

165371

DEED OF TRUST

**THIS DEED OF TRUST** is made this 27th day of November, 1996, by and between **DEAN ASHCROFT** and **SHERRY ASHCROFT**, husband and wife, hereinafter called "Grantors"; **STEWART TITLE OF NORTHEASTERN NEVADA**, as Trustee; and **JOHN N. DAVIS** and **JOANNA D. DAVIS**, Co-Trustees of **THE JOHN N. DAVIS FAMILY TRUST**, hereinafter called "Beneficiary," it being specifically understood that any and all references to the words "Grantor" and "Beneficiary" shall include the masculine, feminine, and neuter genders, and singular and plural, as indicated by the context and number of parties hereto;

WITNESSETH:

That Grantors hereby grant, transfer and assign to the Trustee in trust, with power of sale, all of the following described real property situate in the County of Eureka, State of Nevada, more particularly described on Exhibit "A" attached hereto and incorporated by reference.

**TOGETHER WITH** any and all buildings, fixtures and improvements situate thereon.

**TOGETHER WITH** all and singular the tenements, hereditaments, and appurtenances thereunto belonging or appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof.

**TRUSTOR ABSOLUTELY AND UNCONDITIONALLY ASSIGNS,** transfers, conveys and sets over to Beneficiary all the rents, royalties, issues, profits, revenue, income and other benefits of said property arising from the use or enjoyment of all or any portion thereof or from any lease, mineral lease, or agreement pertaining thereto (collectively the "Rents"); **SUBJECT, HOWEVER,** to the right, power and authority given to and conferred upon Trustor by Paragraph 8 hereof.

**TO HAVE AND TO HOLD** the same unto 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 certain Promissory Notes of even date hereof in the principal amounts of **EIGHTY THOUSAND AND NO/100 DOLLARS (\$80,000.00)** and **EIGHTEEN THOUSAND AND NO/100 DOLLARS (\$18,000.00)**, respectively, with interest thereon, expenses, attorney's fees and other payments therein provided, executed and delivered by the Grantors payable to the Beneficiary or order, and any and all extensions or renewals thereof.

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**TWO:** Payment of such additional amounts as may be hereafter loaned by the Beneficiary to the Grantors, or any successor in interest of the Grantors, with interest thereon, expenses and attorneys' fees, and any other indebtedness or obligations of the Grantors to the Beneficiary.

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

**FOUR:** Payment, performance and discharge of each and every obligation, covenant, promise and agreement of Grantors herein or in said Note contained and of all renewals, extensions, revisions and amendments of the above described Note and any other indebtedness or obligations 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 Grantors for which the Beneficiary may claim this Deed of Trust as security.

2. Grantors further covenant and agree, as follows:

A. Grantors will not use, generate, manufacture, produce, store, release, discharge, or dispose of on, under or about the property or transport to or from the property any Hazardous Substance as defined herein or allow any other person or entity to do so.

B. Grantors shall keep and maintain the property in compliance with, and shall not cause or permit the property to be in violation of any Environmental Law as defined herein or any separate agreement with Beneficiary regarding the property.

C. Grantors shall give prompt written notice to Beneficiary of:

(1) Any proceeding or inquiry by any government authority with respect to the presence of any Hazardous Substance on the property or the migration thereof from or to other property;

(2) All claims made or threatened by any third party against the Grantors or the property relating to loss or injury from any Hazardous Substance;

(3) Grantors' discovery of any occurrence or condition on the property or adjoining real property or in the vicinity of the property that could cause the property or part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the property under any Environmental Law.

D. Beneficiary shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Environmental Law and have its attorneys' fees in connection therewith paid by Grantors.

E. Grantors shall protect, indemnify and hold harmless Beneficiary and its representatives, employees, agents, successors and assigns from and against any and all loss, damage, cost, expense or liability (including attorneys' fees and costs) directly or indirectly arising out of or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a Hazardous Substance on, under or about the property during Grantors' possession, ownership or operation of the property, including without limitation (i) all foreseeable consequential damages; and (ii) the costs of any required or necessary repair, cleanup or detoxification of the property and the preparation and implementation of any closure, remedial or other required plans. This indemnity shall survive the reconveyance of the lien of this Deed of Trust, or the extinguishment of the lien by foreclosure or action in lieu thereof, and this covenant shall survive such reconveyance or extinguishment.

F. In the event that any investigation, site, monitoring, containment, cleanup, removal, restoration or other remedial work of any kind or nature (the "Remedial Work") is reasonably necessary or desirable under any applicable local, state or federal law or regulation, any judicial order, or by any governmental or nongovernmental entity or person because of, or in connection with, the current or future presence, suspected presence, release or suspected release of a Hazardous Substance in or into the air, soil, groundwater, surface water or soil vapor at, on, about, under or within the property (or any portion thereof), Grantors shall within thirty (30) days after written demand for performance thereof by Beneficiary (or such shorter period of time as may be required under any applicable law, regulation, order or agreement), commence to perform, or cause to be commenced, and thereafter diligently prosecute to completion, all such Remedial Work. All Remedial Work shall be performed by one or more contractors, approved in advance in writing by Beneficiary, and under the supervision of a consulting engineer approved in advance in writing by Beneficiary. All costs including, without limitation, the charges of such contractor(s) and/or the consulting engineer, and the reasonable fees and costs of the attorneys for Beneficiary incurred in connection with monitoring or review of such Remedial Work shall be paid by Grantors. In the event Grantors shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Beneficiary may, but shall not be required to, cause such Remedial Work to be performed and all costs and expenses thereof, or incurred in connection therewith, shall become part of the indebtedness secured hereby.

G. "Environmental Laws" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the property, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. Sections 9601 *et seq.* and the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901 *et seq.*

H. The term "Hazardous Substance" shall include without limitation:

(1) Those substances included within the definitions "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in CERCLA, RCRA and the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq. and in the regulations promulgated pursuant to said laws;

(2) Those substances defined as "hazardous wastes," "hazardous substances" or "PCB" in applicable State statutes, as amended from time to time, and in the regulations promulgated pursuant to said laws;

(3) Those substances listed in the United States Department of Transportation Table (49 CFT 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(4) Such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, which are classified as hazardous or toxic under federal, state or local laws or regulations; and

(5) Any material, waste or substance which is (A) petroleum; (B) asbestos; (C) polychlorinated biphenyls; (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. Sections 1251 et seq. (33 U.S.C. Sections 1321) or listed pursuant to Section 3078 of the Clean Water Act (33 U.S.C. Section 1317); (E) flammable explosives; or (F) radioactive materials.

Any reference herein to statutory or regulatory sections shall be deemed to include any amendments thereto and any successor sections.

3. The following covenants, Nos. 1; 2 (\$100,000.00); 3; 4 (10%); 5; 6; 7 (reasonable); 8; and 9 of N.R.S. 107.030, are hereby adopted and made a part of this Deed of Trust. In connection with Covenant No. 6, it shall be deemed to include and apply to all conditions, covenants and agreements contained herein in addition to those adopted by reference, and to any and all defaults or deficiencies in the performance 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 and inspect the premises at all reasonable times.

6. If default be made in the performance or payment of the guaranty, obligation, note or debt secured hereby, or in the performance of any of the terms, conditions, and covenants of the Deed of Trust, or the payment of any sum or obligation to be paid 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 obligations, notes, debts, and sums secured hereby or payable hereunder immediately due and payable although the date of maturity has not yet arrived.

7. In case of condemnation of the property subject hereto, or any part thereof, by paramount authority, all of any condemnation award to which the Grantors shall be entitled, less costs and expenses of litigation, is hereby assigned by the Grantors to the Beneficiary, to the extent the Beneficiary is entitled thereto, 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.

8. Grantors hereby give to and confer upon Beneficiary the right, power and authority, during the continuance of these trusts, to collect the rents, issues and profits of the property, **RESERVING UNTO GRANTORS, HOWEVER,** the right, prior to any default by Grantors in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time by a receiver or agent, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, and/or in the Beneficiary's own name sue for or otherwise collect such rents, issues and profits (including those past due and unpaid), and apply the same less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

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

10. The commencement of any proceeding under the bankruptcy or insolvency laws by or against Grantors, or against any guarantor of any guaranty secured hereby; or the appointment of a receiver for any of the assets of any Grantor hereof or any guarantor of any guaranty secured hereby; or the making by Grantor or any guarantor of any guaranty secured hereby of a general assignment for the benefit of creditors, shall constitute a default under this Deed of Trust.

11. Default under any other Deed of Trust, mortgage, contract, or other instrument, which is, or which creates, a lien, encumbrance, charge or interest of any nature on or in any of the property subject hereto having priority over any lien, right or interest created or existing under this Deed of Trust, or failure to pay or discharge when due any obligation which is secured by, or which constitutes a lien, encumbrance, charge or interest of any nature on or in any property subject hereto having priority over any lien, right or interest created or existing under this Deed of Trust, whether such obligation or the lien thereof is created by writing or otherwise, shall constitute a default under this Deed of Trust.

12. To the extent permitted by the laws of the State of Nevada, Grantors agree to pay any deficiency arising from any cause after application of the proceeds of any sale held in accordance with the provisions hereof and agrees to pay all costs and reasonable attorneys' fees incurred in any action brought to collect said deficiency.

13. 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.

14. All the provisions of this instrument shall inure to 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.

15. Any notice given to Grantors under Section 107.080 of Nevada Revised Statutes in connection with this Deed of Trust shall be given by registered or certified letter to the Grantors addressed to the address set forth near the signature on this Deed of Trust, or at such substitute address as Grantors may direct in writing to Beneficiary and such notice shall be binding upon the Grantors and all assignees or grantees or the Grantors.

16. The Grantors hereby covenant and agree that neither the acceptance or 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.

17. Grantors shall not sell, transfer, convey or alienate the property, or any portion thereof or any interest therein, unless:

- (1) Full payment is made of the Promissory Notes and all payments secured hereby; or,
- (2) The Beneficiary herein gives prior written consent.

If the Grantors shall, in violation of this provision, sell, transfer, convey or alienate the subject property or any part thereof, or any interest therein, or shall be divested of title in any manner or way, whether voluntarily or involuntarily, any indebtedness or obligation secured hereby, irrespective of the maturity dates expressed in any note, document or instrument evidencing the same, at the option of the Beneficiary and without demand or notice, shall immediately, at the earliest time allowed by applicable law, become due and payable in full.

18. 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.

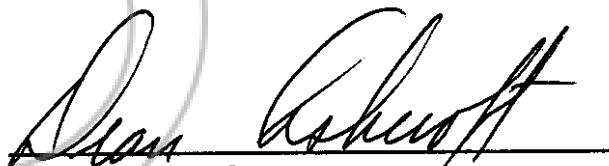
19. In addition to the fixtures described or referred to in the description of property in this Deed of Trust, the following are included in the property subject to this Deed of Trust which shall, for all purposes, be deemed to be fixtures: (a) all buildings, structures and improvements now on or hereafter built, placed, constructed or installed on any portion of the premises; (b) all building fixtures, appliances and equipment that now or hereafter are attached to or installed in, or placed in or upon any building or improvement or any portion of the described real property, including but not limited to all furnaces, boilers, hot water heaters, heating and cooling and air conditioning installations with equipment, appliances and compressors; all wiring, panels, lighting fixtures, other electrical or electronic equipment and installations; all plumbing, plumbing fixtures and equipment; (c) all fences, cattleguards, and gates; and (d) all pipelines, well casings, well pumps and pumping equipment, and domestic water systems; and all storage tanks. All of such fixtures, furnishings, equipment and improvements are, and shall become a permanent accession to the land contained in the described real property and to such building or improvements, and a part of the real property conveyed under this Deed of Trust, whether or not the same may be subject to any Security Agreement.

20. 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.

21. It is expressly agreed that the trusts created hereby are irrevocable by the Grantors.

IN WITNESS WHEREOF, the Grantors have executed these presents the day and year first above written.

GRANTORS:

  
DEAN ASHCROFT

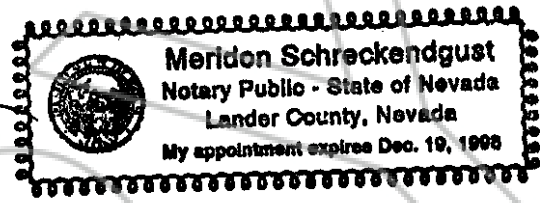
  
SHERRY ASHCROFT

Grantors' Address: PO Box 884  
Battle Mountain, NV 89820

STATE OF NEVADA )  
 )SS.  
COUNTY OF Lander)

On Nov. 18, 1996, personally appeared before me, a Notary Public, **DEAN ASHCROFT** and **SHERRY ASHCROFT**, personally known to me to be the persons whose names are subscribed to the above instrument who acknowledged that they executed said instrument.

*Meridon Schreckengust*  
NOTARY PUBLIC



COPY



EXHIBIT "A"  
DAVIS - ASHCROFT  
DEED OF TRUST

The land referred to herein is situated in the State of Nevada,  
County of Eureka, described as follows:

A parcel of land located in the NE1/4NE1/4 of Section 26, and  
the NW1/4NW1/4 of Section 25, TOWNSHIP 33 NORTH, RANGE 48 EAST,  
M.D.B.&M., Eureka County, Nevada, more particularly described  
as follows:

COMMENCING the Southeast Corner of said Section 26, thence  
North 4°31'30" West, 4,051.65 feet to the Corner No. 1, the  
true point of beginning being on the northerly right-of-way of  
U.S. Highway 40;

THENCE from a tangent bearing North 76°55'52" East, on a curve  
to the right with a radius of 3,112.00 feet, through a central  
angle of 7°11'34", for an arc length of 390.67 feet along the  
said northerly right-of-way of U.S. Highway 40 to Corner No. 2;

THENCE North 5°52'34" West, 250.00 feet to Corner No. 3;

THENCE South 80°31'39" West, 421.78 feet to Corner No. 4;

THENCE South 13°04'08" East, 250.00 feet to Corner No. 1, the  
point of beginning, as shown by the parcel map for JOHN W.  
MARVEL and WILBURTA S. MARVEL, filed in the Office of the  
County Recorder, Eureka County, Nevada, on January 19, 1981, as  
File No. 78377.

EXCEPTING THEREFROM all the grantors right, title and interest  
in and to all oil, gas, coal and all other minerals of whatever  
kind and nature and all geothermal resources in any and every  
form located within, on or beneath the surface of said land as  
reserved by JOHN W. MARVEL and WILBURTA S. MARVEL, Husband and  
Wife, by deed recorded March 4, 1981, in Book 92, Page 24,  
Official Records, Eureka County, Nevada.

BOOK 304 PAGE 52  
OFFICIAL RECORDS  
RECORDED AT THE REQUEST OF  
*Stewart*  
96 DEC 13 PM 1:10  
EUREKA COUNTY NEVADA  
M.N. REBALEATI, RECORDER  
FILE NO. FEES 15.00

BOOK 304 PAGE 60

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