

**AGENDA ITEM SUMMARY**

**DATE:** 4-7-14

**DEPARTMENT:** Legal

**DEPT. HEAD SIGNATURE:** \_\_\_\_\_

**SUBJECT:**

Chestnut Street Vacation – Vacation Ordinance, Quitclaim Deeds and Easements

**AUTHORITY:**  ID Code \_\_\_\_\_  IAR \_\_\_\_\_  City Ordinance/Code \_\_\_\_\_  
(IF APPLICABLE)

**BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:**

Last fall, the City Council conditionally approved a partial vacation of Chestnut Street adjacent to property owned by Lyn Holt and Clear Creek Land Company, LLC. The City Council allowed a vacation provided there was adequate snow storage and a utility easement. During the hearing, I did advise the Council that a vacation of a street cannot be conditional based on an Idaho Supreme Court case, Black v. Ketchum. Nonetheless the Council conditionally approved the vacation provided there were adequate utility and snow storage easements. Since that meeting, I have reviewed this application with the Street Superintendent and he is satisfied with the snow storage to be provided. In addition, I discovered that the vacation would potentially landlock two lots to the west of the vacated street. Those two lots happen to be owned by one of the applicants for the vacated street, Clear Creek Land Company. Accordingly, I have prepared easements which will provide for existing utilities, snow storage and access to the two lots. To avoid the problem with conditionally approving a street vacation, I would suggest that the applicants, Lyn Holt and Clear Creek Land Company, sign the easements before the city finally adopts the ordinance. Once all the documents are signed, then the City can simultaneously record the ordinance, quitclaim deeds and easements. I believe there may be some urgency which could justify waiving the readings because Charlie Holt has advised me that he wishes to proceed with a remodel of the Holt property and title needs to be transferred to Lyn Holt before the remodel can proceed.

Ned

**FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS:** Caselle # \_\_\_\_\_  
Budget Line Item # \_\_\_\_\_ YTD Line Item Balance \$ \_\_\_\_\_  
Estimated Hours Spent to Date: \_\_\_\_\_ Estimated Completion Date: \_\_\_\_\_  
Staff Contact: \_\_\_\_\_ Phone # \_\_\_\_\_  
Comments: \_\_\_\_\_

**ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS:** (IF APPLICABLE)

___ City Attorney	___ Clerk / Finance Director	___ Engineer	___ Building
___ Library	___ Planning	___ Fire Dept.	___
___ Safety Committee	___ P & Z Commission	___ Police	___
___ Streets	___ Public Works, Parks	___ Mayor	___

**RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:**

Conduct a public hearing on Ordinance No. \_\_\_\_\_. If the Council still wishes to vacate two 20' portions of Chestnut Street, make a motion to adopt Ordinance No. \_\_\_\_\_ and authorize the mayor to conduct the first reading of the ordinance by title only. If the Council believes it is appropriate to waive the readings, then make a motion to adopt Ordinance No. \_\_\_\_\_ and authorize the mayor to conduct one reading of the ordinance by title only, to waive the second and third readings, and to authorize the Mayor to sign the ordinance, and to authorize the mayor to sign the quitclaim deeds and easements.

**FOLLOW-UP REMARKS:**

HAILEY ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, VACATING THAT PORTION OF THE TWENTY FOOT (20') CITY RIGHT-OF-WAY WITHIN CHESTNUT STREET DIRECTLY ADJACENT TO LOT 1, BLOCK 6, ORIGINAL HAILEY TOWNSITE AND THAT PORTION OF THE TWENTY FOOT (20') CITY RIGHT-OF-WAY WITHIN CHESTNUT STREET DIRECTLY ADJACENT TO LOT 10, BLOCK 7, ORIGINAL HAILEY TOWNSITE; PROVIDING FOR EXECUTION OF A QUITCLAIM DEED BY THE MAYOR CONVEYING TITLE TO SAID VACATED PROPERTY TO THE OWNER OF PROPERTY ADJACENT TO THE VACATED RIGHT-OF-WAY; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Hailey City Council has determined, and hereby finds, that the twenty foot (20') portion of Chestnut Street directly adjacent to Lot 1, Block 6, Original Hailey Townsite and the twenty foot (20') portion of Chestnut Street directly adjacent to Lot 10, Block 7, Original Hailey Townsite, have not been used by the City of Hailey as a public street right-of-way, is no longer needed for public use, and is of no significant use or value to the City and that the vacation of same is expedient for the public good; and

WHEREAS, the Hailey City Council believes it is appropriate to vacate the remaining the twenty foot (20') portion of Chestnut Street directly adjacent to Lot 1, Block 6, Original Hailey Townsite and the twenty foot (20') portion of Chestnut Street directly adjacent to Lot 10, Block 7, Original Hailey Townsite.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. The City of Hailey hereby vacates the twenty foot (20') portion of Chestnut Street directly adjacent to Lot 1, Block 6, Original Hailey Townsite and the twenty foot (20') portion of Chestnut Street directly adjacent to Lot 10, Block 7, Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, more particularly described in attached Exhibit "A."

Section 2. The Mayor of the City of Hailey is hereby authorized to execute and deliver a Quitclaim Deed, on behalf of the City of Hailey, transferring title to the property vacated as deemed in the best interest of the adjacent property owner pursuant to Idaho Code § 50-311.

Section 3. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2014.

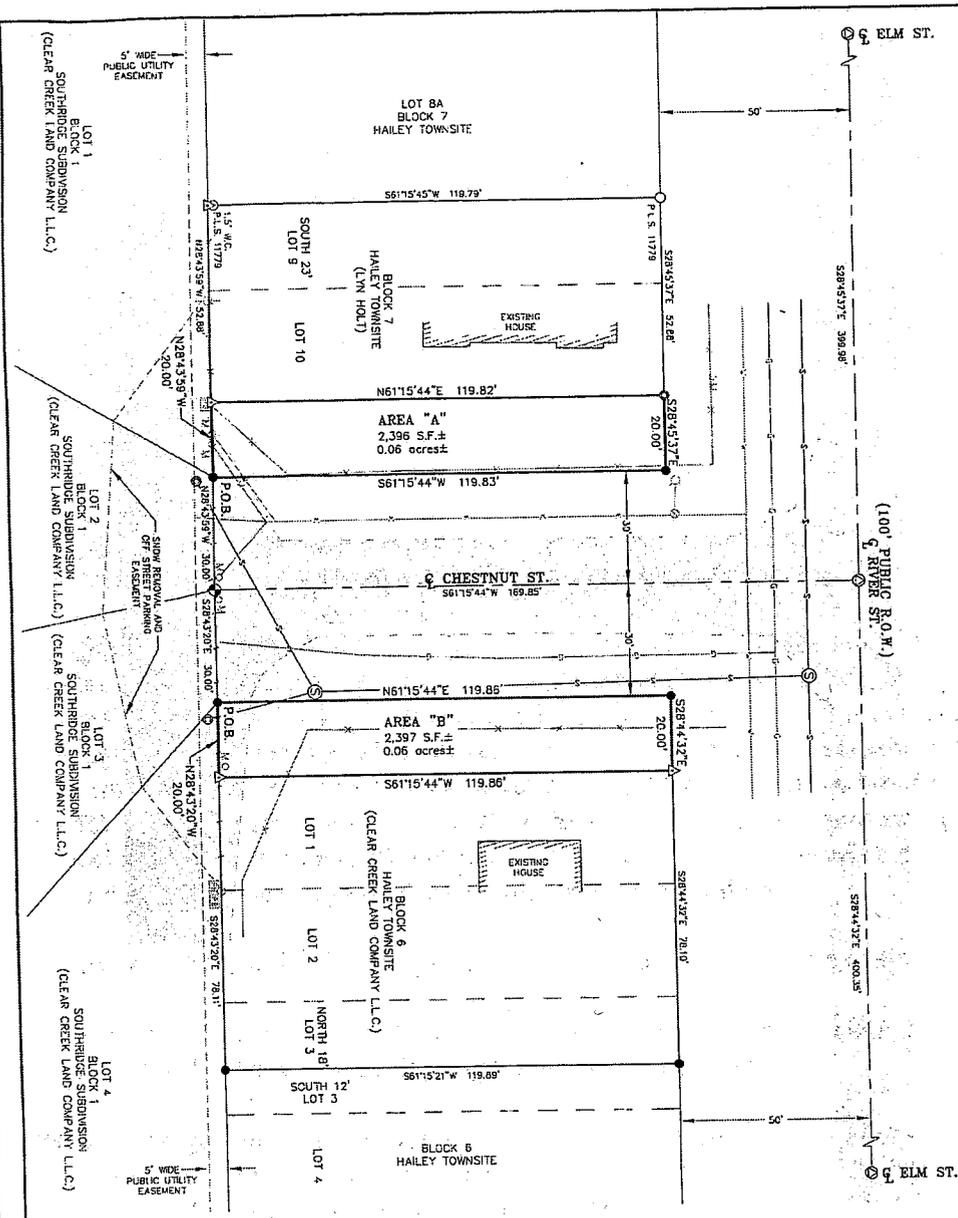
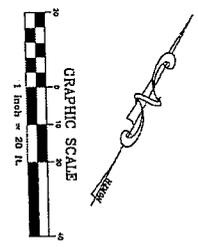
\_\_\_\_\_  
Fritz X. Haemmerle, Mayor, City of Hailey

Attest:

\_\_\_\_\_  
Mary Cone, City Clerk

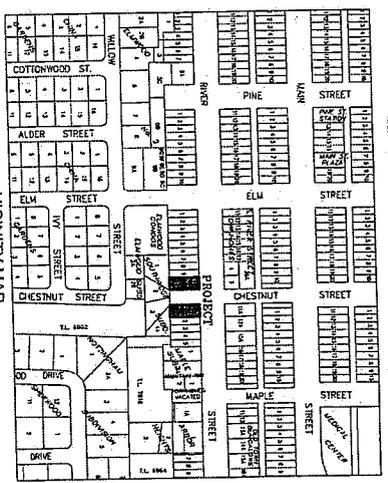
EXHIBIT A – EXHIBIT MAP  
VACATED PORTIONS OF CHESTNUT STREET

AN EXHIBIT MAP SHOWING  
**CHESTNUT STREET VACATION**  
 WHEREIN A 20 FOOT WIDE STRIP OF CHESTNUT STREET ADJACENT TO BLOCKS 6 AND 7, ORIGINAL HAILEY TOWNSITE IS BEING VACATED  
 LOCATED WITHIN SECTION 9, T.2 N., R.18 E., B.M. CITY OF HAILEY, BLAINE COUNTY, IDAHO  
 JULY 2013



**LEGEND**

- Proposed Vacation Line
- Appliment Property Line
- Existing Townsite Lot Line
- Adjoining Lot Line
- Centerline
- Easement Line
- Fence Line
- Water Line
- Sewer Line
- Gas Line
- Overhead Power Line
- Edge of Asphalt
- Asphalt
- Found Brass Cap
- Found Aluminum Cap
- Found Bolt
- Found 5/8" Rebar, As Shown Hereon
- Found 1/2" Rebar, As Shown Hereon
- Found 5/8" Rebar, P.L.S. 11779
- Calculated Point, No Monument Found
- Fire Hydrant
- Water Valve
- Water Meter
- Sewer Manhole
- Sewer Cleanout
- Utility Pole
- Power Box
- Telephone Riser
- Point of Beginning
- Willow Corner



PROFESSIONAL LAND SURVEYOR  
 No. 11779  
 CODY M. MCCAMMON, P.L.S. 11779

AN EXHIBIT MAP FOR  
 CHESTNUT STREET VACATION  
 GALENA ENGINEERING, INC.  
 KETCHUM, IDAHO  
 SHEET 1 OF 1  
 Job No. 6944





## UTILITY, ACCESS AND SNOW STORAGE EASEMENT AGREEMENT

This Utility, Access and Snow Storage Easement Agreement (“**Easement Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between Lyn Holt, a married woman, dealing with her sole and separate property (“**Grantor**”) and City of Hailey, Idaho (“**Grantee**”).

### RECITALS

A. Lyn Holt, a married woman dealing with her sole and separate property, is the owner in fee simple of a parcel of property located in the City of Hailey, Idaho, more particularly described as that twenty foot (20’) portion of Chestnut Street directly adjacent to Lot 10, Block 7 of the Original Hailey Townsite, as shown on the official plat of the City of Hailey on file in the office of the Blaine County Recorder, generally depicted as Area “A” on attached **Exhibit “A-2”** (“**Vacated Street**”). The City of Hailey has contemporaneously granted a vacation of the Vacated Street by Hailey Ordinance No. \_\_\_\_\_.

B. Grantee is a body politic and corporate and has the power and authority to own and hold interests in real property.

C. Grantor and Grantee desire to establish utility, access and snow storage easements across and under the Vacated Street to enable the public to use the easement for utility, access and snow storage purposes. The easements granted herein are voluntary easements and have not been granted as a condition of the vacation of the Vacated Street.

### AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easements. Grantor hereby grants and conveys to Grantee, and its successors and assigns, a non-exclusive public utility, access and snow storage easements (collectively referred to as “**Easements**”) more particularly described on attached **Exhibit “A-1”**, over, across and under the Vacated Street.

2. Purposes/Restrictions. The Easements may be used for the following uses and are granted subject to the following restrictions:

(a) The Easements shall be used solely for the benefit of Grantee and the general public.

(b) The utility easement may be used for improvement, repair and maintenance of public utilities within the utility easement by Grantee or other utilities.

(c) The snow storage easement may be used for snow storage by Grantee.

(d) The access easement shall be used for access to and from Lot 1, Block 1 of the Southridge Subdivision, according to the official plat thereof recorded as Instrument No. \_\_\_\_\_, records of the County Recorder, Blaine County, Idaho.

3. Successors and Assigns. All provisions of this Easement Agreement, including the benefits and burdens, run with the land covered hereby and are binding on and inure to the benefit of the heirs, permitted assigns, permitted successors, tenants and personal representatives of the parties hereto.

4. Recordation of Instrument. The parties agree that this Easement Agreement may be recorded at the expense of the Grantor.

5. Miscellaneous Provisions.

a. Headings. The headings in this Easement Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Easement Agreement or any provision hereof.

b. Severability. Every provision of this Easement Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Easement Agreement.

c. Remedies. The rights and remedies provided by this Easement Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

d. Amendment. This Easement Agreement may be amended only in writing signed by the all of the parties.

e. Attorneys Fees. Should any action be brought to interpret or enforce any provision hereof, or for damages for breach hereof, the prevailing party shall be entitled to such reasonable attorney's fees and costs as may be determined by any court of competent jurisdiction wherein such action is brought, and on appeals and in bankruptcy proceedings.

f. Entire Agreement. This Easement Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matter.

g. Governing Law. This Easement Agreement shall be construed in accordance with the laws of the State of Idaho.

h. Counterparts. This Easement Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

i. Presumption. No presumption shall exist in favor of or against any party to this Easement Agreement as the result of the drafting and preparation of the document.

IN WITNESS WHEREOF, the Parties have executed this Easement Agreement the day and year written herein.

GRANTOR

\_\_\_\_\_  
Lyn Holt

GRANTEE

CITY OF HAILEY

By: \_\_\_\_\_  
Fritz X. Haemmerle, Mayor

ATTEST:

\_\_\_\_\_  
Mary Cone, City Clerk



EXHIBIT A-1 – LEGAL DESCRIPTION  
(LYN HOLT)

**Legal Description**

A parcel of land located within Section 9, Township 2 North, Range 18 East, B.M., City of Hailey, Blaine County, Idaho, said parcel falling within the Chestnut Street right of way as shown on the Hailey Townsite plat, and said parcel being more particularly described as follows:

COMMENCING at an Aluminum Capped Survey Monument marking the western terminus of the centerline of Chestnut Street and its intersection with the eastern boundary of Southridge Subdivision recorded as Instrument Number 212956, said point falling South  $61^{\circ}15'44''$  West 169.85 feet from an Aluminum Capped Survey Monument marking centerline intersection of Chestnut and River Streets;

thence northerly along the eastern boundary of Southridge Subdivision North  $28^{\circ}43'59''$  West 30.00 feet to a point, and said point being the POINT OF BEGINNING for this description:

thence continuing along the eastern boundary of Southridge Subdivision North  $28^{\circ}43'59''$  West 20.00 feet to the south west corner of Lot 10 Block 7 of the Hailey Townsite;

thence South  $73^{\circ}44'07''$  East 28.28 feet to a point on the northern boundary of the Chestnut Street right of way;

thence proceeding along the Chestnut Street right of way South  $61^{\circ}15'44''$  West 20.00 feet to the POINT OF BEGINNING;

said parcel containing 200 square feet more or less.

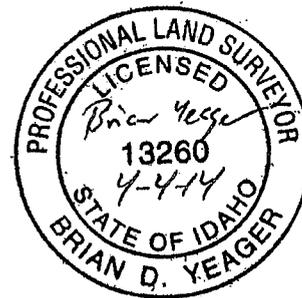
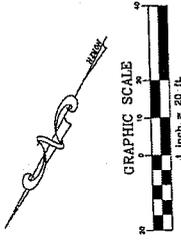
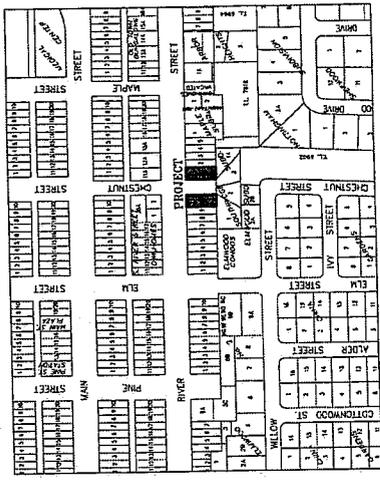
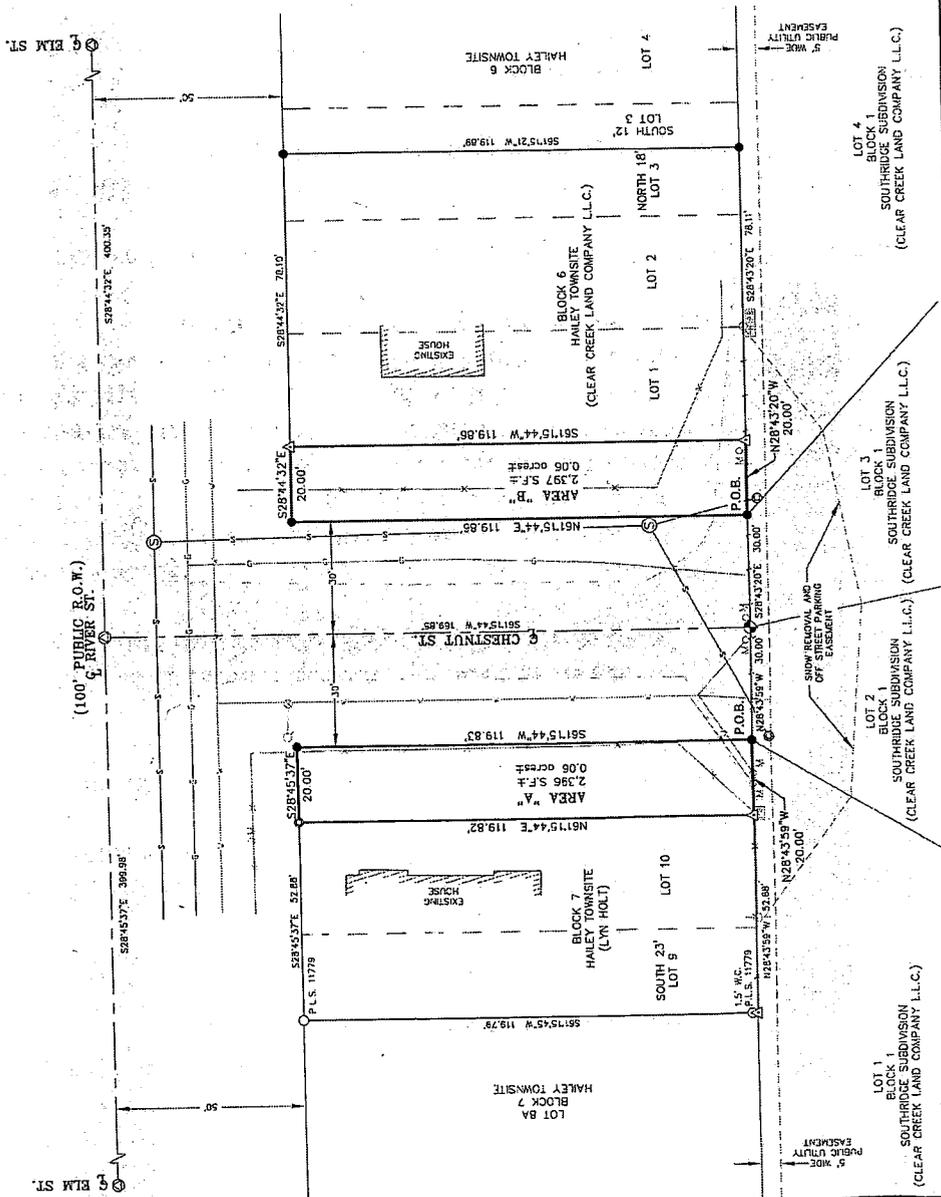


EXHIBIT A-2 – EXHIBIT MAP  
(LYN HOLT)

**AN EXHIBIT MAP SHOWING  
CHESTNUT STREET VACATION  
WHEREIN A 20 FOOT WIDE STRIP OF CHESTNUT STREET ADJACENT TO BLOCKS 6 AND 7, ORIGINAL HAILEY TOWNSITE IS BEING VACATED  
LOCATED WITHIN SECTION 9, T.2 N., R.18 E., B.M., CITY OF HAILEY, BLAINE COUNTY, IDAHO  
JULY 2013**



- LEGEND**
- Proposed Vacation Line
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  - Asphalt
  - Found Brass Cop
  - Found Aluminum Cop
  - Found Bolt
  - Found 5/8" Rebar, As Shown Hereon
  - Found 1/2" Rebar, As Shown Hereon
  - Set 5/8" Rebar, PLS 11779
  - Calculated Point, No Monument Found
  - Fire Hydrant
  - Water Valve
  - Water Meter
  - Sewer Manhole
  - Sewer Cleanout
  - Utility Pole
  - Power Box
  - Telephone Riser
  - Point of Beginning
  - Witness Corner



VICINITY MAP  
SCALE: 1" = 300'



AN EXHIBIT MAP FOR  
CHESTNUT STREET VACATION  
GALENA ENGINEERING, INC.  
KETCHUM, IDAHO

CODY M. McCAMMON, P.L.S. 11779  
SHEET 1 OF 1  
Job No. 6944

## UTILITY, ACCESS AND SNOW STORAGE EASEMENT AGREEMENT

This Utility, Access and Snow Storage Easement Agreement (“**Easement Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between Clear Creek Land Company, LLC, an Idaho limited liability company (“**Grantor**”) and City of Hailey, Idaho (“**Grantee**”).

### RECITALS

A. Clear Creek Land Company, LLC is an Idaho limited liability company, and Miguel Goitiandia is the duly authorized member of the Grantor. Grantor is the owner in fee simple of a parcel of property located in the City of Hailey, Idaho, more particularly described as that twenty foot (20’) portion of Chestnut Street directly adjacent to Lot 1, Block 6 of the Original Hailey Townsite, as shown on the official plat of the City of Hailey on file in the office of the Blaine County Recorder, generally depicted as Area “B” on attached **Exhibit “A-2”** (“Vacated Street”). The City of Hailey has contemporaneously granted a vacation of the Vacated Street by Hailey Ordinance No. \_\_\_\_\_.

B. Grantee is a body politic and corporate and has the power and authority to own and hold interests in real property.

C. Grantor and Grantee desire to establish utility, access and snow storage easements across and under the Vacated Street to enable the public to use the easement for utility, access and snow storage purposes. The easements granted herein are voluntary easements and have not been granted as a condition of the vacation of the Vacated Street.

### AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

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(c) The snow storage easement may be used for snow storage by Grantee.

(d) The access easement shall be used for access to and from Lot 4, Block 1 of the Southridge Subdivision, according to the official plat thereof recorded as Instrument No. \_\_\_\_\_, records of the County Recorder, Blaine County, Idaho.

3. Successors and Assigns. All provisions of this Easement Agreement, including the benefits and burdens, run with the land covered hereby and are binding on and inure to the benefit of the heirs, permitted assigns, permitted successors, tenants and personal representatives of the parties hereto.

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c. Remedies. The rights and remedies provided by this Easement Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

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i. Presumption. No presumption shall exist in favor of or against any party to this Easement Agreement as the result of the drafting and preparation of the document.

IN WITNESS WHEREOF, the Parties have executed this Easement Agreement the day and year written herein.

GRANTOR

CLEAR CREEK LAND COMPANY, LLC,  
an Idaho limited liability company

\_\_\_\_\_  
By: Miguel Goitiandia, its member

GRANTEE

CITY OF HAILEY

By: \_\_\_\_\_  
Fritz X. Haemmerle, Mayor

ATTEST:

\_\_\_\_\_  
Mary Cone, City Clerk



EXHIBIT A-1 – LEGAL DESCRIPTION  
(CLEAR CREEK LAND COMPANY, LLC)

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thence southerly along the eastern boundary of Southridge Subdivision South  $28^{\circ}43'59''$  East 30.00 feet to a point, and said point being the POINT OF BEGINNING for this description:

thence continuing along the eastern boundary of Southridge Subdivision South  $28^{\circ}43'20''$  East 20.00 feet to the north west corner of Lot 1 Block 6 of the Hailey Townsite;

thence along the northern boundary of said Lot 1 North  $61^{\circ}15'44''$  East 17.00 feet to a point;

thence North  $11^{\circ}38'09''$  East 26.25 feet to a point on the southern boundary of the Chestnut Street right of way;

thence proceeding along the Chestnut Street right of way South  $61^{\circ}15'44''$  West 34.00 feet to the POINT OF BEGINNING;

said parcel containing 510 square feet more or less.

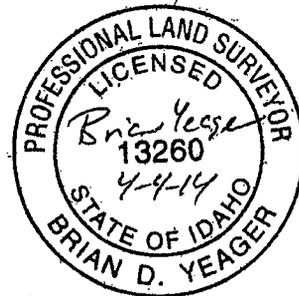
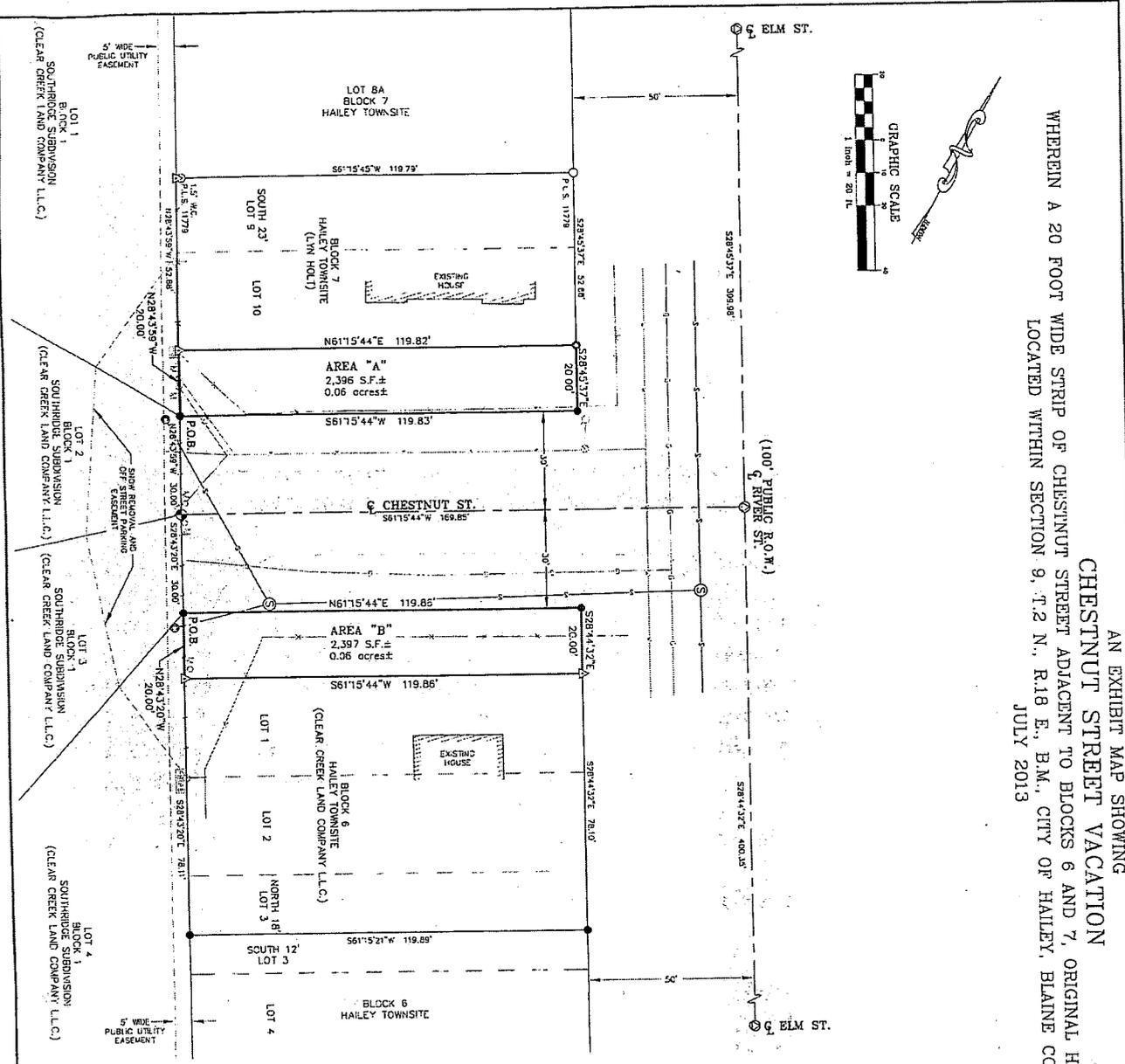
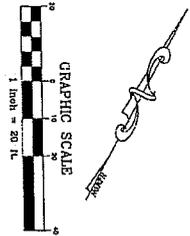


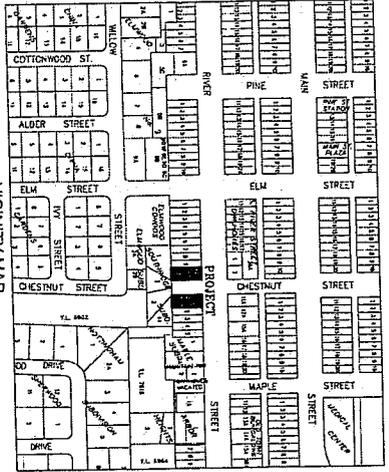
EXHIBIT A-2 – EXHIBIT MAP  
(CLEAR CREEK LAND COMPANY, LLC)

AN EXHIBIT MAP SHOWING  
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WHEREIN A 20 FOOT WIDE STRIP OF CHESTNUT STREET ADJACENT TO BLOCKS 6 AND 7, ORIGINAL HAILEY TOWNSITE IS BEING VACATED  
LOCATED WITHIN SECTION 9, T.2 N., R.18 E., B.M., CITY OF HAILEY, BLAINE COUNTY, IDAHO  
JULY 2013



**LEGEND**

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	Sewer Cleanout
	Utility Pole
	Power Box
	Telephone Riser
	Point of Beginning
	Witness Corner
	W.C.



PROFESSIONAL LAND SURVEYOR  
CODY M. MCCANNON, P.L.S. 11779  
JULY 2013

AN EXHIBIT MAP FOR  
CHESTNUT STREET VACATION  
GALENA ENGINEERING, INC.  
KETCHUM, IDAHO  
SHEET 1 OF 1  
JOB No. 69244