

Shelley M. Davis, ISB No. 6788
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Suite 102
P.O. Box 2139
Boise, ID 83701-2139
Telephone: (208) 336-0700
Facsimile: (208) 344-6034

Attorney for Applicants/Protestants

RECEIVED
MAR 30 2017

Department of Water Resources
Eastern Region

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF WATER RIGHT
TRANSFER APPLICATION NO. 81039 IN
THE NAME OF WALLACE AND PERMIT
NOS. 78-12439 IN THE NAME OF
KALINOWSKI AND 78-12447 IN THE
NAME OF HENLEY

**AFFIDAVIT OF SHELLEY M DAVIS
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

STATE OF IDAHO)
) ss.
County of Ada)

Shelley M. Davis, being first duly sworn upon oath, deposes and states as follows:

1. I am an attorney of record in the above-referenced action, am familiar with the issues and documents in the action, and have personal knowledge of the testimony set forth herein and am competent to testify to all matters addressed herein.

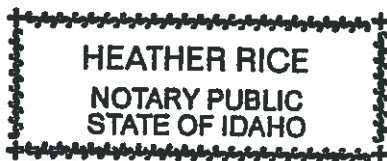
2. Attached hereto as Exhibit 1 is a true and correct copy of the Affidavit of Eulla "Sissy" Wallace delivered to me by the Ms. Wallace's then-acting counsel. The Affidavit contains the original signature of Ms. Wallace and is dated and verified as of October 19, 2016.

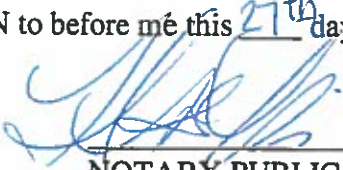
3. Attached hereto as Exhibit 2 is a true and correct copy of Affidavit of Leonard M. Wallace delivered to me by the Ms. Wallace's then-acting counsel. The Affidavit contains the original signature of Mr. Wallace and is dated and verified as of October 19, 2016.

DATED THIS 27th day of March, 2017.


Shelley M. Davis

SUBSCRIBED AND SWORN to before me this 27th day of March, 2017.




NOTARY PUBLIC FOR IDAHO

Residence: Ada County, Boise

My Commission Expires: 12/07/2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of March, 2017, I caused a true and correct copy of the foregoing AFFIDAVIT OF **SHELLEY M. DAVIS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be filed with or served upon the following parties by the indicated methods:

Filed with:

Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705-5082
Facsimile: (208) 334-2348

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email

Served on:

Mike and Eulla Wallace
3288 Wallace Lane
New Meadows, ID 83654

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email

James Cefalo
Hearing Officer
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

☒ U.S. Mail, postage prepaid
☐ Hand Delivery
☐ Facsimile
☐ Overnight Mail
☐ Email



Shelley M. Davis
Attorney for Protestants

EXHIBIT 1

COPY

Scott L. Campbell, ISB No. 2251
Sarah A. McCormack, ISB No. 9683
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
slc@moffatt.com
sam@moffatt.com
26671.0000

Attorneys for Michael and Eulla ("Sissy") Wallace

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CONTESTED
WATER RIGHT TRANSFER
APPLICATION NO. 81039 IN THE NAME
OF WALLACE

Docket No. _____

**AFFIDAVIT OF EULLA "SISSY"
WALLACE**

STATE OF IDAHO)
) ss.
County of Adams)

Eulla "Sissy" Wallace, having been duly sworn upon oath, deposes and states as follows:

1. My name is Eulla "Sissy" Wallace. I am over eighteen years of age and am a joint applicant to Transfer No. 81039 with my husband Michael Wallace. I make this

AFFIDAVIT OF EULLA "SISSY" WALLACE - 1

Client:4262531.1

affidavit upon my own personal knowledge and I am competent to testify regarding the matters contained herein.

2. On May 3, 1988, my father-in-law, Leonard Wallace, filed a Notice of Claim to a Water Right in the Snake River Basin Adjudication ("SRBA") with the Idaho Department of Water Resources (the "Department") for two developed springs gravity fed through a pipeline for domestic use and lawn irrigation on our land. Attached hereto as **Exhibit A** is a true and correct copy of the Notice of Claim. The Department designated the claim as water right claim no. 78-10067. The Notice of Claim described two points of diversion, T19N, R2E, Sec 9, SENWSW and T19N, R2E, Sec 9, SWNWSW, county of Adams.

3. On January 2, 2001, Leonard Wallace transferred his property, which includes the place use for Water Right No. 78-10067, to my husband, Michael Wallace, and me. However, Leonard Wallace and his wife, Sheryl Wallace, remained the owners of record for Water Right No. 78-10067.

4. On August 28, 2005, I decided to search the Department's website for the status of our Water Right Claim in the SRBA. The online file for Water Right Claim No. 78-10067 showed an Adjudication Claim Report describing only one point of diversion, T19N, R2E, Sec 9, SWNWSW, county of Adams, instead of the two points of diversion Leonard Wallace applied for. Attached hereto as **Exhibit B** is a true and correct copy of the Adjudication Claim Report I printed with the date of August 28, 2005. Since the one point of diversion was described correctly, I did not worry about the missing point of diversion.

5. On December 7, 2006, my father-in-law, Leonard Wallace, received a letter from the Department acknowledging the Notice of Claim in the SRBA from 1988 and requesting evidence of priority. Included with the letter was a "computer generated print-out" of

his claim showing what we now know were two incorrect points of diversion for the springs claimed. Attached hereto as **Exhibit C** are true and correct copies of the letter and "computer generated print-out." At the time, we did not realize the points of diversion were in the wrong location because we were sure that the points of diversion would be located where the springs were located. Therefore, we did not object to the print-out. In response to the letter, we provided the evidence of priority by affidavit on December 11, 2006. Attached hereto as **Exhibit D** is a true and correct copy of the affidavit.

6. The Department released a preliminary recommendation of water rights for Water Right Claim No. 78-10067 on December 19, 2006, which described two incorrect points of diversion in T19N, R2E, Sec 9, SENWSW, Lot 3 and T19N, R2E, Sec 9, SENWSW, Lot 3, county of Adams. Attached hereto as **Exhibit E** is a true and correct copy of the preliminary recommendation. Again, we did not realize the points of diversion were in the wrong location because we were sure that the points of diversion would be located where the springs were located. Therefore, we did not object to the preliminary recommendation.

7. The Department released the partial decree for Water Right No. 78-10067 on November 6, 2007, which described the same two incorrect points of diversion, T19N, R2E, Sec 9, SENWSW, Lot 3 and T19N, R2E, Sec 9, SENWSW, Lot 3, county of Adams, which is how they are now described. Attached hereto as **Exhibit F** is a true and correct copy of the partial decree.

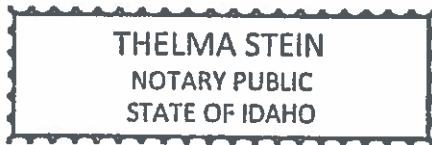
8. It is my belief that the Department made a clerical error in describing the two points of diversions for our springs. When my husband and I finally realized the points of diversion were incorrectly described, we promptly filed an Application for Transfer to correct the locations of the points of diversion to match the locations of the springs.

9. The springs mentioned above are the sole source of water for my husband and I's property.

Further your affiant sayeth naught.

Eulla Sissy Wallace
Eulla "Sissy" Wallace

SUBSCRIBED AND SWORN to before me this 17th day of October, 2016.



Thelma Stein
NOTARY PUBLIC FOR IDAHO
Residing at Valley County, Idaho
My Commission Expires August 17, 2021

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of October, 2016, I caused a true and correct copy of the foregoing **AFFIDAVIT OF EULLA "SISSY" WALLACE** to be served by the method indicated below, and addressed to the following:

Gary Spackman
Director

IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front St.
P.O. Box 83720
Boise, ID 83720-0098

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Shelley M. Davis
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Suite 102
P.O. Box 2139
Boise, ID 83701-2139
Facsimile (208) 344-6034
Attorneys for Protestants

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Scott L. Campbell

EXHIBIT A

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A78-10067
Date Received: 6/02/1988 5-3-88
Receipt No: C000534

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: LEONARD M. WALLACE
Address: BOX 126 208-347-2446
NEW MEADOWS, ID 83654

AND/OR

Name: SHERYL K. WALLACE
Address: BOX 126 208-347-2446
NEW MEADOWS, ID 83654

2. Date of Priority: SEP 01, 1970

3. Source: SPRINGS Trib. to: THREE MILE CREEK

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
19N	02E	9	SW	NW	SW		ADAMS

5. Description of diverting works:
TWO DEVELOPED SPRINGS WITH PIPELINE TO PLACE OF USE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
DOMESTIC	01/01	12/31	0.080		
IRRIGATION	04/15	10/15	0.200		

7. Total Quantity Appropriated is:
0.200 C.F.S. (and/or) A.F.A.

8. Total consumptive use is 8.0 Acre Feet Per Annum.

9. Non-irrigation uses:
2 DOMESTICS WITH LAWN IRRIGATION

A78-10067

Page 1

Date: 06/02/88

MICROFILMED
OCT 05 1992

10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
19N	02E	8	NE NE	SE SE	DOMEST IRR	4.0
Section Acres						4.0
Total Acres						4.0

11. Place of use in counties: ADAMS

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: BENEFICIAL USE
Water Right Number:

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____
My Commission Expires _____

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39356
Ident. Number A78-10067
Date Received 5-3-88
Receipt Number 48632 C000534
C7

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) Leonard M. and/or Sheryl K. Wallace Phone (208) 347-2446

Mailing Address Box 126 New Meadows Zip 83654

2. Date of Priority (Only one (1) per claim) Sept. 1 1970

3. Source of water supply (a) Springs (2)
which is tributary to (b) Three mile Creek

4. a. Location of existing point of diversion is: Township 19N Range 2E Section 9,
SE 1/4 of NW 1/4 of SW 1/4, Govt. Lot, _____ B.M., County of Adams

Additional points of diversion if any: T19N R2E Sec 9 SWNW SW

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. Two developed springs
with pipeline to place of use.

MICROFILMED
Copies: White State, Yellow - Claimant
OCT 25 1988

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

or Domestic purposes from 1-1 to 12-31 amount 0.08 or _____

For Irrigation purposes from 4-15 to 10-15 amount 0.20 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.20 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 8 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) 2 domestics with lawn irrigation

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
<u>19N</u>	<u>2E</u>	<u>8</u>													<u>D</u>				
		<u>8</u>													<u>4</u>				<u>4</u>

Total number of acres irrigated 4

11. In which county (ies) are lands listed above as place of use located? Adams

12. Do you own the property listed above as place of use? Yes ☒ No ☐

If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above. _____ or None (☒)

14. Remarks:

Last Name Wallace ~~A 78-10067~~ Ident No. A 78-10067

MICROFILMED
Originals Were State/County Claimant

OCT 05 1992

15. Basis of Claim (check one) Beneficial Use ☒ Posted Notice _____ License _____ Permit _____
Decree _____

If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

16. Signature (s) _____
(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled
"How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not ☒
wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments -1-

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true
and correct.

Signature of Claimant (s) Leonard M. Wallace Date 5-3-88

_____ Date _____

For Organizations: I do solemnly swear or affirm that I am _____ Title _____

of _____, that I have signed the foregoing
Organization

document in the space below as _____ of _____
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____ Date _____

State of Idaho/or _____)
County of Adams) SS.

Subscribed and sworn (or affirmed) before me this 3rd day of May 19 88

SEAL

Notary Public Carter Fritschle

Residing at Eagle, Id

My Commission Expires 3-21-94

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, _____ will be acting as attorney at law on behalf
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

Last Name Wallace Ident. Number A78-10067

MICROFILMED
Copies Made, Below: Claimant

OCT 05 1992

EXHIBIT B

[Close](#)IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report

08/28/2005

WATER RIGHT NO. 78-10067

Owner Type	Name and Address
Current Owner	LEONARD M WALLACE
Current Owner	SHERYL K WALLACE
	BOX 126
	NEW MEADOWS, ID 83654
	(208)347-2446

Priority Date: 09/01/1970

Basis: Beneficial Use

Status: Active

Source	Tributary
SPRINGS	THREEMILE CREEK

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	4/15	10/15	0.2 CFS	
DOMESTIC	1/01	12/31	0.08 CFS	
Total Diversion			0.2 CFS	

Record - Basin Sequen-
34-78-10067

Location of Point(s) of Diversion:

SPRINGS	SWNWSW	Sec. 09	Township 19N	Range 02E	ADAMS County
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Place(s) of use:

Place of Use Legal Description: IRRIGATION ADAMS County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
19N	02E	8		NESE	4									

Place of Use Legal Description: DOMESTIC ADAMS County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
19N	02E	8		NESE										

Total Acres: 4

Dates:

Licensed Date:

Claim Received Date:

Decreed Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Other Information:

State or Federal: S

Owner Name Connector: AND

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

EXHIBIT C



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

December 7, 2006

JAMES E. RISCH
Governor

KARL J. DREHER
Director

LEONARD M &/OR SHERYL K WALLACE
PO BOX 126
NEW MEADOWS ID 83654

Re: Claim to a Water Right No. 78-10067

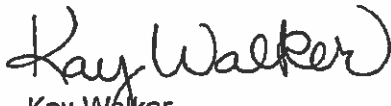
Dear Claimants:

In May of 1988, you submitted the above referenced claim in the Snake River Basin Adjudication. Enclosed is a computer generated print-out of the claim for your reference only; this print-out is **NOT** to be returned or re-filed. You have indicated, when this claim was filed, that the water right was based on a "Beneficial Use" of the water. Water rights of this type are established by the historical use of water for a beneficial purpose, dating back to the time the water was first used, this date being the "Priority Date" as shown on the enclosed print-out. This claim has not been confirmed by a previous filing with the Department of Water Resources since there is no decree, license, or permit on file to verify the use of this water. For this reason, the Department is required to gather evidence from claimants supporting the date of priority for claims based on historical beneficial use of water. Any other claims you may have filed, that are not listed above, do not require evidence of priority be submitted at this time.

Enclosed is a pamphlet entitled "Evidence of Priority" which describes why evidence of the priority date is necessary along with examples of types of evidence that can be submitted to fulfill this requirement. If no evidence is submitted, or we do not hear from you within the time limit below, the priority date, as claimed, may not be recommended to the Court for decree. This could jeopardize the water use under this right, if water availability problems arise in the future. It is our goal to decree the historical water rights within the Snake River Basin as accurately as possible.

The required evidence supporting the priority date must be submitted by **December 14, 2006**, referencing all documents with the corresponding claim number. If you have any questions not covered by this letter, or the enclosed pamphlet, please feel free to call me at 287-4953.

Sincerely,


Kay Walker
Sr. Water Resource Agent

Enclosures

78-10067



700 0 700 1400 Feet

T19N R02E S08

Map prepared by: Carter Fritschle
Date prepared: 06/16/06
2004 NAIP Photography
Idaho Department of Water Resources



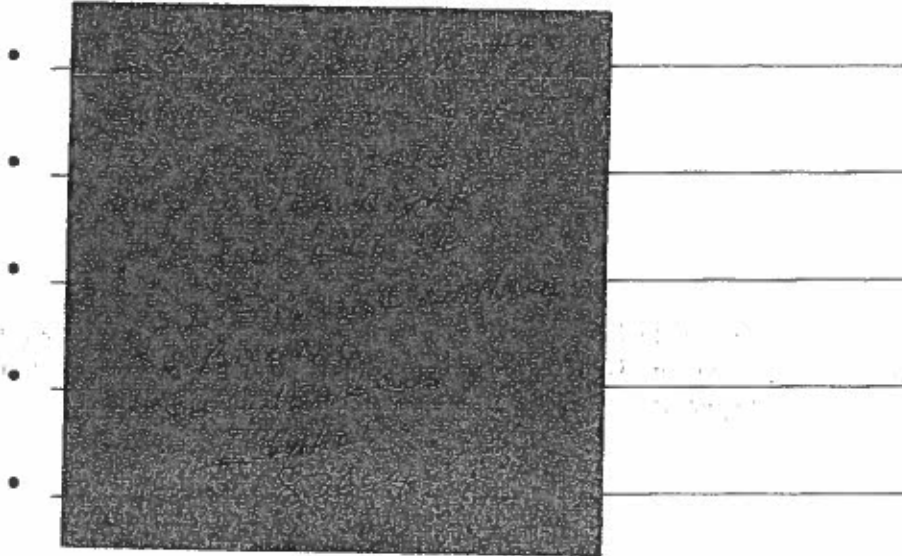
EXHIBIT D

DEC 14 2006

We the undersigned do hereby state that the priority date of September 1, 1970 is correct for water right # 78-10067 which held by Leonard & Sheryl Wallace, P.O. Box 126, New Meadows, Idaho 83654 and it has been used every day & year since 1970.

- Everett Osborn Box 209 New Meadows Id
- Tessie Osborn Box 209 New Meadows Id

• _____



• _____

• _____

• _____

• _____

• _____

• _____

EXHIBIT E

12/19/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 78-10067

NAME AND ADDRESS: LEONARD M WALLACE
PO BOX 126
NEW MEADOWS ID 83654

SHERYL K WALLACE
PO BOX 126
NEW MEADOWS ID 83654

SOURCE: SPRINGS

TRIBUTARY: THREEMILE CREEK

QUANTITY: 0.160 CFS

The quantity of water under this right for domestic use shall not exceed
13,000 gallons per day.

PRIORITY DATE: 09/01/1970

POINT OF DIVERSION:

T19N R02E S9 SENWSW Lot 3 Within ADAMS County

T19N R02E S9 SENWSW Lot 3 Within ADAMS County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
DOMESTIC	01/01 12/31	0.080 CFS
IRRIGATION	04/01 10/31	0.080 CFS

Domestic use is for 2 homes.

PLACE OF USE: IRRIGATION in ADAMS County

T19N R02E S08 NESE 4.00

DOMESTIC in ADAMS County

T19N R02E S08 NESE

4 ACRES TOTAL

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

The quantity of water decreed for this water right for domestic use is not a determination of historical beneficial use.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use



Idaho Department of Water Resources

SRBA Recommendation:

78-10067

(Irrigation)

Legend

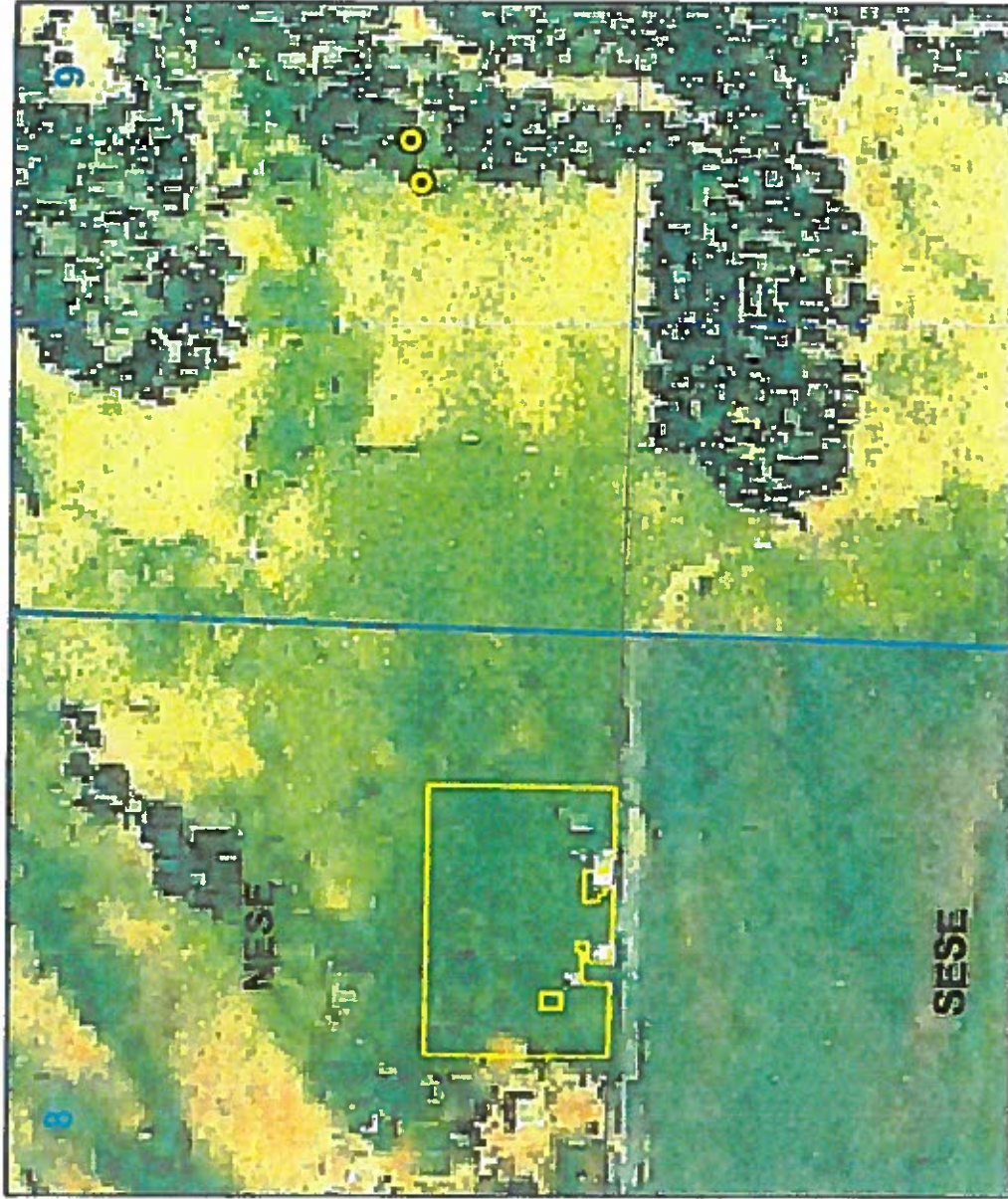
- Point of Diversion
- Place of Use
- Townships
- PLS Sections
- Quarter Quarters



Adams County
IDWR Basin 78

Prepared by K. Walker
On Tuesday, December 19, 2006
1987/88 Aerial Photography

R02E



0 0.1 0.2 Miles

EXHIBIT F

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
)
) Water Right 78-10067

NAME AND ADDRESS: LEONARD M WALLACE
SHERYL K WALLACE
PO BOX 126
NEW MEADOWS, ID 83654

SOURCE: SPRINGS TRIBUTARY: THREE MILE CREEK

QUANTITY: 0.16 CFS

The quantity of water under this right for domestic use shall
not exceed 13,000 gallons per day.

PRIORITY DATE: 09/01/1970

POINT OF DIVERSION: T19N R02E S09 LOT 3 (SENWSW) Within Adams County
LOT 3 (SENWSW)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Irrigation	04-01 TO 10-31	0.08 CFS
	Domestic	01-01 TO 12-31	0.08 CFS

Domestic use is for 2 homes.

PLACE OF USE:	Irrigation		Within Adams County
	T19N R02E S08	NESE 4.0	
	4.0 Acres Total		
	Domestic		Within Adams County
	T19N R02E S08	NESE	

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

The quantity of water decreed for this water right for domestic
use is not a determination of historical beneficial use.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

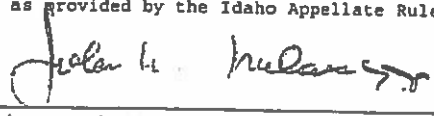

John M. Melanson
Presiding Judge of the
Snake River Basin Adjudication

EXHIBIT 2

COPY

Scott L. Campbell, ISB No. 2251
Sarah A. McCormack, ISB No. 9683
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
slc@moffatt.com
sam@moffatt.com
26671.0000

Attorneys for Michael and Eulla ("Sissy") Wallace

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF CONTESTED
WATER RIGHT TRANSFER
APPLICATION NO. 81039 IN THE NAME
OF WALLACE

Docket No. _____

**AFFIDAVIT OF LEONARD M.
WALLACE**

STATE OF IDAHO)
) ss.
County of Adams)

Leonard M. Wallace, having been duly sworn upon oath, deposes and states as follows:

1. My name is Leonard M. Wallace. I am over eighteen years of age and am the father of Michael Wallace, an applicant to Transfer No. 81039. I am the current owner of record of Water Right No. 78-10067, which is the subject of this transfer, and I live on the

AFFIDAVIT OF LEONARD M. WALLACE - 1

Client:4255079.1

property that includes the place use for Water Right No. 78-10067. I make this affidavit upon my own personal knowledge and I am competent to testify regarding the matters contained herein.

2. My father, Charles Wallace and his company, Charles Wallace & Sons, Inc., owned 350 acres as a ranch in Adams County, including the point of diversion and place use for Water Right No. 78-10067 and the property now known as Timber Ridge Subdivision. Charles Wallace used the water from the springs associated with Water Right No. 78-10067 since 1970 for domestic and irrigation use on his property.

3. Charles Wallace sold a large portion of the ranch, which is now known as Timber Ridge Subdivision, to Phil and Kenny Walters in the 1970s. The point of diversion for the springs associated with Water Right No. 78-10067 was located on the land transferred to the Walters. However, the place of use associated with Water Right No. 78-10067 was retained by Charles Wallace. Although the location of the point of diversion was owned by the Walters, Charles Wallace used and claimed a water line easement to access the spring water through a pipeline to his property through the property owned by the Walters.

4. Despite their promise not to sell the ranch acreage, Phil and Kenny Walters sold the land to Hobie Alter, a developer from California, in 1993.

5. Once Hobie Alter decided that he was going to subdivide and develop the ranch acreage into Timber Ridge Subdivision, he contacted me about the water line easement to the springs. I told him that our family had used the water from the springs for as long as we had owned the property and that we had an agreed easement to pipe the spring water to our property. He agreed to put the easement on the plat map of Timber Ridge Subdivision to memorialize the

agreement that the easement existed. Attached hereto as **Exhibit A** is a true and correct copy of the plat map executed by Hobie Alter, showing the above-mentioned water line easement.

6. On May 3, 1988, I filed a Notice of Claim to a Water Right in the SRBA with the Department for the two developed springs gravity fed through a pipeline for domestic use and lawn irrigation on the remaining land owned by the Wallace family. Attached hereto as **Exhibit B** is a true and correct copy of the Notice of Claim. The Department designated the claim as water right claim no. 78-10067.

7. On December 7, 2006, I received a letter from the Department acknowledging my Notice of Claim in the SRBA from 1988 and requesting evidence of priority. Attached hereto as **Exhibit C** is a true and correct copy of the letter. I provided the evidence of priority by affidavit on December 11, 2006. Attached hereto as **Exhibit D** is a true and correct copy of the affidavit.

8. The Department released a preliminary recommendation of water rights on December 19, 2006 and the water right was decreed on November 6, 2007. Attached hereto as **Exhibit E** is a true and correct copy of the preliminary recommendation.

9. Charles Wallace passed away and his property was officially transferred to me through a quitclaim deed on March 13, 2000. Attached hereto as **Exhibit F** is a true and correct copy of the quitclaim deed.

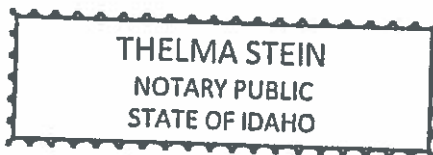
10. On January 2, 2001, I transferred the same property to my son and daughter-in-law, Michael and Eulla ("Sissy") Wallace. The current property consists of five acres in the middle of Timber Ridge Subdivision. I live in a house on one acre and my son and daughter-in-law, Michael and Eulla Wallace, live in a house on the remaining four acres. We use the springs water for domestic use on the two homes and lawn irrigation on our properties. I

also have a well, drilled in 2010, which supplies additional domestic water to my property, but the springs are the sole source of water for my son and daughter-in-law's property.

Further your affiant sayeth naught.

Leonard M. Wallace
Leonard M. Wallace

SUBSCRIBED AND SWORN to before me this 19th day of October, 2016.



Thelma Stein
NOTARY PUBLIC FOR IDAHO
Residing at Valley County Idaho
My Commission Expires August 14, 2021

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of October, 2016, I caused a true and correct copy of the foregoing **AFFIDAVIT OF LEONARD M. WALLACE** to be served by the method indicated below, and addressed to the following:

Gary Spackman
Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front St.
P.O. Box 83720
Boise, ID 83720-0098

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Shelley M. Davis
BARKER RSHOLT & SIMPSON LLP
1010 W. Jefferson St., Suite 102
P.O. Box 2139
Boise, ID 83701-2139
Facsimile (208) 344-6034
Attorneys for Protestants

☐ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Scott L. Campbell

EXHIBIT A

0 100 200 400 600
SCALE 1"=200'

BASIS OF BEARINGS
RECORD OF SURVEY FILED AS
INSTRUMENT NO. 86,564

CURVE TABLES cont.

[illegible]

LINE	SECTION	DISTANCE
L1	50S-51072 W	50.57
L2	50S-51074 E	27.32
L3	N65-50105 E	50.00
L4	N65-51108 W	35.00
L5	N65-50111 W	45.00
L6	50S-51109 E	50.00
L7	N65-51109 E	75.00
L8	N67-51145 E	145.59
L9	N62-51132 W	50.00
L10	N61-54435 W	34.88
L11	50T-50039 W	50.00
L12	50T-50112 E	129.83
L13	51T-50035 W	61.12
L14	54S-50131 E	129.84
L15	N60-51103 W	95.30
L16	N60-00834 W	78.00
L17	50S-51100 E	80.86
L18	54S-52311 E	107.16
L19	S16-51330 E	83.86
L20	50S-51133 E	101.97
L21	S66-02131 E	34.57
L22	S69-51131 E	111.85
L23	N60-50123 E	112.25
L24	51T-50040 E	214.76
L25	S16T-50114 W	44.14
L26	50T-50041 W	125.94

300 DENWARD LANE
MCCELL AIR TUN BUILDING
P.O. BOX 4240
MCCELL, INDIANAPOLIS
(202) 634-4803

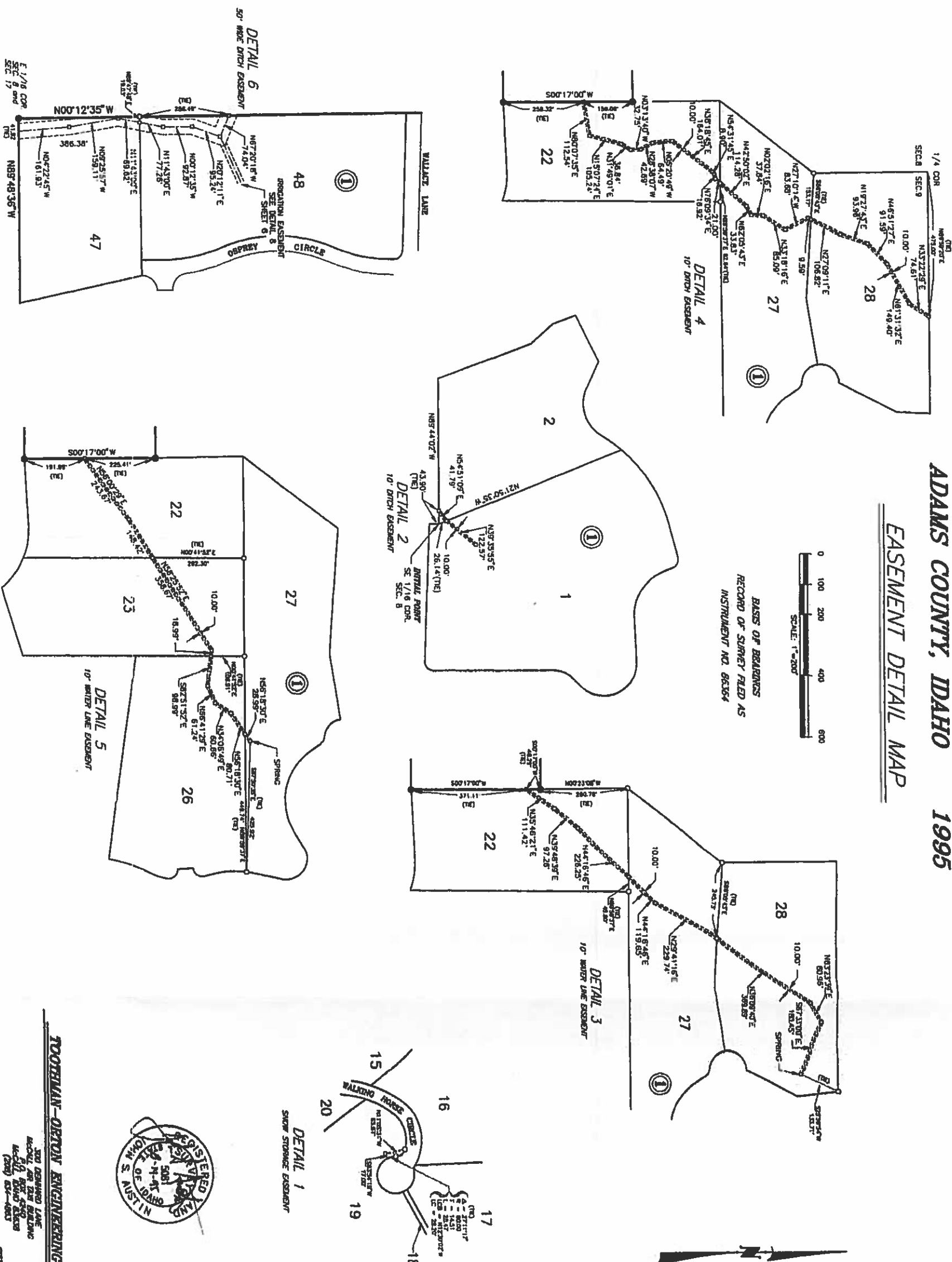
1995



TIMBER RIDGE SUBDIVISION

PART OF SECTIONS 8 AND 9, T.19 N., R.2 E., B.M.
ADAMS COUNTY, IDAHO 1995

EASEMENT DETAIL MAP



TIMOTHY A. ORTON ENGINEERING COMPANY

300 DENHAM LANE
BOZEMAN, MT 59717
PH: 406/592-1234
FAX: 406/592-1235
(200) 406-1234

SHEET NO. 6 OF 7

EASEMENT DETAIL MAP



**BASIS OF BEARINGS
RECORD OF SURVEY FILED AS
INSTRUMENT NO. 86364**



DETAIL 10



DETAIL 8



DETAIL 8
PROGATION BASEMENT (CONT.)



TOOTHMAN-ORTON ENGINEERING COMPANY

300 DENVER LANE
MCCOLL AIR TOW BUILDING
P.O. BOX 4240
MCCOLL, SOUTH CAROLINA
(708) 654-4845

TIMBER RIDGE SUBDIVISION

Book 2 Page 17 of Plats

PART OF SECTIONS 8 AND 9, T.19 N., R.2 E., B.M.
ADAMS COUNTY, IDAHO 1995

CERTIFICATE OF OWNERS

KNOW ALL MEN BY THESE PRESENTS, THAT THE UNDERSIGNED IS THE OWNER OF THE PROPERTY HEREINAFTER DESCRIBED:

A parcel of land located in the SE 1/4 NE 1/4, SE 1/4 NE 1/4 SW 1/4 and NW 1/4 SW 1/4 of Section 8, and in the SW 1/4 of Section 9, T.19 N.2 E. B.M. Adams County, Idaho, being described as follows:

Beginning at the southeast 1/16th corner of said Section 8, being the initial point and being marked by a 2 inch iron pipe with brass cap, thence:

- 1.) N. 89° 44' 32" E., 1201.08 feet along the southerly line of the NW 1/4 SE 1/4 of Section 8 to a 5/8 inch pvc/cap at the center-south 1/16th corner of said Section 8; thence,
- 2.) N. 89° 44' 30" E., 859.78 feet along the southerly line of the NE 1/4 SW 1/4 of said Section 8 to a 5/8 inch pvc/cap at the center-south 1/16th corner of said Section 8; thence,
- 3.) N. 02° 48' 12" E., 457.49 feet along the easterly line of said instrument No. 87622 to a 5/8 inch pvc/cap at the northwesterly corner of same; thence,
- 4.) N. 89° 22' 27" E., 427.20 feet along the southerly line of said instrument No. 87622 to a 5/8 inch pvc/cap at the center-south 1/16th corner of said Section 8; thence,
- 5.) N. 02° 29' 30" E., 844.13 feet along the westerly line of said instrument No. 87619 to a 5/8 inch pvc/cap at the northwesterly corner of same; thence,
- 6.) N. 89° 33' 30" E., 142.31 feet along the southerly line of said instrument No. 87619 and along the southerly line of a parcel of land described in a Quit-Claim deed filed as instrument No. 87623 to a 5/8 inch pvc/cap at an angle point in said southerly line; thence,
- 7.) S. 89° 29' 30" E., 268.00 feet along said southerly line to a 5/8 inch pvc/cap at another angle point in said line; thence,
- 8.) S. 89° 45' 30" E., 1086.00 feet along said southerly line to a 5/8 inch pvc/cap at another angle point in said line; thence,
- 9.) S. 89° 29' 30" E., 1102.00 feet along said southerly line to a 5/8 inch pvc/cap at the southwesterly corner of said instrument No. 87623; thence,
- 10.) N. 02° 43' 35" E., 911.50 feet along the southerly line of said instrument No. 87623 to a 5/8 inch pvc/cap at an angle point in said line; thence,
- 11.) N. 04° 33' 31" E., 297.35 feet along said southerly line to a 5/8 inch pvc/cap at another angle point in said line; thence,
- 12.) N. 89° 44' 30" E., 78.89 feet along said southerly line to a 5/8 inch pvc/cap at the northwesterly corner of instrument No. 87623; thence,
- 13.) S. 89° 13' 30" E., 1239.34 feet along the northerly line of said SE 1/4 NE 1/4 of Section 8; thence,
- 14.) S. 00° 58' 30" E., 1316.67 feet along the easterly line of said SE 1/4 NE 1/4 to a 2 inch pipe with brass cap at the 1/4 corner common to Sections 8 and 9; thence,
- 15.) N. 89° 39' 30" E., 2701.84 feet along the northerly line of said SW 1/4 of said Section 8; thence,
- 16.) S. 00° 40' 22" E., 2611.03 feet along the easterly line of said SW 1/4 to a 2 inch pipe with an aluminum cap at the 1/4 corner common to Sections 9 and 16; thence,
- 17.) S. 89° 43' 30" E., 1317.09 feet along the southerly line of the SE 1/4 SW 1/4 of Section 9 to a 2 inch pipe with an aluminum cap at the west 1/16th corner common to Sections 9 and 16; thence,
- 18.) S. 89° 45' 30" E., 1394.89 feet along the southerly line of the SW 1/4 SW 1/4 of Section 9 to a 2 inch pipe with a brass cap at the corner common to Sections 8, 9, 16 and 17; thence,
- 19.) N. 89° 46' 30" E., 1306.42 feet along the southerly line of the SE 1/4 SE 1/4 of Section 8 to a 5/8 inch pvc/cap at the east 1/16th corner common to Sections 8 and 17; thence,
- 20.) N. 00° 12' 35" E., 1231.58 feet along the westerly line of said SE 1/4 SE 1/4 to the POINT OF BEGINNING.

Excluding a parcel of land described in a Quit-Claim deed filed in Adams County as instrument No. 87624 and described as follows:

Commencing at the 2 inch pipe with brass cap at the corner common to Sections 8, 9, 16 and 17; thence,

N. 02° 27' 18" E., 1272.31 feet along the line common to Sections 8 and 9 to a point located S. 00° 27' 18" E., 48.59 feet from the south 1/16th corner common to Sections 8 and 9; thence,

N. 89° 32' 24" E., 247.33 feet to a 5/8 inch pvc/cap at the POINT OF BEGINNING; thence,

1.) N. 00° 17' 00" E., 417.40 feet to a 5/8 inch pvc/cap; thence,

2.) N. 89° 32' 24" E., 522.20 feet to a 5/8 inch pvc/cap; thence,

3.) S. 00° 17' 00" E., 417.40 feet to a 5/8 inch pvc/cap; thence,

4.) S. 89° 32' 24" E., 522.20 feet to the POINT OF BEGINNING

Said exception containing 5.004 acres. The above-described parcel, excluding the above exception, contains 351.864 acres, and is as shown on a Record of Survey filed in Adams County as instrument No. 86384.

THAT IT IS THE INTENTION OF THE UNDERSIGNED TO, AND HE DOES HEREBY INCLUDE SAID LANDS IN THIS PLAT, THAT THE EASEMENTS INDICATED ON SAID PLAT ARE NOT DEDICATED TO THE PUBLIC, BUT THE RIGHT TO USE SAID EASEMENTS IS HEREBY PERPETUALLY RESERVED FOR PUBLIC UTILITIES AND FOR SUCH OTHER USES AS ARE DESIGNATED HEREON AND THAT NO STRUCTURES OTHER THAN FOR SUCH UTILITY PURPOSE ARE TO BE ERECTED WITHIN THE LINES OF SAID EASEMENTS.

THE OWNER HEREBY CERTIFIES THAT THE MINORAL LOTS SHOWN ON THE PLAT WILL NOT BE SERVED BY ANY SANITARY SEWER SYSTEM BUT WILL BE SERVED BY INDIVIDUAL SEPTIC TANKS AND THAT THE MINORAL LOTS SHOWN WILL NOT BE SERVED BY ANY WATER SYSTEM BUT WILL BE SERVED BY INDIVIDUAL WELLS.

BY: HOBART L. ALTER, GENERAL PARTNER OF HPU PARTNERS

SIGNED BY: HOBART P. ALTER, PARTNER AND ATTORNEY IN FACT FOR HOBART L. ALTER

NOTES

- 1) LOTS 18 & 20 ARE 15 FOOT WIDE PRIVATE ACCESS LOTS OWNED BY THE TIMBER RIDGE HOME OWNERS ASSOCIATION.
- 2) ALL LOT LINES ARE SUBJECT TO A 10 FOOT WIDE UTILITY EASEMENT ON EACH SIDE OF A LOT LINE.
- 3) THE RIGHT-OF-WAY OF EACH ROAD WILL ALSO SERVE AS AN EASEMENT FOR PUBLIC UTILITIES AND AS AN EASEMENT FOR THE ERECTION OF STRUCTURES ON THE PLAT.
- 4) BUILDING SETBACKS IN THIS SUBDIVISION SHALL BE IN COMPLIANCE WITH THE APPLICABLE ZONING REGULATIONS OR C.C.R. REQUIREMENTS.
- 5) THIS PLAT IS SUBJECT TO COMPLIANCE WITH IDAHO CODE SECTION 31-3003. ANY OTHER WRITER WILL BE SUPPLIED TO SOME OF THE LOTS HEREON.

RESTRICTIVE COVENANTS

INSTRUMENT NUMBER 88634
LOT DEVELOPMENT AND BUILDING OCCUPANCY IN THIS SUBDIVISION SHALL BE SUBJECT TO THE CONDITIONS ESTABLISHED BY THE RESTRICTIVE COVENANTS AS FILED IN BOOK _____ AT PAGE _____, MISCELLANEOUS RECORDS, ADAMS COUNTY, IDAHO.

CERTIFICATE OF SURVEYOR

I, JOHN S. AUSTIN DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF IDAHO AND THAT THE SURVEY OF THE LAND DESCRIBED IN THE "CERTIFICATE OF OWNERS" AND DESIGNATED HEREIN AS TIMBER RIDGE SUBDIVISION WAS MADE UNDER MY SUPERVISION. THAT THIS PLAT IS A CORRECT REPRESENTATION OF SAID SURVEY AS STAKED ON THE GROUND AND THAT THE SURVEY AND THIS PLAT IS IN CONFORMITY WITH STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS AND THE CORNER PERPETUATION AND FILING ACT, IDAHO CODE 55-1601 THROUGH 55-1612.

JOHN S. AUSTIN
IDAHO NO. 5081



APPROVAL OF ADAMS COUNTY
PLANNING AND ZONING COMMISSION

ACCEPTED AND APPROVED THIS 18 DAY OF Aug., 1995 BY ADAMS COUNTY
PLANNING AND ZONING COMMISSION

CHAIRMAN *John C. Clevie*

ACKNOWLEDGMENT

STATE OF IDAHO } S.S.
COUNTY OF ADAMS }

ON THIS 22 DAY OF August, 1995, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID STATE, PERSONALLY APPEARED HOBART P. ALTER, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AS THE ATTORNEY IN FACT OF HOBART L. ALTER, GENERAL PARTNER OF HPU PARTNERS, AND ACKNOWLEDGED TO ME THAT HE SUBSCRIBED THE NAME OF HOBART L. ALTER THEREIN AS PRINCIPAL, AND HIS OWN NAME AS ATTORNEY IN FACT, AND THAT SAID PARTNERSHIP EXECUTED THE SAID INSTRUMENT.

NOTARY PUBLIC FOR THE STATE OF IDAHO
MY COMMISSION EXPIRES _____

APPROVAL OF SOUTHWEST DISTRICT HEALTH DEPARTMENT

SANITARY RESTRICTIONS OF THIS PLAT OF TIMBER RIDGE SUBDIVISION ARE HEREBY REMOVED ACCORDING TO THE LETTER TO BE READ ON FILE WITH THE COUNTY RECORDER LISTING THE CONDITIONS OF APPROVAL.

205 (018)
INSTRUMENT NO. *205*
HEALTH OFFICER *John C. Clevie*

CERTIFICATE OF COUNTY TREASURER

I, THE UNDERSIGNED, COUNTY TREASURER IN AND FOR THE COUNTY OF ADAMS, STATE OF IDAHO, PER THE REQUIREMENTS OF I.C. 50-1308, DO HEREBY CERTIFY THAT ANY AND ALL CURRENT AND OR DELINQUENT COUNTY PROPERTY TAXES FOR THE PROPERTY INCLUDED IN THIS SUBDIVISION HAVE BEEN PAID IN FULL. THIS CERTIFICATION IS VALID FOR THE NEXT THIRTY (30) DAYS ONLY.

DATE 8/18/95
COUNTY TREASURER *Theresa Clevie*

CERTIFICATE OF COUNTY ENGINEER

I, MARK HOLLADAY, REGISTERED ENGINEER FOR ADAMS COUNTY, IDAHO, DO HEREBY CERTIFY THAT I HAVE CHECKED THIS PLAT AND THAT IT COMPLEES WITH THE STATE OF IDAHO CODE RELATING TO PLATS AND SURVEYS.

Mark Holladay
3256
ADAMS COUNTY ENGINEER

COUNTY COMMISSIONERS' ACCEPTANCE

THE FOREGOING PLAT WAS ACCEPTED AND APPROVED BY THE BOARD OF COUNTY COMMISSIONERS OF ADAMS COUNTY, IDAHO ON THE 14 DAY OF Aug., 1995.

CHAIRMAN *Raymond Clevie*

CERTIFICATE OF COUNTY RECORDER

STATE OF IDAHO } S.S.
COUNTY OF ADAMS }

I HEREBY CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD AT THE REQUEST OF JOHN S. AUSTIN, AT 3:00 MINUTES PAST 11 O'CLOCK A.M. ON THIS 22 DAY OF August, 1995 IN BOOK 2 OF PLATS AT PAGES 17 AND ____ INSTRUMENT NO. 88634
BY OFFICER RECORDER Michael Fisk
DEPUTY *Robert Fisk*

TOOTHMAN-ORTON ENGINEERING COMPANY

300 DENHAM LANE
MCALL, IDAHO 83428
(208) 634-0883