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IDAHO PUBLIC  
UTILITIES COMMISSION

November 4, 2005

Ms. Jean Jewell  
Commission Secretary  
Idaho Public Utilities Commission  
P O Box 83720  
Boise ID 83720-0074

RE: **Case No.** UWT-W-05-05

Dear Ms. Jewell:

Enclosed please find an original and seven (7) copies of the COMPLAINT OF JAYO CONSTRUCTION, INC., COMPLAINANT, vs. UNITED WATER IDAHO, INC., RESPONDENT.

I have also enclosed an extra copy to be service-dated and returned to us for our files. Thank you.

Sincerely,

Nina Curtis  
Administrative Assistant

encl.

Molly O'Leary (ISB # 4996)  
Richardson & O'Leary PLLC  
515 North 27<sup>th</sup> Street  
P.O. Box 7218  
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Attorneys for Jayo Construction, Inc.

BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION

JAYO CONSTRUCTION, INC.	)	CASE NO. <u>UWI-W-05-05</u>
Complainant	)	
vs.	)	COMPLAINT
UNITED WATER IDAHO, INC.	)	
<u>Respondent.</u>	)	

COMES NOW, JAYO Construction, Inc., a duly organized Idaho corporation (hereafter "Jayo Construction" or "Complainant") by and through undersigned counsel, and files this FORMAL COMPLAINT against United Water Idaho, Inc. (hereafter, "United Water" or "Respondent") for violation of its Special Facilities Tariff. This Complaint is submitted pursuant to Rule 54 of the Rules of Procedure of the Idaho Public Utilities Commission ("Commission"), IDAPA 31.01.01.054

**COMPLAINT**

1. United Water Idaho, Inc. is a regulated public utility subject to the Idaho Public Utilities Commission's jurisdiction pursuant to Title 61 of the Idaho Code.

2. Jayo Construction, Inc. is a duly organized Idaho corporation in the business of developing residential subdivisions.

3. Doug Jayo is president of Jayo Construction.

4. Jayo Construction is developing an 88-lot subdivision in the north Boise Foothills commonly know as Sommerset Ridge Subdivision No. 4 (“Sommerset Ridge 4”). *See* Complainant’s **Exhibit 1**, attached.

5. In December of 2004, United Water agreed to provide service to Sommerset Ridge 4, pursuant to its “tariffs, rules and regulations as filed with the Idaho Public Utilities Commission.” *See* Complainant’s **Exhibit 2**, attached.

6. In January of 2005, United Water sent Mr. Jayo a “Special Facilities Analysis” for Somerset Ridge 4, identifying the need for additional water storage capacity to serve the new subdivision as well as meet United Water’s “Existing Peak Storage Needs” and existing fire protection needs. *See* Complainant’s **Exhibit 3**, attached.

7. In January of 2005, United Water directed Jayo Construction to obtain an “easement” for a new reservoir (“New Claremont Reservoir”). *See* Complainant’s **Exhibit 4**, attached.

8. The location of said easement was determined by United Water, based on its desire to tie the New Claremont Reservoir into United Water’s Existing Claremont Reservoir. *See* Complainant’s **Exhibit 5**, Affidavit of Doug Jayo, attached.

9. Unlike United Water’s Existing Claremont Reservoir, which sits below the line of sight of adjoining building lots, the location of the proposed New Claremont Reservoir is in full view of said adjoining lots. *Id.*; *see also* Complainant’s **Exhibit 6**, attached.

10. On or about August 1, 2005, Jayo Construction purchased an easement from Claremont Realty Company for siting of the New Claremont Reservoir. The purchase price was \$226,239.00 (“Easement Purchase Price”). *See* **Exhibit 7**, attached.

11. Although characterized as an easement, construction of an above-ground water storage reservoir on the site identified by United Water will consume virtually the entire market

value of the easement property as a Boise Foothills building site due to the size and location of the proposed New Claremont Reservoir. *See* Complainant's **Exhibit 8**, attached.

12. Although characterized as an easement, construction of a water storage reservoir on the site identified by United Water will negatively impact the market value of adjoining building sites due to the proposed water reservoir's prominence in relation to surrounding building lots.

13. Due to the lack of options regarding siting of the proposed New Claremont Reservoir, its size, and its view obstruction in relation to other valuable Boise Foothill building lots, the Easement Purchase Price paid by Jayo Construction was fair, just and reasonable. *See* Complainant's **Exhibit 5**.

14. United Water's "Special Facilities Tariff" requires United Water to "construct and/or install special facilities as may be required from time to time to maintain the rendering of adequate water service to existing customers." *See* Paragraph 76, sheet No. 24, United Water Idaho, Inc.'s Rules and Regulations Governing Water Main Extensions, Complainant's **Exhibit 9**, attached.

15. According to United Water's calculations, it needs 60,100 gallons of storage capacity to meet its Existing Peak Storage Needs in the existing Somerset Ridge and Claremont subdivisions. *See* Complainant's **Exhibit 3**.

16. According to United Water's calculations, it needs 116,000 gallons of storage capacity to meet fire protection requirements for its existing customers. *Id.*

17. According to United Water's calculations, given the 90,000-gallon capacity of the Existing Claremont Reservoir, it needs 86,700 gallons of new storage capacity. *Id.*

18. According to United Water, its new storage needs represent 44% of the water storage capacity of the proposed New Claremont Reservoir. *Id.*

19. Based on its Special Facilities Tariff, United Water offered to share in 44% of the cost of siting and constructing said new reservoir. *Id.*

20. United Water's 44% share of the Easement Purchase Price is \$99,545.16.

21. Paragraph 75 of United Water's Special Facilities Tariff requires United Water to submit an "advance and refund agreement" governing the terms of an Applicant's advances in aid of Special Facilities construction to the Commission for approval. *See* Complainant's **Exhibit 9**.

22. United Water acknowledged its duty to submit said agreement to the Commission for its approval in a letter to Jayo Construction dated January 20, 2005. *See* Complainant's **Exhibit 4**.

23. Based on the chronological list of action items in United Water's January 20<sup>th</sup> letter to Jayo Complainant, it is clear that United Water understood that a Special Facilities Agreement should be submitted to the Commission for its approval early on in the process. *Id.*

24. United Water acknowledged that time was of the essence in "managing the project schedule" for the New Claremont Reservoir Id.

25. Despite United Water's acknowledgement that time was of the essence in managing the project schedule, and in violation of its Special Facilities Tariff, United Water did not even provide Jayo Construction with a *draft* Special Facilities Agreement until August 11, 2005 – seven months after it acknowledged its obligation to do so, and 10 days after Jayo Construction concluded the purchase of the easement United Water directed it to obtain. *See* Complainant's **Exhibit 10**, attached.

#### **PRAYER FOR RELIEF**

26. Based on the foregoing facts, Complainant hereby prays the Commission to determine that the Easement Purchase Price for the New Claremont Reservoir is a fair market price for said easement and that United Water's agreement to pay for 44% of said Easement Purchase Price is fair, just and reasonable.

27. Based on the foregoing facts, Complainant hereby prays the Commission to order United Water to comply with its Special Facilities Tariff:

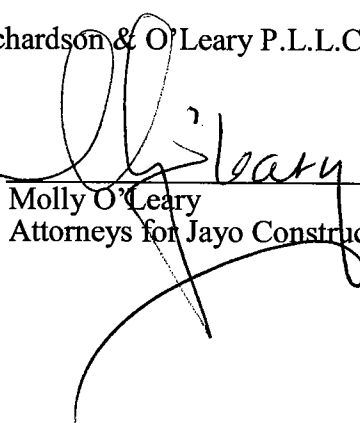
(a) by immediately executing the Special Facilities Agreement attached hereto as **Exhibit 11** and submitting said agreement to the Commission for its immediate review; OR

(b) by independently building a new storage reservoir facility to serve its existing peaking storage needs and fire protection storage needs identified in Complainant's **Exhibit 3**.

27. Complainant further prays for an award of its attorney fees and costs against Respondent United Water.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of November, 2005.

Richardson & O'Leary P.L.L.C.

By  \_\_\_\_\_  
Molly O'Leary  
Attorneys for Jayo Construction, Inc., Complainant

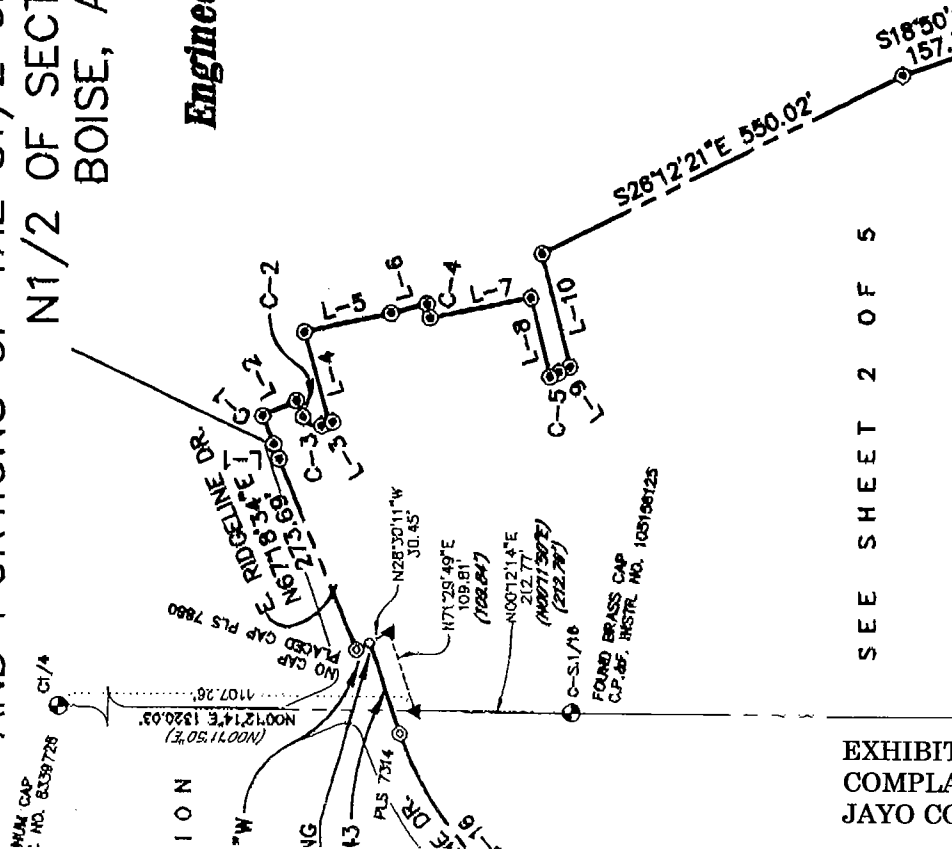
PLAT SHOWING

# SOMERSET RIDGE SUBDIVISION NO. 4

A RESUBDIVISION OF LOT 1, BLOCK 2 OF ORIDA RIDGE NO. 2 SUBDIVISION, AND PORTIONS OF THE S1/2 OF SECTION 35, T.4N., R.2E., B.M., AND THE N1/2 OF SECTION 2, T.3N., R.2E., B.M., BOISE, ADA COUNTY, IDAHO

2005

**Engineering NorthWest, LLC**  
BOISE, IDAHO



UNPLATTED

SEE SHEET 2 OF 5

EXHIBIT 1  
COMPLAINT  
JAYO CONSTRUCTION, INC.

NOTES:

- 1) ALL LOT LINES COMMON TO A PUBLIC RIGHT-OF-WAY LINE HAVE A TEN (10) FOOT WIDE PERMANENT PUBLIC UTILITIES, PROPERTY DRAINAGE, ADA COUNTY HIGHWAY DISTRICT SLOPE EASEMENT, AND BOISE CITY STREET LIGHT EASEMENT.
- 2) EACH SIDE OF INTERIOR LOT LINES HAVE A FIVE (5) FOOT WIDE PUBLIC UTILITIES, AND PROPERTY DRAINAGE EASEMENT, UNLESS DIMENSIONED OTHERWISE.
- 3) IDAHO CODE SECTION 31-3805 CONCERNING IRRIGATION WATER IS INAPPLICABLE AS THERE IS NO IRRIGATION TO THE PROPERTY.
- 4) THE DEVELOPMENT OF THIS PROPERTY SHALL BE IN CONFORMANCE WITH THE DETAILED HILLSIDE PERMIT (CFH99-02012/MOD) AS REQUIRED BY BOISE CITY.
- 5) CONSTRUCTION IN THIS SUBDIVISION SHALL COMPLY WITH CHAPTER 4 OF THE 2000 INTERNATIONAL RESIDENTIAL CODE AND APPENDIX CHAPTER 33 OF THE 1997 UNIFORM BUILDING CODE AND THE BOISE CITY HILLSIDE AND FOOTHILL AREAS DEVELOPMENT ORDINANCE.
- 6) LOTS 22, 35 & 50, BLOCK 4; LOT 33, BLOCK 5; LOT 1, BLOCK 10 AND LOT 1, BLOCK 11 ARE DESIGNATED AS COMMON AREA LOTS TO BE OWNED AND MAINTAINED BY THE SOMERSET HEIGHTS HOMEOWNER'S ASSOCIATION OR FOUNDATION AS SPECIFIED IN THE CONDITIONS, COVENANTS AND RESTRICTIONS OF SOMERSET RIDGE SUBDIVISION NO. 4, AND MAY NOT BE REMOVED WITHOUT THE EXPRESS CONSENT OF BOISE CITY. LOT 1, BLOCK 10 ALSO HAS A MARKET BOISE CITY SANITARY EASEMENT.
- 7) LOT 45, BLOCK 5 IS TO BE CONVEYED TO THE CITY OF BOISE FOR A NEIGHBORHOOD PARK SITE AND OPEN SPACE.
- 8) MINIMUM BUILDING SETBACK LINES SHALL BE IN ACCORDANCE WITH THE BOISE CITY ZONING ORDINANCE AT THE TIME OF ISSUANCE OF THE BUILDING PERMIT OR AS SPECIFICALLY APPROVED BY CUP99-00063 AND CUP99-00065/MOD. ALL LOT, PARCEL AND TRACT SIZES SHALL MEET DIMENSIONAL STANDARDS AS ESTABLISHED IN THE BOISE CITY ZONING ORDINANCE OR AS SPECIFICALLY APPROVED BY CUP99-00063 AND CUP99-00065/MOD. (B.C.C. 9-20-7.C.1)
- 9) ANY RESUBDIVISION OF THIS PLAT SHALL COMPLY WITH THE APPLICABLE ZONING REGULATIONS IN EFFECT AT THE TIME OF RESUBDIVISION.
- 10) SOMERSET HEIGHTS HOMEOWNER'S ASSOCIATION DRAINAGE EASEMENT MAINTENANCE OF ANY DRAINAGE PIPE OR FITCH CROSSING A LOT IS THE RESPONSIBILITY OF THE

To: Molly - 938-7904  
From: Eng. N.W. 376-5000



United Water Idaho Inc.  
8248 W. Victory Road  
P.O. Box 190420  
Boise, ID 83719-0420  
telephone 208 362 7300  
facsimile 208 362 3858

December 8, 2004

Engineering North West LLC  
Mr. Gene Smith  
423 N. Ancestor Place, Suite 180  
Boise, ID 83704

Subject: Sommerset Ridge Subdivision No. 4

Dear Mr. Smith:

The purpose of this letter is to advise you that the above mentioned subject, Sommerset Ridge Subdivision No. 4 is serviceable with United Water Idaho under its present tariffs, rules, and regulations as filed with the Idaho Public Utilities Commission. Fire protection design for single family residential subdivisions is 1500 GPM with a 20 pound residual for a two hour duration.

I trust that this letter will aid you in the speedy process of this project.

Very truly yours,

A handwritten signature in cursive script that reads "John Lee" followed by a stylized flourish or initials.

John Lee  
Construction Coordinator

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DEC - 9 2004



SOMERSET SUBDIVISION  
SPECIAL FACILITIES ANALYSIS

EXISTING CONDITIONS

EXISTING RESERVOIR: CLAREMONT RESERVOIR - 90,000 GALLONS

EXISTING PUMPING FACILITIES:

CRESTLINE BOOSTER STATION

SUNVIEW BOOSTER STATION

EXISTING UWID CUSTOMERS - 162

NEW CONDITIONS

ADDITIONAL CUSTOMERS WITH SOMERSET - 88

ADDITIONAL STORAGE CAPACITY REQUIRED

NO ADDITIONAL PUMPING FACILITIES REQUIRED

STORAGE CAPACITY REQUIREMENTS

EXISTING UWID CLAREMONT CUSTOMERS AVERAGE JULY-AUGUST USAGE = 1,564 GALLONS PER DAY/CUST  
EXISTING SOMERSET CUSTOMERS AVERAGE JULY-AUGUST USAGE = 2,228 GALLONS PER DAY/CUST

MAXIMUM DAY FACTOR =  $62 / 55.4 = 1.1$

EXISTING CLAREMONT CUSTOMERS MAX DAY =  $1,564 \times 1.1 = 1,720$  GALLONS PER CUSTOMER PER DAY

TOTAL MAXIMUM DAY =  $1,720 \times 132 = 227,000$  GALLONS

PEAKING STORAGE =  $227,000 \times 0.20 = 45,400$  GALLONS

EXISTING ORIDA/SOMERSET CUSTOMERS MAX DAY =  $2,228 \times 1.1 = 2,451$  GALLONS PER CUSTOMER PER DAY

TOTAL MAXIMUM DAY =  $2,451 \times 30 = 73,500$  GALLONS

PEAKING STORAGE =  $73,500 \times 0.20 = 14,700$  GALLONS

EXISTING PEAKING STORAGE NEEDS =  $45,400 + 14,700 = 60,100$  GALLONS

NEW SOMERSET CUSTOMERS MAX DAY =  $2,228 \times 1.1 = 2,451$  GALLONS PER CUSTOMER PER DAY

TOTAL MAXIMUM DAY =  $2,451 \times 88 = 215,700$  GALLONS

PEAKING STORAGE =  $215,700 \times 0.20 = 43,100$  GALLONS

NEW PEAKING STORAGE NEEDS = 43,100 GALLONS

TOTAL PEAKING STORAGE NEEDS =  $60,100 + 43,100 = 103,200$  GALLONS

FIRE PROTECTION IS BASED UPON 1,500 GALLONS FOR TWO HOURS = 180,000 GALLONS

TOTAL STORAGE REQUIREMENT =  $103,200 + 180,000 = 283,200$  GALLONS

NEW STORAGE ADDITION =  $283,200 - \text{EXISTING } 90,000 = 193,200$  GALLONS

ASSUMING EACH PARTY PARTICIPATES IN THE FIRE PROTECTION VOLUME PROPORTIONATE TO THE NUMBER OF LOTS:

UWID:  $162 \text{ EXISTING LOTS} / (162 + 88) = 64.8\% \Rightarrow 0.648 \times 180,000 = 116,600$  GALLONS

SOMERSET:  $88 \text{ NEW LOTS} / (162 + 88) = 35.2\% \Rightarrow 0.352 \times 180,000 = 63,400$  GALLONS

TOTAL VOLUME REQUIREMENTS PER PARTY:

UWID: PEAKING - 60,100 GALLONS + FIRE PROTECTION - 116,600 = 176,700 GALLONS

SOMERSET: PEAKING - 43,100 + FIRE PROTECTION - 63,400 GALLONS = 106,500 GALLONS

UWID HAS EXISTING 90,000 GALLONS - REDUCING NEW VOLUME REQUIREMENT TO 86,700 GALLONS

OR,  $86,700 / 193,200 = 0.449$ , OR 44.9% OF NEW VOLUME ADDITION

AS A RESULT:

UWID SHARE = 44.9%

SOMERSET SHARE = 55.1%

EXHIBIT 3  
COMPLAINT  
JAYO CONSTRUCTION, INC.

From Dan Brown

Final - 1/19/2005

January 20, 2005

Mr. Doug Jayo, President  
Jayo Construction, Inc.  
1323 South Five Mile Road  
Boise, ID 83709

SUBJECT: Construction of new Claremont Reservoir

Dear Mr. Jayo:

We appreciated the opportunity to meet with on Friday, January 14, 2005 to discuss the above project. It appears that the project schedule is a very high priority. With that in mind, I have listed below a few of the key tasks that need to be addressed and the responsible party:

- Project cost estimate – UWID
- Adapt Special Facilities Contract to this project – UWID
- Submit executed agreement to IPUC for review and approval - UWID
- Secure easement for new tank – JCI
- Hire structural engineer – JCI
- Provide key design specifications for tank – UWID
- Submit plans & specs to DEQ – JCI
- Submit project to P&Z for approval – JCI
- Submit final construction plans to Building Dept – JCI
- Secure construction bids from contractors – JCI
- Oversee construction – Structural Engineer/UWID
- Fill tank, disinfect and place in-service – UWID

Clearly there are many sub-tasks involved in each of these, but I think this covers most of the major items that need to be completed in order to successfully construct this new facility.

The approved structural engineers are Stapely and JUB Engineers. The approved concrete contractors are McAlvain, Concrete Placing and JC Constructors.

On Friday we discussed your concerns regarding the project schedule and your willingness to proceed with construction while the IPUC performs their review of the proposed agreement, noting the risk that the IPUC does not approve the agreement as proposed. We trust this circumstance will not occur, but it is important to acknowledge the risk up front.

EXHIBIT 4  
COMPLAINT  
JAYO CONSTRUCTION, INC.

[www.unitedwater.com](http://www.unitedwater.com)

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In order to mitigate that risk, it will be very important to closely manage this project. I will contact Gene Smith with Engineering Northwest, to develop a plan for managing the project schedule.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Brown". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Daniel Brown  
Senior Project Engineer

C: Gene Smith, Engineering Northwest  
Scott Rhead, United Water Idaho

Molly O'Leary (ISB # 4996)  
Richardson & O'Leary PLLC  
515 North 27<sup>th</sup> Street  
P.O. Box 7218  
Boise, Idaho 83707  
Telephone: (208) 938-7900  
Fax: (208) 938-7904

Attorneys for Jayo Construction, Inc.

BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION

JAYO CONSTRUCTION, INC. )

Complainant )

vs. )

UNITED WATER IDAHO, INC. )

Respondent. )

CASE NO. \_\_\_\_\_

AFFIDAVIT OF DOUGLAS JAYO

COMES NOW, Douglas Jayo, who being first duly sworn on oath, deposes and says:

1. I am the President of Jayo Construction, Inc., a duly organized Idaho corporation.
2. I have personal knowledge of the facts stated herein.
3. Jayo Construction is developing an 88-lot subdivision in the Boise Foothills commonly known as Sommerset Ridge Subdivision No. 4. ("Sommerset Ridge No. 4").
4. Jayo Construction was advised by United Water of Idaho, Inc. ("United Water") that a new water storage facility would be required in order for United Water to provide service to Sommerset Ridge No. 4.
5. Because United Water does not currently have sufficient capacity to meet its existing peak storage needs, United Water agreed to contribute 44% of the cost of the siting and construction of said new water storage reservoir.
6. Jayo Construction was instructed by United Water to purchase an easement for the siting of said new water storage reservoir.

7. At no time prior to Jayo Construction's purchase of said easement did United Water set a maximum price to be paid for said easement, or in any other way limit its 44% participation in the cost of said easement.

8. United Water determined the location of the new water storage reservoir.

9. The location chosen by United Water is a prime Foothills building site owned by Claremont Realty.

10. Due to the size and location of the new water storage reservoir, virtually the entire market value of the building site selected by United Water will be consumed by the placement of the new water storage reservoir on the lot.

11. United Water's existing water storage reservoir sits below the crest of the hill where United Water wants the new water storage reservoir to be constructed. Thus, unlike the location chosen by United Water for the new water storage reservoir, the existing storage tank does not obstruct the viewscape of adjoining lots. See Exhibit 2, attached.

12. Due to the market value of the building site chosen by United Water for placement of the new water storage reservoir, Claremont Realty was reluctant to sell an easement to Jayo Construction for the new water storage reservoir.

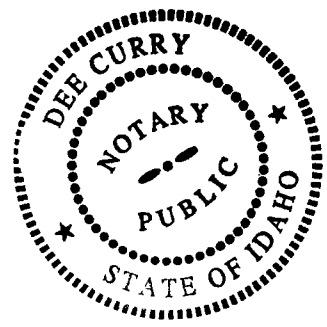
13. Claremont Realty hired Gene Smith, P.E., of Engineering Northwest, LLC to evaluate other possible locations for the new water storage reservoir; however, no other suitable location could be identified due to the hilly terrain of the surrounding foothills and the need to tie the new reservoir to United Water's existing reservoir.

14. For this reason, the fair market value of the easement on the building site chosen by United Water is \$226, 239.00. See Exhibit 1, attached.

FURTHER YOUR AFFIANT SAYETH NAUGHT,

Signed: *Douglas Jayo*  
Douglas Jayo

Dated: 11-3-05



NOTARIAL ACKNOWLEDGMENT

State of Idaho            )  
  ) ss.  
County of Ada            )

Subscribed and sworn to before me, the undersigned Notary Public, on this 3 day of November, 2005, by the above-named DOUGLAS JAYO, personally known to me to be the person named as the affiant in the above affidavit.

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

Dee Curry  
Notary Public in and for Idaho  
Residing in Boise, Ada County, Idaho

My commission expires 8/8/08

