

TRUST AGREEMENT.

THIS TRUST INDENTURE, made this 27th day of February, 1976, by and between OLD SPANISH TRAILS ESTATES WATER COMPANY, INC., a Corporation organized and existing under and by virtue of the laws of the State of Utah, (hereinafter called "GRANTOR" or "PARTY OF THE FIRST PART"), and CEDAR LAND TITLE, INC., a Corporation duly chartered, organized and existing under and by virtue of the laws of the State of Utah (hereinafter called "TRUSTEE" or "PARTY OF THE SECOND PART").

WITNESSETH:

That WHEREAS, Grantor is now the owner of the water works system at SPANISH TRAIL ESTATES, UNITS 1 and 2, Subdivisions, located in or near the City of Cedar, County of Iron, State of Utah, which property is being improved and developed by the construction of dwellings thereon; and

WHEREAS, Grantor has been deeded the right to the use of easements on all residential lots for ingress and egress to and for the operation and maintenance of individual septic tank sewage disposal systems to be designed, located, financed and constructed by individual homeowners in compliance with the Utah Department of Health and the provisions of this Trust Agreement, and is for the purpose of supplying sewage disposal service to all properties within the subdivision in lieu of sanitary sewage system; and

~~WHEREAS, the Federal Housing Administration will not accept for insurance, and the Veterans Administration will not guarantee or insure,~~ mortgage loans covering the separate properties and improvements built or to be built thereon, without receiving assurances as to the continuous and satisfactory operation and maintenance of said septic tank system; and

WHEREAS, Such improvements and development of the properties and the future financing and sale of the properties is contingent upon the insurance of said mortgage loans by the Federal Housing Administration or the guarantee or assurance of said mortgage loans by the Veterans Administration; and

WHEREAS, it is the intention and purpose of the Grantor that such septic tank systems shall be used and operated and maintained to provide adequate disposal of sewage for each of the properties within said subdivision, regardless of the ownership of the individual properties, and properly to maintain the septic tank systems so that it will not adversely affect said properties, and to insure the continuance of the operation and maintenance of all such septic tank systems for the benefit of the present and future land owners of the properties in the said subdivision, the mortgages covering such properties, and the Federal Housing Administration and the Veterans Administration.

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Recorded at
Request of Louis Gordon

Date Aug 31-76 11A.M. Fee 88.00 Bl. 220. Page 875-880

Juan P. [Signature] IRON County Recorder
Deputy
Ver'd. Ind'd. Abs'd. Proof

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NOW, THEREFORE, for and in consideration of the undertakings of the Grantor to provide and assure the maintenance and operation of the septic tank systems as aforesaid and for the further sum of \$1.00 lawful money of the United States, cash in hand paid to Grantor by Trustee, a certain easement in favor of Grantor which reserves unto Grantor the right to ingress and egress to the individual septic tank systems on each lot at Spanish Tail Estates, Units 1 and 2, for the express purpose of maintaining said sewage disposal systems; that said easement is dated the 31st day of July, 1973, and recorded the 26th day of September, 1973, as Entry No. 170117, as to Unit 1; and dated the 1st day of November, 1974, and recorded the 13th day of February, 1975 as Entry No. 176676 as to Unit 2.

(A) That said easements are described as they appear verbatim as shown on the recorded plat in the office of the Iron County Recorder.

(B) The septic tank systems including all appurtenances, distribution boxes, drain fields, effluent lines and all items incidental thereto, heretofore constructed or to be constructed, include all easements incident to the operation and maintenance of said septic tank systems.

This conveyance is upon the trust and for the purposes following to-wit:

1. This grant is for the benefit of the present and future owners of all and each of the properties now or hereafter connected to the said septic tank systems, or central sewage system as well as the holders of the mortgages covering each of the properties, and the Trustee shall hold easements to each property granted by this indenture until, as provided below, the indenture shall be of no further effect.

(a) The Trustee shall transfer the right of operation of the septic tank systems etc., granted by this indenture to a Governmental authority or to a public utility company controlled and regulated as to rates and services by a State Public Commission or similar body which undertakes to operate and maintain the septic tank systems or central sewage systems (1) at the request of, and upon such terms and conditions as may be approved by, the owner or owners of a majority of the properties connected to the septic tank systems, or (2) upon the issuance of a judicial decree requiring such transfer. The Grantor shall have no rights

with respect to such transfer of the systems, facilities and property, and shall not be entitled to any portion of the proceeds, if any, resulting from such transfer. The term "transfer" as used herein shall include, but is not limited to, transfer by sale or as the result of condemnation proceedings, immediately upon such transfer this indenture shall be of no further effect.

(b) In the event other adequate Sanitary sewer service is provided by Governmental authority through means other than the operation of the septic tank systems and facilities transferred to the Trustee herein, the provisions of this indenture relating to the operation and maintenance of the septic tank systems shall be of no effect; the Trustee shall, under such circumstances, terminate his right to operate such facilities and property covered by this indenture upon such terms and conditions as may be approved by

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the owner or owners of the majority of the properties connected to the septic tank systems. The Grantor shall have no rights with respect to such disposition of the system, facilities and property, and shall not be entitled to any portion of the proceeds, if any; resulting from said disposition. Immediately upon such disposition of the system, this indenture shall be of no further effect.

2. The Grantor agrees to provide at all times, for each of the properties connected to the said septic tank systems, service adequate for the safe and sanitary collection, treatment, and disposal of all domestic sewage from said dwellings. The Grantor further shall operate and maintain the septic tanks systems, including the drain fields, in a manner so as not to pollute the ground, air, or water in, under or around said properties with improperly or inadequately treated sewage, or with noxious or offensive gases or odors. The Grantor further agrees to operate the septic tank systems in accordance with regulations and recommendations of the Utah State Board of Health and any and all public authorities having jurisdiction in such matters. Records of any and all tests conducted in connection with said systems shall be kept as permanent records by the Grantor and said records shall be open to inspection by the State Board of Health of the State of Utah, and the owners of the properties connected to said septic tank systems. The said Board of Health and/or its agents, acting on behalf of the Grantor or the Trustee, shall at all times have access across the easements heretofore described to the respective septic tank systems for the purpose of conducting any and all tests as said board shall consider necessary to determine compliance with the said regulations and recommendations. In the event said board shall determine that the operation of the septic tank systems do not meet the said regulations or recommendations, the Grantor shall with reasonable dispatch at its sole cost make any adjustment, repair, installation or improvement that shall be necessary or recommended by said board to bring the operation of the systems up to the said regulations and recommendations.

3. The Grantor shall maintain said septic tank systems at all times in good order and repair so that satisfactory service as aforesaid may be supplied to each of said properties as provided in paragraph 2 above. However, Grantor shall only be responsible to operate, maintain, repair, adjust, or improve any septic tank system that has become defective as a result of normal usage wherein only normal human household wastes are deposited. In the event it is determined that the cause of the malfunctioning of any septic tank system is due to the disposing of foreign matter or material by the respective home or property owner, then in that event, Grantor shall correct such malfunctioning and charge the homeowner for same.

4. This Deed of Trust shall remain in full force and effect for twenty (20) years and shall terminate on _____ day of February, 1996. Until that time, should the Grantor fail to operate and manage the septic tank systems in the manner and under the conditions specified in paragraphs 1, 2 and 3 above and should Grantor fail, after notice in writing from the Trustee to correct such failure within reasonable dispatch, then Trustee shall have the right to immediately operate and

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maintain the septic tank systems in place and in lieu of Grantor, and the right to use, operate, manage and control the same either itself or by or through any of the agencies or parties for whose benefit this trust is created and the Trustee may exercise any authority herein given to Grantor for the purpose of operating the same, and in that event, the Trustee or the entity operating the septic tank disposal systems in its behalf or in the behalf of any of the beneficiaries of this trust, shall be subrogated to all rights of the Grantor to levy and collect a charge against each customer at rates not in excess of those specified in paragraph numbered 6 herein.

5. In the event the Trustee takes control of the septic tank systems pursuant to the provisions of paragraph numbered 4 or paragraph numbered 6, the Grantor shall have no further right or interest in the operation and maintenance of the septic tank systems under this indenture. The Trustee shall have, however, the right to transfer their authority in such systems to a Governmental authority upon such terms or conditions as may be approved by the Trustee and the owner or owners of a majority of the properties connected to the septic tank systems.

6. The Grantor reserves the right to levy and collect a charge for septic tank services as may be required by the terms of this Trust Agreement and provided to the occupants of each of the properties connected to the sewage system in the amount of \$2.00 per quarter. Service shall be charged on a prorated basis from the date the service is established at the request of the customer to the date of its discontinuance.

(a) It is agreed between the parties hereto that for the first year of operation of the septic tank system and/or systems the above rate shall be deemed reasonable.

(b) The Grantor shall maintain accurate books relative to the septic tank systems and such books shall be available for inspection by a person or persons designated in writing by the Trustee or designated in writing by not less than one-third of the beneficiaries of this Trust; provided, that the continuing right of inspection hereby created shall be exercised only at the place where such books are customarily maintained in Cedar City, Utah, and that such right of inspection shall be exercised during usual business hours, after reasonable notice and in such a manner as not to hamper unduly or interfere with the conduct of the Grantor's business.

(c) Changes in rates may be proposed by the Grantor and by the said beneficiaries. If within ninety (90) days after notice to the Trustee and to the Beneficiaries of a rate change proposed by the Grantor not more than one-third of the beneficiaries of this trust shall have signified in writing their opposition to such proposed rate change, the Grantor may forthwith establish such new rates which shall be deemed reasonable pending the accumulation of experience to show such new rates to be unreasonable. If more than one-third of the beneficiaries signify their opposition to a rate change proposed by the Grantor, or if more than one-third of the beneficiaries propose in writing a rate change which the Grantor opposes, and the parties cannot reach an agreement by negotiation within thirty (30) days, then the matter shall be referred to a board of

arbitrators who shall be designated as follows: The Grantors shall designate an arbiter, the beneficiaries shall designate an arbiter the the two arbiters thus selected shall choose a third arbiter. The decision of the board of arbiters as to the reasonableness of rates shall be final upon the parties hereto. All costs of arbitration shall be paid by the losing party or parties. The duly elected officers of a citizen's or property owners' association comprised of the beneficiaries, or the members of a committee duly appointed by such officers, shall prima facie represent more than one-third of the beneficiaries.

(d) Should the Grantor charge rates for septic tank services in excess of reasonable rates, as hereinabove defined, then the Trustee shall notify the Grantor of such overcharge by registered mail. Should the Grantor thereafter fail or refuse to establish and maintain fair and reasonable rates, as herein above defined, within the period of ninety (90) days, the Trustee shall have the right to immediate assignment of all rights held by Grantor for the maintenance and operation of the septic tank systems for the purpose of furnishing service at fair and reasonable rates and the Trustee shall have the right to hold, use, operate, manage and control the septic tank systems, as set forth under paragraph numbered 4 above.

(e) any funds collected under this provision which have not been expended by Grantor or Trustee at the time this Trust Agreement terminates as herein set forth, shall be used first to obtain sewage disposal services from another municipality or organization, if available; second, to the improvement of the water system of the subdivision and last, to improve the community park.

7. Notwithstanding any other provision of this Trust Deed, any creditor of record of the Grantor shall have a reasonable period of time to correct any default hereunder prior to the taking over of the operation and maintenance of the septic tank systems and rights of the Trustee as herein defined.

8. If it should become necessary at any future time for the Trustee or any entity acting in its behalf or any beneficiary under this trust indenture to take over, operate and manage the septic tank systems under the provisions of this trust, then and in that event, the operator of such systems shall be entitled to a Trustee's fee payable from the income of the septic tank systems at a rate not in excess of 10% of the gross charges collected by such Trustee, provided that such Trustee's fee may be increased with the approval of the owner or owners of seventy-five (75) percent of the properties connected to the septic tank systems.

9. The trustee warrants the service as described herein but neither assumes nor implies any liability on their part so far as injury or personal harm to those working on, being around or in any way connected with the above septic tank systems.

IN TESTIMONEY WHEREOF, Old Spanish Trail Estates Water Company, Inc., a Utah Corporation, the Grantor, has caused these presents to be executed in its behalf by RAY E. POTTER, Its President, and its corporate seal to be hereunto affixed and attested by VERYL S. MILLETT, its

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Secretary, and CEDAR LAND TITLE, INC., a Utah corporation, the Trustee herein named, has caused these presents to be executed by JOSEPH H. GUBLER, its President and its corporate seal to be affixed and attested by LOUIS B. CARDON, its Vice-President, the day and year first herein-above written. In entering into the agreement contained herein and executing this Trust Indenture, Cedar Land Title, Inc., acts for itself as Trustee and as representative of and by the authority of all persons, firms, corporations, or entities which are or may be beneficiaries under this trust thereby created.

GRANTOR
OLD SPANISH TRAIL ESTATES WATER COMPANY, INC.
By Ray E. Potter
President
By Veryl S. Millett
Treasurer

TRUSTEE
CEDAR LAND TITLE, INC.
By JH Gubler
President
By Louis B. Cardon
Vice-President

STATE OF UTAH,)
) SS.
COUNTY OF IRON.)

On the 26 day of ~~February~~ ^{August}, 1976, A.D., personally appeared before me JOSEPH H. GUBLER, and LOUIS B. CARDON, who being by me duly sworn did say, each for himself, that he, the said JOSEPH H. GUBLER is the President, and he, the said LOUIS B. CARDON is the Vice-President of CEDAR LAND TITLE, INC., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said JOSEPH H. GUBLER and LOUIS B. CARDON each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Joseph H. Gubler
Notary Public

My Commission expires 2-2-78 My residence is Cedar City, Utah

STATE OF UTAH,)
) SS.
COUNTY OF IRON.)

On the 26 day of ~~February~~ ^{August}, 1976, A.D., 1976 personally appeared before me RAY E. POTTER and VERYL S. MILLETT who being by me duly sworn did say, each for himself, that he, the said RAY E. POTTER is the President, and he, the said VERYL S. MILLETT is Secretary of OLD SPANISH TRAIL ESTATES WATER COMPANY, Inc., and that the within and foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said RAY E. POTTER and VERYL S. MILLETT each duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Wayne D. Galt
Notary Public

My Commission expires 10-6-79 My residence is Cedar City, Utah

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