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DEPT. OF WATER RESOURCES
SOUTHERN REGION

WELL TRUST AGREEMENT

THIS AGREEMENT Is made and entered into this 15 day of July, 1979 by and between CLIFFORD L. GASSERT and RHONDA GASSERT, Husband and Wife (hereinafter referred to as "Gassert"), WILLIAM C. REEVES and MAXINE L. REEVES, Husband and Wife, (hereinafter referred to as "Reeves"), J. CLIFTON SMALLWOOD and RITA IONE SMALLWOOD, Husband and Wife, Husband and Wife (hereinafter referred to as "Smallwood") and ROBERT L. GILLESPIE and RUBY GILLESPIE, Husband and Wife (hereinafter referred to as "Gillespie");

W I T N E S S E T H:

WHEREAS, Each of these parties as marital communities own real property in Twin Falls County, State of Idaho which is contiguous and adjacent to each other, and which formally consisted of a larger tract of land owned by Smallwood; and

WHEREAS, There is a community well existing on a parcel of land adjacent thereto presently and for some time in the past serving the water needs of all parties to this agreement; and

WHEREAS, On or about August 15, 1974 Smallwood executed a trust agreement providing for the community use of adjacent land owners to said well, with provision for maintenance for a well trust agreement; and

WHEREAS, There are certain errors appearing in said former trust agreement leaving uncertainty as to the effect and application of said trust agreement; and

WHEREAS, These parties are desirous of creating a formal and legally binding well trust agreement for the use and benefit of their heirs, successors, and assigns,

NOW THEREFORE In consideration of the mutual promises and covenants contained herein the parties hereto agree as follows:

I.

STATEMENT OF REAL ESTATE OWNERSHIP. The parties hereto acknowledge that they own real estate described as follows:

(a) Gassert owns real property described in Exhibit "A" to this agreement, the same of which is incorporated herein by this reference and which hereinafter is referred to for purposes of this agreement only as Parcel No. 1;

(b) Reeves owns real property described in Exhibit "B" to this agreement, the same of which is incorporated herein by this reference and which hereinafter is referred to for purposes of this agreement only as Parcel No. 2;

(c) Smallwood owns real property described in Exhibit "C" to this agreement, the same of which is incorporated herein by this reference and which hereinafter is referred to for purposes of this agreement only as Parcel No. 3; and

(d) Gillespie owns real property described in Exhibit "D" to this agreement, the same of which is incorporated herein by this reference and which hereinafter is referred to for purposes of this agreement only as Parcel No. 4;

The parties hereto further acknowledge that the well which is the subject of this agreement formally served property owned by Duane L. Hankins and Elouise M. Hankins, Husband and Wife (hereinafter referred to as "Hankins") said parties owning certain real estate described in Exhibit "E" to this agreement, the same of which is incorporated herein by this reference, and the same of

which is hereinafter referred to as Parcel A.

The parties hereto further acknowledge that the well that is the subject of this agreement is located on property owned by Gassert, Parcel I above, and is legally described in Exhibit "F" to this agreement, the same of which is incorporated herein by this reference and made a part of this agreement.

II.

CONVEYANCE TO TRUST. For the purpose of supplying domestic water for Parcels I through IV heretofore described, the parties hereto do hereby set-over, assign, transfer, convey and quitclaim their respective interest in the well to their respective marital communities, each marital community being deemed to constitute one entity, as trustees. This transfer shall convey not only water rights to the well, but also all pumping facilities and connecting lines presently existing or hereinafter created by the trust for the delivery of water for the domestic use by the property owners to Parcels I through IV inclusive. The parties hereto agree that the complete water system shall be held by said trustees in trust for the beneficiaries hereafter designated and upon the terms and conditions hereinafter set forth.

III.

ACKNOWLEDGMENT OF POSSIBLE DIVESTMENT OF INTEREST. The parties hereto acknowledge that Parcel I described above owned by Gassert is the property upon which the well is located. The parties further acknowledge that Parcel A described above, presently owned by Hankins pursuant to warranty deed from a previous owner, was conveyed a one-fifth interest in the well. The parties further acknowledge and understand that Parcel A has its own well system and the parties believe that any interests that Hankins may have heretofore

had in the well has terminated by abandonment. Upon this assumption the parties agree that the ownership interest of the trust to the well rights and appurtenances shall be one-quarter ($\frac{1}{4}$) each, and that in the event of an assertion of ownership rights from present or future owners of Parcel A acknowledge the possibility of divestment of five percent (5%) each of their interest in the well.

IV.

DESIGNATION OF BENEFICIARIES. A beneficiary hereunder is defined to be any person or legal entity who shall from time to time be the owner, either legal or equitable or the contract purchaser of any of the Parcels I through IV inclusive described above and having a building located on such parcel of not less than six thousand (6,000) square feet. The term beneficiary as used herein shall mean one beneficiary per parcel, regardless of whether title to the property is held singularly, jointly, or collectively.

V.

QUALIFICATION, SUCCESSION AND ELECTION OF TRUSTEES AND MANAGING TRUSTEE. All of the trustees created hereunder shall be qualified beneficiaries. The trustees shall elect one of their numbers as a "managing trustee." The function of the managing trustee shall to be to assume direct responsibility for the care, up-keep, and routine repairs and maintenance to the well and its appurtenances. The parties agree that J. Clifton Smallwood is and shall be elected as managing trustee until replaced as hereinafter specified. The managing trustee's election shall be deemed perpetual, provided that upon written notice to all other trustees any one trustee may call an election for the purpose of electing a new managing trustee. The managing trustee shall be elected by majority vote. Each owner of Parcels I through IV inclusive, regardless of

whether title is held singularly, jointly, or collectively shall be entitled to cast one vote. The managing trustee shall not have authority to contract for replacement of the well, or for extraordinary repairs to the well, casing, or any other item other than routine maintenance matter without the consent of all trustees.

VI.

DUTIES OF TRUSTEES. For the term of this trust the trustees shall hold, control, maintain, and operate said water system for the use and benefit of the beneficiaries as defined herein. In the event of failure of natural supply of water, major catastrophe or increase in demand beyond the well's capacity, and in the event for any other reason the water system shall become unuseable or inadequate other than for reasons involving normal maintenance, the trustees shall be under no obligations to expand, augment, or replace said system. The trustees shall keep a record of their acts and proceedings and shall further keep and maintain full and accurate and adequate books of account correctly and adequately recording all receipts and disbursements and disclosing the financial condition of the trust from time to time, and all such records shall be open to the inspection of the beneficiaries hereunder at any and all reasonable times. The trustees shall have the power to formulate rules and regulations relating to use of the water for domestic purposes and shall upon the qualification of any person or entity as a beneficiary furnish to such person or entity a copy of this trust and also a copy of the rules and regulations then in force and effect pertaining to the said water system.

VII.

POWERS OF TRUSTEES. The trustees hereunder shall have the following powers:

(a) To adopt regulations pertaining to the metering of water and the type and maintenance of meters;

(b) To set the manner of connecting existing mains with the property of the beneficiaries, including the specifications of the size and type of material to be used and the location and depth of the service line;

(c) To restrict the use of water by beneficiaries where in the opinion of the trustees such restrictions are necessary to conserve the supply or permit repairs or replacements; and

(d) To adopt such further regulations as may, in the discretion of the trustees, be deemed necessary or expedient for the proper operation of the system.

VIII.

MAJORITY VOTE OF TRUSTEES REQUIRED. With respect to the adoption of any rules and regulations, or any financial decisions changing the terms of this trust, a majority vote of the trustees shall be sufficient to confirm, ratify, or enact such changes or modifications.

IX.

ADDITIONAL POWERS OF TRUSTEES. In addition to the powers specified above, the trustees shall have the power to borrow money for the purposes of operating this trust and to pledge the income of the trust for purposes of major purchases necessary to maintain the well system, provided however, that no such appropriation or borrowing may be made without the unanimous consent of the trustees

X.

COMPENSATION OF TRUSTEES. The trustees hereinunder shall serve without compensation, provided however, that by unanimous consent of all trustees, the managing trustee may be paid such reasonable compensation as all trustees in their discretion determine.

XI.

LIABILITIES OF TRUSTEES. The trustees hereunder shall not be jointly or severally liable for any acts or omissions by them or any of them in carrying out the terms and provisions of this trust, except for the failure to properly account for monies handled by the managing trustee. It is further agreed that any act or omission by any trustee shall not create any personal liability imposed upon that trustee in either contract or tort except as provided for in this paragraph.

XII.

PAYMENT FOR MAINTENANCE OF SYSTEM. The parties acknowledge that under the previous trust agreement there has accumulated funds in the previous trust in the approximate amount of Six Hundred Dollars (\$600.00). All beneficiaries hereto agree to pay the sum of Ten Dollars (\$10.00) per month for the use of water and for pumping, electricity, and repairs to the system to a fund hereby created and to be administered by the trustees at such time as they commence using water. All beneficiaries shall be required to make this monthly payment, or such other sum as agreed upon by the trustees until the working fund of the trust reaches Twenty Five Hundred Dollars (\$2500.00). At such time as the balance in the fund achieves said amount, the beneficiaries shall be relieved from making monthly payments until such time as the balance in the fund is reduced to the sum of Two Thousand Dollars (\$2000.00). In

and after that event, payment by the beneficiaries at the specified sums shall again be required until the balance in the fund is again Twenty Five Hundred Dollars (\$2500.00). If at any time the funds of the trust are insufficient to pay for any repairs to the system, or any other expenditures required after appropriate approval of the trustees, then the cost shall be assessed by the trust against the beneficiaries on a pro-rata basis.

XII.

ACCEPTANCE OF BENEFICIARIES. Each and every beneficiary presently benefitting from this trust agreement by his, her, or their signature appearing hereon shall be deemed to have accepted all the terms and provisions of this trust and agrees to abide by the rules and regulations and requirements of the trustees hereunder. In the event of sale of any of the parcels involved, each future beneficiary before entitled to water service shall execute in writing an application therefore, such application accepting the terms and provisions of this trust and an agreement to be bound by the rules, regulations and requirements of the trustees.

XIII.

TERMINATION AND WITHDRAWAL FROM TRUST. This trust shall be deemed to be perpetual and shall be binding upon all heirs, successors, assigns, donees, and grantees of Parcels I through IV inclusive. The parties specifically acknowledge that the rights to use the well and well system are appurtenant to the four parcels and must be transferred with and run with the interest in the underlying real estate, whether such transfer be deemed legal or equitable in nature. The foregoing notwithstanding, this trust may be in part terminated or the appurtenance of the water rights

to the parcels terminated under the following conditions:

(a) In the event any beneficiary fails or refuses after lawful demand in writing to keep current any required monthly assessments or to promptly pay his pro-rated portion of any assessments made for repairs to the well or the well system, then the balance of the trustees shall have the authority to terminate said beneficiary's interest in the well, with the respective beneficiary's and trustee's water share being deemed to be transferred to the remaining trustees and beneficiaries on a pro-rata basis.

(b) In the event any trustee desires to voluntarily withdraw from this agreement by construction of their own well system, then said trustee and beneficiary shall be entitled to do the same, provided that upon such withdrawal all pro-rated shares of money previously deposited into the account of the trust shall be forfeited and provided further that such trustee and beneficiary shall execute appropriate documentation relinquishing all rights to said well and water system, the same of which shall inure to the remaining trustees and beneficiaries, pro-rata.

XIV.

TRANSFER OF OWNERSHIP. The obligations and benefits created by this trust shall upon sale of any parcel of real estate effected by this trust also be transferred with and appurtenant to transfer of Parcels I through IV inclusive. No trustee or beneficiary shall without the consent of all other trustees and beneficiaries be permitted to sell any rights, interests or, title in any manner whatsoever of the water rights created hereunder, other than as appurtenant to Parcels I through IV inclusive.

IN WITNESS WHEREOF The parties have hereunto set thier
hands the day and year first above written.

Clifford L. Gassert

Rhonda Gassert

William C. Reeves

Maxine L. Reeves

J. Clifton Smallwood

Rita Ione Smallwood

Robert L. Gillespie

Ruby Gillespie

STATE OF IDAHO, COUNTY OF

On this 18 day of July, 1977,
before me, a notary public in and for said State, per-
sonally appeared

RHONDA GASSERT

known to me to be the person whose name
subscribed to the within instrument, and acknowledged to
me that she executed the same.

[Signature]

Notary Public

Residing at [Address], Idaho
Comm. Expires [Date]

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

On this 19 day of July, 1979, before me, the undersigned,
a Notary Public for Idaho, personally appeared Clifford L. Gassert
~~Rhonda Gassert~~, Husband and ~~Wife~~, known to me to be the persons whose
names are subscribed to the foregoing instrument, and acknowledged
to me that ^{He} ~~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 Idaho~~
~~Residing at Twin Falls~~

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

On this day of July, 1979, before me, the undersigned
a Notary Public for Idaho, personally appeared William C. and Maxine
L. Reeves , 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 Idaho~~
~~Residing at Twin Falls~~

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

On this 11 day of July, 1979, before me, the undersigned,
a Notary Public for Idaho, personally appeared J. Clifton and Rita Ione
Smallwood , 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 Idaho
Residing at Twin Falls

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

On this 11 day of July, 1979, before me, the undersigned,
a Notary Public for Idaho, personally appeared Robert L. and Ruby
Gillespie , 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 Idaho
Residing at Twin Falls

EXHIBIT "A"

PARCEL I:

Township 10 South, Range 16 East of the Boise Meridian, Twin Falls County, Idaho,

Section 15: A parcel of land located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, described as follows: Beginning at the Southeast corner of the above mentioned Section 15; thence

North 0°03'West 132.5 feet to a point; thence
South 89°57' West 32 feet to the Real Point of Beginning; thence
North parallel with East line of said Section, a distance of
100 feet; thence
West parallel with the South line of said Section, a distance of
213.4 feet; thence
South parallel with the East line of said Section, a distance of
100 feet; thence
East parallel with the South line of said Section, a distance of
213.4 feet to the Real Point of Beginning.

EXCEPT The Well site herein after described.

PARCEL II:

Township 10 South, Range 16 East of the Boise Meridian, Twin Falls County, Idaho,

Section 15: A Non-Exclusive Easement for ingress and egress over a parcel of land located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, described as follows: Beginning at the Southeast corner of the said Section 15; thence

North 0°03'West 132.5 feet to a point; thence
South 89°57'West 25 feet to the Real Point of Beginning; thence
North parallel with the East line of said Section, a distance of
100 feet; thence
West parallel with the South line of said Section, a distance of
7 feet; thence
South parallel with the East line of said Section, a distance of
100 feet; thence
East parallel with the South line of said Section, a distance of
7 feet to the Real Point of Beginning.

EXHIBIT "B"

PARCEL I

Township 10 South, Range 16 East of the Boise Meridian, Twin Falls County, Idaho,

SECTION 15: A parcel of land located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ described as:

BEGINNING at the Southeast corner of the above mentioned Section 15; THENCE North 00° 03' 00" West, 332.5 feet to a point; THENCE South 89° 57' 00" West, 32.00 feet to the Real Point of Beginning; THENCE South 89° 57' 00" West, 213.40 feet to a point on the East line of of that tract of land conveyed to Kendal Egbert and wife dated September 3, 1971 and recorded June 6, 1975 as Instrument No. 681183; THENCE South 00° 03' 00" East along said East line of lands of Egbert, 100.00 feet to a point; THENCE North 89° 57' 00" East, 213.40 feet to a point; THENCE North 00° 03' 00" West, 100.00 feet to the Real Point of Beginning.

PARCEL II

Township 10 South, Range 16 East of the Boise Meridian, Twin Falls County, Idaho,

SECTION 15: A Non-Exclusive Easement for ingress and egress over a parcel of land located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ described as follows:

BEGINNING at the Southeast corner of said Section 15: THENCE North 00° 03' 00" West, 332.50 feet to a point; THENCE South 89° 57' 00" West, 25.00 feet to the Real Point of Beginning; THENCE South 89° 57' 00" West, 7.00 feet to a point; THENCE South 00° 03' 00" East, 100.0 feet to a point; THENCE North 89° 57' 00" East, 7.00 feet to a point; THENCE North 00° 03' 00" West, 100.0 feet to the Real Point of Beginning.

EXHIBIT "C"

The South 100 feet of the North 200 feet of the following described parcel of land:

Township 10 South, Range 16 East of the Boise Meridian, Twin Falls County, Idaho,

SECTION 15: A parcel of land located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ described as follows:

BEGINNING at the Southeast corner of the above mentioned Section 15; THENCE North 0° 03' West, 132.5 feet to a point; THENCE South 89° 57' West, 32.0 feet to the Real Point of Beginning; THENCE North 0° 03' West 400.0 feet to a point; THENCE South 89° 57' West, 213.4 feet to a point; THENCE South 0° 03' East, 400.0 feet to a point; THENCE North 89° 57' East, 213.4 feet to the Real Point of Beginning.

EXHIBIT "D"

The North 100 feet of the following described parcel of land:

Township 10 South, Range 16 East of the Boise Meridian, Twin Falls County, Idaho,

SECTION 15: A parcel of land located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ described as follows:

BEGINNING at the Southeast corner of the above mentioned Section 15; THENCE North 0° 03' West, 132.5 feet to a point; THENCE South 89° 57' West, 32.0 feet to the Real Point of Beginning; THENCE North 0° 03' West 400.0 feet to a point; THENCE South 89° 57' West, 213.4 feet to a point; THENCE South 0° 03' East, 400.0 feet to a point; THENCE North 89° 57' East, 213.4 feet to the Real Point of Beginning.

TOGETHER WITH a Non-Exclusive Easement for ingress and egress over a parcel of land located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ described as follows:

BEGINNING at the Southeast corner of the said Section 15; THENCE North 0° 03' West, 532.5 feet to a point; THENCE South 89° 57' West, 25 feet to the Real Point of Beginning; THENCE South 89° 57' West, 7 feet to a point; THENCE South 0° 03' East, 100.0 feet to a point; THENCE North 89° 57' East, 7 feet to a point; THENCE North 0° 03' West, 100.0 feet to the Real Point of Beginning.

EXHIBIT "E"

Township 10 South, Range 16 East of the Boise Meridian, Twin Falls County, Idaho,

Section 15: A parcel of land located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ described as follows: Beginning at the Southeast corner of the above mentioned Section 15;

THENCE North 0° 03' West, 132.5 feet to a point;
THENCE South 89° 57' West, 25 feet to the Real Point of Beginning;
THENCE South 89° 57' West, 220.4 feet to a point;
THENCE South 0° 03' East, 107.5 feet to a point;
THENCE North 89° 57' East, 220.4 feet to a point;
THENCE North 0° 03' West, 107.5 feet to the Real Point of Beginning.

EXHIBIT "F"

A well located on the following real property:

Township 10 South, Range 16 East of the Boise Meridian, Twin Falls County, Idaho,

Section 15: A parcel of land located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, described as follows: Beginning at the SE corner of the said Section 15; thence

North 0°03' West 132.5 feet to a point; thence
South 89°57' West 32 feet; thence
North parallel with the East line of said Section, a distance of 12 feet to the True Point of Beginning; thence
from said True Point of Beginning, North parallel with the East line of said Section, a distance of 22 feet; thence
West parallel with South line of said Section, a distance of 84 feet; thence
South parallel with the East line of said Section, a distance of 22 feet; thence
East parallel with the South line of said Section, a distance of 84 feet to the Point of Beginning.

17 100 100
PM 1 100 100
REVIEWED
Clifford L. Howard
Clifford L. Howard
STATE OF IDAHO }
County of Twin Falls }
I hereby certify that the instrument
filed for record at the request of
SAHECO Title
33200, this JUL 18 1979
in my office and duly recorded in book
of page
RICHARD A. PENCE
Ex-Officio Recorder
Henry Beckwith
Deputy
Fee \$ 36.80
Return to
SAHECO Title