

AGREEMENT

THIS AGREEMENT is entered into this day by and between T. R. SHELBY and EMILY SHELBY ("Shelby") and NETTIE B. HELD DITCH COMPANY, an unincorporated association ("Held Ditch Co.").

RECITALS

A. Shelby owns in fee simple and is entitled to possession of the surface of certain real property in the E $\frac{1}{2}$ NW $\frac{1}{4}$ , Section 33, Township 56 North, Range 84 West, 6th P.M., Sheridan County, Wyoming described more specifically in Exhibit "A" attached hereto (the "Shelby Property").

B. An irrigation ditch (the "Held Ditch") owned and maintained by Held Ditch Co. is located upon and across the Shelby Property pursuant to a territorial water appropriation dated October 12, 1882, and subsequent appropriations.

C. Shelby plans to construct improvements on the Shelby property at a location where the Held Ditch is currently located.

D. The parties wish to provide for a relocation of a portion of the Held Ditch on the Shelby Property in accordance with terms of this agreement.

AGREEMENT

In consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

## I.

Held Ditch Co. agrees that its ditch and easement on the Shelby Property may be relocated, provided that Shelby complies with the following restrictions and requirements in relocating the Held Ditch:

- a) The location of the relocated ditch will be mutually agreed upon;

- b) Shelby will execute and deliver an easement for the new ditch in the form annexed hereto as Exhibit "B", which shall specifically describe the location of the easement in conformity with the requirements of Wyoming Statute § 34-1-141;
- c) Shelby shall construct a good, sufficient and permanent ditch on such easement, adequate to carry 11 cubic feet of water per second (11 c.f.s.) through the entire length of the new ditch.
- d) All costs and expenses for planning, surveying, construction and other incidental expenses including legal and recording fees attributable to the relocation of the Held Ditch will be paid by Shelby and Shelby agrees to furnish to Held Ditch Co. satisfactory assurances that all such costs have been paid;
- e) Upon the performance of each of the requirements set out in subparagraphs (a) through (d) and upon Shelby connecting the relocated ditch to the existing ditch, at his expense, then Shelby may take possession of and construct improvements over original Held Ditch on the Shelby Property, and Held Ditch Co. will release any claim it has for an easement on the Shelby Property, excepting the easement for the newly constructed ditch which is mentioned in subparagraph (b) above. Held Ditch Co. will have uninterrupted use of the existing ditch until the relocated and newly constructed ditch is substantially completed and sufficient to convey 11 c.f.s.
- f) The Held Ditch, as relocated, will be constructed as an open, uncovered ditch, provided that, in the

event the ditch does not maintain the minimum flow required by this agreement, Shelby shall, at his sole expense, make such alterations as are necessary so that the ditch will convey through the portion relocated the minimum flow required by this agreement. Within eighteen (18) months after the relocated ditch is completed, if a two-thirds (2/3) majority of the members of Held Ditch Co. determine significant water loss is occurring in the relocated ditch, and if such loss is certified by a licensed civil engineer, to be mutually acceptable to Shelby and two-thirds (2/3) majority of the members of Held Ditch Co. may require and Shelby agrees to install, at his expense, a concrete lining, pipe, or other sufficient means to eliminate the water loss caused by Shelby's relocation of the ditch. The means of eliminating such loss shall be as recommended by the engineer and confirmed by a two-thirds (2/3) majority vote of the Held Ditch Co. members. Any work so required shall be done and completed after the irrigating season. Any necessary alterations shall be accomplished with reasonable promptness after the irrigating season. If the relocated ditch breaks or substantially fails, Shelby shall immediately cause repairs to be made.

- g) Within ten (10) days after execution of this agreement, Shelby shall deliver a letter of credit from a bank authorized to do business in Sheridan County, Wyoming, in the amount of Seven Thousand Five Hundred Dollars (\$7,500.00) payable to the Nettie B. Held Ditch Company, to the president of

the Held Ditch Co. The letter of credit shall be payable upon receipt from the ditch company of an affidavit, executed by the president and secretary of the ditch company, indicating that Shelby has failed to perform his obligations as indicated in subparagraph f) above, has been given notice of such failure, and has failed to cure such failure for a period of thirty (30) days. The Held Ditch Co. shall return the letter of credit to Shelby eighteen (18) months from the date of execution of this agreement provided Shelby has complied with subparagraph f) above.

II.

Shelby will perform the routine maintenance of the Held Ditch on Shelby Property which is required of all members of the Held Ditch Co. on their respective properties.

III.

Held Ditch Co. will retain and is hereby granted a continuing easement, twenty (20) feet in width, the centerline of which follows the centerline of the Held Ditch, wherever it may be relocated on the Shelby Property, for purposes of constructing, reconstructing, maintaining, cleaning, repairing and operating the Held Ditch.

IV.

Upon relocation of the Held Ditch, as provided in this agreement, Shelby may, in his discretion, remove, fill or otherwise destroy that portion of the existing Held Ditch which is replaced by the relocated ditch. Held Ditch Co. will cooperate, as necessary, in effecting any forfeiture or abandonment of that portion of the existing Held Ditch which is replaced by the relocated ditch in accordance with the terms of this agreement.

## V.

Nothing in this agreement shall be construed to create any obligation on the part of Shelby to maintain, repair or change any portion of the Held Ditch other than that portion which is relocated on the Shelby Property.

## VI.

Nothing in this agreement shall be construed to require Held Ditch Co. to provide any maintenance, repair or other service in connection with the Held Ditch beyond that which would be required if the relocation of the Held Ditch on the Shelby Property did not occur.

## VII.

Shelby undertakes to indemnify Held Ditch Co. from any and all liability, loss or damage Held Ditch Co. may suffer as a result of claims, demands, costs, or judgment against it arising from the relocation and construction of the Held Ditch as herein provided and further Shelby undertakes to indemnify Held Ditch Co. from any and all liability, loss or damage Held Ditch Co. may suffer as a result of claims, demands, costs or judgment against it for death, injury or property damage suffered by any patient, patient visitor, or employee of facilities operated on the Shelby Property arising from the use and operation of the Held Ditch on Shelby Property.

## VIII.

This agreement shall inure to the benefit of and be binding on the heirs, executors, administrators, assignees, and successors of the respective parties.

## IX.

This contract shall terminate on April 1, 1989, if Shelby has not, by that time, relocated the Held Ditch pursuant to this agreement.

IN WITNESS WHEREOF, the parties have executed this agreement in Sheridan, Wyoming, this 20th day of May, 1988.

T. R. Shelby  
T. R. SHELBY

Emily Shelby  
EMILY SHELBY

NETTIE B. HELD DITCH COMPANY,  
An Unincorporated Association

By: Richard D. Zingham  
President

By: Carol S. Timm  
Secretary

STATE OF WYOMING     )  
                              : ss  
COUNTY OF SHERIDAN    )

The foregoing instrument was acknowledge before me this 20 day of May, 1988, by T. R. Shelby and Emily Shelby.

WITNESS my hand and official seal.

Kay L. Smith  
Notary Public

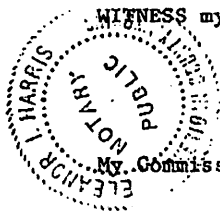
My Commission expires: 11-23-91



STATE OF WYOMING     )  
                              : ss  
COUNTY OF SHERIDAN    )

The foregoing instrument was acknowledge before me this 2nd day of June, 1988, by Richard D. Zingham as President and Carol S. Timm as Secretary of Nettie B. Held Ditch Company.

WITNESS my hand and official seal.



Eleanor J. Harris  
Notary Public

My Commission expires: Feb. 15, 1989

EXHIBIT "A"Block 1

A tract of land lying in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ , and the SE $\frac{1}{4}$ NW $\frac{1}{4}$ , Section 33, Township 56 North, Range 84 West of the 6th Principal Meridian, Sheridan County, Wyoming, said tract being more particularly described as follows:

Beginning at the point of intersection of the east and north right-of-way lines of Leopard Street, said point being N0°19'52"W, 654.14 feet from the southwest corner of said SE $\frac{1}{4}$ NW $\frac{1}{4}$ , thence along said east right-of-way line N0°59'56"W, 1071.02 feet to a point of the south right-of-way line of State Highway No. 331, thence along said south right-of-way line N58°11'20"E, 715.81 feet through a curve to the left having a delta of 14°06'23", a radius of 2914.79 feet and a length of 717.62 feet to a point, thence along said south right-of-way line N51°07'59"E, 61.93 feet to a point on a fence line, thence along said fence line S44°32'54"E, 370.95 feet to a point, thence along said fence line S52°48'05"E, 73.70 feet to a point, thence along said fence line S42°22'39"E, 172.26 feet to a point in the centerline of Big Goose Creek, thence along said centerline S25°51'05"W, 205.72 feet to a point, thence along said centerline S37°26'54"W, 314.06 feet to a point, thence along said centerline S67°38'32"W, 176.08 feet to a point, thence along said centerline S41°24'08"W, 392.55 feet to a point, thence along said centerline S27°21'16"W, 130.10 feet to a point, thence along said centerline S02°20'22"E, 137.31 feet to a point on the north right-of-way line of said Leopard Street, thence along the said north right-of-way line S89°35'43"W, 315.59 feet to the point of beginning.

Said tract contains 21.36 acres more or less.