

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: A74-00265  
Date Received: / /  
Receipt No: X999999  
Received By: \_\_\_\_\_

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: LA VERNE KIRKHAM  
Address: RT. 1  
ASHTON, ID 83420

AND/OR

Name: NELL KIRKHAM  
Address: RT. 1  
ASHTON, ID 83420

2. Date of Priority: MAY 30, 1903

3. Source: MC NUTT CREEK

Trib. to: BASIN CREEK

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County |
|----------|-------|---------|--------|--------|-----|-----|--------|
| 18N      | 23E   | 33      | NE     | SW     |     |     | LEMHI  |
|          |       |         | SE     | SW     |     |     | LEMHI  |

5. Description of diverting works:

6. Water is used for the following purposes:

| Purpose    | From  | To    | C.F.S. | (or) | A.F.A. |
|------------|-------|-------|--------|------|--------|
| IRRIGATION | 03/15 | 11/15 | 1.500  |      |        |

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

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:



MICROFILMED

10. Place of Use:

| Township | Range | Section | 1/4 of | 1/4 | Lot | Use | Acres |
|----------|-------|---------|--------|-----|-----|-----|-------|
| 17N      | 23E   | 4       | NE     | NE  | 1   | IRR | 25.0  |
|          |       |         | NW     | NE  | 2   | IRR | 27.0  |
|          |       |         | SW     | NE  |     | IRR | 5.0   |
|          |       |         | SE     | NE  |     | IRR | 15.0  |

Section Acres 72.0

Total Acres 72.0

11. Place of use in counties: LEMHI

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

13. Other Water Rights Used:

14. Remarks:

AC. IRR.=71.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date: / /

Decree Plaintiff

vs

Decree 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: \_\_\_\_\_

MICROFILMED

**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: 39576

Ident. Number: A74-00265  
Date Received:  
Receipt No: \_\_\_\_\_  
Received By: \_\_\_\_\_

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

**RECEIVED**  
MAY 10 1990

Department of Water Resources

1. Name: LA VERNE KIRKHAM  
Address: RT. 1  
ASHTON, ID

83420

Name: NELL KIRKHAM  
Address: RT. 1  
ASHTON, ID

83420

2. Date of Priority: MAY 30, 1903

3. Source: MC NUTT CREEK

Trib. to: BASIN CREEK

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 | Lot | County |
|----------|-------|---------|--------|--------|-----|-----|--------|
| 18N      | 23E   | 33      | NE     | SW     |     |     | LEMHI  |
|          |       |         | SE     | SW     |     |     | LEMHI  |

5. Description of diverting works:

6. Water is used for the following purposes:

| Purpose    | From  | To    | C.F.S. | (or) | A.F.A. |
|------------|-------|-------|--------|------|--------|
| IRRIGATION | 03/15 | 11/15 | 1.500  |      |        |

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

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

| Township | Range | Section | 1/4 | of | 1/4 | Lot | Use           | Acres |
|----------|-------|---------|-----|----|-----|-----|---------------|-------|
| 17N      | 23E   | 4       | NE  |    | NE  | 1   | IRR           | 25.0  |
|          |       |         | NW  |    | NE  | 2   | IRR           | 27.0  |
|          |       |         | SW  |    | NE  |     | IRR           | 5.0   |
|          |       |         | SE  |    | NE  |     | IRR           | 15.0  |
|          |       |         |     |    |     |     | Section Acres | 72.0  |
|          |       |         |     |    |     |     | Total Acres   | 72.0  |

11. Place of use in counties: LEMHI

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

13. Other Water Rights Used:

14. Remarks:  
AC. IRR.=71.

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

Decree Plaintiff

vs

Decree 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: \_\_\_\_\_

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): Laurie Kirkham Date: 5-8-90  
\_\_\_\_\_  
Date: \_\_\_\_\_

State of Idaho )  
County of Jefferson ) SS.

Subscribed and sworn (or affirmed) before me this 8<sup>th</sup> day

of May 19 90

Kevin Christensen  
Notary Public

Seal

Residing at Terreton, Idaho 83450

My Commission Expires 11-30-90

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 74-00265  
Date Received: 8/3/00  
Receipt No:  
Received By:

**NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW**

1. Name of Claimant(s)

Name: BEVERLY KIRKHAM HEINZ Phone: (801)277-5279

Address: 5529 COTTONWOOD CLUB DR  
SALT LAKE CITY UT USA 84117

2. Date of Priority: 05/30/1903

3. Source: MCNUTT CREEK Trib. to: Unknown Basin Creek

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 Lot | County |
|----------|-------|---------|--------|--------|---------|--------|
| 18N      | 23E   | 33      | SE     | SW     | 0       | LEMHI  |
| 18N      | 23E   | 33      | NE     | SW     | 0       | LEMHI  |

5. Description of diverting works:

6. Water is used for the following purposes:

| Purpose    | From | To    | C.F.S. | (or) A.F.A |
|------------|------|-------|--------|------------|
| IRRIGATION | 3/15 | 11/15 | 1.5    | 0          |

7. Total Quantity Appropriated is:  
1.5 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

| Township      | Range | Section | 1/4 of 1/4 | Lot | Use        | Acres |
|---------------|-------|---------|------------|-----|------------|-------|
| 17N           | 23E   | 4       | NW NE      | 2   | IRRIGATION | 27    |
|               |       |         | SW NE      |     | IRRIGATION | 5     |
|               |       |         | SE NE      | 1   | IRRIGATION | 15    |
|               |       |         | NE NE      |     | IRRIGATION | 25    |
| Section Acres |       |         |            |     |            | 72    |
| Total Acres   |       |         |            |     |            | 72    |

11. Place of use in counties: LEMHI

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

13. Other Water Rights Used:

14. Remarks:

AC. IRR.=71

CHANGED OWNERSHIP PER REQUEST CV/08-03-2000

15. Basis of Claim: Decreed

16. Signature(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A, Idaho Falls, Idaho 83402-1718 - (208) 525-7161- Fax (208) 525-7177

EASTERN REGION

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

August 3, 2000

BEVERLY KIRKHAM HEINZ  
5529 COTTONWOOD CLUB DR  
SALT LAKE CITY UT 84117

RE: CHANGE IN OWNERSHIP FOR A74-00265, A74-00979,  
A74-02319

Dear Claimant:

The request for Change in Ownership concerning the Notice(s) of Claim in the above reference has been processed and the Notice(s) modified to reflect you as the new owner(s).

Enclosed is a copy of the Notice(s) of Claim, with your name shown as the current owner. Review the forms and if there are other corrections or questions, feel free to contact this office.

**If there are no questions or corrections, please keep this Notice for your records.**

Respectfully submitted,

*Cheri Vandermeulen*

Cheri vandermeulen  
Records Clerk

Enclosure: Notice(s) of Claim

N/C  
DELOG  
JC 7/31/00  
OK JC

# STATE OF IDAHO

## DEPARTMENT OF WATER RESOURCES

### NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form.  
Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided, if the change in ownership is limited to a portion of a water right in which case division of the existing water right or adjudication claim record will be required.

| Water<br>Right No(s). | Adjudication<br>Claim No(s). | Split | Water<br>Right No(s). | Adjudication<br>Claim No(s). | Split |
|-----------------------|------------------------------|-------|-----------------------|------------------------------|-------|
| 74-00265              | A74-00265                    | N ✓   |                       |                              |       |
| 74-00979              | A74-00979                    | N ✓   |                       |                              |       |
| 74-02319              | A74-02319                    | N ✓   |                       |                              |       |
|                       |                              |       |                       |                              |       |
|                       |                              |       |                       |                              |       |

2. The following **REQUIRED** information must be submitted with this form:

- A. The appropriate **FILING FEE**. See instructions for fee amounts.
- B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
- C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):  
**PLAT OF PROPERTY** or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are usually attached to your deed or on file with the county).

**OR**

If your water right(s) and/or adjudication claim(s) are for ten or more acres of irrigation, you must submit a USDA Farm Service Agency **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s) LAVERNE AND/OR NELL KIRKHAM  
Box 1, Ashton ID 83420
4. New Owner/Claimant(s) BEVERLY KIRKHAM HEINE  
Name Connector (Check one): [ ] and, [ ] or, [ ] and/or
- New Mailing Address 5529 Cottonwood Club Drive
- City, State and ZIP Code SALT LAKE CITY, UT 84117
- New Telephone Number (201) 202-77-5279
5. Date you acquired the property Dec 1998 and

- 1/6 2000 - 1/6 2000

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in item 1, THEN SKIP THIS ITEM AND GO TO ITEM 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (one water right per box, you may copy this page as necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

**DESCRIPTION OF YOUR PORTION OF WATER RIGHT**  
(If the right(s) will not be split, skip this area and proceed to item 7)

|                                                    |                                                                            |                                                              |
|----------------------------------------------------|----------------------------------------------------------------------------|--------------------------------------------------------------|
| Water Right and/or Adjudication Claim Number _____ |                                                                            |                                                              |
| Water Use                                          | Diversion Rate or Volume<br>(cubic feet per second or acre-feet per annum) | Description<br>(acres, number and type of stock, homes, etc) |
| Irrigation                                         | _____                                                                      | _____                                                        |
| Stock                                              | _____                                                                      | _____                                                        |
| Domestic                                           | _____                                                                      | _____                                                        |
| Other _____                                        | _____                                                                      | _____                                                        |
| Total                                              | _____                                                                      | _____                                                        |

**DESCRIPTION OF YOUR PORTION OF WATER RIGHT**  
(If the right(s) will not be split, skip this area and proceed to item 7)

|                                                    |                                                                            |                                                              |
|----------------------------------------------------|----------------------------------------------------------------------------|--------------------------------------------------------------|
| Water Right and/or Adjudication Claim Number _____ |                                                                            |                                                              |
| Water Use                                          | Diversion Rate or Volume<br>(cubic feet per second or acre-feet per annum) | Description<br>(acres, number and type of stock, homes, etc) |
| Irrigation                                         | _____                                                                      | _____                                                        |
| Stock                                              | _____                                                                      | _____                                                        |
| Domestic                                           | _____                                                                      | _____                                                        |
| Other _____                                        | _____                                                                      | _____                                                        |
| Total                                              | _____                                                                      | _____                                                        |

7. Signature of New Owner(s) or Claimant(s) Beverly Kirkham Derrig  
(include title if applicable) \_\_\_\_\_

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

**For Office Use Only**

|                       |                     |                      |
|-----------------------|---------------------|----------------------|
| Received by <u>gc</u> | Date <u>7/31/00</u> | Fee <u>0</u>         |
| Received by <u>gc</u> | Date <u>7/31/00</u> | Receipt No. <u>0</u> |
| Processed by _____ AJ | Date _____          | WR _____ Date _____  |

State of Idaho )  
County of Lemhi ) SS No. 2098-80  
This instrument was filed for record at the request of Jay R. McKenzie  
at 4:00 o'clock Pm 2 + 1998  
and duly filmed and indexed in the records of Lemhi  
County Tern J. Morton  
Ex-Officio Recorder  
By Brenda Lamberson Deputy  
Fee 3.00  
Return to Jay R. McKenzie  
Attorney at Law  
102 North State Street - Suite 1  
Preston, Idaho 83263  
Telephone: (208) 852-3500

STATE OF IDAHO  
COUNTY OF JEFFERSON  
I HEREBY CERTIFY THAT THE ABOVE AND FOREGOING  
IS A FULL, TRUE AND CORRECT COPY OF THE  
ORIGINAL THEREOF (ON FILE) (ON RECORD) IN MY  
OFFICE.  
DATED 4.14.98  
CONNIE M. KELLER  
MAGISTRATE COURT  
EX-OFFICIO AUDITOR AND RECORDER  
BY JMS DEPUTY

FILED  
4:14 PM  
JMS

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON  
MAGISTRATE'S DIVISION

IN THE MATTER OF THE ESTATE OF )  
 )  
 )  
NOAH LAVERNE KIRKHAM )  
 )  
 )  
Deceased. )  
\_\_\_\_\_ )

Probate Case No. 2098-80  
LETTERS TESTAMENTARY

\* \* \* \* \*

1. DWAIN D. KIRKHAM, was duly appointed and qualified as  
general Personal Representative of the estate of the above-named  
Decedent on the 24 day of March, 1998, by the  
Magistrate Acting as Registrar with all authority pertaining  
thereto.

2. Administration of the estate is unsupervised.

These letters are issued to evidence the appointment,  
qualification, and authority of the said personal representative.

WITNESS, my signature and the Seal of this Court the 24 day  
of March, 1998.

JMS  
MAGISTRATE

## PERSONAL REPRESENTATIVE'S DEED

THIS DEED, made by DWAIN D. KIRKHAM, as Personal Representative of the Estate of NOAH LAVERNE KIRKHAM, Deceased, Grantor; to DWAIN D. KIRKHAM, Trustee of the Beverly K. Heinz Trust, a testamentary trust created upon the death of Noah LaVerne Kirkham, pursuant to the Last Will and Testament of Noah LaVerne Kirkham, dated January 12, 1983, the First Codicil to Last Will and Testament of Noah LaVerne Kirkham, dated January 24, 1992, and the Second Codicil to Last Will and Testament of Noah LaVerne Kirkham dated December 11, 1993, Grantee, whose address is 5529 Cottonwood Club Drive, Salt Lake City, Utah 84117.

WHEREAS, Grantor is the qualified Personal Representative of the Estate filed as Probate Case No. SP-98-80, Jefferson County, Idaho.

THEREFORE for valuable consideration received, Grantor sells and conveys to Grantee the following described real property:

Decedent's one-half community property share of a one-half undivided interest (to-wit: a one-fourth undivided interest) in and to:

Township 17 North, Range 23 East of the Boise Meridian, Lemhi County, Idaho  
Section 4: Lots 1 and 2; S1/2NE1/4

TOGETHER WITH all water and water rights, and all U.S. Forest Service and BLM Range Rights appurtenant thereto,

together with their appurtenances.

SUBJECT TO THE FOLLOWING FIRST RIGHT OF REFUSAL:

(a) All references herein to "children" or "child", refer to Beverly K. Heinz of 5529 Cottonwood Club Drive, Salt Lake City, Utah 84117, Darrell L. Kirkham of P.O. Box 393, Ashton, Idaho 83420, and Dwain D. Kirkham of 1842 East 1500 North, Terreton, Idaho 83450.

(b) Any sale of any of the above-described property by Grantee shall be subject to a right of first refusal option upon the terms hereof, in favor of the other children, in equal shares, or the respective issue of any deceased child by right of representation.

(c) Any of the above-described property subsequently sold shall also be subject to a right of first refusal option upon the terms hereof, in favor of the other children, in equal shares, or the respective issue of any deceased child by right of representation.

(d) All right of first refusal options described herein, shall expire and be of no further force and effect fifteen (15) years from the date hereof.

(e) The right of first refusal options shall arise whenever any of the above-described real property is offered for sale during the period of fifteen (15) years following the date hereof.

(f) Whenever the selling party determines to offer the property and has received an offer which he or she desires to accept, he or she shall then notify the parties entitled to exercise the option in writing of the terms of the offer and offer to sell the property to them upon the same terms and conditions for a period of thirty (30) days following the delivery of the written notice. If the parties entitled to exercise the option do not exercise it within the thirty (30) day period, then any parties with successive rights shall have ten (10) days within which to exercise the option. If no party exercises the option within the time period limited, the selling party may proceed to sell the property upon the terms of the offer or terms more favorable to the selling party. If the property is not sold upon such terms or more favorable terms within ninety (90) days of the date notice is given of the first refusal option, then the property may not subsequently be sold without again extending the right of first refusal option to my children as herein provided.

(g) The right of first refusal shall be personal to my children and their issue as herein provided and may not be assigned or conveyed by them to any other party.

(h) If the right of first refusal option is extended to more than one child or their issue by right of representation, the co-optionees shall have the right to purchase equal undivided interests in the property. If one co-optionee fails to exercise his or her option, the other co-optionee may exercise his or her option right as to the entire amount of the property, but may not exercise his or her option right as to less than the entire amount of the property, it being my intent that the optionees individually or as a group be obligated to purchase all of the property offered and that they not be entitled to exercise their options in such a manner as to only purchase a portion of the property offered.

(i) All deeds transferring any of the above-described property shall contain the foregoing provisions, except deeds which are dated fifteen years following the date hereof shall not require any reference to foregoing first right of refusal option.

SUBJECT TO THE FOLLOWING RESTRICTION: The trustee may not sell any of the above-described real property without the prior written approval of Beverly K. Heinz, if living. If Beverly K. Heinz is not living, then this restriction shall expire and be of no further force or effect.

The successor trustees of the trust are the following, successively in the order named: Such person as may be designated by Dwain D. Kirkham; in the event Dwain D. Kirkham fails to serve as trustee and fails to appoint a successor trustee, such independent person as may be designated by Beverly K. Heinz; such person as may be named by a court of competent jurisdiction. The transfer of trusteeship may be evidenced by a notice of designation of trustee, or a resignation or death certificate of the existing trustee, or deed, filed of record.

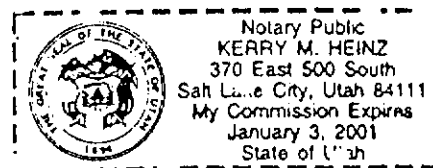
EXECUTED this 21 day of Dec, 1998.

Dwain D. Kirkham  
DWAINE D. KIRKHAM  
Personal Representative of the  
Estate of Noah LaVerne Kirkham,  
Deceased

STATE OF Utah )  
 ) ss.  
COUNTY OF Salt Lake )

On this 21 day of December, 1998, before me, a Notary Public in and for said State, personally appeared Dwain D. Kirkham, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he is the duly authorized and appointed Personal Representative of the Estate, and that he executed this document in said capacity for and in behalf of said Estate.

Kerry M. Heinz  
NOTARY PUBLIC  
Residing at: Salt Lake City, Utah  
My Commission Expires: 1/2/2001



State of Idaho ) SS No. 239622  
County of Lemhi )

This instrument was filed for record at the request  
of Jay R. McKeen  
at 1:00 o'clock Pm 2-4 1999

and duly filed and indexed in the records of Lemhi  
County

Terri J. Morton  
Ex-Officio Recorder

By Sandra Huntington Deputy

Fee 9.00

Return to Jay R. McKeen

## QUITCLAIM DEED

### FOR VALUE RECEIVED

DWAIN D. KIRKHAM, Successor Trustee of the Nellie Murri Kirkham Family Testamentary Trust created upon the death of Nellie Murri Kirkham pursuant to the Last Will and Testament of Nellie Murri Kirkham dated January 12, 1983,

does hereby convey, release, remise and forever quit claim unto

DWAIN D. KIRKHAM, Trustee of the Beverly K. Heinz Trust, a testamentary trust created upon the death of Noah LaVerne Kirkham, pursuant to the Last Will and Testament of Noah LaVerne Kirkham, dated January 12, 1983, the First Codicil to Last Will and Testament of Noah LaVerne Kirkham, dated January 24, 1992, and the Second Codicil to Last Will and Testament of Noah LaVerne Kirkham dated December 11, 1993, Grantee, whose address is 5529 Cottonwood Club Drive, Salt Lake City, Utah 84117.

the following described premises:

A one-half community property share of a one-half undivided interest (to wit: a one-fourth undivided interest) in and to:

Township 17 North, Range 23 East of the Boise Meridian, Lemhi County, Idaho  
Section 4: Lots 1 and 2; S1/2NE1/4

TOGETHER WITH all water and water rights, and all U.S. Forest Service and BLM Range Rights appurtenant thereto,

together with their appurtenances.

SUBJECT TO THE FOLLOWING FIRST RIGHT OF REFUSAL:

(a) All references herein to "children" or "child", refer to Beverly K. Heinz of 5529 Cottonwood Club Drive, Salt Lake City, Utah 84117, Darrell L. Kirkham of P.O. Box 393, Ashton, Idaho 83420, and Dwain D. Kirkham of 1842 East 1500 North, Terreton, Idaho 83450.

(b) Any sale of any of the above-described property by Grantee shall be subject to a right of first refusal option upon the terms hereof, in favor of the other children, in equal shares, or the respective issue of any deceased child by right of representation.

(c) Any of the above-described property subsequently sold shall also be subject to a right of first refusal option upon the terms hereof, in favor of the other

children, in equal shares, or the respective issue of any deceased child by right of representation.

(d) All right of first refusal options described herein, shall expire and be of no further force and effect fifteen (15) years from the date hereof.

(e) The right of first refusal options shall arise whenever any of the above-described real property is offered for sale during the period of fifteen (15) years following the date hereof.

(f) Whenever the selling party determines to offer the property and has received an offer which he or she desires to accept, he or she shall then notify the parties entitled to exercise the option in writing of the terms of the offer and offer to sell the property to them upon the same terms and conditions for a period of thirty (30) days following the delivery of the written notice. If the parties entitled to exercise the option do not exercise it within the thirty (30) day period, then any parties with successive rights shall have ten (10) days within which to exercise the option. If no party exercises the option within the time period limited, the selling party may proceed to sell the property upon the terms of the offer or terms more favorable to the selling party. If the property is not sold upon such terms or more favorable terms within ninety (90) days of the date notice is given of the first refusal option, then the property may not subsequently be sold without again extending the right of first refusal option to my children as herein provided.

(g) The right of first refusal shall be personal to my children and their issue as herein provided and may not be assigned or conveyed by them to any other party.

(h) If the right of first refusal option is extended to more than one child or their issue by right of representation, the co-optionees shall have the right to purchase equal undivided interests in the property. If one co-optionee fails to exercise his or her option, the other co-optionee may exercise his or her option right as to the entire amount of the property, but may not exercise his or her option right as to less than the entire amount of the property, it being my intent that the optionees individually or as a group be obligated to purchase all of the property offered and that they not be entitled to exercise their options in such a manner as to only purchase a portion of the property offered.

(i) All deeds transferring any of the above-described property shall contain the foregoing provisions, except deeds which are dated fifteen years following the date hereof shall not require any reference to foregoing first right of refusal option.

SUBJECT TO THE FOLLOWING RESTRICTION: The trustee may not sell any of the above-described real property without the prior written approval of Beverly K. Heinz, if living. If Beverly K. Heinz is not living, then this restriction shall expire and be of no further force or effect.

The successor trustee of the trust are the following, successively in the order named: Such person as may be designated by Dwain D. Kirkham; in the event Dwain D. Kirkham fails to serve as trustee and fails to appoint a successor trustee, such independent person as may be designated by Beverly K. Heinz; such person as may be named by a court of competent jurisdiction. The transfer of trusteeship may be evidenced by a notice of designation of trustee, or a resignation or death certificate of the existing trustee, or deed, filed of record.

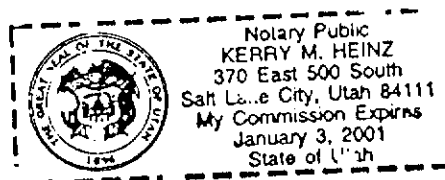
DATED this 21 day of Dec, 1998.

Dwain D. Kirkham  
DWAIN D. KIRKHAM  
Successor Trustee of the  
Nellie Murri Kirkham Family  
Testamentary Trust

STATE OF Utah )  
 ) ss.  
COUNTY OF Salt Lake )

On this 21 day of December, 1998, before me, a Notary Public in and for said State, personally appeared Dwain D. Kirkham, known to me to be the person whose name is subscribed to the within instrument, as the Successor Trustee of the Nellie Murri Kirkham Family Testamentary Trust, and acknowledged to me that he executed the same as such Successor Trustee.

Kerry M. Heinz  
NOTARY PUBLIC  
Residing at: Salt Lake City, Utah  
My Commission Expires: 1/03/2001



State of Idaho )  
County of Lemhi ) SS No. 239623  
This instrument was filed for record at the request of Jay R. M. Kenzie  
at 1:42 clock p m 2-9 1999  
and duly filed and indexed in the records of Lemhi County  
Terri J. Morton  
Ex-Officio Recorder  
By Brenda Armstrong Deputy  
Fee 900  
Return to Jay R. M. Kenzie

## NOTICE OF SUCCESSOR TRUSTEE

COMES NOW, DWAIN D. KIRKHAM, Trustee of the Beverly K. Heinz Trust, a testamentary trust created upon the death of Noah LaVerne Kirkham, pursuant to the Last Will and Testament of Noah LaVerne Kirkham, dated January 12, 1983, the First Codicil to Last Will and Testament of Noah LaVerne Kirkham, dated January 24, 1992, and the Second Codicil to Last Will and Testament of Noah LaVerne Kirkham, dated December 11, 1993, and does hereby declare and give notice that the new successor trustee of the Beverly K. Heinz Trust now is: Beverly K. Heinz of 5529 Cottonwood Club Drive, Salt Lake City, Utah.

The subsequent successor trustees are the following, successively in the order named: Such independent person as may be designated by Beverly K. Heinz; such person as may be named by a court of competent jurisdiction.

The transfer of trusteeship may be evidenced by notice of designation of trustee, or resignation or death certificate of the existing trustee, or deed, filed of record.

DATED this 21 day of Dec, 1998.

Dwain D. Kirkham  
Dwain D. Kirkham, Trustee of the  
Beverly K. Heinz Trust

STATE OF Utah )  
 ) ss.  
COUNTY OF Salt Lake )

On this 21 day of December, 1998, before me, a Notary Public, personally appeared Dwain D. Kirkham, known or identified to me to be the person whose name is subscribed to the within instrument as the trustee of the Beverly K. Heinz Trust, and acknowledged to me that he executed the same as such trustee.

Kerry M. Heinz  
NOTARY PUBLIC

Residing at: Salt Lake City, Utah  
My Commission Expires: 1/3/2001



Notary Public  
KERRY M. HEINZ  
370 East 500 South  
Salt Lake City, Utah 84111  
My Commission Expires  
January 3, 2001  
State of Utah

State of Idaho ) SS No. 239624  
County of Lemhi )

This Instrument was filed for record at the request  
of Jay R. McKenney  
at 1:30 o'clock P.m. 2-4 1999

and duly filmed and indexed in the records of Lemhi  
County

Terri J. Morton  
Ex-Officio Recorder  
By Brenda A. [Signature] Deputy  
Fee 3.00

Retim to Jay R. McKenney