

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

KNEELAND, KORB, COLLIER & LEGG
Post Office Box 249
Ketchum, ID 83340
KKCL File No. 7278-B

Instrument # 454827

HAILEY, BLAINE, IDAHO

2001-08-29 01:45:00 No. of Pages: 8
Recorded for : KNEELAND LAW FIRM
MARSHA RIEMANN Fee: 24.00
Ex-Officio Recorder Deputy
Index to: EASEMENTS

(Space above line for Recorder's Use)

RELOCATION OF MUTUAL ACCESS EASEMENT AGREEMENT

THIS RELOCATION OF MUTUAL ACCESS EASEMENT is made this 31st day of July, 2001, by and between Scott USA, Inc., a Delaware corporation, whose address is Post Office Box 2030, Sun Valley, Idaho, 83353 ("Scott USA"), and Ketchum Depot, an Idaho limited partnership, whose address is Post Office Box 4380, Ketchum, Idaho, 83340 ("Depot").

RECITALS

A. Scott USA is the owner of Lot 1 of Northgate Subdivision according to the official plat thereof, recorded as Instrument No. 308473, records of Blaine County, Idaho ("Lot 1").

B. Depot is the owner of Lot 2A of Northgate Subdivision according to the official plat thereof, recorded as Instrument No. 308473, records of Blaine County, Idaho ("Lot 2A").

C. Lot 1 and Lot 2A are contiguous to one another.

D. That certain Agreement to Grant Mutual Access Easement and to Grant Temporary Access and Parking recorded July 27, 2000, as Instrument No. 441530, records of Blaine County, Idaho ("Agreement to Grant Mutual Access Easement") covers Lot 1 and Lot 2A and provides in part a mutual access easement over Lot 1 for the purpose of vehicular and pedestrian ingress and egress to the existing parking lot located on Lot 2A.

E. Scott USA and Depot desire to relocate the mutual access easement and terminate and release of record the Agreement to Grant Mutual Access Easement as provided hereinafter.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is acknowledged, the parties agree and declare as follows:

1. Relocation of Easement. Scott USA hereby grants, relocates and declares a new perpetual and exclusive mutual access easement over and across Lot 1, twenty-two feet (22') wide with the center line thirty-two feet (32') feet south of the property line between Lot 1 and Lot 2A, more specifically described on Exhibit "A" attached hereto and by this reference made a part hereof

("Easement Premises").

2. Scope of Easement. The purpose of the Easement Premises is to provide vehicular and pedestrian ingress and egress over, on, through and across Lot 1 to Lot 2A (the Lot 2A parking lot). Lot 1 shall have the right to utilize the Easement Premises to access Lot 1 or in any other manner not inconsistent with Lot 2A's use of the Easement Premises.

3. No Claims. Depot agrees that it does not have any present or future claim of right, entitlement, or interest, prescriptive or otherwise, easements, agreements, approvals or any other claim of right in Lot 1 except as specifically set forth in this Agreement.

4. Condition of Property. Scott USA makes no warranties or representations of any kind concerning the physical condition of the Easement Premises. Depot acknowledges it has inspected the Easement Premises and accepts the physical condition of the Easement Premises "as is," without warranty of any kind or nature, except as to title.

5. Repair and Maintenance.

a) Prior to the date when Lot 1 is improved, Depot, its successors or assigns, shall at its sole cost and expense, keep the Easement Premises in reasonably safe, clean and sightly condition, reasonably free from waste and snow to the reasonable satisfaction of Scott USA or its successors or assigns. Depot shall not place any of the snow removed from Lot 2A on Lot 1. After Scott commences construction of improvements and during the term or any extension of the parking spaces lease on Lot 2A between Scott USA and Depot, Scott USA shall pay the cost of snow removal and other maintenance and repairs of the Easement Premises. After expiration of the parking spaces lease on Lot 2A, Scott USA and Depot shall each pay one-half (½) of the cost of snow removal and other maintenance and repairs of the Easement Premises.

b) All alterations, maintenance and repairs made by Depot or Scott USA upon the Easement Premises shall be performed in a good and workmanlike manner reasonably satisfactory to Scott USA and Depot.

c) Depot shall not suffer any mechanics or materialmen's liens of any kind to be placed upon or enforced against the Easement Premises for any work done or materials furnished at Depot's request. If any such liens are filed, Depot shall bond or remove them within sixty (60) days of learning of the same, at Depot's expenses, and shall pay any judgment which may be entered in connection therewith.

d) Should Depot fail, neglect or refuse to do so, Scott USA, after giving Depot twenty (20) business days written notice, shall have the right to pay any amount required to release such liens or to defend any action brought and to pay any judgment entered. Depot shall be liable to Scott USA for all costs, damages, reasonable attorneys fees and any amounts expended in defending any proceedings or in payment of any settling through judgment.

6. Termination. The Agreement to Grant Mutual Access Easement shall be automatically terminated and released of record upon the recordation of this Agreement with the Blaine County Recorder.

7. Indemnity. Depot hereby indemnifies and agrees to hold Scott USA, its employees, customers and invitees harmless from any and all loss, cost, damage and expense (including attorneys fees and court costs) suffered or incurred by reason of this Agreement or the use of the Easement Premises by Depot, its employees, customers and invitees, or any one claiming, by, through or under them.

8. Insurance. Depot shall designate Scott USA as an additional insured on its insurance policy in connection with the use of the Easement Premises by its employees, owners, tenants, customers and invitees, or any one claiming by, through or under them.

9. Running of Benefits and Burdens. All provisions of this Relocation of Mutual Access Easement Agreement, including the benefits and burdens, run with Lot 1 and Lot 2A and are binding upon and inure to the heirs, assigns, successors, tenants and personal representatives of the parties hereto.

10. Recordation. The parties agree that this Relocation of Mutual Access Easement Agreement shall be recorded.

11. Miscellaneous Provisions.

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

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

c) Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude nor waive its rights to use any or all other remedies. Any rights provided to the parties under this Agreement are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

d) Attorney Fees. In the event of any action or proceeding brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys fees, including attorneys fees on appeal, and all costs of the litigation. If an action or proceeding is not commenced, but it is necessary for the party who sought compliance with

this Agreement to retain the services of legal counsel in that process, then that party shall be entitled to receive from the party who has failed to perform all reasonable attorneys fees and related costs.

c) Successors and Assigns. This Agreement and the terms and provisions of it shall inure to the benefit of and be binding upon the successors and assigns of the parties.

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

g) Governing Law. This Agreement shall be governed by, and construed in accordance with, the statutes, laws, legal decisions and rules and regulations of the State of Idaho.

h) Preparation of Agreement. No presumption shall exist in favor of or against any party to this Agreement as the result of the drafting and preparation of the document.

i) No Waiver. No waiver of any breach by either party of the terms of this Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

j) Amendment. No amendment of this Agreement shall be effective unless the amendment is in writing, signed by all of the parties.

k) Signature. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. An executed version of this Agreement which has been signed and transmitted by facsimile or other electronic or mechanical means shall be deemed an original.

l) Notices. Any notice, demand, request, instruction or other communications from any party to this Agreement relating to the substance of the Agreement shall be given by certified mail, postage prepaid by the sender, to the following addresses:

If to Scott USA: P.O. Box 2030
 Sun Valley, ID 83353

If to Depot: P.O. Box 4380
 Ketchum, ID 83340

Notice shall be deemed to have been given forty-eight (48) hours after the same has been deposited in any United States Mail Post Office Box in the state to which the notice is addressed; or seventy-two (72) hours after deposit in any such United States Mail Post Office Box in a state other than in the state to which the notice is addressed. The addresses provided in this paragraph may be changed by giving written notice of such change.

m) Other Documents. The parties agree to execute and deliver such other documents as may be necessary or desirable to carry out the purposes of this Agreement.

n) Time of the Essence. Time and timely performance is of the essence of this Agreement.

WHEREFORE, the parties have executed this Agreement on the day and year first above written.

SCOTT USA, INC.
a Delaware corporation



By: David L. Stevens
Its: Vice President

KETCHUM DEPOT, a limited partnership
ROKAN CORPORATION
a Delaware corporation as general partner



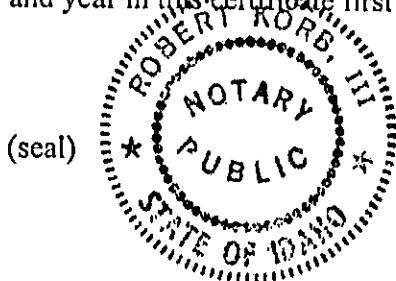
By: Robert A. Kantor
Its: President

ACKNOWLEDGMENTS

STATE OF IDAHO)
) ss.
County of Blaine)

On this 27th day of July, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared David L. Stevens, known to me to be the Vice President of Scott USA, a Delaware corporation, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same on behalf of said corporation.

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



(seal)
STATE OF IDAHO)
) ss.
County of Blaine)

Robert Korb

NOTARY PUBLIC for Idaho
Residing at Ketchum
Commission Expires 4-16-2003

On this 31st day of July, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert A. Kantor, known to me to be the President of Rokan Corporation, a Delaware corporation, and known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same on behalf of said corporation.

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



Marla G. Mink

NOTARY PUBLIC for Idaho
Residing at Bellvue, Id.
Commission Expires 12/01/06

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Benchmark Associates, P.A.

ENGINEERING, PLANNING, SURVEYING & MAPPING
P.O. Box 733 • 100 Bell Drive
Ketchum, Idaho 83340
208/726-9512 • Fax 208/726-9514 • bma@micron.net

LEGAL DESCRIPTION

ACCESS EASEMENT
Within: NORTHGATE SUBDIVISION, LOT 1

TOWNSHIP 4 NORTH, RANGE 17 EAST, BOISE MERIDIAN
SECTION 13 : NORTHGATE SUBDIVISION : LOT 1

Commencing at the northeast corner of Lot 1, NORTHGATE SUBDIVISION, according to the official plat thereof, recorded as Instrument No. 308473, records of Blaine County, Idaho, thence S04°58'12"E, 19.00 feet along the easterly boundary of said Lot 1 to the True Point of Beginning.

Thence continuing along said easterly boundary S04°58'12"E, 22.00 feet

thence S85°01'48"W, 132.00 feet;

thence N04°58'12"W, 22.00 feet;

thence N85°01'48"E, 132.00 feet along said common boundary to the True Point of Beginning.

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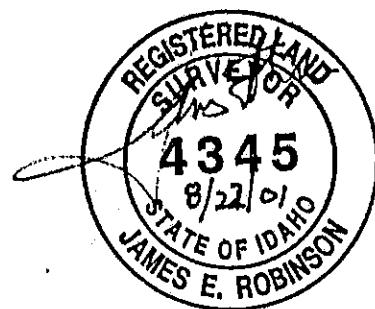


EXHIBIT A
Page 1

NORTHGATE SUBDIVISION, LOT 1

ACCESS EASEMENT

LOCATED WITHIN THE NE $\frac{1}{4}$ SEC. 13, T4N, R17E, BOISE
MERIDIAN, KETCHUM, BLAINE COUNTY, IDAHO

S 4°58'12"E 151.32

VARN SPRINGS ROAD

LOT 1
NORTHGATE

S85°01'48"W 150.00

18'

22'

19'

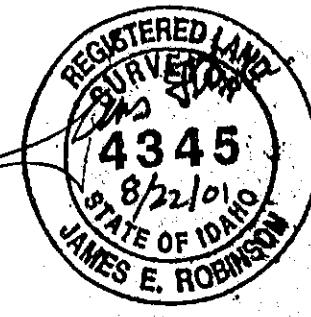
132'

LOT 2A

ACCESS EASEMENT

N 4°58'12"W 145.44

LEWIS STREET



40 20 0 40 80

SCALE: 1' = 40'

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