

RECEIVED

APR 04 2012

WATER RESOURCES
WESTERN REGIONSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Notice of Change in Water Right Ownership

1. List the numbers of all water rights and/or adjudication claim records to be changed. If you only acquired a portion of the water right or adjudication claim, check "Yes" in the "Split?" column.

Water Right/Claim No.	Split?	Water Right/Claim No.	Split?	Water Right/Claim No.	Split?
LIC 63-33613	Yes ☒	~~63-33613~~ SPLIT INTO WR 63-33657	Yes ☒	63-33657	Yes ☐
	Yes ☐		Yes ☐	63-33658	Yes ☐
	Yes ☐		Yes ☐		Yes ☐
	Yes ☐		Yes ☐		Yes ☐
	Yes ☐		Yes ☐		Yes ☐

2. Previous Owner's Name: Kleiner Brothers

Name of current water right holder/claimant

3. New Owner(s)/Claimant(s): The Julius M. Kleiner Memorial Park Trust UTA dated 4/5/2007

Name of each new owner as listed on the conveyance document

New owner continued Name connector ☐ and ☐ or ☐ and/or

c/o Michael E. Huter, Co-Trustee, 217 W. Georgia Ave., Suite 100

Mailing address

Nampa

IDAHO

83686

City

State

ZIP

208-466-9264

mhuter@rdcpa.com

Telephone

Email

4. If the water rights and/or adjudication claims were split, how did the division occur?
- ☒ The water rights or claims were divided as specifically identified in a deed, contract, or other conveyance document.
- ☐ The water rights or claims were divided proportionately based on the portion of their place(s) of use acquired by the new owner.

5. Date you acquired the water rights and/or claims listed above: July 31, 2008

6. This form must be signed and submitted with the following **REQUIRED** items:

- A copy of the conveyance document – warranty deed, quitclaim deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property or description of the water right(s) if no land is conveyed.
- Plat map, survey map or aerial photograph which clearly shows the place of use and point of diversion for each water right and/or claim listed above (if necessary to clarify division of water rights or complex property descriptions).
- Filing fee (see instructions for further explanation):
 - \$25 per *undivided* water right.
 - \$100 per *split* water right.
 - No fee is required for pending adjudication claims.

7. Signature: Michael E. Huter Co-Trustee 3/31/12
 Signature of new owner/claimant Title, if applicable Date
 Signature: Charles E. Gray Co-Trustee 4/2/12
 Signature of new owner/claimant Title, if applicable Date

For IDWR Office Use Only:

Received by RS Date 4.4.12 Receipt No. W040036 Receipt Amt. \$100.00
 Approved by KW Processed by KW Date 6/12/2012

Form 42-248/42-1409(6) Rev. 07/10

SUPPORT DATA

IN FILE # 63-33613

6
NCS-349811 -4

ADA COUNTY RECORDER J. DAVID ARRO
BOISE IDAHO 07/31/08 01:46 PM
DEPUTY Danielle Boulette
RECORDED-REQUEST OF
First American

AMOUNT 18.00 6



When Recorded, Mail to:

Hawley Troxell Ennis & Hawley LLP
877 Main Street, Suite 1000
Boise, Idaho 83702-5884
Attn: Rick Goodson

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

SPECIAL WARRANTY DEED

In consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, DAVID E. KLEINER, AS TRUSTEE OF THE 2008 KLEINER FAMILY TRUST U/T/D MARCH 4, 2008 (the "Grantor"), hereby grants and conveys to EUGENE M. KLEINER and MICHAEL E. HUTER, AS CO-TRUSTEES OF THE JULIUS M. KLEINER MEMORIAL PARK TRUST U/T/D April 5, 2007, whose address is 217 W. Georgia Ave., Suite 100, Nampa, Idaho 83686 (the "Grantee"), all of Grantor's undivided one-half (1/2) fee interest in and to the real property located in Ada County, Idaho, and described in Exhibit A attached hereto and incorporated herein by this reference;

TOGETHER with all easements, rights and hereditaments appurtenant thereto and all improvements located thereon;

SUBJECT ONLY TO current taxes and assessments; any leases agreed to by the Grantee; any easements, reservations, and restrictions of record to which Grantee's other undivided one-half (1/2) fee interest in said real property is subject, including, without limitation, the reservations, easements, covenants, conditions, restrictions, and other rights or interests identified in Exhibit B attached hereto; and the restrictive covenant and equitable servitude hereby imposed that no portion of the real property conveyed hereby shall be employed for residential or commercial uses; provided, however, said real property may be used as a public park for recreational purposes, which uses may include, but are not limited to, a care-taker's house, a non-commercial fitness center, swimming pool, aquarium, sports complex which may include but is not limited to soccer, football, lacrosse, baseball and softball fields, senior center, community center, outdoor concerts, and/or library (all of which may include the assessment of nominal user fees which will allow the City of Meridian, Idaho, or any other governmental agency operating such facilities to recover its operating costs as permitted by Idaho law and sell or provide to the public using such facilities refreshments, snacks and meals), season concession stands selling or renting, as the case may be, those products generally sold or rented in public parks, including, but not limited to soft drinks, candy, hot dogs, snow-cones, ice cream, popcorn, and bike, kite and skate rentals, and other similar non-commercial community uses. No portion of the above-described property shall be used for any residential, private commercial, or retail

uses, except for the above-described ancillary uses in connection with public recreational purposes.

The Grantor, for itself and for its successors in interest, does by these presents expressly limit the covenants of this Deed to those herein expressed, excludes all covenants arising or to arise by statutory or other implication, and does hereby covenant that against all persons whomsoever lawfully claiming or to claim by, through or under the Grantor, and not otherwise, it will warrant and defend the title to the above-described real property.

IN WITNESS WHEREOF, Grantor has executed this Special Warranty Deed this 29th day of July, 2008.

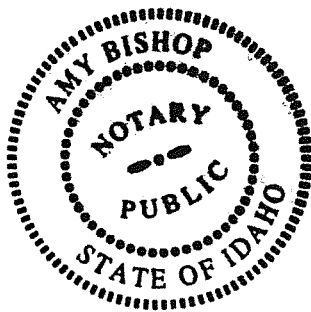
D E K Trustee

DAVID E. KLEINER, AS THE TRUSTEE OF
THE 2008 KLEINER FAMILY TRUST U/T/D
MARCH 4, 2008

~~IDAHO~~
STATE OF ~~WASHINGTON~~)
~~ADA~~) ss.
COUNTY OF ~~KING~~)

I certify that I know or have satisfactory evidence that DAVID E. KLEINER is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he is authorized to execute the instrument and acknowledge it as Trustee of the 2008 KLEINER FAMILY TRUST U/T/D MARCH 4, 2008, to be the free and voluntary act of such party for the uses and purposes mentioned in this instrument.

Dated: July 29, 2008



Amy Bishop
Notary name (typed or printed): IDAHO
Notary Public in and for the State of ~~Washington~~
Residing at: BOISE, ID
My appointment expires: 10-7-10

EXHIBIT A

W R G
DESIGN INC.

Boundary Description
of New Parcel 2
for Meridian Centreal, LLC
Job No. 6077070.00

A parcel of land situated in the southwest quarter and the west half of the southwest quarter of the southeast quarter of Section 4, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho, being more particularly described as follows:

Commencing at a brass cap marking the southwest corner of Section 4, Township 3 North, Range 1 East, Boise Meridian;
Thence S89°46'17"E, 2659.51 feet along the south line of the southwest quarter to a 5/8 inch rebar marking the south quarter-section corner of Section 4;
Thence S89°46'39"E, 664.61 feet along the south line of the southeast quarter;
Thence N00°13'21"E, 57.74 feet to a 5/8 inch rebar marking the southwest corner of Venture Subdivision, Book 27 of Plats at Pages 1704 & 1705, records of Ada County, on the north right-of-way line of East Fairview Avenue;
Thence N00°04'25"E, 741.97 feet along the west line of Venture Subdivision to the POINT OF BEGINNING:

Thence N89°59'29"W, 1365.18 feet;

Thence 118.21 feet on a non-tangent curve to the left, concave westerly, having a radius of 511.67 feet, a central angle of 13°14'13", a chord bearing of N38°03'12"W, and a chord length of 117.95 feet;

Thence N44°40'18"W, 649.89 feet;

Thence 398.07 feet on a curve to the right having a radius of 488.33 feet, a central angle of 46°42'20", a chord bearing of N21°19'08"W, and a chord length of 387.14 feet;

Thence N02°02'02"E, 720.47 feet;

Thence 16.85 feet on a curve to the left having a radius of 511.67 feet, a central angle of 1°53'12", a chord bearing of N01°05'26"E, and a chord length of 16.85 feet;

Thence N00°08'50"E, 182.63 feet to the north line of the west half of the southwest quarter;

Thence N89°51'01"E, 20.33 feet along the north line of the west half of the southwest quarter to a 5/8 inch rebar marking the southwest corner of Redfeather Estates Subdivision No. 7, Book 96 of Plats at Pages 11865 & 11866, records of Ada County, and the northwest corner of the east half of the southwest quarter;



LAND
PLANNING



CIVIL
ENGINEERING



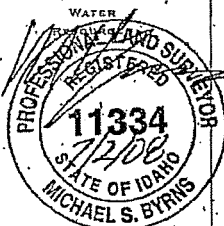
LANDSCAPE
ARCHITECTURE



LAND
SURVEY



WATER
ENGINEERING



1173 East Winding Creek Drive
Eagle, ID
83616

PH 208/246.8300
FX 208/246.8320

www.wrgdesign.com
www.wrgdesign.com

New Parcel 2 continued...

Thence N89°50'47"E, 1330.68 feet along the south line of Redfeather Estates Subdivision No. 7, the south line of Redfeather Estates Subdivision No. 6, Book 96 of Plats at Pages 11818 & 11819, records of Ada County, and the north line of the east half of the southwest quarter to a 5/8 inch rebar marking the center quarter-section corner;

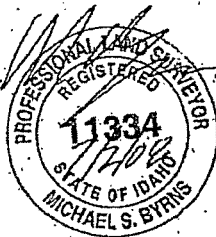
Thence S00°10'49"W, 1314.73 feet along the east line of the southwest quarter to a 1/2 inch rebar marking the southwest corner of Clover Meadows Subdivision No. 3, Book 24 of Plats at Pages 1524 & 1525, records of Ada County;

Thence N89°58'34"E, 662.97 feet along the south line of Clover Meadows Subdivision No. 3 to a 1/2 inch rebar marking the northwest corner of Venture Subdivision, Book 27 of Plats at Pages 1704 & 1705;

Thence S00°04'25"W, 524.56 feet along the west line of Venture Subdivision to the POINT OF BEGINNING.

The above-described parcel contains 60.00 acres, more or less.

Subject to any existing easements or rights-of-way of record or apparent.



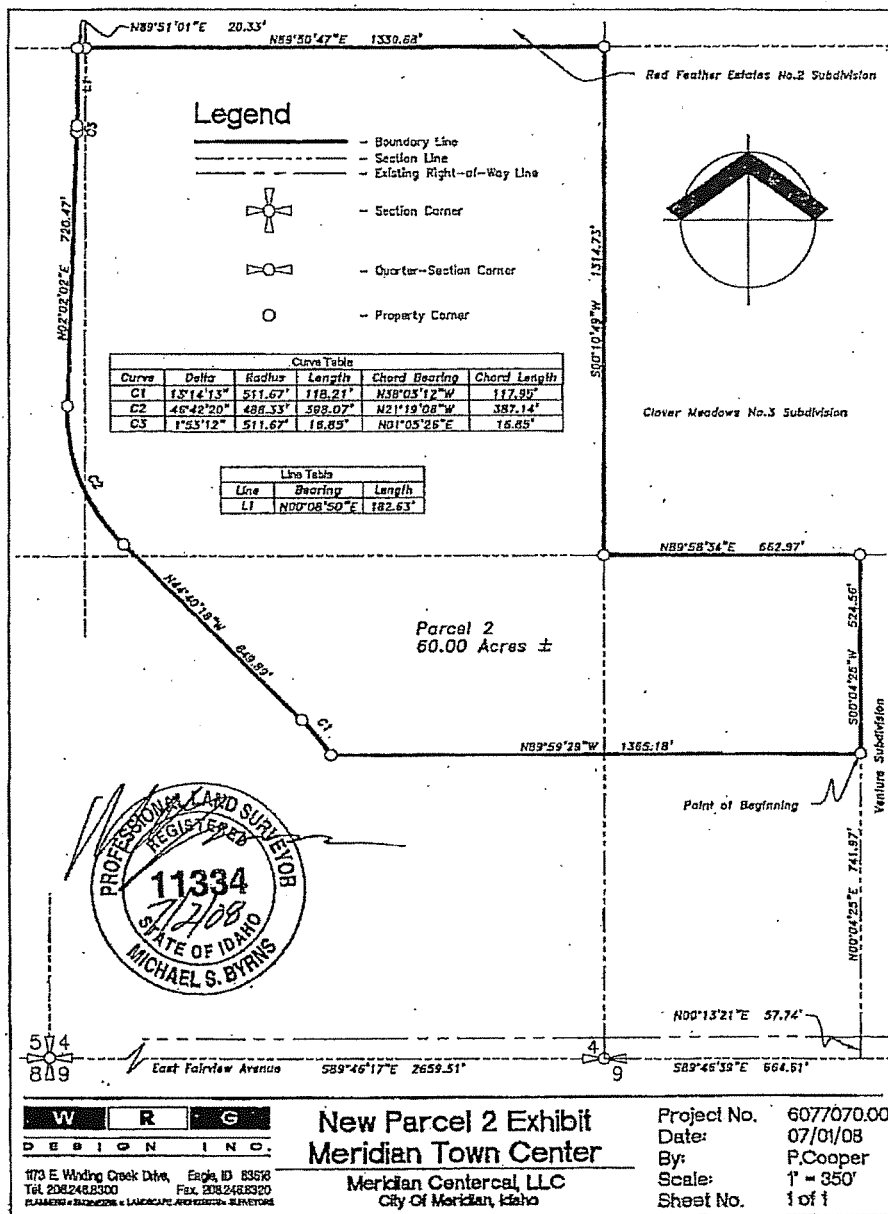


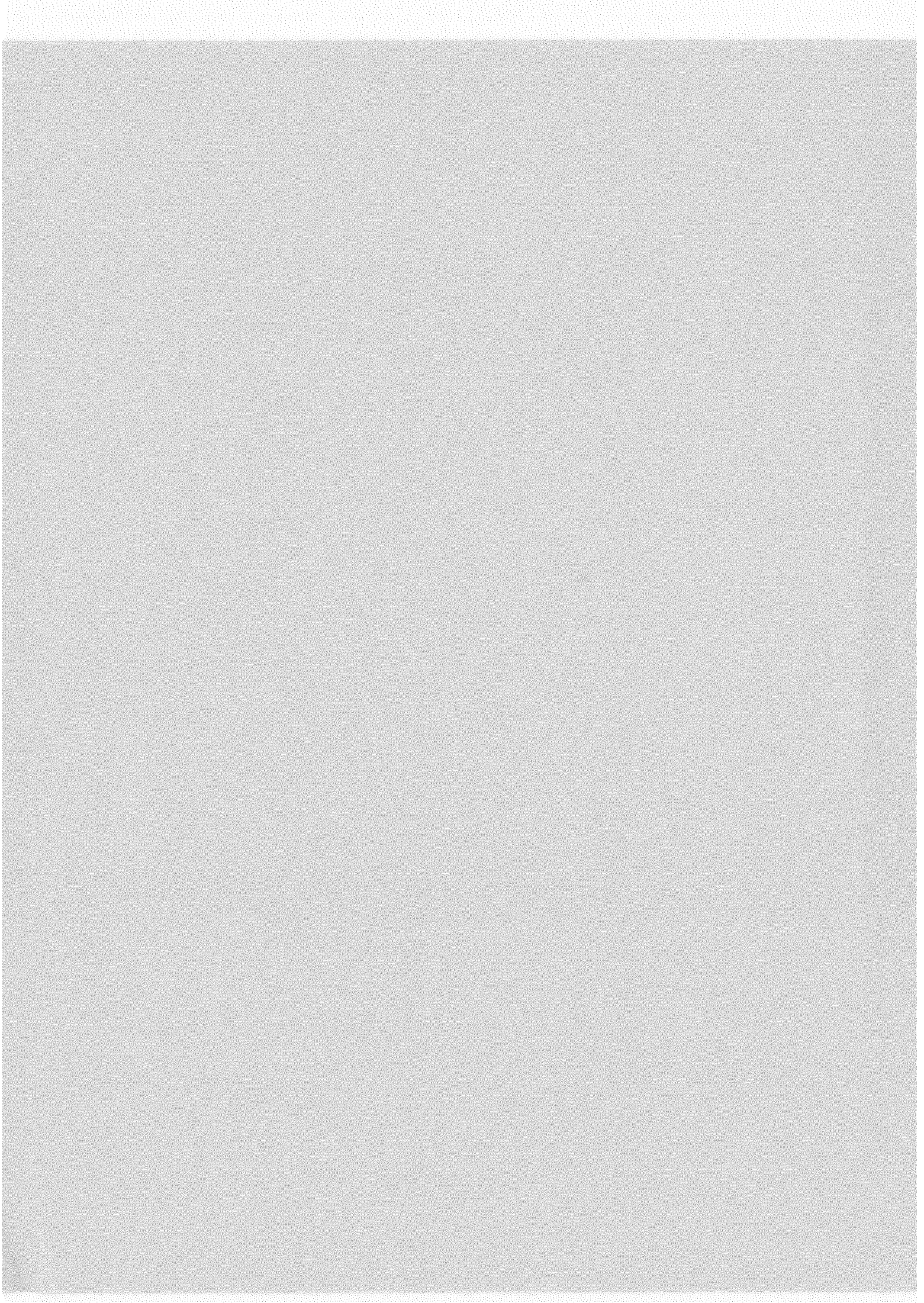
EXHIBIT B

1. General and Special Taxes for the year 2008, an accruing lien not due or payable until the fourth Monday in November 2008 when the bills are issued, the first half of which is not delinquent until after December 20, 2008.
2. General taxes which may be assessed and extended on any "subsequent" or "occupancy" tax roll, which may escape assessment of the regular tax roll; which are a lien not yet due or payable.
3. Liens, levies and assessments by Nampa-Meridian Irrigation District.
4. Right of way for Stokeberry Lateral & South Lateral, also known as Finch Lateral.
5. Except mineral or water rights, claims or title to mineral or water not owned by Grantor.
6. Rights, rights of way, reservations and exceptions in the patent recorded in Book 5 of Patents, Page 18.
7. License Agreement upon the terms, conditions and provisions contained therein;

Dated: August 5, 1996
Parties: NAMPA & MERIDIAN IRRIGATION DISTRICT &
INTERMOUNTAIN GAS COMPANY
Recorded: August 9, 1996
Instrument No. 96066964

8. Right of access to and from the land.
9. Any facts, rights, interests or claims which would be disclosed by a correct ALTA/ACSM survey.

876



9
NCS-291346-6
NCS-349809
NCS-349811

ADA COUNTY RECORDER J. DAVID NAVARRO
BOISE IDAHO 07/31/08 01:46 PM
DEPUTY Danielle Boulette
RECORDED-REQUEST OF
First American

28
AMOUNT 84.00 28



Recording Requested By and
When Recorded Return to:

Richard D. Herndon
Griffin Fletcher & Herndon LLP
3500 Red Bank Road
Cincinnati, Ohio 45227

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

WELL SHARING, WATER SUPPLY AND EASEMENT AGREEMENT

THIS WELL SHARING, WATER SUPPLY AND EASEMENT AGREEMENT (this "Agreement") is made as of the 31st day of July, 2008 (the "Effective Date"), among DAVID E. KLEINER, TRUSTEE OF THE 2008 KLEINER FAMILY TRUST UTA DATED MARCH 4, 2008 (the "Kleiner Trust"), EUGENE M. KLEINER and MICHAEL E. HUTER AS CO-TRUSTEES OF THE JULIUS M. KLEINER MEMORIAL PARK TRUST, UTA DATED APRIL 5, 2007 (the "Park Trust"), and MERIDIAN CENTERCAL, L.L.C., a Delaware limited liability company ("CenterCal") (collectively, the Kleiner Trust, the Park Trust and CenterCal are referred to from time to time herein as the "Parties") under the following circumstances:

RECITALS

A. The Kleiner Trust is the fee owner of real property located in Ada County, Idaho, and legally described in Exhibit A attached hereto (the "Kleiner Property"). The Kleiner Property consists of a parcel containing approximately 22.32 acres of land (Parcel 3).

B. The Park Trust is the fee owner of certain real property located adjacent to the Kleiner Property, and legally described in Exhibit B attached hereto (the "Park Property"). The Park Property is a single parcel containing approximately 60.00 acres of land.

C. CenterCal is the fee owner of certain real property located adjacent to the Kleiner Property, and legally described in Exhibit C attached hereto (the "CenterCal Property"). The CenterCal Property is made up of two (2) parcels containing approximately 35.85 acres of land (Parcel 1-A) and 53.94 acres of land (Parcel 1-B). The Kleiner Property, Park Property and CenterCal Property are sometimes hereafter collectively referred to as the "Properties" and are shown on the site plan attached hereto as Exhibit D (the "Property Site Plan").

D. The Parties to this Agreement, by law, each own a portion of the water right described in State of Idaho Water License Number 63 10412 (the "Water License"), which authorizes the diversion of a total of 2.5 cfs of water for the irrigation of a total of 129 acres

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within the Properties and a total annual diversion volume of 580.50 acre feet per year (4.5 acre-feet per acre). The Parties' respective shares of the Water License are referred to individually as a "Water Right" and collectively herein as the "Water Rights."

The allocation of the Water License among the Water Rights (the "Proportionate Shares") is as follows:

Party	Proportionate Share	Diversion Rate	Acres	Diversion Volume	Name of Right
Kleiner Trust (Parcel 3)	12.97%	.3243 CFS	22.32	75.29	Kleiner Trust Water Right
CenterCal (Parcel 1A)	20.83%	.5208 CFS	35.85	120.93	Center Cal Water Right
CenterCal (Parcel 1B)	31.34%	.7835 CFS	53.94	181.92	CenterCal Water Right
Park Trust	34.86%	.8715 CFS	60.00	202.36	Park Trust Water Right

E. The Water Rights of all the Parties are currently delivered from a ground water well located on the Kleiner Property shown on the Property Site Plan as "Irrigation Well A".

F. The Parties desire to divert their Proportionate Shares of the Water License from wells located or to be located on each of their respective Properties and to engage in the administrative process necessary to amend the Water Rights to allow for the additional points of diversion under the Water Rights. If adequate wells cannot be constructed or utilized on the CenterCal Property or the Park Property or the Water Rights cannot be amended to allow for additional points of diversion for such additional wells, the Parties desire to develop a new community well on the Park Property to serve as a replacement for Irrigation Well A. If new adequate wells cannot be installed on the CenterCal Property and the Park Property, and if a new adequate community well cannot be installed on the Park Property, or if the Water Rights cannot be amended to allow for additional points of diversion for the above described new wells, or until such time as the preceding events occur, then the parties desire to share the use, operation, maintenance and repair of Irrigation Well A, all pursuant to the terms and conditions of this Agreement.

G. The Parties desire to memorialize their agreements regarding the ownership of the Water Rights, their efforts to create new wells and to amend the Water License to allow for additional points of diversion, as well as to address their common ownership rights and obligations with respect to the wells described herein and all related facilities, the costs associated with the creation of new wells, maintenance, repair, use and operation of shared wells and all related facilities, as well as to create the necessary easements related to such shared wells, all upon the terms and conditions hereinafter set forth.

DK

NOW, THEREFORE, in consideration of the mutual undertakings of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all the Parties, the Kleiner Trust, the Park Trust and CenterCal agree as follows:

AGREEMENT

1. **Agreement as to Proportionate Shares of Water Rights.** The Parties hereby agree that the information contained in the Recital D above is accurate, and each Party specifically agrees that its Proportionate Share of the Water Rights as reflected therein and the specific Diversion Rate and Diversion Volume shown for it is accurate and agree and accepts the same as an accurate depiction of such Party's Water Rights. Each Party hereby assigns and transfers to the other Parties its interest in and to the Water License and Water Rights to the extent necessary to effectuate the ownership of the Proportionate Shares as set forth above in Recital D.

2. **CenterCal and Park Trust to Pursue Replacement Wells.**

2.1 **CenterCal and Park Trust to Pursue Separate Points of Diversion.** CenterCal and the Park Trust each agree to file an application for transfer with the Idaho Department of Water Resources ("IDWR") to change their respective points of diversion for their Water Rights from Irrigation Well A to a well located or to be located on their respective Property at such specific locations as they may desire within sixty (60) days following the execution of this Agreement. The Kleiner Trust agrees not to file a protest or to otherwise contest the transfer applications. If and to the extent new wells are installed pursuant to this Section 2.1, the costs of installing such wells, the costs of the equipment associated with such wells and all application and miscellaneous fees and costs shall be shared by the Parties based upon their Proportionate Share as described in Paragraph D of the Recitals Section of this Agreement. Each Party hereto shall pay its share of such costs to the Party installing such well within thirty (30) business days after being invoiced for the same. The Party sending such invoice shall provide a copy of all documentation supporting the invoice.

2.2 **New Shared Well on Park Trust Property.** In the event that CenterCal or the Park Trust are unable to change the point of diversion for their respective Water Rights to add an adequate and acceptable well on their respective Properties pursuant to Section 2.1 above, then the Parties shall work cooperatively to replace Irrigation Well A with a new well to be constructed on the southwest corner of the Park Property at a specific location to be agreed upon by the Parties who will be using such well, for use as a shared community well (the "Shared Replacement Well") by the Kleiner Trust and the Party or Parties who were unable to obtain approval for their own wells and to obtain all necessary governmental approvals required to utilize the Shared Replacement Well as the point of diversion for the Parties' respective Water Rights. Once the Parties who will be using the Shared Replacement Well reach agreement on the specific location, such Parties shall execute and record a Supplement to this Agreement to document the agreement on such location by incorporating a site plan showing the agreed to location (the "Shared Replacement Well Site Plan"). The Parties who will be using the Shared

Replacement Well shall (i) share the costs of construction and associated expenses, including the cost of completing all administrative processes necessary to transfer the point of diversion under the Water Right from Irrigation Well A to the Shared Replacement Well, and (ii) jointly co-own the Shared Replacement Well and all associated pumping equipment based upon their respective Proportionate Shares (adjusted if one of the Parties is not utilizing the Shared Replacement Well and has provided a "Termination Notice" (as hereinafter defined)). In addition, the Parties using the Shared Replacement Well shall allocate the costs of operating and maintaining the Shared Replacement Well based on their Proportionate Shares (as adjusted if one of the original Parties is no longer a Party pursuant to a Termination Notice). In connection with the construction of the Shared Replacement Well on the Park Property, the Parties using the Shared Replacement Well shall install water pipelines from such well to their respective properties at specific locations to be agreed upon by such Parties and install meters on such pipelines in order to insure that no Party receives an amount exceeding its Proportionate Share of Water Rights. A meter shall also be installed by the Parties on the Shared Replacement Well to measure the water being produced by such well. The Parties and their authorized representatives shall have the right to read all such meters from time to time. The rights of the Parties to read meters shall survive any Termination Notice provided under this Agreement. The specific agreed to locations for the above described pipelines shall be included on the Replacement Well Site Plan, and in any event, shall be adjacent to roadways or in such other areas that will not impair the development of the Properties upon which the same are located.

2.3 Use of Irrigation Well A Pending Installation and Approval of Replacement Wells. Until such time as IDWR approves the applications of CenterCal and the Park Trust for their replacement wells on their respective Properties or the application related to the Shared Replacement Well, with such approvals in any case as are reasonably acceptable to the parties utilizing the wells in question, and the replacement wells in question have been developed so that they produce the quantity of water authorized for the Parties utilizing the same as reflected by this Agreement with acceptable water quality, the Parties may continue to use Irrigation Well A as a point of diversion for their respective Water Rights.

2.4 Termination Notice. Once either CenterCal or the Park Trust obtain approvals to use a replacement well on its Property as a point of diversion for its Water Right and installs and is able to operate a replacement well producing the quantity of water such Party is entitled to with an acceptable quality of water, then such Party may provide written notice to the other Parties to this Agreement indicating that it intends to cease using Irrigation Well A or the Shared Replacement Well (the "Termination Notice"), as the case may be, specifying the date such Party will cease using the well in question. Effective upon the date specified in such Termination Notice, the Party providing such Termination Notice shall no longer be a party to this Agreement or bound to or liable hereunder, except for liability for costs incurred prior to such date and except for provisions contained herein expressly stated to survive the Termination Notice. In addition, the Party providing the Termination Notice shall no longer have any ownership rights or obligations with regard to Irrigation Well A or the Shared Replacement Well, as the case may be, or to any of the "Well Facilities" (as hereinafter defined) related to such well, and shall, upon request, execute such bills of sale or other instruments as the other

Parties may reasonably request in order to transfer its ownership interest therein to the other Parties and such easement vacations or other instruments as the other Parties may reasonably request to vacate easements that are no longer necessary.

2.5 Irrigation Well A as Community Well. If CenterCal and the Park Trust are unable to change the point of diversion for their Proportionate Share of the Water Rights to wells on their respective properties as provided in Section 2.1 above, and the Parties are also unable to change the point of diversion for their respective Proportionate Share of the Water Rights to the Shared Replacement Well as provided in Section 2.2 above, then, until they are able to do so, the Parties shall continue to use Irrigation Well A as a community well to supply irrigation water to the Properties. The Parties using Irrigation Well A shall co-own the well and all associated components thereof, including all pumps and related equipment and facilities utilized in the operation of such well (the "Well Facilities"), and (ii) allocate the costs of operating and maintaining the Irrigation Well A based on their Proportionate Shares (as adjusted if one of the original Parties is no longer a Party pursuant to a Termination Notice).

2.6 Installation of Lines for Irrigation Well A. If it is determined that Irrigation Well A is going to be used by the Parties as a community well, then within sixty (60) days after determination by any of the Parties hereto that the existing surface ditches and surface pipes need to be relocated in order to develop their respective Properties, the Kleiner Trust shall install water pipelines from Irrigation Well A to the Park Property and the CenterCal Property at the points to be agreed upon by the Parties, whereupon the Parties shall execute a Supplement to this Agreement to document such agreement on the locations by incorporating a water system site plan showing the agreed to locations (the "Irrigation Well A Site Plan"), which shall be adjacent to roadways or in such other areas that will not impair development of the Properties upon which the same are located, or, at its option, have the respective Parties install their own water lines in conformance with such Well A Site Plan, in which event the Kleiner Trust shall provide such Parties with the necessary easements and entry rights necessary to install the same. Until such time as any Party makes a determination that the existing surface ditches and surface pipes need to be relocated in order to develop its Property, the Parties may continue to use such surface ditches and surface pipes to provide irrigation water to their respective Properties. The plans and specifications for the new pipelines delivering water to the CenterCal Property shall require the prior approval of CenterCal, and the plans and specifications for the new pipelines delivering water to the Park Property shall require the prior approval of the Park Trust. The Kleiner Trust shall also install a meter capable of metering all of the water produced by Irrigation Well A, a meter on the pipeline going to the Park Property, and a meter on the pipeline going to the CenterCal Property in order to insure that each Party does not receive an amount exceeding its Proportionate Share of Water Rights. The Parties and their authorized representatives shall have the right to read the meters from time to time, which right shall survive any Termination Notice given by any Party pursuant to this Agreement. If and to the extent the Kleiner Trust installs the same, the Park Trust shall reimburse to the Kleiner Trust the cost of installing the delivery pipeline to the Park Property and the water meter on such pipeline, subject to the Park Trust's prior approval of such work, within ten (10) business days following receipt a written statement therefore, together with a copy of all documentation supporting the written statement.

DTL

If and to the extent the Kleiner Trust installs the same, CenterCal shall reimburse to Kleiner the cost of installing the delivery pipeline to the CenterCal Property and the water meter on such pipeline within ten (10) business days following receipt a written statement therefore.

2.7. **Disclaimers as to Water Quantity and Quality.** Neither the Kleiner Trust nor the Park Trust make any representation, warranty or guaranty to any Party regarding the quality of the water from wells located on their respective Properties, including but not limited to, the suitability of the water for irrigation purposes. For so long as wells are being shared under this Agreement, the Party required to maintain such well hereunder shall provide the other Parties with not less than twenty (20) days advance written notice of any planned interruption for maintenance, and the anticipated length of such interruption. Any planned interruption exceeding five (5) days shall require prior consent from all Parties.

3. **Quantity of Water Supplied.** Each of the Parties shall have the right to receive their Proportionate Share of the Water License from the Shared Replacement Well or Irrigation Well A, as the case may be.

4. **Grant of Easements.**

4.1 **Shared Replacement Well Easements.** If the Shared Replacement Well will be constructed pursuant to Section 2.2 above, the Park Trust grants to the Kleiner Trust and to CenterCal the following easements:

(a) A nonexclusive well easement ("Shared Replacement Well Easement") for all purposes directly related to the production of groundwater at the Shared Replacement Well, including but not limited to, operating, maintaining, repairing, replacing, reconstructing, metering and monitoring the Shared Replacement Well and the Well Facilities associated with the same. The location for the Replacement Well Easement will be shown on the Shared Well Site Plan once the Parties utilizing the Shared Replacement Well reach agreement on the same.

(b) A nonexclusive subsurface pipeline easement ("Replacement Well Pipeline Easement") for operating, maintaining, repairing, replacing, reconstructing, and monitoring pipelines and related facilities to transport groundwater from the Shared Replacement Well to: (a) the boundary of the Kleiner Property in the case of the Kleiner Trust; and (b) the boundary of the CenterCal Property in the case of CenterCal (the "Shared Replacement Well Pipeline Easement Area"). The Shared Replacement Well Pipeline Easement Area shall be an area that is five (5) feet on either side of the center line of the pipeline to be constructed pursuant to Section 2.2. The Park Trust agrees that no structures, walls, fences, obstructions or barriers of any kind (whether temporary or permanent) shall be constructed, erected or permitted over the Shared Replacement Well Pipeline Easement Area. The location of the Shared Replacement Well Pipeline Easement Area will be shown on the Shared Well Site Plan once the Parties utilizing the Shared Replacement Well reach agreement on the same.

(c) A Nonexclusive easement ("Shared Replacement Well Access Easement") for ingress and egress on such portions of the Park Property reasonably approved by the Park Trust and the other Parties utilizing the same which is necessary in order for the Kleiner Trust and CenterCal to exercise and perform their rights and obligations pursuant to this Agreement. The access rights of the Kleiner Trust and CenterCal shall be directly related to the production of water and operation of the Shared Replacement Well and the Well Facilities associated therewith. The Kleiner Trust and CenterCal, as the case may be, shall provide the Park Trust with reasonable advance notice when they desire access to the Park Property for the purposes provided in this Agreement. The Kleiner Trust and CenterCal, as the case may be, shall not unreasonably interfere with the Park Trust's operations or use of the Park Property while accessing the Trust Property pursuant to this Agreement. The Park Trust shall not install any improvements or alterations, or take any other actions, or permit any of the same to occur, on the Park Property which will restrict or prevent the Kleiner Trust or CenterCal from exercising the easement rights described herein.

4.2 Irrigation Well A Easements. For so long as Irrigation Well A shall be used as a community well pursuant to this Agreement, the Kleiner Trust grants to the Park Trust and to CenterCal the following easements:

(a) A nonexclusive well easement ("Irrigation Well A Easement") for all purposes directly related to the production of groundwater at the Irrigation Well A, including but not limited to, operating, maintaining, repairing, replacing, reconstructing, metering and monitoring Irrigation Well A the Well Facilities associated with the same. The current location of the Irrigation Well A Easement is shown on the attached Exhibit D.

(b) A nonexclusive subsurface pipeline easement ("Irrigation Well A Pipeline Easement") for operating, maintaining, repairing, replacing, reconstructing, and monitoring pipelines and related facilities to transport groundwater from Irrigation Well A to: (a) the boundary of the Park Property in the case of the Park Trust; and (b) the boundary of the CenterCal Property in the case of CenterCal (the "Irrigation Well A Pipeline Easement Area"). The Irrigation Well A Pipeline Easement Area shall be an area that is five (5) feet on either side of the center line of the pipeline to be constructed pursuant to Section 2.6. The Kleiner Trust agrees that no structures, walls, fences, obstructions or barriers of any kind (whether temporary or permanent) shall be constructed, erected or permitted over the Irrigation Well A Pipeline Easement Area. The location of the Irrigation Well A Pipeline Easement Area will be shown on the Irrigation Well A Site Plan once the Parties utilizing Irrigation Well A reach agreement on the same.

(c) A nonexclusive easement ("Irrigation Well A Access Easement") for ingress and egress on such portions of the Kleiner Property reasonably approved by the Kleiner Trust and the other Parties utilizing the same which is necessary in order for the Park Trust and CenterCal to exercise and perform their rights and obligations pursuant to this Agreement. The access rights of the Park Trust and CenterCal shall be directly related to the production of water and operation of the Irrigation Well and the Well Facilities associated

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therewith. The Park Trust and CenterCal, as the case may be, shall provide the Kleiner Trust with reasonable advance notice when they desire access to the Kleiner Property for the purposes provided in this Agreement. The Park Trust and CenterCal, as the case may be, shall not unreasonably interfere with the operations or use by the Kleiner Trust of the Kleiner Property while accessing the Kleiner Property pursuant to this Agreement. The Kleiner Trust shall not install any improvements or alterations, or take any actions, or permit any of the same to occur on the Kleiner Property which will restrict or prevent the Park Trust or CenterCal from exercising the easement rights described herein.

5. **Relocation of Wells, Well Facilities and Pipelines.** The Park Trust or the Kleiner Trust may from time to time elect to relocate the wells located on their respective properties, provided however, if the wells are then still being utilized by any other Party or Parties, then the conditions of this Section 5 shall apply to any such relocation. The proposed relocation for the well (a) must be reasonably acceptable to the other Parties then utilizing such well; (b) must be in compliance with all applicable laws, rules and regulations; (c) shall be performed at the sole cost and expense of the Party relocating the same; (d) shall not reduce or impair the usefulness or function of the water service provided to the other Parties' respective Properties; (e) shall be completed in a manner so as not to interrupt the provision of water to any of the other Parties' respective Properties; (f) shall not disrupt or diminish the extraction of ground water as then being extracted by the water well being relocated; (g) shall not substantially increase "Operating Costs" (as hereinafter defined). In addition, the Party desiring to relocate the water well shall cause to be provided to the other Parties still utilizing such well reasonably acceptable certifications from its water engineer and hydrogeologist attesting to the foregoing. The expenses described above to be paid by the relocating Party shall include the necessary relocation and/or replacement of all Well Facilities and pipelines. The relocating Party shall provide the other Parties then utilizing the well reasonable advance notice of the relocation and work cooperatively with such parties regarding the necessary relocation of irrigation pipelines and related facilities.

6. **Ownership of Well Facilities.** Ownership of Irrigation Well A and all of the Well Facilities associated therewith shall be owned by the Parties as tenants in common, with each such Party's ownership share therein being equal to its Proportionate Share pursuant to Article D of the Recitals. The Parties shall execute such bills of sale or other reasonably requested documents from time to time to evidence such ownership rights. If the Shared Replacement Well is installed on the Park Property, then the ownership of the Shared Replacement Well and the Well Facilities associated with the Shared Replacement Well for each Party shall be equal to the above described ownership percentages. Notwithstanding the foregoing provisions to the contrary, once a Party provides a Termination Notice, then effective as of the date such Party ceases using Irrigation Well A or the Shared Replacement Well, as the case may be, then such Party shall transfer to the other Party or Parties its ownership share in such well and the associated Well Facilities by bill of sale or such other documentation as may be reasonably requested so that the ownership percentages will be proportionate to the remaining Parties' respective Proportional Shares. The transfer of ownership rights in the wells and the Well Facilities as described herein shall be without warranty or guaranty, other than a warranty

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by the transferring party that it has not transferred, encumbered or otherwise alienated its ownership interest to any third party, in any way.

7. Operation and Maintenance of Wells and Well Facilities.

7.1 Licenses and Permits. The Park Trust shall obtain or cause to be obtained all authorizations, licenses, permits, consents and approvals of, notice to and registrations or filings with any governmental body, agency or other instrumentality that are required to be obtained in connection with the operation and maintenance of Irrigation Well A or the Shared Replacement Well and the associated Well Facilities and pipelines ("Permits"). Each Party shall be responsible for the payment of its respective Proportionate Share of the cost of all such licensing and permitting costs ("Regulatory Costs"), with payment to be made within thirty (30) business days following receipt a written statement therefor, together with copies of the actual invoices, bills or other reasonable documentation of the Regulatory Costs in question.

7.2 Operation and Maintenance. The Park Trust shall operate and maintain Irrigation Well A or the Shared Replacement Well and associated Well Facilities and pipelines in a good working condition and in accordance with all applicable governmental laws, regulations and statutes by person(s) or entity(ies) qualified and licensed to perform such work. The costs of maintaining and repairing pipelines that serve one Party's Property exclusively shall be paid by that Party and the costs of maintaining and repairing shared pipelines shall be shared by the Parties based on their Proportionate Shares. The Park Trust shall also be responsible for maintaining and paying for electrical service at Irrigation Well A or the Shared Replacement Well and to operate the Well Facilities. Each Party shall be responsible for the payment of its respective Proportionate Share of the actual out-of-pocket third party cost of all such operation and maintenance costs, including the costs of maintaining and repairing pipelines that serve its Property exclusively ("Operating Costs"), which shall be billed on a quarterly basis with payment due thirty (30) business days following receipt of a bill for the same, which shall be accompanied by copies of the actual bills and invoices or other reasonable documentation evidencing the Operating Costs expended by the Park Trust.

The Kleiner Trust and CenterCal shall have the right to conduct an audit of Operating Expenses for any calendar year, provided such audit is conducted upon at least fifteen (15) days notice, at the auditing Party's expense, during normal business hours, at Park Trust's offices where such records are kept and is not conducted more than once with respect to the period in question. If such audit reveals that the Park Trust has overcharged the Kleiner Trust and CenterCal, the Park Trust shall promptly reimburse the Kleiner Trust and CenterCal for the amount of such overcharge, and if such overage exceeds five percent (5%) of the Operating Costs billed to the auditing Party, the Park Trust shall reimburse the auditing Party for its out-of-pocket cost in having such audit performed.

Notwithstanding the foregoing, the Park Trust shall not incur Operating Costs greater than Ten Thousand Dollars and no/100's (\$10,000.00) for any individual item without

first obtaining the written consent of the Kleiner Trust and CenterCal, such consent not to be unreasonably withheld, conditioned or delayed. The Kleiner Trust and CenterCal, or their respective authorized representatives, shall have the right to observe the Park Trust's operation and maintenance activities on a periodic basis as reasonably necessary to ensure that the Irrigation Well A, or the Shared Replacement Well, as the case may be, and the associated Well Facilities are operated and maintained in accordance with the terms and conditions of this Agreement. Should the Park Trust fail to properly maintain Irrigation Well A, or the Shared Replacement Well, as the case may be, or any of the associated Well Facilities, the Kleiner Trust and CenterCal shall have the right to undertake necessary maintenance, the cost of which shall be shared by the Parties as provided in this Section 7, and shall have the same billing and collection rights as are afforded to the Park Trust hereunder.

8. **Costs of Installing New Wells.** If CenterCal and/or the Park Trust install their own wells pursuant to Section 2.1 of this Agreement, or if the Parties elect to install the Shared Replacement Well on the Park Property pursuant to Section 2.2 of this Agreement, then the costs of installing such new wells and the associated Well Facilities shall be shared by all of the Parties hereto in accordance with their respective Proportionate Shares. Each such Party shall pay its Proportionate Share of these costs within thirty (30) business days after being invoiced for the same, which invoices shall be accompanied by copies of the actual bills or invoices from third parties or other documentation reasonably demonstrating the total costs involved with the well installation of the new wells and the associated Well Facilities. Prior to installing any of the new wells and associated Well Facilities as described herein, the Party installing the same shall submit the bids, estimates and total costs associated therewith to the other Parties for review and approval, which shall not be unreasonably withheld. Each of the Parties' obligations under this Section 8 regarding payment for installation costs shall survive such Party providing any Termination Notice.

9. **Indemnification:**

9.1 **Indemnification by Kleiner Trust.** The Kleiner Trust shall indemnify, defend and hold harmless the Park Trust and CenterCal, and their respective trustees, beneficiaries, officers, employees, directors, members, agents, contractors, attorneys and consultants, from and against all damages, claims, actions, demands, liabilities, costs and expenses, including without limitation, costs of investigation, lawsuits and other proceedings, whether in equity or in law, settlement costs, attorneys' fees and costs, and penalties or violations of any kind, which are alleged to directly or indirectly arise out of, result from or relate to: (a) any injury to a person, property or entity occurring in connection with the exercise of any of its rights hereunder; (b) any negligent act or omission on the part of the Kleiner Trust or its trustees, agents, representatives, contractors, employees, invitees, licensees or lessees in the performance of this Agreement; and (c) breach of the terms and conditions of this Agreement by the Kleiner Trust. The foregoing indemnification obligations owed to an indemnified party shall not include any claims or liability to the extent of the negligence of such indemnified party.

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9.2 **Indemnification by the Park Trust.** The Park Trust shall indemnify, defend and hold harmless the Kleiner Trust and CenterCal, and their respective trustees, beneficiaries, officers, employees, agents, directors, members, contractors, attorneys and consultants, from and against all damages, claims, actions, demands, liabilities, costs and expenses, including without limitation, costs of investigation, lawsuits and other proceedings, whether in equity or in law, settlement costs, attorneys' fees and costs, and penalties or violations of any kind, which are alleged to directly or indirectly arise out of, result from or relate to: (a) any injury to a person, property or entity occurring in connection with the exercise of any of its rights hereunder; (b) any negligent act or omission on the part of the Park Trust or its trustees, agents, representatives, contractors, employees, invitees, licensees and lessees in the performance of this Agreement; or (c) breach of the terms and conditions of this Agreement by the Park Trust. The foregoing indemnification obligations owed to an indemnified party shall not include any claims or liability to the extent of the negligence of such indemnified party.

9.3 **Indemnification by CenterCal.** CenterCal shall indemnify, defend and hold harmless the Kleiner Trust and the Park Trust, and their respective trustees, beneficiaries, employees, agents, contractors, attorneys and consultants, from and against all damages, claims, actions, demands, liabilities, costs and expenses, including without limitation, costs of investigation, lawsuits and other proceedings, whether in equity or in law, settlement costs, attorneys' fees and costs, and penalties or violations of any kind, which are alleged to directly or indirectly arise out of, result from or relate to: (a) any injury to a person, property or entity occurring in connection with the exercise of any of its rights hereunder; (b) any negligent act or omission on the part of CenterCal or its officers, directors, agents, representatives, contractors, employees, invitees, licensees and lessees in the performance of this Agreement; or (c) breach of the terms and conditions of this Agreement by CenterCal. The foregoing indemnification obligations owed to an indemnified party shall not include any claims or liability to the extent of the negligence of such indemnified party.

9.4 **Survival of Indemnification Obligations.** The obligations of the Parties under this Section 9 shall survive any such Party providing a Termination Notice with regard to damages, claims, actions, demands, liability costs, or expenses arising out of actions or breaches that occur prior to the date of termination contained in such Party's Termination Notice. No person shall be liable under the indemnities in this Section 9 for the acts or omissions of its successors in interest.

10. **Covenant.** This Agreement and the rights, duties and obligations of the Parties under this Agreement shall be Successors construed as appurtenances to and covenants running with the Property owned by the respective Parties. The Parties agree that the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties to this Agreement.

11. **Term.** This Agreement shall commence on the Effective Date. Unless otherwise canceled or terminated in writing by the mutual agreement of the Parties, or pursuant to the terms of this Agreement, the easements granted in this Agreement shall continue in perpetuity or such

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shorter term if mandated by Idaho law. Upon the expiration or earlier termination of this Agreement, the Parties will prepare and record a deed quitclaiming any interest in the easements created under this Agreement.

12. Insurance. If the Shared Replacement Well is constructed pursuant to Section 2.2 above, the Park Trust shall obtain and keep in full force and effect during the term of this Agreement a policy of comprehensive liability insurance ("Replacement Well Liability Policy"), insuring the Park Trust against any liability arising out of the use, operation, maintenance or repair of the Shared Replacement Well and associated Well Facilities. Such insurance shall at all times be in an amount not less than \$5,000,000 combined single limit liability for personal and bodily injury and property damage. The insurance required by this Section shall be issued by responsible companies qualified to do business in the State of Idaho, with a "Best's Key Rating Guide" of at least A/VIII. The Kleiner Trust and CenterCal shall be named as additional insureds on such policy. Each Party shall pay its Proportionate Share of the cost of the Replacement Well Liability Policy in the same manner as they are required to pay Operating Costs pursuant to Section 7.

For so long as Irrigation Well A, as currently located, shall be used as a community well pursuant to Section 2.3 above, the Kleiner Trust shall obtain and keep in full force and effect during the term of this Agreement a policy of comprehensive liability insurance ("Irrigation Well Liability Policy"), insuring the Kleiner Trust against any liability arising out of the use, operation, maintenance or repair of Irrigation Well A, and the associated Well Facilities. Such insurance shall at all times be in an amount not less than \$5,000,000 combined single limit liability for personal and bodily injury and property damage. The insurance required by this Section shall be issued by responsible companies qualified to do business in the State of Idaho, with a "Best's Key Rating Guide" of at least A/VIII. The Park Trust and CenterCal shall be named as additional insureds on such policy. Each Party shall pay its Proportionate Share of the cost of the Irrigation Well Liability Policy in the same manner as they are required to pay Operating Costs pursuant to Section 7.

13. Default.

13.1 Failure to Pay Expenses. In the event any Party fails or refuses to pay when due its share of any expenses incurred in connection with the construction, maintenance, operation and insurance of the irrigation wells, well facilities and pipeline delivery systems as provided for in this Agreement, which failure continues for a period of ten (10) days after receipt of written notice of a bill thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting party (the "Defaulting Party") by the Party that has paid the expenses (the "Curing Party") for reimbursement plus interest. Interest shall accrue from the date said bill was due and payable to and including the date said bill is paid at the rate of twelve percent (12%) per annum (the "Default Rate"). Furthermore, the Curing Party shall have a lien on the Defaulting Party's real property described herein for the amount of said expenses plus accrued interest as set forth above; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are

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paid, there shall be no right to place a lien on such Defaulting Party's real property until ten (10) days after such dispute is settled by final court decree or mutual agreement and payment thereof to the Curing Party has not been made.

14. Miscellaneous Provisions.

14.1 Recitals. The Recitals set forth at the beginning of this Agreement of any matters or facts shall be conclusive proof of their truthfulness and the terms and conditions stated in the Recitals, if any, shall be deemed a part of this Agreement.

14.2 Good Faith. The Parties agree to exercise their best efforts and utmost good faith to effectuate all the terms and conditions of this Agreement and to execute such further instruments and documents as are necessary or appropriate to effectuate all of the terms and conditions of this Agreement.

14.3 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same instrument.

14.4 Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the Water Rights, the Shared Replacement Well and Irrigation Well A and supersedes all prior and contemporaneous understandings and agreements, whether oral or in writing, between the parties regarding the foregoing matters. There are no representations, agreements, arrangements or understandings, oral or in writing, between or among the parties to this Agreement relating to the subject matter of this Agreement that are not fully expressed in this Agreement or any addendum or supplement hereto.

14.5 Interpretation and Headings. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attribution to such party as the source of the language in question. Headings used in this Agreement are for convenience of reference only and shall not be used in construing this Agreement.

14.6 Governing Law. This Agreement shall be governed by the laws of the State of Idaho.

14.7 Venue. The venue of any action brought to interpret or enforce this Agreement shall be laid in Ada County, Idaho.

14.8 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, to any extent shall be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and in no way shall be affected, impaired or invalidated thereby.

14.9 Waiver. The waiver by one party of the performance of any covenant, condition or promise under this Agreement shall not invalidate this Agreement, nor shall it be considered a waiver by it of any other covenant, condition or promise under this Agreement. The waiver by either or both parties of the time for performing any act under this Agreement shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

14.10 Amendment. This Agreement may be amended or supplemented at any time, but only by the written agreement of the Parties.

14.11 No Third-Party Beneficiaries. This Agreement is intended to benefit only the Parties hereto and no other person or entity has or shall acquire any rights hereunder.

14.12 Survival. Each of the obligations of the Parties hereto to provide any documents, make any payments, or indemnify any other Party hereto shall survive the termination of this Agreement.

14.13 Further Acts. Each Party agrees to perform any further acts and to execute, acknowledge and deliver any documents which may be reasonably necessary to carry out the provisions of this Agreement.

14.14 Attorneys' Fees. In the event of any litigation involving the Parties to this Agreement to enforce any provision of this Agreement, to enforce any remedy available upon default under this Agreement, or seeking a declaration of the rights of a Party under this Agreement, the prevailing party shall be entitled to recover from the other such attorneys' fees and costs as may be reasonably incurred, including the costs of reasonable investigation, preparation and professional or expert consultation incurred by reason of such litigation or appeal.

14.15 Notice. Any notice or other communication which a Party is required or may desire to give any other Party pursuant to this Agreement shall be in writing and shall be given by personal service, by United States registered or certified mail, return receipt requested, postage prepaid, or by generally recognized overnight carrier with proof of delivery provided, addressed to the party to whom the communication is being sent as follows:

Address for Notices to Kleiner Trust:

Walter and Elizabeth Kleiner
1725 89th Place NE
Bellevue, Washington 98004

DZC

and

David Kleiner
3841 Carr Place N.
Seattle, Washington 98103

With a copy to (which shall not constitute notice):

Stoel Rives, LLP
600 University Street, Suite 3600
Seattle, Washington 98101
Attn: David Rockwell, Esq.

Address for Notices to the Park Trust:

The Julius M. Kleiner Memorial Park Trust
c/o Mr. Eugene M. Kleiner, Co-Trustee
1900 Clise Place West
Seattle, WA 98199

and

The Julius M. Kleiner Memorial Park Trust
Michael E. Huter, Co-Trustee
217 W. Georgia Ave., Suite 100
Nampa, ID 83686
Fax No.: (208) 467-9983

With a copy to (which shall not constitute notice):

Hawley Troxell Ennis & Hawley, LLP
877 Main Street, Suite 1000
PO Box 1617
Boise, ID 83701-1617
Attn: Richard F. Goodson
Fax No. 208-342-3829

Address for Notices to CenterCal:

c/o CenterCal Properties, LLC
7455 SW Bridgeport Road, Suite 205
Tigard, Oregon 97224
Attn: Fred W. Bruning

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With a copy to (which shall not constitute notice):

Griffin Fletcher & Herndon LLP
3500 Red Bank Road
Cincinnati, Ohio 45227
Attn: Richard D. Herndon, Esq.

Either party may change its address by written notice to the other given in the manner set forth above. Any notice so given shall be deemed to have been given at the time of delivery, if personally served, or as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be, if sent by mail or overnight courier.

14.16 Exhibits. The following Exhibits are attached hereto and made a part hereof:

Exhibit A	Legal Description of the Kleiner Property
Exhibit B	Legal Description of the Park Property
Exhibit C	Legal Description of the CenterCal Property
Exhibit D	Property Site Plan (Showing Location of Current Well)

14.17 Authority. The individuals executing this Agreement represent and warrant that they have the authority to enter into this Agreement and to perform all acts required by this Agreement, and that the consent, approval or execution of or by any third party is not required to legally bind the Parties to the terms and conditions of this Agreement.

14.18 Limitation on Trustee. The individuals signing this Agreement on behalf of the Kleiner Trust and the Park Trust are executing this Agreement solely in their capacities as trustees under their respective trusts and any recourse against them or their respective trusts under this Agreement shall be asserted and recoverable solely from the assets of their respective trusts and not from the individual trustees personally.

[Signatures on following page]



ADDENDUM TO
WELL SHARING, WATER SUPPLY AND EASEMENT AGREEMENT

This Addendum is attached to and forms a part of that certain Well Sharing, Water Supply and Easement Agreement dated July 31st, 2008, among David E. Kleiner, as Trustee of The 2008 Kleiner Family Trust U/T/D March 4, 2008 (the "First Trust"), Eugene M. Kleiner and Michael E. Huter, as Co-trustees of The Julius M. Kleiner Memorial Park Trust U/T/D dated April 5, 2007 (the "Park Trust"), and Meridian CenterCal, L.L.C., a Delaware limited liability company ("CenterCal") to evidence and confirm that David E. Kleiner, as Trustee of The 2008 Kleiner Family Trust II U/T/D July 29, 2008 (the "Second Trust"), and all of the interest now held or hereafter acquired in the Kleiner Property by the Second Trust, shall be subject to said Well Sharing, Water Supply and Easement Agreement and that the Second Trust shall be obligated under all of the covenants and subject to all of the conditions applicable to the First Trust thereunder.

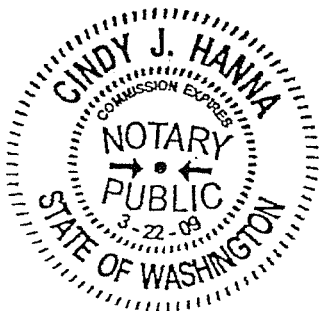
IN WITNESS WHEREOF, the undersigned Trustee has executed these presents as of the 29th day of July, 2008.

David E. Kleiner, Trustee
David E. Kleiner, as Trustee for The 2008 Kleiner Family Trust II U/T/D July 29, 2008.

STATE OF WASHINGTON)
)ss.
COUNTY OF KING)

On this day personally appeared before me DAVID E. KLEINER, as Trustee of The 2008 Kleiner Family Trust II U/T/D July 29, 2008, to me known to be the individual described in and who executed the within and foregoing instrument as Trustee of The 2008 Kleiner Family Trust II U/T/D July 29, 2008, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 29th day of July, 2008.



Signature: Cindy J. Hanna
Name (Print): Cindy J. Hanna

NOTARY PUBLIC in and for the State
of Washington, residing at Issaquah
My appointment expires: 3-22-09

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective
Date.

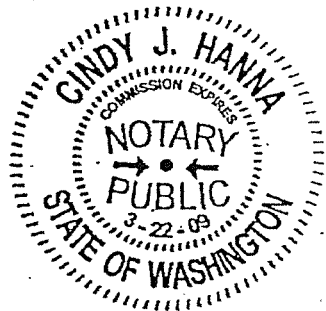
David E. Kleiner
DAVID E. KLEINER, TRUSTEE OF THE 2008
KLEINER FAMILY TRUST UTA DATED
MARCH 4, 2008

KLEINER TRUST ACKNOWLEDGEMENT

STATE OF Washington)
) ss.
County of King)

I certify that I know or have satisfactory evidence that David E. Kleiner
(is/are) the person(s) who appeared before me, and said person(s) acknowledged that he
signed this instrument, on oath stated that he (is/are) authorized to execute the
instrument and acknowledged it as the Trustee of
2008 Kleiner Family Trust to be the free and voluntary act of such party (ies)
for the uses and purposes mentioned in this instrument.

Dated: July 29, 2008



Cindy J. Hanna
Notary name (typed or printed): Cindy J. Hanna
Notary Public in and for the State of Washington
Residing at Issaquah
My appointment expires 3-22-09

OK

Eugene M. Kleiner
EUGENE M. KLEINER, CO-TRUSTEE OF THE
JULIUS M. KLEINER MEMORIAL PARK
TRUST UTA DATED APRIL 5, 2007

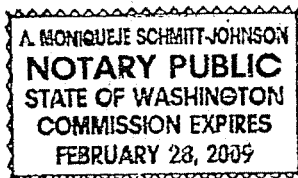
Michael E. Huter
MICHAEL E. HUTER, CO-TRUSTEE OF THE
JULIUS M. KLEINER MEMORIAL PARK
TRUST UTA DATED APRIL 5, 2007

PARK TRUST ACKNOWLEDGEMENTS

STATE OF WA)
County of KING) ss.

I certify that I know or have satisfactory evidence that EUGENE M. KLEINER
(is/are) the person(s) who appeared before me, and said person(s) acknowledged that HE
signed this instrument, on oath stated that HE (is/are) authorized to execute the
instrument and acknowledged it as the CO-TRUSTEE of THE JULIUS M. KLEINER
MEMORIAL PARK TRUST to be the free and voluntary act of such party (ies) for the uses and purposes
mentioned in this instrument.

Dated: July 28, 2008

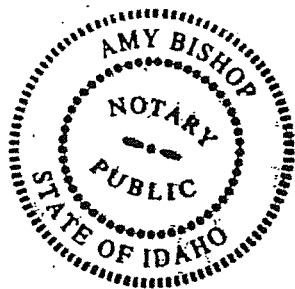


A. Monique Schmitt-Johnson
Notary name (typed or printed):
Notary Public in and for the State of WA
Residing at Seattle
My appointment expires 2/28/09

STATE OF ID)
County of ADA) ss.

I certify that I know or have satisfactory evidence that MICHAEL E. HUTER
(is/are) the person(s) who appeared before me, and said person(s) acknowledged that HE
signed this instrument, on oath stated that HE (is/are) authorized to execute the
instrument and acknowledged it as the TRUSTEE of THE JULIUS M.
KLEINER TRUST to be the free and voluntary act of such party (ies) for the uses and purposes
mentioned in this instrument.

Dated: 7-30-08



A. Bishop
Notary name (typed or printed): AMY BISHOP
Notary Public in and for the State of ID
Residing at BOISE, ID
My appointment expires 10-7-10

Dr

MERIDIAN CENTERCAL, L.L.C.,
a Delaware limited liability company

By: CENTERCAL, LLC,
a Delaware limited liability company
Its Sole Member

By: CENTERCAL ASSOCIATES, LLC,
a Delaware limited liability company
Managing Member

By: Paul Wg
Name: Jean Paul Wardy
Title: Its Member

CENTERCAL ACKNOWLEDGEMENT

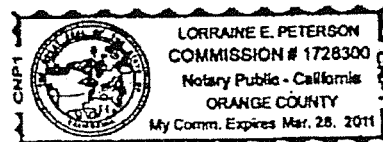
STATE OF CALIFORNIA)
) ss.
County of LOS ANGELES)

On JULY 28, 2008, before me, LORRAINE E. PETERSON,
notary public, personally appeared JEAN PAUL WARDY, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Lorraine E. Peterson (Seal)



W R G
DESIGN INC.

EXHIBIT A

Boundary Description
of New Parcel 3
for Meridian Centarcil, LLC.
Job No. 6077070:00

A parcel of land situated in the east half of the southwest quarter and the west half of the southwest quarter of the southeast quarter of Section 4, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho, being more particularly described as follows:

Commencing at a brass cap marking the southwest corner of Section 4, Township 3 North, Range 1 East, Boise Meridian;
Thence S89°46'17"E, 2659.51 feet along the south line of the southwest quarter to a 5/8 inch rebar marking the south quarter-section corner of Section 4;
Thence S89°46'39"E, 664.61 feet along the south line of the southeast quarter;
Thence N00°13'21"E, 57.74 feet to a 5/8 inch rebar marking the southwest corner of Venture Subdivision, Book 27 of Plats at Pages 1704 & 1705, on the north right-of-way line of East Fairview Avenue, the POINT OF BEGINNING:

Thence N00°04'25"E, 741.97 feet along the west line of Venture Subdivision;

Thence N89°59'29"W, 1378.91 feet;

Thence 281.58 feet on a non-tangent curve to the right, concave westerly, having a radius of 500.00 feet, a central angle of 32°15'58", a chord bearing of S16°07'22"E, and a chord length of 277.87 feet;

Thence S00°00'37"W, 475.04 feet to the north right-of-way line of East Fairview Avenue;

Thence S89°59'29"E, 636.20 feet along the north right-of-way line of East Fairview Avenue to a 5/8 inch rebar;

Thence S89°59'29"E, 664.68 feet along the north right-of-way line of East Fairview Avenue to the POINT OF BEGINNING.

The above-described parcel contains 22.32 acres, more or less.

Subject to any existing easements or rights-of-way of record or apparent.



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LANDSCAPE
ARCHITECTURE



LAND
SURVEY



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Eagle, ID
83616

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FX 208/246.8320

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DL

W R G
DESIGN INC.

EXHIBIT B

Boundary Description
of New Parcel 2
for Meridian Central, LLC
Job No. 6077070.00

A parcel of land situated in the southwest quarter and the west half of the southwest quarter of the southeast quarter of Section 4, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho, being more particularly described as follows:

Commencing at a brass cap marking the southwest corner of Section 4, Township 3 North, Range 1 East, Boise Meridian;
Thence S89°46'17"E, 2659.51 feet along the south line of the southwest quarter to a 5/8 inch rebar marking the south quarter-section corner of Section 4;
Thence S89°46'39"E, 664.61 feet along the south line of the southeast quarter;
Thence N00°13'21"E, 57.74 feet to a 5/8 inch rebar marking the southwest corner of Venture Subdivision, Book 27 of Plats at Pages 1704 & 1705, records of Ada County, on the north right-of-way line of East Fairview Avenue;
Thence N00°04'25"E, 741.97 feet along the west line of Venture Subdivision to the POINT OF BEGINNING:

Thence N89°59'29"W, 1365.18 feet;

Thence 118.21 feet on a non-tangent curve to the left, concave westerly, having a radius of 511.67 feet, a central angle of 13°14'13", a chord bearing of N38°03'12"W, and a chord length of 117.95 feet;

Thence N44°40'18"W, 649.89 feet;

Thence 398.07 feet on a curve to the right having a radius of 488.33 feet, a central angle of 46°42'20", a chord bearing of N21°19'08"W, and a chord length of 387.14 feet;

Thence N02°02'02"E, 720.47 feet;

Thence 16.85 feet on a curve to the left having a radius of 511.67 feet, a central angle of 1°53'12", a chord bearing of N01°05'26"E, and a chord length of 16.85 feet;

Thence N00°08'50"E, 182.63 feet to the north line of the west half of the southwest quarter;

Thence N89°51'01"E, 20.33 feet along the north line of the west half of the southwest quarter to a 5/8 inch rebar marking the southwest corner of Redfeather Estates Subdivision No. 7, Book 96 of Plats at Pages 11865 & 11866, records of Ada County, and the northwest corner of the east half of the southwest quarter;



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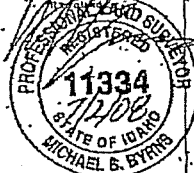
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WATER



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076

New Parcel 2 continued...

Thence N89°50'47"E, 1330.68 feet along the south line of Redfeather Estates Subdivision No. 7, the south line of Redfeather Estates Subdivision No. 6, Book 96 of Plats at Pages 11818 & 11819, records of Ada County, and the north line of the east half of the southwest quarter to a 5/8 inch rebar marking the center quarter-section corner;

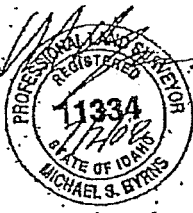
Thence S00°10'49"W, 1314.73 feet along the east line of the southwest quarter to a 1/2 inch rebar marking the southwest corner of Clover Meadows Subdivision No. 3, Book 24 of Plats at Pages 1524 & 1525, records of Ada County;

Thence N89°58'34"E, 662.97 feet along the south line of Clover Meadows Subdivision No. 3 to a 1/2 inch rebar marking the northwest corner of Venture Subdivision, Book 27 of Plats at Pages 1704 & 1705;

Thence S00°04'25"W, 524.56 feet along the west line of Venture Subdivision to the POINT OF BEGINNING.

The above-described parcel contains 60.00 acres, more or less.

Subject to any existing easements or rights-of-way of record or apparent.



DU

W R C
DESIGN, INC.

EXHIBIT C

Boundary Description
of New Parcel 1a
for Meridian Central, LLC
Job No. 6077070.00

A parcel of land situated in the southwest quarter of Section 4, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho, being more particularly described as follows:

Commencing at a brass cap marking the southwest corner of Section 4, Township 3 North, Range 1 East, Boise Meridian;
Thence N00°10'43"E, 2618.49 feet along the west line of the southwest quarter to a brass cap marking the west quarter-section corner of Section 4;
Thence N89°51'01"E, 70.00 feet along the north line of the southwest quarter to a brass cap on the east right-of-way line of North Eagle Road, the POINT OF BEGINNING:

Thence N89°51'01"E, 1237.95 feet along the north line of the west half of the southwest quarter of Section 4;

Thence S00°08'50"W, 182.63 feet;

Thence 16.85 feet on a curve to the right, having a radius of 511.67 feet, a central angle of 1°53'12", a chord bearing of S01°05'26"W, and a chord length of 16.85 feet;

Thence S02°02'02"W, 720.47 feet;

Thence 381.38 feet on a curve to the left, having a radius of 488.33 feet, a central angle of 44°44'49", a chord bearing of S20°20'22"E, and a chord length of 371.76 feet;

Thence N89°49'17"W, 1344.74 feet to the east right-of-way line of North Eagle Road;

Thence N00°10'43"E, 1260.65 feet along the east right-of-way line of North Eagle Road to the POINT OF BEGINNING.

The above-described parcel contains 35.85 acres, more or less.

Subject to any existing easements or rights-of-way of record or apparent.



LAND
PLANNER



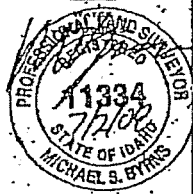
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DK

W R G
DESIGN INC.

Boundary Description
of New Parcel 1b
for Meridian Central, LLC
Job No. 6077070.00

A parcel of land situated in the southwest quarter of Section 4, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho, being more particularly described as follows:

Commencing at a brass cap marking the southwest corner of Section 4, Township 3 North, Range 1 East, Boise Meridian;
Thence S89°46'17"E, 2023.25 feet along the south line of the southwest quarter;
Thence N00°13'43"E, 52.81 feet to the north right-of-way line of East Fairview Avenue, the POINT OF BEGINNING;

Thence N89°59'29"W, 777.49 feet along the north right-of-way line of East Fairview Avenue to a 5/8 inch rebar;

Thence S00°00'31"W, 5.00 feet along the north right-of-way line of East Fairview Avenue to a 5/8 inch rebar;

Thence N89°59'29"W, 631.00 feet along the north right-of-way line of East Fairview Avenue to a 5/8 inch rebar;

Thence N00°00'31"E, 10.00 feet along the north right-of-way line of East Fairview Avenue to a 5/8 inch rebar;

Thence N89°59'29"W, 85.91 feet along the north right-of-way line of East Fairview Avenue to a 5/8 inch rebar;

Thence N85°18'52"W, 122.64 feet along the north right-of-way line of East Fairview Avenue to a 5/8 inch rebar;

Thence N89°59'29"W, 217.51 feet along the north right-of-way line of East Fairview Avenue to a 5/8 inch rebar;

Thence N57°25'03"W, 129.24 feet along the north right-of-way line of East Fairview Avenue to a brass cap on the east right-of-way line of North Eagle Road;

Thence N00°10'43"E, 657.35 feet along the east right-of-way line of North Eagle Road to a brass cap;

Thence N02°06'43"W, 250.20 feet along the east right-of-way line of North Eagle Road to a brass cap;



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OTC

New Parcel 1B continued...

Thence N00°10'43"E, 272.29 feet along the east right-of-way line of North Eagle Road to a 5/8 inch rebar on the south line of the north half of the west half of the southwest quarter;

Thence N00°10'43"E, 48.74 feet along the east right-of-way line of North Eagle Road;

Thence S89°49'17"E, 1344.74 feet;

Thence 16.69 feet on a non-tangent curve to the left, concave easterly, having a radius of 488.33 feet, a central angle of 1°57'31", a chord bearing of S43°41'33"E, and a chord length of 16.69 feet;

Thence S44°40'18"E, 649.89 feet;

Thence 118.21 feet on a curve to the right, having a radius of 511.67 feet, a central angle of 13°14'13", a chord bearing of S38°03'12"E, and a chord length of 117.95 feet;

Thence N89°59'29"W, 13.73 feet;

Thence 281.58 feet on a non-tangent curve to the right, concave westerly, having a radius of 500.00 feet, a central angle of 32°15'58", a chord bearing of S16°07'22"E, and a chord length of 277.87 feet;

Thence S00°00'37"W, 475.04 feet to the POINT OF BEGINNING.

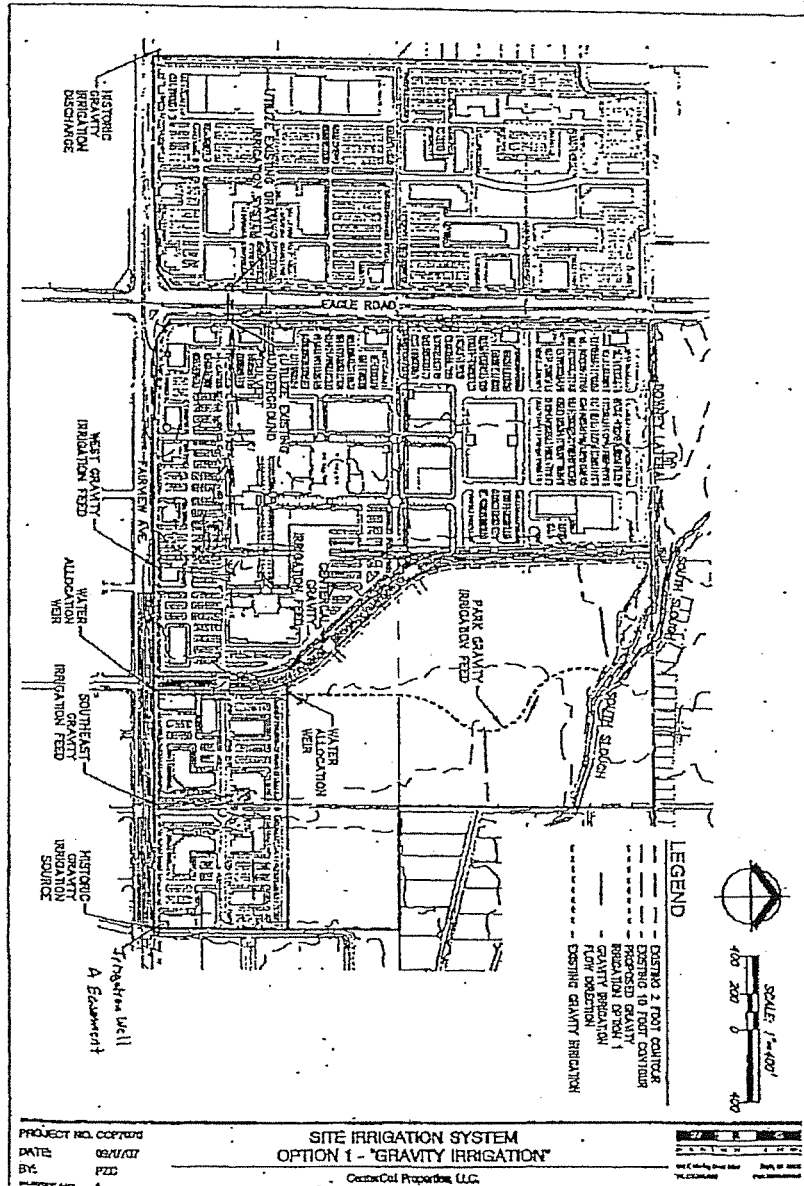
The above-described parcel contains 53.94 acres, more or less.

Subject to any existing easements or rights-of-way of record or apparent.

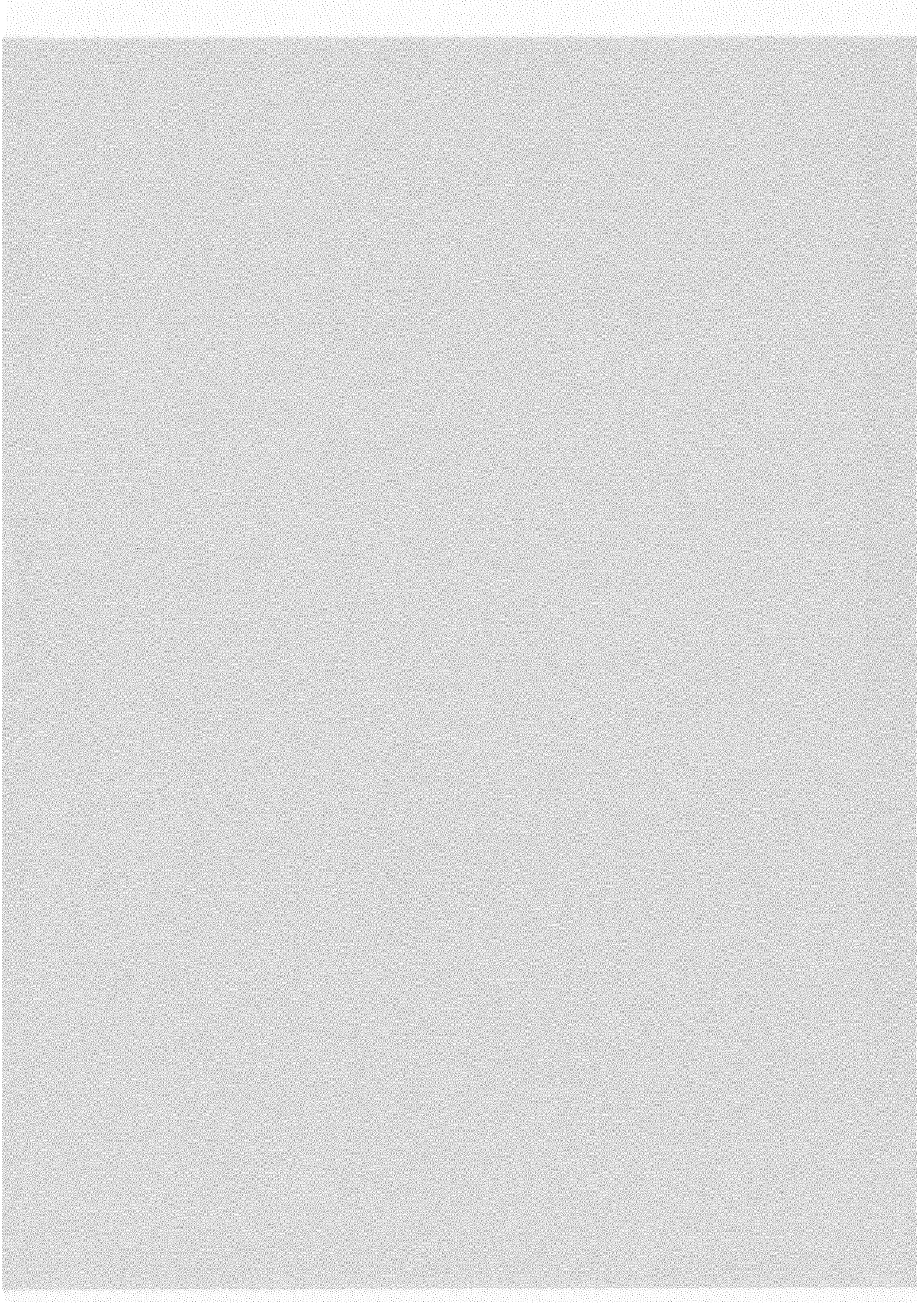


B7C

EXHIBIT D



872



GIVENS PURSLEY LLP

LAW OFFICES

601 W. Bannock Street
PO Box 2720, Boise, Idaho 83701
TELEPHONE: 208 388-1200
FACSIMILE: 208 388-1300
WEBSITE: www.givenspursley.com

MICHAEL P. LAWRENCE
DIRECT DIAL: (208) 388-1294
EMAIL: MPL@givenspursley.com

Gary G. Allen
Peter G. Barton
Christopher J. Beeson
Clint R. Bolinder
Erik J. Bolinder
Jeremy C. Chou
William C. Cole
Michael C. Creamer
Amber N. Dina
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Justin A. Steiner
Robert B. White

Of Counsel
Conley E. Ward

Retired
Kenneth L. Pursley
James A. McClure (1924-2011)
Raymond D. Givens (1917-2008)

January 31, 2012

Via U.S. Mail

Mr. Steve Lester
Western Regional Office
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: Water Right no. 63-10412 – Change of Ownership

Dear Steve,

I am writing you on behalf of Meridian CenterCal LLC (“CenterCal”) to address questions you have raised regarding CenterCal’s Notice of Change in Water Right Ownership for water right no. 63-10412 (“Notice”), a copy of which is enclosed for reference. CenterCal submitted the Notice in accordance with the Department’s rules to reflect CenterCal’s ownership of a portion of this water right.

In July 2008, CenterCal acquired land and appurtenant water rights from The 2008 Kleiner Family Trust (“Kleiner Trust”) and The Julius M. Kleiner Memorial Park Trust (“Park Trust”). In a July 31, 2008, Well Sharing, Water Supply and Easement Agreement (“Agreement”), CenterCal, Kleiner Trust and Park Trust agreed to allocate to each party a “Proportionate Share” of water right no. 63-10412. Copies of CenterCal’s vesting deeds and the Agreement are included with the enclosed Notice.

According to the Agreement, each party’s Proportionate Share of water right no. 63-10412 is based on the total amount of land each party owns, not on the amount of the water right’s place of use each party owns. Consequently, CenterCal acquired less of the water right than if the right had been allocated according to ownership of the right’s place of use. Park Trust

Mr. Steve Lester
January 31, 2012
Page 2

and Kleiner Trust, on the other hand, retained more of the water right than otherwise would have resulted by default from the land conveyances. CenterCal hereby confirms to the Department that the parties' agreed-upon Proportionate Share allocation in the Agreement is correct.

Unfortunately, the Agreement incorrectly states that the water right is authorized for a total diversion rate of 2.5 cfs (instead of the water right license's actual total diversion rate of 2.0 cfs) and to irrigate 172.11 acres (instead of the license's actual 129 acres). The Agreement's Recital D table is re-created below to reflect the correct, licensed 2.0 cfs diversion rate and 129 acres of authorized irrigation based on the parties' agreed-upon Proportionate Shares:

Party	Proportionate Share	Diversion Rate	Acres	Diversion Volume	Name of Right
Kleiner Trust (Parcel 3)	12.97%	0.2594 CFS	16.73	75.29	Kleiner Trust Water Right
CenterCal (Parcel 1A)	20.83%	0.4166 CFS	26.87	120.93	CenterCal Water Right
CenterCal (Parcel 1B)	31.34%	0.6268 CFS	40.43	181.92	CenterCal Water Right
Park Trust	34.86%	0.6972 CFS	44.97	202.36	Park Trust Water Right

I trust this explanation is sufficient to allow the Department to change its records to reflect CenterCal's ownership of its Proportionate Share of water right no. 63-10412 as set forth in the above table. Please do not hesitate to contact me if you have any further questions.

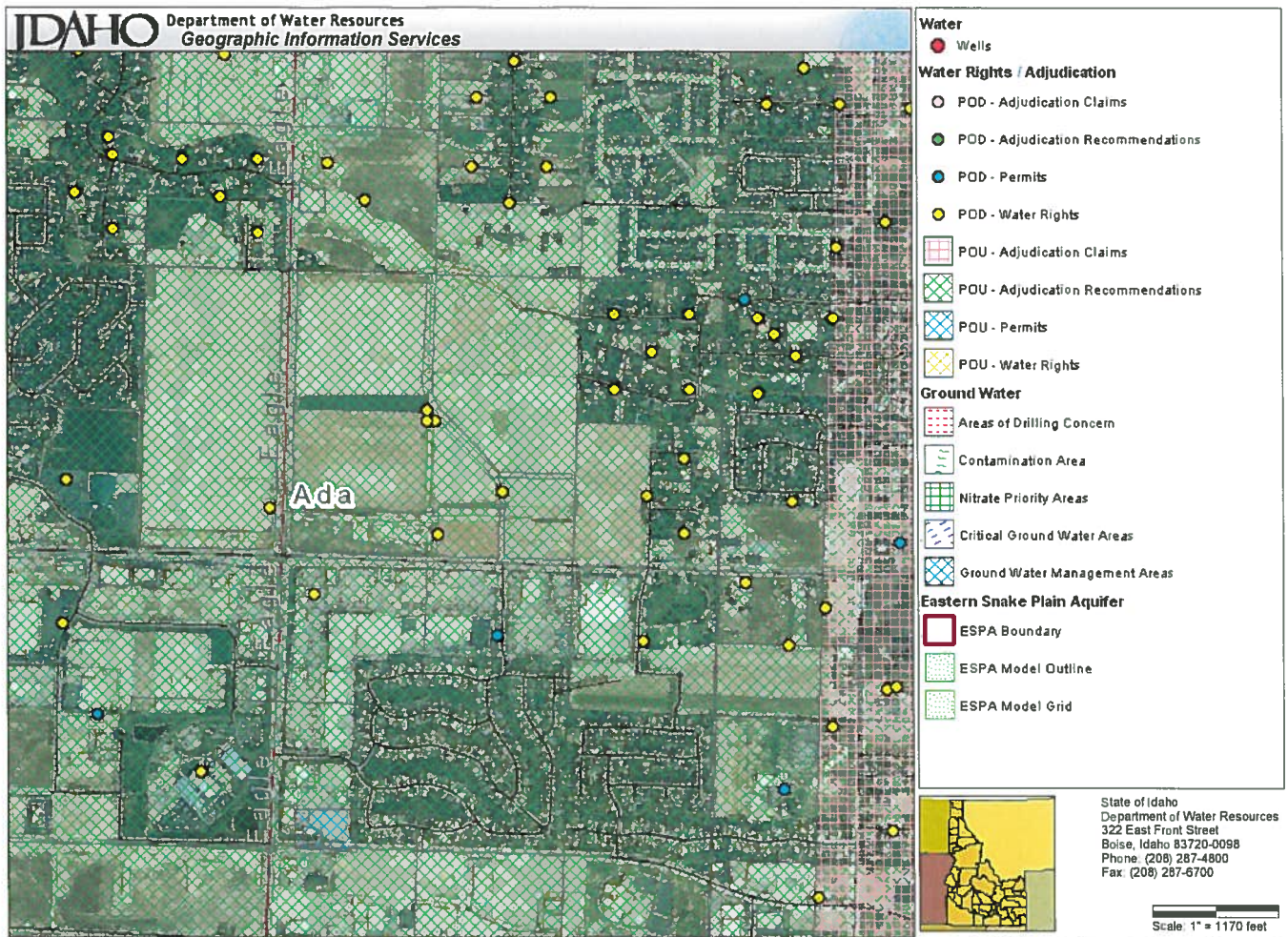
Sincerely,



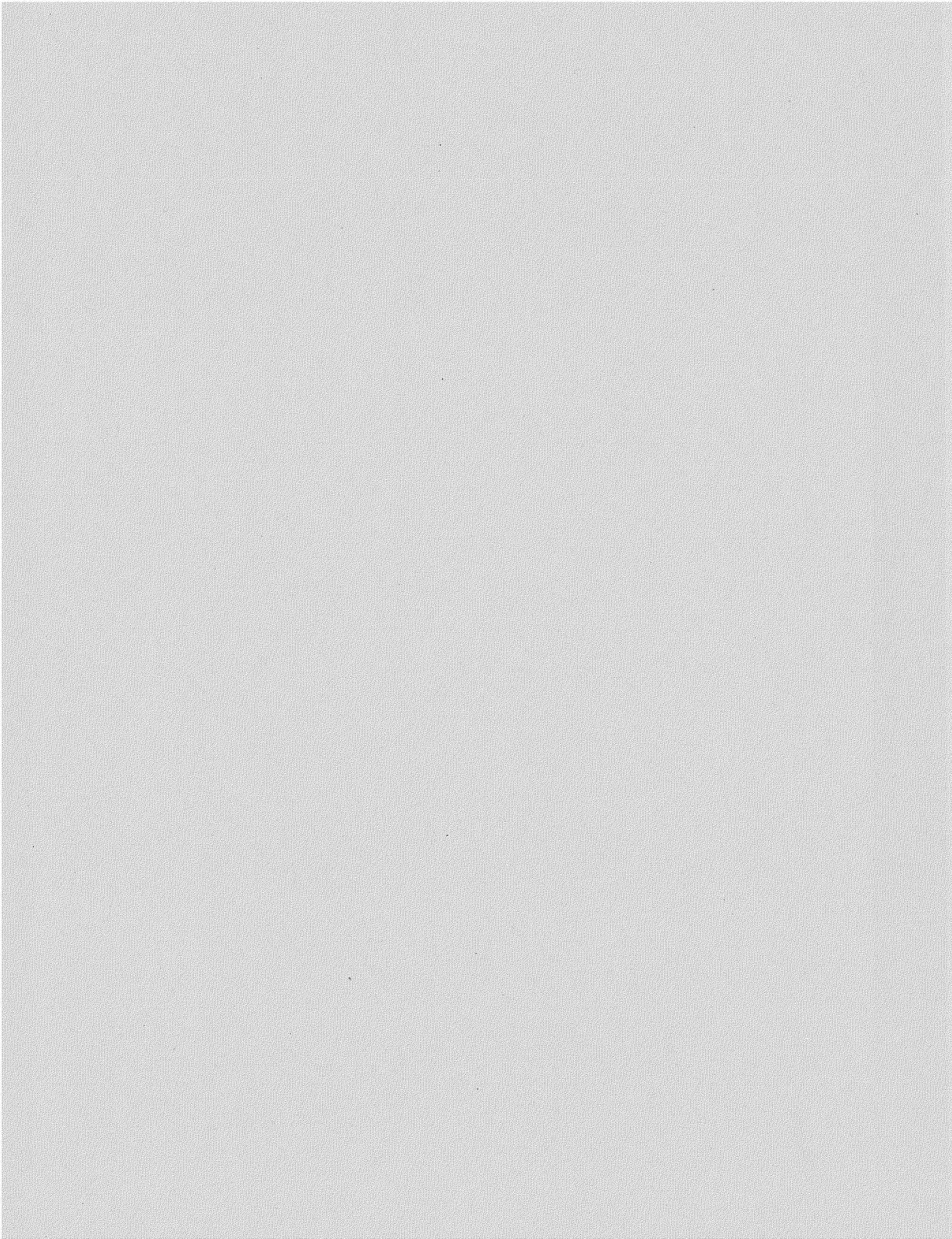
Michael P. Lawrence

cc: David Kleiner, Trustee of Kleiner Trust
David Rockwell, Counsel for Kleiner Trust
Michael E. Huter, Co-Trustee of Park Trust
Elden Gray, Co-Trustee of Park Trust
~~Rick~~ Rick Goodson, Counsel for Park Trust

Enclosure
1349704_5



Created: Wednesday, March 28, 2012 – Persons using information from this site for official purposes, or other purposes, for which accuracy and completeness are required, are hereby notified that they should first verify the information with the public records or other primary sources from which the information was obtained.



MEMORANDUM

TO: Transfer No. 77630
FROM: Steve Lester 
DATE: March 5, 2012
RE: Evaluation of Application

The transfer proposes:

- split the supplemental right (see memo Attachment A)
- add 1 new well (3 alternate locations)
- convert applicant share to primary irrigation (see memo Attachment B).

The site is a proposed shopping center near Fairview Avenue and Eagle Road in Meridian.

Contact person for the applicant is attorney Mike Lawrence, Givens Pursley.

Summary of Information Submitted

Authority to File: Application Attachments 2a and 2b confirm the applicant's authority to file the transfer, split the right and change ownership for the applicant's portion. The additional \$100 ownership fee was paid along with the correct \$580 fee for a 1.02 cfs split.

Water Right Validity: The supplemental right was licensed in 1990 and is not required to be used unless needed. Additionally, the applicant provided evidence of use from 2001-2010, see Application Attachments 8a and 8b. The right is valid.

Injury to Other Water Rights: Adding a new well and reconfiguring 67 acres of supplemental irrigation to fewer acres of primary irrigation will not cause injury. The lack of protests reinforces this conclusion.

Enlargement of Use: Enlargement will not occur under this scenario.

Local Public Interest: Assuming protests are not encountered, use of water for new economic development will be in the public interest.

Beneficial Use/Conservation of Water Resources: The application proposes beneficial use consistent with conservation of water resources in Idaho.

The application is consistent with criteria of I. C. § 42-222 and should be processed.

Discussion

The application has a few quirks. Insignificant quirks that do not need more attention included the following:

- Page 3 includes fractional acres beyond the expected 5 acre cutoff for fractions. Fractions were rounded and data entered as whole numbers. A comment or condition will be used to reflect actual irrigation (67.3 acres in split before change to primary use, 14.5 acres in split after change to primary use).
- Page 6 lists 77.5 acres (wrong) for the applicant but limited to 67.3 acres (right) – due to “land acres” vs. “water right acres.” The correct rate and volume are listed for the split.

More substantial quirks have been satisfactorily addressed as noted below.

- The original water agreement defining a non-standard 3-way split included errors addressed in review memo Attachment A. The correct split for the applicant was data entered. The attorney’s letter received February 1, 2012 provided sufficient explanation and corrected information to support the correct split. This will be useful if the unchanged portion of the right is subsequently split between two other owners as expected in the future.
- “Transfer 2-fer” allows remaining portion of the right to be described with acres per tract different than expected. This is needed to accommodate details of the split. The remaining portion would be expected to cover NESW 29 acres and SESW 21 acres (actually 29.9 and 21.5), which is less than the 62 acre remaining portion. But to list 62 remaining acres in 2 tracts, needed to show NESW 39 and SESW 23, a change normally requiring another transfer. That portion of the right is being described on land owned by the other parties in the water agreement, avoiding complications with the applicant’s land. Allow this second “records correction” without another transfer application but with the added transfer fee of \$500 for 0.96 cfs that remains, paid January 31, 2012, receipt W039878.

Memo Attachment A discusses:

- Land the applicant purchased (exceeds water right acres)
- Expected water right split
- Non-standard split per water agreement
- Corrected split that agreement should describe
- Supplemental nature of the right
- Recommended corrections to application. The corrections were completed by February 1, 2012.

The applicant provided Application Attachments 8a-8b to document historic use of the supplemental right, an average of 87.9 af/year *diversion* volume. Historic *consumptive* use was documented at 418 af/year from surface and ground water. The applicant was unable to document average annual *diversion* volume of surface water from Nampa & Meridian Irrigation District. Therefore, it is not clear what percent of total *diversion* volume came from ground water.

Memo Attachment B addresses the gap in this information. A reasonable conclusion is to recognize enough supplemental ground water use under the applicant’s portion to cover primary

irrigation of about 15 acres (actual 14.5). This will include drip irrigation plus a limited amount of turf (lawn) grass that requires considerably less water than traditional irrigation.

The conversion will require all the volume from the applicant's portion of the right, leaving none available for the water bank. This was discussed with the applicant attorney last week, and he indicated this was an acceptable result for the applicant.

This conversion implies surface water previously used for the applicant's share of the right can be used elsewhere. That would not be considered an expansion under these circumstances.

Significant reduction in use by converting to drip irrigation

Totally converting my traditional lawn to a drip system for other types of landscaping plants reduced water use about 50% over the last several years. This personal observation supports the assumption in memo Attachment B that applicant's share of the right can support about 15 acres of primary use.

Approval Recommendations

Applicant: 15 acres of primary irrigation from 1 well in alternate possible locations. Per Memo Attachment B: diversion volume 45.9 af (consumptive volume is not an element of right but limited to 34.4 af, for the record).

Use standard conditions, except for modified R65 noted below.

Condition 206 is not warranted: this is not an area of concern, and it is hard to imagine an enforcement problem for 14 acres of irrigation in a mostly paved/built over 90-acre POU shopping center.

Condition R65 is modified to delete volume since non-standard values not neatly fitting volume data entry standards ($45.9 / 15 = 3.06$ af ... 3 is too small, 3.1 is too large).

This right is the sole, primary source of water to irrigate the place of use.

Original Owner: balance of split before convert above part to primary use (see Memo Attachment A, summary table, row labeled "others").

0.96 cfs, 277.7 af, 62 acres but not as traditionally expected: 39 NESW and 23 SESW.

TRANSFER 77630 REVIEW MEMO -- ATTACHMENT A

This information was provided to the applicant 11/23/2011 to help review/process the transfer.

Irrigation Right

NESW 30 acres NWSW 36 acres SWSW 26 acres SESW 37 acres

Deeds appear to convey to applicant

- All of right in NWSW & SWSW: 62 acres
- Portion of right in SESW: about 13 acres
- Applicant expected split about 75 acres

Water Agreement

- Defines different water right split than assumed by place of use ownership
- Recital D error about rate, 2.00 instead of 2.50 cfs
- Recital D table has incorrect amounts: total acres 172, total rate 2.50 (total volume is correct)
- Agreement item 1 declares water right splits in Recital D are accurate and acceptable.

Corrected table per proportionate share column times water right acres, rate & volume

Party	Share (%)	Acres	Rate (cfs)	Volume (af)
Kleiner Trust	12.97	17	0.26	75.3
CenterCal	20.83	27	0.42	120.9
CenterCal	31.34	40	0.62	181.9
Park Trust	34.86	45	0.70	202.4
Total	100	129	2.00	580.5

Summary Table per above

Party	Share (%)	Acres	Rate (cfs)	Volume (af)
CenterCal	52.17	67	1.04	302.8
Others	47.83	62	0.96	277.7
Total	100	129	2.00	580.5

See following table notes for IDWR database standards and some rounding.

Table Notes

- IDWR database standards:
 - Round acres to nearest whole # if more than 5 acres
 - Round rate to nearest 2 decimal places
 - Round volume to nearest 1 decimal place.
- Some splits require rounding for correct totals.
- Actual irrigation for CenterCal is 67.3 acres, actual irrigation for others is 61.7 acres.

Transfer application

- Includes ownership split for applicant: 67 acres (67.3), 1.04 cfs, 302.8 af
- Applicant paid correct \$680 fee: \$580 to transfer 1.04 cfs + \$100 for ownership split
- All of applicant share is being transferred & should be listed that way on application
- Applicant will irrigate about 15 acres in 90 acre area, apply balance to water bank
- This does not split applicant's portion into 2 separate rights: applicant will have 1 right with partial use on site and partial use in water bank.

Primary or Supplemental Right

- 1987 application for permit described supplemental use, NMID surface water as primary
- 1987 temporary approval for drought relief based on proposed supplemental well
- 1989 field exam confirmed NMID water for acres
- 63-10412 place of use is within NMID digital irrigation boundary
- 63-10412 presumed supplemental unless shown otherwise.

Recommend

- Revise water agreement to legally confirm desired splits.¹
- Revise application Part 1B per attached draft:
 - Total authorized under right, 2.00 cfs
 - Total amount of water proposed to be transferred, 1.04 cfs/302.8 af
 - Proposed place of use, SW ¼ (application maps are correct).
- Document that 63-10412 is primary right.
- If primary, confirm validity of right with evidence of well usage within past 5 years.
- If not primary, provide information to change supplemental right to primary right, see attached copy of pages 29-30 from IDWR Transfer Memo #24, Transfer Processing Policies and Procedures.

¹ Current right in name of Kleiner Brothers. Transfer approval would leave remaining portion of right for Kleiner Brothers. At some point, Kleiner Trust and Park Trust should file ownership splits if want that portion to be recorded under separate ownerships.

TRANSFER 77630 REVIEW MEMO -- ATTACHMENT B

- Application Attachments 8a-8b document historic consumptive volume from surface water and ground water for 129 acres for turf grass (lawns).
- They also show average ground water diversion volume of 87.9 af/yr.
- It is not clear what percent of consumptive volume was from ground water.
- Ground water licensed at full volume per acre = 4.5 af/acre diversion volume.

Estimating Ground Water Consumptive Volume

- SW = surface water
- GW = ground water
- CV = consumptive volume
- DV = diversion volume

Historic CV from SW + GW for 129 acres = 418 af/yr

Historic CV/acre from SW + GW = $418/129 = 3.24$ af/yr

Historic DV from GW for 129 acres = 87.9 af/yr

Historic DV from applicant share GW ($67.3 \text{ acres} / 129 \text{ acres}$) x 87.9 af/yr = 45.9 af/yr

Ratio of CV to DV:

- Local standard $3.5 / 4.5 = 78\%$
- Historic CV compared to standard DV = $3.24 / 4.5 = 72\%$
- Average ratio $(78 + 72) / 2 = 75\%$

CV from applicant share GW = $45.9 \text{ af/yr} \times 0.75 = 34.4 \text{ af/yr}$ (supplemental use)

Supplemental CV from applicant share GW converted to acres of primary CV:

$$34.4 / 3.24 = 11 \text{ acres (actual 10.6)}$$

Conclusions

GW supplied about 11 acre equivalent of primary use for turf grass (lawns).

Proposed use for mostly drip irrigation plus a limited amount of turf grass ("drip plus") would use significantly less water than 11 acres of lawns (although "less" is not actually quantified):

- 34.4 af CV can provide primary irrigation for 14.5 acres (list as 15) in this scenario.
- $34.4 / 14.5 = 2.37$ CV per acre
- $2.37 / 3.24 = 73\%$
- $11 \text{ acres} / 15 \text{ acres} = 73\%$, same ratio as above (actually $10.6 / 14.5$)
- "drip plus" uses about $\frac{3}{4}$ amount of ground water as historic irrigation in this scenario
- ok to use ground water for 15 acres primary use, which is 100% of applicant's share.