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FIRST AMERICAN TITLE COMPANY AS AN
ACCOMMODATION AND HAS NOT BEEN
EXAMINED AS TO ITS EXECUTION OR AS
TO ITS AFFECT UPON THE TITLE.
**THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:**

Sonnenschein Nath & Rosenthal LLP
233 South Wacker Drive, Suite 7800
Chicago, Illinois 60606
Attn: Derek T. Neathery, Esq.

First American Title

FILED BY

2010 MAY -7 P 2: 39
42.00

MARIE SCOTT
BONNER COUNTY RECORDER

JS DEPUTY

792019

ABOVE FOR RECORDER'S USE ONLY

TEMPORARY CONSTRUCTION AND MAINTENANCE EASEMENT

This **TEMPORARY CONSTRUCTION AND MAINTENANCE EASEMENT** ("Easement Agreement") is granted effective as of November 2, 2009 (the "Effective Date") by **MILLTOWN PARK LLC** ("Grantor") to and for the benefit of **MCINTIRE & YOUNG - IDAHO, LLC** ("Developer") upon the following terms and conditions (collectively, Grantor and Developer shall be referred to herein as the "Owners").

RECITALS:

WHEREAS, Grantor owns that certain parcel of land located in Sandpoint, Idaho and more particularly described on Exhibit A attached hereto (the "Grantor Property");

WHEREAS, Developer owns that certain parcel of land located immediately adjacent to Grantor's Property and more particularly described on Exhibit B attached hereto (the "Developer Property");

WHEREAS, Developer plans to construct certain improvements on the Developer Property which will necessitate the construction and maintenance of a roadway on the Grantor Property;

WHEREAS, Grantor desires to grant the Developer the easements described herein on the terms and conditions described in this Easement Agreement.

NOW THEREFORE, in consideration of mutual covenants and agreements of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Temporary Roadway Construction Easement. Grantor hereby grants for the benefit of Developer a non-exclusive, temporary easement (the "Roadway Easement") over, upon and across the portion of the Grantor Property identified as the "Roadway Easement Area" in the diagram attached as Exhibit C hereto, and legally described therein, for the construction, maintenance, repair and replacement of a roadway, on the following terms and conditions:

- (a) Such roadway shall be twenty-six (26) feet in width and shall be located in the Roadway Easement Area to the extent permitted by the City of Sandpoint, Idaho (the "City") or any applicable law.
- (b) Such roadway shall be planned, constructed, maintained, repaired, or replaced at the sole cost and expense of Developer and in accordance with all applicable laws or requirements of any governmental authority. Developer shall perform such planning and construction with due diligence such that they are completed as soon as reasonably possible after the date hereof.
- (c) On the date (the "Turnover Date") on which development first commences on either (a) the Grantor Property, or (b) the property depicted as "Lot 2" on Exhibit C attached hereto, the Roadway Easement, including foregoing maintenance obligations of Developer, shall automatically terminate and be of no further force or effect. The issuance of building permits for construction activity on any portion of the Grantor Property or Lot 2 shall be conclusive evidence that the Turnover Date has occurred.

2. Maintenance Easements. Grantor hereby grants for the benefit and use of the Developer Property a non-exclusive easement for ingress and egress over, under, across, in and upon the Grantor Property to provide reasonable access to the Roadway Easement Area as is reasonably necessary for the purposes of performing the obligations and exercising the rights set forth in Section 1 hereof.

3. Insurance and Indemnity. In connection with the exercise of the rights granted pursuant to the terms of this Easement Agreement, Developer shall comply with the following additional terms and conditions:

- (a) Prior to such time as Developer or any of its employees, agents or contractors enters any portion of the Grantor Property for purposes of exercising any of its rights granted under Sections 1, or 2 of this Easement Agreement, (i) Developer shall obtain policies of general liability insurance which insure Grantor and any other owners of any portion of the Grantor Property, and their respective mortgagees, with liability insurance limits of not less than \$2,000,000 combined single limit for personal injury and property damage and name Grantor (and its members and indirect owners), and any other owners of any portion of the Grantor Property, and their respective mortgagees, as additional insureds and which are with such insurance companies, provide such coverages and carry such other limits as Grantor shall reasonably require, (ii) each such agent or contractor of Developer shall obtain policies of general liability insurance which insure Developer, Grantor, any other owners of any portion of the Grantor Property, and their respective mortgagees, with liability insurance limits of not less than \$2,000,000 combined single limit for personal injury and property damage and name Developer, Grantor, any other owners of any portion of the Grantor Property, and their respective mortgagees, as additional insureds and which are with such insurance companies, provide such coverages and carry such other limits as Grantor shall reasonably require, and (iii) the Developer shall provide Grantor and any other owners of any portion of the Grantor Property with

certificates of insurance evidencing that the aforementioned policies of insurance have been obtained.

- (b) Developer shall promptly repair any damage to the remainder of the Grantor Property caused by such entry.
- (c) Developer hereby agrees to indemnify, defend, and forever hold Grantor and any other owners of any portion of the Grantor Property or Lot 2, and their agents, successors, assigns and their respective mortgagees harmless from all claims, losses, damages, expenses and costs (including, but not limited to, attorneys' fees) incurred by Grantor, any other owner of any portion of the Grantor Property or Lot 2, or their respective mortgagees, by reason of the exercise of any of the rights granted in this Easement Agreement, including, without limitation, any claims, losses, damages, expenses and costs incurred in connection with any liens that are recorded against the Grantor Property in connection with work performed by Developer or its agents, employees, and contractors pursuant to this Easement Agreement.
- (d) Developer shall complete all construction on the Grantor Property free and clear of all liens asserted by any contractors, subcontractors, laborers or materialmen, of whatever tier, performing any portion of the work on the Grantor Property, and all other liens. In the event any such lien or claim of lien is levied, whether against the Grantor Property or Lot 2, Developer shall, within ten (10) business days of a written notice from Grantor, bond over or discharge such lien or claim of lien. If Developer fails to discharge or bond over any such lien within such ten (10) business day period, Grantor shall have the right to discharge or bond over such lien at the Developer's cost, provided Grantor delivers written notice to Developer and an opportunity to cure within two (2) calendar days after Developer's receipt of such notice.

4. Exercise of Rights. In the exercise of its rights hereunder, Developer and any of its employees, agents or contractors shall not unreasonably interfere with any development, construction or other activities on the remainder of the Grantor Property or Lot 2.

5. Cooperation. Grantor shall, at no cost to Grantor, cooperate with Developer, in such manner as Developer may reasonably request, in Developer's attempt to obtain any permits and approvals necessary for the performance of construction in the Roadway Easement Area.

6. Covenants to Run With the Land until Termination. Any reference to Grantor shall include the successor owners of the Grantor Property and Lot 2 and the obligations and benefits created herein are appurtenant to and run with such land. Any reference to Developer shall include the successor owners of the Developer Property and the obligations and benefits created herein are appurtenant to and run with such land. The terms "Grantor" and "Developer" shall include the successors and assigns of each such party.

7. Further Assurances. The parties from time to time shall execute, acknowledge and deliver such further documents and provide such further assurances as any party may

reasonably request to memorialize any approvals or consents obtained pursuant to the terms of this Easement Agreement.

8. Notices. Any notice required by or made in connection with this Easement Agreement shall be deemed effective and received: (a) upon personal delivery; (b) five days after deposit in the United States mail, certified mail, return receipt requested, postage prepaid; or (c) one business day after deposit with a national overnight air courier, fees prepaid, addressed to the Owners. All such notices shall be sent in accordance with the addresses as the respective parties shall from time to time designate by notice to all other Owners. Upon at least ten (10) days prior written notice, any Owner may designate an additional or a different address from time to time upon giving notice to the other Owners pursuant to this Section. Each Owner shall deliver a copy of any notice required by or made in connection with this Easement Agreement to the mortgagee or mortgagees of any Owner at such mortgagee's request, provided that such other Owner has received written notice of such mortgagee's address for notices.

9. Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any part of the Grantor Property, Lot 2 or the Developer Property to the general public, or for the general public or for any public purpose whatsoever.

10. Default Shall Not Permit Termination of Agreement. No default under this Easement Agreement shall entitle any party to cancel or otherwise rescind this Easement Agreement, provided, however, that this limitation shall not affect any other rights or remedies that the parties may have by reason of any default under this Easement Agreement.

11. No Partnership; No Third Party Beneficiary. Nothing in this Easement Agreement is intended to or shall be deemed to constitute a partnership, joint venture or other association of the Owners. This Easement Agreement is for the benefit solely of the Owners from time to time, except that any section hereof which grants legal rights to any other persons or entities shall be for the benefit of such persons or entities, provided that such other persons or entities shall have only such rights hereunder as this Easement Agreement expressly grants to them. Except to the extent expressly set forth herein, there shall be no third party beneficiaries of this Easement Agreement.

12. Severability. If any of the covenants, conditions or terms of this Easement Agreement shall be found void or unenforceable for whatever reason by any court of law or of equity, then every other covenant, condition or term herein set forth shall remain valid and binding.

13. Governing Law. This Easement Agreement will be construed in accordance with the internal Laws of the State of Idaho, without giving effect to any conflict of Laws principles. This Easement Agreement contains the entire agreement between the parties relative to the easement rights described herein.

14. Time of the Essence. Time is of the essence to this Easement Agreement.

15. Attorney's Fees. If any Owner institutes any action or proceeding against any other Owner under or in connection with this Easement Agreement, the unsuccessful Owner in such action or proceeding will reimburse the Owner who is the prevailing party in such action or

proceeding for the reasonable attorneys' fees, court costs and other disbursements incurred by the successful Owner.

16. Captions - Singular, Plural, Gender. The Section headings herein are for convenience only and shall not be construed with any substantive effect in this Easement Agreement. Words used herein shall be deemed to include singular and plural, and any gender as the context requires.

17. Counterparts. This Easement Agreement may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

[remainder of page intentionally blank]

IN WITNESS WHEREOF, each party hereto has caused this Easement Agreement to be duly executed to be effective as of the day and year first above written.

GRANTOR:

MILLTOWN PARK LLC, a Delaware limited liability company

By: Brownfield Development I, LLC, a Delaware limited liability company, its sole member

By: The Prudential Insurance Company of America, a New Jersey corporation

By: Terry McHugh
Name: Terry McHugh
Title: Vice President

STATE of New Jersey §
County of Morris § SS.

On April 29, 2010, before me, the undersigned, a notary public in and for said State, personally appeared Terry McHugh, personally known to me (or 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.

Maria A. DASILVA Notary Public

My Commission Expires:

MARCH 22, 2013

[SEAL]

MARIA A DASILVA
NOTARY PUBLIC OF NEW JERSEY
COMMISSION EXPIRES MAR. 22, 2013

[signatures continue on following page]

DEVELOPER:

MCINTIRE & YOUNG - IDAHO, LLC

John C. Young
By: John C. Young, Member

Kaye F. Young
By: Kaye F. Young, Member

Ronald B. McIntire
By: Ronald B. McIntire, Member

Joanne F. McIntire
By: Joanne F. McIntire, Member

STATE OF WA §
COUNTY OF Spokane §

On May 6th, 2010, before me, the undersigned, a notary public in and for said State, personally appeared John C. Young, personally known to me (or 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.

T. Millard, Notary Public

My Commission Expires:

1-20-14

[SEAL]



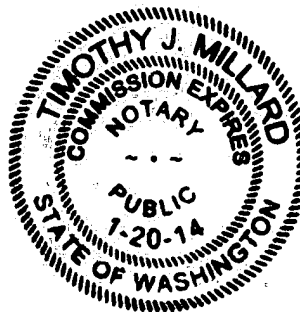
STATE OF WA §
COUNTY OF Spokane §

On May 6th, 2010, before me, the undersigned, a notary public in and for said State, personally appeared Kaye F. Young, personally known to me (or 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.

[Signature], Notary Public

My Commission Expires:
1-20-14

[SEAL]



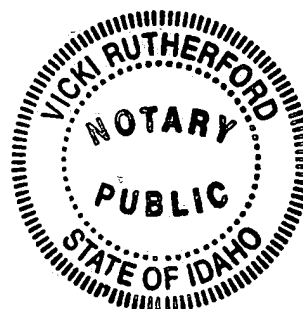
STATE OF Idaho §
COUNTY OF Lootenai §

On May 6, 2010, before me, the undersigned, a notary public in and for said State, personally appeared Ronald B. McIntire, personally known to me (or 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.

[Signature], Notary Public
Hayden, Idaho

My Commission Expires:
Jan. 20, 2012

[SEAL]



STATE OF Idaho §
COUNTY OF Boise §

On May 6, 2010, before me, the undersigned, a notary public in and for said State, personally appeared Joanne F. McIntire, personally known to me (or 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.

My Commission Expires:

Jan 20, 2012

Vicki Rutherford, Notary Public
Boise, Idaho

[SEAL]

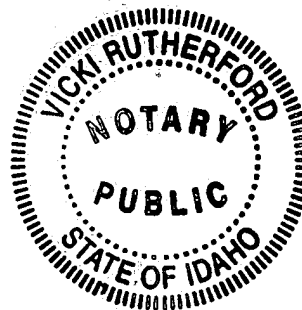


EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR PROPERTY

"LOT 3"

A portion of the southeast quarter of Section 15, Township 57 North, Range 2 West, Boise Meridian, Bonner County, Idaho, and also being a portion of Lot 1, of the Plat of Milltown Park, as recorded in Book 9 of Plats, Page 155, of the Records of Bonner County, Idaho;

Said portion being more particularly described as follows:

Commencing at the southwest corner of Lot 1 of said Plat of Milltown Park,

Thence South $89^{\circ}30'41''$ East along the northerly right of way line of Larch Street, 400.00 feet to the TRUE POINT OF BEGINNING;

Thence continuing along said right of way South $89^{\circ}30'41''$ East, a distance of 70.00 feet;

Thence leaving said right of way line, and along the southerly boundary of said Plat, the following (4) four courses:

1. North $00^{\circ}37'55''$ East, a distance of 85.00 feet;
2. South $89^{\circ}30'41''$ East, a distance of 151.00 feet;
3. North $00^{\circ}37'55''$ East, a distance of 75.00 feet;
4. South $89^{\circ}30'41''$ East, a distance of 147.03 feet to the easterly line of said Plat;

Thence along said easterly line, North $00^{\circ}16'00''$ East, a distance of 901.54 feet;

Thence South $89^{\circ}39'57''$ West, a distance of 419.17 feet;

Thence South $00^{\circ}33'32''$ West, a distance of 330.04 feet;

Thence South $89^{\circ}39'54''$ West, a distance of 343.64 feet to the easterly right of way of North Boyer Avenue;

Thence along said easterly right of way, South $00^{\circ}37'55''$ West, a distance of 60.01 feet;

Thence leaving said easterly right of way, North $89^{\circ}39'54''$ East, a distance of 400.06 feet;

Thence South $00^{\circ}37'55''$ West, a distance of 666.28 feet, to said northerly right of way and the TRUE POINT OF BEGINNING.

EXHIBIT B

LEGAL DESCRIPTION OF DEVELOPER PROPERTY

A portion of the southeast quarter of Section 15, Township 57 North, Range 2 West, Boise Meridian, Bonner County, Idaho, and also being a portion of Lot 1, of the Plat of Milltown Park, as recorded in Book 9 of Plats, Page 155 of the Records of Bonner County, Idaho;

Said portion being more particularly described as follows:

Commencing at the southwest corner of Lot 1 of said Plat of Milltown Park,

Thence South $89^{\circ}30'41''$ East along the northerly right of way line of Larch Street, 149.93 feet to the TRUE POINT OF BEGINNING;

Thence along said right of way, South $89^{\circ}30'41''$ East, a distance of 250.07 feet;

Thence leaving said right of way, North $00^{\circ}37'55''$ East, a distance of 666.28 feet;

Thence South $89^{\circ}39'54''$ West, a distance of 400.06 feet to the easterly right of way line of North Boyer Avenue;

Thence along said easterly right of way, South $00^{\circ}37'55''$ West, a distance of 510.22 feet;

Thence leaving said easterly right of way, South $44^{\circ}22'05''$ East, a distance of 212.04 feet to the TRUE POINT OF BEGINNING.

EXHIBIT C

DIAGRAM AND LEGAL DESCRIPTIONS OF EASEMENT AREA

(See attached Temporary Roadway Easement Area exhibit and legal description, consisting of two (2) pages, prepared by Glahe & Associates and dated April 27, 2010)

TEMPORARY ROADWAY EASEMENT AREA EXHIBIT

MILLTOWN PARK

Located in Southeast Quarter of Section 15,
Township 57 North, Range 2 West, Boise
Meridian, City of Sandpoint, Idaho.

LOT 2

PER RECORD OF SURVEY,
INST. NO. 782454,
RECORDS OF BONNER COUNTY, IDAHO

TEMPORARY ROADWAY EASEMENT AREA

A 26 FT. WIDE EASEMENT

N00°37'55"E 26.00'

SOUTH LINE OF LOT 2

RING ROAD

N89°39'54"E 373.69'

N89°39'54"E 373.72'

400.06'

POB

NORTH LINE OF LOT 1

LOT 1

(GRANTEE)

PER RECORD OF SURVEY,
INST. NO. 782454,
RECORDS OF BONNER COUNTY, IDAHO

RING ROAD

LOT 3 (GRANTOR)

PER RECORD OF SURVEY,
INST. NO. 782454,
RECORDS OF BONNER COUNTY,
IDAHO

EXISTING 60' PERMANENT
ACCESS EASEMENT

S00°33'32"W 26.00'



Not To Scale

GLAHE & ASSOCIATES
PROFESSIONAL LAND SURVEYORS
P.O. Box 1863
Sandpoint, ID 83864
208-265-4474

SCALE: N/A
DRAWN BY: TG/TRP
DATE: 4/27/10
DWG: 09072 S1 EST
SHEET 1 of 1

LEGAL DESCRIPTION
For TEMPORARY ROADWAY EASEMENT AREA

A 26 foot wide strip of land Non-exclusive Roadway Easement in favor of Lot 1, over and across a portion of Lot 3 as shown on the Record of Survey recorded at Instrument No. 782454, all located in the Southeast Quarter of Section 15, Township 57 North, Range 2 West, Boise Meridian, City of Sandpoint, Idaho;

Said Easement being more particularly described as follows:

Beginning at the northwest corner of Said Lot 1;

Thence North 00°37'55" East, along the west line of said Lot 3, a distance of 26.00 feet;

Thence leaving said west line, North 89°39'54" East, a distance of 373.69 feet to a point on an existing 60 foot wide permanent access easement, shown as Ring Road;

Thence along said easement, South 00°33'32" West, a distance of 26.00 feet to a point on the north line of said Lot 1;

Thence along said north line, South 89°39'54" West, a distance of 373.72 feet to a point on the west line of said Lot 3 and the **POINT OF BEGINNING**.