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APR 24 2014 13:25 P 9

Fee amount: 58.00  
FB: 60-13250  
COMP: MS

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
04/24/2014 13:25:46.00



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THE ABOVE SPACE IS RESERVED FOR THE REGISTER OF DEEDS RECORDING INFORMATION

**THIS PAGE INCLUDED  
FOR INDEXING**

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**PERMANENT RECIPROCAL JOINT ACCESS  
EASEMENT AND CONSTRUCTION AGREEMENT**

THIS PERMANENT RECIPROCAL JOINT ACCESS EASEMENT AND CONSTRUCTION AGREEMENT is made as of this 20 day of ~~February~~ <sup>MARCH (SCK)</sup>, 2014, (hereinafter referred to as the "Effective Date"), by and between CARDINAL & GOLD IV, L.L.C., A Nebraska limited liability company ("Summit Pointe"), and HALLE PROPERTIES, L.L.C., an Arizona limited liability company ("Halle"), Summit Pointe and Halle are sometimes collectively referred to as the "Parties".

**RECITALS:**

WHEREAS, Summit Pointe is the lawful owner of Lots 8 and 9, Fromkin's Commercial Plaza, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (the "Summit Pointe Lot");

WHEREAS, Halle is the lawful owner of Lot 1, Georgetowne Replat 6, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (the "Halle Lot");

WHEREAS, the Summit Pointe Lot and the Halle Lot are sometimes referred to herein individually as a "Lot" and collectively as the "Lots";

WHEREAS, by virtue of the recording of this PERMANENT RECIPROCAL JOINT ACCESS EASEMENT AND CONSTRUCTION AGREEMENT (the "Easement Agreement"), the Lots shall be owned, held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of this Easement Agreement and every grantee of any interest in any said Lots, by acceptance of a deed or other conveyance of such interest, and every person or entity owning an interest in any portion of any said Lots, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of this Easement Agreement and shall be deemed to have consented to the terms hereof; and

WHEREAS, the Parties hereto desire to establish for their own benefit and for the mutual benefit of all future owners, occupants, and mortgagees of the Lots or any portion thereof and their respective officers, directors, members, partners, employees, tenants, agents, contractors, customers, invitees, licensees, vendors, suppliers, subtenants, concessionaires, or fire, rescue and other emergency vehicles (collectively referred to herein as "Permittees"), ingress and egress, over and upon each of the Lots, now or hereafter located upon the Lots or any portion thereof within the easement area depicted and legally described on **EXHIBIT A** (the "Easement Area") for the purpose of providing pedestrian and vehicular ingress and egress to the Lots (but not parking), and intends that all future owners, occupants and mortgagees and any other persons hereafter acquiring any interest in the Lots shall hold said interest subject to certain rights, easements and privileges in, over and upon the Lots or any portion thereof for the purpose of providing pedestrian and vehicular ingress and egress, to and from the Lots across the Easement Area.

NOW, THEREFORE, for and in consideration of One Dollar (\$1.00), and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties do hereby agree as follows:

1. Access Easement.

(a) Summit Pointe hereby grants to Halle an easement for the perpetual non-exclusive right for vehicular and pedestrian ingress and egress, in, over and upon the Improvements now or hereafter constructed and located upon that portion of the Summit Pointe Lot within the Easement Area, and hereby made a part hereof, solely for the purpose of providing Permittees pedestrian and vehicular access to the Lots (but not parking).

(b) Halle hereby grants to Summit Pointe an easement for the perpetual non-exclusive right for vehicular and pedestrian ingress and egress, in, over and upon the Improvements now or hereafter constructed and located upon that portion of the Halle Lot within the Easement Area, solely for the purpose of providing Permittees pedestrian and vehicular access to the Lots (but not parking).

(c) The easement rights herein granted to any person or entity, or anyone claiming by, through or under them, shall terminate and expire at such time as such person or entity ceases to be an owner, occupant or mortgagee of a Lot or Lots or any portion thereof, as the case may be, and such rights shall thereafter be held by the new owner, occupant or mortgagee, or anyone claiming by, through or under them.

2. Nature of Easements. The foreclosure of any mortgage covering all or a portion of a Lot or Lots shall in no way affect or diminish any easements granted herein, for all such easements shall remain in full force and effect for the benefit of the grantees described herein. The easements hereby created are not public easements, but are permanent, private easements for the use and benefit of the owners, future owners, occupants, mortgagees, and their respective Permittees. The Parties hereto expressly disclaim the creation of any rights in or for the benefit of the public generally. It is understood and agreed that the easements shall continue for so long as any Lot remains in existence.

3. Improvements and Costs and Expenses. Halle shall be responsible for constructing the connection of the private access drive, sidewalk and stairs ("Improvements") servicing both Lots as depicted on Exhibit B at its sole cost and expense. At completion of construction, Halle shall cause its general contractor to warrant, as to the owners or occupants of each Lot, that the Improvements are free from defects in design, materials or workmanship for at least one (1) year from the date of completion and to execute a construction lien waiver for such Improvements. Within ten (10) days following receipt of such warranty statement and construction lien waiver, Summit Pointe shall pay to Halle its proportionate share, as described below, of the agreed upon design and construction costs for the Improvements. The payment by Summit Pointe shall be conditioned upon the simultaneous payment by Halle of its share of the construction costs.

The Parties agree that the total design and construction costs for the Improvements shall be shared as follows:

<u>Lot:</u>	<u>Share:</u>
Owner of the Summit Pointe Lot:	\$9,256.58
Owner of the Halle Lot:	\$5,290.32

4. Responsibility to Repair Own Parcel. Each party hereto shall be responsible for the repair and maintenance of the Lot owned by it and all Improvements located on such Lot. The repair and maintenance responsibilities shall include, without limitation, the following:

(a) Maintaining the paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or comparable substituted material as shall in all respects be equal in quality, use and durability;

(b) Removal of all papers, ice and snow, mud and sand, debris, filth and refuse, and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Placing, keeping and repair and replacing any necessary and appropriate directional signs, markers and lines; and

(d) Operating, keeping and repairing and replacing, where necessary, such artificial lighting facilities as shall be reasonably required and at all times in conformance with standards and applicable ordinances and governmental requirements applicable to the drive area.

5. Lien Rights. In the event any sum of money payable by one party to the other pursuant to any provision of this Easement Agreement is not paid when due, the party seeking payment (the "Requesting Party") shall give the non-paying party (the "Non-Paying Party") written notice of such failure to pay as required herein. In the event the unpaid amount is not paid in full to have Requesting Party within ten (10) days after such notice is given, the Requesting Party shall have the right to record, in the Office of the Register of Deeds for Douglas County, Nebraska, a notice of lien, which shall set forth the then-delinquent amount owed by the Non-Paying Party (including interest at an annual rate of eighteen percent (18%) per annum (the "Default Rate"), and a legal description of the lot owned by the Non-Paying Party (the "Notice of Lien"). Any Non-Paying Party acknowledges that the its Lot will be subject to a lien claim in favor of the Requesting Party in the event Non-Paying Party fails to pay any sums due under this Easement Agreement. Upon recordation of such Notice of Lien, the then delinquent amount owing by the Non-Paying Party, together with interest thereon at the Default Rate, shall constitute a lien upon the parcel of such Non-Paying Party (the "Lien"), as described in the Notice of Lien. In the event the amount secured by such Lien is not paid in full within ten (10) days after such Notice of Lien has been recorded, the Requesting Party may enforce payment of the amount due, or enforce the Lien against the parcel of the Non-Paying Party, by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies set forth below, the Requesting Party shall not prejudice or waive its right to exercise the other remedy or such additional remedies as may be available under applicable law): (i) bringing an action at law against the Non-Paying Party personally obligated to pay the unpaid sum of money; and/or (ii) foreclosing the Lien against the parcel of the Non-Paying Party in accordance with the then prevailing Nebraska law relating to the foreclosure of realty mortgages or deeds of trust (including the right to recover any deficiency).

6. Self-Help Rights. If either Party (the "Failing Party") fails to observe or perform any of its obligations or duties hereunder, then the non-failing party (the "Non-Failing Party") may give the Failing Party written notice of such failure and Failing Party shall observe or perform the obligation or duty required within thirty (30) days after receiving such notice; provided, however, that if such non-performed or non-observed obligation or duty is one which cannot be performed or observed within said thirty (30) day period and thereafter diligently prosecutes such performance or observance until completion to the reasonable satisfaction of the Non-Failing Party, then Non-Failing Party shall not be entitled to exercise the remedy provided for in the following sentences. Should Failing Party fail to fulfill this obligation or duty within such period, then Non-Failing Party, through its employees or authorized agents, shall have the right and power to enter onto the Failing Party's Lot and perform such obligation or duty without liability to any person for damages for wrongful entry or trespass unless occasioned by the gross negligence or intentional wrongful acts of the Non-Failing Party or its agents. Failing Party shall be liable for one-half (1/2) of the cost of such work and shall promptly reimburse Non-Failing Party for such

costs. If Failing Party shall fail to reimburse Non-Failing Party within thirty (30) days after receipt from Non-Failing Party of a written statement describing the work performed and the cost thereof, then Non-Failing Party may enforce payment of the amount due in accordance with Section 5 of this Easement Agreement. Notwithstanding the foregoing, in the event of an emergency, Non-Failing Party may undertake any duties which are reasonably necessary to alleviate said emergency and to stabilize the situation and Failing Party shall reimburse Non-Failing Party for one-half (1/2) of all reasonable sums so expended. Non-Failing Party shall use best efforts to give immediate notice of such emergent circumstances to Failing Party.

7. Restrictions. No barricades, signs, fences, or other dividers will be constructed and nothing will be done to prohibit or discourage the free and uninterrupted flow of pedestrian or vehicular traffic through the access easement area on any Lot; provided, however, curb stops and other reasonable traffic controls, including, without limitation, directional barriers and stop signs, as may be necessary to guide and control the orderly flow of traffic may be installed by a party on its respective Lot to the extent such controls do not materially adversely affect the other Lot or party. Notwithstanding the foregoing, a party may install temporary traffic controls on its respective Lot in the event of any emergency condition.

8. Effect of Covenants. Each Lot owner, its successors and assigns, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, options, liens and charges, and the jurisdiction, rights and powers granted or reserved by this Easement Agreement or to which this Easement Agreement is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person or entity having at any time any interest of estate in said property, and shall inure to the benefit of such Lot owners on like manner as though the provisions, terms and restrictions of this Easement Agreement were received and stipulated at length in each and every deed of conveyance.

9. Waiver. No covenant, restriction, condition or provision of this Easement Agreement shall be deemed to have been abrogated or waived by reason on any failure to enforce the same at any time, irrespective of the number of violations or breaches which may occur.

10. Savings Clause. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Easement Agreement herein contained, as the case may be, shall not render the remainder of the Easement Agreement invalid, nor any other part therein contained.

11. Amendment; Modification. This Easement Agreement may be amended by the written consent and mutual agreement of all the record owners of the Lots subject hereto or their successors and assigns. Any such modification or amendment shall be effective when duly recorded in the Office of the Register of Deeds of Douglas County, Nebraska.

12. Estoppel. Either party shall deliver to the other party, within ten (10) days after request therefore, a written statement, setting forth that, to the best of such owners knowledge, the requesting party is not in default, in the performance of any of its obligations under this Easement Agreement or, if in default, setting forth the nature of such default, and such other matters as may be reasonably requested.

13. Governing Law. This Easement Agreement shall be construed and governed in accordance with the laws of the State of Nebraska. Time is of the essence.

**[Remainder of page left intentionally blank; execution page follows.]**

EXECUTED this 20 day of ~~February~~<sup>MARCH</sup>, 2014.

**CARDINAL & GOLD IV, L.L.C.,**  
A Nebraska limited liability company

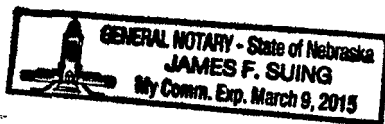
By: [Signature]  
Scott C. Heider, Manager

STATE OF NEBRASKA       )  
                                      )ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me on this 20 day of ~~February~~<sup>MARCH</sup>, 2014, by Scott C. Heider, Manager of CARDINAL & GOLD IV, L.L.C., A Nebraska limited liability company, on behalf of the limited liability company.

[Signature]  
Notary Public

(Seal)



**HALLE PROPERTIES, L.L.C.,**  
an Arizona limited liability company,

By: Wilanna, Inc., an Arizona corporation  
Its: Managing Member

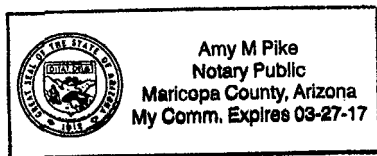
By: [Signature]  
James Silhasek, Agent

STATE OF ARIZONA       )  
                                      )ss.  
COUNTY OF MARICOPA    )

The foregoing instrument was acknowledged before me on this 14th day of February, 2014, by James Silhasek, Agent of Wilanna Inc., an Arizona corporation, Managing Member of Halle Properties, L.L.C., an Arizona limited liability company, on behalf of the limited liability company.

[Signature]  
Notary Public

(Seal)



**CONSENT OF BENEFICIARY UNDER DEED OF TRUST**

In consideration of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, Core Bank as Beneficiary, under those certain Deed of Trust recorded 12/15/2010, as Instrument No. 2010/19396 ("Deed of Trust"), respectively, in the Office of the Register of Deeds of Douglas County, Nebraska, hereby consents to the foregoing PERMANENT RECIPROCAL JOINT ACCESS EASEMENT AND CONSTRUCTION AGREEMENT (the "Easement") such that the Deed of Trust shall be subject to said Easement, and that for itself and its successors and assigns, hereby agrees that in the event of foreclosure of the Deed of Trust, it shall not take any action to terminate the foregoing Easement.

Executed this 20 day of March, 2014.

BENEFICIARY:

Core Bank

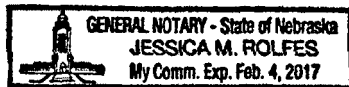
By: [Signature]

Its: Vice President of Commercial Lending

STATE OF NEBRASKA     )  
                                      ) ss.  
COUNTY OF DOUGLAS    )

Before me, a Notary Public qualified for said County and State, personally came Kevin McCracken, Vice President of Core Bank, a National Association, known to me to be the identical person who signed the foregoing instrument and acknowledged the execution thereof to be his/her voluntary act and deed on behalf of said National Association.

WITNESS my hand and Notary Seal on this 20 day of March, 2014.



[Signature]  
Notary Public

EXHIBIT A  
EASEMENT AREA  
**SITE PLAN**

LEGAL DESCRIPTION: PART OF LOT 1 **60-13479**

THE SOUTH 12 FEET OF THE WEST 94 FEET OF LOT 1, GEORGETOWNE REPLAT 6, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA. CONTAINING 1128 SQUARE FEET, MORE OR LESS.

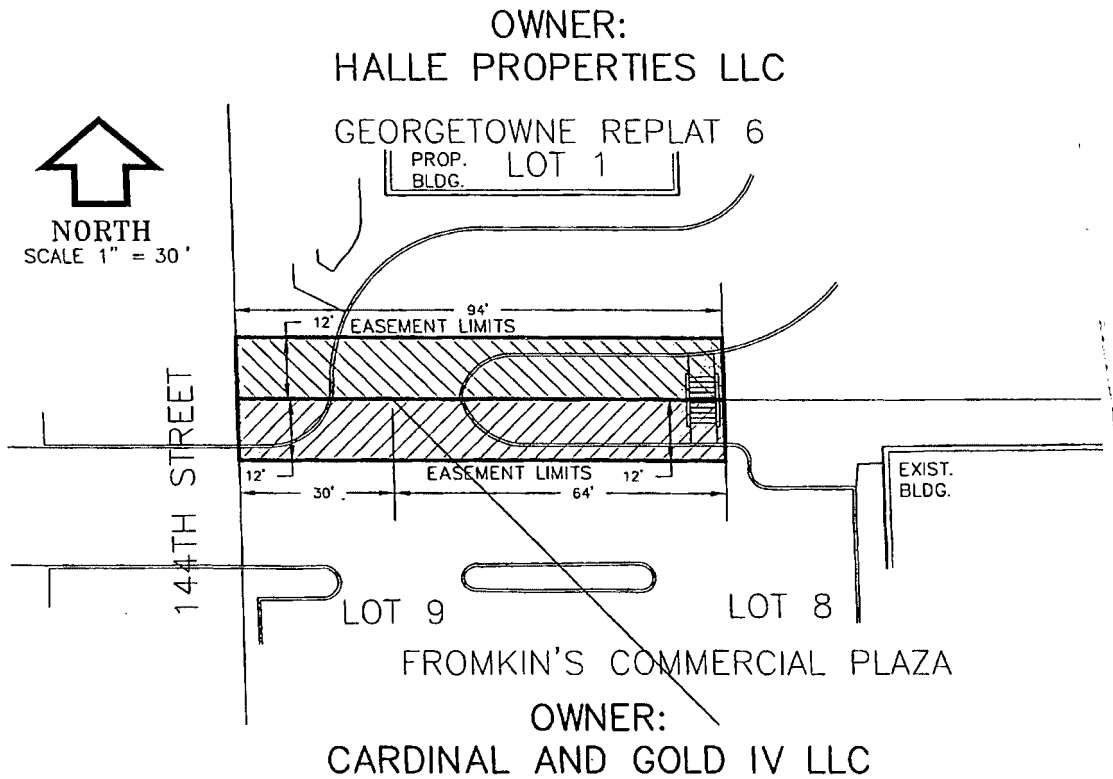
LEGAL DESCRIPTION: PORTIONS OF LOTS 8 AND 9 **60-13250**

THE NORTH 12 FEET OF THE WEST 64 FEET OF LOT 8, FROMKIN'S COMMERCIAL PLAZA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA.

AND

THE NORTH 12 FEET OF LOT 9, FROMKIN'S COMMERCIAL PLAZA, AS SURVEYED, PLATTED AND RECORDED IN DOUGLAS COUNTY, NEBRASKA.

CONTAINING A TOTAL OF 1128 SQUARE FEET, MORE OR LESS.



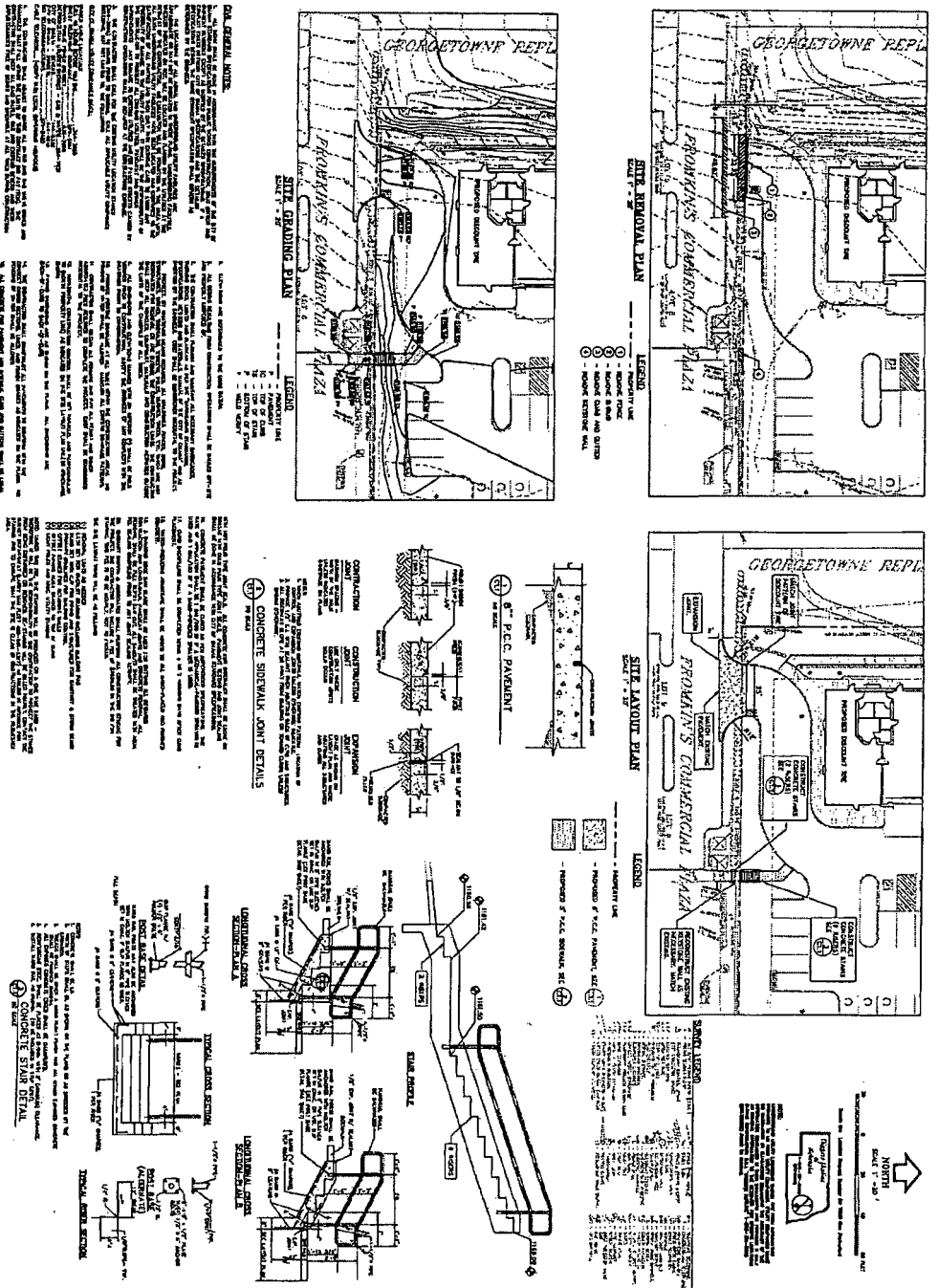
**EHRHART  
GRIFFIN &  
ASSOCIATES**

ENGINEERING      PLANNING      LAND SURVEYING  
3552 Farnam Street • Omaha, Nebraska 68131 • 402 / 551-0631



# EXHIBIT B JOINT ACCESS DRIVE IMPROVEMENTS

D:\Projects\171078A\171078A.dwg, Layer: 171078A, 1/20/2011 10:24:42 AM



PROJECT NO. 171078A		SHEET NO. C1.1	
DATE 1/20/2011		DRAWN BY JES	
CHECKED BY JES		DESIGNED BY JES	
REMOVE, LAYOUT AND GRADING PLANS DISCOUNT TIRE 14323 ARBOR STREET OMAHA, NEBRASKA			
REVISIONS NO. DESCRIPTION DATE 1. 171078A-171078A.dwg, Layer: 171078A, 1/20/2011 10:24:42 AM			