

SAMPLE TRUST DEED

TRUST DEED

THIS TRUST INDENTURE, Made this _____ day of _____, _____, by and between _____, a corporation organized and existing under and by virtue of the laws of the State of _____, (hereinafter called "GRANTOR" or "PARTY OF THE FIRST PART"), and _____ (see text, pages 6 and 7, for selection of entity), TRUSTEE, a corporation duly chartered, organized, and existing under and by virtue of the laws of the State of _____, (hereinafter called "TRUSTEE" or "PARTY OF THE SECOND PART").

WITNESSETH:

THAT WHEREAS, _____ is now the owner of property known as _____, located in or near the City of _____, County of _____, State of _____, which property is being improved and developed by the construction of dwellings thereon; and

WHEREAS, Grantor is the owner of certain property, (hereinafter more particularly described) upon which there is located a well or wells and a plant, together with distribution facilities (hereinafter referred to as "water system"), for the purposes of supplying water to all properties connected or to be connected to the said water system; and

WHEREAS, the Department of Housing and Urban Development (HUD) 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 of the said Water system; and

WHEREAS, such improvement and development of the properties and the future financing and sale of the properties is contingent upon the insurance of said mortgage loans by HUD or the guaranty or insurance of said mortgage loans by the Veterans Administration; and

WHEREAS, it is the intention and purpose of the Grantor that such water system shall be used and operated to provide an adequate supply of water for each of the properties connected thereto, regardless of the ownership of the individual properties, and properly to maintain

an adequate water supply for domestic consumption for the occupants of said properties, and to assure the continuance of the operation and maintenance of such water system for the benefit of the present and future owners of the properties connected thereto, the mortgagees holding mortgages covering such property, and HUD and the Veterans Administration.

NOW, THEREFORE, for and in consideration of the undertakings of the Grantor to provide and assure the maintenance and operation of the water system as aforesaid and the further sum of One Dollar (\$1.00) Lawful money of the United States cash in hand to Grantor by Trustee, the receipt thereof is hereby acknowledge, the Grantor does hereby grant and convey to the party of the second part, as Trustee, the following property, to wit:

(A) All of its right, title, and interest in and to the following described real property:

(Complete description of property upon which water system is located to be inserted in this space)

(B) The well or wells, plant, chemical treatment facilities, storage and distribution facilities, including the water mains and lateral lines, heretofore constructed or to be constructed, including all easements incident to the ownership and operation of said water system.

Further, the Grantor hereby warrants that there are no existing encumbrances, liens, or other indebtednesses to the title of the water system conveyed hereunder, other than the following:

And warrants that the above said encumbrances, liens, or indebtednesses (if any) have been subordinated to this conveyance and are subject to this Trust Deed.

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This conveyance is upon the trusts 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 water system, as well as the holders of the mortgages covering each of the said properties, and Trustee shall hold the title to the property granted by this indenture until either (a) the water system is taken over by either a Governmental authority or a public utility (regulated and controlled as to rates and services by a duly constituted public regulatory body or commission) for maintenance and operation, or (b) other adequate water service is provided either by a Governmental authority or public utility (regulated and controlled as to rates and

services by a duly constituted public regulatory body or commission) through means other than the operation of the water system and facilities now transferred to the Trustee herein. Upon the happening of either of such events at a time when the Grantor is still operating and managing the water system in accordance with the terms and provisions hereof, the Trustee shall immediately reconvey the property to the Grantor, its successors or assigns, and this indenture shall be of no further effect.

2. The Grantor shall supply at all times and under adequate pressure for the use of each of the properties duly connected to the said water system, a sufficient quantity of water to meet the reasonable needs of each of the properties duly connected to said water system. Such water shall be of the quality and purity as shall meet the 1974 Safe Drinking Water Act of the U.S. Environmental Protection Agency (EPA), so as to produce water without excessive hardness, corrosive properties, or other objectionable characteristics making it unsafe or unsuitable for domestic use or harmful to any or all pipes within and/or without the dwellings. Records of any and all tests conducted in connection with said system 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 _____ and the owners of the properties connected to the said water system. The said Board of Health and/or its agents shall at all times have access to the plant of the Grantor to conduct any and all tests as said Board shall consider necessary to determine compliance with the said Standards. In any event, the Grantor shall have said analyses made at least quarterly and shall pay all costs in connection therewith. In the event said Board shall determine that the quality and purity of the water does not meet the said Standard, the Grantor shall, with reasonable dispatch, at its sole costs make any adjustment, repair, installation, or improvement that shall be necessary or recommended by said Board to bring the purity of the water up to the said Standard.

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3. The Grantor shall maintain said water system 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.

4. Until the happening of one of the events set forth under paragraph numbered 1 above: Should Grantor fail to operate and manage the water system, in the manner and under the conditions specified in paragraphs numbered 2 and 3 above and should Grantor fail, after notice in writing from the Trustee, to correct such failure with reasonable dispatch, then Trustee shall take immediate possession of the water system for the purpose of operating and maintaining the same, and shall hold, 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 it shall take possession thereof for the purpose of operating

the same, and in that event, the Trustee or the entity operating the water system 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 possession of the water system pursuant to the provisions of paragraph numbered 4 or paragraph numbered 6, the Grantor shall have no further right, title, or interest in or to the water system or other property granted by this indenture and shall not be entitled to any portion of the proceeds resulting from any sale of such system or property; but the Trustee shall have the right to transfer such system to a Governmental authority upon such terms or conditions as may be approved by the Trustees and the owner or owners of a majority of the properties connected to the water system.

6. The Grantor reserves the right to levy and collect a charge for water furnished and consumed by the occupants of each of the properties connected in the amount of \$_____ per for the first _____ gallons per _____ consumption, payable in advance on _____.

A _____ discount will be allowed if paid within _____ days after same is due. Service shall be charged on a prorata basis

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from the date the service is established at the request of the consumer to the date of its discontinuance. The Grantor shall have the right to install on each of the individual properties a water meter to be maintained by the Grantor, through which all water supplied to the consumer or consumers shall pass and to which the Grantor shall have access at reasonable times for the purpose of taking meter readings and keeping said meter in repair. In the event the consumer shall have used in the excess of _____ gallons per _____, the Grantor may charge for any such excess at the following rates:

_____ Cents per thousand gallons for the
next _____ thousand gallons used per _____;
_____ Cents per thousand gallons for the
next _____ thousand gallons used per _____;
_____ Cents per thousand gallons for the
next _____ thousand gallons used per _____;

(a) It is agreed between the parties hereto that for the first year of operation of the water system, the above rates shall be deemed reasonable.

(b) The Grantor shall maintain accurate books relative to the water

system. 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 _____; 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 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 in writing 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 30 days, then the matter shall be referred

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to a board of arbiters, who shall be designated as follows: The Grantor shall designate an arbiter, the beneficiaries shall designate an arbiter, and 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 citizens' 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 water service in excess of reasonable rates, as herein above 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 take immediate possession of the water system for the purpose of furnishing water service at fair and reasonable rates and the Trustee shall hold, use, operate, manage, and control the water system, as set forth under paragraph numbered 4 above.

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 property by the trustee.

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 water system under the provisions of this trust, then and in that event, the operator of such system shall be entitled to a Trustee's fee payable from the income of the water system at a rate not in excess of _____% 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) per cent of the properties connected to the said water system.

IN TESTIMONY WHEREOF _____, the Grantor, has caused these presents to be executed in its behalf by _____, its President, and its corporate seal to be hereunto affixed and attested by _____, its _____ and the _____, the Trustee herein named, has caused these presents to be executed by _____, its President, and its corporate seal to be affixed and attested by _____, the day and year first hereinabove written.

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In entering into the agreement contained herein and executing this Trust Indenture, _____ acts for itself as Trustee and as representative of and by authority of all persons, firms, corporations, or entities which are or may be beneficiaries under the trust thereby created.

_____ Grantor

By _____

ATTEST:

_____ Trustee

By _____

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