

Law Offices
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

KENT W. FOSTER
ROBERT E. FARNAM
WILLIAM D. FALER
CHARLES A. HOMER
GARY L. MEIKLE
DONALD L. HARRIS
DALE W. STORER
MARIE T. TYLER
ROBERT M. FOLLETT
FREDERICK J. HAHN, III
KARL R. DECKER
THEL W. CASPER*
SHAN B. PERRY
AMELIA A. SHEETS
DeANNE CASPERSON**
ROBERT L. HARRIS

1000 RIVERWALK DRIVE, SUITE 200
P.O. BOX 50130
IDAHO FALLS, IDAHO 83405

TELEPHONE (208) 523-0620
FACSIMILE (208) 523-9518
E-MAIL KFOSTER@HOLDENLEGAL.COM

Arthur W. Holden
(1877-1967)
Robert B. Holden
(1911-1971)
Terry L. Crapo
(1939-1982)
William S. Holden
(1907-1988)

Of Counsel
Fred J. Hahn

*Also Licensed in Utah and Arizona

**Also Licensed in Missouri & Kansas

September 26, 2005

Al Ruberry
Idaho Department of Water Resources
900 N. Skyline Dr., Ste. A
Idaho Falls, ID 83402

RE: Boyd Smith - Teton Ranch Water Rights

Dear Al:

In a telephone conversation with Chuck Brockway, Jr., he indicated you needed some additional documents regarding title to the lands owned by and optioned by Boyd Smith in Section 36. We are enclosing a number of documents with this letter, none of which relate to the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$. That particular 40 acre piece was part of a different purchase and had nothing to do with the Beards. We do not have a copy of that deed in our records and unless you need one, we will not ask the title company to send a special copy.

The following documents relating to the Beard purchase are enclosed:

1. Portions of the Title Commitment from First American Title Company in Driggs, dated May 31, 2000, showing that title to most of the land in Section 36 was, as of that date, vested in James William Beard and Leona Beard as Trustees of the Beard Family Trust;
2. Warranty Deed from Beards to Bilyara Farms, Inc., recorded as Instrument No. 138278 on June 27, 2000;
3. Corporation Warranty Deed from Bilyara Farms, Inc. to Boyd C. Smith and Jill Johnson Smith, No. 138279, recorded on June 27, 2000, (this was all part of tax free exchange);
4. Option Agreement between Beards and Smiths, dated May 1, 2000; and
5. Memorandum of Option Agreement, dated May 1, 2000, recorded as Instrument No. 138280, also on June 27, 2000.

SRC
M114
Box E 0033

22-12-192
22-12-193

RECEIVED

SEP 27 2005

Department of Water Resources
Eastern Region

11/11/05

Al Ruberry
Idaho Department of Water Resources
September 26, 2005
Page 2 of 2

As always, if there are additional questions or concerns, please feel free to call at your convenience.

Yours very truly,



Kent W. Foster

Enclosures

c: Charles G. Brockway

G:\WPDATA\KWF\8527 SMITH, BOYD\CORRESPONDENCE\Al Ruberry ltr 092605.wpd.cdv

FAX COVER LETTER

TIME: 9:15

DATE: 5-31-00

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: Charles A. Homer

FIRM: Holden, Kidwell, Hahn & Crapo

CITY & STATE:

TELEPHONE NO.:

FAX NO.: 523-9518

SENDER: Layne
FIRST AMERICAN TITLE COMPANY
P.O. BOX 42
81 NORTH MAIN STREET
DRIGGS, IDAHO 83422

WE ARE TRANSMITTING 6 PAGES (INCLUDING THIS COVER LETTER.)

OUR FAX NO: (208) 354-8825

OUR TELEPHONE NO.: (208) 354-2771

ADDITIONAL INFORMATION:

RE: Beard/Smith

I have updated the Schedule A & C for our commitment. I have added the SW1/4NW1/4 and the NW1/4SW1/4 to the option property Less the three parcels.

SCHEDULE A

1. Commitment Date: March 13, 2000 at 8:00 a.m. Commitment No. T-7778

2. Policy or Policies to be issued:	Premium	Policy
(x) Owners Policy Form 1402.92 (10-17-92) Proposed Insured: Boyd C. Smith and Jill Johnson Smith as Trustees of the Boyd Charles Smith and Jill Johnson Smith Trust Agreement dated December 13, 1990	\$2,730.00	\$1,000,000.00
() Loan Policy Proposed Insured:	\$	\$
() Proposed Insured:	\$	\$

3. A fee simple interest in the land described in this Commitment is owned, at the Commitment Date, by:

JAMES WILLIAM BEARD AND LEONA BEARD as Trustees of that certain Declaration of Trust of the Beard Family Trust, dated November 22, 1988.

4. The Land referred to in this Commitment is described as follows:

SEE ATTACHED SCHEDULE C

orm No. 1056-4
All Policy Forms

SCHEDULE C

The land referred to in this policy is situated in the State of Idaho and is described as follows: County of Teton

TRACT 1

Township 6 North, Range 45 East, Boise Meridian, Teton County, Idaho.

Section 36: S1/2NE1/4
SE1/4NW1/4
NE1/4SW1/4
NW1/4SE1/4

TRACT 2 (OPTION PROPERTY)

Township 6 North, Range 45 East, Boise Meridian, Teton County, Idaho.

Section 36: N1/2NW1/4 - 20
NW1/4NE1/4 40
SW1/4NW1/4 40
NW1/4SW1/4 40

LESS: County Road Right of Way

ALSO LESS: Beginning at the SW Corner NW1/4SW1/4 Section 36 Township, 6N, Range 45 E.B.M., Teton County, Idaho, and thence North 1760 feet and thence East 990 feet and thence South 1760 feet and thence West 990 feet to the true point of beginning. TOGETHER with an easement for ingress and egress 30 feet wide along the most westerly boundary of the SW1/4NW1/4 of Section 36, Township 6N, Range 45 E.B.M., to the subject property. (Lyle Beard Tract) 40

ALSO LESS: Beginning at the NW corner of the SW1/4NW1/4 of Section 36, Township 6 North, Range 45 E.B.M., Teton County, Idaho; thence East 990 feet; thence South 440 feet; thence West 990 feet; thence North 440 feet to the point of beginning. (Clayton Beard Tract) 10

ALSO LESS: a part of the SW1/4NW1/4 of Section 36, Township 6 North, Range 45 E.B.M., Teton County, Idaho; being further described as; from the W1/4 Corner of said Section 36 N 00°00'54" E, 437.02 ft. along the Western section line to the true point of beginning; thence N 00°00'54" E, 330.00 feet further along the Western section line to a point; thence N 89°55'45" E, 330.00 ft. to a point, thence S 00°00'54" W, 330.00 ft. to a point; thence S 89°55'45" W, 330.00 ft. to the point of beginning. SUBJECT TO AND TOGETHER with a 30 ft. road and utility easement being the 30 ft. directly East of the following described line; from the W1/4 Corner of said Section 36, N 00°00'54" E, 437.02 ft. along the Western section line to the true point of beginning; thence N 00°00'54" E, 885.96 ft. further along the Western section line to the NW Corner of the SW1/4NW1/4 of said Section 36, the point of ending. (Lana Beard Tract) 250

T-7778

138278

WARRANTY DEED

Instrument # 138278

DRIGGS TETON, IDAHO

2000-06-27

04:03:08 No. of Pages: 4

Recorded for: FIRST AMERICAN

NOLAN G. BOYLE

Fee: 12.00

Ex-Officio Recorder Deputy

Index to: DEED, WARRANTY

N. Rigby

THIS INDENTURE is made this 20th day of June, 2000, by JAMES WILLIAM BEARD and LEONA BEARD, husband and wife, acting individually, and JAMES WILLIAM BEARD and LEONA BEARD, acting not individually but as Trustees of that certain Declaration of Trust of the Beard Family Trust dated November 22, 1988, the "Grantor", and BIL YARA FARMS, INC., an Idaho corporation, whose mailing address is _____, the "Grantee".

WITNESSETH:

That the Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) lawful money of the United States of America, and other good and valuable consideration, to the Grantor in hand paid by the Grantee, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents does grant, bargain, sell, convey and confirm unto the Grantee, and to the Grantee's successors and assigns forever, all of the following described property in the County of Teton, State of Idaho, to-wit:

Township 6 North, Range 45 East, Boise Meridian, Teton
County, Idaho
Section 36: S½NE¼
SE¼NW¼
NE¼SW¼
NW¼SE¼

SUBJECT TO THE FOLLOWING:

1. Reservation in the State of Idaho Deed recorded December 18, 1958, in Book 77 at Page 533, records of Teton County, Idaho.
2. All existing easements or claims of easements, patent reservations, rights-of-way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations, encroachments, overlaps, boundary line disputes and other matters which would be disclosed by an accurate survey or inspection of the premises.

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and any reversions, any remainders, rents, issues and

138278

profits therefrom; and all estate, right, title and interest in and to the property, as well in law as in equity, of the Grantor.

TO HAVE AND TO HOLD the premises and the appurtenances unto the Grantee, and to the Grantee's successors and assigns forever. The Grantor and the Grantor's heirs shall warrant and defend the premises in the quiet and peaceable possession of the Grantee and the Grantee's successors and assigns, against the Grantor and the Grantor's heirs, and against every person whomsoever who lawfully holds (or who later lawfully claims to have held) rights in the premises as of the date hereof.

In construing this Warranty Deed and where the context so requires, the singular includes the plural.

IN WITNESS WHEREOF, the Grantor has executed the within instrument the day and year first above written.

James W Beard
James William Beard, individually

Leona Beard
Leona Beard, individually

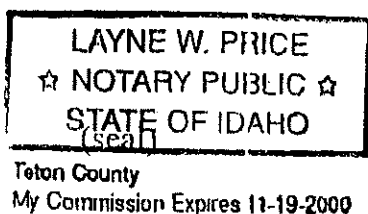
James W Beard Trustee
James William Beard, acting not individually
but as Trustee of that certain Declaration of
Trust dated November 22, 1988

Leona Beard Trustee
Leona Beard, acting not individually but as
Trustee of that certain Declaration of Trust
dated November 22, 1988

STATE OF IDAHO)
)ss.
County of Teton)

On the 26th day of June, 2000, before me, the undersigned, a notary public in and for said State, personally appeared James William Beard, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

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

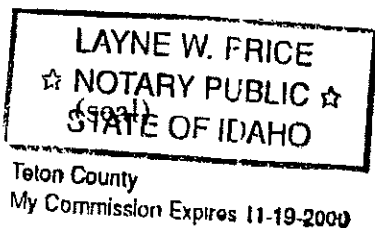


[Signature]
Notary Public for Idaho
Residing at Driggs, Idaho
My Commission Expires: 11-19-2000

STATE OF IDAHO)
)ss.
County of Teton)

On the 26th day of June, 2000, before me, the undersigned, a notary public in and for said State, personally appeared Leona Beard, known or identified to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

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



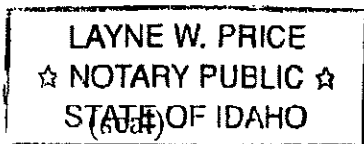
[Signature]
Notary Public for Idaho
Residing at Driggs, Idaho
My Commission Expires: 11-19-2000

138278

STATE OF IDAHO)
)ss.
County of Teton)

On the 20th day of June, 2000, before me, the undersigned, a notary public in and for said State, personally appeared James William Beard, known or identified to me to be the person whose name is subscribed to the within instrument as Trustee of that certain Declaration of Trust dated November 22, 1988, and acknowledged to me that he executed the same as such Trustee.

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



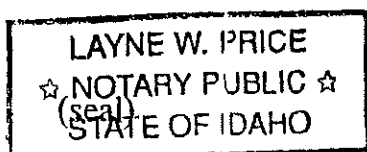
Teton County
My Commission Expires 11-19-2000


Notary Public for Idaho
Residing at Driggs, Idaho
My Commission Expires: 11-19-2000

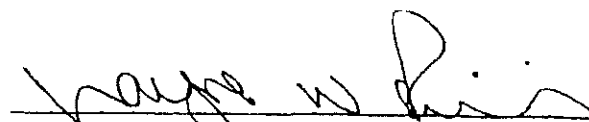
STATE OF IDAHO)
)ss.
County of Teton)

On the 20th day of June, 2000, before me, the undersigned, a notary public in and for said State, personally appeared Leona Beard, known or identified to me to be the person whose name is subscribed to the within instrument as Trustee of that certain Declaration of Trust dated November 22, 1988, and acknowledged to me that she executed the same as such Trustee.

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



Teton County
My Commission Expires 11-19-2000


Notary Public for Idaho
Residing at Driggs, Idaho
My Commission Expires: 11-19-2000

T-7778

CORPORATION WARRANTY DEED

THIS INDENTURE is made this 20 day of June, 2000, by BILYARA FARMS, INC., an Idaho corporation, the "Grantor", and BOYD C. SMITH and JILL JOHNSON SMITH, as Trustees of the Boyd Charles Smith and Jill Johnson Smith Trust Agreement dated December 13, 1990, whose mailing address is 301 Coleridge, Palo Alto, California 94301, the "Grantee".

WITNESSETH, that the Grantor having been duly authorized by resolution of its Board of Directors, for and in consideration of the sum of Ten Dollars (\$10.00) lawful money of the United States of America, and other good and valuable consideration, to it in hand paid by the Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell, convey and confirm unto the Grantee and to Grantee's successors and assigns forever, all the following described property in the County of Teton, State of Idaho. to-wit:

Township 6 North, Range 45 East, Boise Meridian, Teton
County, Idaho

Section 36: S $\frac{1}{2}$ NE $\frac{1}{4}$
SE $\frac{1}{4}$ NW $\frac{1}{4}$
NE $\frac{1}{4}$ SW $\frac{1}{4}$
NW $\frac{1}{4}$ SE $\frac{1}{4}$

SUBJECT TO THE FOLLOWING:

1. Reservation in the State of Idaho Deed recorded December 18, 1958, in Book 77 at Page 533, records of Teton County, Idaho.
2. All existing easements or claims of easements, patent reservations, rights-of-way, protective covenants, zoning ordinances, and applicable building codes, laws and regulations, encroachments, overlaps, boundary line disputes and other matters which would be disclosed by an accurate survey or inspection of the premises.

TOGETHER with the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, any reversions, any remainders, rents, issues and profits therefrom, and all estate, right, title and interest in and to the property, as well in law as in equity, of the Grantor.

Instrument # 138279

DRIGGS TETON, IDAHO

2000-06-27

04:05:44 No. of Pages: 3

Recorded for : FIRST AMERICAN

NOLAN G. BOYLE

Fee: 9.00

Ex-Officio Recorder Deputy

Index to: DEED, CORPORATION WARRANTY

138279

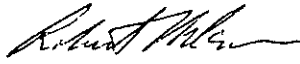
N. Rigby

TO HAVE AND TO HOLD, the above described premises and appurtenances unto the Grantee and to the Grantee's successors and assigns forever. The Grantor shall warrant and defend the premises in the quiet and peaceable possession of the Grantee against the Grantor and the Grantor's successors, and against every person whomsoever who lawfully holds (or who later lawfully claims to have held) rights in the premises as of the date hereof.

In construing this deed and where the context so requires, the singular includes the plural.

IN WITNESS WHEREOF, the Grantor has set its corporate name by its duly authorized officer.

BILYARA FARMS, INC.

By: 
Robert E. Nelson, President

STATE OF IDAHO)
)ss.
County of Teton)

On the ____ day of June, 2000, before me, the undersigned, a notary public in and for said State, personally appeared Robert E. Nelson, known or identified to me to be the President of Bilyara Farms, Inc., and the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

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

(seal)

Notary Public for Idaho
Residing at Driggs, Idaho
My Commission Expires: _____

C:\Program Files\Qualcomm\Eudora\Attach\bilyara0509 wd frm

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

Santa Clara

} ss.

On

Date

June 20, 2000

before me,

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

Rosemary C. Duran, notary

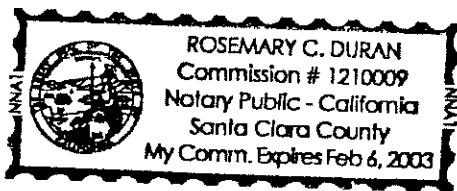
personally appeared

Robert E. Nelson

Name(s) of Signer(s)

☒ personally known to me☐ proved to me on the basis of satisfactory evidence

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 his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Rosemary C. Duran
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document:

Corporation Warranty Deed

Document Date:

6-20-00

Number of Pages:

2

Signer(s) Other Than Named Above:

none

Capacity(ies) Claimed by Signer

Signer's Name:

Robert E. Nelson☒ Individual☐ Corporate Officer — Title(s): _____☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

OPTION AGREEMENT

THIS OPTION AGREEMENT (this "Agreement") is made and entered into to be effective as of the 1st day of May, 2000, by and between **JAMES WILLIAM BEARD and LEONA BEARD**, acting not individually but as Trustees of that certain Declaration of Trust of The Beard Family Trust dated November 22, 1988, (collectively, "Seller"), and **BOYD C. SMITH and JILL JOHNSON SMITH**, acting not individually but as Trustees of The Boyd Charles Smith and Jill Johnson Smith Trust Agreement dated December 13, 1990. ("Buyer").

WITNESSETH:

In consideration of the mutual covenants set forth herein, the parties agree as follows:

1. Provided that Seller complies with all of the terms and conditions set forth herein, Seller has the option to sell (the "Put Option") to Buyer, upon the terms and conditions set forth herein, the following described real property located in Teton County, Idaho (the "Property"):

Township 6 North, Range 45 East, Boise Meridian, Teton County, Idaho.

Section 36: N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$
LESS: County Road Right-of-Way

Also Less the following three parcels:

1. Beginning at the SW Corner NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36 Township, 6N, Range 45 E.B.M., Teton County, Idaho, and thence North 1760 feet and thence East 990 feet and thence South 1760 feet and thence West 990 feet to the true point of beginning. TOGETHER with an easement for ingress and egress 30 feet wide along the most westerly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, Township 6N, Range 45 E.B.M., to the subject property.
2. Beginning at the NW corner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, Township 6 North, Range 45 E.B.M., Teton County, Idaho; thence East 990 feet; thence South 440

feet; thence West 990 feet; thence North 440 feet to the point of beginning.

3. A part of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, Township 6 North, Range 45 E.B.M., Teton County, Idaho; being further described as: from the W $\frac{1}{4}$ Corner of said Section 36 N 00°00'54" E, 437.02 ft. along the Western section line to the true point of beginning; thence N 00°00'54" E, 330.00 feet further along the Western section line to a point; thence N 89°55'45" E, 330.00 ft. to a point; thence S 00°00'54" W, 330.00 ft. to a point; thence S 89°55'45" W, 330.00 ft. to the point of beginning. SUBJECT TO AND TOGETHER with a 30 ft. road and utility easement being the 30 ft. directly East of the following described line; from the W $\frac{1}{4}$ Corner of said Section 36, N 00°00'54" E, 437.02 ft. along the Western section line to the true point of beginning; thence N 00°00'54" E, 885.96 ft. further along the Western section line to the NW Corner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of said Section 36, the point of beginning.

2. Provided that Buyer complies with all of the terms and conditions set forth herein, Buyer has the right of first refusal to purchase the Property (the "RFR Option") and the exclusive option to purchase (the "Call Option") from Seller, upon the terms and conditions set forth herein.

3. The term of the Put Option shall commence on the date of this Agreement and continue in force and effect through April 30, 2005. At any time during the term of the Put Option, Seller may exercise the Put Option by giving written notice to Buyer. It is understood that Seller may exercise the Put Option in connection with Seller's participation in a tax deferred exchange under Section 1031 of the Internal Revenue Code. Buyer agrees to cooperate with Seller in completing such 1031 exchange as long as Buyer is not required to incur any additional costs or liability as a result of such 1031 exchange.

The term of the Call Option shall commence on May 1, 2010 and continue in force and effect through April 30, 2011. At any time during the term of the Call Option, Buyer may exercise the Call Option by giving written notice to Seller.

The term of the RFR Option shall commence on the date of this Agreement and continue in force and effect through April 30, 2011. If at any time during the term of the RFR Option, Seller elects to sell, transfer or otherwise convey the Property or any portion

thereof or any interest therein, Seller shall give written notice to Buyer of such election and Buyer shall have sixty (60) days after receipt of such notice to exercise the RFR Option by giving written notice to Seller. During the term of the RFR Option, Seller shall not sell, transfer or otherwise convey the Property, or any portion thereof or any interest therein, without giving such notice to Buyer. If Buyer fails to exercise the RFR Option within such sixty (60) day period, this Agreement shall automatically terminate and Seller will be free to sell the Property to another buyer. The foregoing notwithstanding, Buyer cannot refuse to purchase the Property during the term of the Put Option if during the term of the Put Option Seller properly exercised the Put Option. The foregoing notwithstanding, any transfer of the Property to James William Beard, Leona H. Beard, James Beard, Beth Ann Beard, and/or any entity or trust that is controlled by such individuals will not trigger Buyer's right to exercise the RFR Option and Seller will not be required to give Buyer notice thereof; provided, however, any subsequent sale, transfer or other conveyance of (i) the Property or any portion thereof or any interest therein or (ii) any ownership or beneficial interest in any such entity or trust shall continue to be subject to the terms of this Agreement, including but not limited to the RFR Option.

All notices to Seller under this Agreement shall be given at the following address: 727 North 50 West, Teton, Idaho 83452, or to such other address as Seller directs in writing delivered to Buyer. All notices to Buyer under this Agreement shall be given at the following address: 301 Coleridge Avenue, Palo Alto, California 94301, with a copy to Charles A. Homer, Esq., Holden, Kidwell, Hahn & Crapo, P.L.L.C., Post Office Box 50130, Idaho Falls, Idaho 83405, or to such other address as Buyer directs in writing delivered to Seller. Notice of the exercise of any option shall be effective upon deposit by the option holder in the United States Mail, postage prepaid, certified with return receipt requested and addressed to the other party, or upon personal or overnight delivery to the other party. In the event a party fails to exercise an option granted herein prior to the expiration of the term thereof, such option shall lapse and be of no further force and effect.

4. In the event Seller exercises the Put Option in the manner aforesaid or in the event Buyer exercises the Call Option or the RFR Option in the manner aforesaid, then the parties agree as follows:

(a) Buyer agrees to buy and Seller agrees to sell to Buyer the Property in accordance with the terms set forth herein and the closing on such transaction shall be no later than: (i) if crops are not growing on the Property, thirty (30) days after exercise of the option; or (ii) if crops are growing on the Property, October 1 of the year in which the option is exercised.

(b) The "Purchase Price" for the Property shall be determined as follows (subject to the fair market value limitation described below):

<u>Option Exercise Date</u>	<u>Purchase Price</u>
May 1, 2000 -- April 30, 2005	\$737,850.00
May 1, 2005 -- April 30, 2006	\$774,742.50
May 1, 2006 -- April 30, 2007	\$813,479.63
May 1, 2007 -- April 30, 2008	\$854,153.61
May 1, 2008 -- April 30, 2009	\$896,861.29
May 1, 2009 -- April 30, 2010	\$941,704.35
May 1, 2010 -- April 30, 2011	\$988,789.57

The foregoing notwithstanding, if an option is exercised on or after May 1, 2005, the Purchase Price shall be limited to the lesser of: (i) the amount determined above, or (ii) the fair market value of the Property. The fair market value of the Property shall be determined as follows. If Buyer and Seller cannot agree on the fair market value of the Property, the Property shall be appraised. If Buyer and Seller cannot agree on an appraiser, they shall each appoint an appraiser. If the two appraisers cannot agree upon the fair market value of the Property, they shall appoint a third appraiser and the decision of the majority of the three appraisers shall be binding on all parties. In making such appraisal, the appraisers may consider all relevant factors effecting the fair market value of the Property. The cost of appraisal shall be shared equally by Buyer and Seller.

(c) At closing, Seller shall make, execute and deliver to Buyer a Warranty Deed conveying the Property to Buyer, free and clear of any lien or encumbrance, excepting any lien or encumbrance that may have attached by reason of any act or deed of Buyer.

(d) Seller shall be entitled to retain possession of the Property and shall bear the risk of loss to the Property up to and including the date of closing. Thereafter, Buyer shall have the right to possession of the Property.

(e) All taxes and assessments upon the Property shall be pro rated between the parties as of the date of closing. Seller shall pay all taxes and assessments levied upon the Property for the time prior to and including said closing date, and Buyer shall pay all taxes levied upon the Property for the term after said closing date before the same become delinquent.

(f) At the time of closing, Seller shall provide to Buyer at Seller's cost a standard form owner's title insurance policy in the amount of the Purchase Price insuring title to the Property in Buyer, free and clear of any lien or encumbrance, excepting any lien or encumbrance that may have attached by reason of any act or deed of Buyer, and excepting the usual printed exceptions contained in such policies of title insurance, and taxes and assessments for the current year not yet due and payable.

(g) The closing shall be handled by First American Title Company of Driggs, Idaho, and Seller and Buyer shall each pay one-half (½) of the standard closing costs charged by such closing agent to handle the closing of such transaction.

(h) It is understood that Seller may want to participate in a tax deferred exchange under Section 1031 of the Internal Revenue Code. Buyer agrees to cooperate with Seller in completing such 1031 exchange as long as Buyer is not required to incur any additional costs or liability as a result of such 1031 exchange.

5. Seller represents and warrants to Buyer as of the date of this Agreement and as of the closing that:

(a) Seller has full power and authority to enter into this Agreement and to complete the sale of the Property.

(b) Seller has fee title to the Property and there are no unrecorded agreements, leases, liens or encumbrances that may affect title to the Property, except as are expressly set forth herein.

(c) Upon execution by Seller, this Agreement will be binding and enforceable against Seller in accordance with its terms.

(d) Seller shall not, prior to termination of this Agreement, enter into or execute any easement, encumbrance, lease, or other agreement with respect to the Property without Buyer's prior written consent.

(e) Seller has not received notice of any violation with respect to any applicable law, regulation, ordinance, requirement, covenant, condition or restriction relating to the use, occupancy or condition of the Property from any authority having jurisdiction over the Property.

(f) There are no suits, claims, proceedings or investigations pending or threatened with respect to the Property or which will adversely affect Seller's ability to meet Seller's obligations with respect to the sale of the Property.

(g) Neither the execution and delivery of this Agreement nor the consummation of the sale of the Property is subject to any requirement that Seller obtain any consent, approval or authorization of, or make any declaration or filing with, any governmental authority or third party.

(h) Seller has no knowledge of and no reason to suspect the presence or existence of any Hazardous Materials (as defined below) or petroleum underground storage tanks on or near the Property. To the best of Seller's knowledge, the Property is in compliance with the provisions of all Environmental Laws (as defined below). As used herein, the term "Hazardous Materials" is defined to include, without limitation, (i) oil, hydrocarbons, petroleum, petroleum products or products containing or derived from petroleum, and (ii) any hazardous or toxic waste, substance, material, chemical, gas or particular matter as presently defined by or for the purposes of any Environmental Laws. As used in this Agreement, the term "Environmental Laws" is defined to include, without limitation, any federal, state or local environmental, health or safety statute, ordinance, code, rule, regulation, order or decree as may now or at any later time be in effect regulating, relating to or imposing liability or standards concerning or in connection with hazardous or toxic wastes, substances, materials, chemicals, gases or particulate matter or the omission, discharge, dumping or other release of any substance to the environment and any common law theory based on nuisance or strict liability.

All representations and warranties by Seller set forth in this Agreement will survive the closing and the delivery and recordation of the deed required hereby.

6. During the term of this Agreement, Buyer shall have the right to change the point of diversion for irrigation water which is appurtenant to the Property so long as such change in the point of diversion does not materially harm or injure Seller's ability to irrigate the Property. Seller agrees to consent to such change in the point of diversion and provide whatever cooperation or assistance Buyer may reasonably require of Seller in order to obtain permission for changing such point of diversion from the Idaho Department of Water Resources.

7. Should either party default in the performance of any of the covenants or agreements contained herein, such defaulting party shall pay to the other party all costs and expenses, including, but not limited to, a reasonable attorney fee, including such fees on appeal, which the offended party may incur in enforcing this Agreement or pursuing any

remedy allowed by law for breach hereof, whether such is incurred by the filing of suit or otherwise.

8. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, administrators, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

SELLER:

James W Beard trustee

James William Beard, acting not individually
but as Trustee of that certain Declaration of
Trust of The Beard Family Trust dated
November 22, 1988

Leona Beard trustee

Leona Beard, acting not individually
but as Trustee of that certain Declaration of
Trust of The Beard Family Trust dated
November 22, 1988

BUYER:

Boyd C. Smith, acting not individually
but as Trustee of The Boyd Charles Smith
and Jill Johnson Smith Trust Agreement
dated December 13, 1990

Jill Johnson Smith, acting not individually
but as Trustee of The Boyd Charles Smith
and Jill Johnson Smith Trust Agreement
dated December 13, 1990

remedy allowed by law for breach hereof, whether such is incurred by the filing of suit or otherwise.

8. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, administrators, successors and assigns of the parties hereto.

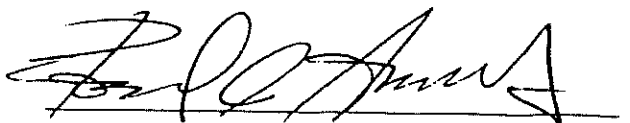
IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

SELLER:

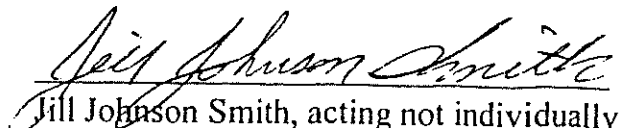
James William Beard, acting not individually
but as Trustee of that certain Declaration of
Trust of The Beard Family Trust dated
November 22, 1988

Leona Beard, acting not individually
but as Trustee of that certain Declaration of
Trust of The Beard Family Trust dated
November 22, 1988

BUYER:



Boyd C. Smith, acting not individually
but as Trustee of The Boyd Charles Smith
and Jill Johnson Smith Trust Agreement
dated December 13, 1990



Jill Johnson Smith, acting not individually
but as Trustee of The Boyd Charles Smith
and Jill Johnson Smith Trust Agreement
dated December 13, 1990

138280

MEMORANDUM OF OPTION AGREEMENT

THIS MEMORANDUM OF OPTION AGREEMENT is made and entered into to be effective as of the 1st day of May, 2000, by and between JAMES WILLIAM BEARD and LEONA BEARD, acting not individually but as Trustees of that certain Declaration of Trust of The Beard Family Trust dated November 22, 1988 (collectively, "Seller"), and BOYD C. SMITH and JILL JOHNSON SMITH, acting not individually but as Trustees of The Boyd Charles Smith and Jill Johnson Smith Trust Agreement dated December 13, 1990 ("Buyer").

Seller and Buyer hereby give notice to the public that Buyer has granted to Seller an option to sell and Seller has granted to Buyer a right of first refusal and an option to purchase the following described real property located in Teton County, Idaho (the "Property"):

Township 6 North, Range 45 East, Boise Meridian, Teton County, Idaho.

Section 36: N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$
LESS: County Road Right-of-Way

Also Less the following three parcels:

1. Beginning at the SW Corner NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 36 Township, 6N, Range 45 E.B.M., Teton County, Idaho, and thence North 1760 feet and thence East 990 feet and thence South 1760 feet and thence West 990 feet to the true point of beginning. TOGETHER with an easement for ingress and egress 30 feet wide along the most westerly boundary of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, Township 6N, Range 45 E.B.M., to the subject property.
2. Beginning at the NW corner of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, Township 6 North, Range 45 E.B.M., Teton County, Idaho; thence East 990 feet; thence South 440 feet; thence West 990 feet; thence North 440 feet to the point of beginning.
3. A part of the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 36, Township 6 North, Range 45 E.B.M., Teton County, Idaho; being further described as: from the W $\frac{1}{4}$ Corner of said Section

Instrument # 138280

DRIGGS TETON, IDAHO

2000-06-27 04:09:11 No. of Pages: 7

Recorded for: FIRST AMERICAN

NOLAN G. BOYLE

Fee: 21.00

Ex-Officio Recorder Deputy

Index to: AGREEMENT, MEMORANDUM OF SALE

138280

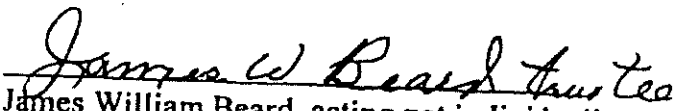
36 N 00°00'54" E, 437.02 ft. along the Western section line to the true point of beginning; thence N 00°00'54" E, 330.00 feet further along the Western section line to a point; thence N 89°55'45" E, 330.00 ft. to a point; thence S 00°00'54" W, 330.00 ft. to a point; thence S 89°55'45" W, 330.00 ft. to the point of beginning. SUBJECT TO AND TOGETHER with a 30 ft. road and utility easement being the 30 ft. directly East of the following described line; from the W¼ Corner of said Section 36, N 00°00'54" E, 437.02 ft. along the Western section line to the true point of beginning; thence N 00°00'54" E, 885.96 ft. further along the Western section line to the NW Corner of the SW¼NW¼ of said Section 36, the point of beginning.

The options described herein were granted in an Option Agreement, of even date herewith (the "Agreement"), which continues in force and effect through April 30, 2011, subject to the terms and conditions set forth in the Agreement which are incorporated herein. Seller shall not, prior to termination of the Agreement, enter into or execute any easement, encumbrance, lease, or other agreement with respect to the Property without Buyer's prior written consent.

Further information concerning the Agreement may be obtained from Buyer at the following address: 301 Coleridge Avenue, Palo Alto, California 94301.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

SELLER:


James William Beard, acting not individually
but as Trustee of that certain Declaration of
Trust of The Beard Family Trust dated
November 22, 1988

Leona Beard Trustee

Leona Beard, acting not individually
but as Trustee of that certain Declaration of
Trust of The Beard Family Trust dated
November 22, 1988

BUYER:

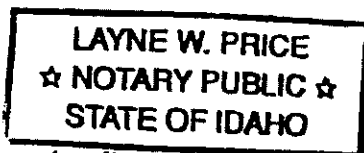
Boyd C. Smith, acting not individually
but as Trustee of The Boyd Charles Smith
and Jill Johnson Smith Trust Agreement
dated December 13, 1990

Jill Johnson Smith, acting not individually
but as Trustee of The Boyd Charles Smith
and Jill Johnson Smith Trust Agreement
dated December 13, 1990

STATE OF Idaho)
)ss.
County of Teton)

On the 20th day of June, 2000, before me, the undersigned, a notary public in and for said State, personally appeared James William Beard, known or identified to me to be the person whose name is subscribed to the within instrument as Trustee of that certain Declaration of Trust of The Beard Family Trust dated November 22, 1988, and acknowledged to me that he executed the same as such Trustee.

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



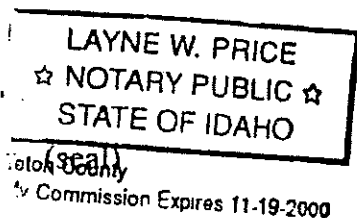
Teton County
My Commission Expires 11-19-2000

Layne W. Price
Notary Public for Idaho
Residing at 11-19-2000

STATE OF Idaho)
)ss.
County of Teton)

On the 26th day of June, 2000, before me, the undersigned, a notary public in and for said State, personally appeared Leona Beard, known or identified to me to be the person whose name is subscribed to the within instrument as Trustee of that certain Declaration of Trust of The Beard Family Trust dated November 22, 1988. and acknowledged to me that she executed the same as such Trustee.

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



Layne W. Price
Notary Public for Idaho
Residing at Idaho
My Commission Expires: 11-19-2000

STATE OF Idaho)
)ss.
County of Teton)

On the 26 day of June, 2000, before me, the undersigned, a notary public in and for said State, personally appeared Boyd C. Smith, known or identified to me to be the person whose name is subscribed to the within instrument as Trustee of The Boyd Charles Smith and Jill Johnson Smith Trust Agreement dated December 13, 1990, and acknowledged to me that he executed the same as such Trustee.

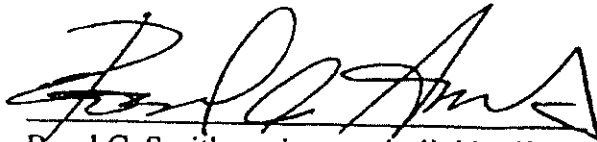
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(seal)

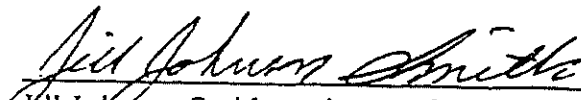
Notary Public for _____
Residing at _____
My Commission Expires: _____

Leona Beard, acting not individually
but as Trustee of that certain Declaration of
Trust of The Beard Family Trust dated
November 22, 1988

BUYER:



Boyd C. Smith, acting not individually
but as Trustee of The Boyd Charles Smith
and Jill Johnson Smith Trust Agreement
dated December 13, 1990



Jill Johnson Smith, acting not individually
but as Trustee of The Boyd Charles Smith
and Jill Johnson Smith Trust Agreement
dated December 13, 1990

STATE OF _____)
)ss.
County of _____)

On the ____ day of June, 2000, before me, the undersigned, a notary public in and for said State, personally appeared James William Beard, known or identified to me to be the person whose name is subscribed to the within instrument as Trustee of that certain Declaration of Trust of The Beard Family Trust dated November 22, 1988, and acknowledged to me that he executed the same as such Trustee.

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

(seal)

Notary Public for _____
Residing at _____

STATE OF _____)
_____)ss.
County of _____)

On the ____ day of June, 2000, before me, the undersigned, a notary public in and for said State, personally appeared Leona Beard, known or identified to me to be the person whose name is subscribed to the within instrument as Trustee of that certain Declaration of Trust of The Beard Family Trust dated November 22, 1988, and acknowledged to me that she executed the same as such Trustee.

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

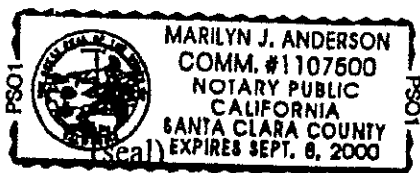
(seal)

Notary Public for _____
Residing at _____
My Commission Expires: _____

STATE OF California)
_____)ss.
County of Santa Clara

On the 22nd day of June, 2000, before me, the undersigned, a notary public in and for said State, personally appeared Boyd C. Smith, known or identified to me to be the person whose name is subscribed to the within instrument as Trustee of The Boyd Charles Smith and Jill Johnson Smith Trust Agreement dated December 13, 1990, and acknowledged to me that he executed the same as such Trustee.

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



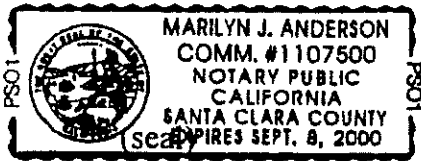
Marilyn J. Anderson
Notary Public for California
Residing at Palo Alto, California
My Commission Expires: Sept. 8, 2000

138280

STATE OF California)
County of Santa Clara)ss.

On the 22nd day of June, 2000, before me, the undersigned, a notary public in and for said State, personally appeared Jill Johnson Smith, known or identified to me to be the person whose name is subscribed to the within instrument as Trustee of The Boyd Charles Smith and Jill Johnson Smith Trust Agreement dated December 13, 1990, and acknowledged to me that she executed the same as such Trustee.

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



Marilyn J. Anderson
Notary Public for California
Residing at Palo Alto, California
My Commission Expires: Sept 8, 2000

C:\Program Files\Qualcomm\Eudora\Attach\BEAR0428.MEM1.wpd.jht