

152527

DEED OF TRUST
AND
SECURITY AGREEMENT
AND
FIXTURE FILING

THIS DEED OF TRUST, made this 30th day of April, _____,

1994, by and between NORBERT WALTER and EILEEN B. WALTER, husband and wife, as joint tenants with right of survivorship, as grantor, and FIRST AMERICAN TITLE COMPANY OF NEVADA, as Trustee, and IVAN L. SMART, an unmarried man, as Beneficiary.

W I T N E S S E S T H :

That grantor, jointly and severally, hereby grants, transfers and assigns to the Trustee in trust, with power of sale, all of the real property situate in the County of Eureka, State of Nevada, described in Exhibit A attached hereto as part hereof.

TO HAVE AND TO HOLD the same unto the said Trustee and its successors, in trust, to secure the performance of the following obligations and payment of the following debts:

ONE: Payment of an indebtedness evidenced by a certain Promissory Note dated APRIL 30, 1994 in the principal amount of TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$225,000.00), executed and delivered by the grantor payable to the Beneficiary or order, and any and all extensions, revisions and renewals thereof and advances thereon, a copy of which is attached hereto as Exhibit C.

TWO: Payment of all other sums with interest thereon becoming due or payable under the provisions hereof to either Trustee or Beneficiary.

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THREE: Payment, performance and discharge by grantor of

this Security Document and said Note, and of all advances on, and renewals, extensions, revisions and amendments of this Security Document and the above described Note and any other indebtedness or obligation secured hereby.

To protect the security of this Deed of Trust, it is agreed as follows:

1. The Beneficiary has the right to record notice that this Deed of Trust is security for additional amounts and obligations not specifically mentioned herein but which constitute indebtedness or obligations of the Grantor for which the Beneficiary may claim the Deed of Trust as security.

2. The Grantor shall:

A. Maintain, care for and keep the property herein described, and all buildings, fences, corrals, stock watering facilities, dams, ditches, diversions, wells, pumping equipment, and all other structures, improvements and fixtures now thereon or hereafter placed thereon, in at least the condition, order and repair existing on the date of this Deed of Trust, Security Agreement and Fixture Filing, subject to reasonable normal wear and depreciation, replacement, substitution or improvement as herein provided.

B. Not remove or demolish all or any portion of any buildings, fences, corrals, watering troughs, windmills, other fixtures or improvements now situate thereon or hereafter placed thereon unless the same is replaced, improved, or substituted therefor by a like item of at least equal value, quality and use.

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C. Not mine or commit or permit any waste of the land, buildings, improvements and fixtures on said premises.

D. Farm, maintain, irrigate, harvest and graze the meadow and pasture areas of the premises, for which water rights exist, in at least the same ranching and husbandmanlike manner as is the common ranch practice in the area of the ranch.

E. Properly maintain, put to beneficial use and utilize all wells and water rights appurtenant, appropriated or decreed to, or used in connection with any portion of the premises so as not to allow any water rights to be jeopardized, diminished, reduced, damaged, or lost.

F. Graze and manage the grazing areas of the lands subject to this Deed of Trust, Security Agreement and Fixture Filing in the manner recognized as good range management in the grazing unit or area in which the lands subject hereto are located.

G. Not do or permit to be done, by act or omission, anything which shall impair, lessen, diminish, devalue or deplete the security hereby given.

H. Operate the farm according to the dictates of good farm, soil, plant, water and pasture management common in the area of the ranch.

3. The following covenants, Nos. 1; 2 (unpaid balance of the Note secured hereby); 3; 4 (8% as adjusted pursuant to the terms of the Note secured hereby); 5; 6 (which covenant is deemed to include and apply to all conditions, covenants and agreements contained herein in addition to those adopted by reference, and to

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any and all defaults or deficiency in performance of this Deed of Trust); 7 (reasonable); 8 and 9 of N.R.S. 107.030, are hereby adopted and made a part of this Deed of Trust.

4. All payments secured hereby shall be paid in lawful money of the United States of America.

5. The Beneficiary and any persons authorized by the Beneficiary shall have the right to enter upon the premises at all reasonable frequency and at reasonable times for the purposes of inspecting them, determining Grantor's performance hereof, and taking all reasonable actions they are authorized to perform under the terms of this Deed of Trust.

6. In case of condemnation of the property subject hereto, or any part thereof, by paramount authority, all of any condemnation award to which the Grantor shall be entitled less costs and expenses of litigation is hereby assigned by the Grantor to the Beneficiary, who is hereby authorized to receive and receipt for the same and apply such proceeds as received toward the payment of the indebtedness hereby secured, whether due or not.

7. If default be made in the payment of the obligations, note or debt secured hereby or in the performance of any of the terms, conditions or covenants of this Security Document, or the payment of any sum payable hereunder, or upon the occurrence of any act or event of default hereunder, and such default is not cured within thirty-five (35) days after written notice of default and of election to sell said property given in the manner provided by N.R.S. 107.080 as in effect on the date of this Deed of Trust, Beneficiary may declare all notes, debts and

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sums secured hereby or payable hereunder immediately due and payable although the date of maturity has not arrived.

8. If the Note, debt and obligations secured by this Deed of Trust are secured also by a Security Agreement, or other written security document given or executed by Grantor as Debtor in favor of Beneficiary, it is agreed that any default in the performance of any promise, covenant, term or condition contained in said Security Agreement or other security document to be performed, kept, or maintained by Debtor therein, or the occurrence of any event of default of any kind under said Security Agreement, or other security document, shall be deemed, at the option of Beneficiary, to constitute a default under this Deed of Trust, and Beneficiary shall have the same rights hereunder as though a default had occurred in the performance of a promise, covenant, term, or condition herein contained and specifically herein set out.

9. The Promissory Note secured by this Deed of Trust is made a part hereof as if fully herein set out.

10. Any notices to be given Grantor shall be given by registered or certified mail to Grantor at the addresses set forth near the signatures on this Deed of Trust or at such substitute address as Grantor may designate in writing, duly delivered to Beneficiary and to the Trustee, at such address set forth in this Deed of Trust, or such substitute address as is designated in writing duly served as aforesaid, shall be deemed conclusively to be the correct address of Grantor for all purposes in connection with said Deed of Trust, including, but not limited to, giving of notices permitted or required by statute to be mailed to Grantor.

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11. The rights and remedies herein granted shall not exclude any other rights or remedies granted by law, and all rights or remedies granted hereunder, or permitted by law, shall be concurrent and cumulative.

12. All the provisions of this instrument shall inure to the benefit of and bind the heirs, legal representatives, successors, and assigns, of each party hereto respectively as the context permits. All obligations of each grantor hereunder shall be joint and several and shall inure to grantors' benefit as joint tenants with right of survivorship. The word "grantor" and any reference thereto shall include the masculine, feminine and neuter genders and the singular and plural, as indicated by the context and number of parties hereto.

13. It is expressly agreed that the trusts created hereby are irrevocable by the grantor.

14. The grantor hereby covenants and agrees that neither the acceptance nor existence, now or hereafter, of other security for the indebtedness secured hereby, or the full or partial release or discharge hereof, shall operate as a waiver of the security of this Deed of Trust, nor shall this Deed of Trust nor its satisfaction nor reconveyance made hereunder operate as a waiver of any such other security now held or hereafter acquired.

15. At any time, or from time to time, without liability therefor and without notice, on written request of Beneficiary and presentation of this Trust Deed and the Note secured thereby for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may reconvey all or any part of such property; consent to the making

of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating such Trust Deed to subsequent liens, encumbrances or charges therein. In the event of any partial reconveyance, Beneficiary is to be paid in full on acreage released based on a proration of principal owed at the sale date to the total acreage which is security.

16. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separate from the remaining provisions and shall in no way affect the validity of this Deed of Trust.

17. To the extent this Deed of Trust contains fixtures and personal property, it is intended to be a fixture filing, Financing Statement and Security Agreement and to perfect a security interest in the personal property and fixtures pursuant to the Nevada Uniform Commercial Code.

18. The rights and remedies of Beneficiary upon the occurrence of one or more defaults by grantor (whether such rights and remedies are conferred by statute, by rule of law, by this Deed of Trust, or otherwise) may be exercised by Beneficiary, in the sole discretion of Beneficiary, either alternatively, concurrently, or consecutively in any order. The exercise by Beneficiary or Trustee of any one or more of such rights and remedies shall not be construed to be an election of remedies nor a waiver of any other rights and remedies Beneficiary might have unless, and limited to the extent that, Beneficiary shall so elect or so waive by an instrument in writing delivered to Trustee. Without limiting the generality of the foregoing, to the extent that this Deed of

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Trust covers both real property, personal property and collateral, Beneficiary may, in the sole discretion of Beneficiary, either alternately, concurrently, or consecutively in any order:

A. Proceed as to both the real property, personal property and collateral in accordance with Beneficiary's rights and remedies in respect of the real property; or

B. Proceed as to the real property in accordance with Beneficiary's rights and remedies in respect of the real property and proceed as to the personal property and collateral in accordance with Beneficiary's rights and remedies in respect of the personal property and collateral. Beneficiary may, in the sole discretion of Beneficiary, appoint Trustee as the agent of Beneficiary for the purpose of disposition of the personal property in accordance with the Nevada Uniform Commercial Code -- Secured Transactions.

If Beneficiary should elect to proceed as to both the real property, personal property and collateral in accordance with Beneficiary's rights and remedies in respect of the real property, all the real and personal property and all the collateral may be sold, in the manner and at the time and place provided in this Deed of Trust in one lot or in separate lots consisting of any combination or combinations of property and collateral, as Beneficiary may elect, in the sole discretion of Beneficiary.

Trustor acknowledges and agrees that a disposition of the personal property and collateral, in accordance with Beneficiary's rights and remedies, in respect to real property under NRS Chapter 107, is a commercially reasonable disposition of the personal property and collateral.

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If Beneficiary should elect to proceed as to the personal property and collateral in accordance with Beneficiary's rights and remedies in respect to personal property, Beneficiary shall have all the rights and remedies conferred on a secured party by NRS 104.9501 to NRS 104.9507, both inclusive.

21. Trustor will execute and promptly deliver to Beneficiary and Trustee any financing statements, five (5)-year extensions thereof, and other documents reasonably requested by Beneficiary for creation, continuation, perfection and enforcement of the trust and security interest in the collateral and to give good faith, diligent cooperation to Beneficiary and to perform such other acts as reasonably requested by Beneficiary for perfection, continuation and enforcement of the trust and security interest. Beneficiary is authorized to file, record or otherwise utilize this and any similar document as is necessary for perfection, continuation and enforcement of the trust and security interest granted hereby.

22. If the Grantor shall sell, lease, convey or alienate any of said property described on Exhibits A and B, or any portion thereof, or shall enter into any agreement for the same, or any interest therein, any indebtedness or obligation secured hereby, irrespective of the maturity dates expressed in any Note evidencing the same, without the written consent of the holder hereof, at the option of the holder and without demand or notice, the Note secured hereby shall immediately become due and payable.

Consent of the holder hereof for any release or reconveyance of all or portions of the encumbered land described

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in Exhibit A attached hereto shall be included, but not be limited to the following terms and conditions:

A. No release or reconveyance of property shall be made by Beneficiary while there is any default in any of the terms, covenants and conditions of the Promissory Note and/or this Deed of Trust, Security Agreement and Fixture Filing securing the principal balance.

B. A release payment paid by grantor to Beneficiary in an amount computed on the basis of the portion of the remaining principal balance of the Promissory Note secured hereby, plus interest accrued to date of release as to each acre of the land remaining encumbered by the indebtedness secured hereby, said release payment to be applied first to interest to date of release, and any remainder to the principal balance of the indebtedness.

23. Grantor agrees to and shall indemnify and hold Trustee and Beneficiary harmless from all liability, costs, fees, expenses, penalties, damages, fines and other payments Beneficiary may have to make or incur in connection with: conducting or requiring environmental inspections, audits, assessments and other investigations; cleanup; remediation; assurances of compliance with environmental laws, rules and regulations; "loan workout" activities; foreclosure; reporting, handling, storage, transportation, treatment and disposal of contaminants, hazardous waste, storage tanks, hazardous substances, spills, chemicals, toxic substances, contamination, hazardous material storage; environmental consultants; and all other liabilities, work,

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services, contracts and payments arising out of the environmental

condition of the property.

IN WITNESS WHEREOF, the grantor has executed these

presents the day and year first above written.

GRANTOR ADDRESS:

GRANTOR:

P. O. Box 739
Eureka, NV 89316

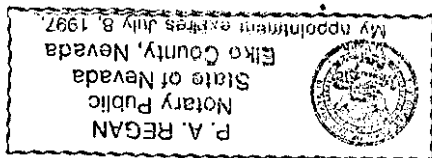
[Signature]
NORBERT WALTER

[Signature]
EILEEN B. WALTER

STATE OF NEVADA)
COUNTY OF ELKO)
SS.)

This instrument was acknowledged before me on
APRIL 30, 1994 by NORBERT WALTER and EILEEN B. WALTER.

[Signature]
NOTARY PUBLIC



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DESCRIPTION

All that certain lot, piece or parcel of land situate in the county of Eureka, State of Nevada, described as follows:

PARCEL 1

Township 20 North, Range 53 East, MDB&M

Section 28: Northwest ¼ of the Northwest ¼

PARCEL 2

Township 20 North, Range 53 East, MDB&M

Section 21: Lots 3, 4, 5, 6, 12, 13, 14 and 15

EXCEPTING THEREFROM, all oil and gas in said land as reserved by the United States of America in patent recorded September 21, 1964, in Book 5, Page 582, Official Records, Eureka County, Nevada.

Township 20 North, Range 53 East, MDB&M

Section 28: All that portion of Lots 1 and 7 lying

southwesterly of the southwesterly boundary of Nevada State Highway 278 as it presently exists; All of Lots 2, 3, 4, 5 and 6.

EXCEPTING THEREFROM, all the oil and gas in said land as reserved by the United States of America in patent recorded December 30, 1965, in Book 9, Page 422, Official Records, Eureka County, Nevada.

FURTHER EXCEPTING FROM all of Parcel 2, one-half of all mineral rights, oil or gas lying on, in or over said land as reserved by EDWIN C. BISHOP and LETA B. BISHOP in deed recorded August 23, 1978, in Book 65, Page 317, Official Records, Eureka County, Nevada.

PERSONAL PROPERTY:

Two (2) Valley Pivot Irrigators
 Four (4) Thunderbird Wheel Lines
 Miscellaneous Main Line and Hand Move Sprinklers
 Four (4) Irrigation Pumps, complete with Motors and Panels
 One (1) 471 Detroit Engine and Gear Head
 One (1) 186 IHC Tractor, Serial #56764
 One (1) 1030 Case Tractor, Serial #2245802
 One (1) 1112 New Holland Windrower, Serial #286161
 One (1) 1114 New Holland Harrowbed, Serial #1783
 One (1) Allen Hydraulic Rake

One (1) 584 IHC Tractor
 One (1) 861 Ford Tractor, Serial #2907A
 One (1) John Deere 15' Disk
 One (1) Sprayer
 One (1) Fertilizer Spreader
 One (1) GMC Dump Truck, Serial #374PF796E
 One (1) Spring Tooth Harrow
 One (1) Truck-Mounted Backhoe, Model LD162, Serial #2945,
 Hy-Hoe Model 330, Serial #402W
 One (1) Windrow Turner
 One (1) "V" Ditcher
 One (1) John Deere Rake
 One (1) Back Blade (for 3-Point Hitch)
 Two (2) Freeman Balers, Serial #34458 and Serial #34596
 Miscellaneous Parts and Equipment

COPY

PROMISSORY NOTE

ELKO, Nevada, APRIL 30, 1994 \$225,000.00

FOR VALUE RECEIVED, the undersigned NORBERT WALTER and EILEEN B. WALTER, husband and wife, jointly and severally, promise to pay to the order of IVAN L. SMART, an unmarried man, at Las Vegas, Nevada, or wherever payment may be demanded by the Holder of this Note, the principal sum of TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$225,000.00), with interest thereon for the first five (5) year term of this Note at the rate of eight percent (8%) per annum from APRIL 30, 1994, with said interest to be adjusted at the beginning of each succeeding five-year period to a rate equal to the prime rate of First Interstate Bank of Nevada plus two percent (2%), with the maximum interest rate for this loan to be twelve percent (12%) per annum, and the minimum rate for this loan to be six percent (6%) per annum, until paid, both principal and interest payable in the following manner:

TWENTY-SIX THOUSAND TWO HUNDRED EIGHTY-SEVEN DOLLARS (\$26,287.00) including accrued interest shall be paid on or before [blank], and a like payment of \$26,287.00 including accrued interest on or before the same day of each year through [blank], 1999.

In the event the Makers have a total crop failure upon the lands securing this Promissory Note in any one year, no payment on principal and interest shall be due that year, but the interest accrued on the remaining principal shall be added to the principal due, and interest-only payments shall be due for the next succeeding two (2) years, with subsequent equal installments to be adjusted to reflect equal annual installments for the remaining term of the Note, with both principal and interest adjusted pursuant to the terms set forth above.

In the event average hay prices as received in Diamond Valley, Eureka County, Nevada are less than EIGHTY-FIVE DOLLARS (\$85.00) per ton in any one year, payment of the accrued interest only shall be due on the next succeeding payment date and continue until hay prices reach \$85.00 per ton or more, or for two (2) years, whichever is least (this deferment of

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payment not to exceed two (2) consecutive years), and succeeding payments of principal and interest to be computed on equal annual installments for the remaining term of this Note, with both principal and interest adjusted pursuant to the terms set forth above.

Each regular installment payment shall be applied first to accrued interest and the balance to principal as of the date of payment. Interest shall accrue only upon the unpaid principal balance of this Note remaining from time to time. All other payments shall be applied as set forth herein.

All payments shall be in lawful money of the United States of America.

The Makers shall have the right to pay all or any portion of this Note at any time; provided, however, any additional payments shall not be cumulative payments, but the Makers shall, in all events, pay each specified annual payment as specified above as it comes due, until this Note is paid in full. Interest will be prorated to such prepayment date if between payment-due dates.

The makers, comakers, endorsers, guarantors and sureties, jointly and severally, waive presentment, protest and notice of dishonor, and waive diligence in collecting, and agree that this Note may be renewed or extended from time to time, and that any security heretofore may be released or discharged partially or in full and that additional comakers, guarantors, and sureties may become parties hereto, without notice to or the consent of any of them, and without affecting their liability hereon.

If any default or deficiency be made in: (1) the payment of this Note, or any portion of installment hereof; or (2) in the performance of the Deed of Trust, Security Agreement or other agreements, documents or instruments, or other lien or encumbrance which secures the payment of this Note; or (3) in the payment and performance of any other deed of trust, mortgage, security agreement or other lien or encumbrance of the note or debt secured thereby, which security affects all or any portion of the property which secures the payment of this Note; then, at the option of the Holder of this Note, the entire unpaid principal balance hereof, together with all accrued interest and other sums payable hereunder and under the items of the security heretofore, shall become immediately due and payable in full, without notice or demand, although the time of maturity expressed in this Note shall not have arrived.

The makers further agree to pay all costs, charges and expenses, including reasonable attorney fees, incurred by the Holder of this Note, incident to the collection hereof, or any portion, in the event of default or deficiency in the payment of

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this Note, or any portion hereof, or in the performance of the Deed of Trust or other security which secures it.

It is agreed that at the election of the Holder of this Note, the same shall mature and become immediately payable in full, together with all other sums payable hereunder and under the security hereof, although the time of maturity of this Note has not arrived, without notice, upon the sale, lease or conveyance of all or any portion of the property which secures the payment of this Note, without the written consent of the Payee herein.

A Deed of Trust, Fixture Filing and Security Agreement secures the payment of this Note.

Robert Walter
ROBERT WALTER

Eileen B. Walter
EILEEN B. WALTER

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RECORDED AT THE OFFICE OF

First American State
94 MAY -2 P1:51

EUREKA COUNTY, NEVADA
M.N. REBATE, RECORDER
FILE NO. FEE \$ 22.00

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3.

