to provide better access into the FRITZ-HEATH. Kootenai County would not allow building permits on any Fritz Heath lot until a new engineered road was constructed due to the extremely steep grades of the OLD ROAD. I often spent time working with the engineers in the office and was a participant during the talk about the necessity of the Crumb Entrance to service Fritz Heath Lots. At times, I was present when the Crumb Access was being constructed.

4. Construction of the CRUMB ACCESS ROAD completely destroyed the ability to use the OLD ROAD. The FRITZ-HEATH can no longer be accessed from the OLD ROAD because, in places, it is covered by 20-35 feet of fill and is impossible to cross with any wheeled vehicle. It would now be a difficult and steep hike over boulders and rocks to traverse the OLD ROAD which was partially obliterated by the CRUMB ACCESS ROAD. Attached to my Declaration are photographs, which I have narrated, showing that the OLD ROAD was partially destroyed by the CRUMB ACCESS ROAD.

5. Brian Crumb has not provided me with a written easement through the CRUMB ACCESS ROAD so that I can reach my FRITZ-HEATH lot, even though the CRUMB ACCESS ROAD destroyed the OLD ROAD which had at least provided some access to my FRITZ-HEATH lot.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

Dated: November 14 2017.


Zacharie Eifler

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of November, 2017, I served a true and correct copy of foregoing DECLARATION OF ZACHARIE EIFLER by the method indicated below, and addressed to the following:

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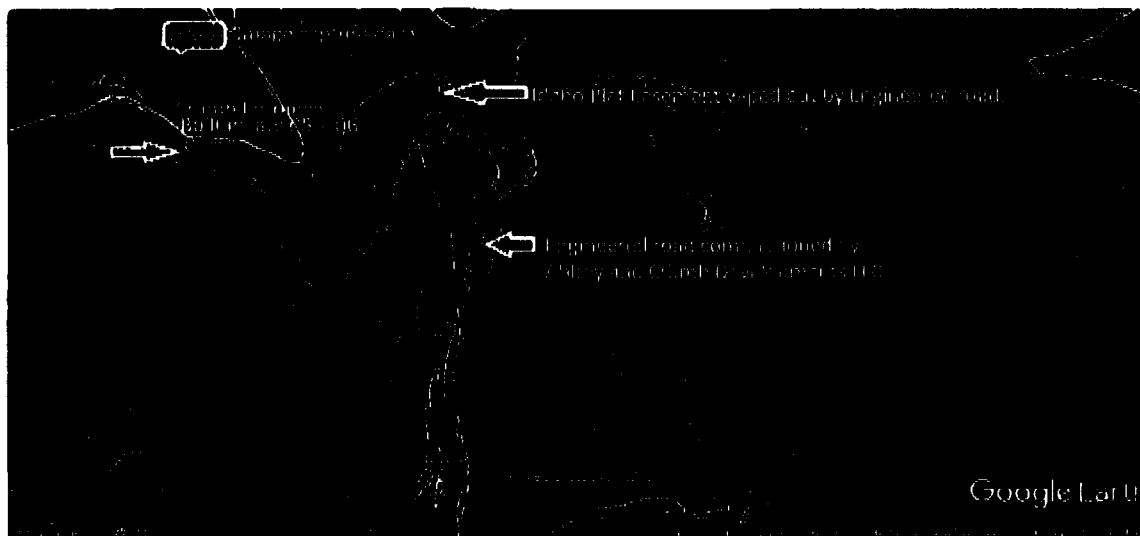
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CLERK DISTRICT COURT

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Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial Fund LLC	)	Case No. CV 2017-5541
)	
Plaintiffs,	)	DEFENDANT BRIAN CRUMB'S
	)	RESPONSE TO PLAINTIFFS' MOTION
	)	FOR SUMMARY JUDGMENT
v.)	
)	
Brian Crumb, Jennifer O'Callaghan and Brian O'Callaghan, Jitinvest LLC, Spirit Elements, LLC, and Todd A. Reeve,)	
)	
Defendants,)	
)	

COMES NOW Defendant Brian Crumb, by and through his attorneys of record, Darrin L. Murphey, of Murphey Law Office, PLLC, and Brent G. Schlotthauer, of Vasseur and
DEFENDANT BRIAN CRUMB'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - 1

Schlotthauer, PLLC, and pursuant to Rule 56, I.R.C.P., hereby submits Defendant Brian Crumb's Response to Plaintiffs' Motion for Summary Judgment.

I. FACTS

See Concise Statement of Facts in Support of Defendant Brian Crumb's Motion for Summary Judgment, filed on November 7, 2017.

II. OBJECTION TO INADMISSIBLE EVIDENCE SUBMITTED BY PLAINTIFFS

Crumb objects to the inadmissible evidence submitted by Plaintiffs. Inadmissible hearsay cannot be considered in ruling on a motion for summary judgment. Sammis v. Magnetek, Inc., 130 Idaho 342, 350, 941 P.2d 314 (1997); *see also*, Orr v. Bank of America, N.P. & S.A., 285 F.3d 764 (9th Cir. 2002) (analyzing analogous federal rule). Where evidence presented on a motion for summary judgment is challenged as being inadmissible, the trial court must determine the admissibility of the evidence before ruling on the motion. Ryan v. Beisner, 123 Idaho 42, 46, 844 P.2d 24 (Ct. App.1992). Pursuant to IRCP 56(c) and (e) Crumb objects to the Court considering the following inadmissible evidence submitted by Plaintiffs:

1. Bistline Dec., Ex. "A" and Exhibit 2 attached to Plaintiffs' Motion for Summary Judgment, should not be considered as evidence on the grounds of lack of foundation and hearsay. The parties to this action were not parties in Lenhart v. Transnation Title & Escrow, Inc., Kootenai County Case No. CV 2013-5442, Judge Christensen presiding. IRCP 32(a)(8). The transcript is not certified by the court reporter. IRCP 30. Crumb is not an unavailable witness in this action.

DEFENDANT BRIAN CRUMB'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - 2

2. Abbey Dec., Ex. "E", and by Plaintiffs' reference, Complaint, Ex. "A", an undated drawing purportedly from the engineering firm INC, which appears to be a lay alteration of a drawing, should not be considered as evidence on the grounds of lack of foundation and hearsay.

3. Abbey Dec., ¶ 15, second sentence, stating "In November, 2016, Kootenai County, gave final sign-off and approval on the 'Phase 1 Road'", and the last sentence of that paragraph and Exhibit "H", should not be considered as evidence on the grounds of lack of foundation and hearsay. There is no foundation and Exhibit "H" does not state that Kootenai County gave final sign-off and approval on the Phase 1 Road, nor does Exhibit H state that Phase 1 Road was completed.

4. Abbey Dec., ¶ 16, should not be considered as evidence on the grounds of lack of foundation, speculation and hearsay.

5. Abbey Dec., ¶ 17, should not be considered as evidence on the grounds of lack of foundation and hearsay. Moreover, Abbey's statement is in fact false, the Order annexing the Fritz Heath Tracts into the Kootenai County Fire & Rescue District, duly recorded in the records of Kootenai County as Instrument No. 1994106, on November 8, 2005, includes an annexation map depicting a road in a location of the Fritz Heath Tracts Plat Map, and not over the Crumb Property. (Crumb Dec., Ex "E"). Furthermore, there were no engineering drawings of a road at the time of the annexation into the Kootenai County Fire & Rescue District. (Abbey Dec., ¶ 7).

6. Abbey Dec., ¶ 18, should not be considered as evidence on the grounds of lack of foundation, speculation and hearsay. The CC&R's do not state that the only entrance to the Fritz

Heath Tracts is through the Crumb Property. In fact, the Fritz Heath Tracts Plat Map clearly depicts otherwise. (Abbey Dec., Ex. "C"; Crumb Dec., Exs. "A" and "B").

7. Abbey Dec., ¶ 19 and Exhibit "T" should not be considered as evidence on the grounds of lack of foundation, speculation and hearsay. There is no foundation for Exhibit "T". Moreover, Abbey states that the recommendation of relocating the entrance of the road from the road described in the Plat Map to the Crumb Property did not occur until after the CC&R's were recorded on January 6, 2006. (Abbey Dec., ¶ 7).

8. Abbey Dec., ¶ 20, should not be considered as evidence on the grounds of lack of foundation, speculation, hearsay and conclusion.

9. Abbey Dec., ¶ 21, should not be considered as evidence on the grounds of lack of foundation, speculation hearsay and conclusion. Abbey's statement is a legal conclusion, not supported by evidence, and not a statement of admissible evidence.

10. Abbey Dec., ¶ 23, first sentence, should not be considered as evidence on the grounds of lack of foundation and hearsay.

11. Abbey Dec., ¶ 24, should not be considered as evidence on the grounds of lack of foundation, speculation hearsay and conclusion. Abbey's statement is a legal conclusion, not supported by evidence, and not a statement of admissible evidence.

12. Abbey Dec., ¶ 25, should not be considered as evidence on the grounds of lack of foundation, speculation hearsay and conclusion. Abbey's statement is a legal conclusion, not supported by evidence, and not a statement of admissible evidence.

III. ARGUMENT

A. Crumb did not grant or agree to grant an easement over and across the Crumb Property.

Notwithstanding that the alleged oral agreement granting or agreeing to grant an easement over the Crumb Property is at best an unenforceable revocable license with Abbey & Crumb, there is a genuine issue of material fact as to the terms and existence of the alleged oral agreement. Plaintiffs cannot meet their burden of proving a contract that is complete, definite and certain in all material terms, including price or consideration, by clear and convincing evidence. “Before an oral agreement to convey land will be specifically enforced, the underlying contract must be proven by clear and convincing evidence.” Bear Island Water Ass’n, Inc. v. Brown, 125 Idaho 717, 722, 874 P.2d 528, 533 (1994) (citing Anderson v. Whipple, 71 Idaho 112, 123, 227 P.2d 351, 358 (1951)); Rice v. Rigley, 7 Idaho 115, 61 P. 290, 294 (1900)(the oral agreement “must be so clear and certain as to leave no well-founded doubt in the mind of the court.”). “Further, the proof must show that the contract is complete, definite and certain in all its material terms, or that it contains provisions which were capable in themselves of being reduced to certainty.” *Id.* The material terms which must be identified in a contract to convey land include the parties to the contract, the subject matter of the contract, the **price or consideration**, and a description of the property.” *Id.* (emphasis added) (citing Hoffman v. S V Co., Inc., 102 Idaho 187, 190, 628 P.2d 218, 221 (1981)). “There can be no part performance of an agreement that was never made.” Bear Island Water Ass’n, Inc. v. Brown, 125 Idaho 717, 723, 874 P.2d 528, 534 (1994). “To be enforceable, a contract must provide a price or a means of determining the price.” Bauchman-Kingston Partnership, LP v. Haroldsen, 149 Idaho 87, 93,

233 P.3d 18, 24 (2008); (*citing* Garmo v. Clanton, 97 Idaho 696, 699, 551 P.2d 1332, 1335 (1976)). “To render a promisor liable on a contract it is incumbent on the part of a third party beneficiary to show due performance of the conditions by the promisee for only in that event would the promisor be liable.” 13 Williston on Contracts § 37:26 (4th ed. 2017).

Plaintiffs argue that they are entitled to enforce as third party beneficiaries an alleged oral agreement by and between Crumb and Abbey & Crumb, made prior to and with consideration purportedly paid to Crumb prior to Crumb’s withdrawal from Abbey & Crumb on September 26, 2006, to grant an easement across the Crumb Property to the Fritz Heath Tracts. Crumb vehemently disputes Plaintiffs’ convenient and self serving rendition of the terms of any alleged oral agreement, the supposed consideration, and that any oral agreement to grant an easement over and across the Crumb Property was in fact ever consummated. (Crumb Dec., ¶¶ 14-19). Thus, even assuming that the alleged oral agreement is not invalid and unenforceable as discussed below, at best, there is a genuine issue of material fact as to the terms, consideration and existence of an oral agreement. Mackay v. Four Rivers Packing, 145 Idaho 408, 413, 179 P.3d 1064, 1069 (2008). As such, Plaintiff’s Motion for Summary Judgment must be denied.

B. The oral agreement alleged by Plaintiffs is barred by the Statute of Frauds, the Member Withdrawal Agreement and the Statute of Limitations.

Crumb adopts and incorporates by this reference the facts, authority and argument set forth in Defendant Brian Crumb’s Memorandum in Support of Motion for Summary Judgment, Concise Statement of Facts in Support of Defendant Brian Crumb’s Motion for Summary Judgment, Declaration of Brian Crumb in Support of Defendant Brian Crumb’s Motion for Summary Judgment, Declaration of Darrin L. Murphey in Support of Defendant Brian Crumb’s

DEFENDANT BRIAN CRUMB’S RESPONSE TO PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT - 6

Motion for Summary Judgment, all of which were filed on November 7, 2017. That authority and argument show that the oral agreement alleged by Plaintiffs is invalid and unenforceable pursuant to the Statute of Frauds, Member Withdrawal Agreement and the Statute of Limitations. As such, Plaintiffs' Motion for Summary Judgment must be denied.

C. Plaintiffs' Complaint is barred on the grounds of laches.

“Whether a party is guilty of laches primarily is a question of fact and therefore its determination is within the province of the trial court. The decision to apply laches is committed to the sound discretion of the trial court.” Capstar Radio Operating Co. v. Lawrence, 153 Idaho 411, 424, 283 P.3d 728, 741 (2012)(quoting Sword v. Sweet, 140 Idaho 242, 249, 92 P.3d 492, 499 (2004). “Therefore, this Court reviews whether the trial court properly found (1) a lack of diligence by the party against whom the defense of laches is asserted, and (2) that the party asserting the defense was prejudiced.” *Id* (citing Sword, *supra*; citing Preservation Coal., Inc. v. Pierce, 667 F.2d 851, 854 (9th Cir.1982)); Callenders, Inc. v. Beckman, 120 Idaho 169, 174, 814 P.2d 429, 434 (Ct.App.1991); Quintana v. Quintana, 119 Idaho 1, 4, 802 P.2d 488, 491 (Ct.App.1990).

Plaintiffs allege that they were not advised in 2006, apparently by Abbey when Plaintiffs loaned money to Abbey and Abbey & Crumb after Crumb withdrew from Abbey & Crumb on September 26, 2006, that easements over and across the Crumb Property were not recorded. (Complaint ¶ 12; Murphey Dec., Ex. A, Answer to Interrogatory No. 8). Rather than search the County Recorder's Office for an easement over and across the Crumb Property to the Fritz Heath Tracts, which the parties do not dispute that no such easement was ever recorded, Plaintiffs

allege that they believed there was an easement over and across the Crumb Property to the lots they obtained by deed in lieu of foreclosure, based on driving a road that did not exist over and across the Crumb Property, recorded public documents that did not show a road over and across the Crumb Property, and documents submitted to the County planning department that did not show that there was a recorded easement over and across the Crumb Property. (Murphey Dec., Ex. A, Answer to Interrogatory No. 8; Crumb Dec., ¶¶ 6-13, 17-23, 25, 28 and 29).

As a matter of law, Plaintiffs were on constructive notice that there was not a recorded easement over and across the Crumb Property. “It has long been established that a purchaser is charged with every fact shown by the records and is presumed to know every other fact which an examination suggested by the records would have disclosed.” Kalange v. Rencher, 136 Idaho 192, 195-96, 30 P.3d 970, 973-74 (2001) (citing Cordova v. Hood, 17 Wall. 1, 84 U.S. 1, 21 L.Ed. 587 (1873); Northwestern Bank v. Freeman, 171 U.S. 620, 19 S.Ct. 36, 43 L.Ed. 307 (1898)). “One claiming title to lands is chargeable with notice of every matter affecting the estate, which appears on the face of any recorded deed forming an essential link in his chain of title, and also with notice of such matters as might be learned by inquiry which the recitals in such instruments made it a duty to pursue.” *Id* (citing Glover v. Brown, 32 Idaho 426, 184 P. 649 (1919)).

Plaintiffs lack of diligence is unquestionable. Plaintiffs could have simply searched the records of the Kootenai County Recorder’s Office in 2006. Plaintiffs did not even ask Crumb if there was an easement over and across the Crumb Property. At no time whatsoever did Crumb discuss with, promise, represent or suggested in any manner whatsoever to Plaintiffs that he

granted or was going to grant Plaintiffs an easement over and across the Crumb Property. (Crumb Dec., ¶ 25). Plaintiffs have always been on notice, including in 2006, that there was not an easement over and across the Crumb Property. Kalange, 136 Idaho at 195-96, 30 P.3d at 973-74 Plaintiffs, despite their lack of diligence, now seek a windfall, eleven years later, after memories have faded and documents are no longer available.

The Court of Appeals in Beckman, affirmed the district court's summary judgment decision finding of laches, based on a similar lack of diligence.

Beckman's lack of diligence is readily apparent. He knew that his claims were not recognized by the partnership as far back as 1976, when the partnership agreement was drawn up and the financial statement prepared. He did not avail himself of the opportunity to inspect the partnership's books and records, nor did he then assert any claim against the partnership. Further, in January, 1986, he signed the dissolution agreement after previously examining two lists of assets and liabilities, both of which failed to itemize any of his claims. Still, Beckman did not assert his claims until February 1987.

Beckman, 120 Idaho at 174-75, 814 P.2d at 434-435. Here, as was the case in Beckman, Plaintiffs' lack of diligence is undeniable.

Prejudice to Crumb is found in that Plaintiffs have threatened that "Security will seek at least \$700,000 in damages against Brian Crumb in the event that a forty (40) foot right of way easement is not declared over his property." (Murphey Dec., Ex. A, Answer to Interrogatory No. 8). Moreover, Crumb is prejudiced in that Plaintiffs are seeking to strong arm an interest in the Crumb Property, an easement, without the payment of any consideration whatsoever to Crumb. Additionally, Crumb was careful to follow the advice of attorney Romer Brown, in reliance of the Statute of Frauds, and did not sign any documents granting or agreeing to grant any easement

DEFENDANT BRIAN CRUMB'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - 9

over and across the Crumb Property, unless and until Crumb received the agreed upon consideration. When Crumb withdrew from Abbey & Crumb on September 26, 2006, Abbey and Crumb contractually agreed, by and through the Member Withdrawal Agreement, that there were no prior agreements with Abbey, including any oral agreement to grant an easement over the Crumb Property. Crumb is now faced with the prejudice of having to defend an alleged oral agreement where he made no such oral agreement, and he took steps to protect himself against any such claim when he withdrew from Abbey & Crumb on September 26, 2006. In Beckman, the Court affirmed the district court's summary judgment decision finding of laches, based on a similar finding of prejudice. "Prejudice is found in the approximately \$450,000 in interest that Beckman asserts in his claims." Beckman, 120 Idaho at 175, 814 P.2d at 435. Here, as was the case in Beckman, the prejudice to Crumb is unquestionable. As such, Plaintiffs' Motion for Summary Judgment should be denied, and Plaintiffs' Complaint dismissed.¹

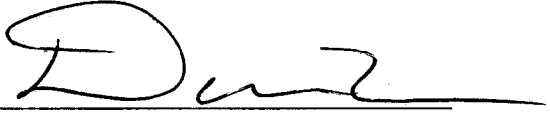
IV. CONCLUSION

Based on the foregoing, Defendant Brian Crumb respectfully requests that the court GRANT his Motion for Summary Judgment, dismissing Plaintiffs' Complaint, and DENY Plaintiffs' Motion for Summary Judgment.

¹ The elements of laches has also been described as (1) the defendant's invasion of plaintiff's right; (2) a delay in the assertion of plaintiff's right; (3) lack of knowledge by the defendant that plaintiff would assert that right; (4) injury or prejudice to the defendant in the event relief is granted to the plaintiff or the suit is not held to be barred. Finucane v. Village of Hayden, 86 Idaho 199, 205, 384 P.2d 236, 240 (1963). Plaintiffs are alleging that Crumb is precluding their right to an easement over and across the Crumb Property. As discussed above, Plaintiffs delay and the prejudice to Crumb is unquestionable. Finally, Crumb had no knowledge that Plaintiffs would assert a right to an easement as Plaintiffs failed to communicate in any manner whatsoever that they believed there was an easement over and across the Crumb Property. As such, Plaintiffs' Complaint is barred by laches.

DATED this 21st day of November, 2017.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 21st day of November, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 TELECOPY (FAX) to: (208) 665-7290
 ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
nichole@bistlinelaw.com; sharon@bistlinelaw.com

Christopher G. Varallo
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 TELECOPY (FAX) to: (509) 458-2728
 ELECTRONIC MEANS (pursuant to written consent):


Darrin L. Murphey

DEFENDANT BRIAN CRUMB'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT - 11

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CLERK DISTRICT COURT

DEPUTY

PS

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Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial
Fund LLC

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
LLC, and Todd A. Reeve,

Defendants,

) Case No. CV 2017-5541

)

) REPLY MEMORANDUM IN SUPPORT OF
) DEFENDANT BRIAN CRUMB'S MOTION
) FOR SUMMARY JUDGMENT

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COMES NOW Defendant Brian Crumb, by and through his attorneys of record, Darrin L.

Murphey, of Murphey Law Office, PLLC, and Brent G. Schlotthauer, of Vasseur and

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY
JUDGMENT - 1

Schlotthauer, PLLC, and pursuant to Rule 56, I.R.C.P., hereby submits his Reply Memorandum in Support of Defendant Brian Crumb's Motion for Summary Judgment.¹

I. ARGUMENT

A. There is no evidence of an express written easement over and across the Crumb Property for the benefit of Plaintiffs' lots.

Plaintiffs make the spurious argument that a couple sentences taken out of context from a page and a half email dated September 15, 2016, constitutes an express written easement granted by Crumb more than ten (10) years earlier, sometime prior to his withdrawal from Abbey & Crumb on September 26, 2006.² (Plaintiffs' Response, 3-4). It is undisputed that Crumb and his wife did not execute any written easement or agreement to grant an easement over and across the Crumb Property for the benefit of Plaintiffs' lots, as required by the Statute of Frauds. (Crumb Dec., ¶ 19). Even assuming that Crumb and his wife granted or agreed to grant an easement over and across the Crumb Property for the benefit of Plaintiffs, prior to September 26, 2006, any such grant or agreement must be dismissed if it was not in writing, subscribed by Crumb and his

¹ This Reply is to Plaintiffs' Response to Defendant's (sic) for Summary Judgment, dated November 21, 2017 (hereinafter "Plaintiffs' Response").

² It is accurate that prior to Crumb's withdrawal from Abbey & Crumb on September 26, 2006, Crumb then verbally offered that upon Crumb's receipt of payment from Abbey & Crumb in the amount of \$200,000, Crumb would grant easements to the lots in the Fritz Heath Tracts for use as a road over and across the Crumb Property. However, that offer was never consummated in that Crumb never received \$200,000, and on September 26, 2006, Crumb withdrew from Abbey & Crumb. Crumb, following the advice of his attorney, did not sign any document granting or agreeing to grant an easement, including the Member Withdrawal Agreement, which included a merger clause. (Crumb Dec., ¶¶ 14-19).

The email does not state that Crumb granted or agreed to grant Plaintiffs and express easement over and across the Crumb Property. In fact, Crumb makes it clear in the email that he will grant easements to Gary Bremer and his mom, and that "I will give an easement thru our 12 acres to only the original purchaser of property that Abbey & Crumb Developments sold to in the beginning, but everyone else has lost their property." (Abbey Dec., ¶ 20 (emphasis added)). Plaintiffs are not one of the original purchasers, and Crumb made no promise whatsoever to grant Plaintiffs an easement. (Crumb Dec., ¶ 24). Crumb further states in the email that "the rest of you can go the old way", meaning the road depicted in the Fritz Heath Tracts Plat. (Abbey Dec., ¶ 20).

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 2

wife, as required by the Statute of Frauds. Bank of Commerce v. Jefferson Enters., LLC, 154 Idaho 824, 830, 303 P.3d 183,189 (2013)(affirming district court's summary judgment decision that even assuming that there was in fact a pre-commitment agreement to loan money and that the Bank agreed to take a second position, because no writing exists, the Statute of Frauds bars any alleged oral agreement); Letunich v. Key Bank Nat. Ass'n, 141 Idaho 362, 367, 109 P.3d 1104, 1109 (2005)(affirming district court's summary judgment decision that commitment letters did not satisfy the writing requirement of the Statute of Frauds because they were never executed by the parties). Thus, there is no genuine issue of material fact that there is no written easement or agreement to grant an easement over and across the Crumb Property for the benefit of Plaintiffs' lots, subscribed by Crumb and his wife, as required by the Statute of Frauds. As such, Crumb's Motion for Summary Judgment must be granted.

B. Plaintiffs did not argue nor did they present any evidence that Plaintiffs, not Abbey, may equitably estop Crumb from relying on the Statute of Frauds.

Plaintiffs argue that an easement may be enforced based on Abbey's reliance on an alleged oral easement over the Crumb Property. (Plaintiffs' Response, pp. 5-6). Plaintiffs' misunderstand the law.³ "An easement established by unwritten agreement is merely a license, revocable by the licensor." Bob Daniels and Sons v. Weaver, 106 Idaho 535, 542, 681 P.2d 1010, 1017 (Ct.App. 1984)(citing Howes v. Barmon, 11 Idaho 64, 81 P. 48 (1905)). "Failure to comply with the statute of frauds renders an oral agreement unenforceable both in an action at law for damages and in a suit in equity for specific performance." Hoffman v. S V Co., Inc., 102

³ Plaintiffs presented no argument or authority that failure to comply with the Statute of Frauds constitutes a complete bar to an action by a third party beneficiary. (See Defendant Crumb's Memorandum, pp 7-8). As such, Crumb's Motion for Summary Judgment must be granted.

Idaho 187, 190, 628 P.2d 218, 221 (1981).⁴ However, application of the Statute of Frauds may be avoided where part performance by one party to an otherwise unenforceable agreement is such as to equitably estop the other party to an otherwise unenforceable oral agreement from relying on the Statute of Frauds as a defense. Treasure Valley Gastroenterology Specialists, P.A. v. Woods, 135 Idaho 485, 489-490, 20 P.3d 21, 25-26 (2001).⁵ Plaintiffs did not present any evidence that they were a party to an otherwise unenforceable oral agreement with Crumb, because they were not.⁶

It is undisputed that Crumb did not discuss with, promise, represent or suggest in any manner whatsoever to Plaintiffs that he granted or was going to grant Plaintiffs an easement over and across the Crumb Property. (Crumb Dec., ¶¶ 25 and 29). It is undisputed that Plaintiffs have

4 Bob Daniels and Sons v. Weaver, 106 Idaho 535, 541, 681 P.2d 1010, 1016 (Ct.App. 1984); Mickelsen Const., Inc. v. Horrocks, 154 Idaho 396, 401, 299 P.3d 203, 208 (2013); Wakelam v. Hagood, 151 Idaho 688, 691, 263 P.3d 742, 745 (2011); Ray v. Frasure, 146 Idaho 625, 628, 200 P.3d 1174, 1177 (2009); Bauchman-Kingston Partnership, LP v. Haroldsen, 149 Idaho 87, 91, 233 P.3d 18, 22 (2008); Lexington Heights Development, LLC v. Crandlemire, 140 Idaho 276, 285, 92 P.3d 526, 535 (2004); Hemingway v. Gruener, 106 Idaho 422, 424, 679 P.2d 1140, 1142 (1984).

5 “The doctrines of equitable estoppel and part performance are viewed together. Under Idaho law, part performance per se does not remove a contract from the operation of the statute of frauds. Rather, “[t]he doctrine of part performance is best understood as a specific form of the more general principle of equitable estoppel.” Lettunich v. Key Bank Nat. Ass’n, 141 Idaho 362, 367, 109 P.3d 1104, 1109 (2005)(quoting Sword v. Sweet, 140 Idaho 242, 249, 92 P.3d 492, 499 (2004)(quoting Frantz v. Parke, 111 Idaho 1005, 1007-08, 729 P.2d 1068, 1070-71 (Ct.App.1986)); Woods, 135 Idaho 485, 489, 20 P.3d 21, 25; Wing v. Munns, 123 Idaho 493, 500, 849 P.2d 954, 961 (Ct.App.1992); See also, Defendant Brian Crumb’s Memorandum in Support of Motion for Summary Judgment, pp. 4-10.

6 Plaintiffs cite Christensen v. Ruffing, 117 Idaho 1047, 1050, 793 P.2d 720, 723 (Ct.App. 1990), as support for their argument that “an express easement can be established by oral agreement.” (Plaintiffs’ Response, pp. 5-6). More accurately, the Court of Appeals in Christensen stated: “In Bob Daniels and Sons v. Weaver, 106 Idaho 535, 681 P.2d 1010 (Ct.App.1984) (review denied) we stated, in a case involving the grant of an easement pursuant to an oral agreement, that an oral agreement may be removed from the strictures of the statute of frauds by part or full performance.” *Id.* The Court of Appeals concluded that the oral agreement between the parties was fully performed and relied upon. *Id.* Here, unlike Christensen, Plaintiffs do not allege and there is no evidence that Plaintiffs were a party to any alleged agreement with Crumb, and the parties dispute the fact of and terms of any agreement to grant an easement over and across the Crumb Property. Thus, Plaintiffs are not a party to an agreement that is entitled equitably estop the other party to an otherwise unenforceable oral agreement from relying on the Statute of Frauds as a defense. Woods, 135 Idaho at 489-490, 20 P.3d at 25-26.

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT BRIAN CRUMB’S MOTION FOR SUMMARY JUDGMENT - 4

not paid Crumb any consideration whatsoever for an easement over and across the Crumb Property. (Crumb Dec., ¶ 26). It is undisputed that Plaintiffs have not performed any improvements on the road over and across the Crumb Property. (Crumb Dec., ¶ 27). It is undisputed that Crumb did not file or record, nor did he authorize anyone to file or record on his behalf, any documents with Kootenai County or any other agency indicating that Crumb granted Abbey & Crumb or the Fritz Heath Tracts an easement over and across the Crumb Property. (Crumb Dec., ¶ 13). Any statements or filings by Abbey or anyone else otherwise were not authorized and void. (Crumb Dec., ¶ 13). Thus, Plaintiffs cannot equitably estop Crumb from relying of the Statue of Frauds. Woods, 135 Idaho at 489-490, 20 P.3d at 25-26.

Plaintiffs did not argue or present any evidence that Plaintiffs had a “[l]ack of knowledge and of the means of knowledge of the truth as to the facts in question”. Woods, 135 Idaho at 490, 20 P.3d at 26. Plaintiffs allege that they were not advised in 2006, apparently by Abbey when Plaintiffs loaned money to Abbey and Abbey & Crumb after Crumb withdrew from Abbey & Crumb on September 26, 2006, that easements over and across the Crumb Property were not recorded. (Complaint ¶ 12; Murphey Dec., Ex. A, Answer to Interrogatory No. 8). Plaintiffs do not dispute that no easement was recorded over and across the Crumb Property for the benefit of the Plaintiffs’ lots. (Crumb Dec., ¶ 13). Nor do the Plaintiffs dispute that they failed to search the County Recorder’s Office for an easement over and across the Crumb Property. (Crumb Dec., ¶ 29).

As a matter of law, Plaintiffs were on constructive notice that there was not a recorded easement over and across the Crumb Property. “It has long been established that a purchaser is

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT BRIAN CRUMB’S MOTION FOR SUMMARY JUDGMENT - 5

charged with every fact shown by the records and is presumed to know every other fact which an examination suggested by the records would have disclosed.” Kalange v. Rencher, 136 Idaho 192, 195-96, 30 P.3d 970, 973-74 (2001) (citing Cordova v. Hood, 17 Wall. 1, 84 U.S. 1, 21 L.Ed. 587 (1873); Northwestern Bank v. Freeman, 171 U.S. 620, 19 S.Ct. 36, 43 L.Ed. 307 (1898)). “One claiming title to lands is chargeable with notice of every matter affecting the estate, which appears on the face of any recorded deed forming an essential link in his chain of title, and also with notice of such matters as might be learned by inquiry which the recitals in such instruments made it a duty to pursue.” *Id* (citing Glover v. Brown, 32 Idaho 426, 184 P. 649 (1919)).

Plaintiffs could have searched the records of the Kootenai County Recorder’s Office and determined, before loaning money to Abbey, and before agreeing to accept lots from Abbey by deed in lieu of foreclosure, that there was no easement over the Crumb Property for the benefit of Plaintiffs’ lots. Plaintiffs did not even ask Crumb if he had or would grant an easement over the Crumb Property. At no time whatsoever did Crumb discuss with, promise, represent or suggested in any manner whatsoever to Plaintiffs that he granted or was going to grant Plaintiffs an easement over and across the Crumb Property. (Crumb Dec., ¶¶ 25 and 29). Plaintiffs have always been on notice, including in 2006, that there was not an easement over and across the Crumb Property. Kalange, 136 Idaho at 195-96, 30 P.3d at 973-74. Thus, Plaintiffs failed to present any evidence, nor can they argue, as a matter of law, that they lacked the knowledge and the means of knowledge of determining that an easement was not recorded over and across the Crumb Property. Woods, 135 Idaho at 490, 20 P.3d at 26.

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT BRIAN CRUMB’S MOTION FOR SUMMARY JUDGMENT - 6

Plaintiffs argue that Abbey & Crumb, not Plaintiffs relied upon Crumb's offer to place the access road on the Crumb Property, destroying the old road and spending money on the new road.⁷ Again, even assuming that Plaintiffs were not on notice that there was not an easement over and across the Crumb Property (Kalange, 136 Idaho at 195-96, 30 P.3d at 973-74), Plaintiffs failed to present evidence that Plaintiffs, not Abbey, relied on an alleged oral agreement to grant an easement over the Crumb Property. Woods, 135 Idaho at 490, 20 P.3d at 26. Plaintiffs have legal access to their lots through the road depicted in the Plat to the Fritz Heath Tracts. If Abbey promised something different to the Plaintiffs, that is not Crumb's fault. As such, Crumb's Motion for Summary Judgment must be granted.

Notwithstanding that Plaintiffs failed to present any evidence of performance or reliance by Plaintiffs, the consideration at issue is ambiguous, not agreed upon and disputed. Price or consideration is a material term that must be proven by clear and convincing evidence. Brown, 125 Idaho at 722, 874 P.2d at 533; Hoffman, 102 Idaho at 190, 628 P.2d at 221. There can be no part performance of an agreement that was never made." Brown, 125 Idaho at 723, 874 P.2d at 534. Moreover, where the consideration or price is ambiguous or not agreed upon or disputed by the parties, the equitable doctrine of part performance is not available to enforce an agreement that is otherwise invalid under the Statute of Frauds. Haroldsen, 149 Idaho at 93, 233 P.3d at 24.

⁷ Even assuming that Abbey destroyed the old road and built a new road, that is not Crumb's fault. Crumb did not destroy the old road. More importantly, Plaintiffs cannot show that the status quo has changed such that Plaintiffs cannot be placed in the position they originally occupied. Howes, 11 Idaho 64, 81 P. at 50. Plaintiffs presented evidence that the road depicted in the Plat to the Fritz Heath Tracts "was too steep to provide good drivable access". (Abbey Dec., dated Nov. 17, 2017, ¶ 2; Eifler Dec., ¶ 3). Plaintiffs clearly have legal access to their lots, and they failed to present any evidence that they cannot construct a road "to provide good drivable access" their lots.

Prior to Crumb's withdrawal from Abbey & Crumb on September 26, 2006, Crumb then verbally offered that upon Crumb's receipt of payment from Abbey & Crumb in the amount of \$200,000, Crumb would grant easements to the lots in the Fritz Heath Tracts for use as a road over and across the Crumb Property. (Crumb Dec., ¶ 14). That offer was never consummated in that Crumb never received \$200,000, and on September 26, 2006, Crumb withdrew from Abbey & Crumb. (Crumb Dec., ¶¶ 15-19). Plaintiffs allege that there was an agreement for an easement over and across the Crumb Property made between Crumb and Abbey & Crumb prior to Crumb withdrawing from Abbey & Crumb on September 26, 2006, alleging that the consideration was "so that 'we could make some money selling the lots.'" (Abbey Dec., ¶ 24). Plaintiffs disagree that Abbey & Crumb agreed to pay Crumb \$200,000 in consideration. (Plaintiffs' Response, pp. 5-6). "There can be no part performance of an agreement that was never made." Brown, 125 Idaho at 723, 874 P.2d at 534. Moreover, where, as here, the consideration or price is ambiguous or not agreed upon or disputed by the parties, the equitable doctrine of part performance is not available to enforce an agreement that is otherwise invalid under the Statute of Frauds. Haroldsen, 149 Idaho at 93, 233 P.3d at 24. As such, Crumb's Motion for Summary Judgment must be granted.

Finally, Crumb is the only one who relied on and acted in conformance with the law, and is the only party that will suffer prejudice if an easement is granted over the Crumb Property for the benefit of the Plaintiffs' lots. Crumb was careful to follow the advice of attorney Romer Brown, in reliance of the Statute of Frauds, and did not sign any documents granting or agreeing to grant any easement over and across the Crumb Property, unless and until Crumb received the

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 8

agreed upon consideration. When Crumb withdrew from Abbey & Crumb on September 26, 2006, Abbey and Crumb contractually agreed, by and through the Member Withdrawal Agreement, that there were no prior agreements with Abbey and Abbey & Crumb, including any oral agreement to grant an easement over the Crumb Property. Plaintiffs are now seeking to strong arm an interest in the Crumb Property, an easement, without the payment of any consideration whatsoever to Crumb. Plaintiffs have threatened that “Security will seek at least \$700,000 in damages against Brian Crumb in the event that a forty (40) foot right of way easement is not declared over his property.” (Murphey Dec., Ex. A, Answer to Interrogatory No. 8). Plaintiffs could have simply searched the records of the Kootenai County Recorder’s Office and determined, before loaning money to Abbey, and before agreeing to accept lots from Abbey by deed in lieu of foreclosure, that there was no easement over the Crumb Property for the benefit of Plaintiffs’ lots. Plaintiffs did not even ask Crumb if he had granted or would grant an easement over the Crumb Property. (Crumb Dec., ¶¶ 25 and 29). Plaintiffs should not be awarded a windfall, and Crumb should not be penalized for reliance upon and acting in conformance with the law. “No unjust or fraudulent result occurs by not applying the doctrine of part performance or equitable estoppel.” Sword, 140 Idaho at 250, 92 P.3d at 500. As such, Crumb’s Motion for Summary Judgment should be granted.

C. Plaintiffs’ Complaint is Precluded by the Member Withdrawal Agreement.

Plaintiffs did not present any evidence or argument in response to Crumb’s Argument that the Member Withdrawal Agreement bars Plaintiffs’ Complaint. (See Defendant Brian Crumb’s Memorandum in Support of Motion for Summary Judgment, pp. 11-12). It is

undisputed that the Member Withdrawal Agreement applies to Crumb and Abbey & Crumb. (Abbey Dec., ¶¶ 14-15, Ex. "G"; Plaintiffs' Motion for Summary Judgment, p. 13; Crumb Dec., ¶¶ 17-19, Ex. "F"). The Member Withdrawal Agreement makes no mention whatsoever of an obligation on the part of Crumb to grant an easement over and across the Crumb Property. The Member Withdrawal Agreement includes a merger clause, which precludes enforcement of an alleged oral agreement to grant an easement over and across the Crumb Property. Howard v. Perry, 141 Idaho 139, 141-42, 106 P.3d 465, 467-68 (2005). As such, Crumb's Motion for Summary Judgment must be granted.

D. Plaintiffs' Complaint is Precluded by the Statute of Limitations.

Plaintiffs did not present any evidence in response to Crumb's Argument that Plaintiffs' Complaint is barred by the Statute of Limitations. (See Defendant Brian Crumb's Memorandum in Support of Motion for Summary Judgment, pp. 12-13). Rather, Plaintiffs argue: "It is Crumb who has a Statute of Limitations problem if he does not file suit to stop access within 20 years." Idaho Code § 5-203. That may or may not be an issue in the future. See Weaver, 106 Idaho at 542, 681 P.2d at 1017 ("An easement established by unwritten agreement is merely a license, revocable by the licensor.")(citing Howes v. Barmon, 11 Idaho 64, 81 P. 48 (1905)). However, that is not an issue in this case.

Plaintiffs only other argument is that the Statute of Limitations does not begin to run until Plaintiffs were on notice of the dispute regarding the easement, apparently distinguishing from when Abbey was on notice. "The right of a third person for whose benefit a promise is made is affected with all the infirmities of the contract as between the parties to the agreement. The

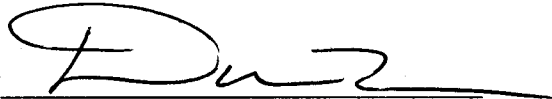
beneficiary is subject to all the equities and defenses that would be available against the promisee". 17A Am. Jur. 2d Contracts § 438 (2017). Thus, even assuming Plaintiffs are a third party beneficiary to an enforceable agreement, their Complaint is time barred for the same reasons that any cause of action by Abbey & Crumb would be time barred. (See Defendant Brian Crumb's Memorandum in Support of Motion for Summary Judgment, pp. 12-13). As such, Crumb's Motion for Summary Judgment must be granted.

II. CONCLUSION

Based on the foregoing, Defendant Brian Crumb respectfully requests that the court GRANT his Motion for Summary Judgment, dismissing Plaintiffs' Complaint, and DENY Plaintiffs' Motion for Summary Judgment.

DATED this 28th day of November, 2017.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY JUDGMENT - 11

CERTIFICATE OF SERVICE

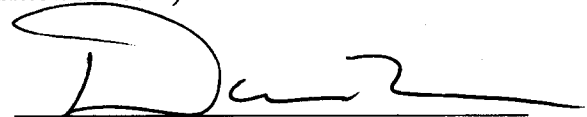
I HEREBY CERTIFY that on the 28th day of November, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 665-7290
- ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
nichole@bistlinelaw.com; sharon@bistlinelaw.com

Christopher G. Varallo
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (509) 458-2728
- ELECTRONIC MEANS (pursuant to written consent):


Darrin L. Murphey

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT BRIAN CRUMB'S MOTION FOR SUMMARY
JUDGMENT - 12

STATE OF IDAHO } ss
 COUNTY OF KOOTENAI }
 FILED: 9/27/18 }
 AT 10:04 O'CLOCK A.M. }
 CLERK, DISTRICT COURT }
 DEPUTY

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

<p>SECURITY INVESTOR FUND LLC, SECURITY FINANCIAL FUND LLC,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>BRIAN CRUMB, JENNIFER O'CALLAGHAN and BRIAN O'CALLAGHAN, JITINVEST LLC, SPIRIT ELEMENTS, LLC, and TODD A. REEVE,</p> <p style="text-align: center;">Defendants</p>	<p>CASE NO. CV-17-5541</p> <p>MEMORANDUM DECISION AND ORDER ON PLAINTIFFS' AND DEFENDANT CRUMB'S CROSS MOTIONS FOR SUMMARY JUDGMENT</p>
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This case involves access to a subdivision and whether an express easement exists across Defendant Crumb's property to provide access to the subdivision. Plaintiffs are landowners within the subdivision who seek to have a forty (40) foot wide easement recognized across Defendant Crumb's property in the location of an existing road to allow ingress and egress for owners of property within the subdivision. Plaintiffs and Defendant Crumb submitted cross motions for summary judgment, and oral argument was held on December 5, 2017. For the reasons set forth below, the Court DENIES Plaintiffs' motion for summary judgment and GRANTS Defendant

MEMORANDUM DECISION AND ORDER ON PLAINTIFFS' AND DEFENDANT
 CRUMB'S CROSS MOTIONS FOR SUMMARY JUDGMENT – 1

Crumb's motion for summary judgment.

I. FACTS

Abbey & Crumb LLC (A&C LLC) was formed to develop the subdivision. Declaration of Richard J. Abbey, ¶ 3 (Oct. 1, 2017). Plaintiffs are landowners within the subdivision. *See* Declaration of Darrin L. Murphey, Ex. A, p. 6 (Nov. 7, 2017). Defendant Brian Crumb, his wife, and his mother were members of A&C LLC as of formation in July 2005. Decl. Abbey, ¶ 2. Defendant Brian Crumb and his family members withdrew from A&C LLC in September 2006. *Id.* at ¶¶ 6, 13. As part of the withdrawal, A&C LLC transferred the four lots to the Crumbs over which Plaintiffs now claim an easement. *Id.* at ¶¶ 6, 13, Ex. G.

Sometime in 2006, A&C LLC retained engineering firm Inland Northwest Consultants (INC) to design and supervise construction of an access road through the subdivision from the public road. *Id.* at ¶ 7. INC advised that it would be much cheaper to construct the access road through Crumb's lots, rather than from the public road. *Id.*

Restrictive covenants (CCRs) pertaining to the subdivision were recorded by A&C LLC in January 2006, which mention maintenance of a common road. *Id.* at ¶ 4, Ex. D. The CCRs mention an easement "shown in Exhibit 'A'" which is purportedly "attached and incorporated herein." *Id.* However, the "Exhibit 'A'" to the CCRs is not included within or attached to Exhibit D (the CCRs) to Abbey's Declaration. *See id.* at ¶ 4, Ex. D. As Richard Abbey admitted, the document intended as Ex. A to the CCRs (showing location of the road) was not actually recorded with the CCRs. *Id.* at ¶ 19, Ex. I. There is a dispute of fact as to what was actually intended to be attached to the CCRs. Abbey claims that the intended "Exhibit A" to the CCRs was attached to Abbey's Declaration as Ex. I thereto, which shows the entrance road planned over Crumb's property. *Id.* at ¶ 19, Ex. I. Defendant Crumb disputes this, claiming that "Exhibit A" to the CCRs was intended to be a different

document showing the first planned entrance road, which provided access from a public road, rather than over Crumb's property. Declaration of Brian Crumb, ¶ 12 (Nov. 6, 2017).

On September 15, 2016, Defendant Crumb sent an email addressed to "Zac" but purportedly sent to Richard Abbey and "others." *See* Decl. Abbey, ¶ 20. The Crumb email states, "It was said that if we came from the 12 acre parcel that my wife and I just happen to own, it could be done for a lot less money and a lot less disturbance to the land and would be worth doing and we could make some money selling the lots. So it was agreed that we would make the entrance for the 200 acres on Frankie's and my 12 acres parcel (where the double green gate is now)." *Id.*

When Defendant Crumb exited A&C LLC in September 2006, the LLC's members entered into the Agreement of Members to Transfer and Withdraw ("Buyout Agreement"). *Id.* at ¶ 13, Ex. G. As previously mentioned and as part of the withdrawal, A&C LLC transferred the four lots to the Crumbs over which Plaintiffs now claim an easement. *Id.* at ¶¶ 6, 13, Ex. G. The Buyout Agreement requires A&C LLC to "complete the road building work and to provide ingress and egress access to each lot." *Id.* at ¶ 14, Ex. G. The Buyout Agreement also contains a merger clause stating that the written agreement is the entire agreement of the parties. *Id.* at ¶ 14, Ex. G. The deeds conveying the lots to the Crumbs, executed along with the Buyout Agreement, do not reserve any easements. *See id.* at ¶ 14, Ex. G.

Crumb's answer to Interrogatory No. 1 included the statement that A&C LLC and Crumb "verbally agreed that upon the receipt of payment in the amount of \$200,000.00 to Defendant Crumb, Defendant Crumb would grant easements..." Plaintiff's Motion for Summary Judgment, Ex. 1 (Defendant Crumb's Answer to Interrogatory No. 1). It further states that although he hadn't yet received the compensation, "Defendant Crumb verbally promised the four (4) original purchasers [who bought property in the subdivision while Crumb was a member of A&C LLC] that he would

MEMORANDUM DECISION AND ORDER ON PLAINTIFFS' AND DEFENDANT
CRUMB'S CROSS MOTIONS FOR SUMMARY JUDGMENT – 3

grant an easement over and across his adjacent property if the original purchaser desired an easement and provided Defendant Crumb with an easement instrument in acceptable form.” *Id.*

Crumb testified on May 29, 2014 in a deposition that he has granted “an access and roadway use easement” to “anybody that wants it.” Corrected Affidavit of Arthur M. Bistline, Ex. Deposition of Brian Crumb, p. 67 (Oct. 3, 2017). However, Crumb states he only gave a “verbal” easement to Abbey. *Id.* Crumb testified numerous times that he told people they had access. *Id.* at Depo. Crumb, p. 73. Crumb never testifies that he granted any easements in writing. *See id.* Crumb somewhat ambiguously testified that he “voluntarily gave up the agreement to receive compensation for” use of his lots, but also that it’s possible he could still receive compensation. *Id.* at Depo. Crumb, p. 114.

Richard Abbey, managing member of A&C LLC, declares that the Crumbs agreed that the entrance would be used as permanent, perpetual, access to the subdivision for the benefit of subdivision landowners. Decl. Abbey, ¶ 9. Abbey claims A&C LLC accepted this “offer” from the Crumbs. *Id.* at ¶ 10.

The original access road to the subdivision used logging roads with steep grades. Declaration of Zacharie Eifler, ¶ 3 (Nov. 14, 2017). A new access road was actually constructed over the Crumb property, which rendered the previous access road impassable by wheeled vehicles. *Id.* at ¶ 4. A&C LLC performed work on and spent approximately \$45,000.00 for the construction of the new access road over Crumb’s property. (Second) Declaration of Richard J. Abbey, ¶ 3 (Nov. 20, 2017).

Defendant Crumb allowed owners of property within the subdivision to use the new road over his property at least until July 2017. Decl. Abbey, ¶ 23; Corrected Aff. Bistline, Ex. (Depo. Crumb, pp. 60, 67, 73); (Second) Decl. Abbey, ¶ 4.

MEMORANDUM DECISION AND ORDER ON PLAINTIFFS’ AND DEFENDANT
CRUMB’S CROSS MOTIONS FOR SUMMARY JUDGMENT – 4

II. SUMMARY JUDGMENT STANDARD

Idaho Rule of Civil Procedure 56 provides for summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, based on the “pleadings, depositions, and admissions on file, together with [any] affidavits....” *Farmers Nat. Bank v. Shirey*, 126 Idaho 63, 67, 878 P.2d 762, 766 (1994); I.R.C.P. 56. Supporting and opposing affidavits must set forth such facts as would be admissible in evidence. *Id.*

Once the moving party has properly supported the motion for summary judgment, the non-moving party must come forward with evidence which contradicts the evidence submitted by the moving party and which establishes the existence of a material issue of disputed fact. *Zehm v. Associated Logging Contractors, Inc.*, 116 Idaho 349, 350, 775 P.2d 1191, 1192 (1988). If the record contains conflicting inferences or if reasonable minds might reach different conclusions, a summary judgment must be denied. *Roell v. City of Boise*, 130 Idaho 199, 200, 938 P.2d 1237, 1238 (1997); *Bonz v. Sudweeks*, 119 Idaho 539, 541, 808 P.2d 876, 878 (1991). However, not all evidence in the record will raise genuine issues: “[T]o withstand a motion for summary judgment, the [non-moving party’s] case must be anchored in something more solid than speculation. A mere scintilla of evidence is not enough to create a genuine issue.” *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 853, 727 P.2d 1279, 1281 (Ct. App. 1986); *see also Blickenstaff v. Clegg*, 140 Idaho 572, 577, 97 P.3d 439, 444 (2004); *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134 Idaho 84, 87, 996 P.2d 303, 306 (2000).

The facts in the record are to be liberally construed in favor of the party opposing the motion. *G & M Farms v. Funk Irr. Co.*, 119 Idaho 514, 517, 808 P.2d 851, 854 (1991). The opposing party cannot rest upon mere allegations or denials, but the party’s response, by affidavits or otherwise, must set forth specific facts showing that there is a genuine issue of material fact. I.R.C.P. 56; *Smith*

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CRUMB’S CROSS MOTIONS FOR SUMMARY JUDGMENT – 5

v. Meridian Joint School District No. 2, 128 Idaho 714, 719, 918 P.2d 583, 588 (1996); *G & M Farms*, 119 Idaho at 517, 808 P.2d at 854; *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 853, 727 P.2d 1279, 1281 (Ct. App. 1986).

In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. "[The] standard [for granting summary judgment] mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a)...."

Dunnick v. Elder, 126 Idaho 308, 311–312, 882 P.2d 475, 478–479 (Ct. App. 1994) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986) (internal citations omitted)).

"The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review, and this Court must evaluate each party's motion on its own merits." *Stafford v. Klosterman*, 134 Idaho 205, 207, 998 P.2d 1118, 1119 (2000).

"Ordinarily, this Court liberally construes all disputed facts and draws all reasonable inferences and conclusions supported by the record in favor of the nonmoving party." *Hoffer v. Callister*, 137 Idaho 291, 293, 47 P.3d 1261, 1263 (2002). "However, where the evidentiary facts are undisputed and the trial court rather than a jury will be the trier of fact, summary judgment is appropriate, despite the possibility of conflicting inferences because the court alone will be responsible for resolving the conflict between those inferences." *Id.*

III. DISCUSSION

a. Defendant Crumb's Evidentiary Objections

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Before considering the merits of a summary judgment motion, a trial court must first determine the admissibility of the evidence offered in support or opposition of that motion. *Hecla Mining Co. v. Star-Morning Mining Co.*, 122 Idaho 778, 784, 839 P.2d 1192, 1198 (1992); *Gem State Ins. Co. v. Hutchinson*, 145 Idaho 10, 175 P.3d 172 (2007). A court may only rely on evidence that would be admissible at trial when determining a summary judgment motion. *Petricevich v. Salmon River Canal, Co.*, 92 Idaho 865, 869 452 P.2d 362, 366 (1969); I.R.C.P. 56(e).

Defendant Crumb has made objections to certain evidence submitted by Plaintiffs to support and oppose the cross motions for summary judgment before the Court. The Court rules on those objections as follows:

1. Defendant Crumb seeks exclusion of Bistline Decl., Ex. "A" and Exhibit 2 attached to Plaintiffs' Motion for Summary Judgment on the grounds of lack of foundation and hearsay. Although Exhibit 2 attached to the motion lacks foundation, both items identified contain identical excerpts of Defendant Crumb's deposition in a previous case. The exhibit to Bistline's declaration contains the necessary foundation and it is not hearsay because it is an admission by a party-opponent. Objection overruled.
2. Defendant Crumb seeks exclusion of Abbey Decl., Ex. "E" and Complaint, Ex. "A" on the grounds of lack of foundation and hearsay. Objection overruled.
3. Defendant Crumb seeks exclusion of a portion of Abbey Decl. ¶ 15 and Exhibit "H" on the grounds of lack of foundation and hearsay. Objection overruled.
4. Defendant Crumb seeks exclusion of Abbey Decl. ¶ 16 on the grounds of lack of foundation, speculation, and hearsay. Objection overruled.
5. Defendant Crumb seeks exclusion of Abbey Decl. ¶ 17 on the grounds of lack of foundation and hearsay. Objection overruled.

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6. Defendant Crumb seeks exclusion of Abbey Decl. ¶ 18 on the grounds of lack of foundation, speculation, and hearsay. Objection overruled.
7. Defendant Crumb seeks exclusion of Abbey Decl. ¶ 19 and Exhibit “I” on the grounds of lack of foundation, speculation, and hearsay. Objection overruled.
8. Defendant Crumb seeks exclusion of Abbey Decl. ¶ 20 on the grounds of lack of foundation, speculation, hearsay, and conclusion. Objection overruled.
9. Defendant Crumb seeks exclusion of Abbey Decl. ¶ 21 on the grounds of lack of foundation, speculation, hearsay, and conclusion. Objection overruled.
10. Defendant Crumb seeks exclusion of the first sentence of Abbey Decl. ¶ 23 on the grounds of lack of foundation and hearsay. Objection sustained.
11. Defendant Crumb seeks exclusion of Abbey Decl. ¶ 24 on the grounds of lack of foundation, speculation, hearsay, and conclusion. Objection overruled.
12. Defendant Crumb seeks exclusion of Abbey Decl. ¶ 25 on the grounds of lack of foundation, speculation, hearsay, and conclusion. Objection overruled.

The Court notes that it does not find any of the evidence objected to by Defendant Crumb to be dispositive with respect to this motion. None of the evidence objected to supplies a missing piece of evidence necessary to grant Plaintiffs’ motion for summary judgment, and none of the evidence objected to is sufficient to create a genuine issue of material fact which would prevent granting Defendant Crumb’s motion for summary judgment.

b. Cross Motions for Summary Judgment

Plaintiffs seek summary judgment establishing that “Brian Crumb and Frankie Crumb created an express forty (40) foot right of way easement over the CRUMB ENTRANCE by virtue of an oral agreement that was fully performed.” Plaintiffs’ Motion for Summary Judgment, p. 12.

Defendant Crumb seeks summary judgment dismissing Plaintiffs' Complaint. Defendant Brian Crumb's Memorandum in Support of Motion for Summary Judgment, p. 14.

Plaintiffs' Complaint alleges two Causes of Action: 1) Breach of Contract and Fraud and 2) Declaratory Judgment. *See* Complaint. Essentially, Plaintiff alleges that Defendant Crumb orally agreed to create and grant an express forty (40) foot right of way easement over the CRUMB ENTRANCE, and then failed to perform the agreement. *Id.* As such, Plaintiffs seek specific performance of the alleged contract, damages, and a declaratory judgment quieting title and establishing that such express easement exists. *Id.* Plaintiffs have not claimed an easement under any alternative legal theories, so this Court must only determine whether an express easement has been established. *See id.*; *see also* Plaintiffs' Motion for Summary Judgment.

Plaintiffs' Complaint also alleges that Defendant Crumb defrauded purchasers of land within the subdivision by not informing them that an easement had not actually been granted. *See* Complaint. In response to Defendant Crumb's motion for summary judgment, Plaintiffs submitted argument and evidence only addressing the contractual claim. Plaintiffs submitted no evidence supporting the allegations pertaining to their fraud claim – that Defendant Crumb failed to inform owners of land within the subdivision of his failure to grant a written easement prior to their purchase of subdivision lots. *See id.*

1. Plaintiffs have failed to support their claim of an oral contract with evidence of all material terms of the alleged oral contract.

Plaintiffs contend that an express easement exists across the Crumb property but fail to point to any writing in evidence which would satisfy the statute of frauds. Rather, Plaintiffs' claims focus on an alleged oral agreement to grant an express easement. Plaintiffs further argue that the alleged oral agreement was partially performed, so equity requires that the oral contract be enforced even if it would otherwise be unenforceable due to the statute of frauds.

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“At a minimum, a valid express easement must identify the land subject to the easement and express the intent of the parties.” *Machado v. Ryan*, 153 Idaho 212, 218, 280 P.3d 715, 721 (2012). “Thus, while specific words are not required to create an express easement, the writing must make clear the parties’ ‘intention to establish a servitude.’” *Id.* (quoting *Capstar Radio Operating Co. v. Lawrence*, 143 Idaho 704, 707, 152 P.3d 575, 578 (2007)).

I.C. § 9-503 requires that the transfer of an interest in real property must be evidenced by a writing signed by the party relinquishing the interest:

No estate or interest in real property ... can be created, granted, assigned, surrendered, or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by his lawful agent thereunto authorized by writing.

I.C. § 9-503 (alteration added for clarification).

“Because an express easement is an interest in real property, it ‘may only be created by a written instrument.’” *Machado*, 153 Idaho at 218 (quoting *Tower Asset Sub Inc. v. Lawrence*, 143 Idaho 710, 714, 152 P.3d 581, 585 (2007)). “An easement established by unwritten agreement is merely a license, revocable by the licensor.” *Bob Daniel and Sons v. Weaver*, 106 Idaho 535, 541, 681 P.2d 1010, 1016 (Ct. App. 1984).

However, I.C. § 9-504 provides an exception to I.C. § 9-503’s writing requirement in case of part performance of an oral contract. “The preceding section must not be construed ... to abridge the power of any court to compel the specific performance of an agreement, in case of part performance thereof.” I.C. § 9-504 (alteration added for clarification). Additionally,

“Before an oral agreement to convey land will be specifically enforced, the underlying contract must be proven by clear and convincing evidence. Further, the proof must show that the contract is complete, definite and certain in all its material terms, or that it contains provisions which were capable in themselves of being reduced to certainty. The material terms which must be identified in a contract to convey land include the parties to the contract, the subject matter of the contract, the

price or consideration, and a description of the property.”

Bear Island Water Ass’n. Inc. v. Brown, 125 Idaho 717, 722, 874 P.2d 528, 533 (1994) (internal citations omitted).

Plaintiffs have not submitted evidence establishing all material terms of the underlying oral agreement whereby Crumb agreed to grant an easement. Plaintiffs have failed to submit any evidence of the price or consideration that Plaintiffs (and/or their predecessors in interest) agreed to pay or provide to Defendant Crumb for granting the easement. The evidence shows only that Defendant Crumb agreed that an entrance road could be constructed over his property (*see* Decl. Abbey, ¶ 20), that a road was actually constructed over Defendant Crumb’s property (*see* (Second) Decl. Abbey, ¶ 3), and that Defendant Crumb allowed owners of property within the subdivision to travel over the road at least up until July 2017 (*see* Decl. Abbey, ¶ 23; *see also* (Second) Decl. Abbey, ¶ 4). There is no evidence that Defendant Crumb agreed to grant an easement in return for A&C LLC’s efforts to construct the road. Relatedly, Plaintiffs have not shown that the efforts and expenses to construct the road constituted part performance of any agreement because there is no evidence of what sort of performance/consideration the agreement required.

The only evidence of consideration offered or claimed in any oral agreement regarding an easement over Crumb’s property is Crumb’s claim that he was to be paid \$200,000.00 for the easement by A&C LLC. *See* Plaintiff’s Motion for Summary Judgment, Ex. 1 (Defendant Crumb’s Answer to Interrogatory No. 1); *see also* Decl. Crumb, ¶ 14. Crumb never actually received any amount of money for the easement from A&C LLC. Decl. Crumb, ¶ 16. Plaintiffs have not submitted any evidence disputing Crumb’s claim that he was to be paid \$200,000.00 for the easement by A&C LLC. However, Plaintiffs’ argue that Crumb’s claim is “dubious” and “defies all logic.” *See* Plaintiff’s Response to Defendant’s Motion for Summary Judgment, p. 6. Plaintiffs

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argue that “[t]he only dispute in this case pertains to the consideration to be paid for the access road.” *Id.* Plaintiffs’ disagreement on the price of \$200,000.00 claimed by Crumb only leads to the inescapable conclusion that the material term of “price” was never agreed upon by the parties.

Crumb’s deposition testimony suggests that Crumb may have intended to grant an “easement” for access to the landowners, but it doesn’t establish that any written easements were ever executed – only that Crumb permitted landowners to pass over his property. *See* Corrected Aff. Bistline, Ex. (Depo. Crumb, pp. 60, 67, 73). Likewise, the Crumb email doesn’t establish that an easement was ever granted or that there was an agreement with consideration for the grant of an easement. *See* Decl. Abbey, ¶ 20. The email demonstrates an acquiescence to place the entrance on the Crumb property, but it does not indicate that subdivision property owners would be granted perpetual access through the entrance. *See id.* Finally, while the Buyout Agreement contemplates that it was the responsibility of A&C LLC to “complete the road building work and to provide ingress and egress access to each lot,” there remains no evidence that a written easement was ever granted or that Defendant Crumb agreed to grant an easement in a contract supported by consideration. *See* Decl. Abbey, Ex. G. If there were such an agreement at the time of the Buyout Agreement, then the deeds transferring the Crumb lots could have reserved an easement for access over the roadway, but no such easements were reserved. *See id.* The Buyout Agreement’s merger clause serves as further evidence that there was no additional agreement between Defendant Crumb and A&C LLC to grant an easement. *See id.*

The evidence of reliance or part performance submitted by the Plaintiffs involved A&C LLC’s efforts to construct the new road through the Crumb property. Plaintiffs contend that A&C LLC’s expenses of approximately \$45,000.00 and construction of the entrance road through Defendant Crumb’s property constitute part performance of the oral agreement. (*see* Plaintiffs’

MEMORANDUM DECISION AND ORDER ON PLAINTIFFS’ AND DEFENDANT
CRUMB’S CROSS MOTIONS FOR SUMMARY JUDGMENT – 12

Response to Defendant's Motion for Summary Judgment, p. 5, *see also* (Second) Decl. Abbey, ¶ 3). However, Plaintiffs have failed to present any evidence tending to show that the road construction, or anything else, was ever agreed upon as consideration in return for Crumb agreeing to grant an easement.

2. Plaintiffs have failed to establish that any detrimental reliance or part performance was solely referable to the alleged oral agreement.

To the extent Plaintiffs argue that road construction was provided in reliance upon an oral agreement, "such reliance cannot be established by conduct referable to a cause other than the oral contract." *Int'l Bus. Machines Corp. v. Lawhorn*, 106 Idaho 194, 198, 677 P.2d 507, 511 (Ct. App. 1984). In this case, no specific oral agreement or consideration has been identified, and there is uncontroverted evidence that A&C LLC and other property owners were at least granted revocable licenses for ingress and egress over the road through Crumb's property until 2017. Corrected Aff. Bistline, Ex. (Depo. Crumb, pp. 60, 67, 73); *see also* Decl. Abbey, ¶ 20; (Second) Decl. Abbey, ¶ 4. Plaintiffs have not shown that the road construction was solely referable to the alleged oral contract. For example, the road construction activities might instead be referable to Defendant Crumb granting a license to use the roadway combined with the fact that the alternative road would have been far more expensive to construct and would have used more land. Corrected Aff. Bistline, Ex. (Depo. Crumb, pp. 67, 73); *see also* (Second) Decl. Abbey, ¶ 4; Decl. Abbey, ¶ 7.

Thus, Plaintiffs have not established the existence of an express easement or an oral contract to grant an express easement. Plaintiffs have failed to establish the material terms of the alleged oral agreement. Namely, there is no evidence of the consideration bargained for in return for Defendant Crumb's alleged agreement to grant an easement. Furthermore, Plaintiffs' claimed reliance or part performance (road construction) is not solely referable to the alleged oral agreement.

As such, the road construction cannot constitute part performance of any oral contract to grant an

easement.

3. Plaintiffs have not submitted evidence supporting their fraud claim.

In addition to their contract based claim, Plaintiffs' Complaint also alleges that Defendant Crumb defrauded purchasers of land within the subdivision by not informing purchasers that an easement had not actually been granted over Crumb's property. *See* Complaint. Defendant Crumb's motion for summary judgment clearly seeks dismissal of Plaintiffs' entire complaint. *See* Defendant Brian Crumb's Memorandum in Support of Motion for Summary Judgment, p. 14.

"The moving party is 'entitled to a judgment as a matter of law' because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof." *Dunnick v. Elder*, 126 Idaho 308, 311–312, 882 P.2d 475, 478–479 (Ct. App. 1994) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986)).

To prove fraud, a plaintiff must show by clear and convincing evidence: "(1) a statement or a representation of fact; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity; (5) the speaker's intent that there be reliance; (6) the hearer's ignorance of the falsity of the statement; (7) reliance by the hearer; (8) justifiable reliance; and (9) resultant injury." *Doe v. Boy Scouts of Am.*, 159 Idaho 103, 108, 356 P.3d 1049, 1054 (2015).

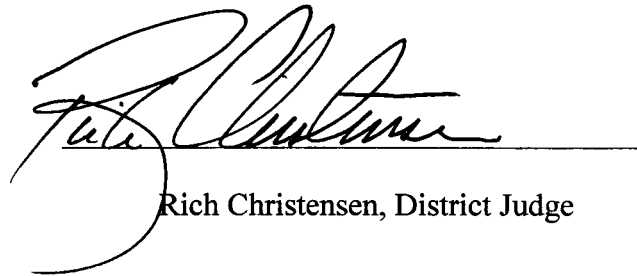
Plaintiffs have submitted no evidence or argument in support of their fraud claim. Plaintiffs have not submitted evidence that Defendant Crumb made any knowingly false material statement, that Defendant Crumb intended reliance upon said statement, that purchasers did not know of said statement's falsity, or that any purchasers actually or justifiably relied on said statement. Meanwhile, Defendant Crumb submitted evidence that he did not have any discussions or negotiations with Plaintiffs prior to Plaintiffs' purchase of property within the subdivision, nor did

Defendant Crumb “offer, promise, or otherwise agree to grant an easement to Plaintiffs over and across the Crumb Property.” *See* Decl. Crumb, ¶ 29. As such, Plaintiffs have not submitted evidence in support of their fraud claim on which Plaintiffs bear the burden of proof, so Plaintiff’s fraud claim must be dismissed. Therefore, Plaintiffs’ motion for summary judgment is DENIED and Defendant Crumb’s motion for summary judgment is GRANTED.¹

IV. CONCLUSION

For the reasons set forth above, Plaintiffs’ motion for summary judgment is DENIED and Defendant Crumb’s is GRANTED.

Dated this 10th day of January, 2018.



Rich Christensen, District Judge

¹ Frankie Crumb is Defendant Brian Crumb’s wife and is a co-owner of the subject Crumb property over which Plaintiffs seek to have an express easement declared. Frankie Crumb would be an indispensable party to be joined under I.R.C.P. 19 in order to grant relief in favor of Plaintiffs because Frankie Crumb has “an interest relating to the subject of the action and is so situated that disposing of the action in the person’s absence may: (i) as a practical matter impair or impede the person’s ability to protect the interest.” I.R.C.P. 19(a)(1)(B)(i). However, the Court may grant Defendant Brian Crumb’s MSJ dismissing Plaintiffs’ complaint without requiring that Frankie Crumb be made a party because, as a practical matter, granting summary judgment in favor of Defendant Brian Crumb will not impair or impede Frankie Crumb’s ability to protect her interest in the property. Frankie Crumb will be left with the exact same rights and interest in the property as she had before this suit was commenced.

I hereby certify that on the 10th day of January, 2018, a true and correct copy of the foregoing was as follows:

Art Bistline
Attorney at Law
FAX 208-665-7290

Darrin Murphy
Attorney at Law
FAX 208-667-7625

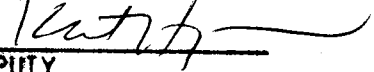
JIM BRANNON, Clerk of the Court, by  _____, Deputy Clerk. 

2/1/18

**MEMORANDUM DECISION AND ORDER ON PLAINTIFFS' AND DEFENDANT
CRUMB'S CROSS MOTIONS FOR SUMMARY JUDGMENT - 16**

2018 JAN 19 AM 9:42

CLERK DISTRICT COURT


DEPUTY

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

Security Investor Fund LLC, Security Financial)
Fund LLC)

Plaintiffs,)

) Case No. CV 2017-5541

v.)

) JUDGMENT

Brian Crumb, Jennifer O'Callaghan and Brian)
O'Callaghan, Jitinest LLC, Spirit Elements,)
LLC, and Todd A. Reeve,)

Defendants,)

JUDGMENT IS ENTERED AS FOLLOWS:

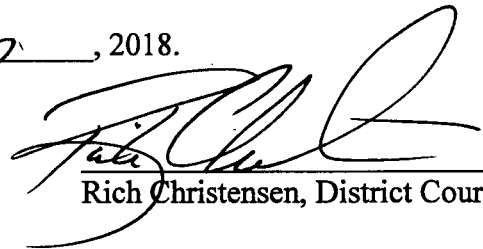
1. Plaintiffs' Complaint for damages and judgment declaring a forty (40) foot wide easement over and across Defendant Brian Crumb's real property, described as the North half of the East half of Government Lot 3 in Section 15, Township 50 North, Range 5 West, Boise Meridian, Kootenai County, State of Idaho, for use as an ingress and egress road by the owners of the lots in the subdivision described as the Second Amendment to the Fritz Heath Tracts,

JUDGMENT - 1

Idaho State Code Plat, duly recorded in the records of Kootenai County at Book J, Page 200, as Instrument No. 1951580, on May 23, 2005, is hereby DISMISSED WITH PREJUDICE.

2. Defendant Brian Crumb is the prevailing party. Upon timely application, the Court will address the award of attorney fees and costs to Defendant Brian Crumb and against Plaintiffs, pursuant to the Idaho Rules of Civil Procedure.

DATED this 18th day of July, 2018.


Rich Christensen, District Court Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19 day of January, 2018, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

DARRIN L. MURPHEY
Murphey Law Office, PLLC
402 West Canfield Avenue, Suite 2
Coeur d'Alene, ID 83815

U.S. MAIL
 TELECOPY (FAX) to: (208) 667-7625

BRENT G. SCHLOTTHAUER
VASSEUR & SCHLOTTHAUER, PLLC
409 Coeur d'Alene Avenue
P.O. Box 808
Coeur, d'Alene, ID 83816-0808

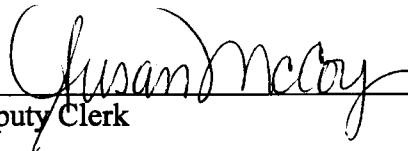
U.S. MAIL
 TELECOPY (FAX) to: (208) 765-4702

ARTHUR M. BISTLINE
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

U.S. MAIL
 TELECOPY (FAX) to: (208) 665-7290

CHRISTOPHER G. VARALLO
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

U.S. MAIL
 TELECOPY (FAX) to: (509) 458-2728


Deputy Clerk

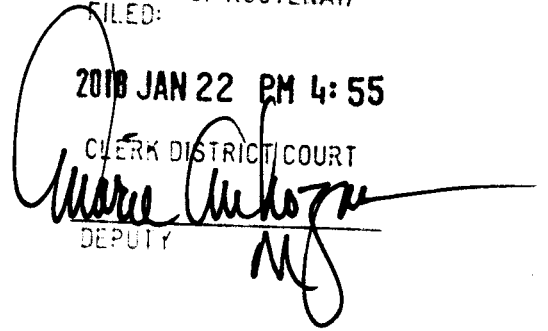
JUDGMENT - 3

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2018 JAN 22 PM 4:55

CLERK DISTRICT COURT

DEPUTY



DARRIN L. MURPHEY
Murphey Law Office, PLLC
402 West Canfield Avenue, Suite 2
Coeur d'Alene, ID 83815
Telephone: (208) 667-7621
Facsimile: (208) 667-7625
ISBA# 6221

BRENT G. SCHLOTTHAUER
VASSEUR & SCHLOTTHAUER, PLLC
409 Coeur d'Alene Avenue
P.O. Box 808
Coeur, d'Alene, ID 83816-0808
Telephone: (208) 664-4457
Facsimile: (208) 765-4702
ISBA# 6104

Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial)
Fund LLC)

Plaintiffs,)

) Case No. CV 2017-5541

v.)

) MOTION FOR ATTORNEY FEES

Brian Crumb, Jennifer O'Callaghan and Brian)
O'Callaghan, Jitinvest LLC, Spirit Elements,)
LLC, and Todd A. Reeve,)

Defendants,)
)
)

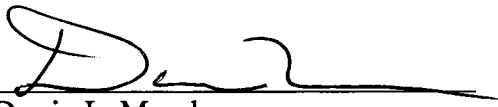
COMES NOW Defendant Brian Crumb, by and through his attorney of record, Darrin L. Murphey, and moves the Court for an order awarding attorney fees pursuant to the Court's

MOTION FOR ATTORNEY FEES - 1

Memorandum Decision and Order on Plaintiffs' and Defendant Crumb's Cross Motions for Summary Judgment, IRCP 54(e)(1), the Agreement of Members of Abbey & Crumb Developments, LLC, as to Transfer of Assets and Withdrawal of Members, Idaho Code § 12-120(3) and/or Idaho Code § 12-121. This motion is supported by the Memorandum of Costs and Memorandum in Support of Motion for Attorney Fees filed contemporaneously herewith.

DATED this 22nd day of January, 2018.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

MOTION FOR ATTORNEY FEES - 2

CERTIFICATE OF SERVICE

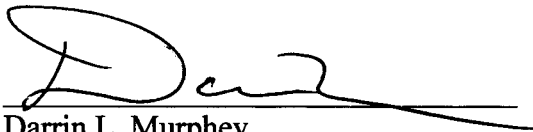
I HEREBY CERTIFY that on the ^{not}22 day of January, 2018, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 665-7290
- ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com; nichole@bistlinelaw.com; sharon@bistlinelaw.com

Christopher G. Varallo
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (509) 458-2728
- ELECTRONIC MEANS (pursuant to written consent):


Darrin L. Murphey

MOTION FOR ATTORNEY FEES - 3

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2018 JAN 22 PM 4:55

CLERK DISTRICT COURT

Mark Anderson
DEPUTY
M

DARRIN L. MURPHEY
Murphey Law Office, PLLC
402 West Canfield Avenue, Suite 2
Coeur d'Alene, ID 83815
Telephone: (208) 667-7621
Facsimile: (208) 667-7625
ISBA# 6221

BRENT G. SCHLOTTHAUER
VASSEUR & SCHLOTTHAUER, PLLC
409 Coeur d'Alene Avenue
P.O. Box 808
Coeur, d'Alene, ID 83816-0808
Telephone: (208) 664-4457
Facsimile: (208) 765-4702
ISBA# 6104

Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial)
Fund LLC)

Plaintiffs,)

Case No. CV 2017-5541

v.)

MEMORANDUM OF COSTS

Brian Crumb, Jennifer O'Callaghan and Brian)
O'Callaghan, Jitinvest LLC, Spirit Elements,)
LLC, and Todd A. Reeve,)

Defendants,)

DARRIN L. MURPHEY states as follows:

MEMORANDUM OF COSTS - 1

1. I am the attorney of record for Defendant Brian Crumb in this matter, and have personal knowledge of the facts set forth herein.

2. That I hereby submit the following Memorandum of Costs pursuant to Rule 54(d)(1), Idaho Rules of Civil Procedure:

3. That Defendant Brian Crumb is the prevailing party in that he obtained all of the relief he sought, dismissal of Plaintiffs' Complaint. *See* Memorandum Decision and Order on Plaintiffs' and Defendant Crumb's Cross Motions for Summary Judgment.

4. That the Court entered its Judgment in this matter on January 19, 2018, dismissing Plaintiffs' Complaint with prejudice.

5. That Defendant Brian Crumb is entitled to an award of his attorney fees pursuant to Idaho Code § 12-120(3), as this matter is an action for an alleged commercial transaction. Plaintiffs' Complaint, p. 5, paragraph 15, alleges that attorney fees should be awarded in this matter as a "commercial dispute".

6. That Defendant Brian Crumb is entitled to an award of his attorney fees pursuant to the Agreement of Members of Abbey & Crumb Developments, LLC, as to Transfer of Assets and Withdrawal of Members, a true and correct copy of which is attached to the Declaration of Richard Abbey dated October 1, 2017, as Exhibit "G", and the Declaration of Brian Crumb dated November 7, 2017, as Exhibit "F", which states on page 4, as follows:

DEFAULT: If any legal action is commenced by any party against another party, as a result of this transaction, the prevailing party in any lawsuit shall be entitled to their reasonable attorney fees.

7. That Defendant Brian Crumb is entitled to an award of his attorney fees pursuant

MEMORANDUM OF COSTS - 2

to Idaho Code § 12-121, as this matter was brought and pursued frivolously, unreasonably or without foundation.

8. That the undersigned attests as follows to the factors set forth in Rule 54(e)(3),

IRCP:

(A) The time and labor required.	I, the undersigned expended 84.50 hours on behalf of Defendant Brian Crumb in this matter.
(B) The novelty and difficulty of the questions.	The questions were of typical difficulty.
(C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.	The legal service provided required general litigation, legal research and writing skills, and general knowledge and experience of Idaho real property law. That I, the undersigned have more than 17 years experience.
(D) The prevailing charges for like work.	Based on my experience and knowledge, \$250 is at or below the prevailing charge for litigation for like work. That judges in the First Judicial District have awarded attorney fees at the rate of \$250 per hour for similar work performed by the undersigned.
(E) Whether the fee is fixed or contingent.	The fee is hourly.
(F) The time limitations imposed by the client or the circumstances of the case.	N/A
(G) The amount involved and the results obtained.	The relief sought was dismissal of Plaintiffs' Complaint, which was obtained.
(H) The undesirability of the case.	N/A
(I) The nature and length of the professional relationship with the client.	I, the undersigned have represented Brian Crumb since 2015.
(J) Awards in similar cases.	The requested award is typical for this type of case.
(K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.	The time expended on legal research was reasonable and necessary. No cost of legal research was charged.
(L) Any other factor which the court deems appropriate in the particular case.	N/A.

9. That I, Darrin L. Murphey, performed the legal services described below on
MEMORANDUM OF COSTS - 3

behalf of Defendant Brian Crumb in this matter:

Date	Time	Description
07/26/17	1.00	Draft Notice of Appearance. Draft email to Art Bistline re: above, service via email, and extension of time to file an Answer. Draft email to Brian re: above.
07/27/17	.25	Draft email to Art re: Notice of Appearance and road description. Draft email to Brian re: above.
08/18/17	2.75	Meeting with Brian re: background facts concerning lawsuit. Draft email to Brian re: preliminary litigation plan.
08/23/17	.50	Receive and review Plaintiffs' first set of discovery. Draft email to Brian re: above.
09/01/17	3.00	Review documents re: background facts. Draft Answer to Complaint. Draft email to Brian and Brent re: above and additional facts.
09/04/17	.25	Draft email to Brian re: Answer and additional background information.
09/06/17	.25	Draft reply email to Art re: Answer and discussing settlement.
09/08/17	2.00	Meeting with Brian re: answers and responses to discovery.
09/15/17	1.00	Review and analyze additional background information. Draft email to Brian re: above.
09/16/17	1.00	Meeting with Brian re: background facts, answers and responses to discovery and litigation plan.
09/19/17	.75	Revise discovery responses. Draft email to Brian re: above.
09/20/17	.25	Draft email to Art Bistline re: service of discovery. Draft email to Brian re: above.
09/26/17	.75	Draft email to Art re: settlement and mediation. Receive and review Plaintiffs' second set of discovery. Draft email to Brian re: above.
09/27/17	.75	Telephone conference with Art re: mediation. Draft email to Art re: above. Draft email to Brian re: above.
09/28/17	.25	Draft email to Art re: mediation.
09/29/17	.25	Draft reply email to Art re: mediation.
10/02/17	.75	Attend Scheduling Conference hearing. Telephone conference with Brent re: above.
10/02/17	.25	Draft reply email to Art re: mediation.
10/05/17	.25	Draft email to Brian re: litigation plan.
10/05/17	1.50	Receive and analyze Plaintiffs' Motion for Summary Judgment Documents. Draft email to Brian re: above.
10/09/17	3.50	Meeting with Brian re: facts in response to Plaintiffs' motion

MEMORANDUM OF COSTS - 4

		for summary judgment.
10/09/17	1.00	Telephone conference with Brent re: meeting with Brian and potential purchaser and litigation issues. Investigate additional background facts. Research relevant county records.
10/13/17	3.00	Meeting with Brian, potential purchaser and his counsel re: sell of property and litigation issues. Meeting with Brian re: above. Review and analyze additional documents from Brian. Draft email to Brian re: above.
10/17/17	1.75	Draft first set of Interrogatories and Request for Production to Security Investor Fund and Security Financial Fund. Draft Notice of Service.
10/17/17	.50	Research and investigate additional background facts.
10/18/17	1.00	Continued investigation of additional background facts. Review and analyze additional documents. Draft email to Brian re: above.
10/20/17	1.50	Background research and analyze documents. Telephone conference with Brian re: research and investigation of evidence support dismissal of Plaintiffs' Complaint.
10/23/17	1.75	Draft objections, answers and responses to Plaintiffs' second set of discovery. Draft email to Brian re: above. Draft email to Art's office re: discovery.
10/24/17	.75	Revise discovery answers and responses. Telephone conference with Brian re: above.
10/24/17	.50	Revise and serve discovery answers and responses. Draft email to Brian re: above.
10/26/17	.25	Draft email to Brian re: advertisement sign that was placed and remained at the entrance of the subdivision during the time Brian was a member of Abbey & Crumb.
10/27/17	.50	Review and analyze Plaintiffs' responses and answers to discovery. Draft email to Brian re: above.
11/03/17	5.00	Legal research and work on Motion for Summary Judgment.
11/04/17	5.00	Continue working on Motion for Summary Judgment.
11/05/17	4.75	Meeting with Brian. Continue working on Motion for Summary Judgment.
11/06/17	4.00	Edit and revise Motion for Summary Judgment. Meeting with Brian re: above.
11/07/17	4.50	Draft email to Art re: supplemental discovery. Edit, revise, finalize, file and serve Motion for Summary Judgment. Draft email in response to Art's letter threatening to sue Brian and Frankie for \$700,000, or settle litigation by granting access and selling lot well below market value.

MEMORANDUM OF COSTS - 5

11/08/17	.50	Telephone conference with Art's office re: confirming receipt of supplemental discovery responses and Motion for Summary Judgment. Draft email to Brian re: above.
11/10/17	.25	Telephone conference with Brian re: communications with fact witnesses.
11/13/17	.25	Draft reply email to Brian re: email communications with fact witnesses.
11/16/17	.25	Draft reply email to Brian re: communications with fact witnesses.
11/17/17	2.00	Research and work on Response to Plaintiffs' Motion for Summary Judgment.
11/19/17	3.75	Continue to research and draft Response to Plaintiffs' Motion for Summary Judgment. Draft email to Brian re: above.
11/21/17	1.00	Finalize and file Response to Plaintiffs' Motion for Summary Judgment. Receive and review Plaintiffs' Response to Defendant's Motion for Summary Judgment. Draft email to Brian re: above.
11/27/17	6.50	Research and draft Reply Brief in Support of Motion for Summary Judgment. Draft email to Brian re: above.
11/28/17	1.75	Edit, revise, finalize, file and serve Reply Memorandum in Support of Motion for Summary Judgment.
12/05/17	4.25	Prepare for and argue cross Motions for Summary Judgment. Telephone conference with Brian re: above.
01/10/18	.75	Review and analyze Memorandum Decision and Order on Plaintiffs' Motion for Summary Judgment and Defendant Crumb's Cross Motion for Summary Judgment. Draft email and telephone conference with Brian re: above.
01/11/18	.50	Draft Judgment.
11/12/18	1.75	Draft correspondence to court re: proposed Judgment. Draft email to counsel re: above. Draft email to Brian re: above. Work on Memorandum of Costs and Motion for Attorney Fees.
01/15/18	2.75	Work on Memorandum of Costs, Motion for Attorney Fees and supporting Memorandum.
01/21/18	.25	Draft email to Brian re: Judgment and Memorandum of Costs.
01/22/18	1.00	Telephone conference with Brian re: Judgment and Memorandum of Costs. Edit, revise and finalize Memorandum of Costs.

10. That I, Darrin L. Murphey, spent 84.50 hours in this matter representing Defendant Brian Crumb as described in the table above, and that based upon my knowledge and

MEMORANDUM OF COSTS - 6

experience, a reasonable hourly rate for the services that have been provided is \$250.

11. That 84.50 hours multiplied by the rate of \$250 per hour totals \$21,125.00.

12. That I, Darrin L. Murphey, believe that the attorney fees, as computed, are reasonable considering the type of litigation involved and the knowledge and experience of the undersigned in handling matters of this nature.

13. That Defendant Brian Crumb incurred the following costs as a matter of right:

Notice of Appearance Fee Fee (Rule 54(d)(1)(C)(i))	\$136.00
--	----------

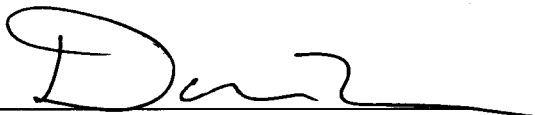
14. That the total attorney fees in the amount of \$21,125.00, plus the total costs in the amount of \$136.00, total \$21,261.00.

15. To the best of my knowledge and belief the items contained herein are correct and that costs claimed are in compliance with Rule 54, IRCP.

I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 22nd day of January, 2018.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

MEMORANDUM OF COSTS - 7

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the nd22 day of January, 2018, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 665-7290
- ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
nichole@bistlinelaw.com; sharon@bistlinelaw.com

Christopher G. Varallo
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (509) 458-2728
- ELECTRONIC MEANS (pursuant to written consent):


Darrin L. Murphey

MEMORANDUM OF COSTS - 8

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: 155

2018 JAN 22 PM 4:55

CLERK DISTRICT COURT

Marcus G. [Signature]
DEPUTY
M

DARRIN L. MURPHEY
Murphey Law Office, PLLC
402 West Canfield Avenue, Suite 2
Coeur d'Alene, ID 83815
Telephone: (208) 667-7621
Facsimile: (208) 667-7625
ISBA# 6221

BRENT G. SCHLOTTHAUER
VASSEUR & SCHLOTTHAUER, PLLC
409 Coeur d'Alene Avenue
P.O. Box 808
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Telephone: (208) 664-4457
Facsimile: (208) 765-4702
ISBA# 6104

Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial)
Fund LLC)

Plaintiffs,)

v.)

Brian Crumb, Jennifer O'Callaghan and Brian)
O'Callaghan, Jitinvest LLC, Spirit Elements,)
LLC, and Todd A. Reeve,)

Defendants,)

) Case No. CV 2017-5541

) MEMORANDUM IN SUPPORT OF
) MOTION FOR ATTORNEY FEES

COMES NOW Defendant Brian Crumb, by and through his attorney of record, Darrin L.

Murphey, and submits his Memorandum in Support of Motion for Attorney Fees.

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES - 1

I. FACTUAL AND PROCEDURAL BACKGROUND

1. On or about July 19, 2017, the Plaintiffs, Security Investor Fund LLC, and Security Financial Fund LLC (herein "Plaintiffs"), filed a verified Complaint against Brian Crumb (herein "Crumb"),¹ seeking damages and judgment declaring a forty (40) foot wide easement over and across Defendant Brian Crumb's real property, for use as an ingress and egress road by the owners of the lots in the Second Amendment to the Fritz Heath Tracts subdivision, based on an express or implied contract. (Complaint, pp. 3-4).

2. Plaintiffs' further allege in their verified Complaint that attorney fees should be awarded in this matter as a "commercial dispute". (Complaint, p. 5, ¶ 15).

3. Plaintiffs and Crumb submitted cross motions for summary judgment, and oral argument was held on December 5, 2017.

4. Specifically, Plaintiffs argued that owners within the Fritz Heath Tracts subdivision are intended beneficiaries of an oral agreement by Crumb, made some time prior to Crumb's withdrawal from Abbey & Crumb Developments, LLC, on September 26, 2006, for a 40 foot right of way over and across Crumb's property to the Fritz Heath subdivision. (Abbey Dec., filed Oct. 3, 2017, ¶ 25; Plaintiffs' Motion for Summary Judgment, p. 10).

5. Plaintiffs argued that as proof that Crumb was not entitled to any consideration for the alleged easement, in that the Agreement of Members of Abbey & Crumb Developments, LLC, as to Transfer of Assets and Withdrawal of Members (herein the "Buyout Agreement"), purports to be the complete agreement of the parties, and fails to mention consideration for the easement. (Plaintiffs' Motion for Summary Judgment, p. 13).

¹ Plaintiffs also named other landowners within the Fritz Heath Tracts subdivision as defendants. (Complaint).
MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES - 2

6. The Buyout Agreement includes an attorney fees provision, as follows:

DEFAULT: If any legal action is commenced by any party against another party, as a result of this transaction, the prevailing party in any lawsuit shall be entitled to their reasonable attorney fees.

7. On January 10, 2018, the Court entered its Memorandum Decision and Order on Plaintiffs' and Defendant Crumb's Cross Motions for Summary Judgment (herein "Decision"), denying Plaintiffs motion for summary judgment and granting Crumb's motion for summary judgment. The Court found that the Buyout Agreement does in fact include a merger clause, but it makes no mention whatsoever of an obligation on the part of Crumb to grant an easement. (Decision, pp. 3, 12). The Court also found that the deeds conveying lots to the Crumbs also do not reserve any easements. *Id.* In addition, the Court found that Crumb did not have any discussions or negotiations with Plaintiffs prior to Plaintiffs' purchase of property within the subdivision, nor did Crumb "offer, promise, or otherwise agree to grant an easement to the Plaintiffs over and across the Crumb Property." (Decision, pp. 14-15).

II. ARGUMENT

A. Crumb is entitled to attorney fees pursuant to Idaho Code § 12-120(3).

Idaho Code § 12-120(3) provides:

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.

The term "commercial transaction" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person,

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES - 3

partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof.

Idaho Code § 12–120(3) applies when “the commercial transaction comprises the gravamen of the lawsuit.” Idaho Transp. Dep’t v. Ascorp, Inc., 159 Idaho 138, 141, 357 P.3d 863, 866 (2015) (*quoting* Brower v. E.I. DuPont De Nemours & Co., 117 Idaho 780, 784, 792 P.2d 345, 349 (1990)). A gravamen is the material or significant part of the grievance or complaint. Idaho Transp. Dep’t, 159 Idaho at 141, 357 P.3d at 866 (*citing* Sims v. Jacobson, 157 Idaho 980, 985, 342 P.3d 907, 912 (2015) (*quoting* Merriam Webster's Collegiate Dictionary 509 (10th ed.1993))). The mere fact an action is brought as a declaratory judgment action does not preclude the application of Idaho Code section 12–120(3) to a case where the gravamen is a commercial transaction. Idaho Transp. Dep’t, 159 Idaho at 141, 357 P.3d at 866 (*citing* Freiburger v. J–U–B Engineers, Inc., 141 Idaho 415, 424, 111 P.3d 100, 109 (2005)). Rather, “[w]here a party alleges the existence of a contractual relationship of a type embraced by section 12–20(3), ... that claim triggers the application of the statute.” Idaho Transp. Dep’t, 159 Idaho at 141, 357 P.3d at 866 (*quoting* Continental Cas. Co. v. Brady, 127 Idaho 830, 835, 907 P.2d 807, 812 (1995)). “[A]llegations in the complaint that the parties entered into a commercial transaction and that the complaining party is entitled to recover based upon that transaction, are sufficient to trigger the application of I.C. § 12–120(3).” Garner v. Povey, 151 Idaho 462, 470, 259 P.3d 608, 616 (2011).

Here, Plaintiffs allege in their verified Complaint that Crumb is bound by an express or implied contract with all Fritz Heath landowners to provide an easement over and across Crumb’s property. (Complaint, pp. 3-4). Plaintiffs further allege in their verified Complaint that

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES - 4

they are entitled to recover attorney fees incurred “in this commercial dispute”. (Complaint, p. 5, ¶ 15). Although the Court determined that the alleged contract did not exist, a prevailing party may recover attorney fees even though no liability under a contract was established. Garner, 151 Idaho at 469, 259 P.3d at 615. “This same principle applies where the action is one to recover in a commercial transaction, regardless of the proof that the commercial transaction alleged did, in fact, occur.” *Id.* (citation omitted). Thus, according to Plaintiffs’ verified Complaint, the gravamen of this action was a commercial transaction. *Id.* at 471, 259 P.3d at 617. The Court dismissed Plaintiffs’ Complaint against Crumb with prejudice. As such, Crumb is entitled to his reasonable attorney fees pursuant to Idaho Code § 12-120(3).

B. Crumb is entitled to attorney fees pursuant to the Buyout Agreement.

Plaintiffs argued that as proof of an oral agreement by Crumb to grant an easement over and across his property, the Buyout Agreement obligated Abbey & Crumb to build a road, and that as proof that Crumb is not entitled to consideration for the alleged easement, that the Buyout Agreement, which purports to be the complete agreement of the parties, fails to mention consideration for the easement. (Plaintiffs’ Motion for Summary Judgment, pp. 12-13). The Buyout Agreement includes a merger clause and makes no mention whatsoever of an obligation on the part of Crumb to grant an easement. (Decision, pp. 3, 12). Furthermore, the Buyout Agreement includes an attorney fees provision, as follows:

DEFAULT: If any legal action is commenced by any party against another party, as a result of this transaction, the prevailing party in any lawsuit shall be entitled to their reasonable attorney fees.

Plaintiffs commenced legal action against Crumb in an apparent attempt to use the buyout

transaction to create liability on the part of Crumb. As such, Crumb is entitled to an award of his reasonable attorney fees pursuant to the Buyout Agreement.

C. Crumb is entitled to attorney fees pursuant to Idaho Code § 12-121.

Trial courts may award attorney fees under Idaho Code § 12-121 if the case was “brought, pursued or defended frivolously, unreasonably or without foundation.” Idaho Code § 12-121 (2017); I.R.C.P. 54(e)(1); Burns v. Baldwin, 138 Idaho 480, 487, 65 P.3d 502, 509 (2003). In awarding attorney fees the trial court must (1) perceive the issue as one of discretion; (2) act within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) reach its decision by an exercise of reason. *Id.* at 486-87, 65 P.3d at 508-09 (citing Sun Valley Shopping Ctr., Inc. v. Idaho Power Co., 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991)).

Here, Plaintiffs attempted to enforce an alleged oral contract for an easement, when they knew there was either no agreement as to the material terms, including price, or that no consideration was paid to Crumb. Moreover, Plaintiffs allege in their verified Complaint that they were not advised when Plaintiffs purchased lots in the Fritz Heath Tracts that easements over and across Crumb’s property to the Fritz Heath owners were not recorded. (Complaint ¶ 12). Plaintiffs allegations are frivolous, unreasonable and without foundation.

Crumb did not sell, transfer, or promise Plaintiffs anything whatsoever. (Crumb Dec., ¶¶ 25, 29; Decision, pp. 9, 14-15). Plaintiffs could have and should have searched the records of the Kootenai County Recorder, wherein they would have determined no easement existed over and

across Crumb's property to Plaintiffs' lots.² Plaintiffs failed to even ask Crumb if there was an easement over and across his property to Plaintiffs' lots. (Crumb Dec., ¶¶ 25, 29). As such, Plaintiffs' lawsuit was brought frivolously, unreasonably or without foundation. Idaho Code § 12-121 (2017); I.R.C.P. 54(e)(1).

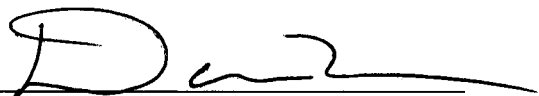
Also, it is not debatable that the merger clause contained in the Buyout Agreement precludes the alleged prior oral agreement to grant an easement over and across Crumb's adjacent property. Howard v. Perry, 141 Idaho 139, 141-42, 106 P.3d 465, 467-68 (2005). The Buyout Agreement makes no reference whatsoever as to a requirement that Crumb grant an easement. As such, Plaintiffs' lawsuit was brought frivolously, unreasonably or without foundation. Idaho Code § 12-121 (2017); I.R.C.P. 54(e)(1). Therefore, Crumb is entitled to his reasonable attorney fees pursuant to Idaho Code § 12-121.

III. CONCLUSION

Based on the foregoing, Defendant Brian Crumb, respectfully requests that the Court GRANT his Motion for Attorney Fees.

DATED this 22nd day of January, 2018.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

² "It has long been established that a purchaser is charged with every fact shown by the records and is presumed to know every other fact which an examination suggested by the records would have disclosed." Kalange v. Rencher, 136 Idaho 192, 195-96, 30 P.3d 970, 973-74 (2001) (citing Cordova v. Hood, 17 Wall. 1, 84 U.S. 1, 21 L.Ed. 587 (1873); Northwestern Bank v. Freeman, 171 U.S. 620, 19 S.Ct. 36, 43 L.Ed. 307 (1898)). "One claiming title to lands is chargeable with notice of every matter affecting the estate, which appears on the face of any recorded deed forming an essential link in his chain of title, and also with notice of such matters as might be learned by inquiry which the recitals in such instruments made it a duty to pursue." *Id.* (citing Glover v. Brown, 32 Idaho 426, 184 P. 649 (1919)).

CERTIFICATE OF SERVICE

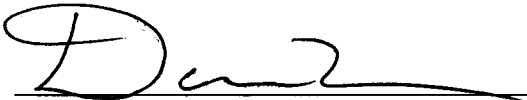
I HEREBY CERTIFY that on the 22nd day of January, 2018, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 665-7290
- ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
nichole@bistlinelaw.com; sharon@bistlinelaw.com

Christopher G. Varallo
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

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Darrin L. Murphey

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES - 8

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STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED: 5/5
2018 FEB -1 PM 1:54
CLERK DISTRICT COURT
DEPUTY

Attorneys for Plaintiffs

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

Security Investor Fund LLC, Security Financial
Fund LLC,

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinest LLC, Spirit Elements,
Inc, and Todd A. Reeve,

Defendants.

Case No. CV-2017-5541

PLAINTIFFS' MOTION TO RECONSIDER

The Plaintiffs, SECURITY INVESTOR FUND LLC and SECURITY
FINANCIAL FUND LLC, by and through their undersigned counsel, ARTHUR M.
BISTLINE of the firm BISTLINE LAW, PLLC, and pursuant to Idaho Rules of Civil
Procedure 11.2(b)(1) hereby files its Motion to Reconsider.

- I. To Form a Valid Contract, the Parties Do Not Need to Agree on
Consideration, They Only Need to Come to a Distinct and Common
Understanding of Their Rights and Obligations Under the Agreement. If
Consideration Supports this Understanding, then a Contract is Formed.
Crumbs Promise to Grant the Easement is Supported by Consideration.

This Court held that Plaintiffs have failed to submit any evidence of the price or
consideration that Plaintiffs (and/or their predecessors in interest) agreed to pay or
provide to Defendant, Crumb for granting the easement." This is an error because

PLAINTIFFS' MOTION TO RECONSIDER -1

Plaintiffs were not required to show an agreement on what was to be paid to Crumb, only that Crumb had agreed with the LLC to allow the use of his property for the access to the LLC's project and that said agreement was supported by consideration, which Plaintiffs did.

This is an express easement case. The evidence on Summary Judgment is clear that the parties had some agreement for Crumb to provide an easement as Crumb himself testified, it is not just in writing. The Court has found that no meeting of the minds existed on what Crumb was to be paid for this easement so no contract was formed. This is an error because the only meeting of the minds which must occur for a contract in general and specifically an express easement is that the land subject to the easement be identified and the parties come to a distinct understanding and express their intent. *Machado v. Ryan*, 153 Idaho 212, 218, 280 P.3d 715, 721 (2012).

- No case exists which states that (mistake and fraud aside) the parties must have a meeting of the minds on the consideration each believes they are receiving out of a contract. That would not be possible as each person is motivated by different things. The parties need only a common and distinct understanding. "Contract formation requires that the parties have a common and distinct understanding. *McColm-Traska v. Valley View, Inc.*, 138 Idaho 497, 501, 65 P.3d 519, 523 (2003) citing *Intermountain Forest Mgmt., Inc. v. Louisiana Pac. Corp.*, 136 Idaho 233, 237, 31 P.3d 921, 925 (2001).

On Summary Judgment, the evidence is undisputed that the parties had an understanding that Crumb's property would be used for access to the LLC's project. The LLC's version of the events is that Crumb did not require any money for the use of his

PLAINTIFFS' MOTION FOR RECONSIDERATION -2

property. On Summary Judgment, that version must be accepted because whether or not Crumb required payment for use of his property is a question of fact and question of fact is being disputed. "Had the case actually been scheduled as a Court Trial, the District Judge could have drawn all reasonable inferences from any undisputed facts that existed because the Court alone would be responsible for resolving the conflict between those inferences." *Parker v. Kokot*, 117 Idaho 963, 967, 793 P.2d 195, 199 (1990) citing *Riverside Dev. v. Ritchie*, 103 Idaho 515, 650 P.2d 657 (1982).

When consideration supports a distinct and common understanding of the parties, the understanding becomes an enforceable contract. *McColm-Traska v. Valley View, Inc.*, 138 Idaho 497, 501, 65 P.3d 519, 523 (2003). So the question is whether or not Crumb's promise to grant an easement to the LLC to use his land to access the LLC's project was supported by consideration even though he was to receive no payment. Clearly it was.

Consideration is any sort of benefit or detriment arising out of the parties agreement. "There were also other elements of detriment or benefit which the jury may have considered sufficient to furnish consideration." *White v. Larsen & Shafer*, 51 Idaho 187, 3 P.2d 994, 995 (1931).

At the time that Crumb agreed to contribute his land for the access he was a member of the LLC. As a member of the LLC, he would have been responsible for some portion of the cost of the road if constructed without his property. This Court has found that not using Crumb's property would cause road construction to be more expensive and use more land, a fact which is not disputed.

PLAINTIFFS' MOTION TO RECONSIDER -3

Crumb avoided having to pay more towards a much more expensive road and losing land for the project by offering his property to the LLC. This is a valid consideration. Whether or not the strip of land he gave up was worth the road construction costs, he saved the costs, and the land that the LLC gained by doing so is not relevant, however, it should be noted that Crumb withdrew from the LLC and expressly required the LLC to complete the road work at no cost to him.

The parties do not have to have an agreement on "consideration", only a distinct and common understanding of what each was to do. Crumb was to provide an easement and the LLC was to construct the road. As set forth above, at the time of the making of this agreement, Crumb obtained a benefit so the distinct and common understanding is supported by consideration. Furthermore, Crumb benefitted further from this bargain when he accepted four lots in the subdivision and did not have to contribute to the expense to complete the road.

The parties agreement as alleged by Plaintiffs is supported by consideration and Summary Judgment should be reversed.

II. No Evidence is in the Record of Any Other Agreement or Understanding That Would Explain Why the LLC Constructed the Road Where it Did.

The Court's holding that part performance does not take this agreement out of the Statute of Frauds is based on the finding that the parties did not reach an agreement on price so that ruling should also be reversed.

If the Court is ruling that even if an oral contract was proved, the work performed in reliance upon it by the Plaintiffs, does not take this out of the Statute of Frauds because the conduct of constructing the road could be attributed to some other cause, then that is

PLAINTIFFS' MOTION FOR RECONSIDERATION -4

incorrect because the only evidence before the Court is that the road is where it is on Crumb's property because of the oral agreement.

In order for conduct to be referable to the alleged oral contract, the conduct, "...must be explainable only by existence of the promise. The performance must evidence the promise. *See generally* CORBIN § 430; *Statute of Frauds* §§ 406-08." *Frantz v. Parke*, 111 Idaho 1005, 1011, 729 P.2d 1068, 1074 (Ct. App. 1986). No evidence exist that would explain why the road was constructed the way it was other than the oral agreement.

This Court stated that the, "...the road construction activities **might** instead be referable to Defendant Crumb granting a license to use the roadway combined with the fact that the alternative road would have been far more expensive to construct and would have used more land." The very use of the word "might" demonstrates the problem with holding that the conduct might attributable to some other reason. It is an acknowledgment that no evidence exists to explain why this road was constructed where it was.

There is no evidence Crumb granted the LLC a license so that cannot be the reason the LLC constructed the road. Nothing else in the record explains why the LLC would spend all this money on the road. The fact that the road was cheaper to construct on Crumbs property is a fact, not a right or duty, "...provided by a separate written contract", *Bob Daniels & Sons v. Weaver*, 106 Idaho 535, 542, 681 P.2d 1010, 1017 (Ct. App. 1984) citing *International Business Machines Corp. v. Lawhorn*, 106 Idaho 194, 677 P.2d 507 (Ct.App.1984), which would explain why the road was constructed where it was.

PLAINTIFFS' MOTION TO RECONSIDER -5

Furthermore, even if Crumb had put in evidence that the LLC and him agreed that the LLC would spend all the money and use the land until they failed to reach an agreement on price, that evidence would have been disputed by Plaintiffs and would have created a question of fact.

No evidence exists of any other agreement or understanding which would explain why the LLC constructed the road on Crumb's property. The only conduct to which the LLC's conduct of constructing the road where it did could be referable would be an intentional trespass and destruction of property, which begs the question of whether the LLC had the right to be on Crumb's property in the first place.

III. A Material Question of Fact Prevents This Court for Determination That no Writing Exists to Satisfy the Statute of Frauds. The CC&R's That Crumb Signed are a Writing that Satisfies the Statute of Frauds.

This Court held that Plaintiffs contend, "...an express easement exists across the Crumb property but fail to point to any writing in evidence which would satisfy the Statute of Frauds."

All that is required for an express easement is that the land subject to the easement be identified and the parties come to a distinct understanding and express their intent. *Machado v. Ryan*, 153 Idaho 212, 218, 280 P.3d 715, 721 (2012). The CC&R's do exactly that and are signed by Crumb.

On Summary Judgment, Richard Abby's testimony that is Exhibit "A" to the CC&R's that Crumb signed is the correct Exhibit "A" to those CC&R's must be taken as true.¹ Exhibit "A" to the CC&R's identifies the exact Crumb property that is subject to

¹ Exhibit "D" to the Declaration of Richard Abby filed in support of Motion for Summary

the easement and even refers to Crumbs parcel as "Crumb's Entrance Parcel" and indicates the road system for that parcel starts on the Crumb parcel. A more clear indication of an intent to allow access across one's property cannot be found. Crumb signed a document that told the world that you accessed the subdivision across his property. The fact that it was never recorded is not relevant.

Furthermore, the CC&R's themselves specifically require the Architectural Control Committee to, "...maintain in good working order and repair all roads, storm water catch basins, grassy swales and other commonly used infrastructure supporting or benefiting the Lots within Fritz Heath Second Amended Forcst Tracts after the private road through each phase of Fritz Heath Second Amended Forest Tracts is completed." The entrance road would be a "commonly used infrastructure supporting or benefiting the Lots" within the subdivision. The CC&R's require that entrance road be maintained for all the lots in the subdivision, which is another clear indication that Crumb intended his parcel to be used as the entrance parcel.

Lastly, Crumb signed another document that indicated his intent that his property be used as the entrance to the subdivision when he signed the Buy-Out Agreement that specifically required the LLC to complete the roads for the benefit of all the lots in the subdivision. The agreement reads that the LLC will "**complete the road building work and to provide ingress and egress access to each lot**". It does not say to the lots that Crumb is receiving, it says to each lot.

On Summary Judgment, Plaintiffs have established that Crumb signed a document that clearly sets forth his intent that the LLC use his property for access to the

Judgment.

PLAINTIFFS' MOTION TO RECONSIDER -7

project. It was an error to hold that no signed memorandum evidences the oral agreement between Crumb and the LLC.

VI. Conclusion.

On Summary Judgment, Plaintiffs have put forth evidence that Crumb agreed to allow the LLC to use his land to construct an access to his property and did not require payment of any money to do so. Plaintiffs have also put forth evidence of a Memorandum signed by Crumb that identifies the property subject to the easement and clearly sets forth Crumb's intent that the property be used to access the subdivision. Crumb's promise was supported by consideration; therefore, the parties had a binding contract.

No evidence exists that would explain why the LLC constructed the road where it did, so the part performance of constructing the road is sufficient to remove the agreement from the operation of the Statute of Frauds.

The Court should reverse its grant of Summary Judgment to Crumb.

DATED this 1st day of February, 2018.

BISTLINE LAW, PLLC



ARTHUR M. BISTLINE
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of February, 2018, I served a true and correct copy of foregoing PLAINTIFFS' MOTION TO RECONSIDER by the method indicated below, and addressed to the following:

Darin L. Murphy
Attorney at Law
701 Front Avenue, #101
Coeur d'Alene, ID 83816

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 Facsimile: (208)667-7625
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Todd A. Reeve
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 Hand Delivery

Spirit Elements, Inc. Project Living
Inc.
Attn: Seth A. Chernoff
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Boulder, CO 80301

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 Certified mail
 Overnight mail
 Facsimile:
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Jitinvest LLC
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STATE OF IDAHO }
COUNTY OF KOOTENAI }
FILED: } *SS*
2018 FEB -2 PM 1:53
CLERK DISTRICT COURT
[Signature]
DEPUTY

Attorneys for Plaintiffs

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

Security Investor Fund LLC, Security Financial
Fund LLC,

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvest LLC, Spirit Elements,
Inc, and Todd A. Reeve,

Defendants.

Case No. CV-2017-5541

PLAINTIFFS' MOTION TO ALTER
AND/OR AMEND JUDGMENT

The Plaintiffs, SECURITY INVESTOR FUND LLC and SECURITY
FINANCIAL FUND LLC, by and through their undersigned counsel, ARTHUR M.
BISTLINE of the firm BISTLINE LAW, PLLC, and pursuant to Idaho Rules of Civil
Procedure 59 hereby files its Motion to Alter and/or Amend Judgment filed on January
19, 2018. This motion is supported by the Motion to Reconsider that was filed on
February 1, 2018 and will be called for hearing on February 15, 2018.

DATED this 2ND day of February, 2018.

BISTLINE LAW, PLLC

[Signature]
ARTHUR M. BISTLINE
Attorney for Plaintiffs

PLAINTIFFS' MOTION TO AMEND AND/OR ALTER JUDGMENT -1

CERTIFICATE OF SERVICE

I hereby certify that on the 2ND day of February, 2018, I served a true and correct copy of foregoing PLAINTIFFS' MOTION TO AMEND AND/OR ALTER JUDGMENT by the method indicated below, and addressed to the following:

Darin L. Murphy
Attorney at Law
701 Front Avenue, #101
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NICHOLE CANSINO

PLAINTIFFS' MOTION TO AMEND AND/OR ALTER JUDGMENT -2

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STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: *AM* 2018
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CLERK DISTRICT COURT

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Attorneys for Plaintiffs

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

Security Investor Fund LLC, Security Financial
Fund LLC,

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinest LLC, Spirit Elements,
Inc, and Todd A. Reeve,

Defendants.

Case No. CV-2017-5541

PLAINTIFFS' OBJECTION TO
DEFENDANT, BRIAN CRUMB'S MOTION
FOR ATTORNEY FEES AND COSTS

The Plaintiffs, SECURITY INVESTOR FUND LLC and SECURITY
FINANCIAL FUND LLC, by and through their undersigned counsel, ARTHUR M.
BISTLINE of the firm BISTLINE LAW, PLLC, and pursuant to I.R.C.P. 54(d)(5) hereby
files their objection to Defendant, Brian Crumb's Motion for Attorney Fees and Costs.

- I. Defendant, Brian Crumb is Not Entitled to an Award of Attorney's Fees Pursuant to Idaho Code § 12-120(3) because no Transaction Occurred between the Parties.

No transaction ever occurred between the parties to this lawsuit. The gravamen of Plaintiffs' Complaint is that an easement on Defendant, Brian Crumb's (hereinafter referred to as "Crumb") parcel came into existence when Crumb orally agreed to allow

PLAINTIFFS' OBJECTION TO DEFENDANT, BRIAN CRUMB'S MOTION FOR ATTORNEY'S FEES AND COSTS -1

the LLC to use a very small portion of his road and allowed improvements to be made to that road or when he signed the CC&R's that describe the easement and provided access to the lots in the subdivision. In either case, a transaction between the parties is not involved and this case is only determination of property rights and requests for fees for such rights have been uniformly denied.

In order to award attorney's fees, the gravamen of the case must be a commercial transaction. As pointed out by Defendant's counsel, the Appellate Court's have allowed attorney's fees when a commercial transaction is involved, even if the contract is not proved or recovered upon. However, there must at least be a transaction.

For even if such a hypothesis were true, it would not support a conclusion that the statute extends to all lawsuits where a commercial *relationship* exists. Under the most expansive view of the statute, a lawsuit still must seek resolution of a dispute arising from a commercial *transaction* between the parties.

Idaho Newspaper Found. v. City of Cascade, 117 Idaho 422, 424, 788 P.2d 237, 239 (Ct. App. 1990).

Also see *Great Plains Equip., Inc. v. Nw. Pipeline Corp.*, 136 Idaho 466, 472, 36 P.3d 218, 224 (2001) – "However, the holding in *Hausam* only stands for the proposition that I.C. § 12-120(3) cannot be invoked if the commercial transaction is between parties only indirectly related, i.e. there was no transaction *between* the parties (*Hausam* and John Schnabl)." (emphasis in the original).

PLAINTIFFS' OBJECTION TO DEFENDANT, BRIAN CRUMB'S MOTION FOR ATTORNEY'S FEES AND COSTS -2

No transaction between the parties to is the basis for this lawsuit.

This lawsuit is a judicial determination of property rights and fees are uniformly denied for this type of suit.

The present action is primarily a dispute over whether the properties in question were conveyed in fee simple or as easements. As such, this case does not fall within the meaning of a commercial transaction as defined in I.C. § 12-120(3). The present situation is instead more analogous to situations involving the determination of property rights where this Court and the Court of Appeals have uniformly denied an award of attorney fees.

C & G, Inc. v. Rule, 135
Idaho 763, 769, 25 P.3d 76,
82 (2001).

The case which best demonstrative why attorney's fees are not appropriate in this case is *Sun Valley Hot Springs Ranch, Inc. v. Kelsey*, 131 Idaho 657, 962 P.2d 1041, (1998), the facts of which are very similar to the facts of this case. In the Sun Valley Hot Springs case, one Clarendon owned a 320 acre tract of land and sought to develop it. In April of 1976 Clarendon recorded a plat map and CC&R's and then conveyed Lot 44 in the subdivision to the Davis'. Thereafter, Clarendon defaulted and after foreclosure, the remaining subdivision property ended up in the hands of Kelsey and SVLM who refused to acknowledge any duty on their part to construct any improvements in the subdivision or to convey any common area to the subdivision.

The Davis' deeded their interest in Lot 44 to SVHS (the Plaintiff in the opinion) and SVHS filed suit claiming that Kelsey and SVLM had breached its obligations to complete the development improvements. Kelsey and SVLM counter-claimed that they had no such obligations. After trial, Kelsey and SVLM sought attorney's fees because

PLAINTIFFS' OBJECTION TO DEFENDANT, BRIAN CRUMB'S MOTION FOR ATTORNEY'S FEES AND COSTS -3

the Plaintiff's claims were based on the commercial transactions between First Federal and Clarendon, and the sale from Clarendon of Lot 44 to the Davis'.

The Court found that both of those transactions were commercial transactions, but found that Idaho Code § 12-120(3) did not contemplate an award of fees for such claims.

“This action brought by SVHS is essentially an action whereby a landowner is attempting to enforce covenants against the owner of adjacent property. This case is analogous to holdings by this Court and the Court of Appeals involving the determination of property rights.” *Sun Valley Hot Springs Ranch, Inc. v. Kelsey*, 131 Idaho 657, 663, 962 P.2d 1041, 1047 (1998).

There was no transaction between these parties so there can be no commercial transaction between these parties. This case was only a judicial determination of easement rights and, as such, an award of attorney's fees is not allowed.

II. Crumb Agreed to Allow His Parcel to Provide Access to all the Lots in the Subdivision. Plaintiffs' Actions in Trying to Judicially Establish the Validity of that Access were not and are not Frivolous.

Whatever legal arguments Crumb was able to insert between him and the actual facts of this case, one thing is clear, and that is that Crumb agreed that the LLC could use his property for access, and then sat back, and watched a road being built on his property with full knowledge that the LLC intended to use it as the access to the property, and he intended to use it to access his property. Crumb just refused to acknowledge what the facts clearly showed and made a successful (thus far) legal argument to get out of what everyone knew he agreed to do.

PLAINTIFFS' OBJECTION TO DEFENDANT, BRIAN CRUMB'S MOTION FOR ATTORNEY'S FEES AND COSTS -4

Crumb had signed CC&R's that acknowledged the existence of the road and the placements of the road. He had signed documents requiring the LLC to complete and maintain the road, he had testified under oath that his property was for, "... us to build roads with everybody has access and nobody will be denied. And it's – you know, its wrote up in the CC&R's, which I don't have a copy of them."¹

Crumb now denies that the CC&R's he signed had the map that showed the access to the LLC as crossing his property. This is a question of fact and when fact questions exists, Idaho Code § 12-121 cannot be invoked to award fees. "Thus, if there is a legitimate, triable issue of fact, attorney's fees may not be awarded under I.C. § 12-121 even though the losing party has asserted factual or legal claims that are frivolous, unreasonable, or without foundation." *Idaho Military Historical Soc'y, Inc. v. Maslen*, 156 Idaho 624, 631, 329 P.3d 1072, 1079 (2014) citing *Nampa & Meridian Irr. Dist. v. Washington Fed. Sav.*, 135 Idaho 518, 524-25, 20 P.3d 702, 708-09 (2001).

DATED this 5th day of February, 2018.

BISTLINE LAW, PLLC



ARTHUR M. BISTLINE
Attorney for Plaintiffs

¹ Affidavit of Arthur M. Bistline filed in support of motion for summary judgment.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February, 2018, I served a true and correct copy of foregoing PLAINTIFFS' OBJECTION TO DEFENDANT, BRIAN CRUMB'S MOTION FOR ATTORNEY'S FEES AND COSTS by the method indicated below, and addressed to the following:

Darin L. Murphy	<input type="checkbox"/>	U.S. Mail
Attorney at Law	<input type="checkbox"/>	Certified mail
701 Front Avenue, #101	<input type="checkbox"/>	Overnight mail
Coeur d'Alene, ID 83816	<input checked="" type="checkbox"/>	Facsimile: (208)667-7625
	<input type="checkbox"/>	Hand Delivery

Todd A. Reeve	<input checked="" type="checkbox"/>	U.S. Mail
P.O. Box 731402	<input type="checkbox"/>	Certified mail
Puyallup, WA 98373-0090	<input type="checkbox"/>	Overnight mail
	<input type="checkbox"/>	Facsimile:
	<input type="checkbox"/>	Hand Delivery

Spirit Elements, Inc. Project Living Inc.	<input checked="" type="checkbox"/>	U.S. Mail
Attn: Seth A. Chernoff	<input type="checkbox"/>	Certified mail
6525 Gunpark Drive, #370-249	<input type="checkbox"/>	Overnight mail
Boulder, CO 80301	<input type="checkbox"/>	Facsimile:
	<input type="checkbox"/>	Hand Delivery

Jitinvest LLC	<input checked="" type="checkbox"/>	U.S. Mail
Attn: Dale Adema	<input type="checkbox"/>	Certified mail
P.O. Box 265	<input type="checkbox"/>	Overnight mail
Rockwall, TX 74087	<input type="checkbox"/>	Facsimile:
	<input type="checkbox"/>	Hand Delivery

Christopher Varallo	<input type="checkbox"/>	U.S. Mail
WITHERSPOON KELLEY	<input type="checkbox"/>	Certified mail
422 W. Riverside Avenue, Ste. 1100	<input type="checkbox"/>	Overnight mail
Spokane, WA 99201-0300	<input checked="" type="checkbox"/>	Facsimile: (509)458-2728
	<input type="checkbox"/>	Hand Delivery


NICHOLE CANSINO

PLAINTIFFS' OBJECTION TO DEFENDANT, BRIAN CRUMB'S MOTION FOR ATTORNEY'S FEES AND COSTS -6

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
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CLERK DISTRICT COURT

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Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial)
Fund LLC)

Plaintiffs,)

v.)

Brian Crumb, Jennifer O'Callaghan and Brian)
O'Callaghan, Jitinest LLC, Spirit Elements,)
LLC, and Todd A. Reeve,)

Defendants,)
)
)

Case No. CV 2017-5541

DEFENDANT BRIAN CRUMB'S
MEMORANDUM IN RESPONSE TO
PLAINTIFFS' MOTION TO RECONSIDER

COMES NOW Defendant Brian Crumb, by and through his attorneys of record, Darrin L.

Murphey, of Murphey Law Office, PLLC, and Brent G. Schlotthauer, of Vasseur and

DEFENDANT BRIAN CRUMB'S MEMORANDUM RESPONSE TO PLAINTIFFS' MOTION TO
RECONSIDER - 1

Schlotthauer, PLLC, and pursuant to Rule 11.2(b)(1), I.R.C.P., hereby submits Defendant Brian Crumb's Memorandum in Response to Plaintiffs' Motion to Reconsider.

I. ARGUMENT

A. Plaintiffs failed to submit evidence establishing all the material terms of an agreement by Crumb to grant an easement.

Plaintiffs argue that they were not required to show an agreement as to the price or consideration that was to be paid to Crumb¹ in exchange for an easement over Crumb's property, only that Crumb received some consideration. (Plaintiffs' Motion to Reconsider, pp. 1-6). Plaintiffs argument is without merit. "Before an oral agreement to convey land will be specifically enforced, the underlying contract must be proven by clear and convincing evidence." Bear Island Water Ass'n, Inc. v. Brown, 125 Idaho 717, 722, 874 P.2d 528, 533 (1994) (citing Anderson v. Whipple, 71 Idaho 112, 123, 227 P.2d 351, 358 (1951)); Rice v. Rigley, 7 Idaho 115, 61 P. 290, 294 (1900)(the oral agreement "must be so clear and certain as to leave no well-founded doubt in the mind of the court."). "Further, the proof must show that the contract is complete, definite and certain in all its material terms, or that it contains provisions which were capable in themselves of being reduced to certainty." *Id.* The material terms which must be identified in a contract to convey land include the parties to the contract, the subject matter of the contract, the **price or consideration**, and a description of the property." *Id.* (emphasis added) (citing Hoffman v. S V Co., Inc., 102 Idaho 187, 190, 628 P.2d 218, 221 (1981)). "To be enforceable, a contract must provide a price or a means of determining the price." Bauchman-Kingston Partnership, LP v. Haroldsen, 149 Idaho 87, 93, 233 P.3d 18, 24 (2008); (citing Garmo

¹ Defendant Brian Crumb is referred to herein as "Crumb".

v. Clanton, 97 Idaho 696, 699, 551 P.2d 1332, 1335 (1976)). In Haroldson, the Supreme Court affirmed the district court's summary judgment dismissal of plaintiff's lawsuit, holding that where "the parties had not agreed on what consideration supported the agreement," the equitable doctrine of part performance is not available to enforce an agreement that is otherwise invalid under the Statute of Frauds. *Id.* "There can be no part performance of an agreement that was never made." Brown, 125 Idaho at 723, 874 P.2d at 534.

Here, Plaintiffs argue that "Crumb avoided having to pay more towards a much more expensive road and losing land for the project by offering his property to the LLC. This is a valid consideration." (Plaintiffs' Motion to Reconsider, p. 4). However, Plaintiffs convenient, self serving argument is not evidence of an agreement as to the price or consideration. There is no evidence that Crumb and A&C LLC² agreed that Crumb granted an easement over and across his adjacent property for the price or consideration of Crumb avoiding having to pay more towards a much more expensive road and losing land for the project, as now argued by Plaintiffs.³ The Court analyzed the evidence and confirmed such. "There is no evidence that Defendant Crumb agreed to grant an easement in return for A&C LLC's efforts to construct the

2 Abbey & Crumb Developments, LLC, is referred to herein as "A&C LLC".

3 Plaintiffs' speculative argument is not only devoid of evidence, but also logic. Richard Abbey and Crumb each received one (1) lot when the Fritz-Heath development project was started. The Agreement of Members of Abbey & Crumb as to Transfer of Assets and Withdrawal of Members Interest, (Abbey Dec., Ex. "G"; Crumb Dec., Ex. "F"), pages 1-2, provides that Crumb and his wife, Frankie Crumb, received two (2) lots, that Marian Crumb, received three (3) lots, and that seven (7) lots remained with the Company, whose only remaining members were Richard Abbey and his wife. If there was an agreement that Crumb exchanged the cost of building the road for an easement across his adjacent property, as suggested by Plaintiffs (Plaintiffs' Motion to Reconsider, pp. 3-4), and the Abbeyes and Marian, a silent partner, did not make a like contribution, then it makes no logical sense that when Crumb and his wife withdrew from the Company, that they received the same number of total lots as Marian, who had an equal, one third interest in the Company.

DEFENDANT BRIAN CRUMB'S MEMORANDUM RESPONSE TO PLAINTIFFS' MOTION TO RECONSIDER - 3

road.” (Decision,⁴ p. 11). As such, the Court properly determined that there was not an agreement as to consideration, and granted Crumb’s Motion for Summary Judgment. Hoffman, 102 Idaho at 190, 628 P.2d at 221; Haroldsen, 149 Idaho at 93, 233 P.3d at 24.

B. Plaintiffs failed to establish that any detrimental reliance or part performance was solely referable to the alleged oral agreement.

Plaintiffs’ argue that there is no evidence that Crumb granted a license, so that cannot be the reason the road was constructed. Plaintiffs misunderstand the law. Plaintiffs, not Crumb, must prove an agreement to grant an easement, including an agreement as to price and consideration, by clear and convincing evidence. Brown, 125 Idaho at 722, 874 P.2d at 533. As discussed above, the Court found that Plaintiffs did not submit evidence establishing all of the material terms of an agreement by Crumb to grant an easement, namely an agreement as to the price or consideration. (Decision, pp. 11 and 13). Where the parties failed to agree on what consideration supports an agreement, the equitable doctrine of part performance is not available to enforce an agreement that is otherwise invalid under the Statute of Frauds. Haroldsen, 149 Idaho at 93, 233 P.3d at 24. “There can be no part performance of an agreement that was never made.” Brown, 125 Idaho at 723, 874 P.2d at 534.

“An easement established by unwritten agreement is merely a license, revocable by the licensor.” . Bob Daniels and Sons v. Weaver, 106 Idaho 535, 542, 681 P.2d 1010, 1017 (Ct.App. 1984) (citing Howes v. Barmon, 11 Idaho 64, 81 P. 48 (1905)). The rule is based on the proposition that “a parol license to impress real property with a servitude cannot be perpetual or

⁴ The Court’s Memorandum Decision and Order on Plaintiffs’ and Defendant crumb’s Cross Motions for Summary Judgment, entered on January 10, 2018, is referred to herein as the “Decision”.

irrevocable, on account of the prohibitions of the statute of frauds, and the parties not having complied with the requirements of the statute, they will be presumed to have dealt in conformity with law, and therefore to have intended a license rather than an easement.” Howes, 11 Idaho 64, 81 P. at 50. This is the rule required by public policy which “prevents the burdening of land with restrictions founded upon oral agreements easily misunderstood.” *Id.*

As a matter of law, Crumb did grant certain individuals a revocable license, including Richard Abbey. The Court noted that the road construction might be referable to Crumb granting a license. “For example the road construction activities might instead be referable to Defendant Crumb granting a license to use the roadway . . .” (Decision, p. 13). As such, even assuming that there was an agreement as to all of the material terms of an oral agreement to grant an easement, including price or consideration, which there was not (Decision, pp. 11 and 13), —Plaintiffs failed to establish detrimental reliance or part performance that was solely referable to the alleged oral agreement.⁵ International Business Machines Corp. v. Lawhorn, 106 Idaho 194,

5 “[U]nder Idaho law part performance per se does not remove a contract from the operation of the statute of frauds. Rather, ‘[t]he doctrine of part performance is best understood as a specific form of the more general principle of equitable estoppel.’” Treasure Valley Gastroenterology Specialists, P.A. v. Woods, 135 Idaho 485, 489, 20 P.3d 21, 25 (2001) (*quoting* Frantz v. Parke, 111 Idaho 1005, 1009, 729 P.2d 1068, 1072 (Ct.App.1986)) *See also* Wing v. Munns, 123 Idaho 493, 500, 849 P.2d 954, 961 (Ct.App.1992). “Therefore, the question whether part performance allows [one party to an otherwise unenforceable oral agreement] to avoid application of the statute of frauds depends upon whether the part performance is such as to equitably estop [the other party to an otherwise unenforceable oral agreement] from relying upon the statute as a defense.” Woods, 135 Idaho at 489-490, 20 P.3d at 25-26.

Plaintiffs failed to present any evidence showing: “(1) Lack of knowledge and of the means of knowledge of the truth as to the facts in question[;] (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.” Woods, 135 Idaho at 490, 20 P.3d at 26 (*quoting* Tew v. Manwaring, 94 Idaho 50, 53, 480 P.2d 896, 899 (1971); Charpentier v. Welch, 74 Idaho 242, 248, 259 P.2d 814, 817 (1953); Frantz, 111 Idaho at 1009, 729 P.2d at 1072; Hoffman v. S V Co., Inc., 102 Idaho 187, 192, 628 P.2d 218, 223 (1981).

The evidence is undisputed that Crumb did not sell, transfer, or promise Plaintiffs anything whatsoever. (Decision, pp. 9, 14-15). Crumb did not discuss with, promise, represent or suggest in any manner whatsoever to

DEFENDANT BRIAN CRUMB’S MEMORANDUM RESPONSE TO PLAINTIFFS’ MOTION TO RECONSIDER - 5

198 677 P.2d 507, 511 (Ct.App.1984). Accordingly, the Court properly granted Crumb's Motion for Summary Judgment.

C. The CC&R's do not constitute an easement over and across Crumb's adjacent property.

There is no language in the CC&R's that describes Crumb and his wife granting an easement over and across their adjacent property. There is no legal description attached to the CC&R's that describes Crumb and his wife granting an easement over and across their adjacent property. There is no map attached to the CC&R's that describes Crumb and his wife granting an easement over and across their adjacent property. There is absolutely nothing whatsoever in the CC&R's that indicate that there is an easement or road over and across Crumb's adjacent property. The self serving exhibit that Plaintiffs' claim should have been attached to the CC&R's, but was not, was not created until after the CC&R's were recorded.⁶ Even assuming

Plaintiffs that he granted or was going to grant Plaintiffs an easement over and across Crumb's property. (Crumb Dec., ¶¶ 25 and 29). Plaintiffs did not pay Crumb any consideration whatsoever for an easement over and across Crumb's property. (Crumb Dec., ¶ 26). Plaintiffs have not performed any improvements on the road over and across Crumb's Property. (Crumb Dec., ¶ 27). Crumb did not file or record, nor did he authorize anyone to file or record on his behalf, any documents with Kootenai County or any other agency indicating that Crumb granted Abbey & Crumb or the Fritz Heath Tracts an easement over and across Crumb's Property. (Crumb Dec., ¶ 13).

Plaintiffs could have and should have searched the records of the Kootenai County Recorder, wherein they would have determined no easement existed over and across Crumb's property to Plaintiffs' lots. "It has long been established that a purchaser is charged with every fact shown by the records and is presumed to know every other fact which an examination suggested by the records would have disclosed." Kalange v. Rencher, 136 Idaho 192, 195-96, 30 P.3d 970, 973-74 (2001) (citing Cordova v. Hood, 17 Wall. 1, 84 U.S. 1, 21 L.Ed. 587 (1873); Northwestern Bank v. Freeman, 171 U.S. 620, 19 S.Ct. 36, 43 L.Ed. 307 (1898)). "One claiming title to lands is chargeable with notice of every matter affecting the estate, which appears on the face of any recorded deed forming an essential link in his chain of title, and also with notice of such matters as might be learned by inquiry which the recitals in such instruments made it a duty to pursue." *Id.* (citing Glover v. Brown, 32 Idaho 426, 184 P. 649 (1919)). Plaintiffs failed to even ask Crumb if there was an easement over and across his property to Plaintiffs' lots. (Crumb Dec., ¶¶ 25, 29). As such, regardless of Plaintiffs' claim of part performance, Plaintiffs failed to present evidence that entitle Plaintiffs to equitably estop Crumb from relying on the Statute of Frauds as a defense. Woods, 135 Idaho at 489-490, 20 P.3d at 25-26.

⁶ The CC&R's, which were drafted by a realtor, Richard Abbey, Crumb and his wife, were recorded on January 5, 2006. (Crumb Dec., ¶ 12; Abbey Dec., Ex. "D"). The CC&R's state, at paragraph 24, that the declarant

DEFENDANT BRIAN CRUMB'S MEMORANDUM RESPONSE TO PLAINTIFFS' MOTION TO RECONSIDER - 6

that a map was attached to the CC&R's depicting a road across Crumb's property, that is not evidence of a grant of an easement by Crumb and his wife over and across their adjacent property. Plaintiffs' argument that **IF** a map had been attached to the CC&R's is proof of written easement over and across Crumb's adjacent property, is no different than arguing **IF** an easement document had been drafted, signed by the Crumbs and recorded, is proof of a written easement. Plaintiffs' specious argument is precluded, for good reason, by the Statute of Frauds. As such, the CC&R's do not constitute an easement over and across Crumb's adjacent property.

D. The alleged oral agreement for an easement is precluded by the Member Withdrawal Agreement.

The Member Withdrawal Agreement is a fully integrated contract that precludes enforcement of an alleged oral agreement to grant an easement over and across Crumb's adjacent property.

If a written contract is complete upon its face and unambiguous, no

reserves an easement for a private road through "each lot" and that a road easement "on each lot" is shown in Exhibit "A" attached to the CC&R's. The CC&R's do not state that a road easement is reserved on each lot AND that the Crumbs also granted an easement over and across their adjacent property as shown in an attached exhibit. In addition, no exhibit was attached to the CC&R's. (Decision, p. 2). The parties dispute what should have been attached as an exhibit. *Id.* Although a determination of what document should have been attached to the CC&R's is an academic exercise, it is apparent that the intended exhibit was a document depicting a road in the location of the only road providing access to the Fritz Heath Tracts at that time, as set forth in the Amendment (Crumb Dec., Ex. "A") and Second Amendment (Crumb Dec., Ex. "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard advertising the lots in the development which was located at the entrance to the Fritz Heath Tracts (Crumb Dec., Ex. "C"), the internet advertising materials (Crumb Dec., Ex. "D"), and the Kootenai County Fire & Rescue Annexation Order Map (Crumb Dec., Ex. "E"). There was no road over and across the Crumb's property to the Fritz Heath Tracts when the CC&R's were recorded. (Crumb Dec., ¶ 12). "In 2006, . . . A&C LLC, retained an engineering firm named Inland Northwest Consultants (hereinafter, "INC") to design and supervise construction of an engineered road from Mellick Road (a public road) through the FRITZ-HEATH for the purpose of providing residential access to the subdivision. Thereafter, INC informed Richard Abbey and Crumb that it would be much cheaper to construct the entrance road into the FRITZ-HEATH by using a forty (40) foot right of way on an adjoining property owned by Brian Crumb. (Abbey Dec., ¶ 7). The drawings from the engineers were not created until July of 2006, several months after the date the CC&R's were recorded, January 5, 2006. (Glessner Dec., Ex "B"). Thus, the engineered drawing of a road over the property owned by Crumb did not exist when the CC&R's were recorded.

DEFENDANT BRIAN CRUMB'S MEMORANDUM RESPONSE TO PLAINTIFFS' MOTION TO RECONSIDER - 7

fraud or mistake being alleged, extrinsic evidence of prior or contemporaneous negotiations or conversations is not admissible to contradict, vary, alter, add to, or detract from the terms of the contract. Kimbrough v. Reed, 130 Idaho 512, 943 P.2d 1232 (1997). A written contract that contains a merger clause is complete upon its face. *Id.*; Chambers v. Thomas, 123 Idaho 69, 844 P.2d 698 (1992); Valley Bank v. Christensen, 119 Idaho 496, 808 P.2d 415 (1991). The purpose of a merger clause is to establish that the parties have agreed that the contract contains the parties' entire agreement. The merger clause is not merely a factor to consider in deciding whether the agreement is integrated; it proves the agreement is integrated. To hold otherwise would require the parties to list in the contract everything upon which they had not agreed and hope that such list covers every possible prior or contemporaneous agreement that could later be alleged.

Howard v. Perry, 141 Idaho 139, 141-42, 106 P.3d 465, 467-68 (2005).

Plaintiffs allege that in 2006, when Crumb was a member of Abbey & Crumb, and prior to Crumb's withdrawal from A&C LLC on September 26, 2006, that Crumb agreed to grant an easement over and across the Crumb's adjacent property. (*See* Plaintiffs' Motion to Reconsider, p. 3). Crumb followed the advice of his attorney, Romer Brown, who presumably was aware of the Statute of Frauds, who advised Crumb to not sign any documents granting or agreeing to grant any easement over and across the Crumb Property, unless and until he received the consideration upon which his offer to grant an easement was based. (Crumb Dec., ¶¶ 15, 17-19). Crumb's offer was never consummated in that Crumb did not receive \$200,000 in consideration from A&C LLC, and Crumb withdrew from the Company on September 26, 2006. As such, no documents granting or agreeing to grant any easement over and across Crumb's property were ever drafted, yet alone signed.

In withdrawing from A&C LLC, the members executed the Member Withdrawal

DEFENDANT BRIAN CRUMB'S MEMORANDUM RESPONSE TO PLAINTIFFS' MOTION TO RECONSIDER - 8

Agreement. The Member Withdrawal Agreement includes a merger clause, which states:

ENTIRE AGREEMENT OF THE PARTIES: It is agreed, this is the entire agreement of the parties, and any amendment or additions to the Agreement must be in written form similar in form to this agreement, with all parties signing said Amendment.

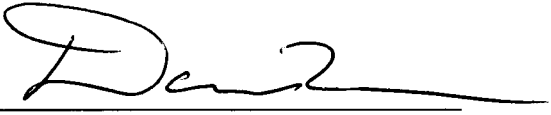
(Decision, pp. 3, 12). The Member Withdrawal Agreement makes no mention whatsoever of an obligation on the part of Crumb to grant an easement over his adjacent property. *Id.*⁷ As such, the Court properly granted Crumb's Motion for Summary Judgment. Perry, 141 Idaho at 141-42, 106 P.3d at 467-68.

IV. CONCLUSION

Based on the foregoing, Defendant Brian Crumb respectfully requests that the Court DENY Plaintiffs' Motion to Reconsider.

DATED this 8th day of February, 2018.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

⁷ As noted by the Court, none of the deeds transferring lots contemporaneous with the Member Withdrawal Agreement reserve an easement over and across Crumb's property. (Decision, pp. 3, 12).

CERTIFICATE OF SERVICE

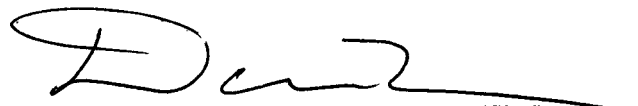
I HEREBY CERTIFY that on the 8th day of February, 2018, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

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- ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
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Christopher G. Varallo
Witherspoon Kelley
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- OVERNIGHT MAIL
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- ELECTRONIC MEANS (pursuant to written consent):


Darrin L. Murphey

DEFENDANT BRIAN CRUMB'S MEMORANDUM RESPONSE TO PLAINTIFFS' MOTION TO RECONSIDER - 10

ST : OF IDAHO
 COUNTY OF KOOTENAI
 FILED: 1/18/18
 AT: 10:00 AM
 CLERK, DISTRICT COURT
 DEPUTY

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

**Security Investor Fund LLC, Security
 Financial Fund LLC,**)
)
Plaintiffs,)
)
vs.)
)
**Brian Crumb, Jennifer O'Callaghan and
 Brian O'Callaghan, Jitinvest LLC,
 Spirit Elements, LLC and Todd A.
 Reeve,**)
)
Defendants.)

Case No. CV-2017-5541

**MEMORANDUM DECISION
 AND ORDER RE:
 PLAINTIFFS' MOTION TO
 RECONSIDER**

This matter was brought to the Court on Plaintiffs' Motion to Reconsider the Courts Memorandum Decision and Order filed January 10, 2018 denying Plaintiffs' motion for summary judgment and granting Defendant Crumb's motion for summary judgment. For the reasons set forth below, the Court DENIES Plaintiffs' Motion to Reconsider.

I. FACTS

No new evidence has been presented in support of Plaintiffs' Motion to Reconsider. The facts remain the same as set forth in the Memorandum Decision and Order on Plaintiffs' and Defendant Crumb's Cross Motions for Summary Judgment.

II. STANDARD OF REVIEW

The Idaho Supreme Court stated the standard of review for a motion to reconsider the district court's summary judgment decision in *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012):

The district court has no discretion on whether to entertain a motion for reconsideration pursuant to Idaho Rule of Civil Procedure 11(a)(2)(B). On

a motion for reconsideration, the court must consider any new admissible evidence or authority bearing on the correctness of an interlocutory order. *See PHH Mortg. Servs. Corp. v. Perreira*, 146 Idaho 631, 635, 200 P.3d 1180, 1184 (2009) (citing *Coeur d'Alene Mining Co. v. First Nat'l Bank of N. Idaho*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990)). However, a motion for reconsideration need not be supported by any new evidence or authority. When deciding the motion for reconsideration, the district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered. In other words, if the original order was a matter within the trial court's discretion, then so is the decision to grant or deny the motion for reconsideration. If the original order was governed by a different standard, then that standard applies to the motion for reconsideration. Likewise, when reviewing a trial court's decision to grant or deny a motion for reconsideration, this Court utilizes the same standard of review used by the lower court in deciding the motion for reconsideration. If the decision was within the trial court's discretion, we apply an abuse of discretion standard. On the other hand, when reviewing the grant or denial of a motion for reconsideration following the grant of summary judgment, this Court must determine whether the evidence presented a genuine issue of material fact to defeat summary judgment. In this case, the trial court was asked to reconsider the granting of a motion for summary judgment, so the summary judgment standard applied both to the trial court deciding the motion for reconsideration and to our review of that decision on appeal.

Fragnella v. Petrovich, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012).

II. ANALYSIS

Plaintiffs make three arguments in their motion to reconsider: (1) to form a contract the parties need only come to an understanding of their rights and obligations under the agreement, and they need not agree specifically on the consideration; (2) there was no evidence of any other reason that the road would be constructed where it now exists; and (3) the CCRs are a writing that satisfies the statute of frauds.

A. Before an oral agreement to convey land will be specifically enforced, the material terms of the underlying contract must be proven by clear and convincing evidence, including the price or consideration.

Plaintiffs argue that to form a contract the parties need only come to an understanding of their rights and obligations under the agreement, and they need not

agree specifically on the consideration. However, Plaintiffs fail to address the language of *Bear Island Water Ass'n. Inc. v. Brown*, 125 Idaho 717, 722, 874 P.2d 528, 533 (1994), which states:

Before an oral agreement to convey land will be specifically enforced, the underlying contract must be proven by clear and convincing evidence. Further, the proof must show that the contract is complete, definite and certain in all its material terms, or that it contains provisions which were capable in themselves of being reduced to certainty. The material terms which must be identified in a contract to convey land include the parties to the contract, the subject matter of the contract, the price or consideration, and a description of the property.

(internal citations omitted). *Bear Island* is particularly on point because it addresses part performance as an exception to the statute of frauds in the case of an oral agreement to convey an interest in real property. *Bear Island* requires “clear and convincing” evidence of the “price or consideration” of an oral agreement to convey land in order to specifically enforce the alleged agreement. Plaintiffs still have not pointed to any evidence in the record which proves the consideration or price term of the alleged oral contract to grant an easement. There remains no evidence in the record that Defendant Crumb agreed to grant an easement in return for A&C LLC’s efforts to construct the road. Plaintiffs failed to submit evidence establishing the material terms of any underlying oral agreement to grant an easement. Plaintiffs had the burden to prove the material terms of the underlying oral contract and failed to provide evidence of the price/consideration term, so the alleged oral agreement cannot be specifically enforced based on part performance.

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B. Plaintiffs failed to show that any alleged part performance or detrimental reliance was referable to the alleged oral agreement.

Second, Plaintiffs argue that there was no evidence of any other reason that the road would be constructed where it now exists. Plaintiffs' argument appears aimed to address the requirement that detrimental reliance/part performance must be referable to the alleged oral agreement. See *Int'l Bus. Machines Corp. v. Lawhorn*, 106 Idaho 194, 198, 677 P.2d 507, 511 (Ct. App. 1984).

Plaintiffs focus on the statement in this Court's opinion, "... the road construction activities might instead be referable to Defendant Crumb granting a license to use the roadway combined with the fact that the alternative road would have been far more expensive to construct and would have used more land." Plaintiff then argues that there was no evidence "that would explain why the road was constructed the way it was other than the oral agreement." However, it was Plaintiffs' burden to prove that any part performance was referable to the underlying oral agreement; it was not Defendants' burden to prove that part performance was not referable to the underlying oral agreement. The statement quoted by Plaintiffs from this Court's opinion merely recognized that the alleged part performance was not "explainable only by existence of the promise." *Frantz v. Parke*, 111 Idaho 1005, 1011, 729 P.2d 1068, 1074 (Ct. App. 1986). The quoted language simply set forth an alternative reason for the establishment of the road over Defendant Crumb's land for purposes of addressing the part performance requirement. This is especially true where Plaintiffs failed to present any evidence of any price or consideration Defendant Crumb was to receive in return for Defendant Crumb's alleged oral promise to grant an easement.

The evidence further showed that Crumb allowed owners of property within the subdivision to use the roadway until July 2017 and that road construction of the alternate route would have been far more expensive and used more land. See Corrected Aff. Bistline, Ex. (Depo. Crumb, pp. 67, 73); see also (Second) Decl. Abbey, ¶ 4; Decl. Abbey, ¶ 7. In addition to the absence of evidence showing that any part performance was referable to the oral agreement, an alternative explanation exists for why A&C LLC may have constructed the road where it did. Plaintiffs failed to submit evidence that showed the road was constructed solely because of the alleged promise to grant an easement. Therefore, Plaintiffs failed to prove that any alleged part performance was referable to the oral agreement.

C. The CCRs are not sufficient to satisfy the statute of frauds and grant an express easement.

Third, Plaintiffs argue that the CCRs are a writing that satisfies the statute of frauds. “Because an express easement is an interest in real property, it ‘may only be created by a written instrument.’” *Machado v. Ryan*, 153 Idaho 212, 218, 280 P.3d 715, 721 (2012). “At a minimum, a valid express easement must identify the land subject to the easement and express the intent of the parties.” *Id.* “Thus, while specific words are not required to create an express easement, the writing must make clear the parties’ ‘intention to establish a servitude.’” *Id.* In order to transfer an interest in land, such as an easement, the statute of frauds requires a written instrument signed by the party granting the easement. I.C. §§ 9-503, 9-505.

An agreement for the sale of real property must not only be in writing and subscribed by the party to be charged, but the writing must also contain such a description of the property agreed to be sold, either in terms or by reference, that it can be ascertained without resort to parol evidence. Parol

evidence may be resorted to for the purpose of identifying the description contained in the writing with its location upon the ground, but not for the purpose of ascertaining and locating the land about which the parties negotiated, and supplying a description thereof which they have omitted from the writing.

Lexington Heights Dev., LLC v. Crandlemire, 140 Idaho 276, 281, 92 P.3d 526, 531 (2004) (quoting *Allen v. Kitchen*, 16 Idaho 133, 100 P. 1052, 1055 (1909)). In *Allen v. Kitchen*, the Court did not consider parol evidence to supplement the deficient description of the property, reasoning, “The evidence to be introduced would not be that of identification of a description, good on its face; but it would be for the purpose of supplying, completing, and perfecting a description on its face insufficient and incapable of application.” *Allen v. Kitchen*, 16 Idaho 133, 100 P. 1052, 1055 (1909). The Court added, “The distinction, however, should always be clearly drawn between the admission of oral and extrinsic evidence for the purpose of identifying the land described and applying the description to the property and that of supplying and adding to a description insufficient and void on its face.” *Id.* at 1056.

The CCRs contain the statement, “The declarant hereby reserves an easement for a private road through each lot to service continued lots in [the subdivision]. The road easement on each lot is shown in Exhibit ‘A,’ which is attached and incorporated herein.” Decl. Abbey, ¶ 4, Ex. D. What was actually intended to be attached to the CCRs as “Exhibit ‘A’” is disputed. See Decl. Abbey, ¶ 19; Decl. Crumb ¶ 12. However, it is undisputed and Richard Abbey testified that “the Crumbs failed to record the ‘Exhibit A’ to the [subdivision] CCRs which purports to show the road easement...” Decl. Abbey, ¶ 19. While the act of recording is not dispositive, without the attachment, the CCRs do not identify the land about which the parties negotiated. The CCRs presented to the

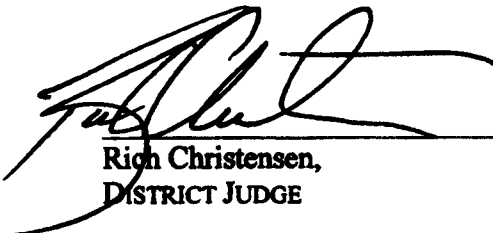
Court do not contain any identification of the land subject to the claimed easement. *See* Decl. Abbey, ¶ 4, Ex. D.

The Court has not received any written instrument, signed by Defendant Crumb, which both identifies the land subject to the easement and makes clear the parties' intention to establish a servitude. The CCRs themselves do not describe the property subject to the easement, nor do the CCRs address any ingress or egress into the subdivision. *See* Decl. Abbey, Ex. D. Additionally, without the missing attachment, there is no description whatsoever of the property subject to the agreement, and the land about which the parties negotiated cannot be ascertained without resorting to parol evidence.¹ Therefore, the CCRs are not sufficient to create an express easement and satisfy the statute of frauds.

III. CONCLUSION & ORDER

For the reasons set forth above, Plaintiffs' motion to reconsider is DENIED.

SO ORDERED this 22nd day of February, 2018


Rich Christensen,
DISTRICT JUDGE

¹ The Court acknowledges that Exhibit "I" to the Declaration of Richard Abbey is claimed to include the missing attachment to the CCRs. *See* Decl. Abbey, ¶ 19. However, Exhibit "I" to the Declaration of Richard Abbey contains multiple documents, many of which are untitled, and none of which refer back to the CCRs. Additionally, to the extent that the map on the first page of Exhibit "I" to the Declaration of Richard Abbey is intended to be the missing attachment to the CCRs, the map is illegible and unintelligible in the form presented.

I hereby certify that on the ^{22nd} day of February, 2018, a true and correct copy of the foregoing MEMORNADUM DECISION AND ORDER RE: PLAINTIFF'S MOTION TO RECONSIDER was delivered as follows:

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Attorney at Law
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Darrin Murphy
Attorney at Law
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Attorney at Law
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JIM BRANNON, Clerk of the Court, by  Deputy Clerk

#467

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CLERK DISTRICT COURT

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Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial)
Fund LLC)

Plaintiffs,)

v.)

Brian Crumb, Jennifer O'Callaghan and Brian)
O'Callaghan, Jitinvest LLC, Spirit Elements,)
LLC, and Todd A. Reeve,)

Defendants,)

) Case No. CV 2017-5541

) MEMORANDUM IN SUPPORT OF
) MOTION FOR ATTORNEY FEES IN
) DEFENDING PLAINTIFFS' MOTION TO
) RECONSIDER

COMES NOW Defendant Brian Crumb, by and through his attorney of record, Darrin L.

Murphey, and submits his Memorandum in Support of Motion for Attorney Fees in Defending

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS'
MOTION TO RECONSIDER - 1

Plaintiffs' Motion to Reconsider.

I. FACTUAL AND PROCEDURAL BACKGROUND

The following supplements the facts and procedural background set forth in Defendant Crumb's Memorandum in Support of Motion for Attorney Fees, filed on January 22, 2018, which are incorporated herein:

1. That on January 10, 2018, the Court entered its Memorandum Decision and Order on Plaintiffs' and Defendant Crumb's Cross Motions for Summary Judgment, denying Plaintiffs' Motion for Summary Judgment and granting Defendant Brian Crumb's Motion for Summary Judgment.

2. That the Court entered its Judgment in this matter on January 19, 2018, dismissing Plaintiffs' Complaint with prejudice, and finding that Defendant Brian Crumb is the prevailing party.

3. That on January 22, 2018, Defendant Brian Crumb filed his verified Memorandum of Costs, Motion for Attorney Fees and Memorandum in Support of Motion for Attorney Fees. The Court has not yet decided the award of attorney fees and costs.

4. That on February 1, 2018, after Defendant Brian Crumb filed his Memorandum of Costs, Plaintiffs filed Plaintiffs' Motion to Reconsider.

5. Defendant Brian Crumb expended attorney fees defending Plaintiffs' Motion to Reconsider.

6. That on February 22, 2018, the Court entered its Memorandum Decision and Order Re: Plaintiffs' Motion to Reconsider, denying Plaintiffs' Motion to Reconsider.

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS'
MOTION TO RECONSIDER - 2

7. Plaintiffs presented no new evidence in support of Plaintiffs' Motion to Reconsider. (Order Re: Plaintiffs' Motion to Reconsider, p. 1).

II. ARGUMENT

A. Defendant Crumb is entitled to an award of attorney fees pursuant to Idaho Code § 12-120(3).

As set forth in Defendant Crumb's Memorandum in Support of Motion for Attorney Fees, which is incorporated herein, Defendant Crumb is entitled to an award of attorney fees pursuant to Idaho Code § 12-120(3), not only for the time expended obtaining a Judgment in this matter, but also for the attorney fees incurred in defending Plaintiffs' Motion to Reconsider.

Where a party alleges the existence of a contractual relationship of a type embraced by section 12-120(3), that claim triggers the application of the statute. Idaho Transp. Dep't v. Ascorp, Inc., 159 Idaho 138, 141, 357 P.3d 863, 866 (2015)(quoting Continental Cas. Co. v. Brady, 127 Idaho 830, 835, 907 P.2d 807, 812 (1995). "[A]llegations in the complaint that the parties entered into a commercial transaction and that the complaining party is entitled to recover based upon that transaction, are sufficient to trigger the application of I.C. § 12-120(3)." Garner v. Povey, 151 Idaho 462, 470, 259 P.3d 608, 616 (2011).

Here, Plaintiffs allege in their verified Complaint that Defendant Crumb is bound by an express or implied contract with all Fritz Heath landowners to provide an easement over and across Defendant Crumb's property. (Complaint, p. 4, § III, ¶ A). Plaintiffs further allege in their verified Complaint that they are entitled to recover attorney fees incurred "in this commercial dispute". (Complaint, p. 5, ¶ 15). Plaintiffs did not submit any new evidence in their Motion to

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS'
MOTION TO RECONSIDER - 3

Reconsider. Although the Court determined that the contract and commercial transaction alleged by Plaintiffs in their Complaint did not exist, a prevailing party may recover attorney fees even though no liability under a contract was established. Garner, 151 Idaho at 469, 259 P.3d at 615. “This same principle applies where the action is one to recover in a commercial transaction, regardless of the proof that the commercial transaction alleged did, in fact, occur.” *Id.* (citation omitted). Thus, according to Plaintiffs’ verified Complaint, the gravamen of this action was a commercial transaction. *Id.* at 471, 259 P.3d at 617. The Court dismissed Plaintiffs’ Complaint against Crumb with prejudice, and denied Plaintiffs’ Motion to Reconsider. As such, Crumb is entitled to his reasonable attorney fees pursuant to Idaho Code § 12-120(3).

B. Defendant Crumb is entitled to attorney fees pursuant to the Buyout Agreement.

For the reasons set forth in Defendant Crumb’s Memorandum in Support of Motion for Attorney Fees, which is incorporated herein, Defendant Crumb is entitled to an award of attorney fees based on the Buyout Agreement not only for the time expended obtaining a Judgment in this matter, but also for the attorney fees incurred in defending Plaintiffs’ Motion to Reconsider.

C. Defendant Crumb is entitled to attorney fees pursuant to Idaho Code § 12-121.

For the reasons set forth in Defendant Crumb’s Memorandum in Support of Motion for Attorney Fees, Defendant Crumb is entitled to an award of attorney fees not only for the time expended obtaining a Judgment in this matter, but also for the attorney fees incurred in defending Plaintiffs’ Motion to Reconsider. Trial courts may award attorney fees under Idaho Code § 12-121 if the case was “brought, pursued or defended frivolously, unreasonably or without

foundation.” Idaho Code § 12-121 (2017); I.R.C.P. 54(e)(1); Burns v. Baldwin, 138 Idaho 480, 487, 65 P.3d 502, 509 (2003). In awarding attorney fees the trial court must (1) perceive the issue as one of discretion; (2) act within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) reach its decision by an exercise of reason. *Id.* at 486-87, 65 P.3d at 508-09 (citing Sun Valley Shopping Ctr., Inc. v. Idaho Power Co., 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991)).

Here, Plaintiffs presented no new evidence on Plaintiffs’ Motion to Reconsider. Plaintiffs made the frivolous legal argument that they were not required to show an agreement as to the price or consideration that was to be paid to Defendant Crumb in exchange for an easement over Crumb’s property, only that Defendant Crumb received some consideration. (Plaintiffs’ Motion to Reconsider, pp. 1-6). The law is not debatable on this issue. “Before an oral agreement to convey land will be specifically enforced, the underlying contract must be proven by clear and convincing evidence.” Bear Island Water Ass’n, Inc. v. Brown, 125 Idaho 717, 722, 874 P.2d 528, 533 (1994) (citing Anderson v. Whipple, 71 Idaho 112, 123, 227 P.2d 351, 358 (1951)); Rice v. Rigley, 7 Idaho 115, 61 P. 290, 294 (1900). “Further, the proof must show that the contract is complete, definite and certain in all its material terms, or that it contains provisions which were capable in themselves of being reduced to certainty.” *Id.* The material terms which must be identified in a contract to convey land include the parties to the contract, the subject matter of the contract, the price or consideration, and a description of the property.” *Id.* (emphasis added) (citing Hoffman v. S V Co., Inc., 102 Idaho 187, 190, 628 P.2d 218, 221 (1981)). “To be enforceable, a contract must provide a price or a means of determining the

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS’
MOTION TO RECONSIDER - 5

price.” Bauchman-Kingston Partnership, LP v. Haroldsen, 149 Idaho 87, 93, 233 P.3d 18, 24 (2008); (citing Garmo v. Clanton, 97 Idaho 696, 699, 551 P.2d 1332, 1335 (1976)). The Court confirmed that “Plaintiffs had the burden to prove the material terms of the underlying oral contract and failed to provide evidence of the price/consideration term, so the alleged oral agreement cannot be specifically enforced based on part performance.” (Memorandum Decision and Order Re: Plaintiffs’ Motion to Reconsider, p. 3). Plaintiffs’ argument that they did not have to prove price or consideration was frivolous. As such, Plaintiffs’ Motion to Reconsider argument, as well as this case in its entirety, was brought and pursued frivolously, unreasonable and without foundation.

Next, notwithstanding that Plaintiffs failed to present any evidence that there was an agreement as to price or consideration for an easement across Defendant Crumb’s property,¹ Plaintiffs also argued that there was no evidence that would explain why the road was constructed the way it was other than the oral agreement. (Plaintiffs’ Motion to Reconsider, pp. 4-5). Again, the law is not debatable on this issue. Plaintiffs, not Defendant Crumb, were required to prove an agreement to grant an easement, including an agreement as to price or consideration, by clear and convincing evidence. Brown, 125 Idaho at 722, 874 P.2d at 533. The Court recognized such. “However, it was Plaintiffs’ burden to prove that any part performance was referable to the underlying oral agreement; it was not Defendants’ burden to prove that part performance was not referable to the underlying oral agreement.” (Memorandum Decision and

¹ Where the parties fail to agree on what consideration supports an agreement, the equitable doctrine of part performance is not available to enforce an agreement that is otherwise invalid under the Statute of Frauds. Haroldsen, 149 Idaho at 93, 233 P.3d at 24. “There can be no part performance of an agreement that was never made.” Brown, 125 Idaho at 723, 874 P.2d at 534.

Order Re: Plaintiffs' Motion to Reconsider, p. 4). Plaintiffs failed to present any new evidence on their Motion to Reconsider, and the Court confirmed its earlier finding that "Plaintiffs failed to submit evidence that showed the road was constructed solely because of the alleged promise to grant an easement." (*Id.* at p. 5). As such, Plaintiffs' Motion to Reconsider argument, as well as this case in its entirety, was brought and pursued frivolously, unreasonable and without foundation.

Finally, Plaintiffs most egregious argument was that the CC&Rs are a writing that satisfies the Statute of Frauds. (Plaintiffs' Motion to Reconsider, pp. 6-8). Again, the law is not debatable on this issue. In order to transfer an interest in land, such as an easement, the Statute of Frauds requires a written instrument signed by the party granting the easement. Idaho Code §§ 9-503 and 9-505. There is no language in the CC&Rs that describes that Crumb and his wife granted an easement over and across their adjacent property.² The Court found that the CC&Rs "do not contain any identification of the land subject to the claimed easement." (Memorandum Decision and Order Re: Plaintiffs' Motion to Reconsider, p. 6). The parties agree that no exhibit was attached to the CC&Rs. (Memorandum Decision and Order Re: Plaintiffs' Motion to Reconsider, p. 6). There is absolutely nothing whatsoever in the CC&Rs that indicate that there is an easement or road over and across Crumb's adjacent property.³ The Court described the

² The CC&R's, which were recorded on January 5, 2006, state, at paragraph 24, that the declarant reserves an easement for a private road through "each lot" and that a road easement "on each lot" is shown in Exhibit "A" attached to the CC&Rs. (Abbey Dec., Ex. "D"). The CC&Rs do not state that a road easement is reserved on each lot AND that the Crumbs also grant an easement over and across their adjacent property as shown in an attached exhibit.

³ The self serving exhibit that Plaintiffs' claim should have been attached to the CC&Rs, but was not, was not created until after the CC&Rs were recorded. The parties dispute what should have been attached as an exhibit. (Memorandum Decision and Order Re: Plaintiffs' Motion to Reconsider, p. 6) Although a determination of what

frivolous nature of Plaintiffs' lawsuit in a single sentence: "The Court has not received any written instrument, signed by Defendant Crumb, which both identifies the land subject to the easement and makes clear the parties' intention to establish a servitude."⁴ (Memorandum Decision and Order Re: Plaintiffs' Motion to Reconsider, p. 7). As such, Plaintiffs' Motion to Reconsider argument that the CC&Rs are a writing that satisfies the Statute of Frauds, as well as this case in its entirety, was brought and pursued frivolously, unreasonable and without foundation.⁵ Idaho Code § 12-121 (2017); I.R.C.P. 54(e)(1). Therefore, Defendant Crumb is

document should have been attached to the CC&R's is an academic exercise, it is clear that the intended exhibit was a document depicting a road in the location of the only road providing access to the Fritz Heath Tracts at that time, as set forth in the Amendment (Crumb Dec., Ex. "A") and Second Amendment (Crumb Dec., Ex. "B") to the Fritz Heath Tracts, the four (4) foot by eight (8) foot sign/billboard advertising the lots in the development which was located at the entrance to the Fritz Heath Tracts (Crumb Dec., Ex. "C"), the internet advertising materials (Crumb Dec., Ex. "D"), and the Kootenai County Fire & Rescue Annexation Order Map (Crumb Dec., Ex. "E"). There was no road over and across the Crumb's property to the Fritz Heath Tracts when the CC&R's were recorded. (Crumb Dec., ¶ 12). "In 2006, . . . A&C LLC, retained an engineering firm named Inland Northwest Consultants (hereinafter, "INC") to design and supervise construction of an engineered road from Mellick Road (a public road) through the FRITZ-HEATH for the purpose of providing residential access to the subdivision. Thereafter, INC informed Richard Abbey and Crumb that it would be much cheaper to construct the entrance road into the FRITZ-HEATH by using a forty (40) foot right of way on an adjoining property owned by Brian Crumb. (Abbey Dec., ¶ 7). The drawings from the engineers were not created until July of 2006, several months after the date the CC&R's were recorded, January 5, 2006. (Glessner Dec., Ex "B"). Thus, the engineered drawing of a road over the property owned by Crumb did not exist when the CC&R's were recorded. Plaintiffs argument otherwise was frivolous.

4 Plaintiffs lawsuit has been a moving target. Plaintiffs previously argued that an unsigned email without a legal description constitutes an easement that satisfies the Statute of Frauds. That argument was rejected by the Court. (Memorandum Decision and Order on Plaintiffs' and Defendant Crumb's Cross Motion for Summary Judgment, p. 12).

5 Plaintiffs entire lawsuit brought and pursued frivolously, unreasonable and without foundation. Plaintiffs allege in their verified Complaint that they were not advised when Plaintiffs purchased lots in the Fritz Heath Tracts that easements over and across Crumb's property to the Fritz Heath owners were not recorded. (Complaint ¶ 12). However, the undisputed facts show that Crumb did not sell, transfer, or promise Plaintiffs anything whatsoever. (Crumb Dec., ¶¶ 25, 29; Memorandum Decision and Order on Plaintiffs' and Defendant crumb's Cross Motions for Summary Judgment, pp. 9, 14-15). Plaintiffs could have and should have searched the records of the Kootenai County Recorder, wherein they would have determined no easement existed over and across Crumb's property to Plaintiffs' lots. "It has long been established that a purchaser is charged with every fact shown by the records and is presumed to know every other fact which an examination suggested by the records would have disclosed." Kalange v. Rencher, 136 Idaho 192, 195-96, 30 P.3d 970, 973-74 (2001) (citing Cordova v. Hood, 17 Wall. 1, 84 U.S. 1, 21 L.Ed. 587 (1873); Northwestern Bank v. Freeman, 171 U.S. 620, 19 S.Ct. 36, 43 L.Ed. 307 (1898)). "One claiming title to lands is chargeable with notice of every matter affecting the estate, which appears on the face of any recorded deed forming an essential link in his chain of title, and also with notice of such matters as might be learned by

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS'
MOTION TO RECONSIDER - 8


entitled to his reasonable attorney fees.

III. CONCLUSION

Based on the foregoing, Defendant Brian Crumb, respectfully requests that the Court GRANT his Motion for Attorney Fees and Motion for Attorney Fees in Defending Plaintiffs' Motion to Reconsider.

DATED this 8th day of March, 2018.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

inquiry which the recitals in such instruments made it a duty to pursue.” *Id.* (citing Glover v. Brown, 32 Idaho 426, 184 P. 649 (1919)). Plaintiffs failed to even ask Defendant Crumb if there was an easement over and across his property to Plaintiffs’ lots. (Crumb Dec., ¶¶ 25, 29). As such, Plaintiffs’ lawsuit was brought frivolously, unreasonably or without foundation. Idaho Code § 12-121 (2017); I.R.C.P. 54(e)(1).

Also, it is not debatable that the merger clause contained in the Buyout Agreement precludes the alleged prior oral agreement to grant an easement over and across Defendant Crumb’s adjacent property. Howard v. Perry, 141 Idaho 139, 141-42, 106 P.3d 465, 467-68 (2005). The Buyout Agreement makes no reference whatsoever as to a requirement that Defendant Crumb grant an easement. As such, Plaintiffs’ lawsuit was brought frivolously, unreasonably or without foundation. Idaho Code § 12-121 (2017); I.R.C.P. 54(e)(1).

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS’
MOTION TO RECONSIDER - 9

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 8th day of March, 2018, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 665-7290
- ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
nichole@bistlinelaw.com; sharon@bistlinelaw.com

Christopher G. Varallo
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (509) 458-2728
- ELECTRONIC MEANS (pursuant to written consent):


Darrin L. Murphey

MEMORANDUM IN SUPPORT OF MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS'
MOTION TO RECONSIDER - 10

1. I am the attorney of record for Defendant Brian Crumb in this matter, and have personal knowledge of the facts set forth herein.

2. That I hereby submit the following Verified Memorandum of Costs in Support of Motion for Attorney Fees in Defending Plaintiffs' Motion to Reconsider, pursuant to Rule 54(d)(1), Idaho Rules of Civil Procedure:

3. That on January 10, 2018, the Court entered its Memorandum Decision and Order on Plaintiffs' and Defendant Crumb's Cross Motions for Summary Judgment, denying Plaintiffs' Motion for Summary Judgment and granting Defendant Brian Crumb's Motion for Summary Judgment.

4. That the Court entered its Judgment in this matter on January 19, 2018, dismissing Plaintiffs' Complaint with prejudice, and finding that Defendant Brian Crumb is the prevailing party.

5. That on January 22, 2018, Defendant Brian Crumb filed his verified Memorandum of Costs, Motion for Attorney Fees and Memorandum in Support of Motion for Attorney Fees. The Court has not yet decided the award of attorney fees and costs.

6. That on February 1, 2018, after Defendant Brian Crumb filed his Memorandum of Costs, Plaintiffs filed Plaintiffs' Motion to Reconsider.

7. Defendant Brian Crumb expended attorney fees defending Plaintiffs' Motion to Reconsider.

8. That on February 22, 2018, the Court entered its Memorandum Decision and Order Re: Plaintiffs' Motion to Reconsider, denying Plaintiffs' Motion to Reconsider.

VERIFIED MEMORANDUM OF COSTS IN SUPPORT OF MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS' MOTION TO RECONSIDER - 2

9. Defendant Brian Crumb is the prevailing party in that he obtained all of the relief he sought, dismissal of Plaintiffs' Complaint. *See* Judgment, Memorandum Decision and Order on Plaintiffs' and Defendant Crumb's Cross Motions for Summary Judgment and Memorandum Decision and Order Re: Plaintiffs' Motion to Reconsider.

10. That Defendant Brian Crumb is entitled to an award of his attorney fees pursuant to Idaho Code § 12-120(3), as this matter is an action for an alleged commercial transaction. Plaintiffs' Complaint, p. 5, paragraph 15, alleges that attorney fees should be awarded in this matter as a "commercial dispute".

11. That Defendant Brian Crumb is entitled to an award of his attorney fees pursuant to the Agreement of Members of Abbey & Crumb Developments, LLC, as to Transfer of Assets and Withdrawal of Members, a true and correct copy of which is attached to the Declaration of Richard Abbey dated October 1, 2017, as Exhibit "G", and the Declaration of Brian Crumb dated November 7, 2017, as Exhibit "F", which states on page 4, as follows:

DEFAULT: If any legal action is commenced by any party against another party, as a result of this transaction, the prevailing party in any lawsuit shall be entitled to their reasonable attorney fees.

12. That Defendant Brian Crumb is entitled to an award of his attorney fees pursuant to Idaho Code § 12-121, as this matter was brought and pursued frivolously, unreasonably or without foundation.

13. That the undersigned attests as follows to the factors set forth in Rule 54(e)(3),
IRCP:

VERIFIED MEMORANDUM OF COSTS IN SUPPORT OF MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS' MOTION TO RECONSIDER - 3

(A) The time and labor required.	I, the undersigned expended an additional 13 hours on behalf of Defendant Brian Crumb in this matter, after the Memorandum of Costs was filed on January 22, 2018.
(B) The novelty and difficulty of the questions.	The questions were of typical difficulty.
(C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.	The legal service provided required general litigation, legal research and writing skills, and general knowledge and experience of Idaho real property law. That I, the undersigned have more than 17 years experience.
(D) The prevailing charges for like work.	Based on my experience and knowledge, \$250 is at or below the prevailing charge for litigation for like work. That judges in the First Judicial District have awarded attorney fees at the rate of \$250 per hour for similar work performed by the undersigned.
(E) Whether the fee is fixed or contingent.	The fee is hourly.
(F) The time limitations imposed by the client or the circumstances of the case.	N/A
(G) The amount involved and the results obtained.	The relief sought was dismissal of Plaintiffs' Complaint, which was obtained.
(H) The undesirability of the case.	N/A
(I) The nature and length of the professional relationship with the client.	I, the undersigned have represented Brian Crumb since 2015.
(J) Awards in similar cases.	The requested award is typical for this type of case.
(K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.	The time expended on legal research was reasonable and necessary. No cost of legal research was charged.
(L) Any other factor which the court deems appropriate in the particular case.	N/A.

14. That I, Darrin L. Murphey, performed the legal services described below on behalf of Defendant Brian Crumb in this matter:

Date	Time	Description
02/02/18	.50	Review and analyze Plaintiffs' Motion to Reconsider. Draft email to Brian re: above.

VERIFIED MEMORANDUM OF COSTS IN SUPPORT OF MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS' MOTION TO RECONSIDER - 4

02/04/18	3.00	Draft Memorandum in Response to Plaintiffs' Motion to Reconsider.
02/06/18	.25	Draft email to Brian re: Motion to Reconsider.
02/07/18	.50	Meeting with Brian re: Response to Plaintiffs' Motion to Reconsider. Edit and revise Response to Plaintiffs' Motion to Reconsider.
02/08/18	1.50	Edit, revise, finalize, file and serve Response to Plaintiffs' Motion to Reconsider.
02/12/18	.25	Draft email to Court re: hearing date on motion for attorney fees. Draft Notice of Hearing Re: Motion for Attorney Fees
02/15/18	3.00	Prepare for and argue objection to Plaintiffs' Motion to Reconsider. Draft email to Brian re: above.
02/16/18	.25	Draft email to Brian re: proceedings after decision on Plaintiffs' Motion to Reconsider.
02/27/18	.25	Draft email to Brian re: offer of settlement letter from Art Bistline.
03/07/18	.50	Draft email to Brian re: seeking attorney fees for defending motion to reconsider, and settlement offer. Draft Amended Notice of Hearing re: Motion for Attorney Fees.
03/08/18	3.00	Draft Verified Memorandum of Costs in Support of Motion for Attorney Fees in Defending Plaintiffs' Motion to Reconsider, motion, memorandum and notice of hearing.

15. That I, Darrin L. Murphey, spent 13 hours in this matter representing Defendant Brian Crumb as described in the table above, and that based upon my knowledge and experience, a reasonable hourly rate for the services that have been provided is \$250.

16. That 13 hours multiplied by the rate of \$250 per hour totals \$3,250.00.

17. That I, Darrin L. Murphey, believe that the attorney fees, as computed, are reasonable considering the type of litigation involved and the knowledge and experience of the undersigned in handling matters of this nature.

18. That the total attorney fees and costs set forth in Defendant Brian Crumb's verified Memorandum of Costs dated January 22, 2018, in the amount of \$21,261.00, plus the total attorney fees set forth above, in the amount of \$3,250.00, totals \$24,511.00.

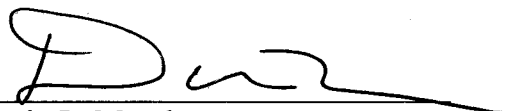
VERIFIED MEMORANDUM OF COSTS IN SUPPORT OF MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS' MOTION TO RECONSIDER - 5

19. To the best of my knowledge and belief the items contained herein are correct and that costs claimed are in compliance with Rule 54, IRCP.

I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 8th day of March, 2018.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

VERIFIED MEMORANDUM OF COSTS IN SUPPORT OF MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS' MOTION TO RECONSIDER - 6

CERTIFICATE OF SERVICE

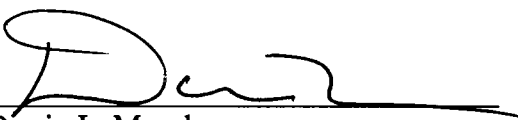
I HEREBY CERTIFY that on the 8th day of March, 2018, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

- U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 TELECOPY (FAX) to: (208) 665-7290
 ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
nichole@bistlinelaw.com; sharon@bistlinelaw.com

Christopher G. Varallo
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

- U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 TELECOPY (FAX) to: (509) 458-2728
 ELECTRONIC MEANS (pursuant to written consent):


Darrin L. Murphey

VERIFIED MEMORANDUM OF COSTS IN SUPPORT OF MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS' MOTION TO RECONSIDER - 7

124

STATE OF IDAHO }
COUNTY OF KOOTENAI } ss
FILED: 0

2018 MAR -8 PM 4: 39

CLERK DISTRICT COURT
Hugh Murphy
DEPUTY

DARRIN L. MURPHEY
Murphey Law Office, PLLC
402 West Canfield Avenue, Suite 2
Coeur d'Alene, ID 83815
Telephone: (208) 667-7621
Facsimile: (208) 667-7625
ISBA# 6221

BRENT G. SCHLOTTHAUER
VASSEUR & SCHLOTTHAUER, PLLC
409 Coeur d'Alene Avenue
P.O. Box 808
Coeur, d'Alene, ID 83816-0808
Telephone: (208) 664-4457
Facsimile: (208) 765-4702
ISBA# 6104

Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial)
Fund LLC)

Plaintiffs,)

v.)

Brian Crumb, Jennifer O'Callaghan and Brian)
O'Callaghan, Jitinvest LLC, Spirit Elements,)
LLC, and Todd A. Reeve,)

Defendants,)
_____)

) Case No. CV 2017-5541
)
) MOTION FOR ATTORNEY FEES IN
) DEFENDING PLAINTIFFS' MOTION TO
) RECONSIDER

COMES NOW Defendant Brian Crumb, by and through his attorney of record, Darrin L.
Murphey, and moves the Court for an order awarding attorney fees pursuant to the Court's

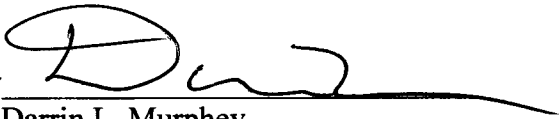
MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS' MOTION TO RECONSIDER - 1

Judgment, Memorandum Decision and Order on Plaintiffs' and Defendant Crumb's Cross Motions for Summary Judgment, Memorandum Decision and Order Re: Plaintiffs' Motion to Reconsider, IRCP 54(e)(1), the Agreement of Members of Abbey & Crumb Developments, LLC, as to Transfer of Assets and Withdrawal of Members, Idaho Code § 12-120(3) and/or Idaho Code § 12-121. This motion is supported by the Memorandum of Costs and Memorandum in Support of Motion for Attorney Fees, filed on January 22, 2018, and Verified Memorandum of Costs In Support of Motion for Attorney Fees in Defending Plaintiffs' Motion to Reconsider and Memorandum in Support of Motion for Attorney Fees in Defending Plaintiffs' Motion to Reconsider, filed contemporaneously herewith.

Defendant Brian Crumb requests oral argument.

DATED this 8th day of March, 2018.

MURPHEY LAW OFFICE, PLLC

By 
Darrin L. Murphey,
Attorney for Brian Crumb

MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS' MOTION TO RECONSIDER - 2

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 8th day of March, 2018, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 665-7290
- ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
nichole@bistlinelaw.com; sharon@bistlinelaw.com

Christopher G. Varallo
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (509) 458-2728
- ELECTRONIC MEANS (pursuant to written consent):


Darrin L. Murphey

MOTION FOR ATTORNEY FEES IN DEFENDING PLAINTIFFS' MOTION TO RECONSIDER - 3

ARTHUR M. BISTLINE
BISTLINE LAW, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814
(208) 665-7270
(208) 665-7290 (fax)
arthur@bistlinelaw.com
ISB: 5216

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED: #740 24
2018 APR -5 PM 1:03

CLERK DISTRICT COURT
[Signature]
DEPUTY

Attorneys for Plaintiffs

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

Security Investor Fund LLC, Security Financial
Fund LLC,

Plaintiffs,

v.

Brian Crumb, Jennifer O'Callaghan and Brian
O'Callaghan, Jitinvst LLC, Spirit Elements,
Inc, and Todd A. Reeve,

Defendants.

Case No. CV-2017-5541

NOTICE OF APPEAL

TO: THE ABOVE NAMED DEFENDANTS, Brian Crumb, Jennifer O'Callaghan and Brian O'Callaghan, Jitinvest LLC, Spirit Elements, Inc., and Todd A. Reeve, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

Plaintiff/Appellants, appeal from the First Judicial District, the Honorable Richard Christiansen presiding.

I. Judgments and Orders Appealed

A. Memorandum Decision and Order of Plaintiffs' and Defendants Crumb's Cross Motions for Summary Judgment.

B. The Judgment based on the appealed Memorandum Decision entered January 19, 2018.

NOTICE OF APPEAL -1

- C. The Memorandum Decision and Order Re: Plaintiffs' Motion to Reconsidered entered February 22, 2018.

II. Issues on Appeal

- A. Was it an error for the District Court to conclude on Summary Judgment that Plaintiffs had presented no evidence to support their claim of an oral agreement between Plaintiffs and Defendant, Brian Crumb, that Defendant would allow Plaintiffs' predecessor in interest, to use Defendant, Brian Crumb's property to access Plaintiffs' property?
- B. Was it an error for the District Court to conclude on Summary Judgment that the Agreement referenced in Paragraph II.A. above was not supported by consideration?
- C. Was it an error for the District Court to conclude on Summary Judgment that Plaintiffs had not provided any evidence of the consideration for Defendant's Agreement referenced in Paragraph II.A. above?
- D. Was it an error for the District Court to conclude on Summary Judgment that Plaintiffs had not provided any evidence of the detrimental reliance upon or part performance of the Agreement referenced in Paragraph II.A. above?

III. Statement of Jurisdiction

- A. Plaintiffs/Appellants have a right to appeal to the Idaho Supreme Court, and the Judicial Actions described in Paragraph I above are an appealable order pursuant to Idaho Appellate Rule 11(a)(1).

IV. Transcript on Appeal

No Transcript is requested.

V. Record on Appeal

A standard record is requested.

In addition to the standard record, the following are requested to be included in the record:

1. **Plaintiffs' Motion for Summary Judgment filed September 3, 2017;**
2. **Affidavit of Arthur M. Bistline in Support of Motion for Summary Judgment filed October 3, 2017;**
3. **Declaration of Roger Glessner filed October 3, 2017;**
4. **Corrected Affidavit of Arthur M. Bistline in Support of Motion for Summary Judgment filed October 3, 2017;**
5. **Defendant Brian Crumb's Motion for Summary Judgment filed November 7, 2017;**
6. **Concise Statement of Facts in Support of Defendant Brian Crumb's Motion for Summary Judgment filed November 7, 2017;**
7. **Defendant Brian Crumb's Memorandum in Support of Motion for Summary Judgment filed November 7, 2017;**
8. **Declaration of Darrin L. Murphey in Support of Defendant Brian Crumb's Motion for Summary Judgment filed November 7, 2017;**
9. **Declaration of Brian Crumb in Support of Defendant Brian Crumb's Motion for Summary Judgment filed November 7, 2017;**
10. **Declaration of Richard J. Abbey filed November 15, 2017;**
11. **Plaintiffs' Response to Defendant's for Summary Judgment filed November 21, 2017;**
12. **Declaration of Zacharie Eifler filed November 21, 2017;**
13. **Declaration of Richard J. Abbey filed November 21, 2017;**

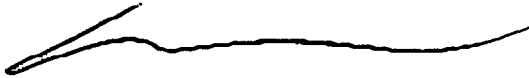
NOTICE OF APPEAL -3

- 14. Defendant Brian Crumb's Response to Plaintiffs' Motion for Summary Judgment filed November 21, 2017;
- 15. Reply Memorandum in Support of Defendant Brian Crumb's Motion for Summary Judgment filed November 28, 2017;
- 16. Plaintiffs' Motion to Reconsider filed February 1, 2018;
- 17. Plaintiffs' Motion to Alter and/or Amend Judgment filed February 2, 2018;
- 18. Plaintiffs' Objection to Defendant, Brian Crumb's Motion for Attorney Fees and Costs filed February 5, 2018; and
- 19. Defendant Brian Crumb's Memorandum in Response to Plaintiffs' Motion to Reconsider filed February 8, 2018.

VI. Certification of Attorney

- A. Service of the Notice of Appeal has been served on the Court Reporter.
- B. No estimated fees for the reporter's transcript is due because no transcript is requested.
- C. Service has been made upon all parties required to be served pursuant to Rule 20.
- D. No order has been entered sealing or any portion of the record.

DATED this 5th day of April, 2018.



ARTHUR M. BISTLINE
 Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of April, 2018, I served a true and correct copy of foregoing NOTICE OF APPEAL by the method indicated below, and addressed to the following:

Darin L. Murphy
Attorney at Law
701 Front Avenue, #101
Coeur d'Alene, ID 83816

U.S. Mail
 Certified mail
 Overnight mail
 Facsimile: (208)667-7625
 Hand Delivery

Todd A. Reeve
P.O. Box 731402
Puyallup, WA 98373-0090

U.S. Mail
 Certified mail
 Overnight mail
 Facsimile:
 Hand Delivery

Spirit Elements, Inc. Project Living Inc.
Attn: Seth A. Chernoff
6525 Gunpark Drive, #370-249
Boulder, CO 80301

U.S. Mail
 Certified mail
 Overnight mail
 Facsimile:
 Hand Delivery

Jitinvest LLC
Attn: Dale Adema
P.O. Box 265
Rockwall, TX 74087

U.S. Mail
 Certified mail
 Overnight mail
 Facsimile:
 Hand Delivery

Christopher Varallo
WITHERSPOON KELLEY
422 W. Riverside Avenue, Ste. 1100
Spokane, WA 99201-0300

U.S. Mail
 Certified mail
 Overnight mail
 Facsimile: (509)458-2728
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NICHOLE CANSINO

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brent@vslawfirm.com
ISBA# 6104

Attorneys for Brian Crumb

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

Security Investor Fund LLC, Security Financial Fund LLC)	
)	
Plaintiffs,	)	Case No. CV 2017-5541
)	
v.	)	REPLY TO PLAINTIFFS' OBJECTION TO
	)	DEFENDANT, BRIAN CRUMB'S
Brian Crumb, Jennifer O'Callaghan and Brian O'Callaghan, Jitinest LLC, Spirit Elements, LLC, and Todd A. Reeve,	)	MOTION FOR ATTORNEY FEES AND
	)	COSTS
)	
Defendants,)	
)	

COMES NOW Defendant Brian Crumb, by and through his attorney of record, Darrin L.

REPLY TO PLAINTIFFS' OBJECTION TO DEFENDANT, BRIAN CRUMB'S MOTION FOR ATTORNEY
FEES AND COSTS - 1

Murphey, and submits his Reply to Plaintiffs' Objection to Defendant, Brian Crumb's Motion for Attorney Fees.

I. ARGUMENT

A. Defendant Crumb is entitled to an award of attorney fees pursuant to Idaho Code § 12-120(3).

Plaintiffs' argument in this case has been a moving target. Plaintiffs now argue that attorney fees should not be awarded pursuant to Idaho Code § 12-120(3), because “[n]o transaction ever occurred between the parties to this lawsuit.” (Objection, p. 1).¹ Defendant Crumb agrees that no transaction ever occurred between the parties. However, Plaintiffs brought and pursued this lawsuit on the basis of an alleged commercial transaction.

“Where a party alleges the existence of a contractual relationship of a type embraced by section 12-120(3) ... that claim triggers the application of [I.C. § 12-120(3)] and a prevailing party may recover fees even though no liability under a contract was established.” Garner v. Povey, 151 Idaho 462, 469, 259 P.3d 608, 615 (2011) (citation omitted); Idaho Transp. Dep't v. Ascorp, Inc., 159 Idaho 138, 141, 357 P.3d 863, 866 (2015). “This same principle applies where the action is one to recover in a commercial transaction, regardless of the proof that the commercial transaction alleged did, in fact, occur.” *Id.* (citation omitted). Thus, “allegations in the complaint that the parties entered into a commercial transaction and that the complaining party is entitled to recover based upon that transaction, are sufficient to trigger the application of I.C. § 12-120(3).” *Id.* at 470, 259 P.3d at 616.

¹ Plaintiffs' Objection to Defendant, Brian Crumb's Motion for Attorney Fees is designated herein as “Objection”.

In Garner, the Garners, the Plaintiffs in that case, alleged in their verified Complaint that:

The wrongful actions of [the Poveys] include plowing over Segment “A” of the Original Access Road to facilitate sale of their property; wrongfully conveying property without confirming the right-of-way now held by Daniel, his wife, Nola and the Nola Trust; warranting against the right-of-way; and by actions herein seeking to have Daniel, his wife, Nola and the Nola Trust lose all fully effective access rights. By performing these wrongful actions, the Poveys breached the warranty contained in the Warranty Deed
....

The Garners’ complaint continued, alleging that they

[brought] and pursue[d] this action to preserve their right-of-way and to recover damages against Defendants Brad Povey and Leiza Povey for their wrongful conduct in seeking to extinguish the right-of-way.... The purchase of the real estate by Gary and Nola from Povey Defendants was a commercial transaction under Idaho Code Sec. 12–120(3) so Plaintiffs ... should be entitled to recover their reasonable attorney fees from Defendants Brad Povey and Lezia [sic] Povey.

Id. at 470-71, 259 P.3d at 616-17 (italics original) (underlining added). The Supreme Court held that the allegations of a commercial transaction in the Garners’ verified complaint entitled the Defendants to an award of attorney fees pursuant to Idaho Code § 12-120(3). *Id.* at 471, 259 P.3d at 617.²

Here, as was the case in Garner, Plaintiffs’ verified Complaint alleges a claim seeking to recover based on breach of contract, and that Plaintiffs are entitled to recover attorney fees based on “this commercial dispute”. Plaintiffs alleged in their verified Complaint that Defendant “Crumb is bound by an express or implied contract with all FRITZ-HEATH landowners to

2 “This was not a situation where, after the substantive litigation, a party seeking fees attempted to characterize the action as one based on a commercial transaction. Rather, according to the Garners’ complaint, the gravamen of this action was a commercial transaction of the type embraced by I.C. § 12–120(3).” *Id.*

provide them access to FRITZ-HEATH through the CRUMB ENTRANCE PARCEL”, and that “Crumb’s conduct constitutes breach of contract and/or fraud.”³ (Complaint, p. 4, § III, ¶ A) (emphasis added). Plaintiffs also alleged in their verified Complaint that “Plaintiffs have been required to retain the services of an attorney in this commercial dispute solely as a result of Crumb’s incompetency, fraud, or breach of contract, and are entitled to an award of their reasonable attorneys fees incurred in this matter.” (Complaint, p. 5, ¶ 15) (emphasis added). Plaintiffs’ further alleged in their verified Complaint that “Plaintiffs have incurred damages in an amount in excess of TEN THOUSAND DOLLARS AND NO/100 (\$10,000) to be proved at trial.” (Complaint, ¶ 16). As such, as was the case in Garner, Defendant Crumb is entitled to an award of reasonable attorney fees pursuant to Idaho Code § 12-120(3) based on the allegations in Plaintiffs’ verified Complaint seeking to recover “in this commercial dispute.” *Id.* at 470, 259 P.3d at 616.

Even assuming that Plaintiffs had not plead a commercial transaction in their verified Complaint, Plaintiffs pursued this lawsuit on the basis of an alleged commercial transaction. Plaintiffs submitted declaration testimony that “All FRITZ-HEATH landowners are intended beneficiaries of the express agreement that the CRUMB ENTRANCE would be used as a permanent access to the FRITZ-HEATH.” (Abbey Dec. (filed Oct. 3, 2017), ¶ 24). Plaintiffs submitted argument that “FRITZ-HEATH landowners are intended beneficiaries of the express

3 Although Plaintiffs did present evidence and argument on their breach of contract claim, Plaintiffs did not present any evidence or argument on their fraud claim. “Plaintiffs have submitted no evidence or argument in support of their fraud claim.” (Memorandum Decision and Order on Plaintiffs’ and Defendant Crumb’s Cross Motions for Summary Judgment, p. 14). In fact, Plaintiffs now argue that there was no transaction between Plaintiffs and Defendant Crumb. As such, Defendant Crumb could not have misrepresented a material fact, if no transaction or promise to Plaintiffs ever occurred.

agreement that the 40 foot right of way through the CRUMB ENTRANCE would be used as a permanent access to the FRITZ-HEATH.” (Plaintiffs’ Motion for Summary Judgment, 9 10, ¶ 25). Notwithstanding, that the alleged oral agreement occurred prior to Defendant Crumb’s withdrawal from Abbey & Crumb and is precluded by the merger clause contained in the Buyout Agreement,⁴ the alleged oral agreement is commercial in nature. Plaintiffs argued that Defendant Crumb entered into an oral agreement to grant an easement so that “we could make some money selling lots.” (Abbey Dec. (filed Oct. 3, 2017), ¶ 24; Plaintiffs’ Motion for Summary Judgment, p. 14). Plaintiffs’ not only alleged damages in their verified Complaint,⁵ Plaintiffs stated in response to discovery, under oath, that “Security will seek at least \$700,000 in damages against Brian Crumb in the event that a forty (40) foot right of way easement is not declared over his property.” (Murphey Dec. (filed Nov. 7, 2017), Ex. A, Answer to Interrogatory No. 8). As such, the gravamen of the lawsuit pursued by Plaintiffs “in this commercial dispute”⁶ was the alleged oral agreement to grant an easement, which according to Plaintiffs was to “make some money selling lots”⁷ or “in order to save road construction costs.”⁸ Accordingly, Defendant Crumb is entitled to an award of reasonable attorney fees pursuant to Idaho Code § 12-120(3).

4 The Agreement of Members of Abbey & Crumb as to Transfer of Assets and Withdrawal of Members Interest is herein referred to as the “Buyout Agreement”. (Crumb Dec. (filed Nov. 7, 2017), ¶ 17, Ex. “F”). The Buyout Agreement is a commercial transaction as defined by Idaho Code § 12-120(3). As discussed below, Plaintiffs are subject to the terms of the Buyout Agreement, which contains a merger clause precluding the alleged oral agreement.

5 “Plaintiffs have incurred damages in an amount in excess of TEN THOUSAND DOLLARS AND NO/100 (\$10,000) to be proved at trial.” (Complaint, ¶ 16).

6 Complaint, p. 5, ¶ 15.

7 Abbey Dec. (filed Oct. 3, 2017), ¶ 24; Plaintiffs’ Motion for Summary Judgment, p. 14.

8 Complaint, p. 4, § III, ¶ A.

REPLY TO PLAINTIFFS’ OBJECTION TO DEFENDANT, BRIAN CRUMB’S MOTION FOR ATTORNEY FEES AND COSTS - 5

Plaintiffs argue that attorney fees should not be awarded pursuant to Idaho Code § 12-120(3), as this case was brought merely as a judicial determination of property rights, citing Sun Valley Hot Springs Ranch, Inc. v. Kelsey, 131 Idaho 657, 962 P.2d 1041 (1998). (Objection, p.3-4). First, the Supreme Court in the much more recent 2011 Garner decision clearly held that “allegations in the complaint that the parties entered into a commercial transaction and that the complaining party is entitled to recover based upon that transaction, are sufficient to trigger the application of I.C. § 12-120(3).” *Id.* at 470, 259 P.3d at 616;⁹ *see, also* Idaho Transp. Dep’t v. AscCorp, Inc., 159 Idaho 138, 141, 357 P.3d 863, 866 (2015). Unlike the facts in Kelsey, as discussed above, Plaintiffs’ verified Complaint in this case alleges a claim seeking to recover based on breach of contract, and that Plaintiffs are entitled to recover attorney fees “in this commercial dispute”¹⁰ As such, Defendant Crumb is entitled to an award of reasonable attorney fees, pursuant to Idaho Code § 12-120(3).

Second, even assuming that the Plaintiffs in this case did not allege in their verified Complaint that they are entitled to recover attorney fees “in this case is commercial dispute”, the loan-mortgage transaction in Kelsey was merely incidental to that lawsuit, whereas the commercial dispute in this case for breach of contract and/or fraud seeking specific performance

9 The allegations of the verified complaint in Garner are very similar to the allegations in Plaintiffs’ verified Complaint against Defendant Crumb. As discussed above, in Garner, the Garners, the plaintiffs in that case, alleged in their verified complaint that the defendants plowed over a part of the original road, conveyed property without confirming the right-of-way, warranted against the right-of-way; and have caused defendants to lose all fully effective access rights, in breach of the warranty deed. The Garners’ further alleged in their verified complaint that they brought the action to preserve their right-of-way and to recover damages against the defendants for their wrongful conduct in seeking to extinguish the right-of-way, and that the purchase of the property from the defendants was a commercial transaction under Idaho Code § 12-120(3), entitling plaintiffs to recover their reasonable attorney fees from defendants. *Id.* at 470-71, 259 P.3d at 616-17.

10 Complaint, p. 5, ¶ 15.

and damages against defendant Crumb in the amount of at least \$700,000 if an easement is not declared,¹¹ arises out of an alleged oral agreement¹² in order to “make some money selling lots”¹³ or “in order to save road construction costs.”¹⁴ As such, Plaintiffs lawsuit cannot be said to be merely incidental to the alleged oral agreement, and merely a determination of property rights. The alleged oral agreement was the gravamen of Plaintiffs’ lawsuit, and Plaintiffs sought more than a mere determination of property rights. The alleged oral agreement was in fact the basis on which Plaintiffs were attempting to recover. Accordingly, Defendant Crumb is entitled to an award of reasonable attorney fees, pursuant to Idaho Code § 12-120(3).

B. Defendant Crumb is entitled to attorney fees pursuant to the Buyout Agreement.

Plaintiffs brought this action seeking specific performance, damages and a declaratory judgment based on an alleged oral contract by Defendant Crumb made prior to his withdrawal from Abbey & Crumb Developments, LLC, to grant an easement over his adjacent property, in order to “make some money selling lots” or “in order to save road construction costs.” (Memorandum Decision and Order on Plaintiffs’ and Defendant Crumb’s Cross Motions for Summary Judgment, p. 9; Abbey Dec. (filed Oct. 3, 2017), ¶¶ 9, 24; Complaint, p. 4, § III, ¶ A.). Plaintiffs allege that “Fritz-Heath landowners they are intended beneficiaries of that agreement.

11 Murphey Dec. (filed Nov. 7, 2017), Ex. A, Answer to Interrogatory No. 8.

12 This Court described Plaintiffs’ causes of action as follows: “Plaintiffs’ Complaint alleges two Causes of Action: 1) Breach of Contract and Fraud and 2) Declaratory Judgment. *See* Complaint. Essentially, Plaintiff alleges that Defendant Crumb orally agreed to create and grant an express forty (40) foot right of way easement over the CRUMB ENTRANCE, and then failed to perform the agreement. *Id.* As such, Plaintiffs seek specific performance of the alleged contract, damages, and a declaratory judgment quieting title and establishing that such express easement exists. *Id.*” (Memorandum Decision and Order on Plaintiffs’ and Defendant Crumb’s Cross Motions for Summary Judgment, p. 9).

13 Abbey Dec. (filed Oct. 3, 2017), ¶ 24; Plaintiffs’ Motion for Summary Judgment, p. 14.

14 Complaint, p. 4, § III, ¶ A.

(Abbey Dec. (filed Oct. 3, 2017), ¶ 24). Even assuming that Plaintiffs are a beneficiary to the alleged oral agreement, Plaintiffs are subject to the same defenses and restrictions as the parties to the agreement. 17A Am. Jur. 2d Contracts § 438 (2017)(“The right of a third person for whose benefit a promise is made is affected with all the infirmities of the contract as between the parties to the agreement.”).

When Defendant Crumb withdrew from Abbey & Crumb Developments, LLC, he executed the Buyout Agreement which included a merger clause. (Crumb Dec. (filed Nov. 7, 2017), ¶ 17, Ex. “F”; Memorandum Decision and Order on Plaintiffs’ and Defendant Crumb’s Cross Motions for Summary Judgment, pp. 3, 12). A merger clause precludes enforcement of any alleged prior or contemporaneous agreement that could later be alleged. Howard v. Perry, 141 Idaho 139, 141-42, 106 P.3d 465, 467-68 (2005). Notwithstanding the merger clause, Plaintiffs attempted to use the terms of the Buyout Agreement to create liability on the part of Defendant Crumb. (Plaintiffs’ Motion for Summary Judgment, pp. 12-13).

The Buyout Agreement includes an attorney fees provision, which states as follows: “If any legal action is commenced by any party against another party, as a result of this transaction, the prevailing party in any lawsuit shall be entitled to their reasonable attorney fees.” (Crumb Dec. (filed Nov. 7, 2017), ¶ 17, Ex. “F”). As discussed above, the Buyout Agreement also constitutes a commercial transaction, as defined by Idaho Code § 12-120(3). Plaintiffs’ commenced this action purportedly as a beneficiary to the alleged oral agreement which is precluded by the merger clause contained in the Buyout Agreement. The very purpose of the merger clause was to protect Defendant Crumb against allegations of any alleged prior oral

agreements, such as that brought by Plaintiffs. Howard, 141 Idaho at 141-42, 106 P.3d at 467-68. As such, Defendant Crumb is entitled to his reasonable attorney fees pursuant to the Buyout Agreement.

C. Defendant Crumb is entitled to attorney fees pursuant to Idaho Code § 12-121.

Plaintiffs only argument in response to Defendant Crumb’s Motion for Attorney Fees pursuant to Idaho Code § 12-121 is that there is a question of fact as to whether the CC&Rs had a map showing an easement. (Objection, pp 4-5). There is no question of fact and the law is not debatable on this issue. In order to transfer an interest in land, such as an easement, the Statute of Frauds requires a written instrument signed by the party granting the easement. Idaho Code §§ 9-503 and 9-505. There is no language in the CC&Rs that describes that Crumb and his wife granted an easement over and across their adjacent property.¹⁵ The parties agree that no exhibit was attached to the CC&Rs. (Memorandum Decision and Order Re: Plaintiffs’ Motion to Reconsider, p. 6). The Court found that the CC&Rs “do not contain any identification of the land subject to the claimed easement.” *Id.* “The Court has not received any written instrument, signed by Defendant Crumb, which both identifies the land subject to the easement and makes clear the parties’ intention to establish a servitude.” *Id.* at, p. 7. As such, Plaintiffs’ objection to the award of attorney fees pursuant to Idaho Code § 12-121 is without merit. Accordingly, Defendant Crumb is entitled to his reasonable attorney fees in defending against Plaintiffs

¹⁵ The CC&R’s, which were recorded on January 5, 2006, state, at paragraph 24, that the declarant reserves an easement for a private road through “each lot” and that a road easement “on each lot” is shown in Exhibit “A” attached to the CC&Rs. (Abbey Dec., Ex. “D”). The CC&Rs do not state that a road easement is reserved on each lot AND that the Crumbs also grant an easement over and across their adjacent property as shown in an attached exhibit.

lawsuit, which was brought and pursued frivolously, unreasonable and without foundation. Idaho Code § 12-121.

II. CONCLUSION

Based on the foregoing, Defendant Brian Crumb, respectfully requests that the Court GRANT his Motion for Attorney Fees and Motion for Attorney Fees in Defending Plaintiffs' Motion to Reconsider.¹⁶

DATED this 10th day of April, 2018.

MURPHEY LAW OFFICE, PLLC

By /s/ Darrin L. Murphey
Darrin L. Murphey,
Attorney for Brian Crumb

¹⁶ Plaintiffs did not file a response to Defendant Crumb's Motion for Attorney Fees in Defending Plaintiffs' Motion to Reconsider.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of April, 2018, I electronically filed the foregoing with the Clerk of the Court using the File and Serve system which sent to the email that was identified as the party's service contact.

I FURTHER CERTIFY that on the 10th day of April, 2018, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (208) 665-7290
- ELECTRONIC MEANS (pursuant to written consent): arthur@bistlinelaw.com;
nichole@bistlinelaw.com; sharon@bistlinelaw.com

Christopher G. Varallo
Witherspoon Kelley
422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

- U.S. MAIL
- HAND DELIVERED
- OVERNIGHT MAIL
- TELECOPY (FAX) to: (509) 458-2728
- ELECTRONIC MEANS (pursuant to written consent):

By /s/ Darrin L. Murphey
Darrin L. Murphey

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

Security Investor Fund LLC, Security)
 Financial Fund LLC,)
)
 Plaintiffs,)
)
 vs.)
)
 Brian Crumb, Jennifer O'Callaghan and)
 Brian O'Callaghan, Jitinvest LLC,)
 Spirit Elements, LLC and Todd A.)
 Reeve,)
)
)
 Defendants.)

STATE OF IDAHO
 COUNTY OF KOOTENAI
 FILED: 4/25/18
 1:00 PM
 CLERK, DISTRICT COURT
 DEPUTY

Case No. CV-2017-5541

**MEMORANDUM DECISION
AND ORDER RE:
ATTORNEY FEES AND
COSTS**

I.

INTRODUCTION.

This matter comes before the Court by the defendant Brian Crumb's (Crumb) motion for attorney fees as filed January 22, 2018 and Crumb's motion for attorney fees in defending the plaintiffs' motion to reconsider as filed March 8, 2018. Crumb's motions are DENIED.

II.

FACTS AND PROCEDURAL HISTORY

This Court granted summary judgment to Crumb and against the plaintiffs on January 10, 2018. The facts and underlying issues in this case are set forth in the Court's memorandum decision and order of the same date and will not be repeated here. Judgment was subsequently entered in favor of Crumb on January 19, 2018. The plaintiffs brought a timely motion to reconsider which was heard by the Court on February 15, 2018 and denied by written memorandum and order on February 22, 2018. Crumb brought his motions for attorney fees on both the initial judgment and the order denying reconsideration in a timely manner.

MEMORANDUM DECISION AND ORDER RE: ATTORNEY FEES AND COSTS – 1

III.**DISCUSSION**

In assessing whether to award attorney fees a court must consider a number of preliminary matters as set forth below.

A. Is There A Prevailing Party?

In determining whether there is a prevailing party to be awarded fees and costs, the Court is guided by I.R.C.P. 54(d)(1)(B) which provides:

(B) Prevailing Party. In determining which party to an action is a prevailing party and entitled to costs, the trial court shall in its sound discretion consider the final judgment or result of the action in relation to the relief sought by the respective parties. The trial court in its sound discretion may determine that a party to an action prevailed in part and did not prevail in part, and upon so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resultant judgment or judgments obtained.

Id.

In the present case, Crumb obtained a judgment in his favor dismissing all claims against him. In applying the above Rule 54(d)(1)(B) to Crumb's judgment, the only conclusion is that Crumb is the prevailing party. *Sanders v. Lankford*, 134 Idaho 322, 1 P.3d 823 (Ct. App. 2000).

B. Is There An Underlying Basis For The Award of Attorney Fees?

Crumb sets forth three separate grounds upon which he claims an award of attorney fees should be granted.

1. Idaho Code §12-120(3).

Crumb asserts this lawsuit involved a "commercial transaction" and therefore seeks attorney fees pursuant to Idaho Code §12-120(3) which reads as follows:

(3) 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*

MEMORANDUM DECISION AND ORDER RE: ATTORNEY FEES AND COSTS – 2

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.

The term "*commercial transaction*" is defined to mean all transactions except transactions for personal or household purposes. The term "party" is defined to mean any person, partnership, corporation, association, private organization, the state of Idaho or political subdivision thereof. *Id.* (*emphasis added*).

In order to recover under 12-120(3) the prevailing party must show that the gravamen of the lawsuit was due to a "commercial transaction." *Brower v. E.I. DuPont De Nemours & Co.*, 117 Idaho 780 (1990). However, an award of attorney fees under 12-120(3) is not warranted every time a commercial transaction is remotely connected with the case. *Kelly v. Silverwood Estates*, 127 Idaho 624, 903 P.2d 1321 (1995) (Court determined an accounting, a winding up of the partnership affairs, and a distribution of the partnership assets did not constitute a commercial transaction as the gravamen of the case was to enforce a statutory scheme of dissolution); *Gumprecht v. Doyle*, 128 Idaho 242, 912 P. 2d 620 (1995) (attempt to enforce statutory penalties for failure to provide access to corporate records deemed not a "commercial transaction").

In this action, Crumb argues that the plaintiffs alleged in their complaint that Crumb was bound by an express or implied contract with the plaintiffs' predecessors requiring that he (Crumb) was to provide an easement over and across Crumb's property. *Complaint at 4*. Further, that in the "Attorney Fees" section of the Complaint, the plaintiffs refer to "this commercial dispute." *Id. at 5*. Crumb relies heavily on the quote from *Garner v. Povey*, 151 Idaho 462, 259 P.3d 608 (2011) which stated, "[A]llegations in the complaint that the parties entered into a commercial transaction and that the complaining party is entitled to recover based upon that

MEMORANDUM DECISION AND ORDER RE: ATTORNEY FEES AND COSTS – 3

transaction, are sufficient to trigger application of I.C. §12-120(3).” 151 Idaho at 470. However, *Garner* is distinguishable on the law and the facts.

In the present case, there is no privity between Crumb and the plaintiffs. The agreement that the plaintiffs were attempting to enforce against Crumb was a “Transfer of Assets and Withdrawal of Members (*sic*) Interest” agreement, *Declaration of Abbey, Ex. G.*, to which the plaintiffs were not a party. This was an agreement between Crumb and his former business partner wherein Crumb, his wife, and his mother were withdrawing as members of an LLC and were receiving land parcels from the LLC owned subdivision in exchange for their member interests. The plaintiffs were not a party to this agreement nor could they be considered successors in interest to this agreement. Such is the difference between present case and *Garner*, wherein the dispute arose from claims of breach of an implied duty to warrant and defend an implied or prescriptive easement implicitly contained in a warranty deed between grantor and grantees. The grantors and grantees in *Garner* were the respective defendants and plaintiffs (at least some of the plaintiffs) in the underlying lawsuit. Such parties were in direct privity with each other and the plaintiffs had alleged a “commercial transaction” in the complaint. In this instant case the plaintiffs did not allege that a “commercial transaction” was entered into with Crumb. Although there is a reference in the “Attorney Fees” section of the Complaint to “this commercial dispute,” (*Complaint* at 4) there is no reference to Idaho Code §12-120(3).

As stated in *Garner*,

In determining whether attorney fees should be awarded under I.C. §12-120(3), the Court has conducted a two-step analysis: “(1) there must be a commercial transaction that is integral to the claim; and (2) the commercial transaction must be the basis upon which recovery is sought.” *Great Plains*, 136 Idaho at 471, 36 P.3d at 223. ... “The commercial transaction must be an actual basis of the complaint... [T]he lawsuit and the causes of action must be based on a commercial transaction, not simply a situation that can be characterized as a commercial transaction.” *Id.* In other words, the relevant inquiry is whether the

MEMORANDUM DECISION AND ORDER RE: ATTORNEY FEES AND COSTS – 4

commercial transaction constituted "the gravamen of the lawsuit," and was the basis on which a party is attempting to recover.

Garner at 469, 259 P.3d at 615, citing *Great Plains Equip., Inc. v. Northwest Pipeline Corp.*, 136 Idaho 466, 471-472, 36 P.3d 218, 223-224 (2001).

The Court finds that the gravamen of this lawsuit was not a commercial transaction between the parties. The plaintiffs unartfully pleaded a breach of contract and fraud and a declaratory judgment for an easement, but there was no commercial transaction existing or even contemplated between the parties. Crumb's request for attorney fees pursuant to I.C. §12-120(3) is DENIED.

2. Idaho Code §12-121.

Crumb also seeks attorney fees under I.C. §12-121 maintaining plaintiffs' case was "brought, pursued or defended frivolously, unreasonably or without foundation" *Memorandum In Support of Motion for Attorney Fees* at 6. The award of attorney fees under Idaho Code §12-121 and IRCP Rule 54, is a matter within the court's discretion. *Everett v. Trunnell*, 105 Idaho 787, 673 P.2d 387 (1983). As set forth in *Goodspeed v. Shippen*, 154 Idaho 866, 303 P.3d 225 (2013)

An award of attorney fees under Idaho Code § 12-121 is not a matter of right to the prevailing party, but is appropriate only when the court, in its discretion, is left with the abiding belief that the case was brought, pursued, or defended frivolously, unreasonably, or without foundation. When deciding whether attorney fees should be awarded under I.C. § 12-121, the entire course of the litigation must be taken into account and if there is at least one legitimate issue presented, attorney fees may not be awarded even though the losing party has asserted other factual or legal claims that are frivolous, unreasonable, or without foundation.

Id. at 874, 303 P.3d at 233, quoting *Michalk v. Michalk*. 148 Idaho 224, 235, 220 P.3d 580, 591 (2009) (citing *McGrew v. McGrew*, 139 Idaho 551, 562, 82 P.3d833, 844 (2003)).

MEMORANDUM DECISION AND ORDER RE: ATTORNEY FEES AND COSTS – 5

The Court finds the plaintiffs' claims for breach of contract and fraud to be wholly without merit. As indicated above, there was no evidence of a contract between the plaintiffs and Crumb, let alone a breach of a contract. The plaintiffs also failed to properly plead a claim of fraud and did not even argue their fraud claim in the cross-motions for summary judgment. Therefore, the Court finds such claims for breach of contract and fraud to have been brought, pursued or defended frivolously, unreasonably or without foundation.

The plaintiffs also brought and argued for a declaratory judgment as to an easement through Crumb's property. Although the Court found for Crumb on this matter, having determined that no express easement existed across Crumb's property, the Court finds in its discretion, and taking into account the facts as presented by way of affidavits submitted for the summary judgment motions, that such a claim was neither frivolous, nor unreasonable, nor without foundation. Although not a successful claim, it was an arguable claim. Such a finding on this claim precludes the award of any attorney fees pursuant to I.C. §12-121 for the previously discussed frivolous claims.

The Court is aware of the line of decisions that flow from *Idaho Military Historical Society, Inc. v. Maslen* 156 Idaho 624, 329 P. 3d 1072 (2014) which appeared to allow for an apportionment of attorney fees between frivolous and non-frivolous claims. However, the latest opinions from the Idaho Supreme Court harken back to the reasoning of *Michalk, supra*. As recently as this past March, the Court again quoted *Michalk*, as to "[w]hen deciding whether attorney fees should be awarded under I.C. §12-121, the entire course of the litigation must be taken into account *and if there is at least one legitimate issue presented, attorney fees may not be awarded even though the losing party has asserted other factual or legal claims that are*

MEMORANDUM DECISION AND ORDER RE: ATTORNEY FEES AND COSTS – 6

frivolous, unreasonable, or without foundation.” In Re SRBA Case No. 39576 Subcase No. 61-12301, ___ Idaho ___, 414 P3.d 215 at 220 (emphasis added).¹

Therefore, Crumb’s motion for attorney fees on such a basis is DENIED.

3. Attorney Fees Pursuant to the Buyout Agreement.

Crumb seeks attorney fees pursuant an attorney fees clause in the Buyout Agreement. It is understood that this is the same as the “Transfer of Assets and Withdrawal of Members (*sic*) Interest” agreement. As stated, *supra*, the parties to this lawsuit were not the same parties bound by the Buyout Agreement, nor does the Court find the plaintiffs to be the successors or assigns of the member parties of such agreement. Crumb’s motion for attorney fees on such basis is DENIED.

C. Attorney Fees Incurred on Motion to Reconsider

Although this Court ultimately denied the plaintiffs’ motion to reconsider, the Court finds in its discretion, and taking into account the facts as presented by way of affidavits submitted for the motion to reconsider and the summary judgment motions, that the motion to reconsider was neither frivolous, nor unreasonable, nor without foundation. Therefore, Crumb’s motion for attorney fees is DENIED as to fees incurred defending the plaintiffs’ motion to reconsider.

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¹ More recently the Idaho Supreme Court again set forth the same quote from *Michalk*, in *Budget Truck Sales, LLC v. Tilley*, 2018 WL 1885685 (filed April 20, 2018). Such case is not yet precedent as it has not yet been released for publication, however it is instructive as to the Supreme Court’s position on the issue.


MEMORANDUM DECISION AND ORDER RE: ATTORNEY FEES AND COSTS – 7

IV.

CONCLUSION

For the reasons set forth above, Crumb's motions for attorney fees are DENIED.

SO ORDERED this 25th day of April, 2018.



Rich Christensen,
DISTRICT JUDGE

MEMORANDUM DECISION AND ORDER RE: ATTORNEY FEES AND COSTS – 8

I hereby certify that on the 25th day of April, 2018, a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER RE: ATTORNEY FEES AND COSTS , was delivered as follows:

Darrin Murphy
Attorney at Law
FAX 208-667-7625

Art Bistline
Attorney at Law
FAX 208-665-7290

Christopher Varallo
Attorney at Law
FAX 509-458-2728

JIM BRANNON, Clerk of the Court, by  Deputy Clerk

MEMORANDUM DECISION AND ORDER RE: ATTORNEY FEES AND COSTS - 9

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ISBA# 6104

Attorneys for Defendant/ Respondent/
Cross-Appellant Brian Crumb

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

Security Investor Fund LLC, Security Financial)
Fund LLC,)
Plaintiffs/ Appellants/ Cross-Respondents,) Case No. CV 2017-5541
v.)
BRIAN CRUMB, JENNIFER O'CALLAGHAN AND BRIAN)
O'CALLAGHAN, JITINVEST LLC, SPIRIT ELEMENTS,)
LLC, AND TODD A. REEVE,)
Defendants/ Respondents/ Cross-Appellants.)
_____)

NOTICE OF CROSS APPEAL - 1

TO: THE ABOVE NAMED CROSS-RESPONDENTS, SECURITY INVESTOR FUND LLC, AND SECURITY FINANCIAL FUND, LLC AND THE PARTIES ATTORNEY OF RECORD, ARTHUR M. BISTLINE, BISTLINE LAW, PLLC, 1205 N. 3RD STREET, COEUR D'ALENE, IDAHO, 83814, AND THE CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named Cross-Appellant, Brian Crumb appeals against the above named Cross-Respondents to the Idaho Supreme Court from the Memorandum Decision and Order Re: Attorney Fees and Costs, entered in the above entitled action on the 25th day of April, 2018, the Honorable Judge Rich Christensen presiding.

2. That Cross-Appellant has a right to cross-appeal to the Idaho Supreme Court, and the order described in paragraph 1 above is an appealable order under and pursuant to Idaho Appellate Rule 11(a)(7).

3. Cross-Appellant intends to assert the following issues on appeal:

a. Whether it was error for the District Court to deny Cross-Appellant's Memorandum of Costs?

b. Whether it was error for the District Court to deny Cross-Appellant's Motion for Attorney Fees?

c. Whether it was error for the District Court to deny Cross-Appellant's Verified Memorandum of Costs in Support of Motion for Attorney Fees in Defending Cross-Respondents' Motion to Reconsider?

- d. Whether it was error for the District Court to deny Cross-Appellant's Motion for Attorney Fees in Defending Cross-Respondents' Motion to Reconsider?
- e. Whether it was error for the District Court to fail to award Cross-Appellant's costs incurred as a matter of right, a notice of appearance court filing fee, pursuant to IRCP 54(d)(1)(C)(i)?
- f. Whether it was error for the District Court to fail award attorney fees to Cross-Appellant pursuant to Idaho Code § 12-120(3)?
- g. Whether it was error for the District Court to find that the gravamen of the lawsuit pursued by Cross-Respondents was not a commercial transaction?
- h. Whether it was error for the District Court to conclude that actual proof of a commercial transaction between the parties is required in order to award attorney fees pursuant to Idaho Code § 12-120(3), where the Cross-Respondents plead in their verified Complaint the existence of a commercial dispute and that the Cross-Respondents are entitled to an award of attorney fees based upon that commercial dispute?
- i. Whether it was error for the District Court to fail to award attorney fees to Cross-Appellant pursuant to the Agreement of Members of Abbey & Crumb Developments, LLC, as to Transfer of Assets and Withdrawal of Members (sic) Interest?

- j. Whether it was error for the District Court to fail to award attorney fees to Cross-Appellant pursuant to Idaho Code § 12-121?
 - k. Whether it was error for the District Court to find that Cross-Respondents' lawsuit was not brought, pursued or defended frivolously, unreasonably or without foundation?
4. Cross-Appellant requests the preparation of the following reporter's transcripts, in both hard copy and electronic format:
- a. The hearing on Cross-Respondents' and Cross-Appellant Crumb's Cross Motions for Summary Judgment, December 5, 2017, the Honorable Judge Richard Christensen, presiding;
 - b. The hearing on Cross-Respondents' Motion to Reconsider, February 15, 2018, the Honorable Judge Richard Christensen, presiding; and
 - c. The hearing on Cross-Appellant Brian Crumb's Motion for Attorney Fees and Cross-Respondents' Objection to Cross-Appellant Brian Crumb's Motion for Attorney Fees and Costs, April 12, 2018, the Honorable Judge Richard Christensen, presiding.
5. Cross-Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R. and those designated by the appellant in the initial notice of appeal:
- a. Memorandum of Costs, filed January 22, 2018;
 - b. Motion for Attorney Fees, filed January 22, 2018;

- c. Memorandum in Support of Motion for Attorney Fees, filed January 22, 2018;
 - d. Plaintiffs' Objection to Defendant, Brian Crumb's Motion for Attorney Fees and Costs, filed February 5, 2018;
 - e. Motion for Attorney Fees in Defending Plaintiffs' Motion to Reconsider, filed March 8, 2018;
 - f. Verified Memorandum of Costs in Support of Motion for Attorney Fees in Defending Plaintiffs' Motion to Reconsider, filed March 8, 2018;
 - g. Memorandum in Support of Motion for Attorney Fees in Defending Plaintiffs' Motion to Reconsider, filed March 8, 2018; and
 - h. Reply to Plaintiffs' Objection to Defendant, Brian Crumb's Motion for Attorney Fees and Costs, filed April 10, 2018.
6. I certify:
- a. That a copy of this notice of cross-appeal and any request for additional transcript have been served on the court reporter.
 - b. That the estimated reporter's fees for the requested transcript have been paid.
 - c. That the estimated fees for including any additional documents in the clerk's record have been paid.
 - d. That all appellate filing fees have been paid.

e. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 21st day of May, 2018.

MURPHEY LAW OFFICE, PLLC

By /s/ Darrin L. Murphey
Darrin L. Murphey,
Attorney for Defendant/ Respondent/
Cross-Appellant Brian Crumb

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of May, 2018, I electronically filed the foregoing with the Clerk of the Court using the File and Serve system which sent an email to the email address that was identified as the party's service contact.

I FURTHER CERTIFY that on the 21st day of May, 2018, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Arthur M. Bistline
Bistline Law, PLLC
1205 N. 3rd Street
Coeur d'Alene, ID 83814

U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 TELECOPY (FAX) to: (208) 665-7290

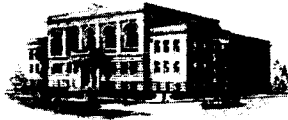
Christopher G. Varallo
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422 W. Riverside Ave., Ste. 1100
Spokane, WA 99201

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Keri Veare
P.O. Box 9000
Coeur d'Alene, ID 83816-9000

U.S. MAIL
 HAND DELIVERED
 OVERNIGHT MAIL
 TELECOPY (FAX) to:

By /s/ Darrin L. Murphey
Darrin L. Murphey



STATE OF IDAHO }
 COUNTY OF KOOTENAI } SS
Keri J. Veare FILED:
 OFFICIAL COURT REPORTER - ID CSR No. 675, RTR
 324 West Garden Avenue • P.O. Box 9000
 Coeur d'Alene, Idaho 83814
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 Email: mail4keri@yahoo.com

2018 JUN 28 AM 8:47
 CLERK DISTRICT COURT
Cindy O. Kelly

TO: Idaho Supreme Court - Clerk of the Court
 Email: Sctfilings@idcourts.net

SECURITY INVESTOR FUND LLC)
 and SECURITY FINANCIAL FUND)
 LLC,)
)
 Plaintiffs/Appellants,)
 vs.) DOCKET NO. 45969
) CASE NO. CV-2017-5541
 BRIAN CRUMB, et al.,)
)
 Defendants/Respondents.)

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that, on June 22, 2018, for the above-referenced appeal, I electronically lodged with the Kootenai County Court Clerk an Original Transcript, totaling **80** pages, entitled:
Plaintiff's Motion to Reconsider held February 15, 2018,
and Plaintiffs' and Defendant Crumb's Cross Motions for Summary Judgment held December 5, 2017, and Crumb's Motion for Attorney Fees and Costs held April 12, 2018.

Keri Veare

 Keri Veare, Official Court Reporter

cc: Court File
 Arthur M. Bistline, Esq., arthur@bistlinelaw.com
 Darrin L. Murphey, Esq., dmurphey@murphey.com

IN THE SUPREME COURT OF THE STATE OF IDAHO

SECURITY INVESTOR FUND LLC,)	
and SECURITY FINANCIAL FUND LLC,)	
	)	SUPREME COURT
PLAINTIFFS-APPELLANTS,	)	CASE NO. 45969
)	
VS.	)	DISCTRICT COURT
	)	CASE NO. CV 2017 – 5541
BRIAN CRUMB,)	
)	
DEFENDANT-RESPONDENT,)	
)	
JENNIFER O’CALLAGHAN, BRIAN)	
O’CALLAGHAN, JITINVEST LLC,)	
SPIRIT ELEMENTS INC, and TODD)	
A REEVE,)	
)	
DEFENDANTS)	
_____)	


CLERK’S CERTIFICATE OF EXHIBITS

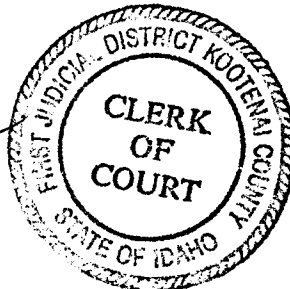
I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the attached list of exhibits is a true and accurate copy of the exhibits being forwarded to the Supreme Court of Appeals.

I further certify that no exhibits will be added to the Record.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 15th day of June 2018.

Jim Brannon
Clerk of the District Court


Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF IDAHO

SECURITY INVESTOR FUND LLC,)
and SECURITY FINANCIAL FUND LLC,)
)
PLAINTIFFS-APPELLANTS,)
)
VS.)
)
BRIAN CRUMB,)
)
DEFENDANT-RESPONDENT,)
)
JENNIFER O'CALLAGHAN, BRIAN)
O'CALLAGHAN, JITINVEST LLC,)
SPIRIT ELEMENTS INC, and TODD)
A REEVE,)
)
DEFENDANTS)
_____)

SUPREME COURT
CASE NO. 45969

CLERK'S CERTIFICATE OF SERVICE


I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that I have personally served or mailed, by United States mail, one copy of the Clerk's Record and transcripts to each of the Attorneys of record in this cause as follows:

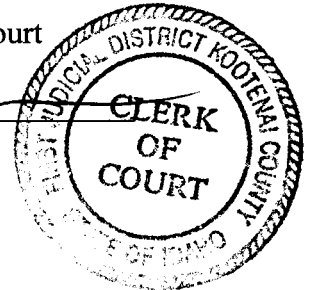
ARTHUR M. BISTLINE
1423 N Government Way
Coeur d'Alene, ID 83814

DARRIN L MURPHEY
402 W Canfield Ave, Suite 2
Coeur d'Alene, ID 83815

IN WITNESS WHEREOF, I have unto set my hand and affixed the seal of the said Court this 15th day of June 2018.

Jim Brannon
Clerk of District Court

By: 



IN THE SUPREME COURT OF THE STATE OF IDAHO

SECURITY INVESTOR FUND LLC,)
and SECURITY FINANCIAL FUND LLC,)
PLAINTIFFS-APPELLANTS,)
VS.)
BRIAN CRUMB,)
DEFENDANT-RESPONDENT,)
JENNIFER O'CALLAGHAN, BRIAN)
O'CALLAGHAN, JITINVEST LLC,)
SPIRIT ELEMENTS INC, and TODD)
A REEVE,)
DEFENDANTS)

SUPREME COURT
CASE NO. 45969

I, Jim Brannon, Clerk of the District Court of the First Judicial District of the State of Idaho, in and for the County of Kootenai, do hereby certify that the above and foregoing record in the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

I further certify that no exhibits were offered in this case.

I certify that the Attorneys for the Appellant and Respondent were notified that the Clerk's Record and transcripts are complete and ready to be picked up, or if the attorney is out of town, the copies were mailed by U.S. mail, postage prepaid on the 15th day of June 2018.

I do further certify that the Clerk's Record and transcripts will be duly lodged with the Clerk of the Supreme Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Kootenai County, Idaho this 15th day of June 2018.

JIM BRANNON
Clerk of the District Court

By: 
Deputy Clerk

