

Gerald J. Corvino  
11865 West Tustin LN  
Kuna, Idaho 83634  
Email: [Jerry@apfpower.com](mailto:Jerry@apfpower.com)  
(208) 362-5215

RECEIVED  
2008 MAY 27 AM 11:39  
IDAHO PUBLIC  
UTILITIES COMMISSION

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE APPLICATION OF</b>	)	
<b>MAYFIELD SPRINGS WATER COMPANY,</b>	)	<b>CASE NO. MSW-W-08-1</b>
<b>INC. FOR A CERTIFICATE OF PUBLIC</b>	)	
<b>CONVENIENCE AND NECESSITY</b>	)	<b>INTERVENOR TESTIMONY</b>
	)	
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The attached information is provided to the Commission for its consideration in the application of Mayfield Springs Water Company for a Certificate of Public Convenience and Necessity.

"Company" in the following discussion refers to Mayfield Springs Water Company (aka Idaho Springs Water Company and Arbor Ridge, LLC).


1. At the workshop on May 19, 2008, the Commission staff asked for information concerning the number of people not paying the water bills. The following table details to the best of our knowledge the customers not paying the Company for water service. We suggest the Commission staff ask the Company to provide a more complete list.

<u>Family</u>	<u>Payment Status</u>
Stivers	Never
Corvino	Paid January through June 2007 only
Bourgeau	Never
King	Never
Davidson	Never
Whitten	Paid January 2007 only

2. **Exhibit 201:** a letter from the company dated July 14, 2005 to Ada Count Development Services.

3. **Exhibit 202:** approval by the Ada County Board of Supervisors of the Arrowrock Ranch Subdivision No 1 ("Subdivision").
4. **Exhibit 203:** Purchase Agreement executed by Mark and Amber Abercrombie to purchase their lot in the Subdivision.
5. **Exhibit 204:** water service bill sent by Arbor Ridge, LLC to Gerald and Eileen Corvino.
6. **Exhibit 205:** letter from Gerg Johnson to water service customers.
7. **Exhibit 206:** complaint filed by Gerald J. Corvino via the Commission's website.
8. **Exhibit 207:** letter from Gerg Johnson to water service customers dated May 2, 2007.
9. **Exhibit 208:** email from Chris Hecht, Utility Compliance Investigator, Idaho Public Utility Commission to Gerald J. Corvino.
10. **Exhibit 209:** affidavit by Timothy L. Farrell filed in 4th Judicial Court Case No CVOC0708918, Guy and Lori Bourgeau et al, Plaintiffs versus Greg Johnson et al, Defendants.
11. **Exhibit 210:** Affidavit of Alden Holm in above referenced case.
11. **Exhibit 211:** ruling of 4<sup>th</sup> Judicial Court Judge Michael regarding Plaintiffs the summary judgment request in the above referenced case.

**DATED** at Kuna, Idaho, this 23<sup>rd</sup> day of May 2008.

  
Gerald J. Corvino

Cc: John R. Hammond  
Kris Sasser

**Arbor Ridge LLC.**  
PO Box 344 Meridian ID 83680  
(208)-888-9946

July 14, 2005

Scott Scoot  
Ada County Development Services  
200 W. Front Street  
Boise, Idaho 83702

Subject: Response to Planning Department final plat comments  
Arrowrock Ranch Subdivision No. 1  
Ada County Idaho

Attn: Scott Cook

The plat for Arrowrock Ranch Subdivision was modified to address your comments in your letter dated April 4, 2005. Your comments were specifically addressed as follows:

1. Documentation from the Kuna Fire Protection District has been provided. As agreed to recently by Ada County stated in the letter from Richard Cook the floodplain development is not required. (see attachment A)
2. The storm water drainage improvements will be inspected and approved by the County Engineer and I have spoken to Dave Wells about the inspection.
3. The manufactured home has been removed.
4. Note 1 on the plat has been modified.
5. Documentation of the responsible entity for the irrigation has been provided. (see attachment B.)
6. To the best of our knowledge the plat meets the requirements of non-farm development standards.
7. Plans for the grading permit have been submitted to Ada County and should be with Scott Cook via the building department.
8. The private roads are nearing completion. A bond will be posted for any unfinished work prior to Board signing the plat.
9. As mentioned the floodplain mapping will not be required as no development will be near floodplain areas as indicated in the letter from Richard Cook. (see attachment A)
10. The private lot was eliminated from the development therefore we request that this condition be removed.
11. As approved through our communications the plat now is in substantial conformance with the approved preliminary plat.

12. A legal description for the subdivision boundary will be on the plat and can be provided at any time.
13. Turnouts are provided on the private road in the developed areas of the subdivision as shown on the improvements plans.

Sincerely



Shay Bertola  
Project Manager  
Arbor Ridge LLC.

(208)-888-9946  
(208)-888-9947  
[shay@westparkco.com](mailto:shay@westparkco.com)

**ADA COUNTY  
DEVELOPMENT SERVICES**PHONE (208) 287-7900  
FAX (208) 287-7909

200 W. FRONT, BOISE, IDAHO 83702-7300



BUILDING • ENGINEERING • PLANNING • ZONING

July 13, 2005

Arbor Ridge, LLC  
P.O. Box 344  
Meridian, Idaho 83680

Attn: Shay Bertola

Re: Arrowrock Ranch Subdivision

Dear Shay:

This letter is in response to your request for interpretation regarding the final plat on the Arrowrock Ranch Subdivision.

1. The home that was proposed to be located on Lot 2, Block 1 as shown on the preliminary plat by the previous owner(s) may be excluded from the final plat along with the private road that was proposed for accessing the subject lot.
2. The flood study that was required in conjunction with the private road crossing over Indian Creek will no longer be required as there are no improvements being proposed within any flood plain area.

This should address your concerns regarding the above issues. However, I need to point out to you that the one acre +/- farm development right (01-03-OA) parcel for the existing home may not be included in the final plat as part of Lot 63, Block 1. This out parcel must be excluded from the final plat but you must also complete the approval for a private road to access the existing home on the out parcel.

If you have any further questions or concerns please do not hesitate to contact me at 287-7903 or Scott Cook at 287-7905.

Sincerely,

A handwritten signature in cursive script that reads "Richard Cook".

Richard Cook  
Planning & Zoning Administrator  
Ada County Development ServicesCc: Scott Cook  
File #01-08-S

1 . B


# **Arbor Ridge Homeowners Association**

Arbor Ridge Homeowners Association  
PO Box 344  
Meridian, ID 83680

**RE: Arrowrock Ranch Subdivision**

Arbor Ridge Homeowners Associate will be taking over the pressurized sprinkler system for all phases of the Arrowrock Ranch Subdivision. The association will maintain and be responsible for the operation of said system.

Arbor Ridge Homeowners Association: President    **Greg Johnson**

    Signature    **Greg Johnson**

Arbor Ridge Homeowners Association  
PO Box 344  
Meridian ID 83642

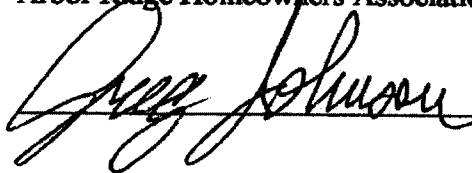
# **Arbor Ridge Homeowners Association**

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**RE: Arrowrock Ranch Subdivision**

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Arbor Ridge Homeowners Association: President    **Greg Johnson**

    Signature    **Greg Johnson**

Arbor Ridge Homeowners Association  
PO Box 344  
Meridian ID 83642

Thank you for your time,

Tuscany Development Inc.

# **Intermountain Sewer and Water**

Intermountain Sewer and Water  
PO Box 344  
Meridian, ID 83680

ATTN: Ada County Development Services

RE: Arrowrock Ranch Subdivision

Intermountain Sewer and Water will be serving the Arrowrock Ranch subdivision in regards to their water and sewer facilities. This service will include all maintenance and operations for all phases of the Arrowrock Ranch Subdivision. Intermountain Sewer and Water will contract the maintenance and operation of said systems to the proper licensed operators with the appropriate qualifications and licenses.

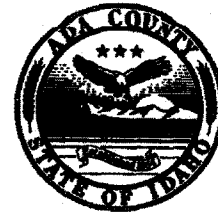
If you have any questions or need further information you can contact me at (208)-888-9946

Sincerely,

A handwritten signature in black ink that reads "Greg Johnson". The signature is written in a cursive, flowing style.

Greg Johnson  
President Intermountain Sewer and Water  
Meridian Office





**TO:** BOARD OF ADA COUNTY COMMISSIONERS

**DATE:** September 9, 2005

**STAFF:** Scott Cook, Planner II

**FILE NO:** 01-08-S/01-08-ZC  
Final Plat for Arrowrock Ranch Subdivision

**OWNER/  
APPLICANT:** Arbor Ridge, LLC  
P. O. Box 344  
Meridian, Idaho 83680

#### **SUMMARY OF THE RECORD**

This is final plat application for a 63-lot non-farm residential subdivision (51 buildable, 10 common and 2 open space lots) to be located in the RR (Rural Residential) Zoning District. The property contains 501.1 acres and is located on the southeast corner of the intersection of S. Cloverdale and Kuna Mora Roads, Boise, Idaho; Section 3, Township 1 North, Range 1 East.

The application is comprised of:

1. Application forms prepared and submitted by the applicant.
2. Final Plat of Arrowrock Ranch Subdivision No. 1.
3. All other information contained in File # 01-08-S/01-08-ZC/01-09-PR/01-10-PR/01-11-PR.

#### **PROCEDURAL ITEMS**

1. On October 24, 2001 the Board approved the preliminary plat and adopted Findings of Fact and Conclusions of Law for File # 01-08-S/01-08-ZC/01-09-PR/01-10-PR/01-11-PR
2. On November 26, 2003 Development Services approved a one-year time extension for the project as provided for in Section 8-7-6 of the Ada County Code. The time extension e the preliminary approval for the project until October 24, 2004.
3. On December 30, 2004 the Board of Ada County Commissioners authorized a 90-day time extension for the project.

4. On March 31, 2005 the Board of Ada County Commissioners authorized an additional 60-day time extension for the project.
5. On March 15, 2005 Development Services received the final plat application for File #01-08-S the item was scheduled before the Board on September 9, 2005.

#### STAFF ANALYSIS

The applicant is seeking approval of the final plat for File # 01-08-S (Arrowrock Ranch Subdivision Preliminary Plat). The preliminary plat was approved by the Board of County Commissioners on October 24, 2001. A subsequent one-year time extension was granted by Ada County Development Services on November 26, 2003, which extended the approval of the project to October 24, 2004. On December 30, 2004 the Board of Ada County Commissioners approved the applicant's request for a 90-day time extension on the project. The Board found that there had been extenuating circumstances, which had prevented the applicant from being able to process the final plat in a timely fashion. On March 21, 2005 the Board granted a second time extension allowing the applicant an additional 60-days to complete the final plat process. On July 13, 2005 the Director of Development Services issued a letter of interpretation, permitting the applicant to modify the preliminary plat approved on October 24, 2001. (See letter issued by Richard Cook).

Based on staff's review of the Conditions of Approval, staff finds that the final plat does not comply with said Conditions of Approval as adopted by the Board of Ada County Commissioners on October 24, 2004 and subsequently amended on November 26, 2003. However, based on the Board's direction and motion on this matter on December 30, 2004, staff has prepared the Findings of Fact, Conclusions of Law and Order for approval.

The Conditions of Approval are noted below in italicized text. Staff's analysis is presented in plain text. Conditions of Approval are noted below in italicized text. Staff analysis is presented in plain text.

#### Required Actions.

1. Prior to the approval of the final plat, the applicant shall submit to Development Services written approval from the following agencies. The approval may be either on agency letterhead referring to the approved plat/plans.
  - A. Idaho Department of Water Resources for the development of a community well.
  - B. Division of Environmental Quality for the development of a community wastewater and treatment system and community water system.
  - C. Public Utilities Commission regarding the establishment of non-contiguous service area.
  - D. Kuna Fire District for fire flow and access requirements.
  - E. The Ada County Engineer must approve a surface drainage run-off plan and floodplain development permit. Please contact the County Engineer at 364-2277 for fee and application information. See Section 8-4A-11 of the Ada County Code for drainage plan standards.

*The applicant has demonstrated compliance with the above referenced condition.*

2. Prior to approval by the Board of County Commissioners, the plat shall contain the following certificates and/or endorsements:

- A. signature of the owner(s),
- B. certificate of the plat surveyor,
- C. certificate of the County Surveyor,
- D. endorsement of the Central District Health Department, and
- E. endorsement of the Ada County Highway District.

*All of the above referenced signatures are on the final plat.*

3. Prior to final plat approval, storm water and drainage improvements shall be inspected and approved by the County Engineer or the applicant and/or owner must submit a surety agreement consistent with Title 8, Chapter 4, Article K of the Ada County Code.

*The storm water and drainage improvements have been inspected and approved by the Ada County Engineer.*

4. Prior to the submittal of the final plat, the applicant shall remove the manufactured unit (or receive other zoning approval) located on Lot 1, Block 1 as indicates on the preliminary plat. The applicant shall schedule a final site inspection upon completion of this condition. A building permit is required for the removal or demolition of the structure.

*The manufactured unit has been removed from the property.*

#### **TERMS OF APPROVAL**

5. The final plat must be approved by the Board of County Commissioners within twenty-four (24) months of the Board of County Commissioner's approval of the preliminary plat, unless a time extension is granted as per Ada County Code Section 8-7-6. For subdivisions where the Board approved a phasing plan, the Board shall approve the phases in successive one-year intervals as required in Section 8-6-3 of the Ada County Code.

*The preliminary plat was conditioned to expire on October 24, 2003. A subsequent one-year time extension was granted for the project, extending the preliminary plat approval to October 24, 2004. On December 30, 2004, the Board of Ada County Commissioners issued a letter to the developer granting an extension of the approval to March 30, 2005. On March 31, 2005 staff issued at the Board's direction a 2<sup>nd</sup> letter to the developer granting an additional 60-day time extension for the project.*

6. The final plat shall be meet the final plat specifications listed in Section 8-6-4.3 of the Ada County Code.

*The Ada County Surveyor has review the final plat for compliance with the above referenced section. The County Surveyor signed the final plat on September 6, 2005.*

7. A final plat must be recorded with the County Recorder's Office within one (1) year of the Board of County Commissioner's approval of the final plat as per Ada County Code Section 8-6-3h.

*This term of approval shall apply after the final plat is approved and signed.*

8. No building permits will be issued until the final plat is recorded through the County Recorder's Office and parcel numbers have been issued by the County Assessor's Office.

*This term of approval shall apply after the final plat is approved and signed.*

9. Before you submit the final plat for approval, the Ada County Street Name Committee must approve all street subdivision names. See Title 2, Chapter 1 of the Ada County Code.

*The Ada County Surveyor has verified that the final plat complies with the Ada County Street Name Committee's approval.*

10. The following statements shall appear on the face of the final plat:

- A. "(Legal description of open space lot(s)) is a deed restricted lot and may only be used for open space as defined in the non-farm development and dedicated open space sections of the Ada County Zoning Ordinance. The deed restricted lot(s) must also be used in the manner specified in the conditions of approval issued by Ada County's Department of Development Services. These lot(s) must be used in this matter until the subject property has received development approval and approval for a zoning ordinance map amendment to 1) a commercial or industrial district or 2) a residential or rural district that allows a density of less than or equal to 5 acres per dwelling; and urban services are available to the proposed development."
- B. This development recognizes Idaho Code §22-4503, Right to Farm Act, which states: "No agricultural operation or an appurtenance to it shall be or become a nuisance, private or public, by any changed conditions in or about the surrounding nonagricultural activities after the same has been in operation for more than one (1) year, when the operation was not a nuisance at the time the operation began; provided, that the provisions of this section shall not apply whenever a nuisance results from the improper or negligent operation of any agricultural operation or appurtenance to it."
- C. "Any resubdivision of this plat shall comply with the applicable regulations in effect at the time of the resubdivision."
- D. "Building setbacks and dimensional standards in this subdivision shall be in compliance with the applicable zoning regulations of Ada County and this approval."
- E. "Upon being reasonably available, each lot within the development shall connect to a municipal sewage collection and treatment system."

*All of the above referenced notes are indicated on the final plat.*

11. All public rights of way shall be dedicated and constructed to standards of the Ada County Highway District. No public street construction may be commenced without the approval of the Ada County Highway District. Any work within the Ada County Highway District rights of way requires a permit. For information regarding the requirements to obtain a permit, contact Ada County Highway District Development Services at 387-6100. Your File # 01-08-S/01-08-ZC/01-09-PR/01-10-PR/01-11-PR is required.

*The Ada County Highway District signed the final plat on March 9, 2005.*

12. Compliance with Section 31-3805 of the Idaho Code pertaining to irrigation waters is required. Irrigation/drainage waters shall not be impeded by any construction on site. Compliance with the specific requirements of the Ada County Engineer is required. Your File # 01-08-S/01-08-ZC/01-09-PR/01-10-PR/01-11-PR is required.

*This term of approval shall apply after the final plat is approved and signed by the Board.*

13. Irrigation water shall only be applied by sprinkling methods. Documentation of the proposed homeowners association or similar entity responsible for maintenance and operation of the sprinkler irrigation system shall be submitted to the Director of Development Services prior to final plat approval by the Board.

*Documentation of the proposed homeowners association or similar entity responsible for maintenance and operation of the sprinkler irrigation system has been provided prior to the Board's approval of the final plat.*

14. The applicant shall comply with all requirements of the Central District Health Department.

*Central District Health Department signed the final plat on March 10, 2005.*

15. Installation of service facilities to comply with the requirements of the public utility or irrigation district providing the services. All easements shall comply with Section 8-6A-6 of the Ada County Code. All easements shall be shown on the final plat. In accordance with Section 8-4A-21 of the Ada County Zoning Ordinance all utilities shall be installed underground.

*Notes # 9 indicates compliance with easement requirement for utilities.*

16. The non-farm development standards (building heights, setback requirements, and street frontage) of the RR zone shall be used for the development of this parcel. All residential lots within this development shall adhere to Table 8-2A-2 and Section 8-2A-6D2 of the Ada County Zoning Ordinance. Each residential lot shall share at least 100 feet of property line with another residential lot. This standard shall not be deemed as prohibiting a development area with a single lot.

*Staff has verified compliance with this condition. The final plat must comply with the residential requirements for the RR zone. This term of approval shall apply after the final plat is approved and signed by the Board.*

17. Dedicated open space lot(s) shall not be less than 100 feet in width at any point and not less than 20,000 square feet of contiguous area, except when part of a trail system or pathway network.

*Staff has verified compliance with this condition.*

18. All submittals of required compliance letters and plans (lighting, landscaping, drainage, and development) must be accompanied by your application file number.

*Compliance letters and plans have been clearly labeled.*

19. No construction, grading, filling, clearing, or excavation of any kind shall be initiated until the applicant has received approval of a drainage design plan from the Ada County Engineer. The drainage design plan shall include all proposed site grading. The drainage design plan requires a separate application and fee. Please contact the Ada County Engineer at 364-2277 for fee and application information.

*The Ada County Engineer approved the drainage plan on June 3, 2004.*

20. Upon approval of the drainage design plan, the applicant shall obtain a grading permit or waiver from the Ada County Building Official. The grading permit shall conform to the approved drainage design plan. The drainage design plan shall include, but is not limited to, the following:

- A. Identification of high ground water areas, poorly drained areas, and areas being developed over soils with poor drainage characteristics, poor soil-bearing capacity, hydric soils, liquefaction and soil strength loss.
- B. These areas shall be identified on the drainage design plan and specific measures included in the design to overcome the adverse effects of these characteristics (i.e., concentration of ground water in building crawl spaces, subsidence of foundations, etc.). The plan shall comply with Section 1804.04, Foundation Investigation, of the Uniform Building Code (1997 Edition) as adopted by Ada County. Special submittals including a site-specific geotechnical report may be required by the Ada County Engineer. The drainage design plan shall be prepared and submitted by a Professional Engineer or design professional licensed in the State of Idaho.

*The applicant has obtained a grading permit from the Ada County Building Official prior to the Board's approval of the final plat.*

21. Prior to acceptance of a final plat by the Ada County Engineer all drainage improvements and site grading shall be completed. The County Engineer shall inspect and approve all drainage improvements, except where bonding is provided. As-built drawings, acceptable to the County Engineer in form and substance, shall be submitted prior to final inspection and approval of the drainage improvements.

*All drainage and site improvements have been completed for the project.*

22. Prior to final plat approval, the applicant shall have obtained and completed any required grading permit.

*The applicant has obtained a grading permit from the Ada County Building Official prior to the Board's approval of the final plat.*

23. This development shall provide fire flow as adopted by the Kuna Fire District in accordance with Section 8-3B-2C of the Ada County Zoning Ordinance.

*The Kuna Fire District approved the final plat and plans on August 5, 2005.*

24. Lighting within the development shall comply with the requirements of Article 8-4H of the Ada County Zoning Ordinance.

*This term of approval shall apply after the final plat is approved and signed by the Board.*

25. The private road shall comply with the standards of Article 8-4D and is subject to field verification by the County Engineer:

- A. The private road shall be constructed on a perpetual access easement or lot that provides access from a public street to all applicable properties.
- B. The easement shall have a minimum width of 30 feet.
- C. The private road shall terminate at a 45-foot radius cul-de-sac or other approved turn-around configuration. If the terminus is other than the cul-de-sac, written approval from the Kuna Fire District for the turnaround area shall be submitted to Development Services.
- D. Gates or other travel way obstacles shall not be allowed.
- E. Any travel way grades over 7 percent shall be specifically approved, in writing, by the Kuna Fire District.
- F. The private roads shall be subject to the Wildland-Urban Fire Interface Overlay District and/or Flood Hazard Overlay District.
- G. The travel way from S. Cloverdale Road shall have a minimum improved width of 24 feet and have a stable, compacted base. This private road shall be paved with 2.5 inches of asphaltic concrete. There shall be a crown or transverse slope of 2 percent to drain water away from the travel way. The travel way from Kuna Mora Road shall have a minimum width of 20 feet and a stable compacted base. There shall be a crown or transverse slope of 2 percent to drain water away from the travel way. The improved surface shall consist of six inches (6") of compacted two inch (2") minus crushed gravel or other materials approved by the county engineer.
- H. The private road must be constructed or bonded for prior to the Board's approval of the final plat. No permits shall be issued until the private road have been constructed and verified by the Ada County Engineer.
- I. Vehicular turnouts shall be provided at a maximum interval of every 700 feet and shall be 8 feet wide and 30 feet long.

*The Ada County Engineer approved the construction of the private roads on September 2, 2005.*

26. The standards of Article 8-3B (Wildland-Urban Fire Interface Overlay District) shall be used for the development of this parcel.

*This term of approval shall apply after the final plat is approved and signed by the Board.*

27. The standards of Article 8-3F (Flood Hazard Overlay District) shall be used for the development of this parcel.

*This term of approval shall apply after the final plat is approved and signed by the Board.*

28. Both the community wastewater collection and treatment system and community well shall be approved prior to final plat approval and in accordance with Section 8-4A-22 and 8-4A-23 of the Ada County Zoning Ordinance.

*Both the Department of Environmental Quality, Central District Health and Idaho Department of Water Resources have approved of the above referenced facilities.*

29. If applicable, bonds for the wastewater collection and treatment system and the community water system shall be deposited with the appropriate health authority.

*No bonding is required for the completion of the wastewater collection and treatment system and the community water system.*

30. Lot 2, Block 1 shall comply with Section 8-3B-2C1 of the Ada County Zoning Ordinance. This lot shall be served by an interconnected system of roadways and/or fire accesses such that emergency vehicles can travel to the lot from two directions.

*This condition was satisfied with the Director's interpretation issued on July 13, 2005.*

### **RECOMMENDATION**

Based on staff's review of the Conditions of Approval, staff finds that the final plat does not comply with said Conditions of Approval as adopted by the Board of Ada County Commissioners on October 24, 2001 and subsequently amended on November 26, 2003. However, based on the Board's direction and motion on this matter on December 30, 2004, staff has prepared the Findings of Fact, Conclusions of Law and Order for approval.



### **APPLICABLE LAW**

1. Section 50-1308 of the Idaho Code states that if a subdivision is not within the corporate limits of a city, the plat shall be submitted, accepted and approved by the Board of Commissioners of the county in which the tract is located in and if the county has established a planning commission, then all plats must be submitted to the Commission.
2. Section 8-6-4-3 of the Ada County Code establishes the procedures for approval of a Final Plat.
3. Section 8-6-5 of the Ada County Code establishes the findings that must be made for a Final Plat.
4. The Conditions of Approval for File # 01-08-S as approved on October 24, 2001, and subsequently amended on November 26, 2003, establishes the required actions that must be met prior to approving the final plat.
5. The Conditions of Approval for File # 01-08-S as approved on October 24, 2001, and subsequently amended on November 26, 2003, also establishes the terms of approval that will continue to apply to the subject property after the final plat is approved.

### **FINDINGS OF FACT**

If any of these Findings of Fact are deemed to be Conclusion of Law, they are incorporated into the Conclusions of Law section.

1. Based upon the above noted procedural items and the evidence and testimony in the record the Board finds that the final plat for Arrowrock Ranch Subdivision Phase 1 is not within the corporate limits of a city and as such, are under the jurisdiction of Ada County and have been reviewed in accordance with the provisions of Section 50-1308 of the Idaho Code.
2. The Board finds that the final plat as required in the Final Plat Findings for 8-6-5 of the Ada County Code does conform substantially to the approved preliminary plat in lot configuration and street layout. In addition, based upon the above noted procedural items, the Board finds that the final plat was submitted and acted on by the Commission in accordance with the provisions of Section 8-6-4-3 of the Ada County Code.
3. Based on the documentation found in File # 01-08-S and the subsequent files for the final plat, the Board finds that in accordance with Final Plat Findings of 8-6-5 of the Ada County Code that the final plat for Arrowrock Ranch Subdivision Phase 1 does meet the conditions of approval adopted on October 24, 2001 and subsequently amended on November 26, 2003. The Board finds that there had been extenuating circumstances, which has prevented the applicant from being able to process the final plat in a timely fashion. Notwithstanding condition of approval #5, the Board finds that the unforeseen events have delayed the processing of the final plat and warrants the additional time granted by the Board.

### **CONCLUSIONS OF LAW**

If any of these Conclusions of Law are deemed to be Findings of Fact, they are incorporated into the Findings of Fact section.

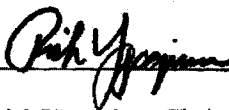
1. The Board concludes that the final plat for Arrowrock Ranch Subdivision No. 1 complies with the provisions of Section 50-1308 of the Idaho Code.
2. The Board concludes that the final plat for Arrowrock Ranch Subdivision No. 1 is in substantial conformance with the approved preliminary and complies with Section 8-6-4-3 of the Ada County Code.
3. The Board concludes that the final plat for Arrowrock Ranch Subdivision No. 1 has met the required conditions of approval as approved on October 24, 2001 and subsequently amended on November 26, 2003.


**ORDER**


Based upon the Findings of Fact and Conclusions of Law reviewed above, the Board hereby approves of the final plat for Arrowrock Ranch Subdivision No. 1, as submitted by Arbor Ridge LLC, and as documented in File # 01-08-S.

DATED this 13<sup>th</sup> day of September, 2025

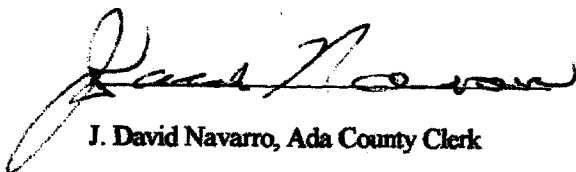
Board of Ada County Commissioners

  
By: Rick Yzaguirre, Chairman

  
By: Judy M. Peavey-Derr, Commissioner

  
By: Fred Tilman, Commissioner

ATTEST:

  
J. David Navarro, Ada County Clerk

## **ATTACHMENTS**

**Exhibit 1, Final plat of Arrowrock Ranch Subdivision Phase I.**

**Exhibit 2, Preliminary plat of Arrowrock Ranch Subdivision.**

**Exhibit 3, Vicinity map.**

Pro Mortgage: 947-5555

Ferguson: Office 866-5549  
645-5761

**PURCHASE AGREEMENT**  
(Buyer's Option)

THIS AGREEMENT, made and entered into this 1st day of Aug, 2005, by and between Arbor Ridge L.L.C., Greg Johnson as Manager, Re/Max of Boise as Marketing Agent and Mark Abercrombie, as Buyer, wherein buyer does hereby purchase from Seller the optional right to purchase the following described property located in Arrow Rock Subdivision located in Ada County, State of Idaho, to wit:

Block	Lot	Subdivision/Phase	Price	Expiration Date
1	8	Arrow Rock #1	65,900	30 Days from t Permitability :
1		Arrow Rock #1		recorded 9/14/05
1		Arrow Rock #1		
Total Price			65,900	

Re/Max of Boise/Shawn Tracy (Broker) shall hold the completely executed Broker's copy of this Agreement. The responsible Broker shall be Shawn Tracy.

TERMS: Seller does hereby agree to sell said property to Buyer for the sum of

Sixty five thousand nine hundred Dollars and no/100 dollars

(\$ 65,900), in lawful money of the United State of America, provided said amount is fully paid by buyer to Seller in accordance with the following closing schedule:

As consideration for this continuing offer to sell said property, Buyer agrees to pay to seller the sum of **Five Thousand Dollars (\$5,000.00)**, as a non-refundable option deposit. The deposit shall be released to the seller and be applied at each lot closing at the rate of (\$ 5,000.00 ) per lot. Seller may grant, at Seller's sole discretion, an extension of this Purchase Agreement to the Buyer. Seller may require Buyer to deposit additional option purchase money as consideration for granting an extension. Buyer shall also pay one percent (1%) per month on any extension granted on the total purchase price. Said interest shall not be applied to the purchase price. In the event the full purchase price is not fully paid on or before said expiration date, Seller shall retain said option purchase money payments and interest payments and may convey said property to others without regard to this Agreement or payments made hereunder and Buyer shall have no claim to said property, option purchase money payments, or interest payments. In addition to the purchase price of the lot, Buyer shall also pay the following charges to the seller at closing:

**Additional charges collected at closing by Seller:**

Owners Association Initial Assessment:	\$250 per lot
Owners Association Regular Annual Assessment	\$1200 per lot
Assessment for street cleaning and portable toilets:	\$125 per lot
Mail box and stand	\$ 75 per lot
Property Taxes & Irrigation Taxes *:	As Assessed or Estimated
Marketing Fee**:	\$2,636
Sewer Hook up fee	\$4,000
Water hook up fee	\$2,500

**\$4100**

\*Pro-ration of Owner Association Regular Annual Assessments, Property Taxes, and Irrigation Taxes shall be from closing date.

1. Re/Max of Boise is the exclusive marketing agent for the above named subdivision.
2. Re/Max of Boise wishes to accommodate all potential Lot Purchasers who desire to build in the above named subdivision, who may then select their own Realtors/Agents to assist in the sale of a home-site/home. Real Estate signs may be placed on optioned lot only with no arrow signs or agent signs at entrance of subdivision.
3. \*\*Marketing Fee: This fee may be waived only by Re/Max of Boise in its sole discretion.

The following additional terms and conditions shall apply:

1. Buyer acknowledges receipt of a copy of the Master Declaration of Covenants, Condition, Restriction, and Easements (CC&R's) and the Architectural Design Standards and Construction Guidelines for said subdivision and agrees to abide by said documents.
2. Buyer agrees to submit plans and specification to the Architectural control Committee (ACC) of the subdivision at 660 E Franklin Rd suite 240 Meridian, ID prior to start of construction.
3. Buyer shall contact Kelley Edwards at Lawyers Title 389-6903 for lot payoff figures.
4. Builder shall verify boundary and measurements before starting construction, Seller will not be responsible for damages resulting from Buyer's failure to do so.
5. Buyer shall pay all utility hook-up fees at close of escrow on lot.
6. Any damage to streets, curbs, sidewalks, fences, tiled irrigation lines, utility facilities, drainage issues or other improvements shall be the responsibility of the Buyer if occurring after lot inspection. Lot inspection shall take place within ten day after date of option agreement or recording of plat, whichever date shall occur first.
7. It is understood and agreed that Seller will not be required to furnish Title Insurance to Buyer but Seller warrants merchantable title subject to easements, restrictions, and covenants of record and/or as shown on the official plat of the subdivision.
8. This Agreement shall be binding on the executors, heirs, administrators, personal representatives, successors, and assigns of the respective parties hereto, time being of the essence. This agreement may only be modified in writing signed by both parties.
9. If legal action is to be instituted to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees.
10. Buyer acknowledges some members of the Seller may be licensed real estate agents.
11. The Marketing fee on above referenced lot(s) is hereby an integral part of this Agreement.
12. Buyer will supply at his/her cost a trash receptacle for all construction sites they are responsible for.
13. Buyer will keep all trash on site and keep all construction sites clean and orderly.

IMPORTANT – AGENCY REPRESENTATION CONFIRMATION:

In this transaction, the brokerage (s) involved and the following relationship(s) with the BUYER ('agent' or 'nonagent' or 'limited dual agent without an assigned agent' or 'limited dual with assigned agent acting solely on behalf of Buyer'):

Listing Broker acted as a(n) \_\_\_\_\_ Non-Agent \_\_\_\_\_ for the BUYER.

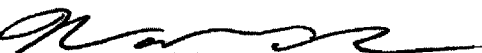
Selling Broker acted as a(n) Non-Agent \_\_\_\_\_ for the BUYER.

In this transaction, the brokerage(s) involved has the following relationship(s) with the SELLER ('agent' or 'nonagent' or 'limited dual agent'):

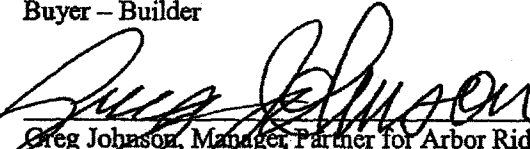
Listing Broker acted as a(n) \_\_\_\_\_ Agent \_\_\_\_\_ for the SELLER.

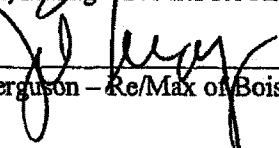
Selling Broker acted as a(n) \_\_\_\_\_ Non-Agent \_\_\_\_\_ for the SELLER.

Each party signing this document confirms that he or she has received read and understood the Agency Disclosure Brochure and has elected the relationship confirmed above. In addition, each party confirms that the broker's agency office policy was made available for inspection and review. EACH PARTY UNDERSTANDS THAT HE OR SHE IS A "CUSTOMER" AND IS NOT REPRESENTED BY A BROKER UNLESS THERE IS A SIGNED WRITTEN AGREEMENT FOR AGENCY REPRESENTATION.

  
Buyer – Builder

457-05

  
Greg Johnson, Manager/Partner for Arbor Ridge LLC


  
J. Douglas Ferguson – Re/Max of Boise

## Plan Approval Memorandum

It is hereby agreed that no construction shall commence until such time that builder has received a written approval from Greg Johnson, General Manager of Arbor Ridge LLC.

A full set of plans, plot plan and landscaping plan is to be submitted at 660 E Franklin, suite 240. Builder is advised to get plans submitted ASAP. In the event that Builder commences without approval developer may at it discretion levy a fine of \$5,000.00 for each offense.

Driveway crossing—No culverts are allowed under approach. Driveway must act as a dam in barrow ditch. In the event questions arise on design please contact the developers office.



Builder/Buyer

9-23-05

Date



**ARROWROCK RANCH  
ARCHITECTURAL GUIDELINES  
September 2005**

Minimum house size 2200 square feet – single level  
2400 square feet – two story  
Minimum of 1200 square feet on main floor

Minimum of three car attached garage – side entry garages will be encouraged.

Detached garages or shops will be allowed as long as they architecturally match the house and use the same exterior materials.

Fencing – No perimeter lot fencing will be allowed except a five foot black wrought iron. It is the intent of the community to have landscaping that flows from one yard to another. Hedges and other plantings to define boundaries will be allowed as approved on landscaping plans. Privacy fencing will be allowed for swimming pools and back patio areas but not closer than fifteen feet of a property line. Privacy fencing must be in the taupe colored vinyl, brick, stone or stucco. All dogs must be on a leash or in a dog run or fenced privacy area.

Building setbacks will be 30 feet from front lot line, 20 feet from side lot lines and 40 feet from the rear lot line.


All motor homes, boats, RV's, etc must be stored inside a garage or shop.

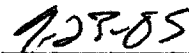
Corners must be wrapped. Brick, stone or stucco will be required on 25% of the front elevation or other architectural features as approved by Architectural Committee. A minimum of 30 year Architectural asphalt single will be required.

The sewer hook up fee will be \$4,000

The water hook up fees will be \$2,500

HOA Dues will be \$100 per month - \$1,200 per year  
Transfer Fee is \$250

  
\_\_\_\_\_  
Builder

  
\_\_\_\_\_  
Date

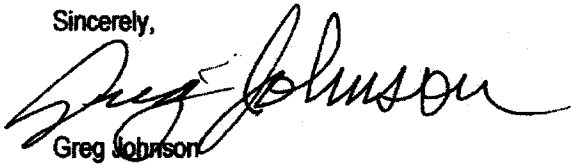


INTERMOUNTAIN SEWER AND WATER INC.  
ARBOR RIDGE WATER ACCOUNT  
P.O. BOX 344  
MERIDIAN, ID 83642

Dear Homeowner,

Enclosed please find the operations budget for both the water system and the wastewater treatment system. We will be billing \$100 for water system (paid to Arbor Ridge Water Account) and \$100 for wastewater treatment system (paid to Intermountain Sewer and Water Inc.) per month. These amounts are due on the 15<sup>th</sup> of each month and the checks need to be written to the separate companies until further notice. This will pay for the current maintenance contracts, accounting, utilities and reserves. We have not billed these first six months in order get an accurate estimate of costs. The question has been asked why the billing for water system is a flat rate and not by meter reading. If it is decided that the water system charge needs to be at a per gallon rate then the meters will need to be read and then billed by usage. This will increase costs as then the company would need to hire a meter reader and it would take more time to calculate usage calculations.

Sincerely,



Greg Johnson

Reference	WWTP	Monthly	Unit Cost	
1	Operating Costs	\$ 3,350.00		
2	Accounting	\$ 750.00		
3	Utilities	\$ 500.00		
4	Parts Replacement	\$ 5,000.00	\$ 9,600.00	\$ 96.00
<b>Well House</b>				
5	Service	\$ 1,050.00		
6	Accounting	\$ 750.00		
7	Utilities	\$ 3,000.00		
8	Parts Replacement	\$ 5,000.00	\$ 9,800.00	\$ 98.00
	<b>Monthly</b>	<b>\$ 19,400.00</b>		<b>\$ 194.00</b>
	<b>Yearly</b>	<b>\$ 232,800.00</b>		
	<b>30 Years</b>	<b>\$ 6,984,000.00</b>		
	<b>Inflation (2%/year)</b>	<b>\$ 7,123,680.00</b>		

- 1 Black Water Inc, Contract
- 2 Westpark - Marilea Boncz
- 3 Idaho Power, Intermountain Gas
- 4 Reserve
- 5 Valley Hydro Inc, Contract
- 6 Westpark - Marilea Boncz
- 7 Idaho Power, Intermountain Gas
- 8 Reserve

<b>Billing To:</b>
Gerald & Eileen Corvino 11865 Tustin Lane Kuna, ID 83634
<b>Billing Period:</b> 1/1/07 – 1/31/07

Statement Date: 1/30/07  
Invoice # 70009

**Account #: 025-001-S**

**Sewer Transaction Activity Since Last Statement**

**Previous Balance & Payments Received by 1/15/07**

Beginning Balance	\$0.00
Payments Received	\$0.00
<b>Remaining Previous Balance</b>	<b>\$0.00</b>

**Monthly Services**

1/1/07-1/31/07	Wastewater Treatment Services	\$100.00
<b>Total Monthly Services</b>		

**Total Due By 2/15/07** **\$100.00**

**Account #: 025-001-W**

**Water Transaction Activity Since Last Statement**

**Previous Balance & Payments Received by 1/15/07**

Beginning Balance	\$0.00
Payments Received	\$0.00
<b>Remaining Previous Balance</b>	<b>\$0.00</b>

**Monthly Services**

1/1/07-1/31/07	Water Services	\$100.00
<b>Total Monthly Services</b>		

**Total Due By 2/15/07** **\$100.00**

Detach Here. Retain this portion of your statement for your records. Please allow 7 to 10 days for postal delivery.



<b>Gerald &amp; Eileen Corvino</b> <b>11865 Tustin Lane</b> <b>Kuna, ID 83634</b>	<b>Account Number</b>	<b>Payment Due Date</b>	<b>Total Amount Due</b>
	025-001-S	2/15/07	\$100.00
Remit U.S. funds payable to Intermountain Sewer & Water, Inc. Please include your account number on your check	<b>SHUT-OFF DATE: 2/23/07</b>		
<b>Intermountain Sewer &amp; Water, Inc.</b> P.O. Box 344 Meridian, ID 83680	<b>Amount Enclosed</b> \$ _____		



Attention: Arrowrock Ranch Homeowners

Date: March 8, 2007

Re: Water/ Sewer Billing

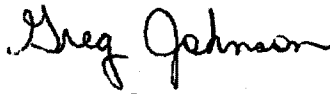
We, Arbor Ridge Water Acct, LLC, have met the PUC, Public Utility Commission, and will be working with them over the next 120 days on setting prices on the water service at Arrowrock Ranch Subdivision.

At this time, it has not been determined whether it will continue to be a flat rate or become metered service. This will be decided between our company and the PUC. In the interim, we will continue billing at our current rate.

Sewer rates are not regulated by the PUC and will continue at the current rate of \$100.00 per month.

We will be following the direction of the PUC on all termination of service for non-payments.

Sincerely,



Greg Johnson

<b>Billing To:</b>
Gerald J. Corvino Eileen F. Corvino 11865 Tustin Lane Kuna, ID 83634
<b>Billing Period:</b> 2/1/07 - 2/28/07

Statement Date: 3/08/07  
Invoice # 70030

**Account #: 025-001-S**

**Sewer Transaction Activity Since Last Statement**

**Previous Balance & Payments Received by 2/15/07**

Beginning Balance	\$100.00
Payments Received - Thank You	\$100.00
<b>Remaining Previous Balance</b>	<b>\$0.00</b>

**Monthly Services**

2/1/07-2/28/07	Wastewater Treatment Services	\$100.00
<b>Total Monthly Services</b>		

**Total Due By 3/24/07**

**\$100.00**

**Account #: 025-001-W**

**Water Transaction Activity Since Last Statement**

**Previous Balance & Payments Received by 2/15/07**

Beginning Balance	\$100.00
Payments Received - Thank You	\$100.00
<b>Remaining Previous Balance</b>	<b>\$0.00</b>

**Monthly Services**

2/1/07-2/28/07	Water Services	\$100.00
<b>Total Monthly Services</b>		

**Total Due By 3/24/07**

**\$100.00**

Detach Here. Retain this portion of your statement for your records. Please allow 7 to 10 days for postal delivery.  
For Customer Service or Billing Inquiries Please call: (208) 888-9946, ext. 104.



<b>Gerald J. Corvino</b> <b>Eileen F. Corvino</b> <b>11865 Tustin Lane</b> <b>Kuna, ID 83634</b>	<b>Account Number</b>	<b>Payment Due Date</b>	<b>Total Amount Due</b>
	025-001-S	3/24/07	\$100.00
Remit U.S. funds payable to Intermountain Sewer & Water, Inc. Please include your account number on your check			
<b>Intermountain Sewer &amp; Water, Inc.</b> P.O. Box 344 Meridian, ID 83680		<b>Amount Enclosed</b> \$ _____	



<b>Gerald J. Corvino</b>	<b>Account</b>	<b>Payment Due</b>	<b>Total Amount</b>
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**Meters:**

Meters are the property of the Arbor Ridge, LLC. and are not to be turned on or off except by authorized employees. Unauthorized connection of a meter is illegal under state law. Arbor Ridge, LLC. has the right of access to meters whenever necessary.

**Non-Pay Terminations:**

Every attempt will be made to resolve payment on past due accounts before termination of service will occur.

Services disconnected for non-payment will not be restored until all past due balances, along with a reconnect fee, have been paid.

Reconnect fee is \$70.00

If your service has been terminated for non payment, do not cut the padlock and reactivate your service.

**Illegal Turn-Ons:**

Illegal turn-ons are assessed a \$50.00 fee and the meter is removed until the account is paid in full.

**Payments:**

Customers have 15 days from the date the bill is mailed to make payment. Our office must receive the payment by the due date to avoid an additional fee. Accepted forms of payment would include: Check, Money Order or Cash.

Payments may be made by mail in the envelope provided with your billing statement. However, mailed payments must reach our mailing address by 5:00 pm on the date due; we do not go by postmark date. All payments should show your account number.

If payment is not received by the due date, a late fee of \$30.00 will be assessed on your account.





# Idaho Public Utilities Commission

## Consumer Inquiry or Complaint Form

**Submit electronically below or print and return to:**

**Consumer Assistance Section, Idaho Public Utilities Commission**

**P O Box 83720**

**Boise, Idaho 83720-0074**

**FAX: (208) 334-4045**

**You may also contact our office at ☎ (208) 334-0369 Or ☎ 1-800-432-0369**

### STEP 1

**Before submitting a complaint to the IPUC please visit this link to determine if the commission regulates this service. If the company is regulated please contact it as a first step. If you have already contacted your utility and are not satisfied with its response, please fill out this form to be submitted electronically.**

### STEP 2

**Use the tab key not the enter key to navigate this form**

Inquiry/Complaint Form	
Your name	Gerald Corvino
Address	11865 West Tustin lane
City	Kuna
State	ID
ZIP	83634
Home Telephone	208-362-5215
Work/Contact Telephone	619-549-1402
Email Address	gcorvino@yahoo.com
Does this inquiry/complaint concern your home or business?	<input checked="" type="radio"/> Home <input type="radio"/> Business <input type="radio"/> Both
Business Name	
Business Address	
Business Phone	
Name of Utility Company	Arbor Ridge Water Account, LLC
If Telephone/Local Provider	

**Have you contacted the utility  
regarding your concern?**

☒ Yes ☐ No

### **STEP 3**

***Below, please describe your question or complaint briefly.***

We are being billed by Arbor Ridge Water Account, LLC (which is not a registered corporation in Idaho) for water service in the Arrowrock Ranch Subdivision at a rate of \$100 per month which is three to four times the prevailing rate of other community water service providers in the area. We can find no record of the utility filing on the IPUC website. The CC&Rs dated October 18, 2005 indicate the water system is owned by the Arrowrock Ranch Subdivision Homeowners Association and not the subject utility company. We contested the billing per IPUC procedures on March 12 and have had no reply to our letter.

### **STEP 4**

***Please mail or fax (208)334-4045 copies of any documentation, such as bills, that our office would need to provide a response. (Note: If your complaint involves slamming or a billing dispute, we will be unable to process your complaint without a copy of the bill in dispute.)***

**Submit Complaint**

**Intermountain Sewer & Water, Inc.**  
**Arbor Ridge, LLC**

---

**Attn: Arrowrock Ranch Homeowners**

**Date: May 2, 2007**

**RE: Sewer & Water Billing Changes**

After meeting with many of you on April 19, 2007 at the Arrowrock Ranch Annual Homeowners Association Meeting, it became clear that the claims of misrepresentation were broader than we first thought.

Intermountain Sewer & Water, Inc. (Sewer service provider) and Arbor Ridge, LLC (Water service provider) are currently taking steps with the marketing departments and real estate companies to make sure that everyone is fully informed of the cost of sewer and water service in Arrowrock Ranch Subdivision.

We understand your frustration and apologize that sewer and water fees were not made abundantly clear during the early sales of homes and we want to minimize the long term impact.

We have decided upon the following changes to billing:

- Sewer will stay at the current rate of \$100.00 per month. This price is comparable with the two other identical systems in town as described below.
  - **Iron Horse Subdivision**  
Location: Black Cat/Columbia
  - This subdivision has the same wastewater treatment system as Arrowrock Ranch Subdivision. The residents currently pay their sewer through their HOA dues which are \$1300/year (108/mo.). The entire amount of their HOA dues goes to the wastewater treatment system. (They are not run by a HOA management company, and only have 2 acres of common area that is maintained by the homeowners.)
  - **Calloway Ranch Subdivision**  
Location: Beacon Light/Park – (Eagle)
  - This subdivision has the same wastewater treatment system as Arrowrock Ranch Subdivision. The system has been partially turned over to the HOA. Currently the homeowners pay for the power and water bill for the sewer system, and the developer pays for the maintenance of the system. The system will be turned over to the HOA fully this year and the cost of the system will come from the HOA dues. Currently the cost to maintain the wastewater treatment system and common area is approx. \$1740/year

(\$145/mo per homeowner). (They are not run by and HOA Management Company and their common area is only 50x1350 sqft.)

- Water will be reduced to \$50.00 per month (Retroactive from January 2007), and continue at the \$50.00 per month rate until such time that we become certified with the PUC. At that time, it will become a metered service. We anticipate that through metered service your water bill will potentially likely go back up.
- As well, we have removed all assessed late fees charges, with the understanding that you will need to bring your accounts current by May 23<sup>rd</sup> to avoid any further late fees/termination of services.

Your billing reflects the above changes. We do not feel that a meeting is necessary, so there will be no meeting at the grade school.

If you feel that you have legal recourse with your real estate companies, then that is your decision that will not affect the continuation of your billing for services provided. We hope that we have addressed your issues and provided a compromise to the unfortunate situation.

Sincerely,

Greg Johnson

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P.O. Box 344 Meridian, ID Office: (208) 888-9946 EXT 104 Fax: (208) 888-9947

## Jerry Corvino

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**From:** Chris Hecht [Chris.Hecht@puc.idaho.gov]  
**Sent:** Monday, March 26, 2007 9:30 AM  
**To:** Jerry Corvino  
**Subject:** RE: Arbor Ridge LLC

Jerry,

Arbor Ridge **has not** applied to IPUC even though we have requested that they do so and that is why they operate the way they do. Once they apply the rates would be subject to verification prior to the IPUC approving the rates. If application is made the customers would be able to comment prior to approval.

Chris Hecht,  
Utility Compliance Investigator  
Idaho Public Utilities Commission  
208 334-0300  
800 432-0369

-----Original Message-----

From: Jerry Corvino [mailto:gcovino@yahoo.com]  
Sent: Friday, March 23, 2007 4:59 PM  
To: Chris Hecht  
Subject: RE: Arbor Ridge LLC

Chris,

First, thanks for your very fast response. I am very impressed with how quickly you got back to me. We most recently lived in California so you can guess what my expectations were for a response.

I knew that Arbor Ridge was a registered Idaho corporation but my first bill asked for payment to "Arbor Ridge Water Account, LLC." The second bill asked for payment to "Arbor Ridge Water Account." Both payments are to be mailed to the same address as Intermountain Water and Sewer, Inc. It appeared they were the same company doing business under a fictitious business name that had not been registered with the Secretary of State since neither bill asked for payment to Arbor Ridge, LLC.

Just so I understand your note, Arbor Ridge is only regulated by the IPUC because they applied to be regulated and are free to operate in any manner they see fit until they are granted a certificate. If they never had applied they would be free to operate outside the IPUC rules and regulations for small water companies. Is that correct?

Also, will the homeowners in the subdivision be given the opportunity to participate in the process?

Thanks again,

Jerry Corvino

-----Original Message-----

From: Chris Hecht [mailto:Chris.Hecht@puc.idaho.gov]  
Sent: Friday, March 23, 2007 2:48 PM  
To: gcorvino@yahoo.com  
Subject: Arbor Ridge LLC

Mr.. Corvino,

I have attached below the registration information for Arbor Ridge, LLC. As you can see it is registered with Idaho's Secretary of State office. And while they must be permitted by the Idaho Department of Environmental Quality to operate as a water company they have not yet processed an application to obtain a Certificate of Public Convenience and Necessity from the Idaho Public Utilities Commission. Until they file the application and complete the required paperwork, and are granted a certificate from IPUC their rates do not fall under our jurisdiction.

If I can help you further please let me know.

Thanks,

Chris Hecht,  
Utility Compliance Investigator  
Idaho Public Utilities Commission  
208 334-0300  
800 432-0369

ARBOR RIDGE, LLC  
PO BOX 344  
MERIDIAN, ID 83680

Type of Business: LIMITED LIABILITY COMPANY  
Status: EXISTING, ANREPT SENT 02 Oct 2006  
State of Origin: IDAHO  
Date of Origination/Authorization: 06 Dec 2000  
Current Registered Agent: GREG JOHNSON  
660 E FRANKLIN STE 240  
MERIDIAN, ID 83642

File Number: W13641  
Date of Last Annual Report: 31 Oct 2006

Michael T. Spink, ISB No. 2201  
 Lauren Maiers Reynoldson, ISB No. 5909  
 T. Hethe Clark, ISB No. 7265  
 SPINK BUTLER, LLP  
 251 E. Front Street, Suite 200  
 P. O. Box 639  
 Boise, Idaho 83701  
 Telephone: 208/388-1000  
 Facsimile: 208/388-1001  
 #21793.8

Attorneys for Defendants Greg Johnson;  
 Arrowrock Ranch Association, Inc.; Arbor Ridge, LLC;  
 Intermountain Sewer & Water, Corp.; and  
 Powder River Development, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Guy and Lori Bourgeau, Jeff and Jamee )  
 King, Jerry and Eileen Corvino, Larry and )  
 Diane Grable, Mark and Amber Abercrombie, )  
 Rick and Debbie Whitten, Sheila Johnson and )  
 Jason Jones, Joshua and Tina Bartels, Jason )  
 and Kassy Reeder, Neal and Brenda Koyle, )  
 Cris and Susan Stiver, Deida and Fernando )  
 Diaz, Michael and Linda Wiedenfeld, and )  
 Tony and Vicki Davidson, )

Plaintiffs, )

vs. )

Greg Johnson, individually and as Director of )  
 Arrowrock Ranch Association, Inc.; )  
 Arrowrock Ranch Association, Inc.; Arbor )  
 Ridge, LLC; Intermountain Sewer and Water, )  
 Inc.; Powder River Development, Inc.; and )  
 Douglas Ferguson, individually and as agent )  
 for Ferguson, Beal & Associates, and )  
 Ferguson, Beal & Association, )

Defendants. )

Case No. CV OC 0708918

AFFIDAVIT OF  
 TIMOTHY L. FARRELL IN  
 OPPOSITION TO PLAINTIFFS'  
 MOTION FOR PARTIAL  
 SUMMARY JUDGMENT

STATE OF IDAHO    )  
                              ) ss.  
County of Ada        )

I, Timothy L. Farrell, P.E., being first duly sworn on oath, depose and, upon personal knowledge, state as follows:

1. I am a professional engineer registered with the State of Idaho (No. 8574). I am also certified by the State of Idaho as a Class IV Certified Water Operator (No. DWD4-12353).

2. I am a Principal Engineer with SPF Water Engineering, LLC, one of the preeminent water-engineering firms in the State of Idaho.

3. I have many years of experience in areas including: public water system design and permitting; water rate development and analysis; capital improvement planning; water system operations; source water treatment; water system master planning; hydraulic modeling; water resource and groundwater evaluations; and water quality investigations. I am very familiar with and have helped numerous developers receive all approvals necessary for the development and permitting of various water systems.

4. Approval for all public water systems, including design, construction, and development in the State of Idaho must comply with IDAPA 58.01.08, Idaho Rules for Public Drinking Water Systems. Idaho Department of Environmental Quality (DEQ) is reviewing agency for purposes of implementation of the above rules.

5. I was the engineer of record for the water system for Arrowrock Ranch Subdivision (the "Subdivision") throughout the DEQ-approval process. Accordingly, I have personal knowledge of the relevant facts of this matter.

6. The water system for the Subdivision has received all necessary DEQ approvals, including approval of the water system's Demonstration of Financial, Technical, and Managerial



Capacity ("TFM Manual"). The TFM Manual for the water system associated with the Subdivision was submitted in October 2005 and received DEQ approval on July 19, 2007. A true and accurate copy of the approved TFM Manual is attached as **Exhibit A**.

7. With regard to the water system serving the Subdivision, DEQ's approval of the water system includes approval of a plan, described in the TFM Manual and in the Amended and Restated Master Declaration of Covenants, Conditions and Restrictions for Arrowrock Ranch Subdivision, dated October 18, 2005 ("Restrictive Covenants") to transfer the water system to either the Subdivision's homeowners' association or another entity after 90% of lots within the Subdivision have requested water service. This "change of ownership" description is included in the TFM Manual on pages 3-5 and in Paragraph 9.12 of the Restrictive Covenants.

8. DEQ approved the TFM Manual, which includes provisions designating ultimate control and ownership of this public water system. It is common for new public water systems to be run by the developer and transferred to a DEQ-approved entity on or before full build-out of the Subdivision.

9. The timing requirements of the transfer were approved by DEQ in the TFM Manual. If transferred to an entity other than a non-profit association, the PUC may then have regulation authority in conjunction with DEQ.

10. After approval by DEQ, I engaged in discussions with both DEQ and the PUC and let them know that the water system would be transferred according to the provisions of the TFM Manual.

11. DEQ and PUC officials accepted this resolution, which allows this developer to retain control over the private water system for a limited time during the build-out of their projects. This also allows a developer to charge for water service, though only insofar as the

charges are limited to actual operation and maintenance expenses, plus a small amount for emergency reserves. In other words, the system is to be operated effectively on a not-for-profit basis.

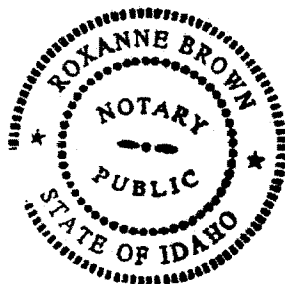
12. Once the "trigger point" of 90% of lots requesting service is reached, then the approved TFM Manual designates that the water system may be transferred to another entity (including to a PUC-certified entity), but only upon receipt of written authorization for the transfer from DEQ.

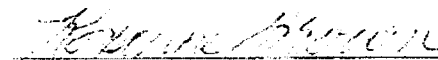
Further this affiant sayeth naught.

DATED this 22<sup>nd</sup> day of January, 2008.

  
TIMOTHY L. FARRELL

SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of January, 2008.



  
Notary Public for Idaho  
Residing at: 2200 N. 10th St.  
My Commission Expires: 5/11/2011

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of January, 2008, I caused a true and correct copy of the above AFFIDAVIT OF TIMOTHY L. FARRELL IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT to be served upon the following individuals in the manner indicated below:

Eric R. Clark, Esq.  
The Real Estate Law Group  
1880 S. Cobalt Point Way, Suite 200  
P. O. Box 2504  
Eagle, ID 83616  
Facsimile: 208/939-7136

☒ U.S. Mail  
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☐ Federal Express  
☐ Via Facsimile  
☐ Via Process Server

J. Justin May  
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1419 W. Washington Street  
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☐ Via Facsimile  
☐ Via Process Server

  
\_\_\_\_\_  
T. Hethe Clark

Michael T. Spink, ISB No. 2201  
 Lauren Maiers Reynoldson, ISB No. 5909  
 T. Hethe Clark, ISB No. 7265  
 SPINK BUTLER, LLP  
 251 E. Front Street, Suite 200  
 P. O. Box 639  
 Boise, Idaho 83701  
 Telephone: 208/388-1000  
 Facsimile: 208/388-1001  
 #21793.8

Attorneys for Defendants Greg Johnson;  
 Arrowrock Ranch Association, Inc.; Arbor Ridge, LLC;  
 Intermountain Sewer & Water, Corp.; and  
 Powder River Development, Inc.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Guy and Lori Bourgeau, Jeff and Jamee )  
 King, Jerry and Eileen Corvino, Larry and )  
 Diane Grable, Mark and Amber Abercrombie, )  
 Rick and Debbie Whitten, Sheila Johnson and )  
 Jason Jones, Joshua and Tina Bartels, Jason )  
 and Kassy Reeder, Neal and Brenda Koyle, )  
 Cris and Susan Stiver, Deida and Fernando )  
 Diaz, Michael and Linda Wiedenfeld, and )  
 Tony and Vicki Davidson, )

Plaintiffs, )

vs. )

Greg Johnson, individually and as Director of )  
 Arrowrock Ranch Association, Inc.; )  
 Arrowrock Ranch Association, Inc.; Arbor )  
 Ridge, LLC; Intermountain Sewer and Water, )  
 Inc.; Powder River Development, Inc.; and )  
 Douglas Ferguson, individually and as agent )  
 for Ferguson, Beal & Associates, and )  
 Ferguson, Beal & Association, )

Defendants. )

Case No. CV OC 0708918

AFFIDAVIT OF ALDEN HOLM  
 IN OPPOSITION TO PLAINTIFFS'  
 MOTION FOR PARTIAL  
 SUMMARY JUDGMENT

STATE OF IDAHO     )  
                                      ) ss.  
County of Ada         )

I, Alden Holm, CPA, being first duly sworn on oath, depose and, upon personal knowledge, state as follows:

1. I am a certified public accountant registered with the State of Idaho. I am also President of Alden Holm & Co., Inc., an Idaho corporation located in the Treasure Valley that provides tax, business development, and planning services for small businesses and high net-worth individuals.

2. I have over ten years of tax consulting, business-consulting and public utility auditing experience, including experience as a Principle Auditor for the State of Idaho.

3. My past experience as a State of Idaho employee included work for the Idaho Public Utilities Commission (PUC). As a result, I am very familiar with the practices, policies, and procedures of the PUC.

4. Thanks, in part, to this familiarity, one of the services that I am able to provide to my clients is the ability to advise and lead clients through the PUC-certification process, including certification as a small water company.

5. I am presently working with Arbor Ridge, LLC ("Arbor Ridge"), the developer of Arrowrock Ranch Subdivision (the "Subdivision"), in order to achieve PUC certification for the water system serving the Subdivision. This includes finalizing each of the documents, including results of ongoing monitoring, necessary to PUC-certification application. Based upon my review of these documents, I anticipate filing (on behalf of Arbor Ridge or its successor-in-interest with regard to the Subdivision's water system) for PUC-certification for the water

system serving the Subdivision by approximately late spring 2008. I have personal knowledge of the relevant facts of this matter.

6. Based upon materials I have reviewed, I anticipate that the monthly rate that will be proposed to PUC for water service will be approximately in the range of Fifty Dollars (\$50.00) to One Hundred Dollars (\$100.00) per month.

7. The rate for water service that is presently being charged by Arbor Ridge to the residents of the Subdivision is Fifty Dollars (\$50.00) per month. It is my understanding that the current rates cover some, but not all, of the operation and maintenance costs directly relating to the water system.

8. In my experience, the PUC has never denied an owner of a water system the ability to charge a reasonable rate prior to certification. This is due, in part, to the fact that certification of small water systems is a long process. It may take as long as nine (9) months from the time of application for certification to take place; this is in addition to the significant pre-application work, including extensive and time-consuming monitoring (presently being completed by the developer of the Subdivision and water system), that must also be completed.

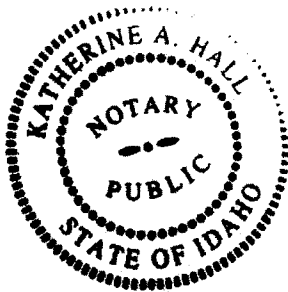
9. I am aware that employees of Arbor Ridge have been in discussions with the PUC related to the Subdivision's water system and have alerted the PUC not only to the water system's existence, but that the Arbor Ridge is currently charging rates to recover ongoing operation and maintenance costs directly related to the water system. I am aware of no objection that has been raised by the PUC relating to this water system.

Further this affiant sayeth naught.

DATED this 22<sup>nd</sup> day of January, 2008.

Alden Holm  
ALDEN HOLM

SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of January, 2008.



Katherine A. Hall  
Notary Public for Idaho  
Residing at: Meridian  
My Commission Expires: 10/5/08

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of January, 2008, I caused a true and correct copy of the above AFFIDAVIT OF ALDEN HOLM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT to be served upon the following individuals in the manner indicated below:

Eric R. Clark, Esq.  
The Real Estate Law Group  
1880 S. Cobalt Point Way, Suite 200  
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☐ Via Facsimile  
☐ Via Process Server

T. Hethe Clark  
T. Hethe Clark

NO. \_\_\_\_\_  
A.M. 8:53 P.M. \_\_\_\_\_

MAR 10 2008

J. DAVID MARRERO, Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO

STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

GUY and LORI BOURGEOU; JEFF and JAMEE KING; JERRY AND EILEEN CORVINO; LARRY and DIANE GRABLE; MARK and AMBER ABERCROMBIE; RICK and DEBBIE WHITTEN; SHEILA JOHNSON and JASON JONES; JOSHUA and TINA BARTELS; JASON and KASSY REEDER; NEAL and BRENDA KOYLE; CRIS and SUSAN STIVER, DEIDA and FERNANDO DIAZ, MICHAEL and LINDA WIEDENFELD, and TONY and VICKI DAVIDSON,

Plaintiffs,

vs.

GREG JOHNSON; individually and as Director of Arrowrock Ranch Association, Inc.; ARROWROCK RANCH ASSOCIATION, INC.; ARBOR RIDGE, LLC; INTERMOUNTAIN SEWER AND WATER, INC.; POWDER RIVER DEVELOPMENT, INC.; and DOUGLAS FERGUSON, individually and as agent for Ferguson, Beal & Associates; and FERGESON, BEAL & ASSOCIATES,

Defendants.

Case No. CVOC 0708918

MEMORANDUM DECISION ON:  
(1) PLAINTIFFS' OBJECTIONS TO AFFIDAVITS FILED BY JOHNSON DEFENDANTS (FARRELL, NEIFFENEGGER, CLARK, HOLM)  
(2) PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON COUNTS ONE AND TWENTY-NINE  
(3) DEFENDANTS' COUNTER-MOTION FOR SUMMARY JUDGMENT ON COUNT ONE

## APPEARANCES

For Plaintiffs: Eric R. Clark of The Real Estate Group for the Plaintiffs Guy and Lori Bourgeau, Jeff and Jamee King, Jerry and Eileen Corvino, Larry and Diane Grable, Mark and Amber Abercrombie, Rick and Debbie Whitten, Sheila Johnson and Jason Jones, Joshua and Tina Bartels, Jason and Kassy Reeder,



1 Neal and Brenda Koyle, Cris and Susan Stiver, Deida  
2 and Fernando Diaz, Michael and Linda Wiedenfeld,  
3 and Tony and Vicki Davidson.

4 For Defendants: Michael T. Spink and T. Hethe Clark of Spink Butler,  
5 LLP for the Defendants Greg Johnson, Arrowrock  
6 Ranch Association, Inc., Arbor Ridge, LLC,  
7 Intermountain Sewer & Water, Corp., and Powder  
8 River Development, Inc.

9 J. Justin May of May, Sudweeks & Browning for  
10 Defendants Douglas Ferguson and Ferguson Beal &  
11 Assoc.

### 12 PROCEEDINGS

13 This matter came before the Court on February 5, 2008 upon (1) Plaintiffs'  
14 Objections to Affidavits Filed by Johnson Defendants (Farrell, Neiffenegger, Clark,  
15 Holm), (2) Plaintiffs' Motion for Partial Summary Judgment on Counts One and Twenty-  
16 Nine, and (3) Defendants' Counter Motion for Summary Judgment on Count One.  
17 Following oral argument by counsel, the Court took the matter under advisement.

### 18 BACKGROUND

19 This litigation arises out of the development of Arrowrock Ranch Subdivision.  
20 The Plaintiffs purchased property within the subdivision and their suit is against various  
21 entities associated with the subdivision that are controlled by the Defendant, Greg  
22 Johnson, who has also been sued individually. The Plaintiffs have also made claims  
23 against the Defendant Ferguson, Beal & Associates, a real estate agency, as well as  
24 the Defendant Douglas Ferguson, a broker for that agency.

25 The Plaintiffs filed their Second Amended Complaint on November 1, 2007.  
26 Their complaint alleges breach of contract, fraud, breach of fiduciary duty, violations of  
the Idaho Racketeering Act, Idaho Consumer Protection Act (ICPA), breach of the

1 CCRs, and operating a water corporation without a permit. At the heart of these claims  
2 is the Plaintiffs' contention that the Defendants represented to the Plaintiffs that their  
3 association fees, water and sewage fees would be billed at a flat rate of \$1,200 a year.  
4 The CCRs for the subdivision prohibit individual water systems or sewage disposal  
5 systems. Upon the purchase of their homes, the Plaintiffs were charged \$4,000 for a  
6 sewer "hookup" and \$2,500 for a water connection to the Defendants' systems. After  
7 purchasing their homes, the Plaintiffs were billed by two of the Defendant-entities for a  
8 total of \$200 a month for their water and sewage alone.

9 The Defendants filed their Amended Answer on November 20, 2007, claiming  
10 that the Amended Complaint fails to state a claim upon which relief can be granted, the  
11 doctrines of res judicata and collateral estoppel preclude the claims, the Plaintiffs have  
12 not been damaged, and that the Plaintiffs' claims are barred by the equitable doctrines  
13 of estoppel and unclean hands.  
14

15 The Plaintiffs filed the present Motion for Partial Summary Judgment on Counts  
16 One and Twenty-Nine on December 14, 2007. The Defendants filed their Counter  
17 Motion for Partial Summary Judgment on Count One on December 18, 2007. The  
18 Plaintiffs filed objections to certain affidavits submitted by the Defendants on January  
19 29, 2008.  
20

### 21 LEGAL STANDARD

22 Idaho Rule of Civil Procedure 56(c) states that summary judgment shall be  
23 rendered "if the pleadings, depositions, and admissions on file, together with the  
24 affidavits, if any, show that there is no genuine issue as to any material fact and that the  
25 moving party is entitled to a judgment as a matter of law." Summary judgment may be  
26

rendered upon an entire case or discrete claims or issues. See I.R.C.P. 56(d).

It is well settled that a mere scintilla of evidence or only a slight doubt as to the facts is not sufficient to withstand summary judgment. *Corbridge v. Clark Equipment Co.*, 112 Idaho 85, 87, 730 P.2d 1005, 1007 (1986). The moving party is entitled to summary judgment when the non-moving party fails to make a showing sufficient to establish the existence of an element essential to their case on which they bear the burden of proof at trial. *Ponds v. Denison*, 120 Idaho 425, 426, 816 P.2d 982, 983 (1991). A party who resists summary judgment has the responsibility to place in the record before the court the existence of controverted material facts that require resolution at trial. *Sparks v. St. Luke's Regional Medical Center, Ltd.*, 115 Idaho 505, 508, 768 P.2d 768, 771 (1988). A party may not rely on his pleadings nor merely assert the existence of facts which might or will support his legal theory. *Id.* A party must establish the existence of those facts by deposition, affidavit, or otherwise. *Id.*

Additionally, the trial court must construe the record liberally in favor of the non-moving party and draw all reasonable factual inferences in favor of such party. *Bear Lake West Homeowner's Assoc. v. Bear Lake County*, 118 Idaho 343, 346, 796 P.2d 1016, 1019 (1990). Furthermore, all doubts are to be resolved against the moving party and the motion must be denied if the evidence is such that conflicting inferences may be drawn therefrom, and if reasonable people might reach different conclusions. *Parker v. Kokot*, 117 Idaho 963, 793 P.2d 195 (1990).

## DISCUSSION

### 1. Plaintiffs' Objection to Affidavits

The Plaintiffs raise several objections to affidavits submitted by the Defendants

1 in opposition to their Motion for Summary Judgment. The Defendants submitted  
2 affidavits by Alden Holm, a CPA and Arbor Ridge employee, T. Hethe Clark, the  
3 Defendants' attorney, Trent Neiffenegger, an employee of Arbor Ridge, and Timothy  
4 Farrell, the engineer that designed the water utility for the Arrowrock subdivision. The  
5 Plaintiffs have objected that these affidavits contain inadmissible hearsay, that the  
6 statements lack a basis for expert opinion testimony, contain legal opinions, or are  
7 without relevance.

8 Mr. Holm's affidavit identifies his experience in tax consultation, as well as his  
9 former background as an ex-employee of the Idaho Public Utilities Commission (PUC).  
10 Paragraphs 8 and 9 describe Mr. Holm's knowledge of the PUC process and his  
11 awareness of what steps that unnamed Arbor Ridge employees have taken with the  
12 PUC in the process of receiving certification. To the extent that Paragraph 8 draws on  
13 Mr. Holm's prior experience, these statements would be admissible only if Mr. Holm  
14 was a qualified expert in PUC certification, which has not been demonstrated to the  
15 Court. Paragraph 9 contains hearsay that purports to stand for the truth of the matter  
16 asserted. The PUC employees or Arbor Ridge employees that have been involved in  
17 this process may submit their own testimony as to what discussions have or have not  
18 occurred in regard to the Arrowrock Ranch water system. Paragraphs 8 and 9 of the  
19 Holm affidavit will be stricken.  
20

21 An affidavit of Defendants' counsel, Mr. Clark, was submitted with attached  
22 emails between a former Arbor Ridge employee and an employee for the PUC. These  
23 emails are hearsay and will be stricken.  
24

25 The affidavit of Trent Neiffenegger was filed by the Defendants. Mr.  
26

1 Neiffenegger is a current Arbor Ridge employee. Paragraph 4 was objected to by the  
2 Plaintiffs as containing legal opinions on the meaning of documents and hearsay  
3 statements of what the developer intended. The Court agrees that it is unclear in the  
4 affidavit how Paragraph 4 is based on the affiant's personal knowledge and that the  
5 content of the plat itself is best proven by the admittance of the document itself. Thus,  
6 Paragraph 4 of Mr. Neiffenegger's Affidavit will be stricken.

7 Timothy Farrell's affidavit was also submitted by the Defendants. Mr. Farrell is  
8 the principal engineer in charge of the Arrowrock Ranch's water system. Mr. Farrell  
9 describes his experience, which the Court will find does not qualify him under Idaho  
10 Rule of Evidence 702 as an expert regarding the PUC's certification process. As  
11 approval under the Department of Environmental Quality is not at issue, his expertise in  
12 this area is not relevant. As such, Paragraphs 1 through 9 and Paragraph 12 will be  
13 stricken. Mr. Farrell's statements regarding what the DEQ or PUC accepted, contained  
14 in Paragraph 11, is hearsay, and so will also be stricken.

16 **2. Count One: Plaintiffs' Motion for Summary Judgment and the**  
17 **Defendants' Counter-Motion for Summary Judgment.**

18 The Plaintiffs have asked this Court to award summary judgment in their favor on  
19 Count One, which alleges a breach of contract. The Plaintiffs' theory is that the  
20 reference to the CC&Rs in the purchase agreements incorporates the duties expressed  
21 in the restrictive covenants as part of the purchase agreement. Hence, a breach of the  
22 covenants would be an incorporated breach of the contract. However, the Defendants  
23 contend that there is a lack of contractual privity between the Defendants and the  
24 Plaintiffs who purchased property from a seller other than the Defendants. As to the  
25 Plaintiffs who purchased directly from the Defendants, the Defendants state that at  
26

1 most the purchase agreements incorporate the notice requirements for CC&Rs, but do  
2 not incorporate the covenants themselves as contractual burdens on the parties.

3 While there are similarities between contract law and law regarding restrictive  
4 covenants, a claim to enforce restrictive covenants is not one that sounds in contract  
5 law. The fundamental principles of mutuality and contractual privity are absent in such  
6 restrictive covenant claims. See 34 Am. Jur. 3d *Proof of Facts* 339 § 2. Instead, privity  
7 of estate is required, but that privity of estate is not a substitute for a contract. Rather,  
8 the claim is based in the CC&R duties that may run with the land apart from any  
9 contractual document. *Id.*

10 The distinction between a breach of contract claim and a claim to enforce a  
11 restrictive covenant is not one that can be alleviated by changing a caption or label. If  
12 that were the case, such a distinction could be quickly alleviated by the liberal  
13 construction of pleadings permitted in Rule 8(f). Rather, the distinction goes to the  
14 heart of the claim and has profound implications on the appropriate remedy. Idaho  
15 courts have not addressed whether more than injunctive relief is appropriate for claims  
16 to enforce covenants, but even if such relief was appropriate, it would not necessarily  
17 be a calculation based on contract law principles. See 34 Am. Jur. 3d *Proof of Facts*  
18 339 §§ 10–12. Furthermore, the Second Amended Complaint's pleadings on Count  
19 One and the briefs filed in support of the Plaintiffs' motion for summary judgment are all  
20 based on contractual law and not Idaho law regarding restrictive covenants. The  
21 Plaintiffs' moving papers extensively detail their argument that the contracts for the sale  
22 of property incorporated by reference the CC&Rs and by that reference, the CC&Rs  
23 become contractual obligations between the parties. This argument sounds exclusively  
24  
25  
26

1 in contractual law rather than as a claim to enforce a restrictive covenant. Additionally,  
2 the remedy sought in the prayer for relief does not include one appropriately tied to a  
3 claim to enforce a restrictive covenant.

4 As to the Plaintiffs that do have contractual privity with the Defendants because  
5 they purchased the land directly from the Defendants, there is still a problem with the  
6 Plaintiffs' allegation that the CC&Rs were incorporated. The relevant provision of the  
7 Purchase Agreements read as follows: "Buyer acknowledges receipt of a copy of the  
8 Master Declaration of Covenants, Condition, Restriction, and Easements (CC&R's) . . .  
9 and agrees to abide by said documents" (emphasis added). The Court has not found  
10 any basis in Idaho law that suggests that such contractual language stating that a *buyer*  
11 acknowledges the receipt of CC&Rs and agrees to abide by them could reasonably be  
12 interpreted as creating additional duties for the *seller*. The Plaintiffs cited to *Shawver v.*  
13 *Huckleberry Estates, LLC* in support of their argument that such a reference was an  
14 incorporation. 140 Idaho 354, 93 P.3d 685 (2004). However, that case concerned a  
15 buyer who purchased land only to find that the seller-subdivision later amended the  
16 CC&Rs to increase the square footage requirement. *Id.* There was a question as to  
17 whether the amendment was a breach of the purchase and sale agreement, and  
18 another question as to whether the amendments to the CC&Rs were applicable to the  
19 buyer. The Court found that the amendment was not a breach and that the amended  
20 CC&Rs applied to the buyer's land because the buyers were notified through the  
21 purchase and sale agreement that it was their duty to obtain a copy and review the  
22 applicable CC&Rs. *Id.* at 364-365, 93 P.3d at 695-696.

25 While on one hand, the *Shawver* court acknowledged the incorporation of the  
26

1 CC&R amendment provisions into the purchase agreement, CC&R references in  
2 contracts for the purchase of real estate are generally included to provide the buyer  
3 notice of the buyer's duty to review the CC&Rs. The court in *Shawver* did not extend  
4 the use of such provisions into creating additional contractual duties for the seller, and  
5 there is no basis to do so in this case when the plain language of the contract clearly  
6 indicates that the reference was meant for the protection of the seller, not the buyer.  
7 Any other interpretation of that provision does not adequately give the seller notice that  
8 the seller may be additionally bound by provisions contained outside the contractual  
9 language itself.

10 For all of these reasons, the Plaintiffs have not pled a claim that this Court can  
11 award summary judgment upon. Rather, the Defendants have demonstrated that even  
12 construing all contested facts in favor of the Plaintiffs, the Plaintiffs still cannot  
13 successfully prevail on the breach of contract claim that they have pled. Accordingly,  
14 the Court will award the Defendants summary judgment on Count One.

15  
16 **3. Count Twenty-Nine: Plaintiffs' Motion for Summary Judgment**

17 Count Twenty-Nine of the Plaintiffs' Second Amended Complaint alleges that the  
18 Defendants are operating a water corporation without a permit. The Defendants admit  
19 to operating what is described in Idaho Code § 61-125 as a "water corporation." The  
20 Defendants also admit that they have not yet applied for a certificate of convenience  
21 and necessity, although for some time they have stated that they plan to make such an  
22 application in the future. A certificate of convenience and necessity is required under  
23 Idaho Code § 61-526, which states in relevant part:

24  
25 No street railroad corporation, gas corporation, electrical corporation,  
26 telephone corporation or water corporation, shall henceforth begin the



1 construction of a street railroad, or of a line, plant, or system or of any  
2 extension of such street railroad, or line, plant, or system, without having  
3 first obtained from the commission a certificate that the present or future  
4 public convenience and necessity require or will require such construction

5 I.C. § 61-526 (emphasis added).

6 The statute goes on to list some exceptions to the interpretation of the provision,  
7 but no party has alleged that any of these exceptions are applicable to the current case,  
8 nor does the Court find any of the exceptions applicable from its own reading of the  
9 statute. Additionally, a review of IDAPA 31.01.01.111 suggests that the reading of the  
10 statute is correct, in that every reference to the utility service is qualified with the term  
11 "proposed." Even further, the regulation requires that the public utility state "the manner  
12 in which the applicant proposes to finance new utility service construction, the time  
13 when the applicant proposes to begin construction and the time when the applicant  
14 proposes to begin service." IDAPA 31.01.01.111.

15 The Defendants argue that the PUC is aware of the Defendants' water service  
16 charges to the Plaintiffs and that the PUC has condoned such charges during times  
17 when certificate applications are in the process of being completed and approved. In  
18 support of this defense, the Defendants have not produced non-hearsay statements  
19 from any employee from the PUC as verification. Further, the Defendants have not  
20 pointed to any written policy or regulation promulgated by the PUC that describes any  
21 permitted transitional charging, or even construction, of a water corporation before  
22 receiving a certificate of convenience and necessity. From the statute and regulations,  
23 a certificate for necessity and convenience was required before the construction of the  
24 water system at all. The Defendants have gone further than merely commencing  
25  
26


1 construction—the construction has been completed. The Defendants have gone even  
2 further and have begun to charge customers for its services. The Plaintiffs have no way  
3 to know how long—months or even years—that this unregulated assessment might  
4 continue without oversight by the PUC.

5 In order to survive summary judgment, more than a scintilla of evidence must be  
6 put forth in defense of one's argument. Here, the Defendants have failed to provide  
7 such evidence because the affidavits and other evidence submitted was largely based  
8 on hearsay and statements lacking personal knowledge. The Court has stricken those  
9 statements. As such, the Court must grant the Plaintiffs' Motion for summary judgment  
10 on this count as to the issue of whether the statute has been violated. The Court notes,  
11 however, that little to no briefing or oral argument addressed the subject of an  
12 appropriate remedy, whether that relief is an injunction, damages, or some other  
13 remedy. A further hearing, upon the request by either party, will be necessary before  
14 any such relief will be granted by the Court.  
15

### 16 CONCLUSION

17 The Court will GRANT the Plaintiffs' Motion for Summary Judgment on Count  
18 Twenty-Nine and DENY the Plaintiffs' Motion for Summary Judgment on Count One.  
19 The Court will GRANT the Defendants' Counter Motion for Summary Judgment on  
20 Count One.  
21

22 DATED this 10 day of March 2008.

23  
24   
25 MICHAEL McLAUGHLIN  
26 DISTRICT JUDGE

## CERTIFICATE OF MAILING

I hereby certify that on the 10<sup>th</sup> day of March 2008, I mailed (served) a true and correct copy of the within instrument to:

Michael T. Spink  
SPINK BUTLER, LLP  
251 E Front St, Ste 200  
PO Box 639  
Boise, ID 83701  
Fax: 388-1001

Eric R. Clark  
THE REAL ESTATE LAW GROUP  
PO Box 2504  
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J. Justin May  
MAY SUDWEEKS & BROWNING LLP  
1419 W Washington  
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Fax: 342-7278

J. DAVID NAVARRO  
Clerk of the District Court

By:   
Deputy Clerk