

RESOLUTION NUMBER 05-052

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KETCHUM, IDAHO, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT AMONG THE CITY OF KETCHUM, THE CITY OF SUN VALLEY, THE SUN VALLEY WATER AND SEWER DISTRICT, GLASSMEYER PROPERTIES LIMITED PARTNERSHIP, RICHARD AND DIANA FASSINO, ANNE EDMONDSON AND BEHNKE PROPERTY TRUST UTA 9/7/95, WHO ARE ALL OF THE OWNERS OF S/G SUBDIVISION AND WYNDERMERE SUBDIVISION FOR THE PURPOSE OF PROVIDING FIRE SUPPRESSION WATER SERVICES TO SUCH SUBDIVISIONS FOR A SPECIFIC PERIOD.

WHEREAS, Wyndermere Subdivision is a six-lot residential subdivision and S/G Subdivision is an adjacent two-lot subdivision (collectively the "Subdivisions") which were both originally platted in Blaine County, Idaho, and subsequently annexed into the City of Sun Valley ("Sun Valley") and the Sun Valley Water and Sewer District (the "District"); and

WHEREAS, the water flow requirements for fire protection are greater in Sun Valley than in Blaine County, Idaho; and

WHEREAS, the District is currently unable to provide water to meet fire flow requirements for the Subdivisions; and

WHEREAS, the Subdivisions are unable to develop their properties because of the lack of fire flow; and


WHEREAS, Ketchum does not wish to establish a policy of providing its water or sewer services to any property outside of its municipal boundaries; however, because of the hardship suffered by the Subdivisions as a result of the District's inability to provide sufficient water for fire flows, Ketchum agrees to provide such fire flows for a limited period of time, during which period the District shall make a good faith effort to develop sufficient capacity to provide the Subdivisions with appropriate water to fulfill their fire flow requirements.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Ketchum, Idaho, that the Mayor is hereby authorized to execute an agreement among The City Of Ketchum, The City Of Sun Valley, The Sun Valley Water And Sewer District, Glassmeyer Properties Limited Partnership, Richard and Diana Fassino, Anne Edmondson and Behnke Property Trust Uta 9/7/95, who are all of the owners of S/G Subdivision and Wyndermere Subdivision for the purpose of providing fire suppression water services to such subdivisions for a specific period.

PASSED by the City Council and APPROVED by the Mayor this 20th day of June, 2005.


ATTEST:


Sandra E. Cady, CMC,
City Clerk/Treasurer

CITY OF KETCHUM, IDAHO

EDWARD E. SIMON,
Mayor



APPROVED AS TO FORM
AND CONTENT:


Benjamin W. Worst,
City Attorney

W. H. ...

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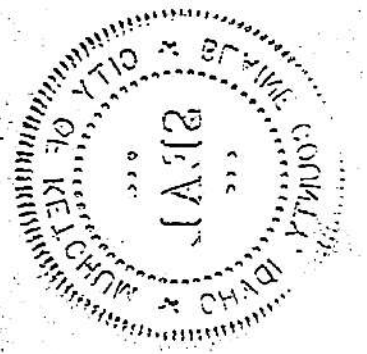
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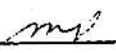
Instrument # 523967

HAILEY, BLAINE, IDAHO

2005-08-03 11:06:00 No. of Pages: 16

Recorded for : BARRY LUBOVISKI

MARSHA RIEMANN Fee: 48.00

Ex-Officio Recorder Deputy 

Index to: AGREEMENT/CORRECTION

AGREEMENT

THIS AGREEMENT is entered into by and between the City of Ketchum, an Idaho municipal corporation ("Ketchum"); the City of Sun Valley, an Idaho municipal corporation ("Sun Valley"); the Sun Valley Water and Sewer District, a political subdivision of the State of Idaho ("District"); and Glassmeyer Properties Limited Partnership, Sun Valley Residence Trust, Richard and Diana Fassino, Anne Edmondson and Behnke Property Trust UTA 9/7/95, who are all of the Owners of the Wyndermere Subdivision (collectively "Wyndermere").

WHEREAS, Wyndermere Subdivision is a six-lot residential subdivision which was originally platted in Blaine County, Idaho and subsequently annexed into Sun Valley; and

WHEREAS, Wyndermere is not within the boundaries of the District, and the District is not currently obligated to provide to any portion of said subdivisions; and

WHEREAS, Wyndermere desires in the future to be annexed into the District or to otherwise receive adequate water for fire flows for the subdivisions from the District on such terms and conditions as the District deems appropriate; and

WHEREAS, the District desires to provide Wyndermere with sufficient water to provide appropriate fire flows subject to the terms and conditions set forth herein; and

WHEREAS, the water flow requirements for fire protection are greater in Sun Valley than in Blaine County, Idaho; and

WHEREAS, Wyndermere is unable to develop its property because of the lack of fire flow; and

WHEREAS, Ketchum does not wish to establish a policy of providing its water resources to subdivisions which lie outside of its municipal boundaries; however, Ketchum has agreed to provide said fire flows for a limited period of time.

NOW THEREFORE, for valuable consideration, including the mutual covenants contained herein, the parties agree as follows:

1. Ketchum shall provide water to Wyndermere for fire protection purposes only from

the date of the last signature hereto until June 21, 2008 (the "Transition Date"). On the Transition Date, Ketchum shall stop providing such fire-protection water and may, at its option, require Wyndermere to remove all modifications made to Ketchum's water system and restore such system to a condition as good or better than its condition as of the date of the execution of this Agreement. Wyndermere shall be solely responsible for all costs of such removal and restoration. Although the providing of fire-protection water by Ketchum under this Agreement shall terminate as set forth above, all other terms and conditions of this Agreement shall remain in full force and effect, until the above-referenced removal and restoration is either completed to Ketchum's satisfaction or waived by Ketchum in writing. There shall be no option to renew or extend the providing of fire-protection water by Ketchum under this Agreement beyond the Transition Date. After the Transition Date, Wyndermere shall look exclusively to District for its fire-protection water needs.

2. Ketchum makes no representations regarding the availability or quantity of water from its system.

3. Wyndermere shall pay all costs, including without limitation, the costs of installation, maintenance, removal and restoration of all fire hydrants and water pipes, and other water system upgrades necessary to allow Wyndermere to utilize Ketchum's water supplies. All such modifications, improvements, maintenance and restoration of Ketchum's water system shall be performed to Ketchum's reasonable satisfaction.

4. Wyndermere, their agents, successors and assigns, do hereby agree and covenant to release, hold harmless and indemnify Ketchum, its elected officials, officers, employees, interns, volunteers, visitors, citizens, successors and assigns forever from all damages, loss, injury, suits, actions or claims brought on account of any injuries or damages sustained by any person (including wrongful death) or property as a result of Wyndermere's use of Ketchum's water system or any matters relating thereto, no matter how remotely, and said indemnity and hold harmless shall include expenses, including attorney's fees and court costs, incurred by Ketchum incidental to the investigation and defense of any of said damages, injuries, suits, claims, actions

or losses.

5. Subject to the following terms, conditions and contingencies, the District agrees to provide adequate fire flow capability to Wyndermere on or before the expiration of the period set forth in paragraph 1 hereinabove:

(a) The rates, fees and charges to be assessed to Wyndermere for necessary water service infrastructure, capacity and water flow quantities shall be fixed by mutual agreement of the District and Wyndermere.

(b) Service shall be contingent upon District owning or acquiring such additional water rights, sources and delivery system improvements as may be required to provide adequate fire flow service to Wyndermere, which the District shall pursue in good faith and with all reasonable diligence.

(c) The provision of fire flow capacity to Wyndermere from the District's water system shall be contingent upon a determination by the District that no impairment will consequently occur in its ability to meet the reasonably anticipated water requirements of all other water users then being served by the District.

(d) If requested to do so by the District, all property owners within Wyndermere shall agree to have their property annexed into the District as a condition of fire flow services to the subdivisions.

6. Wyndermere, their agents, successors and assigns, do hereby agree and covenant to hold harmless Sun Valley, its elected officials, officers, employees, citizens, successors and assigns forever from all damages, loss, injury, suits, actions or claims brought on account of any injuries or damages sustained by any person (including wrongful death) or property as a result of Sun Valley's lifting of its prohibition against construction, referred to in Paragraph 7, below, or any matters relating thereto, no matter how remotely, and said indemnity and hold harmless shall include expenses, including attorney's fees and court costs, incurred by Sun Valley incidental to the investigation and defense of any of said damages, injuries, suits, claims, actions or losses.

7. Sun Valley shall lift its prohibition against construction in Wyndermere upon
AGREEMENT - PAGE 3

Wyndermere's demonstration of appropriate fire flows, subject to Sun Valley's laws and ordinances.

8. In the event of any dispute with regard to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees incurred therein, whether or not a lawsuit is actually filed, and on any appeals, and in any bankruptcy proceeding. Notwithstanding the foregoing, no party shall be entitled to recover any attorney fees or costs from Ketchum under any circumstances. All parties hereby waive any and all right to attorney fees and costs they may ever have against Ketchum, including, without limitation, attorney fees or costs awarded pursuant to Idaho Code §§ 12-117, 12-120 or 12-121, I.R.C.P. 54 or I.A.R. 40 and 41.

9. This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section thereof was drafted by said party.

10. Except as otherwise provided within this Agreement, no party hereto may amend this Agreement without the prior written consent of the other parties.

11. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

12. This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart. Facsimile transmission of any signed original document and retransmission of any signed facsimile transmission shall be the same as personal delivery of the original. At the request of any party, the parties will confirm facsimile transmitted signatures by signing an original document.

13. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement.

14. This Agreement shall only become effective upon the execution of all parties hereto.

15. In the event of any default by any party to this Agreement, each non-defaulting party

shall be entitled to seek all available legal and equitable remedies, including without limitation, specific performance.

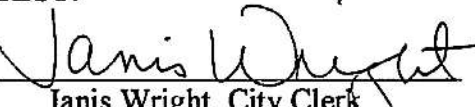
IN WITNESS WHEREOF, the parties hereto have set their hands on the date shown below.

CITY OF SUN VALLEY

By 
Jon Thorson, Mayor

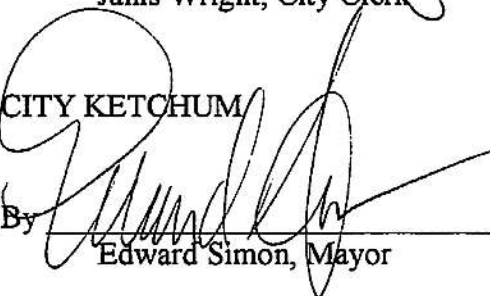
DATED 7/27/05

ATTEST:

By 
Janis Wright, City Clerk

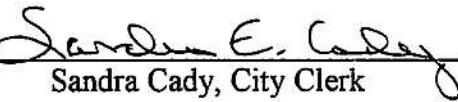


CITY KETCHUM

By 
Edward Simon, Mayor


DATED 7.27.05

ATTEST:

By 
Sandra Cady, City Clerk



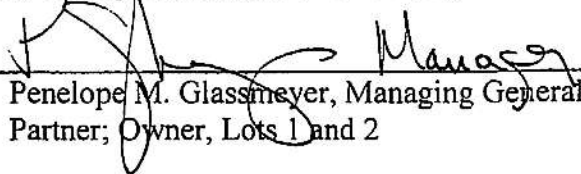
SUN VALLEY WATER AND SEWER DISTRICT

By 
~~XXXX XXXX XXXX XXXX XXXX~~
James D. Loyd, Chairman of the Sun Valley/Ketchum Water & Sewer District

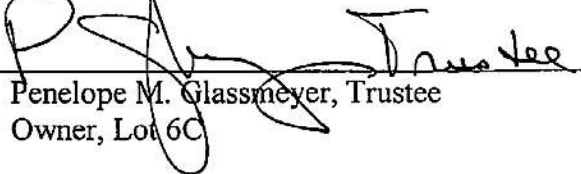
DATED 7.28.05

WYNDERMERE SUBDIVISION

Glassmeyer Properties Limited Partnership

By  DATED 7-19-05
Penelope M. Glassmeyer, Managing General
Partner; Owner, Lots 1 and 2

Sun Valley Residence Trust

By  DATED 7-19-05
Penelope M. Glassmeyer, Trustee
Owner, Lot 6C

By _____ DATED _____
Richard Fassino, Owner, Lot 3

By _____ DATED _____
Diana Fassino, Owner, Lot 3

By _____ DATED _____
Anne Edmondson, Owner, Lot 4

Behnke Property Trust UTA 9/7/95

By _____ DATED _____
Carl G. Behnke, Trustee, Owner, Lot 5A

Behnke Property Trust UTA 9/7/95

By _____ DATED _____
Renee J. Behnke, Trustee, Owner, Lot 5A

WYNDERMERE SUBDIVISION

Glassmeyer Properties Limited Partnership

By _____ DATED _____
Penelope M. Glassmeyer, Managing General
Partner; Owner, Lots 1 and 2

Sun Valley Residence Trust

By _____ DATED _____
Penelope M. Glassmeyer, Trustee
Owner, Lot 6C

By _____ DATED _____
Richard Fassino, Owner, Lot 3

By _____ DATED _____
Diana Fassino, Owner, Lot 3

By Anne Edmondson DATED 7/19/05
Anne Edmondson, Owner, Lot 4

Behnke Property Trust UTA 9/7/95

By _____ DATED _____
Carl G. Behnke, Trustee, Owner, Lot 5A

Behnke Property Trust UTA 9/7/95

By _____ DATED _____
Renee J. Behnke, Trustee, Owner, Lot 5A

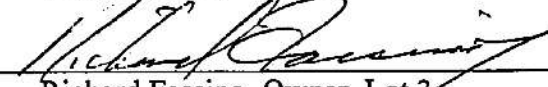
WYNDERMERE SUBDIVISION

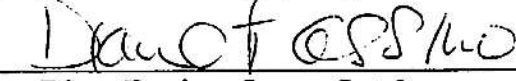
Glassmeyer Properties Limited Partnership

By _____ DATED _____
Penelope M. Glassmeyer, Managing General
Partner; Owner, Lots 1 and 2

Sun Valley Residence Trust

By _____ DATED _____
Penelope M. Glassmeyer, Trustee
Owner, Lot 6C

By  DATED 7/25/05
Richard Fassino, Owner, Lot 3

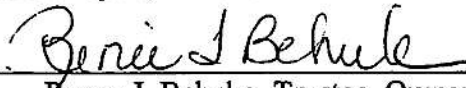
By  DATED 7/25/05
Diana Fassino, Owner, Lot 3

By _____ DATED _____
Anne Edmondson, Owner, Lot 4

Behnke Property Trust UTA 9/7/95

By  DATED 7-19-05
Carl G. Behnke, Trustee, Owner, Lot 5A

Behnke Property Trust UTA 9/7/95

By  DATED 7/19/05
Renee J. Behnke, Trustee, Owner, Lot 5A

STATE OF IDAHO)
) ss.
County of Blaine)

On this 27th day of July, 2005, before me, a Notary Public for the State of Idaho, personally appeared JON THORSON, known or identified to me to be the Mayor of the City of Sun Valley, and the Mayor who subscribed said municipality's name to the foregoing instrument, and acknowledged to me that he executed the same.

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

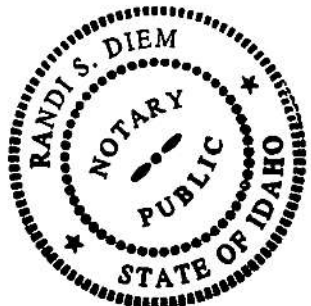


Janis L. Wright
Notary Public for Idaho
Residing at: Hailey
My commission expires: 9/18/05

STATE OF IDAHO)
) ss.
County of Blaine)

On this 27th day of July, 2005, before me, a Notary Public for the State of Idaho, personally appeared EDWARD SIMON, known or identified to me to be the Mayor of the City of Ketchum, and the Mayor who subscribed said municipality's name to the foregoing instrument, and acknowledged to me that he executed the same.

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



Randi S. Diem
Notary Public for Idaho
Residing at: Hailey, ID
My commission expires: 8-29-09

STATE OF IDAHO)
) ss.
County of Blaine)

On this 28 day of July, 2005, before me, a Notary Public in and for said State, personally appeared JAMES D. LOYD known or identified to me, to be the Chairman of the Sun Valley Water and Sewer District that executed the instrument or the person who executed the instrument on behalf of said District, and acknowledged to me that such District executed the same.

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

Randi S. Diem
Notary Public for Idaho
Residing at: Hailey, ID
My commission expires: 8-29-09



STATE OF IDAHO)
) ss.
County of Blaine)

On this _____ day of _____, 2005, before me, a Notary Public in and for said State, personally appeared JACK BROWN, known or identified to me, to be the District Manager of the Sun Valley Water and Sewer District that executed the instrument or the person who executed the instrument on behalf of said District, and acknowledged to me that such District executed the same.

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

Notary Public for Idaho
Residing at: _____
My commission expires: _____

STATE OF CT)
) ss.
County of FAIRFIELD)

On this 19 day of July, 2005, before me a Notary Public in and for said State, personally appeared PENELOPE M. GLASSMEYER, known or identified to me to be the Managing General Partner, in the partnership of Glassmeyer Properties Limited Partnership, an Connecticut limited partnership, and the partner who subscribed said partnership name to the foregoing instrument, and acknowledged to me that she executed the same in said partnership's name.

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

Karen R. Goersch
Notary Public for CT
Residing at: Darien, CT
My commission expires: 7/31/09

KAREN R. GOERSCH
NOTARY PUBLIC
MY COMMISSION EXPIRES 07/31/2009



STATE OF CT)
County of Fairfield) ss.

On this 19 day of July, 2005 before me, a Notary Public in and for said State, personally appeared PENELOPE M. GLASSMEYER, known or identified to me to be the person whose name is subscribed to the within instrument as the Trustee of the Sun Valley Residence Trust and acknowledged to me that she executed the same as such Trustee of said Trust.

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

Karen R. Goersch
Notary Public for CT
Residing at: DARIEN, CT
My commission expires: 7/31/09



KAREN R. GOERSCH
NOTARY PUBLIC
MY COMMISSION EXPIRES 07/31/2009

STATE OF _____)
County of _____) ss.

On this ____ day of _____, 2005, before me a Notary Public in and for said State, personally appeared RICHARD FASSINO, known to me to be the person who executed the within and foregoing document and acknowledged to me that he executed the same.

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

Notary Public for _____
Residing at: _____
My commission expires: _____

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 2005 before me, a Notary Public in and for said State, personally appeared PENELOPE M. GLASSMEYER, known or identified to me to be the person whose name is subscribed to the within instrument as the Trustee of the Sun Valley Residence Trust and acknowledged to me that she executed the same as such Trustee of said Trust.

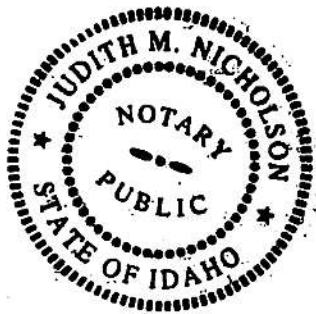
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public for _____
Residing at: _____
My commission expires: _____

STATE OF Idaho)
) ss.
County of Blaine)

On this 25 day of July, 2005, before me a Notary Public in and for said State, personally appeared RICHARD FASSINO, known to me to be the person who executed the within and foregoing document and acknowledged to me that he executed the same.

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

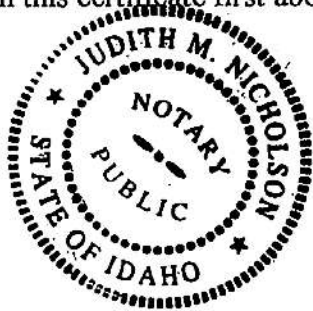


Judith M. Nicholson
Notary Public for Idaho
Residing at: Hamden
My commission expires: 8/11/2011

STATE OF Idaho)
) ss.
County of Blaine)

On this 25 day of July, 2005, before me a Notary Public in and for said State, personally appeared DIANA FASSINO, known to me to be the person who executed the within and foregoing document and acknowledged to me that she executed the same.

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



Judith M. Nicholson
Notary Public for Idaho
Residing at: Harley
My commission expires: 8/11/2011

STATE OF IDAHO)
) ss.
County of Blaine)

On this _____ day of _____, 2005, before me a Notary Public in and for said State, personally appeared ANNE EDMONDSON, known to me to be the person who executed the within and foregoing document and acknowledged to me that he executed the same.

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

Notary Public for _____
Residing at: _____
My commission expires: _____

STATE OF _____)
) ss.
County of _____)

On this _____ day of _____, 2005, before me a Notary Public in and for said State, personally appeared DIANA FASSINO, known to me to be the person who executed the within and foregoing document and acknowledged to me that she executed the same.

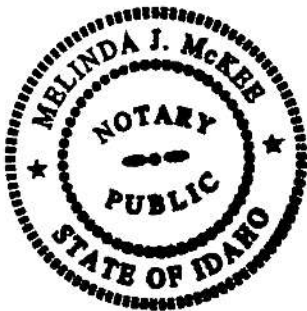
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public for Idaho
Residing at: _____
My commission expires: _____

STATE OF IDAHO)
) ss.
County of Blaine)

On this 19 day of July, 2005, before me a Notary Public in and for said State, personally appeared ANNE EDMONDSON, known to me to be the person who executed the within and foregoing document and acknowledged to me that he executed the same.

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

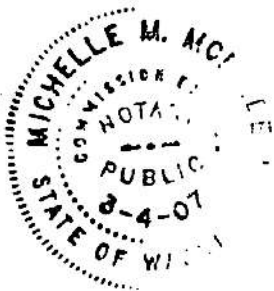


Melinda J. McKee
Notary Public for Idaho
Residing at: Hailey, Idaho
My commission expires: 6-11-07

STATE OF WA)
) ss.
County of KING)

On this 19 day of July, 2005, before me, a Notary Public in and for said State, personally appeared CARL G. BEHNKE, known or identified to me to be the person whose name is subscribed to the within instrument as one of the Trustees of the Behnke Property Trust UTA 9/7/95 and acknowledged to me that he executed the same as such Trustee of said Trust.

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

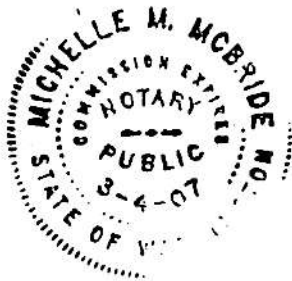


Michelle M. McBride
Notary Public for Washington
Residing at: Renton, WA
My commission expires: 3-4-07

STATE OF WA)
) ss.
County of KING)

On this 19 day of July, 2005, before me, a Notary Public in and for said State, personally appeared RENEE J. BEHNKE, known or identified to me to be the person whose name is subscribed to the within instrument as one of the Trustees of the Behnke Property Trust UTA 9/7/95 and acknowledged to me that she executed the same as such Trustee of said Trust.

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



Michelle M. McBride
Notary Public for Washington
Residing at: Renton, WA
My commission expires: 3-4-07