

Return to:
William M. Berg, Attorney
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703815

FILED BY
B. Berg
2006 MAY 12 P 4: 53
279
MARIE SCOTT
BONNER COUNTY RECORDER
MS DEPUTY

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
and
ROAD MAINTENANCE AGREEMENT**

This Declaration of Covenants, Conditions and Restrictions, and Road Maintenance Agreement is made by and between LARRY W. TOPPENBERG and JUNE M. TOPPENBERG, husband and wife (Toppenbergs), and STEVEN B. SIEMER and JACALYN SIEMER, in their capacities as trustees of the Siemer Family Trust (Siemers), and shall be effective upon recordation in the records of Bonner County, Idaho.

I. Recitals

1.1. The Declarants are as follows:

1.1.1. Larry W. Toppenberg and June M. Toppenberg, as to the following real property:

The West half of the Northwest quarter of the Southeast quarter of
Section 3, Township 56 North, Range 2 West, Boise Meridian,
Bonner County, Idaho.

1.1.2. Steven B. Siemer and Jacalyn Siemer, as to the following real property:

The East half of the Northwest quarter of the Southeast quarter of
Section 3, Township 56 North, Range 2 West, Boise Meridian,
Bonner County, Idaho.

1.2. The Toppenbergs intend to create a subdivision known as GLENSHIRE ESTATES.

1.3. The Siemers intend to create a subdivision known as SKYLINE SUBDIVISION.

1.4. The above described properties are contiguous.

1.5. The Toppenbergs have granted the Siemers a road and utility easement (Easement), recorded as instrument number 703814, records of Bonner County, Idaho; and

1.6. It is in the parties' mutual interests to cooperate in regulating road maintenance and creating minimum design standards for dwellings.

II. Declaration

FOR VALUABLE CONSIDERATION the parties mutually covenant and declare as to their respective properties:

2.1. **Residential Lots.** The Siemers' property (Skyline Subdivision) shall be restricted to single family residential lots and common areas supporting and enhancing residential living.

- 2.2. **Maximum Lot Division.** The Siemers' property (Skyline Subdivision) shall be subdivided into no more than four lots.
- 2.3. **Minimum Standards.** The properties shall be subject to the following minimum standards:
- 2.3.1 **One Dwelling Unit Per Lot.** A lot may contain no more than one single family residence or dwelling unit.
- 2.3.2 **Mobile, Modular, and Manufactured Homes Prohibited.** A lot owner shall not construct or maintain on the property as a dwelling unit any mobile, modular or manufactured home.
- 2.3.3 **Maintenance and Repair Obligations.** A lot owner shall have a continuing duty to maintain, repair, replace and restore areas under its exclusive control in a neat, sanitary and attractive condition.
- 2.3.4 **Building Materials.** Storage of building materials, including but not limited to sand, gravel, top soil, lumber, roofing, windows and doors, shall be permitted only while a structure is actively under construction.
- 2.3.5 **Storing Wrecked Vehicles.** Wrecked, disabled, or unlicensed vehicles shall not be stored on or within the property unless such vehicles are stored in a fully enclosed building.
- 2.3.6 **Trash.** No rubbish, trash or garbage or other waste material shall be kept or permitted upon any lot, dwelling unit, or common area except in sanitary containers.
- 2.3.7 **Operating a Business.** A lot owner shall not conduct, or allow to be conducted, a business or commercial activity on the property except for a "home occupation" as described and limited in Title 12-202 of the Bonner County Revised Code and as subsequently amended.
- 2.4. **Utilities.** Utilities lines and pipes shall be buried. Utility poles are prohibited.
- 2.5. **Enforcement.** This declaration is for the mutual benefit of the Declarants and, therefore, the parties hereto, lot owners individually and collectively, and any homeowners' association representing the lot owners are entitled to the protections provided hereunder and shall, therefore, each be entitled to enforce in law or equity any breach of these covenants. Time is of the essence and these covenants shall be subject to declaratory and/or injunctive relief and/or specific performance. In addition, a party in breach shall be subject to a claim for monetary damages reasonably foreseeable from the breach. The prevailing party shall be entitled to recover the costs of enforcement including reasonable attorney fees from the non-prevailing party subject to the following condition: a party seeking relief shall be entitled to automatic recovery only if it gives the party in breach notice of intent to enforce these covenants in law or equity and provides the party in breach no less than thirty (30) days to cure the breach before such action is commenced. Notice of intent shall be by certified mail, postage prepaid, return receipt requested, to the party's address of record with Bonner County, Idaho Assessor. Such notice shall set forth the alleged breach with sufficient particularity that the alleged breach can be cured.

- 2.6 **Covenant.** All of the restrictions contained herein shall be deemed to be covenants running with the land and shall endure and be binding upon the parties hereto, all lot owners, and their respective heirs, successors, agents, trustees and assigns.
- 2.7 **Irrevocable Provisions.** This Article II is irrevocable.
- 2.8 **Supplemental CC&Rs.** If the Toppenbergs or Siemers declare and record a supplemental declaration of covenants, conditions, and restrictions, said declaration shall not be inconsistent with this declaration and shall reference this instrument by record number.

III. Road Maintenance Agreement

FOR VALUABLE CONSIDERATION the parties mutually covenant and agree to bind their respective properties, as described above, to the following road maintenance agreement:

- 3.1. **Easement Road.** This agreement shall apply to the road and utility easement, 60 feet in width, granted by the Toppenbergs to the Siemers on even date and recorded as instrument number 703814, records of Bonner County, Idaho (Easement) and described as follows:

The South 60 feet of the West half of the Northwest quarter of the Southeast quarter of Section 3, Township 56 North, Range 2 West, Boise Meridian, Bonner County, Idaho, and the South 720 feet of the East 60 feet of the West half of the Northwest quarter of the Southeast quarter of said Section 3, Township 56 North, Range 2 West, Boise Meridian, Bonner County, Idaho.

The subject roadway is depicted in Exhibit A (attached hereto) as "Tarin Court" from its junction with Brisboys Road to its terminus in Lot 2 of the Toppenbergs' property.

- 3.2. **Lots Subject to Agreement.** The following lots shall be subject to this Road Maintenance Agreement:

3.2.1. **Siemers' property.** All lots created on the Siemers' property shall be subject to this agreement.

3.2.2. **Toppenbergs' property.** Lots located in that portion of the Toppenbergs' property described below shall be subject to this agreement:

The East half of the West half of the Northwest quarter of the Southeast quarter of Section 3, Township 56 North, Range 2 West, Boise Meridian, Bonner County, Idaho.

- 3.3 **Management Body.** Lot owners subject to this agreement shall form a road association to maintain the Easement roadway.
- 3.4 **Road Association.** The road association may be incorporated or unincorporated and shall be known as the Glenshire-Skyline Road Assoc. (Association).
- 3.5 **Voting.** Each lot subject to this agreement shall have one (1) vote in the Association. Decisions shall be made by majority vote.
- 3.6 **Deadlock.** A deadlock in the Association shall be submitted to arbitration pursuant to the Uniform Arbitration Act as codified in Chapter 9, Title 7 of the Idaho Code.
- 3.7 **Budget.** The Association shall adopt an annual budget.

- 3.8 **Assessments.** The Association shall fix and levy assessments for road maintenance and repair. Each lot owner in the Association shall bear an equal burden of the cost of operating the Association and maintaining the roadway. Assessments shall be made and collected no less frequently than annually.
- 3.9 **Membership.** Membership in the Association and the duty to pay assessments shall arise upon the recording of this instrument. A lot owner and his successors shall be subject to assessment, regardless of whether a dwelling is constructed or the lot owner uses the roadway.
- 3.10 **Rights and Duties of Declarants.** The Declarants shall have the following rights and duties:
- 3.10.1 **Mutual Duty to Maintain Roadway.** So long as the Declarants are in title to their respective properties subject to this agreement, they shall have a mutual duty and obligation to maintain the roadway.
- 3.10.2 **Siemers' Voting Power.** Until a lot is conveyed, the Siemers shall have a total of four (4) votes in the Association and shall be assessed for four (4) lots. Upon conveyance of a lot, the Siemers' voting power shall be reduced by one (1) vote and the lot owner shall succeed to Membership in the Association pursuant to the terms of this agreement.
- 3.10.3 **Toppenbergs' Voting Power.** Until a lot is conveyed, the Toppenbergs shall have a total of two (2) votes in the Association and shall be assessed for two (2) lots. Upon conveyance of a lot, the Toppenbergs' voting power shall be reduced by one (1) vote and the lot owner shall succeed to Membership in the Association pursuant to the terms of this agreement.
- 3.10.4 **Toppenbergs' Right of Approval.** So long as the Toppenbergs are in title to property subject to this agreement (paragraph 4.2.2), any action of the Association shall be subject to the Toppenbergs' express approval.
- 3.11 **Governing Documents.** The Association may adopt articles of incorporation, bylaws, rules, regulations and other governing documents. Such documents shall not be inconsistent with this agreement.
- 3.12 **Minimum Maintenance Obligations.** The Association shall be obligated to maintain the Easement for the benefit of all lot owners. Maintenance shall include, at a minimum, snow removal, pot hole repair, erosion control, and noxious weed control.
- 3.13 **Duty to Repair.** A lot owner shall have a duty to repair the Easement if the lot owner, his agent or invitee damages the roadway. The Association shall enforce this provision and is authorize to levy a special assessment on the offending lot owner in the amount of the repair.
- 3.14 **Enforcement.** The Association and the members individually or collectively shall have a right of enforcement. In addition, a homeowners association representing the lot owners of the respective subdivisions shall each have the right of enforcement. The enforcement powers set forth in Article 2.5 above shall apply to this section.
- 3.15 **Amendment.** This Article III may be amended by unanimous consent of the lot owners

subject to the Road Maintenance Agreement. Any amendment shall be (a) written, (b) recorded in the records of Bonner County, Idaho, (c) reference this agreement by record number, and (d) be executed by all lot owners.

IV. Miscellaneous Provisions

4.1. Definitions.

“Assessment” means a levy or imposition of a monetary fee on real property for the purpose of maintaining the Easement.

“Dwelling” means a building or portion thereof designed exclusively for residential purposes.

“Easement” means the easement and roadway thereon described in the Easement recorded as instrument number ⁷⁰³⁸¹⁴ ___, records of Bonner County, Idaho.

“Lot Owner” means the record owner of a lot within the subdivision. Where more than one person is in title to a lot, the title holders collectively are the “Lot Owner” and shall cast one vote.

“Lot” means an individual platted lot within the Property.

"Mobile home" means a factory-assembled structure equipped with the necessary service connections and made so as to be readily movable as a unit or units on their own running gear and designed to be used as a dwelling unit or units with or without a permanent foundation.

"Modular building" means any building or building component, other than a manufactured or mobile home, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site

"Manufactured home" means a structure that is transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein.

“Owner” means the record owner, whether one or more persons or entities of the fee simple title. The term Owner includes, but is not limited to, a purchaser under a deed of trust, mortgage, or contract, or a person who takes the lot under a life estate.

“Subdivision” means the plats on the parcels described in Article 2.1, tentatively known as Glenshire Estates or Skyline Subdivision. If the plat as recorded has a different name, the recorded name shall apply to this instrument.

4.2. Entire Agreement. This agreement contains the entire agreement of the parties respecting the matters herein and supersedes all prior written and oral agreements between the parties respecting such matters.

4.3. Time is of the Essence. Time is of the essence in this agreement.

4.4. Counterparts. This declaration and agreement may be executed in counterparts. Executing an agreement in counterparts shall mean the signature on identical copies of the

same agreement, amendment or addendum. Each identical copy of an agreement signed in counterparts is deemed to be an original and all identical copies shall together constitute one and the same instrument.

- 4.5. **Captions and Titles.** The captions and titles are for convenience and reference only. They shall not define, limit or construe the contents of any provision.
- 4.6. **Gender Designation.** Unless otherwise suggested by the context of the provision, the masculine gender shall include the feminine and vice versa.
- 4.7. **Plural and Singular Words.** Words used in singular include the plural and vice versa.
- 4.8. **Governing Law and Severability.** This agreement is established under, and shall be governed by the laws of the state of Idaho. Any provision prohibited by law or unenforceable shall not affect the remaining provisions of the agreement.

THIS AGREEMENT CONSISTS OF SIX PAGES INCLUDING THIS PAGE, A SIGNATURE PAGE (page 6) AND AN EXHIBIT (page 8).

SIGNATURE PAGE

DATED this ____ day of May, 2006

Larry W. Toppenberg

June M. Toppenberg

STATE OF _____)
) SS.
COUNTY OF _____

On this ____ day of _____, in the year of 200____, before me, a Notary Public for the state of _____, personally appeared **Larry W. Toppenberg**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

(Sign) _____
NOTARY PUBLIC
Residing at: _____
My commission expires: _____

STATE OF _____)
) SS.
COUNTY OF _____

On this ____ day of _____, in the year of 200____, before me, a Notary Public for the state of Idaho, personally appeared **June M. Toppenberg**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

(Sign) _____
NOTARY PUBLIC
Residing at: _____
My commission expires: _____

SIEMER FAMILY TRUST

Dated this 11 day of May,
2006

Steven B. Siemer
By: **Steven B. Siemer, Trustee**

Jacalyn Siemer
By: **Jacalyn Siemer, Trustee**

STATE OF IDAHO)
COUNTY OF BONNER) SS.

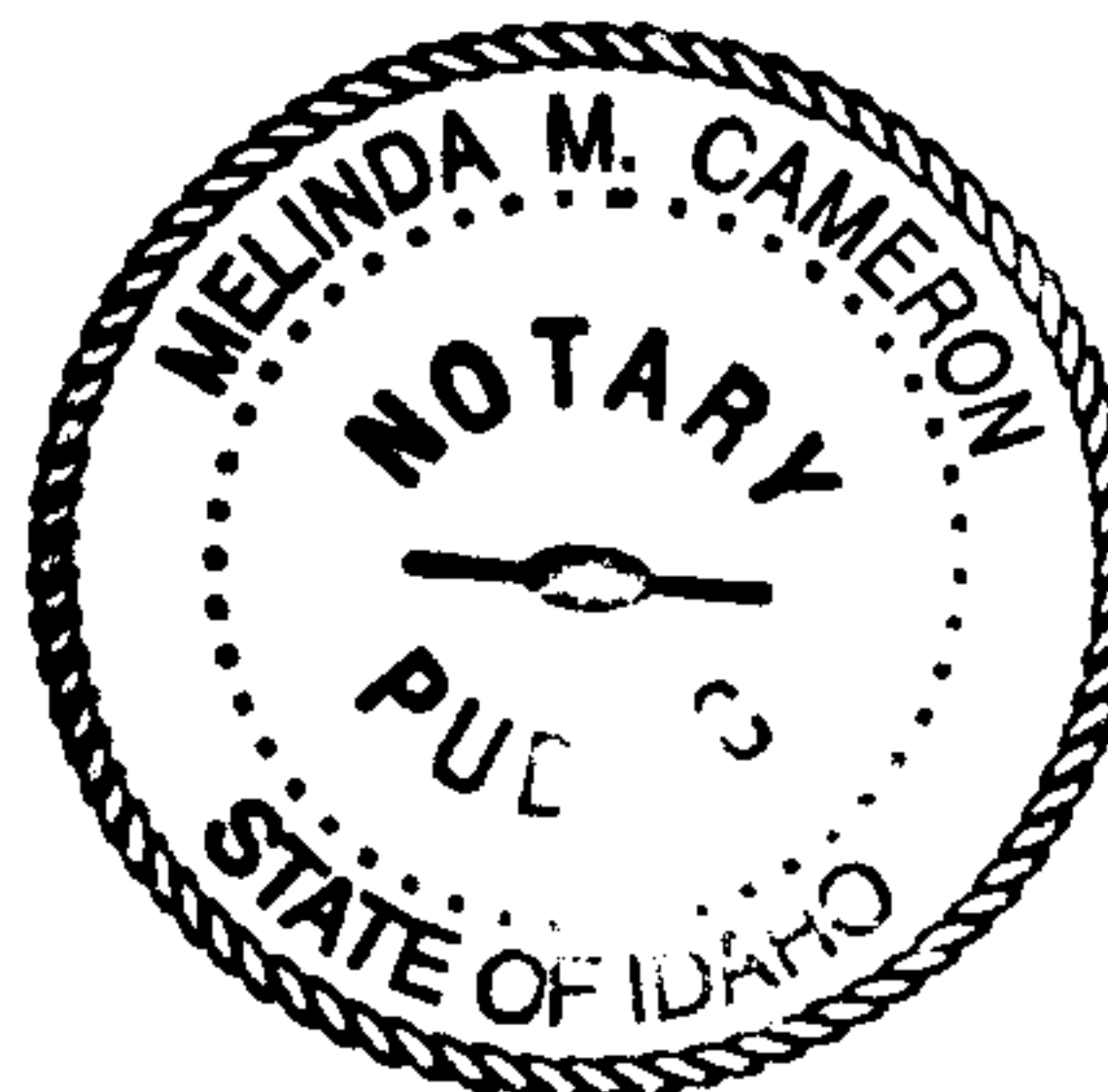
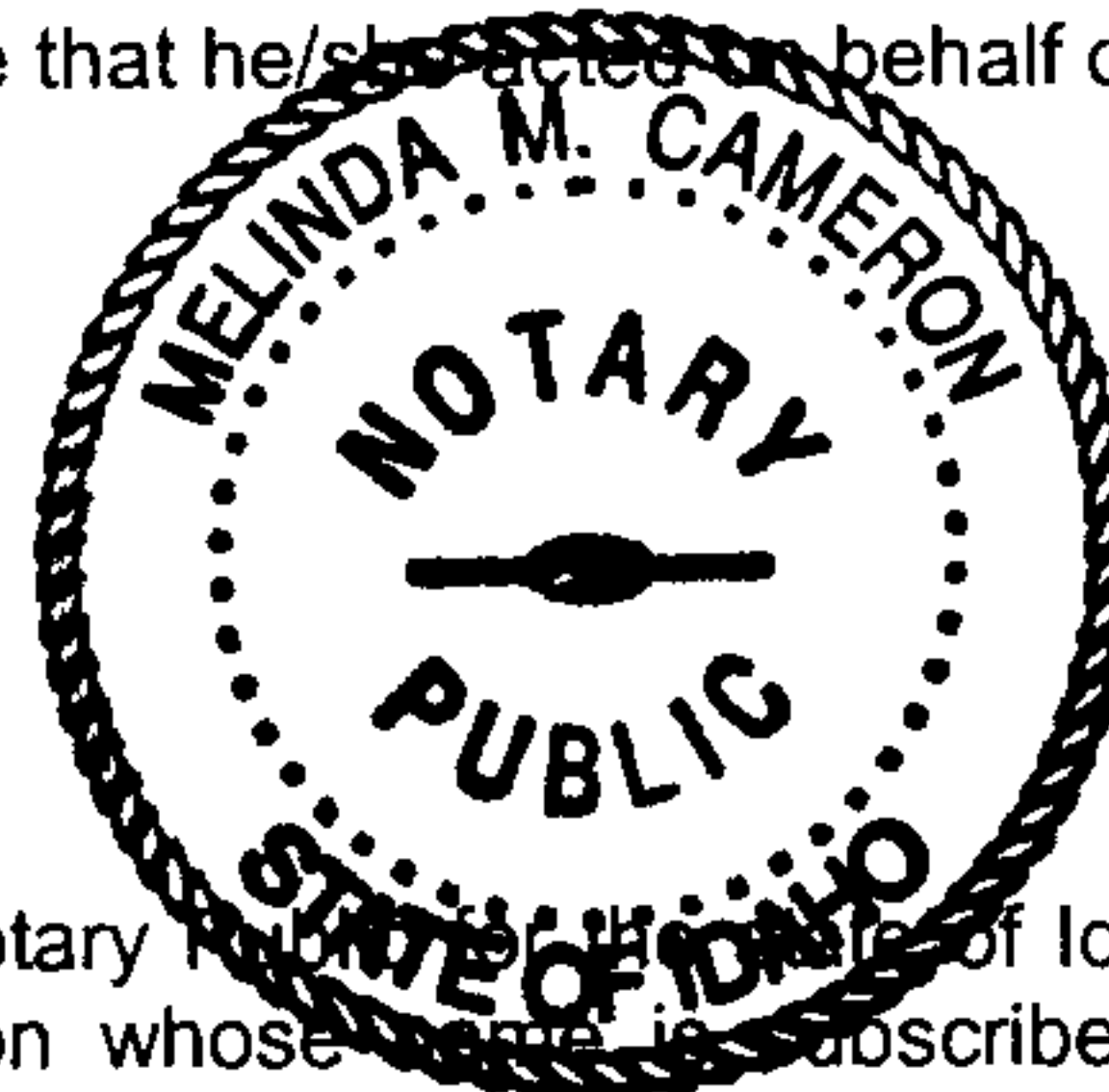
On this 11 day of May, in the year of 2006, before me, a Notary Public for the state of Idaho, personally appeared **Steven B. Siemer**, known or identified to me to be the person whose name is subscribed to the within instrument as the trustee of **Siemer Family Trust** and acknowledged to me that he/she acted on behalf of said trust.

(Sign) Melinda M. Cameron
NOTARY PUBLIC
Residing at: Sagle
My commission expires: 12/3/07

STATE OF IDAHO)
COUNTY OF BONNER) SS.

On this 11 day of May, in the year of 2006, before me, a Notary Public for the state of Idaho, personally appeared **Jacalyn Siemer**, known or identified to me to be the person whose name is subscribed to the within instrument as the trustee of **Siemer Family Trust** and acknowledged to me that he/she acted on behalf of said trust.

(Sign) Melinda M. Cameron
NOTARY PUBLIC
Residing at: Sagle
My commission expires: 12/3/07



SIGNATURE PAGE

DATED this ___ day of May, 2006

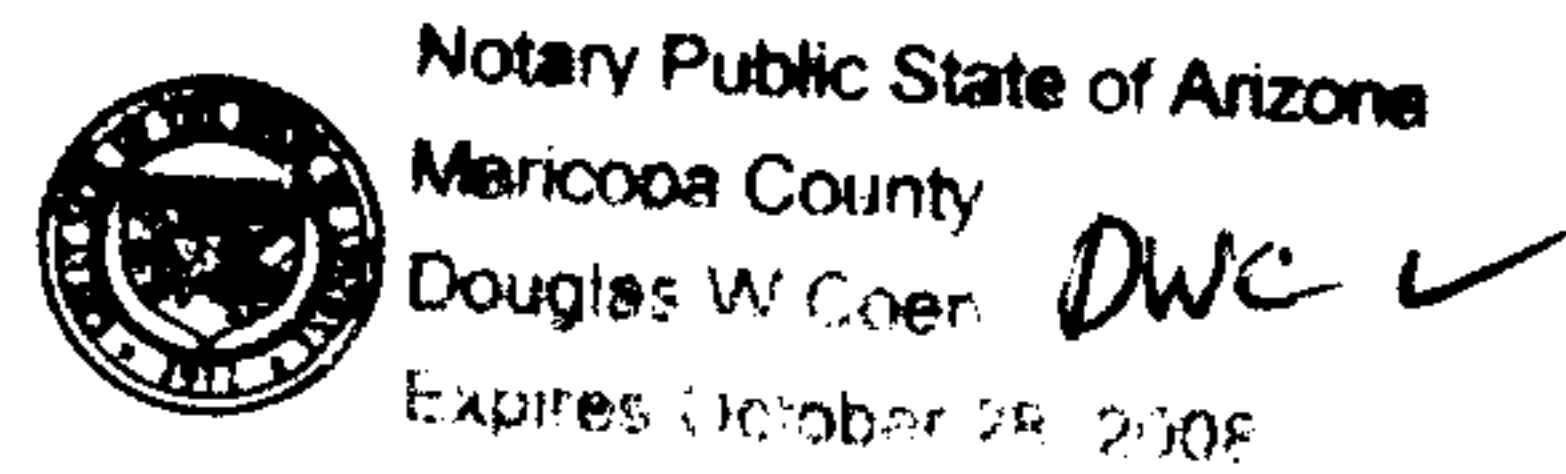
Larry W. Toppenberg ✓
Larry W. Toppenberg

June M. Toppenberg ✓
June M. Toppenberg

STATE OF Arizona)
COUNTY OF Maricopa) SS.

On this 10th day of MAY, in the year of 2006, before me, a Notary Public for the state of Arizona, personally appeared **Larry W. Toppenberg**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

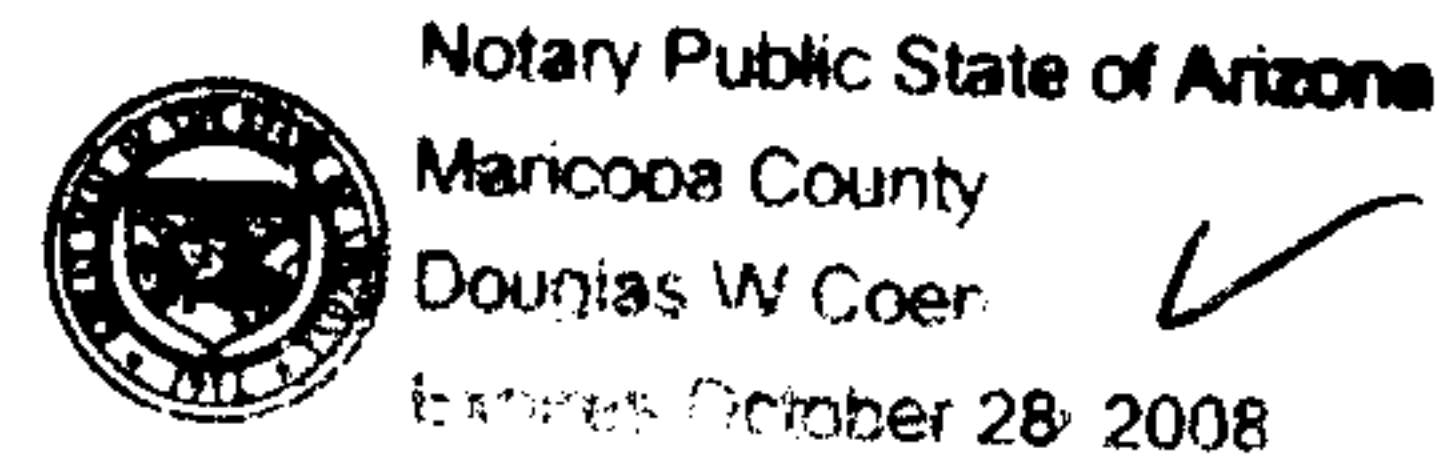
(Sign) DW Coen ✓
NOTARY PUBLIC
Residing at: Mesa, AZ, 85202
My commission expires: 10-28-2008



STATE OF Arizona)
COUNTY OF Maricopa) SS.

On this 10th day of MAY, in the year of 2006, before me, a Notary Public for the state of Arizona, personally appeared **June M. Toppenberg**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

(Sign) DW Coen ✓
NOTARY PUBLIC
Residing at: Mesa, AZ, 85202
My commission expires: 10-28-2008



DATED this ___ day of May, 2006

Steven B. Siemer

Jacalyn Siemer

STATE OF IDAHO)
COUNTY OF BONNER) SS.

On this ___ day of _____, in the year of 200____, before me, a Notary Public for the state of Idaho, personally appeared **Steven B. Siemer**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

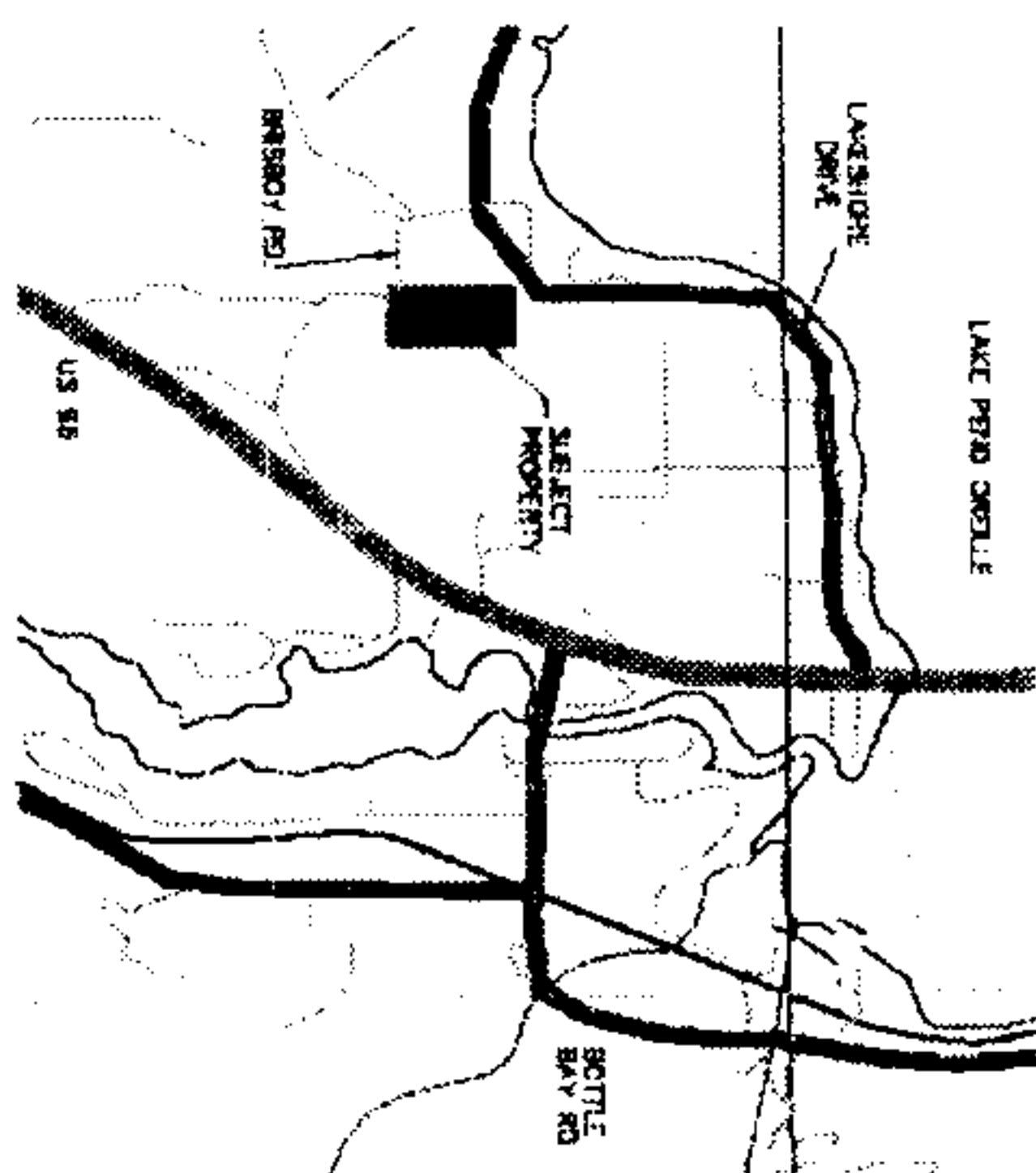
(Sign) _____
NOTARY PUBLIC
Residing at: _____
My commission expires: _____

STATE OF IDAHO)
COUNTY OF BONNER) SS.

On this ___ day of _____, in the year of 200____, before me, a Notary Public for the state of Idaho, personally appeared **Jacalyn Siemer**, known or identified to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same.

(Sign) _____
NOTARY PUBLIC
Residing at: _____
My commission expires: _____

GLENSHIRE ESTATES PRELIMINARY PLAT



GENERAL NOTES

- [illegible]

TEST FILE APPROPRIATE LITERATURE

PROJECT AREA
JERRY AND JANE TOMPELSON
1306 N. HAZELDEN
CHANDLER, AZ 85226

BUILDING LOTS

A 4x4 grid of squares. The square in the second row from the top and second column from the left is shaded black. All other squares are white.