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Incline Village General Improvement District, John A. Bohn, Gene Brockman, Bea Epstein, Chuck Weinberger and Robert C. Wolf

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

STEVEN E. KROLL,
Plaintiff

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, aka IVGID, a governmental subdivision of the State of Nevada; JOHN A. BOHN; GENE BROCKMAN; BEA EPSTEIN, CHUCK WEINBERGER and ROBERT C. WOLF, individually and as Trustees of IVGID; DOES 1 through 25, inclusive, each in their individual and official capacities,
Defendants.
_____/

Case No. 3:08-CV-0166-ECR-RAM

OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION TO ENJOIN DEFENDANT IVGID'S POLICY NO. 136

COME NOW Defendants, Incline Village General Improvement District, John A. Bohn, Gene Brockman, Bea Epstein, Chuck Weinberger and Robert C. Wolf, and hereby submit their opposition to Plaintiff's motion entitled "Plaintiff's Emergency Motion to Enjoin Defendant IVGID's Policy No. 136 Regulating Speech As Void on its Face under the First Amendment."

I

INTRODUCTION

Plaintiff, STEVEN KROLL, filed his complaint in state court on or about March 4, 2008, against the Incline Village General Improvement District (hereinafter referred to as "IVGID") and five individual Trustees of the Board of IVGID, including John Bohn, Gene Brockman, Bea

Epstein and Chuck Weinberger. The action was subsequently removed to this Court on April 2, 2008. By way of his amended complaint, Plaintiff seeks declaratory, injunctive and monetary relief against IVGID on the grounds that IVGID Ordinance No. 7, §62, among other things, violates the First and Fourteenth Amendment rights of Plaintiff under the United States Constitution. Plaintiff also purports to state a claim for relief for the taking of his "property" without just compensation in violation of the Fifth Amendment of the United States Constitution. Primarily, however, Plaintiff contends that Ordinance No. 7, §62, which restricts the use of recreational facilities located at certain beach properties owned by IVGID and located in Incline Village, violates Plaintiff's rights to free speech and free assembly guaranteed by the First Amendment of the Constitution. Specifically, Plaintiff claims that the ordinance in question violates his First Amendment rights by denying him access to these properties to conduct First Amendment activities.

Inexplicably, Plaintiff has now filed a motion in which he asks this Court to enter a "permanent" and preliminary injunction to prohibit IVGID from putting into effect a new policy adopted on April 30, 2008, promulgated by IVGID to ensure access to these beach properties by all who wish to use them for First Amendment activities. See, Exhibit "A," Policy and Procedure No. 136. As shall be discussed infra, Article III of the United States Constitution divests this Court of subject matter jurisdiction to grant any such relief, as there is no "case or controversy" presented which is ripe for review. In addition, Plaintiff cannot demonstrate the required elements necessary to warrant the imposition of a preliminary injunction, as Plaintiff cannot demonstrate a likelihood of success on the merits or irreparable harm should the injunction sought not be granted.

As such, Plaintiff's "Emergency Motion" should be summarily denied by this Court.

II

RELEVANT FACTS

As this Court is well aware, the instant lawsuit arises out of an ordinance in place in IVGID which relates to access to certain beach properties owned by IVGID since 1968. The section of the ordinance at issue provides as follows:

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Deed Restrictions. Parcels annexed to the District after May 30, 1968, are not eligible for District beach access per deed restrictions listed on the beach property.

See, Exhibit "2," Ordinance No. 7.

In 1968, Village Development Company deeded two beaches at Lake Tahoe to IVGID. See, Exhibit "3," Affidavit of Ramona Cruz. The deed contains a restrictive covenant limiting the use of the property to recreational purposes. Specifically, the deed contains the following language:

> "It is hereby covenanted and agreed that the real property above described, and any and all improvements now or hereafter located thereon, shall be held, maintained and used by grantee, its successors and assigns, only for the purposes of recreation by, and for the benefit of, property owners and their tenants (specifically including occupants of motels and hotels) within the Incline Village General Improvement District as now constituted, and, as the Board of Trustees of said District may determine, the guests of such property owners, and for such other purposes as are herein expressly authorized."

See, Exhibit "4," 1968 Deed.

The deed also contains the following language:

> "This covenant shall be in perpetuity, shall be binding upon the successors and assigns of grantee, shall run with and be a charge against the land herein described, shall be for the benefit of each parcel of real property located within the area presently designated and described as Incline Village General Improvement District and shall be enforceable by the owners of such parcels and their heirs, successors and assigns. . ."

Id. The deed goes on to provide that the Grantor, for its benefit and for the benefit of all owners of property located within the 1968 boundaries, specifically reserved an easement to enter upon the land to use the properties for recreational purposes. Id.

Plaintiff is a resident of property which was formerly a part of the Crystal Bay General Improvement District. On or about 1995, CBGID merged with IVGID in order to provide the CBGID properties with sewer service. Despite the fact that the boundaries of IVGID have expanded since 1968 as additional properties were annexed or merged, IVGID has limited the access to the two beaches in accordance with the restrictive covenant within the deed.

Plaintiff asserts in his lawsuit that Ordinance No. 7, §62 violates his constitutional right to freedom of speech and freedom of assembly by preventing him access to the properties for purposes of engaging in First Amendment activities.

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On April 30, 2008, IVGID adopted Policy and Procedure No. 136 entitled, "Policy Concerning Access to District Property and the Use of District Facilities for Expression."[1] See, Exhibit "1," Affidavit of Bea Epstein and Exhibit "A," Policy and Procedure No. 136.[2] As can be seen from a review of same, the new policy recognizes the importance of public expression, speech and assembly and provides for access to property owned by IVGID to all wishing to use same for First Amendment activities. Id. The policy designates areas within IVGID-owned properties where First Amendment activities may be conducted. Id. Contrary to Plaintiff's flippant statements in his "emergency motion," these areas are not limited to "transitory" and "dangerous" parking lots.

As can be see from even a cursory review of Policy No. 136, it does not in any way attempt to regulate speech based on its content. Further, nothing in the new policy acts in any way as a prior restraint on speech. Also contrary to Plaintiff's allegations, nothing in the new policy vests any discretion in IVGID General Manager Bill Horn to make determinations as to who will be permitted to speak. Id.; see also, Exhibit "1," Affidavit of Bea Epstein.

To the contrary, the rights of individuals to access IVGID property for free speech purposes is limited only by substantial governmental interests. Specifically, Policy No. 136 provides as follows:

> "The District recognizes that public expression, speech, and assembly is a fundamental right. The District must, however, balance the exercise of that fundamental right with its significant interests to:
>
> (a) satisfy its special purpose;
>
> (b) assure orderly conduct;
>
> (c) protect the rights of persons authorized to use District real property and facilities to the unique recreational experiences provided by the natural environment of such real property and facilities;
>
> (d) protect and preserve the unique environment on which the various District properties and facilities reside;

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[1]IVGID spent over a year developing this new policy. See, Exhibit "5," Affidavit of Bill Horn.

[2]A color copy of Policy 136 will be manually filed with the Court for its review.

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(e) reasonably provide an opportunity for access to the District community for expression; and,

(f) reasonably protect persons entitled to use District real property and facilities from activities or practices which would make them involuntary audiences, or which are inappropriate to the purpose and enjoyment of a specific real property and facility."

See, Exhibit "A."

The policy goes on to state that, in order to promote the interests described above, the District "may make reasonable, lawful rules and regulations with respect to the time, place and manner of any use of its real property and facilities for purposes of expression, speech and assembly." Id. As the policy was enacted on April 30, 2008, there have been no limiting regulations placed on the new policy. See, Long Beach Area Peace Network v. City of Long Beach, 522 F.3d 1010, 1025 (9th Cir. 2008)(the court reviews only the present version of an ordinance in connection with First Amendment challenge thereto). The policy permits access to all individuals wishing to use the designated areas for First Amendment purposes, irrespective of the content of the speech. The policy does not require any prior application or request for a permit by any person wishing to use the designated areas for First Amendment purposes. The policy does not vest any discretion in IVGID General Manager Bill Horn concerning who may, or may not, use the designated areas or how conduct of those exercising their First Amendment rights on the properties will be regulated. See, Exhibit "1," Affidavit of Bea Epstein.

Plaintiff filed a "supplement" to his emergency motion on May 15, 2008, in which he refers to additional "rules" which Plaintiff asserts are part of Policy No. 136. Specifically, Plaintiff alleges that those wishing to express their views on the beach properties will be required to sign-in and out at the entrance of the properties and will be required to wear a wrist band in order to access the properties. No such regulations or requirements were enacted or adopted by the IVGID Board of Trustees. Id. The policy attached hereto as Exhibit "A," is the entire policy which currently governs First Amendment expression on the subject properties.

Plaintiff has offered no evidence, nor is IVGID aware of the existence of any evidence, which would suggest that Plaintiff has made any effort to access any of the beach properties in reliance on the provisions of Policy No. 136.

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As was set forth above, Plaintiff has moved this Court for a preliminary injunction enjoining the enforcement of the new policy. In order to be entitled to a preliminary injunction, Plaintiff must demonstrate a strong likelihood of success on the merits; (2) the possibility of irreparable harm to him if preliminary relief is not granted; (3) a balance of hardships favoring Plaintiff; and (4) advancement of the public interest. See, Save Our Sonoran, Inc. v. Flowers, 408 F.3d 1113, 1120 (9th Cir. 2005). In the alternative, a court may grant a preliminary injunction if the plaintiff demonstrates *either* a combination of probable success on the merits and the possibility of irreparable harm *or* that serious questions are raised and the balance of hardships tips sharply in his favor. Id. The Ninth Circuit has described these two formulas as representing two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. Id. They are not to be construed as separate tests but, rather, as the "outer reaches of a single continuum." Id.

With respect to his instant motion, Plaintiff can show neither a likelihood of success on the merits nor irreparable harm should the Court deny his request that IVGID's new policy be enjoined. By his own admission, Plaintiff "relies exclusively" on the Ninth Circuit Court of Appeals' recent decision in Long Beach Area Peace Network v. City of Long Beach, 522 F.3d 1010 (9th Cir. 2008) in support of his argument that Policy No. 136 contravenes the First Amendment. See, Plaintiff's motion, page 8. As shall be discussed infra, a review of the Long Beach decision actually demonstrates that IVGID's newly promulgated policy meets the requirements of the First Amendment. As such, Plaintiff is unable to show a strong likelihood of success on the merits.

In addition, Plaintiff cannot demonstrate that he would suffer irreparable harm should Policy No. 136 not be enjoined. While Plaintiff does not even pay lip service to the standards required for injunctive relief, it appears that Plaintiff bases his need for the injunction on the proximity of the upcoming presidential elections in November. Specifically, in an affidavit attached to his "emergency motion," Plaintiff states as follows:

> "I am a supporter of Barack Obama for President of the United States with a feeling of almost evangelical zeal for carrying his message of hope and reconciliation and CHANGE to the mostly conservative voters in this District.

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> Policy No. 136 became effective on May 1, 2008, and there is but half a year remaining before the most critical presidential election in my lifetime takes place; and I feel deeply the weight of this Policy in officially closing off my political speech and advocacy literally *everywhere* in the District where citizens gather to talk and exchange ideas, except in the District's Parking Lots which are by nature transitory, not to say dangerous.
>
> Time is of the essence in this matter, for every day that passes with my advocacy muted by the government's Speech Policy 136 is a day lost to converting others to my belief in Barack Obama's superior qualifications for the next President of the United States. I feel that loss deeply, and pray for its swift end and the return of Freedom of Speech to my District through an appropriate Order of this Court.

See, Affidavit of Steven Kroll, pp. 2-3.

It simply is beyond IVGID's comprehension how, exactly, Plaintiff contends that its new First Amendment policy will cause Plaintiff irreparable harm with respect to his desire to campaign for Senator Obama in connection with the upcoming presidential election. Plaintiff's entire lawsuit is premised upon the complaint that IVGID has violated his constitutional rights by preventing him access to the beach properties for the purpose of conducting First Amendment activities. Now, IVGID has passed legislation assuring Plaintiff (and the public at large) access to the beach properties to conduct First Amendment activities. It is simply inconceivable that this new policy will cause Plaintiff any harm, let alone irreparable harm, with respect to his campaign activities.

As shall be discussed infra, Plaintiff cannot meet the requirements for entitlement to preliminary injunctive relief, as Plaintiff cannot demonstrate a likelihood of success on the merits or that he will suffer irreparable harm without imposition of the injunction. In addition, Article III concerns are raised by Plaintiff's motion which also warrant denial of his request for a preliminary injunction.

III

LEGAL ANALYSIS

I. PLAINTIFF CANNOT DEMONSTRATE A LIKELIHOOD OF SUCCESS ON THE MERITS.

In his motion, Plaintiff expressly states that his entire legal position concerning the constitutionality of Policy No. 136 is premised on the Ninth Circuit Court of Appeals' recent decision in Long Beach, supra. A careful reading of this decision demonstrates that IVGID's

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new policy meets First Amendment standards.

In Long Beach, the Ninth Circuit Court of Appeals was called upon to evaluate the constitutionality of a particular city ordinance. The plaintiffs, a group called the Long Beach Area Peace Network, brought suit in district court after the City of Long Beach sought payment of administrative fees associated with a march and rally held by the plaintiffs in March of 2003. Id. at 1015. The administrative fees were assessed in accordance with Long Beach Municipal Code §5.60. The plaintiffs took the position that the entire regulation at issue constituted an unlawful restriction on freedom of speech and sought an order permanently enjoining the City from enforcing same. Id. The district court agreed with the plaintiffs and ordered the relief sought. The Ninth Circuit Court of Appeals affirmed in part, and reversed, in part. In so doing, the Court specifically held that five of the challenged features of §5.60 were constitutional, while four were not. Id.

The ordinance in question in Long Beach governed the use of traditional public fora such as public streets, sidewalks and parks. Id. at 1019. In fact, the Ninth Circuit noted that some of the provisions of §5.60 specifically applied to persons engaged in "expressive activity." Id. The ordinance required, under certain circumstances, for those wishing to engage in expressive activities involving the use of city streets, sidewalks and parks, to submit an application for a special use permit to the City. Id. The ordinance also permitted the City Manager to deny or revoke a permit for failure of the applicant to abide by the specific requirements of the ordinance. Id. at 1025. Further, the ordinance permitted the City to charge applicants for government services such as those associated with fire safety, traffic and/or pedestrian control, water safety, closure of streets and intersections, diverting traffic, salaries of city employees involved in the administration or coordination of government services for the event and the costs of City equipment and supplies associated with the event. Id.

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With respect to the conditions imposed on applicants by the ordinance, §5.60.020(D) provided as follows:

> "The city manager may condition any permit . . . with *reasonable requirements* concerning the time, place or manner of holding such an event *as is necessary to coordinate multiple uses of public property, assure preservation of public property and public places, prevent dangerous, unlawful or impermissible uses, protect the safety of persons and property and to control vehicular and pedestrian traffic in and around the venue*, provided that such requirements shall not be imposed in a manner that will unreasonably restrict expressive or other activity protected by the California or United States Constitution."

Id. at 1027 *(emphasis in the original)*. The ordinance further permitted the City to designate "alternate sites, times, dates, or modes for exercising expressive activity. Id.

In the instant matter, Plaintiff contends that Policy No. 136 is facially unconstitutional because IVGID has designated certain areas within the beach properties for use by those wishing to engage in First Amendment activities. In Long Beach, the Court noted that reasonable time, place and manner restrictions, including permitting requirements, are permissible in traditional public fora. Id. at 1022. In that regard, the Court noted that such restrictions are valid provided that they are justified without reference to the content of the regulated speech, are narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communication. Id. Further, the Ninth Circuit, in citing to the United States Supreme Court, reiterated that substantial government interests exists with respect to regulating competing uses of public fora. Id. at 1023. The Court specifically recognized the need to maintain parks in an attractive and intact condition, the need to insure the safety, comfort, and convenience of the public, and the need to collect nominal fees to defray expenses associated with regulating the activity as substantial government interests. Id. Provided government restrictions are narrowly tailored to meet these substantial interests, regulations on expressive activity, even in traditional public fora, do not violate the First Amendment.

Thus, based upon the very precedent under which Plaintiff seeks a preliminary injunction in this case, IVGID is entitled to regulate First Amendment activities on its beach properties and the mere fact that certain areas have been designated for expressive purposes does not render Policy No. 136 facially unconstitutional. IVGID, in fact, is entitled to enact reasonable time,

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place and manner restrictions which govern First Amendment activities on its property. Policy No. 136 is narrowly tailored to suit what are clearly, as stated by the Ninth Circuit, substantial government interests in regulating competing uses of the beach properties. As such, to the extent Plaintiff argues that Policy No. 136 is facially unconstitutional because it does not grant him unfettered access to IVGID property, this argument is without merit and does not support his request for injunctive relief.

Plaintiff also cites to Long Beach on the issue of prior restraints on speech. As the Ninth Circuit noted therein, prior restraints on speech are those that give public officials the power to deny use of a forum in advance of actual expression. Id. at 1022. From even a cursory review of Policy No. 136, it is clear that the ordinance simply does not constitute a prior restraint on speech. Unlike the policy at issue in Long Beach which contained specific permitting requirements which had to be met by applicants *prior to* their engaging in expressive conduct, Policy No. 136 does not constitute a prior restraint. Policy No. 136 does not include any permit or application requirements, nor does it require an individual wishing to engage in First Amendment activity to seek prior approval from IVGID to do. Accordingly, Policy No. 136 is not a prior restraint on speech and Plaintiff's reliance on any legal authority which relates to such doctrine is misplaced.

Plaintiff also appears to argue that Policy No. 136 operates as a content-based regulation of speech. As the Ninth Circuit stated in Long Beach, content based regulations of speech are those which demonstrate that the government has adopted the regulation because of a disagreement with the message it conveys or that single out certain speech for differential treatment based on the idea expressed. Id. at 1026. Nothing in Policy No. 136 attempts to regulate the message of those wishing to engage in First Amendment activity. It is entirely content neutral. As such, Policy No. 136 does not constitute a content-based regulation of speech by virtue of which Plaintiff can successfully argue that it is facially unconstitutional.

Finally, Plaintiff appears to argue that Policy No. 136 is facially unconstitutional because it vests "unbridled power" in Bill Horn, IVGID's General Manager, to regulate speech. Regulations that confer unbridled discretion on a permitting or licensing official are

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constitutionally invalid. Id. at 27. In the instant case, Plaintiff's argument is simply contrary to the language of the policy and contrary to uncontroverted fact, in that the policy vests no discretion in Mr. Horn concerning how the terms and conditions of the policy will be enforced. See, Exhibit "1," Affidavit of Bea Epstein.

Based upon all of the foregoing, it is clear that Policy No. 136 is not facially unconstitutional. As such, Plaintiff cannot demonstrate the requisite likelihood of success on the merits which is essential for the imposition of preliminary injunctive relief.

II. PLAINTIFF CANNOT SHOW IRREPARABLE HARM.

In addition, Plaintiff simply cannot demonstrate that he would sustain irreparable harm absent issuance of a preliminary injunction enjoining IVGID from enforcing Policy No. 136. Plaintiff claims in his complaint that his First Amendment rights have been violated because of his inability to gain access to the beach properties in question. IVGID has now adopted legislation which will permit Plaintiff access to the beach properties to conduct First Amendment activities. It is simply uncomprehensible how Plaintiff will be irreparably harmed by the enactment of a policy which provides him with the very thing he seeks by way of this litigation. Contrary to the allegations in Plaintiff's affidavit, nothing about Policy No. 136 will prevent Plaintiff from campaigning vigorously for Senator Obama in the upcoming presidential election. To argue otherwise defies logic.

This absence of irreparable harm further warrants the denial of Plaintiff's "emergency motion."

III. PLAINTIFF'S MOTION SHOULD BE DENIED BASED UPON ARTICLE III CONCERNS.

Finally, Plaintiff's request for a preliminary injunction based upon Policy No. 136 should be denied based upon Article III concerns in that there is no "case or controversy" pertaining to Policy No. 136 for this Court to decide.

Article III of the United States Constitution requires that the federal courts decide only cases or controversies. See, Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 472 (1982). Thus, Article III requires the Plaintiff to

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show (1) that he has suffered an injury in fact that is concrete and particularized *and* actual or imminent, not conjectural or hypothetical; (2) that the injury is fairly traceable to the challenged action of the Defendant; and (3) that it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. Id. Additionally, the Ninth Circuit Court of Appeals has noted that, whenever a plaintiff seeks declaratory and injunctive relief, there must be a substantial controversy of sufficient immediacy and reality to warrant injunctive relief. See, Ross v. Alaska, 189 F.3d 1107, 1114 (9th Cir. 1999). "These justiciability limitations are reflected in the doctrines of standing, mootness, and ripeness." See, Lee v. State of Oregon, 107 F.3d 1382, 1387 (9th Cir. 1997).

Ripeness is a question of timing designed to "prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." See, Thomas v. Anchorage Equal Rights Comm'n., 220 F.3d 1134, 1138 (9th Cir. 2000). As the Ninth Circuit has stated, the court's "role is neither to issue advisory opinions nor to declare rights in hypothetical cases, but to adjudicate live cases or controversies consistent with the powers granted the judiciary in Article III of the Constitution." Id. The United States Supreme Court has stated that the ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction. Id. at 1138; *citing*, Reno v. Catholic Soc. Servs., Inc., 509 U.S. 43, 57 (1993). Thus, the ripeness analysis contains both a constitutional and a prudential inquiry. See, Thomas, supra. at 1138.

With respect to the constitutional issue of ripeness, it is often treated under the rubric of standing. Id. Whether the question is viewed in terms of standing or ripeness, however, the Constitution mandates that prior to the court's exercise of jurisdiction, there appear a case or controversy and that the issues presented are definite and concrete, not hypothetical or abstract. Id. at 1139.

As was demonstrated above, Policy No. 136 is simply not facially unconstitutional. As such, Plaintiff must show that Policy No. 136 is unconstitutional as applied. See, Thomas v. Haley, 220 F.3d 1134 (9th Cir. 2000). Plaintiff cannot, however, ask this Court to make such a determination, as there is a complete absence of evidence that Policy No. 136 has been applied as

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against Plaintiff in an unconstitutional manner. Given that the policy was adopted on April 30, 2008, and that Plaintiff has never even requested access to the beach properties to engage in First Amendment activities as permitted by Policy No. 136, Plaintiff has asked this Court to issue what is a purely advisory opinion concerning the application of Policy No. 136. Whether or not Policy No. 136 would be applied to Plaintiff in an unconstitutional manner is solely a hypothetical question, not a live case or controversy as required by Article III limitations on judicial power.

Accordingly, Plaintiff's request for preliminary injunctive relief should be summarily denied.

IV

CONCLUSION

As Plaintiff cannot demonstrate either a likelihood of success on the merits or that he would suffer irreparable harm should Policy No. 136 be enforced, Plaintiff cannot obtain preliminary injunctive relief from this Court. Further, as there is no evidence to suggest that Policy No. 136 is facially invalid, Plaintiff cannot demonstrate a live case or controversy for this Court's consideration.

Accordingly, IVGID respectfully requests that Plaintiff's motion be denied.

DATED this 30th day of May, 2008.

THORNDAL, ARMSTRONG,
DELK, BALKENBUSH & EISINGER

By _____

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CERTIFICATE OF MAILING

Pursuant to FRCP 5(b), I certify that I am an employee of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and that on this day I deposited for mailing at Reno, Nevada a true and correct copy of the following attached document, **OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION TO ENJOIN DEFENDANT IVGID'S POLICY NO. 136** addressed to:

Steven E. Kroll, Esq.
Post Office Box 8
Crystal Bay, NV 89402

DATED this 30th day of May, 2008.

Mary C. Wilson

An employee of Thorndal, Armstrong,
Delk, Balkenbush & Eisinger

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EXHIBIT “1"

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John A. Bohn, Gene Brockman, Bea Epstein,
Chuck Weinberger, and Robert C. Wolf

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

STEVEN E. KROLL,
Plaintiff
vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, aka IVGID, a governmental subdivision of the State of Nevada; JOHN A. BOHN; GENE BROCKMAN; BEA EPSTEIN, CHUCK WEINBERGER and ROBERT C. WOLF, individually and as Trustees of IVGID; DOES 1 through 25, inclusive, each in their individual and official capacities,

Defendants.
_____/

Case No. 3:08-cv-00166-ECR-RAM

AFFIDAVIT OF BEA EPSTEIN

STATE OF NEVADA)
:ss
COUNTY OF WASHOE)

BEA EPSTEIN, being first duly sworn, deposes and says under penalty of perjury as follows:

1. I am over the age of eighteen (18) and have personal knowledge of the information contained herein.

2. I am the Chairman of the Board of Trustees of the Incline Village General Improvement District and have been the Chairman since 2007. I have been a member of the Board since November of 2004.

3. On April 30, 2008, IVGID Board of Trustees adopted Policy No. 136, which is attached to this Affidavit as Exhibit "A." This policy vests no discretion in the General Manager

of IVGID concerning how the terms and conditions of this policy will be enforced.

4. There are no conditions in the policy which require an individual to sign-in or out in connection with accessing the property to exercise their First Amendment rights or which require any individual to wear an identifying wrist band in connection with accessing the property to exercise their First Amendment rights.

DATED this 29th day of May, 2008.

Bea Epstein
BEA EPSTEIN

SUBSCRIBED and SWORN to before
before me this 29th day of ~~April,~~ May 2008.

Susan A Herron
NOTARY PUBLIC

SUSAN A. HERRON
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 98-2732-2 - Expires December 8, 2010

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Exhibit "A"

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT
ONE DISTRICT – ONE TEAM

Policy and Procedure Number 136
Policy Concerning Access to District Property and the Use of District Facilities for Expression

Through this Policy, the District designates public forum areas within its real property and facilities, and encourages any individual or group to use such designated public forum areas for the exercise of expression, speech and assembly, in accordance with this Policy. The District will not further regulate such exercise except as consistent with applicable law. In order to preserve the peace, however, and to promote the significant interests of the District, including those listed above, the District may make reasonable, lawful rules and regulations with respect to the time, place and manner of any use of its real property and facilities for purposes of expression, speech and assembly.

DESIGNATION OF PUBLIC FORUM AREAS

The District designates as public forum areas the following areas of the real properties and facilities listed on Exhibit 1 to this Policy: the parking lots, the walkways within and adjacent to the parking lots, and the sidewalks adjacent to any public entrance to any building open to the public, located on such listed real properties and facilities. A copy of this Policy and Exhibit 1, which Exhibit is made a part of this Policy, shall be available at each such real property and facility, and shall also be available at the District Administrative Office.

The designated public forum areas as described above for the real properties and facilities listed on Exhibit 1 are areas where all persons may exercise the activities of expression, speech and assembly, to the extent permitted by law and this Policy and any rules and regulations which the District may adopt. Such activities must be consistent with the maintenance and operation of District real properties and facilities, and must not interfere with the intended use of such facilities, or with parking, the flow of vehicular traffic, and ingress to and egress from the

INCLINE VILLAGE
GENERAL IMPROVEMENT DISTRICT
ONE DISTRICT – ONE TEAM

Policy and Procedure Number 136
Policy Concerning Access to District Property and the Use of District Facilities for Expression

PREAMBLE

The Incline Village General Improvement District (the "District") is a special purpose district existing under Chapter 318 of the Nevada Revised Statutes for the purposes of providing curbs, gutters, sidewalks, storm drainage, sewer disposal, water supply and recreational facilities.

The District owns real property and facilities that it uses to fulfill its special purposes, and those uses by the District take precedence over any other activity or use.

The District recognizes that public expression, speech and assembly is a fundamental right. The District must, however, balance the exercise of that fundamental right with its significant interests to:

(a) satisfy its special purposes;

(b) assure orderly conduct;

(c) protect the rights of persons authorized to use District real property and facilities to the unique recreational experiences provided by the natural environment of such real property and facilities;

(d) protect and preserve the unique environment on which the various District properties and facilities reside;

(e) reasonably provide an opportunity for access to the District community for expression; and,

(f) reasonably protect persons entitled to use District real property and facilities from activities or practices which would make them involuntary audiences, or which are inappropriate to the purpose and enjoyment of a specific real property and facility.

POLICY OF INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT CONCERNING ACCESS TO DISTRICT PROPERTY AND THE USE OF DISTRICT FACILITIES FOR EXPRESSION

PREAMBLE

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(d) protect and preserve the unique environment on which the various District properties and facilities reside;

(e) reasonably provide an opportunity for access to the District community for expression; and,

(f) reasonably protect persons entitled to use District real property and facilities from activities or practices which would make them involuntary audiences, or which are inappropriate to the purpose and enjoyment of a specific real property and facility.

Through this Policy, the District designates public forum areas within its real property and facilities, and encourages any individual or group to use such designated public forum areas for the exercise of expression, speech and assembly, in accordance with this Policy. The District will not further regulate such exercise except as consistent with applicable law. In order to preserve the peace, however, and to promote the significant interests of the District, including those listed above, the District may make reasonable, lawful rules and regulations with respect to the time, place and manner of any use of its real property and facilities for purposes of expression, speech and assembly.

DESIGNATION OF PUBLIC FORUM AREAS

The District designates as public forum areas the following areas of the real properties and facilities listed on Exhibit 1 to this Policy: the parking lots, the walkways within and adjacent to the parking lots, and the sidewalks adjacent to any public entrance to any building open to the public, located on such listed real properties and facilities. A copy of this Policy and Exhibit 1, which Exhibit is made a part of this Policy, shall be available at each such real property and facility, and shall also be available at the District Administrative Office.

The designated public forum areas as described above for the real properties and facilities listed on Exhibit 1 are areas where all persons may exercise the activities of expression, speech and assembly, to the extent permitted by law and this Policy and any rules and regulations which the District may adopt. Such activities must be consistent with the maintenance and operation of District real properties and facilities, and must not interfere with the intended use of such

facilities, or with parking, the flow of vehicular traffic, and ingress to and egress from the property and all buildings and facilities. Such activities must not create an imminent health or safety hazard or result in a violation of the privacy or rights of others. The location and size of the designated public forum areas with respect to each real property and facility listed on Exhibit 1 reflects an appropriate balance of the significant interests of the District with the recognized right of expression, speech and assembly.

While it is the District's intention to assure use of the designated public forum areas as described in this Policy for each real property and facility listed on Exhibit 1 for the purpose of expression, speech and assembly, some of the real properties and facilities may have existing practical limitations. The District may make additional reasonable rules and regulations for the use of each real property and facility as it determines to be necessary

BOARD MEETING ROOM

The meeting room at the District Administrative Office in which the Board of Trustees of the District conducts its meetings is also available for expression, speech and assembly consistent with the conduct of the Board's business during such meetings and with the provisions of N.R.S. § 241.020(3).

NON-PUBLIC FORUM AREAS

The portions of the District real properties and facilities listed on Exhibit 1 and not designated in this Policy as a public forum area, and all other District real properties and facilities, including without limitation, the real properties and facilities described in Exhibit 2, where public access may be limited or restricted, are deemed to be and are designated as "non-public forum areas."

EXHIBIT 1

LOCATIONS AND MAPS OF PROPERTIES

WITH DESIGNATED PUBLIC FORUM AREAS

1. Administration Building
2. Recreation Center
3. Tennis Complex
4. Chateau
5. Diamond Peak
6. Preston Field
7. Mountain Golf Course
8. Burnt Cedar Beach
9. Incline Beach
10. Ski Beach
11. Aspen Grove—Village Green

EXHIBIT 2

NON-PUBLIC FORUM AREAS

1. Public Works Building
2. Water Treatment Plant
3. Wastewater Treatment Plant
4. Wetlands Effluent Disposal Facility
5. Sewer Pumping Station
6. Water Pumping Stations
7. Spooner Effluent Pumping Station
8. Water Storage Reservoirs and Tanks
9. Parks Storage Building
10. Overflow Parking Lot

Not to Scale

ANNE VORDERBRUGEN BUILDING
IVGID ADMINISTRATION
893 SOUTHWOOD BLVD.

EXHIBIT 1, MAP 1

Not to Scale

RECREATION CENTER
964 INCLINE WAY

EXHIBIT 1, MAP 2

EXHIBIT 1, MAP 3

Not to Scale

TENNIS COMPLEX
969 INCLINE WAY

EXHIBIT 1, MAP 4

Not to Scale

CHATEAU
955 FAIRWAY

Not to Scale

DIAMOND PEAK
1210 SKI WAY

EXHIBIT 1, MAP 5

Not to Scale

PRESTON FIELD
700 TAHOE BLVD.

EXHIBIT 1, MAP 6

Not to Scale

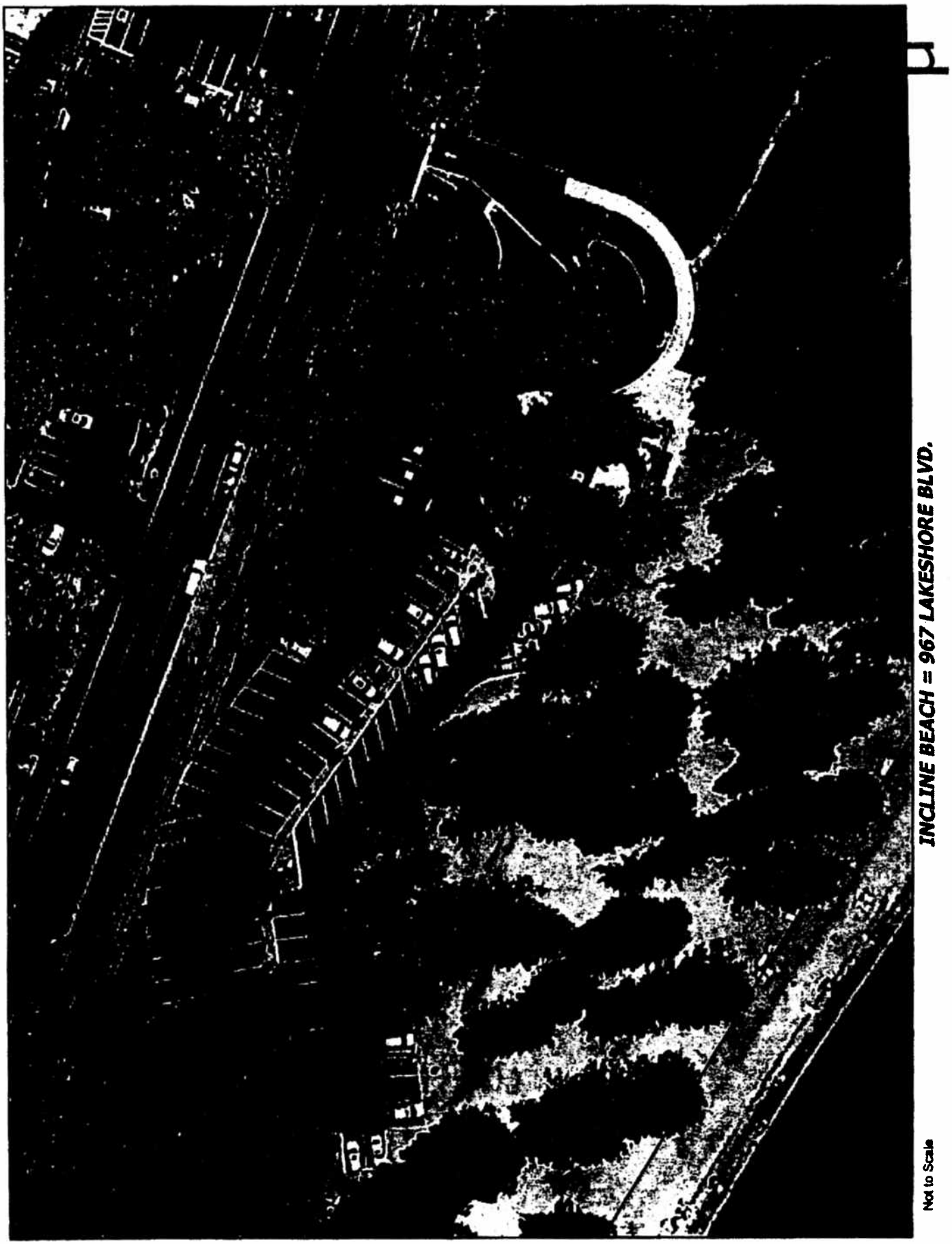
MOUNTAIN GOLF COURSE
687 WILSON WAY

EXHIBIT 1, MAP 7

EXHIBIT 1, MAP

BURNT CEDAR BEACH
665 LAKESHORE BLVD.

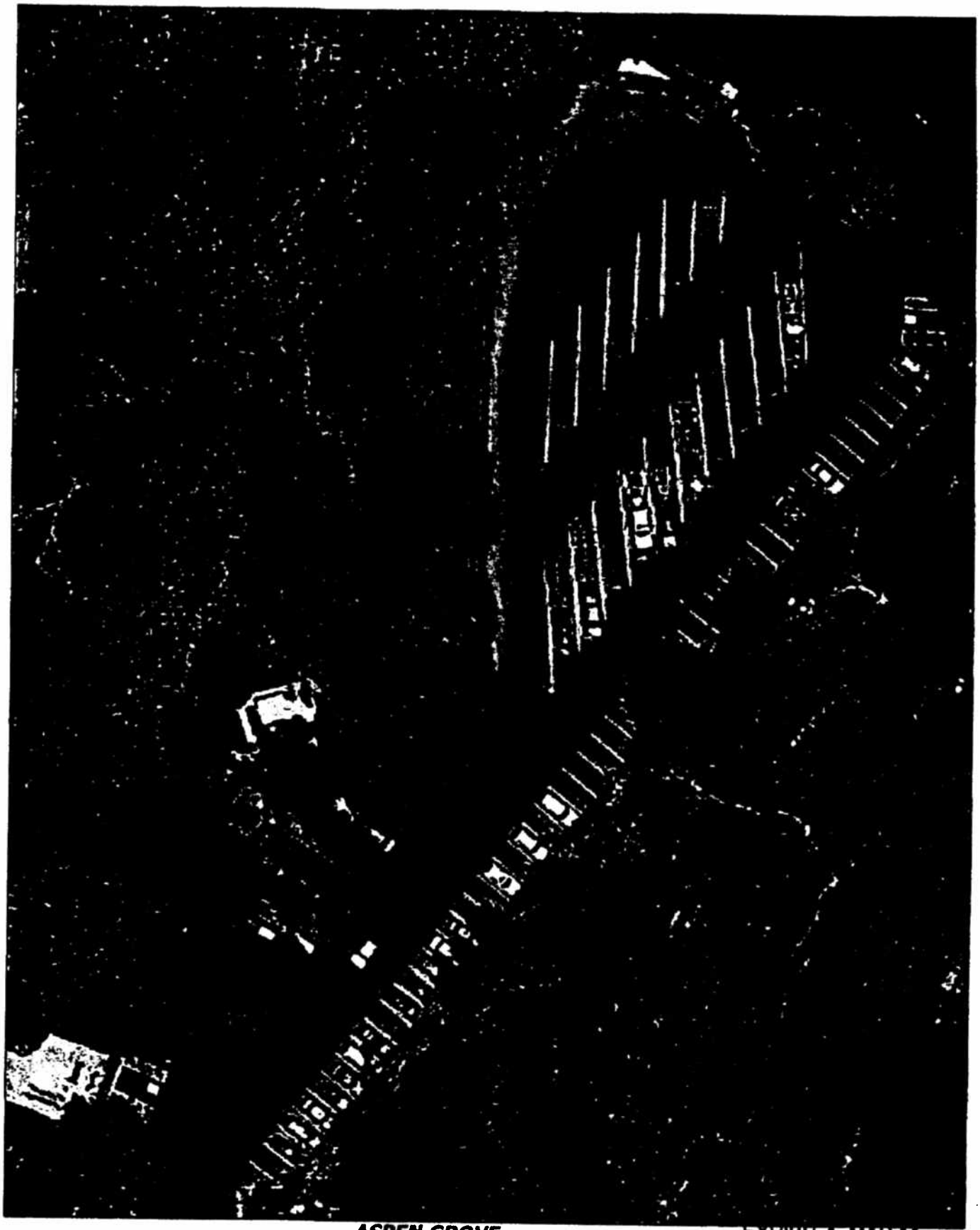
Not to Scale



Not to Scale

SKI BEACH
967 LAKESHORE BLVD.

EXHIBIT H, MAP 10



Not to Scale

ASPEN GROVE
960 LAKESHORE BLVD.

EXHIBIT 1, MAP 11

EXHIBIT "2"

ORDINANCE NO. 7

(As amended June 13, 1991; November 17, 1993; May 8, 1995; June 12, 1995; March 25, 1998)

AN ORDINANCE ESTABLISHING RATES, RULES AND REGULATIONS FOR RECREATION PASSES AND RECREATION PUNCH CARDS BY THE INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

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ARTICLE IV. APPLICATION PROCEDURES

ARTICLE V. ASSIGNMENT OF PRIVILEGES

ARTICLE VI. RECREATION PASS

ARTICLE VII. RECREATION CARD

ARTICLE VIII. GENERAL USE REGULATIONS

ORDINANCE NO. 7

(As amended June 13, 1991; November 17, 1993; May 8, 1995; June 12, 1995; March 25, 1998)

An Ordinance Establishing Rates, Rules and Regulations for Recreation Passes and Recreation Punch Cards by the Incline Village General Improvement District

RECREATION PASS ORDINANCE

Be it ordained by the Board of Trustees of the Incline Village General Improvement District, Washoe County, Nevada, as follows:

ARTICLE I. GENERAL PROVISIONS

1. **Short Title.** This ordinance shall be known and may be cited as the "Incline Village General Improvement District Recreation Pass Ordinance."

2. **Words and Phrases.** For the purpose of this ordinance, all words used herein in the present tense shall include the future; all words in the plural number shall include the singular number; and all words in the singular number shall include the plural number.

3. **Separability.** If any section, subsection, sentence, clause or phrase of this ordinance or the application thereof to any person or circumstances is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance or the application of such provision to other persons or circumstances. The Board hereby declares that it would have passed this ordinance or any section, subsection, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared to be unconstitutional.

4. **Posting.** The adoption of this ordinance shall be entered in the minutes of the Board and certified copies hereof shall be posted in three (3) public places in the District for ten (10) days following its passage.

ARTICLE II. DEFINITIONS

When used in this ordinance, the following terms shall have the meanings defined below:

5. **Affinity** signifies the connection existing in consequence of marriage between each of the married persons and the blood relatives of the other.

6. **Agent** means the person designated by an owner to represent the owner in matters pertaining to the assignment of recreation privileges.

7. **Assignment** means the naming of persons to receive recreation privileges.

8. **Beach Pass** means a daily pass, good for one day only, sold by the District allowing entry onto the District-owned beaches.

9. **Board** means the Board of Trustees of the Incline Village General improvement District.

10. **Card Holder** means the person who is in possession of a Recreation Punch Card.

11. **Commercial Tenant** means an individual or corporation who rents, or leases, a commercial property for the purposes of conducting business or commercial activity.

12. **Consanguinity** means a blood relationship.

13. **County** means the County of Washoe, Nevada.

14. **Director of Parks and Recreation** means the person appointed as the department head of the Parks and Recreation Department.

15. **District** means the Incline Village General Improvement District (acting through its duly authorized officers or employees within the scope of their respective duties).

16. **Family** means a social unit consisting of people related to the property owner by marriage and to the extent of the first and second degrees of consanguinity and affinity, including parents, children, grandparents, grandchildren, brothers and sisters, and their spouses. *(See attached Exhibit A.)*

17. **General Manager** means the person appointed by the Board of Trustees as the General Manager of the District.

18. **Owner** means any person owning fee title to the property, or portion thereof, or any person in whose name the legal title to the property appears, in whole or in part, by deed duly recorded in the County Recorder's office, or any person exercising acts of ownership over same for himself, or as executor, administrator, guardian or trustee of the Owner.

19. **Parcel** means a single plot of land with or without a dwelling on it, or a single unit within a multi-unit residence as defined by the District Recreation Roll.

20. **Pass Holder** means an individual who has been issued a Recreation Pass.

21. **Recreation** means any leisure or sports facility, program, or service owned, operated or provided by the District, including, but not limited to, beaches, parks, playgrounds, athletic fields, trails, Nordic and alpine ski areas, golf courses, recreation centers, tennis courts, swimming pools, sports leagues, contests, events, classes, and special events.

22. **Recreation Punch Card** means the transferable punch card issued by the District to eligible parcel owners and/or their assignees that can be used to pay the difference between the resident rate and the retail or nonresident rate for access to various District recreation facilities and bears a face value established by the Board. The District can sell additional Recreation Punch Cards to eligible parcel owners or assignees for their personal use as provided in Article VIII, Item 69 herein.

23. **Recreation Fee** means the annual Recreation Standby and Service Charge assessed by the District to finance recreation programs and facilities.

24. **Recreation Pass** means the non-transferable photo identification pass issued by the District for free access to District beaches and for hourly, daily, and seasonal discounts at District-owned recreation facilities. Subject to the familial limitations described herein, the District can sell additional Recreation Passes to eligible parcel owners, residents or assignees for their personal use as provided in Article VIII, Item 69 herein. Additional Recreation Passes sold cannot be used to obtain a resident discount at the District-owned golf facilities.

25. **Recreation Privilege** means any privileges of recreation access or special rates afforded to pass holders or card holders, including the privilege to provide admission for guests.

26. **Resident** means any individual maintaining residence within the boundaries of the District as constituted by law.

ARTICLE III. RECREATION PRIVILEGE ELIGIBILITY

27. **Eligible Parcels**. Each District parcel which is assessed a recreation fee, is eligible to receive recreation privileges so long as the assessment on that parcel is current.

28. **Fees Kept Current**. All property taxes, special assessments and recreation fees on a parcel must be paid for the current and prior years to maintain the parcel's eligibility for recreation privileges. The District Recreation Fee must be paid by October 1 of the year billed in order to continue receiving recreation privileges.

29. **Resident Eligibility**. All residents are eligible for an assignment of recreation privileges, provided that they have proof of residency.

30. **Available Privileges**. Every eligible parcel may receive any combination of up to five (5) Recreation Passes or Recreation Punch Cards.

ARTICLE IV. APPLICATION PROCEDURES

31. **Application**. Application for recreation privileges must pertain to a specific, eligible parcel. An application will be accepted when filed on the Application Form provided by the District; when accompanied by proof of ownership as set forth in Section 32; and when signed by any owner of the parcel. The form must be filed with the District's Parks and Recreation office, in person, by fax, or by mail, prior to any issue of recreation privileges as provided by this ordinance.

32. **Proof of Ownership**. Proof of ownership shall be made in one of the following forms:

(a) Written copy of legal deed of title.

(b) Confirmation of ownership by the District from the County Assessor's office.

(c) Confirmation of ownership by the District from a local title company.

33. **Proof of Residence**. Proof of residence shall be made in one, or more, of the following forms:

(a) Written copy of legal lease signed by parcel owner, or authorized agent.

(b) Valid Nevada Driver's License indicating current street address.

(c) Verifiable copies of current utility (phone, electric, water and sewer, etc.) bills in assignee's name.

(d) Valid Washoe County, Nevada, voter's registration card.

34. **Proof of Commercial Tenancy**. Proof of commercial tenancy shall be made with the submittal of a written copy of legal lease signed by the parcel owner, or authorized agent.

Confirmation must be by written document. Written documents need not be certified; however, the District may require further confirmation of uncertified documents.

35. **Application Acceptance**. Application will not be accepted on any parcel if another valid parcel owner or resident application already exists on that parcel. Any application will expire with a change of ownership, residency or tenancy where no party listed on the application continues ownership, residency or tenancy.

36. **Application Approval**. Upon review and verification of the application by the District, the Director of Parks and Recreation, or the Director's designee, shall approve the application. It is the applicant's responsibility to provide the District with all information required for approval.

37. **Application Amendment**. To update information on the application, an approved application may be amended by any verified owner of the parcel, whether or not that owner signed or submitted the original application form.

ARTICLE V. ASSIGNMENT OF PRIVILEGES

38. **Assignment Procedures**. Assignment of recreation privileges will be accepted when filed on the Assignment Form and when accompanied by an approved application, or when an approved application is already on file, and when signed by any owner listed on the application

or any listed owner's designated agent. The assignment form must be filed with the District's Recreation office, in person, by fax, or by mail.

When there is an assignment of recreation privileges, the property owner and assignor shall be jointly and severally liable with assignee(s) respecting any sums of money assignee(s) owes the District related to the use of recreation facilities, including the use of all District-owned meeting facilities.

39. **Agent Designation** Any Owner listed on an approved application may designate an agent by filing and executing an Agent Authorization Form. An owner may only designate one agent. The agent form must be filed with the District's Parks and Recreation office, in person, by fax, or by mail. Upon review and verification of the agent form by the District, the Director of Parks and Recreation, or the Director's designee, shall approve the form. It is the owner's responsibility to provide the District with all information required for approval.

40. **Multi-Parcel Agent Designation**. If one agent is to serve as a representative of all units in a multi-parcel complex, an Agent Authorization Form signed by the president of the appropriate homeowners' association and a petition signed by owners representing at least two-thirds (2/3) of the affected parcels must be filed with the District's Parks and Recreation office, in person, by fax, or by mail.

41. **Assignment Acceptance**. Assignment will not be accepted, on any parcel, if another valid assignment already exists on that parcel. Assignment will expire with a change of ownership, where no party listed on the application continues ownership.

42. **Privileges Assignable - Residential Parcels**. Every eligible residential parcel may receive any combination of up to five (5) Recreation Passes or Recreation Punch Cards. A Recreation Pass may be assigned to any property owner's eligible family member, or resident, or resident's eligible family member.

43. **Privileges Assignable - Commercial Parcels**. Every eligible commercial parcel may receive any combination of up to five (5) Recreation Passes or Recreation Punch Cards. A Recreation Pass may be assigned to any property owner's family member, commercial tenant principal, or commercial tenant corporate officer.

44. **Assignment Approval**. Upon review and verification of the assignment by the District, the Director of Parks and Recreation, or the Director's designee, shall approve the assignment. It is the owner's or agent's responsibility to provide the District with all information required for approval.

45. **Assignment Amendments**. To update information, the assignment may be amended, and may only be amended, by the person signing the original assignment form. Provided, however, that any owner listed on the approved application or a designated agent of any listed owner may add names of persons to be assigned recreation privileges, to the extent additional privileges are available.

ARTICLE VI. RECREATION PASS

46. A **Recreation Pass**, subject to the other conditions and restrictions of this recreation pass ordinance, provides the pass holder:

a. free admission to all District-owned beaches; and

b. reduced season pass rates, at District-owned ski and tennis facilities; and

c. reduced daily rates at District-owned golf, ski and tennis facilities; and

d. reduced yearly, quarterly, monthly, or weekly membership rates at District-owned Recreation Center; and

e. reduced daily rates at the District-owned Recreation Center; and

f. reduced rates for the rental of the Chateau, Aspen Grove Community Building, Diamond Peak Ski Lodge, Recreation Center, and District-owned athletic fields; and

g. watercraft launching access at the District-owned boat ramp, for a fee; and

h. guest access to District-owned beaches for a fee; and

i. any other recreation privileges determined by the Board.

47. **Term of Pass Issuance**. The Recreation Pass of any person will be limited to a term of not less than six (6) months or more than five (5) years. If no term is specified, the minimum term shall apply.

48. **Pass Expiration**. A Recreation Pass expires when:

a. the stated expiration date has been exceeded; or

b. the parcel changes ownership; or

c. the pass is withdrawn or reassigned to another individual by the owner or his agent; or

d. payment of the District Recreation Fee is delinquent, or

e. the pass is voided pursuant to this ordinance.

49. **Ability to Transfer**. All Recreation Passes shall be issued for the sole use of the pass holder and are non-transferable.

50. **Responsibilities of Pass Holder**. It is the responsibility of the pass holder to:

a. renew his pass on or before the expiration date shown on the pass;

b. report lost, stolen, or destroyed passes;

c. return all valid passes when eligibility to use passes has expired or when asked by the District to surrender the passes;

d. be responsible for the conduct of his/her guests and for any liability resulting from the guests' use of the District's facilities, or the guests' presence in, or at, the facilities.

51. **Lost/Stolen Recreation Pass**. A charge of $15.00 per pass will be assessed to replace any Recreation Pass that is lost or stolen prior to its date of expiration.

52. **Reassignment Fee**. Reassignment will not be allowed within the initial six months of pass issuance except for the following conditions: (a) the parcel on which the pass is issued changes title; (b) the passholder is deceased; and (c) other circumstances that the Director of Parks & Recreation deems appropriate. In the event of a reassignment where the issued passes are not returned, there will be a charge of $15.00 per pass assessed to the parcel owner. New passes will not be issued for any other individuals unless this fee is paid or the passes are returned.

53. **Ownership Transfer Fee**. A charge of $25.00 per parcel will be assessed to the new owner of a parcel if the Recreation Passes issued on the parcel are not returned to the District when a property changes ownership.

ARTICLE VII. RECREATION PUNCH CARD

54. A **Recreation Punch Card** provides the cardholder with a face value of recreation privileges, determined by the Board, which may be applied toward:

a. the difference between the resident rate and the guest rate for daily beach access, daily boat and jet ski launching; and

b. the difference between the resident rate and the retail or nonresident rate for daily access to the District-owned golf, ski, recreation center, and tennis facilities; and

c. the difference between the resident rate and the retail or nonresident rate for any other recreation use fee or rental fee as may be determined by the Board.

55. **Expiration Date**. Recreation Punch Cards shall have a term of one year beginning on May 1. All Recreation Punch Cards expire on the first April 30th following the date of issuance, regardless of when issued during the course of that year.

56. **Transferability**. Recreation Punch Cards are issued against the parcel and are transferable to anyone.

57. **Replacement**. Recreation Punch Cards will not be replaced if lost, stolen, destroyed or used up.

58. **Exchange for Recreation Pass**. Once the Recreation Punch Card is used, it can be exchanged for a Recreation Pass only if all amounts that appear to be punched are paid for by the card holder and a $15.00 invalidation fee is paid to the District.

59. **Refund**. The Recreation Punch Card has no monetary exchange value and therefore cannot be returned to the District for any form of refund or credit, except as provided in paragraph 58 hereof.

ARTICLE VIII. GENERAL USE REQUIREMENTS

60. **Use of Recreation Pass and/or Card at Golf**. A maximum of five (5) Recreation Passes per parcel can be used to obtain discounts for daily access for the District-owned golf courses. No other Recreation Passes can be used to obtain daily discounts at the District-owned golf courses, beyond the five.

61. **Recreation Pass or Card Ownership**. All Recreation Passes and Cards are the property of the District and must be returned upon request, and/or upon the loss of eligibility by the pass holder or card holder.

62. **Deed Restrictions**. Parcels annexed to the District after May 30, 1968, are not eligible for District beach access as per deed restrictions listed on the beach property.

63. **Assumption of Risk**. The pass holder or card holder assumes all risk of personal injury to himself and loss of, or damage to, his personal property resulting from use of the recreation facilities.

64. **Fraudulent Use**. False or misleading information to obtain a Recreation Punch Card or Recreation Pass, or any fraudulent use of such card or pass, will be grounds for voiding all recreation privileges issued against the parcel. The District reserves the right to pursue any other legal action.

65. **Selling of Recreation Privileges**. It is strictly forbidden for any individual to sell an assignment of Recreation Privileges, or to sell individual Recreation Passes or Recreation Punch Cards. Any such sales of privileges, passes, or cards is considered to be fraudulent use and will be grounds for voiding all recreation privileges issued against the parcel. The District reserves the right to pursue any other legal action.

66. **Misconduct**. Use of the District's facilities by any pass holder or card holder is a privilege. For misconduct, a pass holder or card holder may be removed from the facilities and/or his/her privileges, including the immediate confiscation of the Recreation Pass or Recreation Punch Card, may be suspended for any period deemed appropriate by the District or those privileges may be revoked, at the District's sole discretion. Misconduct includes but is not limited to:

a. failure to abide by any rule, policy, procedure, or regulation established by the District and all such supplemental rules, policies, procedures, or regulations established for each recreational facility; or

b. violation of any law or ordinance; or

c. disorderly and/or abusive behavior; or

d. excessive or improper use of alcohol and/or drugs; or

e. vandalism or any other form of property damage.

The parent(s), conservator, or guardian of a child who engages in willful misconduct may be jointly and severally liable for the resulting damage. (NRS 41.470, as amended.)

67. **Disciplinary Procedures for Misconduct.**

a. **Incident Report.** An employee may, in a timely fashion, submit a written incident report of facts within that employee's own, personal knowledge concerning the alleged misconduct of a user, regardless of whether that user was removed from the premises for that same alleged misconduct.

b. **Removal.** Under exigent circumstances, a District employee may remove a user from District property, with or without the assistance of the Washoe County Sheriff's Office. Exigent circumstances include but are not limited to a threat of bodily harm, to him/herself or others, a risk of property damage, and/or a persistent refusal to obey the law and/or policies and procedures, or regulations of the District.

(1) Washoe County Sheriff Assistance. The District may request at any time the assistance of the Washoe County Sheriff's Office in maintaining order.

(2) Incident Report. The employee(s) involved in the removal shall file an incident report with the department head of that facility within 24 hours of the occurrence.

c. **Suspension, Revocation, or Other Disposition.**

(1) **Department Head.** Within a reasonable time following receipt of an incident report, the Department Head may determine that sufficient evidence of serious misconduct exists, indicating adequate grounds for suspension or revocation of privileges. Upon such an assessment, the Department Head shall provide the user with written notice of the accusation(s) and the possible sanction/penalty which may result. The notice shall also provide the user with the date, time and place at which the user may appear before the Department Head and the accusing employee(s), to respond to the claims and to explain the user's position concerning the incident.

(a) **Notice.** The written notice shall be signed by the Department Head and mailed, certified return receipt requested, to the District's record address of the user. Attached to the notice shall be a copy of the incident report(s). If the user is a minor, an additional copy of the notice shall be mailed to the parent(s) or person(s) in loco parentis of the user-child.

(b) **Hearing.** Within five (5) business days of mailing the written notice, unless otherwise agreed by the Department Head and the user, the Department Head shall hold a hearing to determine the accuracy of the representations contained in the Incident Report and to determine what, if any, further action shall be taken by the District. At this hearing, the employee(s) bringing the charges shall provide testimony and the user shall have opportunity to respond and explain. At the close of the hearing, the Department Head may render his/her opinion orally or take the matter under submission. The Department Head shall deliver a written decision concerning the allegations and any resulting suspension or revocation within two (2) business days following the hearing.

(c) **Decision.** The Department Head shall include findings of facts, conclusions of misconduct, and sanction/penalty, if any imposed, in the decision; additionally, the Department Head shall inform the user in the decision of the user's right to appeal the decision to the District's General Manager. Such disposition shall include, but not be limited to, the following: suspension, revocation, reprimand (oral or written), or a determination of no action of no misconduct.

(d) **Notice of Appeal.** In order to avail him/herself of the right to appeal to the General Manager, the user must so inform the General Manager by letter delivered to the District's Administrative Building (located at 893 Southwood Boulevard, Incline Village, NV 89451) within two (2) business days of issuance of the written opinion.

(2) **District General Manager.** Within five (5) business days of the user's notice of appeal letter, the General Manager shall hear the user's appeal. Also at this hearing shall be the charging employee(s) and the deciding Department Head, to respond to the user's assertions. The General Manager shall render his/her written decision within two (2) business days of the appellate hearing. In the decision, the General Manager shall uphold, modify, or reverse, in whole or in part, the Department Head's decision. The General Manager shall advise the user in this written decision of the user's right to appeal the General Manager's decision to the District's Board of Trustees. In order to avail him/herself of the right of final appeal to the Board of Trustees, the user must so inform the Board by letter delivered to the District's Administrative Building (located at 893 Southwood Boulevard, Incline Village, NV 89451) within five (5) business days of issuance of the written opinion from the General Manager.

(3) **Board of Trustees.** The Board of Trustees shall hear the user's duly agendized appeal at the Board's next regularly scheduled public meeting. (NRS 241.030 (3) (d): nothing contained in the Chapter 241 shall require that any meeting be closed to the public.) Also at this hearing shall be the charging employee(s), the deciding Department Head, and General Manager, to respond to the user's assertions. The Board shall render its decision at this

hearing. By its decision, the Board shall uphold, modify, or overturn, in whole or in part, the General Manager's decision. The Board's decision is final.

d. **Right of Representation**. The user may enlist the assistance of legal counsel, of the user's choice and at his/her expense, at any and all stages of these proceedings.

e. **Reservation**. Nothing herein shall preclude the District from utilizing any and all legal and/or equitable remedies, in the stead of or in addition to the present procedure.

68. **Other Issuance**. Nothing in this ordinance shall prevent the District from issuing recreation privileges to employees, former Board members, or anyone else, in the past, present or future, as approved by the Board of Trustees.

69. **Purchase of Additional Recreation Passes or Cards**. If any owner wishes to purchase additional Recreation Passes or Recreation Punch Cards, the owner may do so by paying an additional fee equal to one-fifth of the current District Recreation Fee for each Pass or Card for the parcel in question. Additional Recreation Passes are valid for a period of one (1) year from the date of purchase, unless they expire on an earlier date as provided in paragraph 48 hereof. Additional Recreation Passes can only be purchased for eligible family members of parcel owners or residents. Additional Recreation Punch Cards are valid from the date of purchase until the first April 30th following the date of purchase and can be used by any individual. Additional Recreation Passes or Cards cannot be purchased for commercial parcels and their tenants. An application for additional recreation passes or cards must be filed with the District's Parks and Recreation office.

70. **Personal Identification**. Prior to issuance of any recreation privilege, identification of the person receiving the privilege may be required in the form of a valid photo identification card, such as an automobile driver's license.

71. **Administration**. The General Manager may from time to time adopt, amend, or rescind rules consistent with this ordinance. The General Manager shall hold the final authority to interpret this ordinance and rules adopted thereunder. Such authority shall include the application of this ordinance and rules to specific people, parcels, and circumstances. The day-to-day administration of this ordinance is hereby delegated to the Director of Parks and Recreation.

ARTICLE IX. AMENDMENTS

72. **Modification of Privileges**. The recreation privileges issued under this ordinance shall be modified by the terms of any amendments to this ordinance subsequently adopted by the Board. Nothing in this ordinance shall be deemed to limit the Board's discretion to modify the terms of this ordinance or the application of any such modification to Recreation Passes, Recreation Punch Cards and other recreation privileges outstanding, including alterations in the terms or expiration dates thereof.

73. **Effective Date**. The effective date of this ordinance was January 1, 1988. The terms of this ordinance applied to all recreation privileges that were outstanding on that date. The

Director of Parks and Recreation is empowered to determine how to administer the application of this ordinance to existing privileges. The effective date of this amendment shall be March 26, 1998.

Exhibit A

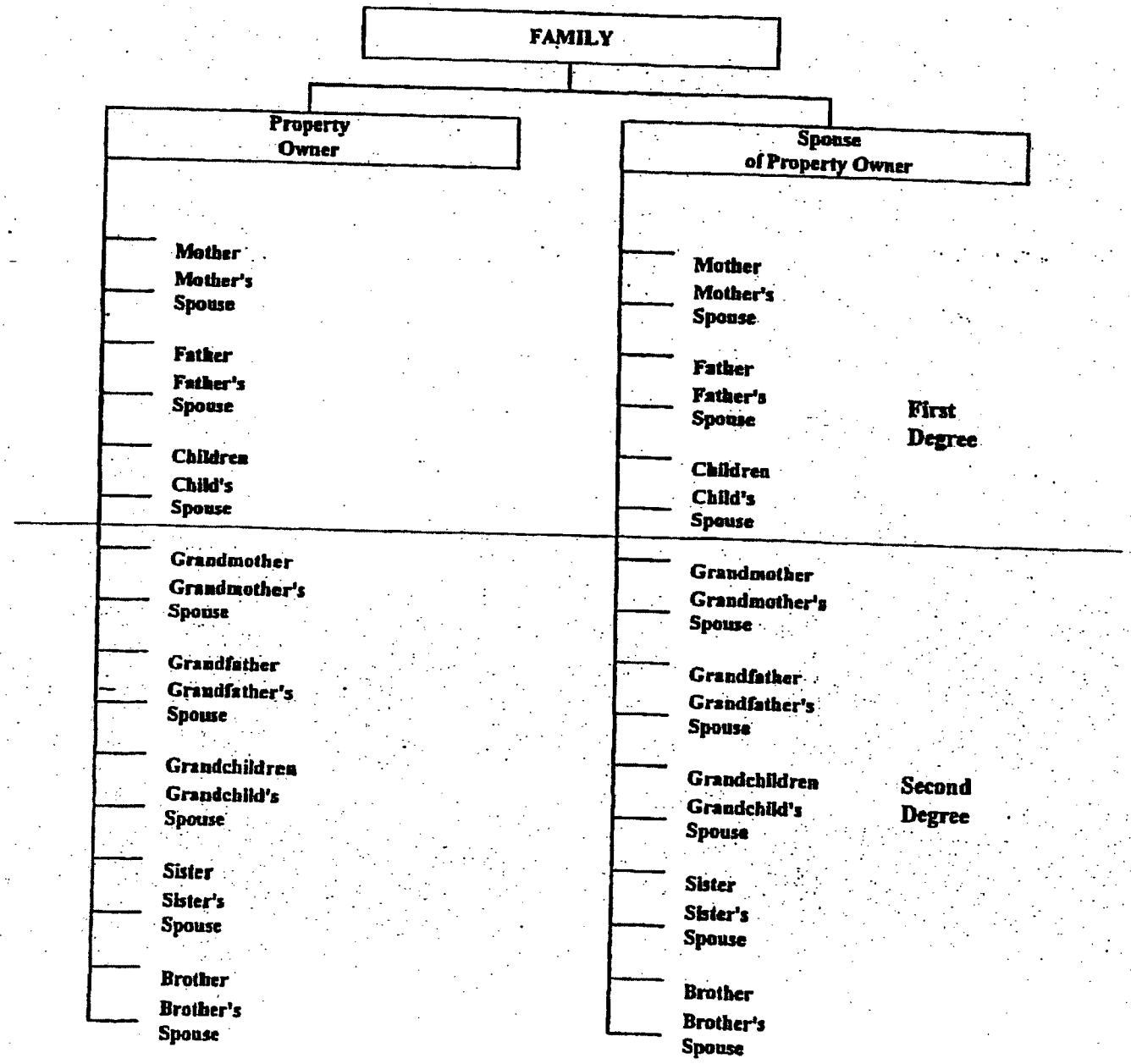

EXHIBIT “3"

Katherine Parks - Signed Affidavits - Cruz and Horn.pdf

Stephen C. Balkenbush, Esq.
State Bar No. 1814
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6590 South McCarran Blvd., Suite B
Reno, Nevada 89509
(702) 786-2882
Attorneys for Defendant
Incline Village General Improvement District

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

FRANK WRIGHT,

Plaintiff,

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, and DOES I through XX, inclusive,

Defendants.

Case No. 3:08-CV-00119-LRH-VPC

AFFIDAVIT OF RAMONA CRUZ

STATE OF NEVADA)
:ss
COUNTY OF WASHOE)

RAMONA CRUZ, being first duly sworn, deposes and says under penalty of perjury as follows:

1. I have been employed by Incline Village General Improvement District (hereinafter IVGID) for approximately 15 years and am currently employed as the Director of Finance, Accounting, and Information Technology for IVGID.

2. To the best of my recollection, in 1968, IVGID purchased two parcels of real property abutting Lake Tahoe, including APN 122-162-23 and APN 127-280-01. These parcels are currently known as Burnt Cedar Beach, Incline Beach, Ski Beach, and Hermit Beach (hereinafter referred to as "IVGID Beaches").

3. To the best of my recollection, the payment for the IVGID Beaches was made through the use of public bonds. The entire indebtedness resulting from the issuance of these public bonds was paid for solely by owners of parcels of real property in IVGID as it was

constituted in 1968.

4. To the best of my recollection, since 1968, improvements has been made to the IVGID Beaches and these improvements have been paid for solely by owners of parcels of real property in IVGID as it was constituted in 1968.

5. To the best of my recollection, owners of real property annexed to IVGID after 1968 have not been assessed for the purchase of or improvements to IVGID Beaches.

RAMONA CRUZ

SUBSCRIBED and SWORN to before before me this 30th day of April, 2008.

NOTARY PUBLIC

SUSAN A. HERRON
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 98-2732-2 - Expires December 8, 2010

EXHIBIT “4"

R.P.T.T. $ 2310.00

D E E D

THIS INDENTURE, made this 13 day of June, 1968, between VILLAGE DEVELOPMENT CO., formerly known as CRYSTAL BAY DEVELOPMENT CO., a Nevada corporation, party of the first part, (hereinafter referred to as "Grantor"), and INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, a quasi-municipal corporation organized and existing pursuant to the provisions of the General Improvement District Law, Chapter 318, Nevada Revised Statutes, party of the second part (hereinafter referred to as "Grantee"),

W I T N E S S E T H:

That the said party of the first part, for and in consideration of the sum of TEN DOLLARS ($10.00), lawful money of the United States, to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell and convey unto the said party of the second part, and to its successors and assigns, all that certain lot, piece or parcel of land situate in the County of Washoe, State of Nevada, more particularly described in Exhibit "A" attached hereto.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said party of the second part, and to its successors and assigns forever.

It is hereby covenanted and agreed that the real property above described, and any and all improvements now or hereafter located thereon, shall be held, maintained and used by grantee,

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Bible, Medonald, Cowan & Wilson
ATTORNEYS AT LAW
100 SOUTH VIRGINIA ST.
RENO, NEVADA 89505

Exhibit A

its successors and assigns, only for the purposes of recreation by, and for the benefit of, property owners and their tenants (specifically including occupants of motels and hotels) within the Incline Village General Improvement District as now constituted, and, as the Board of Trustees of said District may determine, the guests of such property owners, and for such other purposes as are herein expressly authorized.

This covenant shall be in perpetuity, shall be binding upon the successors and assigns of grantee, shall run with and be a charge against the land herein described, shall be for the benefit of each parcel of real property located within the area presently designated and described as Incline Village General Improvement District and shall be enforceable by the owners of such parcels and their heirs, successors and assigns; provided, however, that said Board of Trustees shall have authority to levy assessments and charges as provided by law, and to control, regulate, maintain and improve said property as in its sole discretion it shall deem reasonable and necessary to effectuate the purposes herein mentioned; and provided, further, the said District shall have the right to use the real property above described for the maintenance and operation of the water pumping facilities now located thereon and such other utility facilities necessary to the operation of the District.

Grantor, for the benefit of itself and its successors and assigns in the ownership of real properties located within the presently constituted boundaries of Incline Village General Improvement District, and for the benefit of all other owners of property located within said boundaries, and their respective successors and assigns in such ownership, hereby specifically reserves an easement to enter upon the above described real property and to

BOOK 324 PAGE 193

16713

[illegible]
ATTORNEYS AT LAW
[illegible] SOUTH VIRGINIA ST.
RENO, NEVADA [illegible]

use said real property for the recreational uses and purposes specified herein. Said District shall have the authority to impose reasonable rules, regulations and controls upon the use of said easement by the owners thereof.

The easement hereby created and reserved shall be appurtenant to all properties located within the Incline Village General Improvement District, as said District is now constituted. Such easement may not be sold, assigned or transferred in gross, either voluntarily or involuntarily, but shall pass with any conveyance of real properties within said District as now constituted.

IN WITNESS WHEREOF, the said party of the first part has hereunto set its hand and seal the day and year first above written.

VILLAGE DEVELOPMENT CO.

ATTEST:

Secretary

By
President

ACCEPTED AND APPROVED:

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT

ATTEST:

Secretary

By
President

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ATTORNEYS AT LAW
100 SOUTH VIRGINIA ST.
RENO, NEVADA 89505

STATE OF NEVADA)
) ss
COUNTY OF WASHOE)

On this [illegible] day of June, 1968, before me, a Notary Public in and for said County and State, personally appeared [illegible] and [illegible], known to me to be the President and Secretary of the corporation that executed the foregoing instrument, and upon oath, did depose that they are the officers of said corporation as above designated; that they are acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official stamp at my office in said County and State, the day and year in this certificate first above written.

[illegible]
Notary Public

DOROTHY E. [illegible]
Notary Public — State of Nevada
Washoe County
My Commission Expires February 3, 1972

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1671

[illegible], McDonald, Carano & Wilson
ATTORNEYS AT LAW
100 SOUTH VIRGINIA ST.
RENO, NEVADA 89505

STATE OF NEVADA)
) ss
COUNTY OF WASHOE)

On this 12th day of June, 1968, before me, a Notary Public in and for said County and State, personally appeared [illegible] and [illegible], known to me to be the President and Secretary of INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, the quasi-municipal corporation that executed the foregoing instrument, and upon oath, did depose that they are the officers of said corporation as above designated; that they are acquainted with the seal of said corporation and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures; and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official stamp at my office in said County and State, the day and year in this certificate first above written.

[illegible]
Notary Public

DOROTHY E. LeBROKE
Notary Public — State of Nevada
Washoe County
My Commission Expires February 1, 1972

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[illegible]
ATTORNEYS AT LAW
[illegible]
RENO, NEVADA

uate in the County of Washoe, State of Nevada, as follows, to-wit:

PARCEL 1

A portion of Lots II, III and IV of Section 22, Township 16 North, Range 18 East, M.D.B.&M., more particularly described as follows:

Commencing at the Southwesterly corner of Lot 12 in Block N and the Northerly right of way line of Nevada State Highway No. 28, as said lot, block and Highway are shown on the map of Lakeview Subdivision, Washoe County, Nevada, filed in the office of the County Recorder of Washoe County, State of Nevada, on February 27, 1961; thence South 20°35'35" West 80.00 feet to a point in the Southerly right of way of said Highway; thence South 69°24'25" East 174.28 feet along the Southerly right of way line of said Highway to the true point of beginning of this description, said point of beginning also being the Northwest corner of that certain parcel conveyed to Crystal Bay Development Co. on September 30, 1963, under Filing No. 395633, Washoe County Records; thence continuing South 69°24'25" East 1251.79 feet along the Southerly right of way of said Highway to the Northwest corner of that certain parcel deeded to Pacific Bridge Company and Associates on October 23, 1963, under Filing No. 397736, Deed Records; thence South 20°35'35" West 574.75 feet, more or less, to Lake Tahoe; thence Westerly along Lake Tahoe to a point from which the true point of beginning of this description bears North 31°07'35" East; thence North 31°07'35" East to the true point of beginning of this description.

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PARCEL 2

Beginning at the Southeasterly corner of Lot 24 in Block H of Lakeview Subdivision, Washoe County, Nevada, according to the map thereof, filed in the office of the County Recorder of Washoe County, State of Nevada, on February 27, 1961; thence South 15°11'27" East 111.13 feet to a point on the Southerly right of way line of Nevada State Highway 28 as it now exists and the true point of beginning of this description, said point of beginning being the Northwest corner of Lot 36 of Lakeshore Subdivision No. 1, Washoe No. 1, as said Lot 36 is shown on the map of Lakeshore Subdivision No. 1, Washoe County, Nevada, filed in the office of the County Recorder of Washoe County, State of Nevada, on June 28, 1960, and being on a curve concave to the Northeast, having a central angle of 4°41'11", a radius of 5040.00 feet and a tangent which bears North 61°40'36" West 206.23 feet, thence Northwesterly along said curve and the Southerly boundary of said highway 28, an arc distance of 412.24 feet; thence continuing along the Southerly right of way line of said highway 28, North 56°59'25" West 907.76 feet; thence leaving said Highway 28, South 27°17'46" West 90.72 feet; thence South 00°50'05 West to Lake Tahoe; thence running Southeasterly along Lake Tahoe to a point from which the true point of beginning bears North 28°08'35" East (Lakeshore Subdivision No. 1 bearing North 27°16'00" East); thence North 28°08'35" East along the Westerly boundary of said Lakeshore Subdivision No. 1 to the true point of beginning of this description.

RESERVING FROM the above described parcel an easement for maintaining and operating an existing pumping plant and pipe lines.

116713

EXHIBIT “5"

Stephen C. Balkenbush, Esq.
State Bar No. 1814
Thorndal, Armstrong, Delk, Balkenbush & Eisinger
6590 South McCarran Blvd., Suite B
Reno, Nevada 89509
(702) 786-2882
Attorneys for Defendant
Incline Village General Improvement District

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

FRANK WRIGHT,

Plaintiff,

vs.

INCLINE VILLAGE GENERAL IMPROVEMENT DISTRICT, and DOES I through XX, inclusive,

Defendants.

Case No. 3:08-CV-00119-LRH-VPC

AFFIDAVIT OF BILL HORN

STATE OF NEVADA)
:ss
COUNTY OF WASHOE)

BILL HORN, being first duly sworn, deposes and says under penalty of perjury as follows:

1. I am employed as the General Manager for Incline Village General Improvement District (hereinafter IVGID) and have been employed in this capacity since November, 2001.

2. To the best of my recollection, at no time since I have been General Manager for IVGID has Plaintiff Frank Wright requested that he be granted access to Burnt Cedar Beach, Incline Beach, Ski Beach, or Hermit Beach in order to engage in speech which is protected by the First Amendment.

3. To the best of my recollection, at no time since I have been General Manager for IVGID has Plaintiff Frank Wright requested that he be granted access to Burnt Cedar Beach, Incline Beach, Ski Beach, or Hermit Beach in order to bolster his candidacy for political office in general or, specifically, as a candidate for Trustee of IVGID.

4. To the best of my recollection, at no time since I have been General Manger for IVGID has IVGID ever denied access to any group or individual, including Plaintiff, to access Burnt Cedar Beach, Incline Beach, Ski Beach, or Hermit Beach for the purpose of engaging in First Amendment activities.

5. IVGID has been considering over the past year adopting a policy which addresses the use of District property and use of District facilities for speech and advocacy. A copy of this proposed policy is attached to my affidavit as Exhibit "1." This policy will be considered by the IVGID Board of Trustees at its regularly scheduled meeting on April 30, 2008.

BILL HORN

SUBSCRIBED and SWORN to before before me this 30th day of April, 2008.

NOTARY PUBLIC

SUSAN A. HERRON
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 98-2732-2 - Expires December 8, 2010