

Revised
3/28/02
HAX

INDIAN FALLS WATER USERS ASSOCIATION

CHARTER

Be it known to all persons that on this date, *March 23, 2002*, the Indian Falls Property Owners Association does hereby establish a Water Users Association pursuant to Title 42-1301 of Idaho Code, for delivery of irrigation water to those qualifying lands within the Indian Falls Recreational Development. The aforementioned Association shall be known as the Indian Falls Water Users Association.

Article I --- Water Rights

The source of the irrigation water claimed for use by the Indian Falls Water Users Association is the Portneuf River, a tributary to the Snake River. The subject water is currently allocated for use by claim of water rights filed in 1990 by the Indian Falls Property Owners Association but is subject to final use recommendations of the Idaho State Department of Water Resources as decreed by the Snake River Basin Adjudication Court. These water rights so claimed by the Indian Falls Property Owners Association are identified as follows:

<u>Water Right Number</u>	<u>Priority Date</u>	<u>current allowed amount</u>
A29-00046	July 14, 1902	0.4 C.F.S.
A29-12078	May 1, 1889	1.2 C.F.S.
A29-12079	July 1, 1889	4.4 C.F.S.

The present points of diversion for the subject water rights are as follows:

A29-00046	NWSW	Sec. 28	08S38E
A29-12078	NESW	Sec. 28	08S38E
A29-12079	NESW	Sec. 28	08S38E

The quantity of water recommended may be less than allowed under the 1990 claims. Points of diversion and place of use may also be modified.

Article II ---Qualifying Lands

Lands qualified for irrigation with water by decreed water rights using delivery systems owned and operated by the Indian Falls Water Users Association must lie within the irrigatable lands survey boundaries as determined by the Idaho State Department of Water Resources lands survey completed during 2001. These qualifying lands include those privately owned parcels with a water right included in a deed of trust or like

instrument and those common areas which are owned in undivided interest by the Indian Falls Property Owners Association.

Article III --- Allocation of Water ---Shareholders and Shares

The owners of qualifying lands wishing to use water supplied by the Indian Falls Water Users Association and who agree to assume all the responsibilities and duties of a water user as required by the Association shall be deemed to be a shareholder in the Association. Water shares allocated to each shareholder shall be determined by the total water available as allowed by the water rights to be granted by the Idaho State Department of Water Resources and the acreage to be watered by that shareholder. Water shall be distributed on a rotation cycle to be determined by the water management committee. The total hours per rotation cycle divided by the irrigated acres (shares) shall determine the hours of use per rotation by each user.

Article IV---Water Management Committee

On or before April 1 of each year, a three (3) member water management committee shall be appointed by the shareholders of the Indian Falls Water Users Association. The committee shall be composed of a President and two additional shareholders representatives. One of the two at-large representatives shall be a member of the Indian Falls Property Owners Association Board of Directors who shall represent the Property Owners Association interests in regards to the common areas. Pending election of a water management committee by the shareholder membership prior to April 1, 2002, the President of the Indian Falls Property owners Association shall appoint a three (3) member interim committee from the anticipated shareholder membership. One of those selected shall be appointed chairman. The duties of the interim committee shall include consulting and coordinating with the Idaho Department of Water Resources on all matters pertaining to the Indian Falls Water Users Association and planning and scheduling of the initial shareholder membership meeting. The interim committee shall serve until a water management committee is chosen by the shareholder membership or until a water management committee is chosen by shareholder membership or until March 31, 2002, whichever comes first.

Article V---Duties of Management Committee

It shall be the duty of the management committee to ascertain and insure that the amount of water to which each shareholder is entitled is properly apportioned and distributed. The Management Committee acting on behalf of the Indian Falls Water Users Association shall have authority to assess and collect annual fees from each shareholder based on the total shares or portions thereof owned by that shareholder. These fees are to be used for construction of ditches and laterals and installation of measuring weirs, head gates and checks as well as planned system maintenance. In addition the committee shall have the authority to require of each user (shareholder) of the common arterial lateral and ditch system to provide a proportional amount of labor, material and/or money

reasonably necessary for the unplanned repair and maintenance of the system as needed. The committee further has authority to require measuring weirs, head-gates and checks to be installed for distributing the water among the users (shareholders). Annual assessments, notice and penalties for delinquent payments shall be determined by the Management Committee in accordance with Title 42-1304, 1305 I.C.

In cases where disputes arise between the shareholders and the Association or other shareholders over any matter pertaining to the quantity of water to be delivered or the amount actually delivered and which cannot be settled in a timely manner, the president of the Indian Falls Water Users Association shall refer the matter to the Idaho State Department of water Resources as recommended in Title 42-907-910, I.C.

Article VI---Duties of Shareholders

Shareholders shall be responsible to pay their pro-rated share of the annual assessments as required by the Management Committee. If not paid by the date established by the Committee, the Water Users Association shall have the right to refuse water delivery to the delinquent shareholder until all assessments are paid in full. Should any user (shareholder) wish to contest any annual assessment or apportionment of costs, an appeal may be made to the District Court in Bannock County within (10) ten days of the receipt of the assessment or apportioned fee pursuant to Title 42-910 I.C. If upon hearing the appeal by the shareholder(s), the court determines that all or part of the assessment is due the Association by the shareholder(s), this sum must be paid within (10) ten days. If not paid in the required time, the Water Users Association may refuse to deliver any water to that user(s) until the amounts have been paid in full.

Upon request by the management committee for labor, material, or money for unplanned repair or maintenance of the water distribution system, the shareholder(s) (users) so informed shall have (3) three days to comply. If after (3) three days, the shareholder(s) have not complied, they shall be deemed to be in default. In this event, the Management Committee may employ other labor, or furnish material or money as necessary to complete any necessary repairs. The shareholder(s) shall pay to the Water Users Association the reasonable value of such labor and materials with full reimbursement of any, and all monies spent for the subject repair or maintenance pro-rated to each user in default. Should the shareholder(s) fail to provide the reimbursement required, the Water Users Association may sue and collect the full amount in the appropriate court of jurisdiction and in addition, the court shall award the Association reasonable attorney's fees incurred.

Any shareholder across whose property the commonly owned arterial ditch system must traverse shall grant a right-of-way in perpetuity for construction of the ditch and guarantee of right of entry and use by the Association and down stream users (shareholders) for repair and maintenance activities. (Title 42-1102 I. C.)

Article VII---Meetings and Voting

Prior to April 1st of each year a meeting of the shareholder membership shall be held to choose a management committee for the coming irrigation season which begins April 15th. Other Association business shall be conducted as necessary such as system maintenance and anticipated expenses.

Each shareholder in attendance at the annual meetings shall be entitled to one (1) vote on all matters brought before the shareholder membership for voting. Joint ownership such as husband and wife or partnerships of any kind shall be represented by a single vote. A simple majority vote shall decide all matters brought before the membership.

Article VIII---Adoption of Charter

Adoption of the foregoing articles requires a simple majority ratification by the general membership of shareholders of the Indian Falls Water Users Association. This acknowledgement is attested by the dated signatures of shareholders below. Joint ownership shall be represented by one(1) vote only and a single signature below.

Shareholders	Signatures	Date
1. Mark & Yvonne Evans	<i>Yvonne Evans</i>	<i>Mark W. Evans</i>
2. Daniel & Patricia Housek	<i>Daniel Housek</i>	<i>Patricia A. Housek</i>
3. Phil Hudgens & Joan Maxwell	<i>Phil Hudgens</i>	
4. Denny & Shirley Jones		
5. Allyn Vico	<i>Allyn Vico</i>	
6. Paul & Dixie Smith		
7. Indian Falls Property Owners Assoc. (Representative)	<i>Carl Mages, President</i>	

AL,

The enclosed signature sheet to the Indian Falls Water Users Association Charter reflects the addition of Denny and Shirley Jones (lot #5) to the current group of shareholders. Please replace the signature sheet on your copy of the charter with the updated version.

Thank you,



Earl Mapes

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APR 17 2002

Department of Water Resources
Eastern Region

RECEIVED
APR 16 2002

Department of Water Resources
Eastern Region

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Shareholders	Signatures	Date
1. Mark & Yvonne Evans	<i>Yvonne Evans</i>	<i>Mark W. Evans</i>
2. Daniel & Patricia House	<i>Daniel House</i>	<i>Patricia A. House</i>
3. Phil Hudgens & Joan Maxwell	<i>Phil Hudgens</i>	
4. Denny & Shirley Jones	<i>Denny Jones</i>	<i>Shirley Jones</i>
5. Allyn Vico	<i>Allyn Vico</i>	
6. Paul & Dixie Smith		
7. Indian Falls Property Owners Assoc. (Representative)	<i>Carl Mason, President</i>	

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APR 17 2002
Department of Water Resources
Eastern Region

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APR 16 2002
Department of Water Resources
Eastern Region

A meeting was held on Saturday, March 23, 2002 for the purpose of organizing the Indian Falls Water Users Association within the Indian Falls Development. The meeting was hosted by Mark and Yvonne Evans at their home at 6896 Pheasant Drive. The summarized minutes of that meeting are presented below.

MINUTES

1. The initial organizational meeting of the Indian Falls Water Users Association came to order at 1:00 P.M. with the following persons in attendance. The meeting was conducted by Earl Mapes.

Mark & Yvonne Evans
Dan & Patricia Housel
Phil Hudgens
Al Vico
Earl Mapes

2. Earl presented a brief summary and history of the Snake River Basin Adjudication Process and how it affects the conditional water rights filed upon by Indian Falls in 1990. A discussion followed regarding the unusual status of the water rights as it applies to ownership and assigned usage. There is an ongoing effort being made by the Idaho State Department of Water Resources to help us develop a cooperative plan whereby the owners (Indian Falls Property Owners Association), the assigned users (owners of lots 1, 2, 3, 4) and others, with water rights in their deeds, can utilize irrigation water from the three water rights involved.
3. Earl presented a revised version of the original draft charter for the Indian Falls Water Users Association to the group for their examination and approval. Following a few questions and brief discussions, all parties present signed the charter. Under provisions of the charter, it is considered to be adopted and ratified by the general membership of the presently known potential shareholders. The two outstanding potential shareholders not present at the meeting will be sent copies of the final charter and provided the opportunity to sign. A copy of the executed charter will be forwarded to all signatories.
4. With the adoption of the charter completed the next item of business is election of a Three person management committee, whose term shall be April 1, 2002 – March 31, 2003. Under provisions of the charter the committee shall be composed of a President and two other at-large members, one of which shall be a member of the Indian Falls Property Owner Association Board of Directors. The management committee shall be elected by the membership annually. Following motions and seconds from the floor, Phil Hudgens was elected President with Mark Evans selected as one at-large member. Earl Mapes will serve as the at-large member representing the Indian Falls Board of Directors, at least for the present time.
5. The next topic of discussion concerned the request for information by the Dept. of

Water Resources and more specifically, the point(s) of diversion and places of use for irrigation water at Indian Falls. Phil stated that it was his understanding from a conversation which he had with Mr. Ruberry last year that he (Mr. Ruberry) had administratively moved the point of diversion upstream to a location at the N. E. corner of lot #1. Earl will call Mr. Ruberry early next week and request a meeting together with Phil to get the point of diversion question resolved.

The discussion next turned to possible routing of a ditch from the diversion point south to lots 4 & 5 with Phil suggesting that it should be placed within the public access easement along that reach of the river. A short period of discussion followed with some general support for the position but Earl urged caution. We must be very careful that we do not create a contentious and divisive issue such as the one experienced last fall concerning activities in this easement.

Note: Post-meeting commentary by author. (We must remember that the Indian Falls Property Owners Association Board of Directors has the exclusive jurisdiction and authority, acting on behalf of all association members, to grant or deny permission to construct the ditch in question within the public access easement. Neither the Indian Falls Water Users Association nor its officers has the authority implied or otherwise, to grant itself permission to do so.) If Phil wishes to do so, he will be provided time to make a presentation to the Board of Directors at its next meeting later this spring.

6. Al Vico (lot #13 and Paul & Dixie Smith (lot #12) both have a water right in their property deeds but because of their location probably must rely on pumping from the river to obtain irrigation water. Since they will not be using any of the ditch conveyance infrastructure, it is recognized that some accommodations will have to be made concerning annual system maintenance assessments to the users.
7. Earl suggested that Al & Paul contact Mr. Ruberry soon to see what is involved with allowing them to pump from the river. It is Earl's understanding that some special applications and/or permits may be required of them.
8. With thanks to all for attending and a special thanks to Yvonne & Mark for hosting The session on such short notice, the meeting was adjourned at 2:30 P. M.

Earl Mapes

Cc: Indian Falls Board of Directors

NOTICE OF ASSIGNMENT OF WATER USAGE
INDIAN FALLS PROPERTY OWNERS ASSOCIATION, INC.

On May 24, 1990, Indian Falls Property Owners Association filed for deeded water rights from the Portneuf River for a project called Indian Falls, which is 2.8 miles north of Lava Hot Springs, Idaho, and is located in Township 09S, Range 38E, in Sections 4 & 9 (map attached).

Said water rights are in adjudication with the State of Idaho to prove usage of those rights.

We filed for these rights on May 24, 1990 and they were amended on November 18, 1998. The numbers under these rights are A29-12079, A29-00046 and A29-12078.

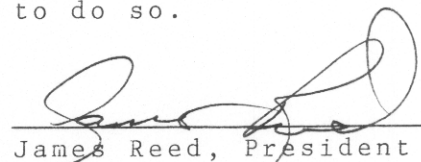
We, the Board of Directors of Indian Falls Property Owners Association, Inc., assign usage of our water rights to Lot 10 of Township 09S, Range 38E, Section 4, also known as Parcels 1, 2, 3, 4 & 5, of Indian Falls Subdivision, Lava Hot Springs, Idaho (30 acres usage).

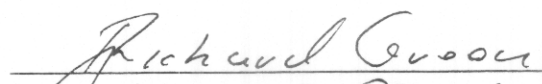
The owners will be Henry P. Hudgens & Joan Y. Maxwell, Parcels 1 & 4; Daniel R. & Patricia Housel, Parcel 3; and Mark W. & Yvonne L. Evans, Parcel 2.

If ownership is changed, the water rights stay with said parcels in the Subdivision.

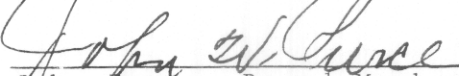
This Assignment is not guaranteed because the adjudication of rights to use the water from the Snake River Basin Water System has not been resolved through the State of Idaho yet.

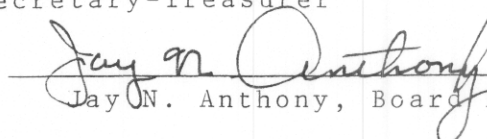
We allow usage of these water rights according to what power we have to do so.


James Reed, President


Richard Green, Vice President


Allen Vico, Secretary-Treasurer


John Purce, Board Member


Jay N. Anthony, Board Member

March 11, 2002

Dear Indian Falls Member,

Some time ago a draft charter for formation of an Indian Falls Water Users Association was mailed to each presently known potential user of irrigation water at Indian Falls with a request to offer comments and suggestion on its content and structure. With this input, a final version of a charter can then be developed as a first step in an organizational effort. To date, no responses have been received and consequently, no progress has been made in moving this activity forward.

I received the enclosed letter today (March 9, 2002) from Mr. Allen B. Ruberry, Senior Water Resource Agent for the Idaho State Department of Water Resources. His candid displeasure with the Indian Falls Organization for lack of progress in forming a water users association and providing requested information is readily apparent. Mr. Ruberry has been very generous with his time and resources to help us in our effort to secure water rights into the future and is understandably frustrated that we have not done our part sufficiently well to date. It is clear from his letter that our failure to meet the requirements of the Department very soon could well jeopardize the granting of any water for use anywhere within the Indian Falls Subdivision.

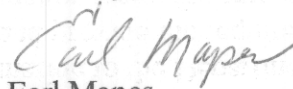
Therefore, it is imperative that we cooperatively organize the water users association very soon and make the important initial decisions about points of diversion and places of use in order to provide the required information to the Department. If we fail to act quickly and decisively to organize ourselves and provide the required information to the State, I fear that our opportunity to obtain irrigation water for anyone may be forfeited. I will contact each of you in a few days to schedule a meeting for the purpose of finalizing a Water Users Association Charter, choosing officers and beginning the task of immediately generating the information which the Department of Water Resources has requested.

The following members were mailed copies of the draft charter earlier this year. These same members are being provided with this correspondence and a copy of Mr. Ruberry's letter.

Mark & Yvonne Evans
Phil Hudgens & Joan Maxwell
Allyn Vico
Indian Falls Board Members

Daniel & Patricia Housel
Denny & Shirley Jones
Paul & Dixie Smith

Sincerely,



Earl Mapes
President, Indian Falls Board of Directors

Cc: Mr. Allen Ruberry, I. D. W. R.

RECEIVED

MAR 12 2002

Department of Water Resources
Eastern Region

February 5, 2002

Dear Indian Falls Property Owner,

For the past several years, the Idaho State Department of Water Resources has been reviewing the legal standing of all irrigation water rights in the Snake River Basin in what is known as the Snake River Basin Adjudication process. As a tributary to the Snake River, the Portneuf River and all its attendant water rights are included in this effort.

As most of you know, certain Indian Falls property owners and board members have been working with the Department of Water Resources for the past several months in the adjudication process, trying to permanently secure irrigation water rights which were filed upon by the Indian Falls Property Owners Association in 1990, but were granted only conditionally, pending the outcome of the adjudication process.

Because of the unique circumstances involving ownership and assigned use of these water rights, the Department has been working with us to find an acceptable water allocation and use plan which can best serve the interests and needs of all parties involved, including the State of Idaho. To this end we have been advised that the best hope for securing irrigation water rights on a permanent basis at Indian Falls rests with the formation of a water users association serving qualifying individual property owners and certain common areas being utilized for hay production.

Enclosed you will find a draft charter for a water users association which conforms with Title 42-1301 of the Idaho Code and has been reviewed by the Department of Water Resources in Idaho Falls. I have also enclosed an example of a two-week irrigation rotation cycle which includes the presently known potential users as referenced in the draft charter. Please bear in mind that this is only an illustrative example to show how a rotation schedule could work and is not necessarily the schedule which the members would actually establish. I would appreciate it if you would review the charter and get back to me by mid March with your comments and/or suggestions. If possible, we need to have an organizational structure in place by April 15th of this year. You can contact me at (208)233-1713 in Pocatello or mail your comments to the Indian Falls mailing address in Lava Hot Springs.

Thanks for your assistance in this matter,

Earl Mapes
President, Indian Falls Board of Directors

Two Week Rotation Cycle = 336 hours.

336 hrs./76.24 acres = 4.4 hours/acre

<u>Lot #</u>	<u>Acres</u>	<u>hrs./rotation</u>
1	6.10	26.84
2	5.04	22.17
3	5.56	24.46
4	7.65	33.66
	24.35	107.13
5	7.10	31.24
11	5.00	22.00
12	5.02	22.09
Common area	<u>34.77</u>	<u>152.99</u>
Total	76.24 acres	335.45

7/23/01

RECEIVED

JUL 24 2001

Department of Water Resources
Eastern Region

AL,

I hope this is what you need to prove ownership of the common areas in Phase II of Indian Falls. If more is needed however, I will contact Mrs. Anderson again. Also it is my understanding that the small Jorgensen acreage just came out of probate in the past two weeks. I will follow up on the ownership question now that probate is finished.

If I can be of further help in your efforts at Indian Falls, please let me know.

Thanks

Earl Maper

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[INDIAN FALLS PROPERTY OWNERS]
[ASSOCIATION]
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[INDIAN FALLS RECREATION DEV ]
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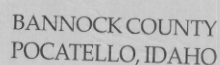
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JO LYNN ANDERSON
Cadastral Technician

BANNOCK COUNTY ASSESSOR'S OFFICE

P.O. Box 4969
Pocatello, ID 83205-4969

OFFICE: (208) 236-7263
FAX: (208) 236-7033

This change has been made

7/18/2001

J. L. Spruill

3-2

We do solemnly swear or affirm that we are the Board of Directors for the Indian Falls Property Owners Association, that we have signed the foregoing document in the spaces above as James Reed, President; Richard Green, Vice President; Allyn Vico, Secretary-Treasurer; John Purce, Board Member; and Jay N. Anthony, Board Member of the Indian Falls Property Owners Association, and that the statements contained in the foregoing document are true and correct.

State of Idaho }
County of Bannock } SS.

Subscribed and sworn (or affirmed) before me this 13th day
of December, 1998

Terri J. Small
Notary Public

NOTARY SEAL

Residing at Pocatello, Id.

My Commission Expires 4/28/99

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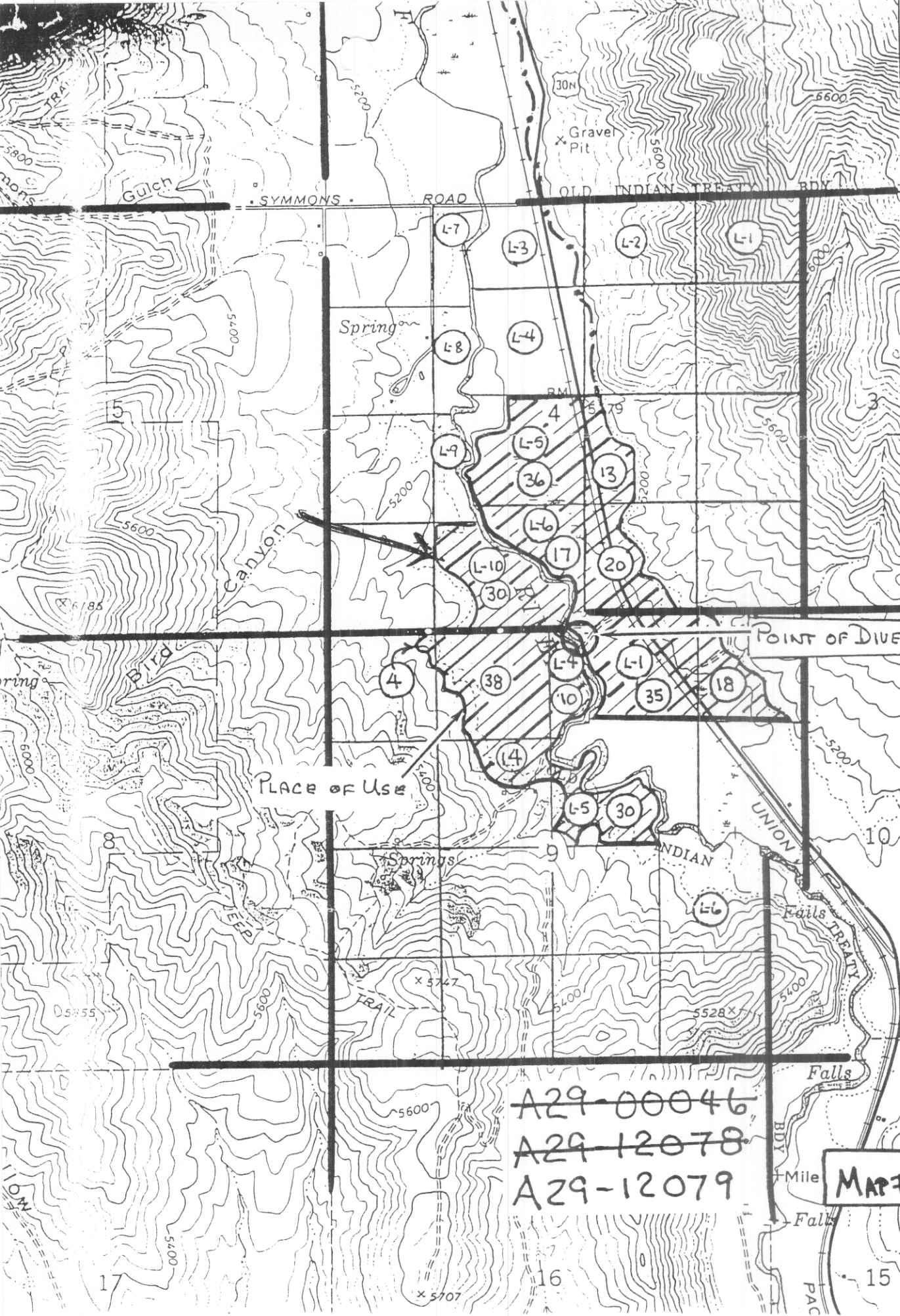
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POINT OF DIVERSION #2

PLACE OF USE

~~A29-00046~~
~~A29-12078~~
A29-12079

MAP #2



INDIAN FALLS PROPERTY OWNERS ASSOCIATION

ANNUAL MEETING

LAVA HOT SPRINGS COMMUNITY CENTER

SATURDAY, NOVEMBER, 10, 2001

1:30 P.M.

---AGENDA---

1. Presidents Report
2. Water Rights/Irrigation Water
3. Financial Report and Operating Budgets
4. Proposed Revision of Restrictive Covenants & By-laws
5. Road Maintenance
6. Portneuf River Public Access Easement
7. General Discussion

RECEIVED

OCT 03 2001

Department of Water Resources
Eastern Region

INDIAN FALLS PROPERTY OWNERS ASSOCIATION

Dear Property Owner,

The re-scheduled annual meeting of the Indian Falls Property Owners Association will be held on Saturday, November 10, 2001, in the Lava Hot Springs, Idaho Community Center beginning at 1:30 P.M.

We urge every property owner to attend if possible. The Board of Directors plans to report on a number of items which should be of interest and importance to you. Your input, ideas and guidance are important to the success of the Indian Falls Subdivision.

Your Board of Directors

al,

We hope you will be able to speak to our group on November 10. I would appreciate it if you could let me know as soon as possible.

Thanks again

Carl Maper

RECEIVED

AUG 15 2001

Department of Water Resources
Eastern Region

August 15, 2001

Dear Indian Falls Property Owner,

Membership response to the annual meeting/picnic scheduled for August 25th has been very limited with only a few members indicating they plan to attend. We will therefore, cancel the annual meeting scheduled for August 25th and plan to reschedule it for a later time this fall when hopefully attendance will be better. The Board has several important issues to bring before the membership for discussion and input, and we hope to have a larger segment of the owners participate.

We apologize for any inconvenience this change may have caused but we feel it is in the best interest of the Association and its membership to have the annual meetings when the greatest number of us can attend. It appears that perhaps the end of the summer vacation season was not the best time to schedule this event.

Indian Falls Board of Directors

Al,

I'm sorry we had to change plans on such short notice but I hope your schedule will permit you to attend later in the year. Thanks for your willingness to meet with our group.

Best Regards

Carl Mapes

Master Declarations of Covenants, Conditions and Restrictions for Indian Falls Recreational Subdivision

Know all men by these presents.

That the undersigned INDIAN FALLS PROPERTY OWNERS ASSOCIATION, INC., hereinafter called Property Owners Association, are the Owners of the real property, known as INDIAN FALLS RECREATIONAL SUBDIVISION, located in Bannock County, State of Idaho.

NOW THEREFORE, the undersigned do hereby publish and declare that all of the properties described above are held, shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants, conditions, restrictions, uses, limitations and obligations contained herein and by those certain Use Rules hereinafter described, and the same shall be deemed to run with the land and shall be a burden and benefit to the undersigned. The Owners, their executors, administrators and assigns, and any person or persons acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees, assigns, tenants, employees, and any person or persons acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees, assigns, tenants, employees, and any other person who may in any manner use the property or any part thereof.

1. Definitions: Certain terms are used in these Restrictive Covenants and shall be defined as follows unless the context indicates a different meaning therefore:
 - A. "COVENANTS" Shall mean these Restrictive Covenants created by this instrument which shall become effective upon recording of the same.
 - B. "USE RULES" Shall be the regulations formulated by the Management Committee for the reasonable guidance, control and definitions of use of property permitted, and uses and acts prohibited, as may be necessary and adopted from time to time for the fulfillment of the objectives of these restrictive Covenants provided not in conflict herewith.
 - C. "OWNER" Shall mean collectively and jointly and severally, the record Owner (s) or purchaser (s) entitled to equitable Ownership of a Parcel within the above described property. "Owner" shall include Property Owners.
 - D. "MAINTENANCE COMMITTEE" Shall be in charge of the fund to which property Owners contribute and from which expenditures are made toward mutually beneficial improvements, maintenance, repairs and acquisitions to include but not to be limited to development of culinary water systems, irrigation systems, road systems and utility systems as well as necessary management services and incidental administrative expenses.
 - E. "MANAGEMENT COMMITTEE" Shall mean the governing body elected pursuant to the provisions hereof, having responsibilities and authority herein delegated for the operation and maintenance of the Maintenance Fund.
 - F. "MANAGER" Shall mean the person or firm designated by the Management Committee to execute and enforce Management Committee directives, these Covenants and Use Rules.

- G. "OWNERS" Shall mean the undersigned, jointly and severally, or as joint tenants and not as tenants in common (as appropriate), the sellers of the said parcels to other Owners.
- H. "PARCEL" Shall mean all of the real property as designated as a Cabin/Home Site owned by an Owner within the land and consisting of not less than five (5) acres.
- I. "LAND" Shall mean all real estate covered by these Restrictive Covenants.
- J. "COMMON IMPROVEMENTS" Shall mean improvements, real or personal, owned in common by all OWNERS which Ownership is vested in each Owner, shall be undivided and such Ownership shall be in proportion to the number of parcels owned by the Owner in proportion to the parcels owned by other OWNERS.
- K. "COMMON AREAS" Shall mean all common areas and improvements described above but excluding therefrom, any and all Parcels. Control of the common area shall be turned over to the Management Committee for the benefit of OWNERS of Parcels when 51% of Parcels have been sold to OWNERS. Prior to this time control of common area shall rest with the Indian Falls Property OWNERS Association and be subject to these Restrictive Covenants.
- L. "SINGLE FAMILY DWELLING" Shall mean the shelters built upon the Parcel by the Owner either for permanent or seasonal use.
- M. "HUNTING RESTRICTIONS" Shall mean that there will be no hunting allowed within the confines of the Indian Falls Subdivision, Phase I and II, including Common Areas.

2. **MEMBERSHIP:** Membership in the Indian Falls Property Owners Association, Inc. an Idaho non-Profit corporation, is appurtenant to and shall be a mandatory incident of ownership of any lot in the Indian Falls Subdivision. The general purpose of the Property Owners Association is to further promote the community welfare of property owners in the subdivision. The Property Owners Association shall be responsible for the improvement, maintenance, upkeep and repair, and the establishment and enforcement of rules and regulations concerning the operation and use of all common areas and recreational facilities and other properties within the subdivision as it may from time to time own, and for the payment of liability insurance premiums and taxes incident to the ownership and operation of common areas and recreational facilities. The Property Owners Association shall specifically assume responsibility for private road improvements, maintenance and snow removal which shall be and remain the obligation of the Property Owners Association.

The Property Owners Association shall have all the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, including, but not limited to, the power to assess and collect from every member of the Property Owners Association a uniform annual charge per single family lots within the subdivision which if not paid when due shall bear interest from the due date. The Property Owners Association may publish the name of a delinquent member and may file notice that it is the Owner of a lien to secure payment of the unpaid charge plus costs and reasonable attorney's fees, which lien shall encumber the member's lot or lots and may be foreclosed in accordance with the laws of the State of Idaho. The Board of Directors of the Property Owners Association shall fix the amount of the annual charge per lot, which may vary from year to year depending on the amount required to meet the obligation of the Property Owners Association.

3. **OBJECTIVES:** The objective of these covenants and the project contemplated hereby shall be to make available Ownership of all Single Family Dwelling Sites of five (5) Acres each and approximately 308

acres of Common Area all in a natural or near natural setting, tending to preserve in an unspoiled state, the amenities offered by the relatively secluded and mountainous terrain, flora, and streams of the land and Portneuf River.

4. **VOTING:** At any meeting of the Owners, each Owner shall be entitled to cast the number of votes equaling the number of Parcels which he owns. Any Owner may attend and vote at such meeting in person or by an agent duly appointed by an instrument in writing signed by the Owner and filed with the Management Committee or Manager. Where there is more than one Owner of record or equitable Owner for a parcel, any or all of such persons may attend any meeting of the Owners, but it shall be necessary for those present to act unanimously on behalf of any one Parcel in order to cast the vote to which they are entitled.

5. **MEETINGS:** The presence at any meeting of Owners having a majority of the total votes shall constitute a quorum. In the event that a quorum is not present at any meeting, the Owners present though less than a quorum, may adjourn to a later date and give notice thereof to all Owners in accordance with the provision of Paragraph 5 hereof, and at that meeting the presence of Owners holding in excess of thirty percent (30%) of the total votes shall constitute a quorum for the transaction of business. Unless otherwise expressly provided in this declaration, any action may be taken at any meeting of the Owners upon the affirmative vote of the majority of the voting power of the Owners present and voting, provided that a quorum is present as provided for above.

A. **ANNUAL MEETING:** Unless otherwise notified, there shall be a meeting of the Owners on the second Saturday in July of each year at 10:00 a.m. upon the Common Area or at such other reasonable place in Bannock County or time (not more than 35 days before or after such date) as may be designated by written notice of the Management Committee delivered to the Owners not less than ten (10) days prior to the date fixed for the said meeting. At the Annual Meeting, the Management Committee shall present an audit of the common expenses, itemizing receipts and disbursements for the calendar year to date, the allocation thereto each Owner, and the establishment of common expenses for the present and coming calendar years, which shall be January 1 through December 31. Within twenty (20) days after the Annual Meeting, said statement shall be made available to all Owners, upon request.

B. **SPECIAL MEETINGS:** Special meetings of the Owners may be called at any time for the purpose of considering matters which by the terms of this declaration, require the approval of all or some of the Owners or for any other reasonable purpose. Said meeting shall be called by written notice, signed by a majority of votes and delivered not less than fifteen (15) days prior to the date fixed for said meeting. Said notices shall specify the date, time and place (in Bannock County) of the meeting, and the matters to be considered thereat.

6. **NOTICES:** Any notices permitted or required to be delivered as provided herein may be delivered either personally to the Owner with an Owner signature line and date of delivery, Certified Mail along with normal mail to current address or to an address that Owner has designated in writing to the Management Committee or the Manager.

A. Notices may be given at the election of the Management Committee, by publishing an announcement in a newspaper of general circulation in Bannock County twice a week for two (2) consecutive weeks, not more than thirty (30) nor less than five (5) prior to the meeting called thereby.

7. MEMBERSHIP, ELECTION AND PROCEEDINGS OF THE MANAGEMENT COMMITTEE:

- A. MEMBERSHIP: The Management Committee shall consist of three (3) members who shall each be Owners. Property Owners Association shall appoint the initial three members of the Management Committee to serve until their successors have been duly chosen.
- B. ELECTION: At each annual meeting the Owners shall elect members to fill vacancies of the Management Committee. Each Owner shall have one vote for each member of the Management Committee. Cumulative voting will not be allowed. Voting shall be regulated as described in paragraph 3 above. The candidates receiving the highest number of votes shall be deemed elected.
- C. TERM: Elected members of the Management Committee shall serve for a term of three (3) years each or until the successor has been qualified and elected, and shall serve until their death, resignation, or removal; provided that if any member ceases to be an Owner, his membership in the Management Committee shall thereupon terminate. Vacancies shall be filled by vote of the Owners at the earliest meeting thereafter.
- D. RESIGNATION and REMOVAL: Any member may resign at any time by giving written notice to the Manager, and any member may be removed from membership on the Management Committee by vote of the Owners; provided that unless the entire Management Committee is removed, an individual member shall not be removed if the number of votes cast against his removal exceeds thirty three percent (33%) of the votes cast.
- E. PROCEEDINGS: Three (3) members of the Management Committee shall constitute a quorum and if a quorum is present, the decision of a majority of those present shall be to act of the Management committee. The Management Committee shall elect a chairman who shall preside over both its meetings and those of the Owners. Meeting of the Management Committee may be called, held and conducted in accordance with such regulations as the Management committee may adopt. The Management committee may also act without a meeting by unanimous written consent of its members.
- F. NOTICE of ELECTION: After the first election of the Management Committee, Property Owners Association shall execute, acknowledge, record and append hereto an affidavit stating the names of all of the members of the Management Committee. Thereafter any two (2) persons who are designated or recorded as being members of the most recent Management Committee (regardless of whether or not they shall still be members) may execute, acknowledge and record an affidavit stating the names of all of the members of the then current Management Committee. The most recently recorded of such affidavit shall be prima facie evidence that the person named therein are all of the incumbent members of the Management Committee and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

8. AUTHORITY OF MANAGEMENT COMMITTEE: The Management Committee for the benefit of the Parcel Owners, shall enforce these Covenants and Use Rules and shall have Further authority and responsibility as follows:

- A. To the extent the Property Owners Association may express by 2/3 majority vote to

undertake necessary action for the providing of culinary water and necessary pumps and storage equipment essential to the same; provided that any excavated areas shall be returned to their natural state as soon as installation or maintenance has been completed; a seasonal system may be developed if Property Owners Association so vote.

- B. To establish rules and regulations for the placement and concealment of fuel tanks, whether owned in common or by the Parcel Owners;
- C. To grade, gravel, surface, repair, and maintain roadways and bridges within and upon said land;
- D. To establish reasonable rules for fencing (or prohibition against fencing) of property;
- E. To keep records of receipts and expenditures and conduct account and audits as appropriate;
- F. To establish reasonable rules for the use of Common Improvements such as water usage priorities, parking, roads, bridges, maintenance responsibility for Common Improvements.
- G. To incorporate the Management Committee authority and duties with the property Owners being the shareholders subject to the voting power described in paragraph 3 of these restrictive covenants; the Management Committee, if incorporated, to own common buildings, utilities and improvements, real and personal, as necessary to achieve the purposes of this act. If incorporated, the Manager shall be the president of such corporation and the Management Committee its directors.
- H. To dedicate streets and utilities to governmental bodies as appropriate.
- I. To waive payments to the Maintenance Fund exchange for the reasonable value of services rendered by an Owner, when approved in writing by the Management Committee.
- J. To retain the services of a person or firm to manage its affairs (The Manager) to the extent deemed advisable by the Management Committee as well as such other personnel for the operation of the Common Improvements whether such personnel are employed directly by the Management Committee or are furnished by the Manager.
- K. To make expenditures and commitments for payment of materials, supplies, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments which the Management Committee is required to secure or pay for pursuant to the terms of these restrictions or by law or which in its opinion shall be necessary or proper for the operation of the Common Improvements, making emergency repairs and protection of individual land, or for the enforcement of these covenants or Use Rules, provided that if any such expenditure is justly allocatable to less than 75% of the Parcels, the costs thereof shall be specifically assessed to the Owners of such Parcels.
- L. To borrow funds and pledge Common Improvements as collateral in order to generate temporary funds with which to fulfill management duties and pay for authorized expenditures.
- M. To establish reasonable rules and regulations regarding the improvement and usage of the

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Common Areas, such as Recreational Development, Picnic Areas, continued use of Hay Removal and possible grazing and Wild Bird Refuge.

9. EASEMENTS-PROPERTY OWNERS' RIGHTS RESERVED, UTILITIES AND ROADS:

- A. Property Owners have reserved to themselves, their heirs, administrators and assigns, the rights to all minerals and hydrocarbons and to extract and develop the same. Property Owners also reserve for themselves, their heirs, administrators, and assigns perpetual easements upon existing roadways and upon such additional roadways as necessary together with the right to maintain and improve said roadways as necessary together with the right to maintain said roadways as reasonable and necessary for purposes of ingress and egress of vehicles, foot traffic, and driving of livestock upon the Common Areas. Such easements and reservations may be contained in individual deeds to the Owner.
- B. Road easements are hereby reserved for the ingress to and egress from each Parcel. Such road easements shall have a width of not less than fifty (50) feet unless otherwise required and shall be located and if necessary, relocated as determined by the Management Committee. Legal descriptions and plats thereof may be recorded and filed by the Management Committee. Road easements shall also be used for power, water, telephone, gas or other utilities.
- C. Easements and licenses for right-of-ways heretofore granted and presently in effect or which may hereafter be granted upon the Common Areas and unless otherwise restricted in such easement or license for right-of-way shall not be terminated or withdrawn except with the consent of the Grantee thereof or except upon good and sufficient cause as determined by the Management Committee. Violation of the terms of such easement or license agreement, trespass or force majeure shall constitute sufficient reasons for termination.

10. ZONING COMPLIANCE AND SIDE YARDS:

- A. The Owner's Parcels and use thereof shall comply with County Ordinances and other laws of governmental entities having jurisdiction, the same to be as effective as if fully incorporated herein and the Management Committee shall be entitled to enforce the same by action at law for damage or by specific performance and to recover reasonable attorney's fees as part of an award.
- B. Location of Single Family Dwelling upon the Parcel shall be subject to the prior written approval of the Management Committee and in no event shall the setback from the front property line be less than thirty (30) feet, nor shall the rear property line be less than thirty (30) feet nor shall the side property lines be less than twenty (20) feet; provided, however, the Management Committee may grant or control exceptions to the foregoing property line requirements for good cause shown. The Owner shall be responsible for complying with County Zoning Ordinances and obtaining variances where required.
- C. Minimum Parcel Size shall consist of not less than five (5) acres, unless approved by Management Committee.

11. DELEGATION TO MANAGER: The Management Committee may delegate any of its duties, powers, authority or functions to act as Manager of the project; provided that any such delegation shall be revised

upon the notice by the Management Committee. The members of the Management Committee shall not be liable for any omission or improper exercise by the Manager of any such duty, power or function so delegated by written instrument executed by a majority of the Management Committee. In the absence of any appointment, the chairman of the Management Committee shall act as manager.

12. **EXCLUSIVE OWNERSHIP AND POSSESSION BY OWNERS:** Each OWNER shall be entitled to exclusive Ownership and possession of his Parcel; subject, however, to easements recorded and unrecorded and subject to the rights of other Owners to traverse his property, these Covenants and Use Rules. Each Owner shall be entitled to an undivided interest in the Common Areas and Common Improvements.

13. **LIMITATION ON THE USE OF PARCELS AND COMMON IMPROVEMENTS:**

- A. Each Owner shall maintain his Parcel and his improvements thereon in good order, condition and repair and in a clean and sanitary condition. It is understood that animals shall be managed in a husband-like manner and no Owner shall permit noxious odors, loud noises, or other nuisances to emanate from his parcel.
- B. No Owner shall occupy or use his Parcel or permit the same or any part thereof to be occupied or used for any purpose other than as a single residence; which shall be a minimum of 750 square feet on the ground floor living space and not to exceed 2½ stories in height, and shall be permitted to use, to conduct; and to maintain not in excess of one added building for housing of vehicles, machinery, animals or storage items. Improvements to be constructed on a Parcel shall be subject to the approval by the Management Committee as to exterior design, and size, which approval shall not be unreasonably withheld. Completion of the exterior construction must be accomplished within twelve (12) months from date of commencement of construction of any building. Building permits are required prior to commencement of construction in accordance with applicable law. Materials used in construction of improvement shall be coordinated in appearance to blend with the natural surroundings of the area.
- C. All pets, livestock, poultry and other animals may be kept, raised and maintained only pursuant to the Use Rules formulated by the Management Committee and as limited by pertinent county zoning restrictions. With the exception; no pigs shall be permitted either for commercial or personal use.
- D. There shall be no commercial activities conducted upon any parcel that would conflict with any existing laws.
- E. No Sign of any kind shall be displayed to the public view on any lot, parcel or roadway in the development.
- F. No lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste. Trash, garbage or other waste shall be kept in secure and sanitary containers. All incinerators or other equipment for storage or disposal of such materials shall be kept in a clean and sanitary condition.
- G. Temporary structures such as vacation trailers, motor homes, or tents may be located on Phases I and II on a temporary basis while construction of a permanent structure; or for seasonal use.

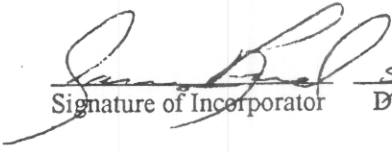
- H. There shall be no felling or dropping of live trees except as necessary and essential for construction of homes and improvements.
- I. Such other restrictions as set forth herein by reference or by Use Rules.
14. **FAILURE OF MANAGEMENT COMMITTEE TO INSIST ON STRICT PERFORMANCE:** The failure of the Management Committee or Manager to insist in any one or more instances, upon the strict performance of these covenants or to exercise any right or operation herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future, or such terms, covenants, conditions, or restrictions but such term, covenants, conditions or restrictions shall remain in full force and effect. The receipt by the Management Committee or Manager or any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and in waiver by the Management Committee or Manager of any provisions hereof shall be deemed to have been made unless expressed in writing and signed by the Management Committee.
15. **LIMITATION OF MANAGEMENT COMMITTEE'S LIABILITY:** The Management Committee shall not be liable for any failure of water supply or other service to be obtained and paid for by the Management Committee hereunder or for injury or damage to person or property caused by the elements or by another Owner or person in the Development or resulting from electricity, water, rain dust or sand which may leak or flow from the outside or from any part of the buildings, or from any of its pipes, drains, conduits, appliances or equipment or from any other place unless caused by gross negligence of the Management Committee. No diminutive or abatement of Maintenance Fund payment obligations shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Area or from any action taken to comply with a law, ordinance or order of a governing authority except as otherwise provided herein.
16. **INDEMNIFICATION OF MANAGEMENT COMMITTEE MEMBER:** To the extent not covered by insurance, each member of the Management Committee shall be indemnified by the Owners against all expenses and liability including attorney fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being of having been a member of the Management Committee, or any Committee at the time such expenses are incurred, except in such cases wherein the member of the Management Committee is adjudged guilty of gross negligence, willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Management Committee approves such settlement and reimbursement as being for the best interest of the Management Committee.
17. **AUDIT:** Any Owner may at any time at his own expense cause an audit or inspection to be made of the books and records of the Manager or Management Committee. The Management Committee at the expense of the Maintenance Fund, shall obtain an audit of all books and records pertaining to the project at annual intervals and shall immediately furnish copies thereof to the Owners.
18. **AMENDMENTS:** Except as otherwise provided herein, the provisions of these restrictive covenants may be amended, modified or rescinded by an instrument in writing, signed and acknowledged by the record Owners holding 75% of the total acreage hereunder which amendment shall be effective and prima facie evidence thereof upon recordation in the office of the Recorder of Bannock County, State of Idaho.
19. **SEVERABILITY:** The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not effect the validity or enforceability of any other provision hereof.

Articles of Incorporation

- A: The name of the corporation shall be Indian Falls Property Owners Association.
- B: The period of duration shall be perpetual.
- C: The Corporation is organized under Internal Revenue Service Code Section 538 for the purpose of providing for the acquisition, construction, management, maintenance, and care of the Homeowner's Association realstate property.
- D: The aggregate number of shares which the Corporation shall have authority to issue is 100,000 and all shares included in the aggregate shall not have any par value.
- E: There shall be only one class of stock unless authorized by Board of Directors by virtue of Section F:
- F: The authority shall be vested in the Board of Directors to establish series and fix and determine the variations in the relative rights and preferences as between series.
- G: The shareholders shall have preemptive rights for maintaining their percent of ownership of the total Association properties.
- H: All provisions shall be consistent with Idaho State Code.
- I: The mailing address of the Corporation shall be:
P.O.Box 386
Lava Hot Springs, Idaho 83246
- J: The number of directors constituting the initial Board of Directors are 4. Their names and addresses are: President..... James Reed 1660 W. 7800 S. Rexburg, Idaho 83440
Vice President..... Richard Green 13253 N. Walton Rd Pocatello, Idaho 83202
Board Member..... Jay Anthony P.O.Box 201 Inkom, Idaho 83245
Board Member..... John Purce 446 N. 6th Ave Pocatello, Idaho 83201
Sec / Treasurer..... Al Vico P.O.Box 386 Lava Hot Springs, Idaho 83246

This board will serve until their successors are elected and qualify.

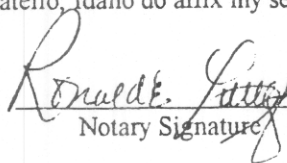
K: I, James Reed 1660 W. 7800 S. Rexburg, Idaho 83440, do sign and deliver, in duplicate, to the Secretary of State of the State of Idaho these articles of incorporation for the Indian Falls Property Owners Association.


Signature of Incorporator

5-18-96
Date

The above Incorporator James Reed, of Rexburg, is known by me and has appeared before me for the purpose of signing the above Articles of Incorporation. I do witness the same. I, Ronald E. Littlefield, residing in Pocatello, Idaho do affix my seal of Notary Public for the State of Idaho.

My commission expires 3-31-98


Notary Signature

5-6-96
Dated