

USDA-FmHA
Form FmHA 427-7 UT-NV
(7-11-78)

REAL ESTATE DEED OF TRUST FOR UTAH AND NEVADA

THIS DEED OF TRUST is made and entered into by and between the undersigned _____

LUND AND STITZEL, a partnership

residing in Eureka County, Nevada whose post office address
(state)
is Pine Valley Route Carlin, Nevada, 89822
(state) (zip code)

as trustor(s) herein called "Borrower", and the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, a Government agency, 125 South State Street, Room 5434 Federal Building, Salt Lake City, Utah, as trustee, herein called "Trustee", and the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, as beneficiary, herein called the "Government", and:

WHEREAS Borrower is indebted to the Government as evidenced by one or more promissory note(s) or assumption agreement(s), herein called "note", which has been executed by Borrower, is payable to the order of the Government, authorizes acceleration of the entire indebtedness at the option of the Government upon any default by Borrower, and is described as follows:

<u>Date of Instrument</u>	<u>Principal Amount</u>	<u>Annual Rate of Interest</u>	<u>Due Date of Final Installment</u>
April 23, 1979	220,000.00	8.5000%	April 23, 2019

And the note evidences a loan to Borrower, and the Government, at any time, may assign the note and insure the payment thereof pursuant to the Consolidated Farm and Rural Development Act, or Title V of the Housing Act of 1949;

And it is the purpose and intent of this instrument that, among other things, at all times when the note is held by the Government or in the event the Government should assign this instrument without insurance of the note, this instrument shall secure payment of the note and shall secure any FUTURE ADVANCES by the Government to the Borrower (all references herein to the "note" shall be deemed to include such future note(s)); but when the note is held by an insured holder, this instrument shall not secure payment of the note or attach to the debt evidenced thereby, but as to the note and such debt shall constitute an indemnity deed of trust to secure the Government against loss under its insurance contract by reason of any default by Borrower:

NOW, THEREFORE, in consideration of the loan(s) Borrower does hereby grant, bargain, sell, convey, and assign unto trustee the following described property situated in the State of Utah, Nevada, County(ies) of

As per attached description

BOOK 70 PAGE 125
FmHA 427-7 UT-NV (7-11-78)

DESCRIPTION

All those certain lots, pieces or parcels of land situate in the County of Eureka, State of Nevada, more particularly described as follows:

PARCEL I:

TOWNSHIP 31 NORTH, RANGE 51 EAST, MDB&M.

Section 1: That portion lying Westerly and Southerly of the centerline of Nevada State Highway 51, as the same is now constructed.

Section 2: N $\frac{1}{2}$

Section 11: Lots 1, 2, 3 & 4; S $\frac{1}{2}$ N $\frac{1}{2}$; N $\frac{1}{2}$ SW $\frac{1}{4}$; SE $\frac{1}{4}$ SW $\frac{1}{4}$; SE $\frac{1}{4}$

EXCEPTING from Section 2 that parcel conveyed by T. R. JEWELL, et al, to CENTRAL PACIFIC RAILWAY COMPANY by Deed recorded May 2, 1902 in Book 14 of Deeds at page 426, Eureka County, Nevada, records.

FURTHER EXCEPTING therefrom that parcel of Section 2 conveyed by T. R. JEWELL to the SOUTHERN PACIFIC COMPANY by deed recorded April 14, 1906 in Book 15 of Deeds at page 176, Eureka County, Nevada, records.

FURTHER EXCEPTING therefrom a parcel of land conveyed by THOMAS R. JEWELL and THOMAS H. JEWELL to the WESTERN PACIFIC RAILWAY COMPANY by deed recorded May 23, 1906 in Book 15 of Deeds at page 186, Eureka County, Nevada, records.

FURTHER EXCEPTING therefrom a parcel of land conveyed by THOMAS R. JEWELL, et ux, to CENTRAL PACIFIC RAILWAY COMPANY by deed recorded September 25, 1907 in Book 15 of Deeds at page 531, Eureka County, Nevada, records.

EXCEPTING from portions of the S $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 1 and All of Section 11, all petroleum, oil, natural gas and products derived therefrom within or underlying said land or that may be produced therefrom, as reserved in Deed dated January 17, 1950 from SOUTHERN PACIFIC LAND COMPANY to FILBERT ETCHEVERRY, OSCAR RUDNICK and SAM RUDNICK co-partners, doing business as EUREKA LIVESTOCK COMPANY, recorded March 9, 1950 in Book 24 of Deeds at page 42, Eureka County, Nevada, records.

BOOK 70 PAGE 126

FURTHER EXCEPTING from portions of the S $\frac{1}{4}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ of Section 1 and All of Section 11, all oil, gas and minerals as conveyed by MELVIN JONES and RACHEL JONES to SAM RUDNICK, et al, by deed recorded November 5, 1962 in Book 26 of Deeds at page 299, Eureka County, Nevada, records.

PARCEL II:

TOWNSHIP 31 NORTH, RANGE 52 EAST, MDB&M

- Section 6: That portion of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ lying southerly of the centerline of Nevada State Highway 51, as the same is now constructed.
- Section 7: That portion lying westerly and southerly of the centerline of Nevada State Highway 51 as the same is now constructed.
- Section 17: That portion of the W $\frac{1}{4}$ lying westerly and southerly of the centerline of Nevada State Highway 51, as the same is now constructed.
- Section 18: That portion of the E $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$ lying westerly and southerly of the centerline of Nevada State Highway 51 as the same is now constructed.

"Together with all rights to the use of water, ditches and other accessories for irrigation and drainage of said premises including water rights now appurtenant under adjudicated water for 255 acres out of Pine Creek through the Humboldt Water Drainage System."

TOGETHER WITH Federal Grazing Rights appurtenant to said lands as described below:

- I. Under authority of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1269), Federal grazing rights administered by the United States Department of the Interior, BUREAU OF LAND MANAGEMENT, are allotted to Lund & Stitzel in the following BLM Allotments, as shown on BLM Allotment Maps:

Safford Canyon & Palisade Allotments

together with all rights, interests, easements, hereditaments and appurtenances thereunto belonging, the rents issues, and profits thereof and revenues and income therefrom, all improvements and personal property now or later attached thereto or reasonably necessary to the use thereof, including, but not limited to ranges, refrigerators, clothes washers, clothes dryers, or carpeting purchased or financed in whole or in part with loan funds, all water, water rights, and water stock pertaining thereto, and all payments at any time owing to Borrower by virtue of any sale, lease transfer, conveyance, or condemnation of any part thereof or interest therein all of which are herein called "the property".

TO HAVE AND TO HOLD the property unto Trustee, Trustee's successors, grantees and assigns forever and in fee simple:

IN TRUST, NEVERTHELESS, (a) at all times when the note is held by the Government, or in the event the Government should assign this instrument without insurance of the payment of the note, to secure prompt payment of the note and any renewals and extensions thereof and any agreements contained therein, including any provisions for the payment of an insurance or other charge, (b) at all times when the note is held by an insured holder, to secure performance of Borrower's agreement herein to indemnify and save harmless the Government against loss under its insurance contract by reason of any default by Borrower, and (c) in any event and at all times to secure the prompt payment of all advances and expenditures made by the Government, with interest, as hereinafter described and the performance of every covenant and agreement of Borrower contained herein or in any supplementary agreement.

BORROWER for Borrower's self, Borrower's heirs, executors, administrators, successors and assigns WARRANTS the property unto Trustee for the benefit of the Government against all lawful claims and demands whatsoever except any liens, encumbrances, easements, reservations, or conveyance specified hereinabove, and COVENANTS AND AGREES as follows:

(1) To pay promptly when due any indebtedness to the Government hereby secured and to indemnify and save harmless the Government against any loss under its insurance of payment of the note by reason of any default by Borrower. At all times when the note is held by an insured holder, Borrower shall continue to make payments on the note to the Government as collection agent for the holder.

(2) To pay to the Government such fees and other charges as may now or hereafter be required by regulations of the Farmers Home Administration.

(3) If required by the Government, to make additional monthly payments of 1/12 of the estimated annual taxes, assessments, insurance premiums and other charges upon the mortgaged premises.

(4) Whether or not the note is insured by the Government, the Government may at any time pay any other amounts required herein to be paid by Borrower and not paid by Borrower when due, as well as any costs and expenses for the preservation, protection, or enforcement of this lien, as advances for the account of Borrower. All such advances shall bear interest at the rate borne by the note which has the highest interest rate.

(5) All advances by the Government as described in this instrument, with interest, shall be immediately due and payable by Borrower to the Government without demand at the place designated in the latest note and shall be secured hereby. No such advance by the Government shall relieve Borrower from breach of Borrower's covenant to pay. Any payment made by Borrower may be applied on the note or any indebtedness to the Government secured hereby, in any order the Government determines.

(6) To use the loan evidenced by the note solely for purposes authorized by the Government.

(7) To pay when due all taxes, liens, judgments, encumbrances, and assessments lawfully attaching to or assessed against the property, including all charges and assessments in connection with water, water rights, and water stock pertaining to or reasonably necessary to the use of the real property described above, and promptly deliver to the Government without demand receipt evidencing such payments.

(8) To keep the property insured as required by and under insurance policies approved by the Government and, at its requests to deliver such policies to the Government.

(9) To maintain improvements in good repair and make repairs required by the Government; operate the property in a good and husbandmanlike manner; comply with such farm conservation practices and farm and home management plans as the Government from time to time may prescribe, and not to abandon the property, or cause or permit waste, lessening or impairment of the security covered hereby, or, without the written consent of the Government, cut, remove, or lease any timber, gravel, oil, gas, coal, or other minerals except as may be necessary for ordinary domestic purposes.

BOOK 70 PAGE 128

0211

- (10) To comply with all laws, ordinances, and regulations affecting the property.
- (11) To pay or reimburse the Government for expenses reasonably necessary or incidental to the protection of the lien and priority hereof and to the enforcement of or the compliance with the provisions hereof and of the note and any supplementary agreement (whether before or after default) including but not limited to costs of evidence of title to and survey of the property, costs of recording this and other instruments, attorneys' fees, trustees' fees, court costs, and expenses of advertising, selling, and conveying the property.
- (12) Neither the property nor any portion thereof or interest therein shall be leased, assigned, sold, transferred or encumbered, voluntarily or otherwise, without the written consent of the Government. The Government shall have the sole and exclusive rights as beneficiary hereunder, including but not limited to the power to grant consents, partial releases, subordinations, and satisfaction, and no insured holder shall have any right, title or interest in or to the lien or any benefits hereof.
- (13) At all reasonable times the Government and its agents may inspect the property to ascertain whether the covenants and agreements contained herein or in any supplementary agreement are being performed.
- (14) The Government may extend and defer the maturity of and renew and reamortize the debt evidenced by the note or any indebtedness to the Government secured hereby, release from liability to the Government any party so liable thereon, release portions of the property from and subordinate the lien hereof, and waive any other rights hereunder, without affecting the lien or priority hereof or the liability to the Government of Borrower or any other party for payment of the note or indebtedness secured hereby except as specified by the Government in writing.
- (15) If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a production credit association, a Federal land bank, or other responsible cooperative or private credit source, at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, upon the Government's request, apply for and accept such loan in sufficient amount to pay the note and any indebtedness secured hereby and to pay for any stock necessary to be purchased in a cooperative lending agency in connection with such loan.
- (16) Default hereunder shall constitute default under any other real estate, or personal property or other, security instrument held or insured by the Government and executed or assumed by Borrower, and default under any such other security instrument shall constitute default hereunder.
- (17) SHOULD DEFAULT occur in the performance or discharge of any obligation in this instrument or secured by this instrument, or should any one of the parties named as Borrower die or be declared an incompetent, a bankrupt, or an insolvent, or make an assignment for the benefit of creditors, the Government, at its option with or without notice, may: (a) declare the entire amount unpaid under the note and any indebtedness to the Government hereby secured immediately due and payable, (b) for the account of Borrower incur and pay reasonable expenses for repair or maintenance of and take possession of, operate or rent the property, (c) upon application by it and production of this instrument without other evidence and without notice of hearing of said application, have a receiver appointed for the property, with the usual powers of receivers in like cases, and (d) authorize and request Trustee to foreclose this instrument and sell the property as provided by law, (e) bring an action to foreclose this instrument, obtain a deficiency judgment, or enforce any other remedy provided by law.
- (18) **WAIVER: THE BORROWER ACKNOWLEDGES AND AGREES THAT IF BORROWER DEFAULTS A NONJUDICIAL FORECLOSURE SALE OF THE PROPERTY MAY BE CONDUCTED WITHOUT A HEARING OF ANY KIND. THE BORROWER HEREBY WAIVES ANY RIGHTS BORROWER MAY HAVE TO ANY SUCH HEARING. NEVERTHELESS, THE REGULATIONS OF THE FARMERS HOME ADMINISTRATION IN EFFECT AT THE TIME SUCH FORECLOSURE IS STARTED MAY PROVIDE FOR A MEETING AND THE GOVERNMENT WILL FOLLOW THESE REGULATIONS.**
- (19) At the request of the Government, Trustee may foreclose this instrument by advertisement and sale of the property as provided by law, for cash or secured credit at the option of the Government, personal notice of which sale need not be served on Borrower; and at such sale the Government and its agents may bid and purchase as a stranger; Trustee at Trustee's option may conduct such sale without being personally present, through Trustee's delegate authorized by Trustee for such purpose orally or in writing, and Trustee's execution of a conveyance of the property or any part thereof to any purchaser at foreclosure sale shall be conclusive evidence that the sale was conducted by Trustee personally or through Trustee's delegate duly authorized in accordance herewith.
- (20) The proceeds of foreclosure sale shall be applied in the following order to the payment of: (a) costs and expenses incident to enforcing or complying with the provisions hereof, (b) any prior liens required by law or a competent court to be so paid, (c) the debt evidenced by the note and all indebtedness to the Government secured hereby, (d) inferior liens of record required by law or a competent court to be so paid, (e) at the Government's option, any other indebtedness of Borrower owing to or insured by the Government, and (f) any balance to Borrower. In case the Government is the successful bidder at foreclosure or other sale of all or any part of the property, the Government may pay its share of the purchase price by crediting such amount on any debts of borrower owing to or insured by the Government, in the order prescribed above.
- (21) All powers and agencies granted in this instrument are coupled with an interest and are irrevocable by death or otherwise; and the rights and remedies provided in this instrument are cumulative to remedies provided by law.
- (22) Borrower agrees that the Government will not be bound by any present or future State laws, (a) providing for valuation, appraisal, homestead or exemption of the property, (b) prohibiting maintenance of an action for a deficiency judgment or limiting the amount thereof or the time within which such action may be brought, (c) prescribing any other statute of limitations, (d) allowing any right of redemption or possession following any foreclosure sale, or (e) limiting the conditions which the Government may by regulation impose, including the interest rate it may charge, as a condition of approving a transfer of the property to a new Borrower. Borrower expressly waives the benefits of any State laws. Borrower hereby relinquishes, waives and conveys all rights, inchoate or consummate, of descent, dower and curtesy.

(23) If any part of the loan for which this instrument is given shall be used to finance the purchase, construction or repair of property to be used as an owner-occupied dwelling (herein called "the dwelling") and if Borrower intends to sell or rent the dwelling and has obtained the Government's consent to do so (a) neither Borrower nor anyone authorized to act for Borrower will after receipt of a bona fide offer, refuse to negotiate for the sale or rental of the dwelling or will otherwise make unavailable or deny the dwelling to anyone because of race, color, religion, sex, or national origin, and (b) Borrower recognizes as illegal and hereby disclaims, and will not comply with or attempt to enforce any restrictive covenants on the dwelling relating to race, color, religion, sex, or national origin.

(24) If Borrower has a permit or approved application for the appropriation of water for use on or for the benefit of the property hereinabove described, Borrower will perform and complete all the action and fulfill all the conditions necessary to perfect such water right; and in the event of Borrower's failure to do so, the Government shall have the right to complete such action and to advance such sums as may be necessary for such purpose, such advances to be secured by this instrument.

(25) If the property, or any part thereof, is a lease or a purchaser's interest in a contract of sale, Borrower will pay when due all rents, contract payments and any and all other charges required by said lease or contract, will comply with all other requirements of said lease or contract, and will not surrender or relinquish, without the Government's written consent, any of Borrower's right, title and interest in or to the property or the lease or contract while this instrument remains in effect.

(26) Borrower has assigned or waived or will immediately, on request of the Government, assign or waive in favor of the Government all grazing privileges, permits, licenses, or leases appurtenant to or used in connection with said land, and Borrower further covenants and agrees to produce renewals thereof prior to their expiration, to pay all fees and charges and to perform all acts and to do all things necessary to keep and preserve all said grazing rights and renewals thereof, and in the event of the failure of Borrower to do any of these things the Government may do so on behalf of Borrower, including advancing such sums as may be necessary for this purpose, and such funds advanced shall be secured by this instrument.

(27) This instrument shall be subject to the present regulations of the Farmers Home Administration, and to its future regulations not inconsistent with the express provisions hereof.

(28) Notices given hereunder shall be sent by certified mail, unless otherwise required by law, and addressed, unless and until some other address is designated in a notice so given, in the case of both Trustee and the Government to the Farmers Home Administration at the address stated above and in the case of Borrower to Borrower at the address shown in the Farmers Home Administration Finance Office records (which normally will be the same as the post office address shown above).

(29) Upon full and final payment of all indebtedness hereby secured and the performance and discharge of each and every condition, agreement and obligation, contingent, or otherwise, contained herein or secured hereby, the Government shall request Trustee to execute and deliver to Borrower at Borrower's address a full reconveyance of the property within 60 days after written demand by Borrower, and Borrower hereby waives the benefits of all law requiring earlier execution or delivery of such reconveyance.

(30) If any provision of this instrument or application thereof to any person or circumstances is held invalid, such invalidity will not affect other provisions or applications of the instrument which can be given effect without the invalid provision or application, and to that end the provisions hereof are declared to be severable.

WITNESS the hand(s) and seal(s) of Borrower this 23rd day of April, 19 79
LUND AND STITZEL, a partnership

Calvin Dean Stitzel
CALVIN DEAN STITZEL

Rita Ann Stitzel
RITA ANN STITZEL

Harold Lund
HAROLD LUND

Leora Jean Lund
LEORA JEAN LUND

STATE OF Nevada
COUNTY OF Elko ss:

ACKNOWLEDGMENT

On this 23rd day of April, 19 79, personally appeared before me CALVIN DEAN STITZEL, RITA ANN STITZEL, HAROLD LUND and LEORA JEAN LUND the signer(s) of the above instrument, who duly acknowledged to me that they executed the same.



PHYLLIS KIRKHAM
Notary Public - State of Nevada
Elko County, Nevada
Commission Expires March 16, 1980

(NOTARIAL SEAL)

Notary Public, residing at: Elko, Nevada

Phyllis Kirkham

My commission expires: 3/16/80

BOOK 70 PAGE 130

AS INDIVIDUALS

Calvin Dean Stitzel
CALVIN DEAN STITZEL

Rita Ann Stitzel
RITA ANN STITZEL

Harold Lund
HAROLD LUND

Leora Jean Lund
LEORA JEAN LUND

State of Nevada
County of ELKO

On April 23, 1979, personally appeared before me, a Notary Public,
CALVIN DEAN STITZEL, RITA ANN STITZEL, HAROLD LUND AND LEORA JEAN LUND, who
acknowledged that they executed the foregoing instrument.



Phyllis Kirkham
NOTARY PUBLIC

68176

First American Title
RECORDED AT THE REQUEST OF Company of Nevada
on April 25, 1979, at 28 mins. past 10 A.M. In
Book 70 of OFFICIAL RECORDS, page 125-131, RECORDS OF
EUREKA COUNTY, NEVADA. WILLIS A. DePAOLI Recorder
File No. 68176 Fee \$ 9.00

BOOK 70 PAGE 131