

# State of Idaho

## Department of State

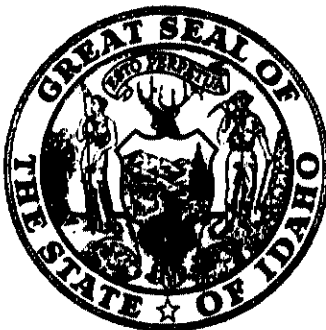
### CERTIFICATE OF INCORPORATION OF

THE NEW SPORTS & FITNESS CLUB, LTD.

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of Incorporation for the incorporation of the above named corporation, duly signed pursuant to the provisions of the Idaho Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Incorporation and attach hereto a duplicate original of the Articles of Incorporation.

Dated: October 2, 1991



*Pete T. Cenarrusa*

SECRETARY OF STATE

*Jonny Carlson*

Corporation Clerk

ARTICLES OF INCORPORATION

of

The New SPORTS & FITNESS CLUB, Ltd.

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SECRETARY OF STATE

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The following Articles of Incorporation are hereby adopted pursuant to the Idaho Business Corporation Act:

1. Name.

The name of the corporation is:

The New SPORTS & FITNESS CLUB, Ltd.

2. Duration.

The corporation shall have perpetual duration.

3. Purposes.

The corporation is formed to own, operate and manage the sports, racquetball, aquatics fitness and recreational center known as "SPORTS AND FITNESS CLUB", at 51 South 100 East, Rexburg, Idaho, and any or all other lawful business for which corporations may be incorporated under the Idaho Business Corporation Act.

4. Authorized Shares.

The corporation shall be authorized to issue 5000 shares, all of one class, with a par value of \$100.00 per share.

5. Registered Agent and Office.

The name of the initial registered agent and the address of the initial registered office of the corporation are:

Jerry R. Rigby  
P.O. Box 250  
25 North 2nd East  
Madison County  
Rexburg, Idaho 83440

6. Directors.

(a) The initial Board of Directors shall consist of six directors who shall serve as directors until the next annual meeting of shareholders or until their successors be elected and qualify, and whose names and addresses are as follows:

<u>Name</u>	<u>Address</u>
Ray W. Rigby	2131 North 3000 West Rexburg, Idaho 83440
Golden C. Linford	2120 West 4200 West Rexburg, Idaho 83440
Evan L. Meyers	22 West 1st North Street Sugar City, Idaho 83448
Carl J Thurgood	165 East 100 South, Rexburg, Idaho 83440
Gordon S. Thatcher	329 Mohawk Avenue Rexburg, Idaho 83440
Jerry R. Rigby	25 North 2nd East Rexburg, Idaho 83440

(b) The shareholders are authorized to elect an alternate director for each director position. In order to implement the election of an alternate director the person nominating a director may also nominate at the same time an alternate director for that position; in that event voting shall be for the nominated director and nominated alternate as a unit. Where there is an alternate director elected the

corporation and any parties dealing with the corporation may rely upon action by either the director or the alternate as being binding as to that director position. At any meeting of the board of directors any alternate may attend but if both a director and an alternate to that director attend then only the director shall have the right to vote.

(c) There is a alternate director to the director position of Gordon S. Thatcher and the name and address of that alternate director is:

G. Bryce Thatcher	17 South 300 East Rexburg, Idaho 83440
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7. Incorporators and Subscribers.

The names and addresses of the present incorporators and subscribers and the shares subscribed by each, are:

<u>Shareholders</u>	<u>Address</u>	<u>Shares</u>
Ray W. Rigby	2131 North 3000 West Rexburg, Idaho 83440	600
Golden C. Linford	2120 West 4200 West Rexburg, Idaho 83440	600
Evan L. Meyers	22 West 1st North Street Sugar City, Idaho 83448	600
Carl J Thurgood	165 East 100 South Rexburg, Idaho 83440	600
Gordon S. Thatcher	329 Mohawk Avenue Rexburg, Idaho 83440	600
Jerry R. Rigby	25 North 2nd East Rexburg, Idaho 83440	<u>600</u>
	TOTAL	3600

8. Preemptive Rights.

(a) Each shareholder shall have the preemptive right to purchase shares (and securities convertible into such shares or carrying a right to subscribe to or acquire shares) that may from time to time be issued (whether or not presently authorized), including treasury shares, in the ratio that the number of shares held by a shareholders at the time of issue bears to the total number of shares issued and outstanding exclusive of treasury shares.

(b) The preemptive right of a shareholder shall be deemed waived by any shareholder who does not exercise it and pay for the shares preempted within 30 days (or such longer time as shall be set by the board of directors) of receipt of notice in writing from the corporation stating the price, terms and conditions of the issue of shares and inviting shareholders to exercise their preemptive rights.

(c) To fully preserve preemptive rights shares shall not be issued:

- (1) For consideration other than cash;
- (2) To directors, officers or employees, pursuant to a bonus, deferred compensation or other plan; or
- (3) In payment of a debt of corporation,

Without unanimous consent in writing of all shareholders.

9. Transfer Restrictions.

(a) The corporation shall recognize written restrictions on the transfer or registration of transfer of shares of corporation, which are adopted by any number of

shareholders or among such shareholders and corporation, or which may be contained in by-laws of corporation, provided that such restrictions are:

(1) Permitted or authorized and not forbidden by Idaho Code §30-1-23A or other applicable law;

(2) Contained in a writing submitted to and filed with corporation; and

(3) Noted conspicuously on the certificates representing such shares (or the intended transferee had actual knowledge of the restrictions).

(b) No transfer shall be valid nor shall it be recognized by corporation unless accomplished in compliance with all such valid restrictions.

(c) No transfer shall be valid nor shall it be recognized by corporation, if it would cause corporation to be disqualified as an "S" corporation under Internal Revenue Code §1361 through §1379.

10. Cumulative Voting; Vacancies on Board; Removal of Directors; Number of Directors.

(a) The right of cumulative voting for directors as defined in Idaho Code §30-1-33(d) shall not be modified or restricted except by an amendment to these articles approved unanimously by shareholders holding all outstanding shares of corporation.

(b) Vacancies on the board of directors shall be filled at a special shareholders meeting at which all positions on the board shall be deemed vacant and shall be filled by an election at which cumulative voting shall be allowed.

(c) No director may be removed from the board except by a vote of shareholders as provided in Idaho Code §30-1-39. A director may not be removed if votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, unless the director is determined to have been or is in violation of fiduciary duties to the corporation of a serious nature so as to involve:

(i) Breach of duty of loyalty to the corporation or its shareholder;

(ii) Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;

(iii) Violations of duties under Idaho Code §30-1-48; or

(iv) Any transaction from which the director derived an improper personal benefit,

In any of which events removal may be by a simple majority vote of shareholders.

(d) There are six directors of the corporation and the number of directors may not be changed without unanimous approval of shareholders holding all of the outstanding stock of the corporation and without unanimous approval of the board of directors.

11. Arbitration to Resolve Deadlocks.

Exercise of all corporate powers by the board of directors, as provided in Idaho Code §30-1-35, is modified to

provide for binding arbitration in the event of deadlocks, as follows:

(a) If the board of directors shall be deadlocked respecting the management of the property, business and affairs of the corporation, or any aspect thereof or any transaction involved therein, or shall be equally divided on any question, dispute or controversy, which may be decided by a simple majority and such equal division concerns a proper subject for action by the board, no shareholder or director shall have the right to have the assets and business of the corporation liquidated under Idaho Code §30-1-97 nor shall have any other legal right in a suit at law or in equity, because of such deadlock. Any such equal division may be submitted to arbitration in the following manner:

(i) Upon written request by any director submitted at a duly organized meeting of the board of directors, the board shall select two arbitrators, each director having in such selection the right to two votes under a system of cumulative voting; whereupon such two arbitrators shall select a third arbitrator, but if they shall be unable to agree within fifteen days upon the third arbitrator, he shall be appointed by them from the Panels of Arbitrators



of the American Arbitration Association in accordance with its rules then in effect.

(ii) The arbitrators shall decide, resolve and determine the matters respecting which the board may be equally divided, including (but not limited to) all collateral matters such as whether such matter is a proper subject for action by the board of directors, whether such matters have been properly submitted to them for decision, whether the board is actually equally divided, and whether this article and the provisions for arbitration hereunder are properly invoked and applicable, to the end that all questions, disputes and controversies be resolved, determined and adjudged by the arbitrators; and the decision of such arbitrators on all matters submitted to them hereunder shall be conclusive and binding upon the board of directors, the corporation and the parties.

(iii) The arbitrators shall conduct the arbitration proceedings at Rexburg, Idaho in accordance with the Commercial Arbitration Rules of the American Arbitration Association, as then in effect, insofar as such rules are not in conflict with this Article.

(iv) The decision of the arbitrators shall be final and conclusive, shall be the equivalent of a resolution unanimously passed by the full board at a meeting duly convened, and shall not be revoked or amended or overruled except by unanimous action of the board of directors or the shareholders of the corporation. Such decision shall be forthwith filed with the secretary of the corporation; and judgment on such decision may be entered in accordance with the Idaho Uniform Arbitration Act.

(b) The denial in this Article of the right to have the assets and business of the corporation liquidated, and of other legal rights, shall be inoperative in the event that any shareholder of the corporation shall have given written notice to the members of the board of directors that he intends to seek liquidation or other legal remedy because of deadlock among the board of directors, and such notice remains unrevoked for two years from the date it was given. If such notice is given and (i) no such proceedings are commenced within three years thereafter, or (ii) such notice is revoked, or (iii) proceedings are commenced and are determined adversely to the party seeking liquidation or other legal remedy because of such deadlock, the said denial of rights in

this Article shall again become fully operative as before.

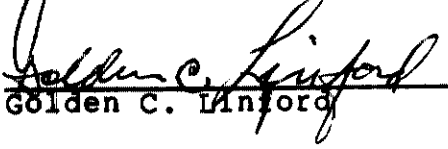
12. Restriction on Personal Liability.

No director shall be personally liable to the corporation or its shareholders for monetary damages, for breach of fiduciary duty as a director, except for breaches of duty for which liability may not be eliminated or limited under Idaho Code §30-1-54(2).

Executed by all incorporators and subscribers this  
30th day of September, 1991.

"Incorporators & Subscribers"

  
Ray W. Rigby

  
Golden C. Linford

  
Evan L. Meyers


  
Carl J. Thurgood

  
Gordon S. Thatcher

  
Jerry R. Rigby

STATE OF IDAHO       )  
                          ss.  
COUNTY OF MADISON   )

I, the undersigned, a notary public, do hereby certify that on this 30th day of September, 1991, personally appeared before me JERRY R. RIGBY, who, being by me first duly sworn, declared that he is one of the shareholders of The New SPORTS & FITNESS CLUB, Ltd., that he signed the foregoing document as one of the shareholders of the corporation, and that the statements therein contained are true.

  
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Notary Public for Idaho  
Residing at: Rexburg, Idaho  
My Commission Expires: 4-11-97

SPORTS & FITNESS CLUB, INC  
51 South 100 East  
Rexburg, Idaho 83440  
SECRETARY OF STATE  
OCT 9 9 45 AM '91

September 30, 1991

The Honorable Pete T. Cenarrusa  
Secretary of State  
Statehouse - Room 203  
Boise, Idaho 83720

Dear Mr. Cenarrusa:

RE: Sports and Fitness Club, Inc. and The New SPORTS  
& FITNESS CLUB, Ltd.

Sports and Fitness Club, Inc. does hereby consent to the filing of the proposed Articles of Incorporation of "The New SPORTS & FITNESS CLUB, Ltd."

Sports and Fitness Club, Inc. is in the process of dissolving and desires that the element of its corporate name, namely "Sports and Fitness Club" be used by the new corporation, which will be operating and managing the business now operated by Sports and Fitness Club, Inc.

Sports and Fitness Club, Inc. will operate that business through the close of business on September 30, 1991 and commencing with October 1, 1991 The New SPORTS & FITNESS CLUB, Ltd. will be operating that business.

Sincerely yours,

Sports and Fitness Club, Inc.

By: Carl J. Thurgood  
Carl J. Thurgood, President

By: Joseph B. Romney  
Joseph B. Romney, Treasurer

CTT/JBR/dnh

enc.