

**173297**

**DEED OF TRUST, ASSIGNMENT OF RENTS  
AND GRANT OF SECURITY INTEREST**

**THIS DEED OF TRUST**, made and entered into as of the 18th day of November, 1999, by and between JACK WHELCHER and ROMONA G. WHELCHER, husband and wife, hereinafter called Trustors; and STEWART TITLE OF NORTHEASTERN NEVADA, hereinafter called Trustee; and IVAN SMART, of Elko, Nevada, hereinafter called Beneficiary;

**WITNESSETH:**

**THAT WHEREAS**, the Trustors hereby grant, transfer and assign to the Trustee in trust, with power of sale, all the following described real property:

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

Parcel C as shown on that certain Parcel Map for E. A. and L. C. RASMUSSEN filed in the office of the County Recorder of Eureka County, Nevada, as File No. 114556, being a portion of Lot 2, Parcel F of Large Division Map, E½ of Section 17, TOWNSHIP 20 NORTH, RANGE 53 EAST, M.D.B. & M.

TOGETHER WITH all buildings and improvements situate thereon.

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

EXCEPTING THEREFROM all the oil and gas in and under said land, reserved by THE UNITED STATES OF AMERICA, in Patent recorded April 15, 1966, in Book 10, Page 331, Official Records, Eureka County, Nevada.

SUBJECT TO all taxes and assessments, reservations, exceptions, easements, rights of way, agreements and licenses affecting the property of record.

**TO HAVE AND TO HOLD** said premises, together with the appurtenances unto the said Trustee, and to 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 of even date herewith, in the principal amount of \$15,500.00, with the interest thereon, expenses, attorney fees and other payments therein provided, executed and delivered by the Trustors 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 Trustors or any successor in interest of the Trustors, with interest thereon, expenses and attorney fees, and any other indebtedness or obligation of the Trustors to the Beneficiary.

**THREE:** Payment of all other sums with interest thereon becoming due and 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 Trustors herein or in said note contained and of all renewals, extensions, revisions and amendments of the above-described note and any other indebtedness or obligation secured hereby.

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

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

2. The Trustors shall keep the property herein described in good condition, order and repair; shall not remove or demolish any buildings or other improvements thereon or hereafter placed or constructed thereon; shall not commit or permit any waste or deterioration of the land, buildings, and improvements; and shall not do nor permit to be done anything which shall impair, lessen, diminish or deplete the security hereby given. The Trustors shall repair, rebuild, complete or restore promptly and in good and workmanlike manner any building or improvement which is damaged or destroyed and to pay when due all claims for labor performed and materials furnished therefor.

3. The following covenants: One; Two (\$15,500.00); Three; Four (12%); Five; Six; Seven (reasonable); Eight and Nine of Nevada Revised Statutes 107.030 are hereby adopted and made a part of this Deed of Trust. In connection with Covenant No. 2, it is agreed that the insurance provisions shall extend and apply to all buildings, improvements and fixtures which may hereafter be in the process of construction on the property and the insuring requirements shall include, but not be limited to, course of construction insurance.

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

5. If default occurs in the performance or payment of this Deed of Trust, or if there is any failure to pay any installment or tax or assessment before it is delinquent or any insurance premium on or before the date it is due, the Beneficiary may, without waiving any such default, require the Trustors, until this Deed of Trust is reconveyed, to pay to the Beneficiary, a sum equal to the taxes and assessments next due on the premises covered by this Deed of Trust plus the premium that will next become due and payable on policies of fire and other hazard insurance on the premises covered hereby (all as estimated by the Beneficiary). Such sums shall be held by the Beneficiary in trust to pay said premiums, taxes and assessments as they come due and before the

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same become delinquent. The Beneficiary may require the payments to be made on a prorata basis monthly, quarterly or annually, so that the funds are available to make such payments as they come due.

6. The Beneficiary and any persons authorized by the Beneficiary shall have the right to enter upon and inspect the premises at all reasonable times.

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

8. That Trustors 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 Trustors the right, prior to any default by Trustors 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 without notice, either in person, by agent, or by a receiver to be appointed by a court, 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, in their 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 attorney's 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. The rents assigned are any and all of the foregoing: rents, sub-rents, earnings, income, receipts, revenues, royalties, issues and profits, including, without limitation by enumeration, those on account of and installments under any agreement of sale, cleaning deposits, performance deposits, and security deposits that are due, or that become due, or that accrue while any portion of the indebtedness secured by this Deed of Trust remains unpaid, and any and all proceeds and accruals whatsoever that arise out of the hiring, sub-hiring, letting, subletting, or otherwise (collectively hereinafter referred to as "leasing") of or from the whole or any part of the property. The creation, existence or exercise of Trustors' privilege and license to collect rents or Beneficiary's acceptance or exercise of the right to collect rents shall not subordinate this Deed of Trust to any leasing or be Beneficiary's affirmation of any leasing or assumption of any liability under any leasing.

9. That upon default of payment of any indebtedness secured hereby or in the performance or payment of this Deed of Trust or of any agreement or obligation hereunder, or upon the occurrence of any act or event of default hereunder, and such default is not cured within 35 days, Beneficiary may declare all sums secured hereby immediately due and payable by written notice of default and of election to sell said property, which notice shall be in the form and shall be served in the manner then prescribed by the laws of the State of Nevada.

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

11. Default under any other deed of trust, mortgage, contract, lease or other instrument, which is, or which creates, a lien, encumbrance, charge or interest of any nature 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 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 be conclusively deemed to be an event of default under this Deed of Trust.

12. The Trustors request that a copy of any notice of default and any notice of sale hereunder be mailed to Trustors at Trustors' address as set forth below or at such substitute address as Trustors may designate in writing duly delivered to Beneficiary and to Trustee.

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 Trustors hereunder shall be joint and several if more than one Trustor. The words "Trustors", "Beneficiary" and "Trustee" 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.

15. It is expressly agreed that the trust created hereby is irrevocable by the Trustors.

16. In the event Trustors shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of their title of any interest therein in any manner or way, whether voluntary or involuntary, without the written consent of the Beneficiary being first had and obtained, Beneficiary shall have the right, at his option, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any note evidencing the same, immediately due and payable.

#### **GRANT OF SECURITY INTEREST IN PERSONAL PROPERTY**

For a valuable consideration, to them in hand paid, the Trustors hereby grant to the Beneficiary a security interest in all that certain personal property described as follows and hereinafter called "Collateral":

That certain 1972 Broadmore 70' x 14' mobile home, Serial Number S3966.

1. The obligations secured hereby are the payment of that certain Promissory Note in the amount of FIFTEEN THOUSAND FIVE HUNDRED (\$15,500.00) DOLLARS, together with

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all other obligations set forth in said Promissory Note, of even date herewith, and set forth above in the foregoing Deed of Trust and Assignment of Rents.

2. Trustors hereby warrant and covenant that except for the security interest granted hereby, Trustors are the owners of the Collateral free from any adverse lien, security interest or encumbrance and Trustors will defend the Collateral against all just claims thereto.

3. During the life of this Security Agreement, Trustors will not remove the Collateral from the property described above in this Deed of Trust.

4. Trustors will keep the Collateral free from any adverse lien, security interest or encumbrance and in good order and repair, and will not waste or destroy the Collateral, or any part thereof; and Beneficiary may examine and inspect the Collateral at any reasonable time, wherever located.

5. Trustors will pay when due any and all indebtedness secured by this Security Agreement, together with interest, and any and every rent, tax, levy, assessment, or other claim which is or may become a lien against the Collateral.

6. Trustors shall be in default under this agreement upon the happening of any of the following events or conditions prior to the payment in full of the said \$15,500.00:

A. Default in the payment or performance of any obligation, covenant or liability contained herein, including the Deed of Trust and Assignment of Rents, or a default of any obligation contained in said Promissory Note.

B. Loss, substantial damage, destruction, danger of misuse, waste or confiscation of the Collateral; or the making of any levy, lien, seizure or attachment thereof or thereon, not released within 30 days.

C. Removal of the Collateral from the real property described above.

7. Upon any such default and without notice to Trustors, Beneficiary may elect to exercise any and all rights available to him as a secured creditor pursuant to NRS 104.9101 *et seq.*

8. Any notice required hereby shall be sufficient if given in writing addressed to the Trustors at P.O. Box 561, Eureka, Nevada 89316.

9. The laws of the State of Nevada shall govern this Agreement.

10. No waiver by Beneficiary of any default shall operate as a waiver of any other default or of the same on a future occasion. All rights of the Beneficiary hereunder shall inure to the benefit of the successors and assigns of the Beneficiary and all obligations of the Trustors shall bind their successors and assigns.

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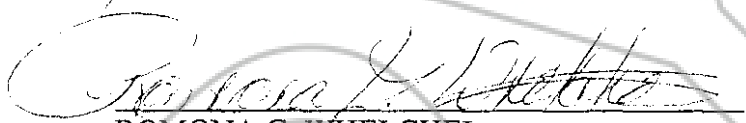
11. In the event of a dispute arising under this Agreement which is resolved by judicial means, including arbitration or declaratory relief, the prevailing party in such dispute shall have and recover against the other party all allowable costs and a reasonable attorneys fee incurred.

12. If any term, provision, covenant, or condition of this Agreement, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions, covenants, and conditions of this Security Agreement, and all applications thereof, not held invalid, void, or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

13. The rights and obligations owed by and owing to the parties to this Agreement shall inure to the benefit of the parties' successors, assigns or personal representatives.


IN WITNESS WHEREOF, the Trustees have hereunto set their hands as of the day and year first hereinabove written.

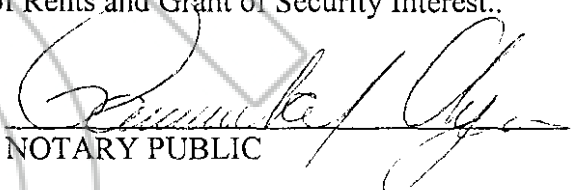
  
\_\_\_\_\_  
JACK WHELCHER

  
\_\_\_\_\_  
ROMONA G. WHELCHER

STATE OF NEVADA        )  
                                  ) SS.  
COUNTY OF Elko        )

On this 16<sup>th</sup> day of November, 1999, personally appeared before me, a Notary Public, JACK WHELCHER, known or proved to me to be said person, who acknowledged that he executed the foregoing Deed of Trust, Assignment of Rents and Grant of Security Interest..

 PAMELA J. AGUIRRE  
NOTARY PUBLIC • STATE of NEVADA  
Elko County • Nevada  
CERTIFICATE # 99-58153-6  
APPT. EXP. OCT 28, 2003

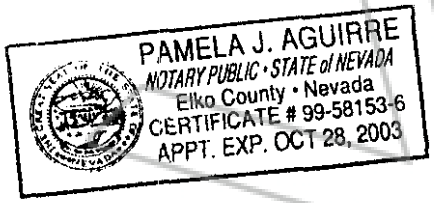
  
\_\_\_\_\_  
NOTARY PUBLIC

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STATE OF NEVADA )  
 ) SS.  
COUNTY OF Elko )

On this 16<sup>th</sup> day of November, 1999, personally appeared before me, a Notary Public, ROMONA G. WHELCHER, known or proved to me to be said person, who acknowledged that she executed the foregoing Deed of Trust, Assignment of Rents and Grant of Security Interest..

  
NOTARY PUBLIC



**COOPER**

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BOOK 331 PAGE 215  
OFFICIAL RECORDS  
RECORDED AT THE REQUEST OF  
Stewart Title Co.  
99 NOV 18 AM 9:45  
EUREKA COUNTY NEVADA  
M.N. REBALEATI, RECORDER  
FILE NO. FEES 13.00

**173297**