

NW1/4SW1/4	SW1/4SW1/4
NW1/4NE1/4	SW1/4NE1/4
NE1/4NW1/4	SE1/4NW1/4
NE1/4SW1/4	SE1/4SW1/4

The property also includes the following parcels in Section 1, Township 12 South, Range 19 East, Cassia County:

Lot 3, SE1/4NW1/4

3. In 1979 I purchased additional property for the Dry Creek Ranch from Everett and Leah Fuller. *See Exhibit B.* This property is located in Cassia County and includes the following parcels in Section 1, Township 12 South, Range 19 East:

Lot 2, SW1/4NE1/4	NE1/4SW1/4
SE1/4SW1/4	NW1/4SE1/4
SW1/4SE1/4	

4. In addition to acquiring the land, I also acquired various appurtenant water rights from Dry Creek (see table below). Specifically, in the 1963 Agreement I acquired 48 inches (0.96 cfs) of 1879 water. *See Exhibit A at 2.* In the 1979 Agreement I acquired 98 inches (1.96 cfs) of 1879 water. *See Exhibit B at 1.* These rights, as well as later priority rights, are generally described as follows (as listed on the partial decrees issued by the SRBA Court):

<u>Water Right No:</u>	<u>Diversion Rate:</u>	<u>Priority Date:</u>
45-487B	2.08 cfs	March 1, 1879
45-491	2.60 cfs	March 1, 1884
45-492	.08 cfs	March 1, 1894
45-493	.08 cfs	March 1, 1895
45-496B	2.40 cfs	October 21, 1908

5. I divert water from Dry Creek through a ditch to a holding pond where the water is then pumped through a metered pump and diverted through my property in a gravity system. I have continuously diverted and used approximately 146 inches (2.92 cfs) from Dry Creek under the 1879 priority right since 1963 and 1979. I have grown a variety of crops including alfalfa,

wheat, potatoes, sugar beets, and corn. It is my understanding and experience that all of the water decreed by the court in the *Stoner v. Willhite* decree for water right no. 45-487 (292 inches or 5.84 cfs) has been diverted and put to beneficial use continuously since 1963 by myself and the other landowners where that water is appurtenant.

6. In 1974 I filed application for transfer no. 1762 to change the place of use for certain water rights, including water right no. 45-487. After the transfer it was my understanding that water right no. 45-487 was split into two rights, part A and part B. It was my understanding that after the transfer was approved water right no. 45-487B was appurtenant to approximately 150 acres of my property located in the NE1/4NW1/4, SE1/4NW1/4, NE1/4SW1/4, and the SE1/4SW1/4 in Section 1, Township 12 South, Range 19 East, Cassia County. It was my understanding that a portion of water right no. 45-487, or what remained as part A of the right, was still appurtenant to approximately 102.5 acres of my property located in the NW1/4NE1/4 and the SW1/4NE1/4 of Section 12, and the NW1/4SE1/4 and the SW1/4SE1/4 of Section 1, Township 12 South, Range 19 East, Cassia County.

7. I originally filed a claim for water right no. 45-487B in July 1989 for 0.96 cfs, which represented Part B that was transferred to the new place of use under transfer no. 1762. I later amended the claim in August 1999 to cover the diversion rate for the remaining portions of 45-487 that I diverted and used on my property which was 1.96 cfs. I did not realize that I should have filed a separate claim for my portion of water right no. 45-487A at the time.

8. It is my recollection that I met with Vikie Hancock at IDWR's Southern Regional Office in Twin Falls, Idaho in the fall of 2003 and that we discussed IDWR's proposed recommendation for water right no. 45-487B. I did not understand there was a need to file a separate claim for water right no. 45-487A. It was my understanding based on discussions with

Ms. Hancock that no additional claims needed to be filed for my 1879 Dry Creek water right. I did not purposefully fail to file a water right claim for water right no. 45-487A.

9. After my meeting with Ms. Hancock in the fall of 2003, I did not review IDWR's recommendations that were made for my Dry Creek water right claims in Basin 45. Due to my busy work schedule in the fall of 2004 and the winter of 2004-05, I inadvertently did not review IDWR's preliminary and final recommendations for my Dry Creek water right claims. In addition, I lost track of the court schedule regarding those claims over the winter.

10. In May 2005 I received copies of partial decrees from the SRBA Court for my Basin 45 Dry Creek water right claims. I reviewed the partial decree for water right no. 45-487B (decreed for 2.08 cfs). I then reviewed the partial decree for water right no. 45-487C (claimant Darrell & Patricia Funk, decreed for 3.20 cfs). After reviewing the partial decrees and comparing them to the water right that was originally decreed under the *Stoner v. Willhite* decree (45-487) as well as to the rights as they existed after transfer no. 1762 (45-487A for 4.88 cfs and B for 0.96 cfs), I discovered that IDWR did not recommend the full amount of the 1879 water right (45-487) as had been historically used.

11. After realizing this mistake with the amounts recommended and decreed for the 1879 water right, I immediately contacted and met with Doug Jones at IDWR's Southern Regional Office in Twin Falls in June 2005 to discuss what I had discovered after reviewing the various partial decrees. At that meeting I also discovered that I had erroneously failed to file a water right claim for my portion of water right 45-487A (0.56 cfs) that had gone unclaimed in the SRBA.

12. In order to confirm the water rights that were conveyed to me in 1963 and 1979 (see Exhibits A and B), as well as my historical use of the portion of water right no. 45-487A, I

am filing the present *Motion to File Late Notice of Claim* for 0.56 cfs. It is my understanding this amount represents the difference from the original water right as recognized by the court in the *Wilhite v. Stoner* decree and IDWR after approving transfer no. 1762 (45-487 for 5.84 cfs) as compared to the two water rights recently decreed by the SRBA Court (45-487B for 2.08 cfs and 45-487C for 3.20 cfs, which total equals 5.28 cfs).

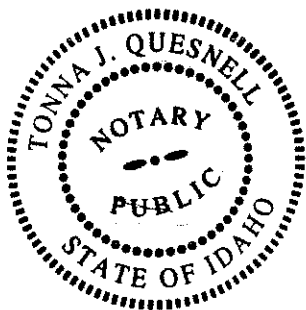
DATED this 27 day of October 2005.


Joseph E. Tugaw

STATE OF IDAHO)
) ss.
County of Twin Falls)

On this 27 day of October, 2005, before me, a Notary Public for said County and State, personally appeared JOSEPH E. TUGAW, known or identified to me to be the owner of Tugaw Ranch and the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the 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.




NOTARY PUBLIC FOR IDAHO
Residing at: Kimberly, ID
My commission expires: 9/28/11

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of October, 2005, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 3rd Ave North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, Idaho 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-44449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort St., MSC 033
Boise, Idaho 83724

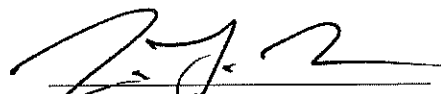

Travis L. Thompson

EXHIBIT “A”

A G R E E M E N T

THIS AGREEMENT, Made and entered into this 10th day of January, 1963, by and between VALERIA I. FULLER, a widow, and GEORGE W. FULLER and GENEVA FULLER, husband and wife, parties of the first part, hereinafter called "SELLERS", and J. E. TUGAW, party of the second part, hereinafter called "BUYER",

WITNESSETH:

That Sellers agree to sell and Buyer agrees to buy under the terms herein contained the following described real property situated in Cassia County, State of Idaho:

- ✓ W 1/2 SW 1/4, Sec. 12; NW 1/4, N 1/2 SW 1/4, SW 1/4 SW 1/4, Sec. 13; NW 1/4 NW 1/4, Sec. 24, Twp. 12 S., Rge. 19 E.B.M.

Lot 3, SE 1/4 NW 1/4, Sec. 1, Twp. 12 S., Rge. 19 E.B.M.

- ✓ NW 1/4 NE 1/4, SW 1/4 NE 1/4, NE 1/4 NW 1/4, SE 1/4 NW 1/4, NE 1/4 SW 1/4, SE 1/4 SW 1/4, Sec. 12, Twp. 12 S., Rge. 19 E.B.M.

SE 1/4 NE 1/4, E 1/2 SW 1/4, SE 1/4, Sec. 29, Twp. 12 S., Rge. 19, E.B.M. and NE 1/4 NE 1/4, Sec. 32, Twp. 12., Rge. 19 E.B.M.

NE 1/4 SE 1/4, Sec. 36, Twp. 13 S., Rge. 19 E.B.M.

- ✓ W 1/2 NW 1/4, Sec. 6, Twp. 14 S., Rge. 20 E.B.M.

Together with all water rights appurtenant thereto and a Johnson head pump and a one-third interest in a Layne Bowler pump (which pumps shall be considered part of the above described realty), and together with Taylor Grazing Rights and Forest Grazing Permits commensurate to said real property, being 729 AUM's under Taylor Grazing Rights and Forest Grazing Permits covering 376 head of livestock and together with the following described personal property:

249 breeding cows	1 mowing machine
9 bulls	1 side delivery rake
18 calves	1 corrugator
3 head horses	1 land leveler
1 weed sprayer	2 plows
1 commercial fertilizer spreader	1 grain drill
	1 ditcher

1 chute	1 wagon
1 1951 3/4 ton Ford Pickup	1 manure loader
700 bushels mixed grain	Miscellaneous steel and wood
1 spike harrow	fence posts
1 1955 International 300 Utility tractor	1 International C-49 tractor
	Approximately 400 tons hay

To best of Sellers' knowledge, information and belief the following water rights are appurtenant to the above described land and Sellers know of no adverse claim or other facts impairing the validity of the same.

<u>AMOUNT:</u>	<u>PRIORITY DATE:</u>	<u>IN:</u>
48 inches	1879	Dry Creek
130 inches	1884	Dry Creek
4 inches	1884	Dry Creek
120 inches	1908	Dry Creek
45 inches	1908	Deer Creek

1/3 of water license 625309 and all of water license 624721
but Sellers do not warrant the validity of such water rights.

IT IS HEREBY AGREED THAT THE TERMS OF SAID SALE ARE AS FOLLOWS:

1. Buyer agrees to pay Sellers as the purchase price for said property the sum of Two Hundred Thousand and No/100 (\$200,000.00) Dollars payable as follows:

- (a) \$58,000.00 upon the execution of this agreement.
- (b) \$142,000.00 together with interest thereon at the rate of 5 1/2% per annum from January 10, 1963, payable as follows: \$9,476.00 together with accrued interest on January 15, 1964, and \$9,486.00 together with accrued interest on January 10, 1965, and on the 10th day of each succeeding January for the following thirteen (13) years. All of said payments shall be made at the Twin Falls Bank & Trust Company, Twin Falls, Idaho. Buyer may, after the 1st day of January, 1964, make additional payments of principal and interest at any time but such payments shall be in addition to and not in lieu of payments called for herein and all of such payments shall be applied in inverse order to said payments called for herein.

2. Upon the execution of this agreement, Sellers shall deliver Buyer a Bill of Sale transferring to Buyer free and clear of all encumbrances, the personal property enumerated above. Buyer shall immediately thereafter execute and deliver to Sellers a chattel mortgage mortgaging to Sellers said 249 breeding cows and said 9 bulls, to secure the payments due under

this agreement and the performance of all terms herein contained. In the event that any of the livestock covered by said mortgage shall die, Buyer shall immediately replace the same with comparable livestock, or if any of the said livestock must be replaced for breeding purposes, the right of the Buyer to make such replacements being hereby granted, Buyer shall replace the same and the lien of said Chattel Mortgage shall extend to and cover such replacement livestock and said Chattel Mortgage shall so provide. None of the livestock mortgaged to Sellers may be sold nor moved from the real property above described and the public ranges herein referred to until the lien of said Chattel Mortgage is released as hereinafter provided. It is, however, agreed that any calves born after January 1, 1963, from the above described breeding animals or replacements thereof shall be the property of Buyer and subject to disposition by him. When the unpaid principal balance has been reduced to the sum of \$75,000.00 Sellers agree to deliver Buyer a release of said Chattel Mortgage.

3. All of the breeding livestock sold hereunder or any replacement thereof shall be branded with the NL brand on the left hip. Said brand is included in this sale, but shall also be covered by the Chattel Mortgage mortgaging livestock and it is further agreed that in the event this agreement is terminated ownership of said brand shall revert to Sellers.

4. In the event this agreement is terminated by Sellers prior to release of said Chattel Mortgage as hereinafter provided, Buyer shall be obligated to pay Sellers, in addition to liquidated damages hereinafter provided, the market value on said date of termination of 400 tons of hay and 700 bushels of mixed grain or furnish Sellers hay and mixed grain in such amounts.

5. Sellers shall pay real and personal property taxes on the property sold hereunder for the year 1962 and preceding years and Buyer shall pay said taxes for the year 1963 and succeeding years.

6. There is situated on the real estate sold hereunder two modern homes and the Buyer shall, at his expense, maintain a fire insurance policy covering the smaller of said homes in the amount of \$12,000⁰⁰ and the

J. T.
S. J.
H. W. H.
15,000.00

larger of said homes in the amount of ~~\$15,000.00~~ and said policies shall bear a contract of sale clause showing Sellers' interest. In the event proceeds are collected from either of said fire insurance policies the same may be either used to rebuild or repair the damaged improvement or applied against the unpaid balance of this agreement at Buyer's option.

7. Buyer shall maintain all improvements on the premises sold hereunder in the same condition as they now are, reasonable wear and tear and damage by fire and the elements excepted. Buyer further agrees prior to the release of said Chattel Mortgage to maintain the livestock sold hereunder or any replacement thereof in accordance with accepted livestock standards in the area. Buyer further agrees, at his expense, by reasonable means to prevent the spread of noxious weeds on the above described premises.

8. An executed copy of this agreement together with Warranty Deeds from record title holders of the property sold hereunder conveying said property to Buyer free and clear of all encumbrances other than existing rights-of-way, easements and 1963 taxes, and instruments executed by Buyer retransferring all grazing rights to Sellers, and fire insurance policies insuring the two homes on said premises shall be placed in escrow in the Twin Falls Bank & Trust Company, Twin Falls, Idaho, and said Bank shall, as escrow agent, deliver all of said instruments to Buyer when Sellers have been paid in full, or deliver all of said instruments to Sellers if this agreement is terminated as hereinafter provided.

9. Certain of the real property sold hereunder is being purchased under a State of Idaho Land Sale Certificate, the unpaid balance of which is now being paid by Sellers and as soon as title to lands covered by said Land Sale Certificate have been received and recorded Sellers shall furnish Buyer a title insurance policy in the amount of \$138,000.00 covering all of the real estate sold hereunder showing merchantable title thereto and after the same has been examined by Buyer's attorney said title insurance policy shall be placed in escrow in the Twin Falls Bank & Trust Company together with the instruments described above. Sellers and Buyer shall each pay one-half of all escrow fees.

10. In the event either party hereto shall engage the services of an attorney to enforce any of their rights under this agreement, the prevailing party shall pay the other party a reasonable sum as attorney's fees.

11. Buyer shall not assign this agreement nor sell any of the real property or pumps sold hereunder without the prior written consent of Sellers, except that said pumps may be replaced if necessary, such replaced pumps to become part of the realty. This agreement may, however, be assigned to an Idaho corporation, the majority stock of which is owned by J. E. Tugaw and/or J. T. Tugaw, but such assignment shall not relieve the Buyer nor J. T. Tugaw, nor either of them, from any personal liability under this agreement. In the event of such assignment to such corporation, it shall thereafter become null and void if the majority stock in such corporation is sold to others than J. E. Tugaw or J. T. Tugaw unless the Sellers shall consent to such sale of stock in writing.

12. Sellers shall co-operate with Buyer in securing assignments of Taylor Grazing and Forest Grazing Rights. Buyer shall fully comply with all laws and regulations concerning such grazing rights and shall protect such rights. In the event that said permits or either of them become jeopardized by action or inaction of Buyer, George Fuller, regardless of any provision of this agreement, may without notice to Buyer take any action necessary to protect such grazing rights and charge the Buyer the reasonable cost thereof.

13. Possession of the property sold hereunder shall be delivered to Buyer upon the execution of this agreement and payment of the sum of \$58,000.00 to Sellers by Buyer and Buyer may continue to have possession thereof as long as the terms of this agreement are performed. However, time is of the essence of this agreement, and in the event Buyer shall refuse or neglect to pay installments of purchase price and/or interest, or any of them, or fail to comply with any of the provisions herein contained, it shall be optional with the Sellers to:

(a) Declare this agreement terminated, and upon the making of such declaration, all of the rights of the Buyer to continue said purchase, or to continue in possession of said premises shall immediately terminate

and Sellers shall retain all money paid to them as purchase price as liquidated damages and Buyer shall thereupon re-transfer said Forest Grazing rights and Taylor Grazing rights to Sellers.

(b) Declare all installments of purchase price and interest thereon due hereunder to be immediately due and payable; provided, however, that before such termination of this agreement, or before declaring all installments of purchase price and interest thereon immediately due and payable, the Sellers must give Buyer 30 days' written notice of their intention to terminate this agreement or to declare all installments of purchase price immediately due and payable and said written notice shall contain the grounds upon which such action is based, and if within such 30-day period the Buyer shall fully comply with and conform with the provision or provisions hereof for the breach of which the Sellers shall give such notice, then, and in that event, this agreement shall remain and be in full force and effect the same as if such default by Buyer had never been made, provided, however, that such remedy or remedies shall not be exclusive but shall be cumulative and not in derogation of any remedies or rights the Sellers may otherwise have by reason of the breach of this agreement by Buyer.

In the event the Sellers shall exercise any of the above remedies Sellers shall have the right to, at the same time, foreclose the Chattel Mortgage on livestock or may foreclose the same individually for a breach of the terms of this agreement.

14. As a consideration of the entering into of this agreement by Sellers, J. T. TUGAW hereby personally guarantees performance of this agreement by Buyer and joins in the execution of this agreement for that purpose, and this agreement shall not be effective until he so joins in such execution.

15. The parties hereto respectively bind themselves, their heirs, legal representatives and permitted assigns.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

Valeria I. Fuller

George W. Fuller

Geneva Fuller

"SELLERS"

E. E. Ingaw

"BUYER"

J. T. Ingaw

STATE OF IDAHO,)
) ss.
County of Twin Falls,)

On this 19th day of January, 1963, before me, the undersigned, a Notary Public in and for said State, personally appeared VALERIA I. FULLER, a widow, and GEORGE W. FULLER and GENEVA FULLER, husband and wife, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the 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.

Edward L. Bush

Notary Public for Idaho,
Residing at Twin Falls, Idaho.

STATE OF IDAHO,)
) ss.
County of Twin Falls.)

On this 29 day of January, 1963, before me, the undersigned, a Notary Public in and for said State, personally appeared J. E. TUGAW, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the 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.

J. M. Robertson

Notary Public for Idaho,
Residing at Twin Falls, Idaho.

IDAHO
STATE OF WASHINGTON,)
) ss.
County of Twin Falls.)

On this 29 day of January, 1963, before me, the undersigned, a Notary Public in and for said State, personally appeared J. T. TUGAW, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the 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.

J. M. Robertson

IDAHO
Notary Public for Washington,
Residing at Twin Falls, IDAHO, Washington.

EXHIBIT “B”

A G R E E M E N T

THIS AGREEMENT, made and entered into this 7 day of April, 1979, by and between EVERETT M. FULLER and LEAH FULLER, husband and wife, presently residing in the County of Cassia, State of Idaho, hereinafter referred to as Sellers; and JOSEPH E. TUGAW, presently residing in the City of Salt Lake, County of Salt Lake, State of Utah, hereinafter referred to as Purchaser.

WHEREAS, the Sellers are the owners of certain real estate, with improvements and irrigation equipment located thereon, situate in the County of Cassia, State of Idaho, said real estate being hereinafter referred to as Parcel A and more particularly described as follows, to-wit:

Lot Two (2), SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$,
Section One (1), Township Twelve (12) South,
Range Nineteen (19) East, Boise Meridian,

745-
02486 TOGETHER WITH a water right of Ninety-eight inches (98") of the water of Dry Creek with a priority date of March 1, 1879, and with an additional water right of Fifty-Three inches (53") of the water of Dry Creek with a priority date of March 1, 1884, and Two-Thirds (2/3) interest in the water right of 3.9 cubic feet per second, evidenced by Water License number G-25303 issued by the Reclamation Department of the State of Idaho, in and to that certain well located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 24, Township 12 South, Range 19 East, Boise Meridian, County of Cassia, State of Idaho, and

An easement of ingress and egress for a road right-of-way running across the West Twenty-Five feet (25') of Parcel I excepted below and a canal easement running across the East Fifteen feet (15') of Parcel I excepted below, which easements are excepted in that certain Warranty Deed executed by Everett M. Fuller and Leah Fuller, husband and wife, as Grantors and Wynne F. Bessire as Grantee, recorded on the 10th day of March, 1975, as instrument number 81689, records of the Cassia County Recorder's Office, State of Idaho.

EXCEPTING THEREFROM the following described parcels:

PARCEL 1:

Beginning at the Northeast corner of said Section 1;

THENCE South 89°59'00" West 1314.80 feet along
the section line to the Northeast corner
of Lot 2, which point is the True Point
of Beginning;
THENCE South 0°16'43" West 890.00 feet along
the East line of Lot 2;
THENCE South 89°59'00" West 135.95 feet;
THENCE North 0°16'43" East 890.00 feet to the
section line;
THENCE North 89°59'00" East 135.95 feet along
the section line to the True Point of
Beginning.

PARCEL No. 2:

Beginning at the North quarter corner of said
Section 1,
THENCE, North 89°59'00" East 1178.85 feet
along the section line to the True
Point of Beginning; said point lies
South 89°59'00" West 1450.75 feet, from the
Northeast corner of said Section 1;
THENCE South 00°16'43" West 342.00 feet;
THENCE South 89°59'00" West 71.00 feet;
THENCE North 00°16'43" East 342.00 feet to the
North boundary of said Section 1;
THENCE North 89°59'00" East 71.00 feet along
the section line to the True Point of
Beginning.

and,

WHEREAS, the Sellers are willing and desire to sell,
to the Purchaser Parcel A with all improvements and irrigation
equipment located thereon upon the terms and conditions hereinafter
set forth, and

WHEREAS, the Purchaser is willing and desires to
purchase of and from the Sellers, Parcel A with all water rights
and easements appurtenant thereto and all improvements and
irrigation equipment located thereon upon the terms and conditions
herein stated.

NOW, THEREFORE, in consideration of the premises,
covenants and agreements herein contained, the parties hereto
agree as follows:

W I T N E S S E T H:

I.

The Sellers do hereby agree to sell to the Purchaser and the Purchaser does hereby agree to purchase of and from the Sellers Parcel A with all water rights appurtenant thereto and all improvements and irrigation equipment located thereon for the purchase price of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00). Said purchase price of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00) for Parcel A with all water rights appurtenant thereto and all improvements and irrigation equipment located thereon shall be allocated as follows:

(a) TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) for the irrigation equipment more particularly described in Exhibit A attached hereto and by reference thereto made a part hereof.

(b) FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) for the residence of Sellers' located on Parcel A.

(c) ONE HUNDRED TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$125,000.00) for the real estate described above as Parcel A.

II.

The purchase price in the sum of TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00) shall be paid by the Purchaser to the Sellers in the following manner:

(a) TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) upon the execution of this agreement, the receipt for which is hereby acknowledged.

(b) THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00) to be paid by the Purchaser to the office of Barnes Realty, 1043 Blue Lakes Blvd. North, Twin Falls, Idaho, on July 1, 1979, which shall be carried until July 1, 1979, without interest.

(c) TWENTY-EIGHT THOUSAND SIX HUNDRED THIRTY-THREE AND 37/100 DOLLARS (\$28,633.37) by the assumption of

a First Mortgage encumbering Parcel A held by the Federal Land Bank Association, which First Mortgage the Purchaser does hereby agree to assume and pay according to the terms and provisions thereof commencing April 1, 1979.

(d) The remaining principal balance of ONE HUNDRED THIRTY-ONE THOUSAND THREE HUNDRED SIXTY-SIX AND 63/100 DOLLARS (\$131,366.63) shall bear interest at the rate of eight percent (8%) per annum commencing with April 1, 1979, until paid, and shall be payable in annual payments of THIRTEEN THOUSAND FOUR HUNDRED FORTY-FOUR AND 20/100 DOLLARS (\$13,444.20) each. The first of said annual payments in the sum of THIRTEEN THOUSAND FOUR HUNDRED FORTY-FOUR AND 20/100 DOLLARS (\$13,444.20) shall become due and payable on the first day of April, 1980, with a like sum of THIRTEEN THOUSAND FOUR HUNDRED FORTY-FOUR AND 20/100 (\$13,444.20) becoming due and payable on the first day of April each and every year thereafter until said principal balance with interest has been fully paid. Each annual payment shall first be applied to the accumulated interest then due with the remainder thereof then being applied to the unpaid balance of the purchase price.

E.J.
(e) Purchaser shall have and is hereby granted the right of prepayment, which shall not exceed twenty-nine percent (29%) of the purchase price in the years 1980, 1981 and 1982. Thereafter said Purchaser may prepay any amount, said prepayments may be made without penalty. The amount of any prepayment shall first be applied to the accumulated interest then due with the remainder thereof then being applied against the unpaid principal balance of the purchase price.

III.

Upon the execution of this agreement Purchaser shall purchase from Sellers Sellers' stock in the Federal Land Bank Association for the purchase price of ONE THOUSAND FOUR HUNDRED SEVENTY AND NO/100 DOLLARS (\$1,470.00). It being understood and agreed that the purchase of said stock is necessary in order for the Purchaser to assume Sellers' First Mortgage encumbering Parcel A, which mortgage is held by the Federal Land Bank Association at its Burley, Idaho, office.

IV.

Sellers shall pay all accrued interest on said First

Mortgage encumbering Parcel A through March 31, 1979.

V.

The Purchaser shall make, execute and deliver to the Sellers all documents required by the Uniform Commercial Code securing Sellers' interest in the irrigation equipment more particularly described in Exhibit A attached hereto. Upon the payment of THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00) on July 1, 1979, as set forth above, the Sellers shall release Sellers' secured interest in said irrigation equipment and deliver, or cause to be delivered, to the Purchaser a good and sufficient Bill of Sale transferring said irrigation equipment free and clear of all claims and demands.

VI.

It is further understood and agreed by and between these respective parties that the Sellers are reserving unto themselves, or the survivor thereof, a life estate in Sellers' residence located on Parcel A and that part of Parcel A on which said residence is located, said lands being more particularly described as follows, to-wit:

Commencing at the North quarter corner of Section One (1), Township Twelve (12) South, Range Nineteen (19) East of the Boise Meridian, which point is the True Point of Beginning;

Said point lies South 89°59'00" West, 2629.60 feet from the Northeast corner of said Section One (1); Thence North 89°59'00" East 90.00 feet along the section line;
Thence South 00°18'47" West 343.00 feet parallel to the West boundary of the NW $\frac{1}{4}$ NE $\frac{1}{4}$;
Thence South 89°59'00" West 90.00 feet to the West boundary of the NW $\frac{1}{4}$ NE $\frac{1}{4}$;
Thence North 00°18'47" East 343.00 feet along the West boundary of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ to the true point of beginning.

The deed executed by the Sellers to the Purchaser, hereinafter referred to, shall contain the reservation of said life estate.

During the term of Sellers' occupancy of the residence on the above described lands in which Sellers' have retained a life estate, Sellers shall maintain said residence, domestic well and pump used in connection therewith in as good a condition as the same now are.

VII.

Upon the execution of this agreement the same shall be placed in the escrow department of the Twin Falls BANK & Trust Company at its Kimberly office in Kimberly, Idaho, together with a good and sufficient Warranty Deed executed by the Sellers conveying Parcel A, together with all water rights and easements appurtenant thereto, to the Purchaser free and clear of all encumbrances and subject to the Sellers' life estate.

The Sellers shall furnish the Purchaser with a policy of title insurance in the sum of ONE HUNDRED SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$175,000.00) insuring a good and merchantable title in Parcel A to be vested in the Sellers. Said policy of title insurance shall show no exceptions other than the presently existing easements, rights-of-way and the First Mortgage referred to above. The cost and expense of said title insurance shall be an expense of the Sellers. All papers and documents held by said escrow holder shall be delivered to the Purchaser upon final payment of the purchase price.

The initial escrow handling charges shall be equally divided between these respective parties. All future escrow charges shall be paid by the Sellers and deducted from the payments as they are received by the escrow holder.

VIII.

The Sellers shall pay all taxes and assessments levied and assessed against Parcel A for the year 1978 and prior thereto.

The Purchaser shall pay all taxes and assessments levied and assessed against Parcel A for the year 1980 and thereafter excluding that portion of the taxes and/or assessments which may be levied and assessed upon the land and improvements in which the Sellers have retained a life estate, which portion of the taxes and/or assessments the Sellers shall pay so long as they shall occupy said premises.

All taxes and assessments levied and assessed against Parcel A for the year 1979 shall be prorated as of April 1, 1979, and in addition thereto the Sellers shall pay that portion of the taxes and assessments levied and assessed against the lands and improvements in which they have reserved a life estate for the period of time commencing with April 1, 1979, through December 31, 1979.

IX.

So long as Sellers, or the survivor thereof, occupy the residence in which they have reserved a life estate they shall maintain a policy of fire and extended coverage on said residence in the maximum amount attainable, which policy of fire and extended coverage shall be placed in escrow with the other papers and documents referred to above. Said policy of fire insurance and extended coverage shall contain a loss payable clause first to the Purchaser and then to the Sellers as their interests may appear. In the event of damage to said residence caused by fire or other calamity covered by said policy of insurance the Sellers shall have and are hereby granted the option to use the proceeds derived from said insurance policy for the purpose of restoring or rebuilding said residence.

X.

The Purchaser shall have possession of Parcel A as of April 1, 1979.

XI.

Purchaser agrees that he will not allow any workman's or materialman's liens to be filed against the above described property or commit waste of said premises during the term of this contract under penalty of forfeiture hereunder.

Sellers likewise agree that they shall not allow any workman's or materialman's liens to be filed against the residence or premises in which they have reserved a life estate, and if any such lien should be filed the Purchaser may pay the same and receive credit against the purchase price for the amount so paid.

XII.

It is hereby acknowledged that the Sellers have a portion of the 1978 hay crop remaining on Parcel A. With regard thereto, it is hereby agreed that the Sellers may continue to store said hay on Parcel A until July 1, 1979 with the right of ingress and egress for the purpose of removing said hay from Parcel A.

XIII.

It is hereby acknowledged that the Purchaser has personally inspected Parcel A and the improvements situate thereon. That no representations have been made by the Sellers as to the condition of said land or improvements. That no representations have been made with regard to the absence or existence of noxious weeds, and that the Purchaser accepts Parcel A with the improvements thereon in the condition that the same now are.

XIV.

Should any controversy arise between these respective parties resulting in litigation, the party adjudged to be in

default by a court of competent jurisdiction shall pay to the aggrieved party, in addition to all damages allowed by law, court costs and a reasonable attorney's fee.

XV.

Time and prompt performance of each and every obligation of Purchaser are the essence of this agreement, and should Purchaser fail to make any of the payments due under this contract or fail to abide by any other terms and conditions of this agreement, then Sellers may cause to be prepared a written notice setting forth therein the manner in which Purchaser is claimed to be in default and said notice shall be mailed by certified mail to the Purchaser at 1875 Jeremy Drive, Salt Lake City, Utah 84101.

Purchaser shall have sixty (60) days after the mailing of said notice in which to correct the matters claimed to be in default, or to correct any other matters constituting a breach of this agreement. If such default is not corrected within said sixty-day period then Sellers shall be entitled to the immediate possession of the premises, and the Purchaser agrees that he will immediately deliver up possession of the same. All monies paid by Purchaser hereunder, or permanent improvements placed on said lands, shall be retained by Sellers as liquidated damages for breach of contract and Purchaser hereby waives and releases the Sellers from any claims or demands he may have for reimbursement of costs for any such permanent improvements. Forfeiture shall not be deemed Sellers' exclusive remedy hereunder.

XVI.

The parties hereby respectfully bind themselves, their heirs, successors, assigns and legal representatives.

IN WITNESS WHEREOF, the parties hereto have executed
this agreement in triplicate the day and year first above written.

SELLERS:

PURCHASER:

Everett M. Fuller
Everett M. Fuller

Joseph E. Tugaw
Joseph E. Tugaw

Leah Fuller
Leah Fuller

STATE OF IDAHO)
County of Twin Falls) ss

On this ____ day of _____, 1979, before me,
the undersigned, a Notary Public in and for said State, personally
appeared EVERETT M. FULLER and LEAH FULLER, husband and wife,
known to me to be the persons whose names are subscribed to the
foregoing instrument and acknowledged to me that they executed
the 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.

Notary Public for the State of Idaho;
residing at _____, Idaho.

STATE OF IDAHO)
County of Twin Falls) ss

On this ____ day of _____, 1979, before me, the
undersigned, a Notary Public in and for said state, personally
appeared JOSEPH E. TUGAW, known to me to be the person whose name

is subscribed to the foregoing instrument and acknowledged to me that he executed the 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.

Notary Public for the State of Idaho;
residing at _____, Idaho.