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HAILEY, BLAINE, IDAHO
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Index to: AGREEMENT/CORRECTION

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HIAWATHA HIGH DITCH/OLD CUTTERS SUBDIVISION
MAINTENANCE AGREEMENT

THIS HIAWATHA HIGH DITCH/OLD CUTTERS SUBDIVISION MAINTENANCE AGREEMENT (this "Agreement") is made and entered into this 17 day of January, 2007, by and between the JAMES W. PHILLIPS, individually and on behalf of all owners of water rights delivered through the HIGH DITCH OF THE HIAWATHA CANAL (hereinafter collectively referred to as "High Ditch Users"), and OLD CUTTERS, INC., an Idaho corporation, ("Cutters").

RECITALS

A. The High Ditch Users own, operate and maintain an irrigation canal known as the High Ditch of the Hiawatha Canal ("High Ditch"), a portion of the which traverses through and is located within the Old Cutters Subdivision according to the plat thereof on file or to be filed in the records of the Office of the Blaine County Recorder, Hailey, Idaho (the "Subdivision"), which Subdivision is currently owned and being by developed by Cutters, and the real property within the Subdivision is more particularly described as set forth on attached Exhibit A (the "Real Property").

B. Cutters and the High Ditch Users desire to have that portion of the High Ditch which traverses through the Subdivision be maintained by Cutters and upon its lawful creation by the Homeowners Association of the Subdivision (collectively the "Association") so that said maintenance is done in a manner acceptable to said Association and the owners of the lots, blocks and parcels of land within the Subdivision.

C. The High Ditch Users are willing to have that portion of the High Ditch maintained by Cutters and the Association in a manner which provides for use and benefit of the High Ditch by the High Ditch Users.

E. The High Ditch Users are willing to permit the Association to maintain said High Ditch subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, Cutters and the High Ditch Users hereby covenant and agree as follows:

1. MAINTENANCE OF THE CANAL.

(A). Cutters, and after its creation the Association, shall maintain that portion of the High Ditch which traverses through the Subdivision and shall keep the High Ditch in good condition and repair at its sole expense, except as set forth herein in paragraph 2, below. Said maintenance

shall include, but not be limited to (i) inspection and cleaning of the High Ditch, (ii) keeping the High Ditch free of debris, fallen trees, shrubs, branches, obstructions, weeds, and grasses, (iii) keeping the High Ditch embankments free of debris, trees, brush, and aquatic plants and grasses (iv) keeping the High Ditch embankments in good condition and repair, all so that the water rights then being delivered in the High Ditch flow freely and at their full volume less historical ditch loss, and water does not flow out of said High Ditch (except at established points of diversion) onto the Real Property or any portion thereof, and to ensure delivery of the water in the High Ditch to the owners thereof. The High Ditch Users shall, at their sole expense, remove silt from the High Ditch as necessary to keep the water flowing at the full volume of the water rights then being delivered through the High Ditch. Any silt and debris removed by the High Ditch Users may be deposited within the easement premises or outside of the platted easement in those areas where it has been historically deposited. The High Ditch Users are not obligated to remove the silt and debris from where it is deposited.

(B). The Association shall conduct an annual spring cleaning of the High Ditch so that the maintenance required by the Association under this Agreement is done by April 1st of each year. If during the year the High Ditch Users becomes aware of additional maintenance which needs to be done on the High Ditch they will so notify the Association, however, this provision does not relieve the Association of its independent continuing obligation to inspect and maintain the High Ditch as set forth in this Agreement.

(C) In order for the High Ditch to function properly and safely Cutters, the Association and the owners of property within the Subdivision shall not, without the express prior written consent of the High Ditch Users:

- (i) place any obstructions such as dams, foot bridges (other than those approved by the City of Hailey and the High Ditch Users) rocks, etc., in or over the High Ditch;
- (ii) build or place any structure or fence within the High Ditch Easement or outside of the building envelopes as shown on the Subdivision Plat for those lots adjacent to the High Ditch Easement;
- (iii) dig into the High Ditch embankment (this is to avoid damage to or weakening of the embankment to prevent flooding or seepage);
- (iv) plant any tree, shrubs or other vegetation within the High Ditch Easement;
- (v) plant or place cattail, reed, rush or similar aquatic vegetation in the High Ditch or along its embankments;
- (vi) dump or store grass clippings, compost, firewood, dirt, construction materials or other items within the High Ditch Easement;
- (vii) restrict the flow of the water within the High Ditch; and

(viii) divert or use any water from the High Ditch, except for the Big Wood River water rights that will be delivered to and used on the park and certain lots in the Subdivision.

2. **BREACH.** If either party deems the other party to be in breach of any of its obligations or responsibilities with respect to the High Ditch contained in this Agreement, the non-defaulting party shall give the defaulting party notice of such breach, and the defaulting party shall have five (5) days in which to cure the breach (unless due to an emergency immediate action is deemed necessary by the non-defaulting party), provided that if the nature of such breach is such that the same cannot with due diligence be cured within said period, the non-defaulting party shall not be deemed to be in default if it shall within said period, commence such curing and thereafter diligently prosecute the same to completion. If within said time the defaulting party does not cure the breach, the non-defaulting party may then undertake to cure the breach and the defaulting party shall pay the non-defaulting party for any and all expenses which it may incur in doing so. In the case of an emergency (such as waters flooding out from the High Ditch due to an obstruction of the High Ditch or damage to its embankment, or reduction in the free flow of the full volume of the water rights then being delivered, less historical ditch loss, due to an obstruction in the High Ditch during the irrigation season) where immediate action is deemed necessary by the High Ditch Users, the High Ditch Users may proceed without notice to the Association to take such actions as the High Ditch Users deem appropriate and the Association shall pay the High Ditch Users for any and all expenses which it may incur in doing so. The Association shall pay the High Ditch Users the expenses so incurred within thirty (30) days of billing by the High Ditch Users to the Association. In the event the High Ditch Users perform any maintenance of the High Ditch pursuant to this paragraph on the default of Cutters or the Association, such maintenance may be done in their customary manner which includes without limitation the use of hand labor, chain saws, heavy construction equipment, burning, and herbicides along the High Ditch and its embankments, and Cutters, the Association and each owner of lands within the Subdivision hereby irrevocably consents thereto. Any silt or debris removed by the High Ditch Users may be deposited within the easement premises or outside of the platted easement in those areas where it has been historically deposited, and the High Ditch Users are under no obligation to remove the debris or silt from the easement premises.

3. **EASEMENT RIGHTS AND USE.**

(A) This Agreement shall not affect in any way the High Ditch Users' rights to the High Ditch and their rights to use, access, maintenance, repair or improvement thereof.

(B) In the event that Cutters, the Association or any owners of lots within the Subdivision take delivery of water through and from the High Ditch for use in the Subdivision they shall be bound by the bylaws, rules and regulations of the Hiawatha Canal Company and any statutory lateral ditch water users association pursuant to Title 42, Chapter 13 of the Idaho Code or other organization created by the High Ditch Users for the High Ditch in the same manner as every other water user taking delivery of water through and from the High Ditch.

4. **INDEMNIFICATION.** The Association hereby agrees to indemnify, hold harmless

and defend the High Ditch Users, their employees, agents, directors and officers from any and all injuries, damages, claims, causes of action and/or expenses for personal injury or death or damage to property, real or personal, arising out of or relating to any act or omission of the Association with regard to its obligations and responsibilities under this Agreement, any breach of any obligation or responsibility under this Agreement or of negligence with regard thereto. The High Ditch Users hereby agree to indemnify, hold harmless and defend the Association and Cutters, their employees, agents, directors and officers from any and all injuries, damages, claims, causes of action and/or expenses for personal injury or death or damage to property, real or personal, arising out of or relating to any act or omission of the High Ditch Users with regard to its obligations and responsibilities under this Agreement, any breach of any obligation or responsibility under this Agreement or of negligence with regard thereto.

5. COVENANTS RUNNING WITH THE LAND. This Agreement shall be a covenant running with the land in perpetuity and shall inure to the benefit of and be binding upon the High Ditch Users and upon each of the Real Property and each and every portion thereof.

6. NOTICES. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party to whom it is directed, or in lieu of such personal service when deposited in the United States Mail, first-class postage prepaid, addressed as follows:

High Ditch Users: High Ditch Users
c/o James W. Phillips
P.O. Box 864
Hailey, Idaho 83333

Cutters: Old Cutters, Inc.
P.O. Box 4944
Ketchum, Idaho 83340

or such other address as any party may hereafter in writing to the other designate.

7. GENERAL PROVISIONS.

a. Severance and Validity. In the event any provision of this Agreement or any part thereof shall be determined by any court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions hereunder, or party thereof, shall remain fully in force and effect, it being agreed that such remaining provision shall be construed in a manner most closely approximating the intention of the parties with respect to the invalid, void, or unenforceable provision or part thereof.

b. Attorney Fees. In the event of any suit or proceeding by either party herein against the other party, in any way arising out of this Agreement, or attempting to enforce any right

herein granted, the losing party, in such suit or proceeding shall pay to the prevailing party such sum or sums as the court shall adjudge reasonable, in such suit or proceeding, for attorney's fees, including such fees on appeal, for such prevailing party.

c. Governing Law. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Idaho.

d. Captions to Paragraphs. The captions to the paragraphs of this Agreement are for convenience only and shall not be deemed to enlarge, diminish, explain or in any manner affect the meaning of such paragraphs.

e. Binding Contract. This Agreement shall be binding upon and inure to the benefit of the heirs, personal representative, administrators, successors, and assigns of the parties hereto.

f. Entire Agreement and Amendment. This Agreement contains the entire agreement between the Parties respecting the matters herein set forth and supersedes all prior agreements that may exist between the Parties respecting the matters contained in this Agreement. This Agreement may not be amended except in writing executed by the Parties hereto.

g. Assignment. This Agreement shall not be assigned by either party without the prior written consent of the other party except the High Ditch Users may assign this Agreement to a statutory lateral ditch water users' association pursuant to Title 42, Chapter 13 of the Idaho Code or similar organization created by the High Ditch Users for the High Ditch.

h. Waiver. Failure of any party to exercise its rights upon a breach or default of the other party shall not be constructed as a waiver of the right to insist upon full performance of all of the terms and conditions of this Agreement.

i. Recordation. This Agreement shall be recorded in the records of Blaine County, Idaho by Cutters at or prior to the time the final plat for the Subdivision is recorded. The High Ditch Users shall reimburse Cutters for the costs of recordation.

j. Recitals Incorporated. The recitals set forth in this Agreement are hereby incorporated herein by reference.

k. Exhibit Incorporated. Exhibit A attached hereto is hereby incorporated herein by reference.

l. Benefit of Other High Ditch Users. This Agreement is made by Jim Phillips both individually and on behalf of all other owners of water rights delivered through the High Ditch who shall be third party beneficiaries of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed the foregoing Agreement on the

dates set forth above.

High Ditch Users,

by *James W. Phillips*
James W. Phillips

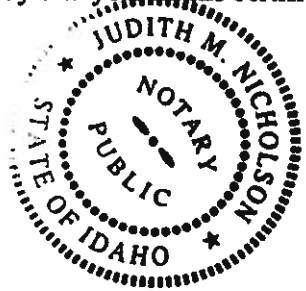
Old Cutters, Inc. an Idaho corporation,

by *J. Campbell*
John Campbell, president

STATE OF IDAHO)
) ss.
County of Blaine)

On this 18 day of January, 2007, before me, the undersigned, a Notary Public in and for said County and State, personally appeared John Campbell, known or identified to be the president of Old Cutters, Inc., an Idaho corporation, the corporation that executed the foregoing instrument or the person who executed the foregoing instrument on behalf of said corporation, and acknowledged to me that said corporation executed same.

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



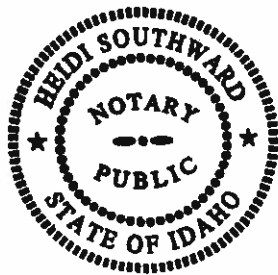
Judith M. Nicholson
NOTARY PUBLIC FOR IDAHO
Residing at: *Hailey*
Commission expires: *8/11/2011*

STATE OF IDAHO)
) ss.
County of Blaine)

On this 23 day of January, 2007, before me, the undersigned, a Notary Public in

and for said County and State, personally appeared James W. Phillips, the person who executed the foregoing instrument, and acknowledged to me that he executed same.

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



Heidi Southward
NOTARY PUBLIC FOR IDAHO
Residing at: Hailey
Commission expires: 1-18-11

EXHIBIT A

Lots 1A, 2A, 3 and 4, Block 1 of a REPLAT OF DREXLER RANCH SUBDIVISION, BLAINE COUNTY, IDAHO, as shown on the official plat thereof, recorded February 8, 1999, as Instrument No. 423951, records of Blaine County, Idaho; and

A parcel of land within the SW1/4NE1/4, Section 4, T.2N., R.18E., B.M. and also within Lot 4, Buckhorn Subdivision Second Addition, Blaine County, Idaho, more particularly described as follows:

Commencing at a BLM brass cap marking the Southeast Corner of said SW1/4NE1/4, which corner is also the CE 1/16 corner of said Section 4 and which point is the REAL POINT OF BEGINNING:

thence North 89°42'50" West 291.01 feet to the Northwest corner of the Drexler Ranch;

thence North 23°17'51" West 37.31 feet along the centerline of the Hiawatha Canal and along the Southerly boundary of said Lot 4, Buckhorn Subdivision Second Addition;

thence North 89°50'20" East 306.07 feet along a fence to the East boundary of said SW1/4NE1/4, said Section 4;

thence South 0°27'55" West 36.58 feet along said East boundary of the SW1/4NE1/4, Section 4 to the point of beginning, containing 0.24 acres, more or less, also known as Tax Lot 6804.