

APN: 07-210-06

**WHEN RECORDED RETURN TO:**

Gregory D. Corn Chartered  
575 5<sup>th</sup> St.  
Elko, NV 89801

BOOK **393** PAGE **182-188**  
OFFICIAL RECORDS  
RECORDED AT THE REQUEST OF  
*Gregory D. Corn*  
2004 SEP -7 PM 4:24

EUREKA COUNTY, NEVADA  
M.N. REBALEATI, RECORDER  
FILE NO. FEES **20<sup>00</sup>**

**191961**

**DEED OF TRUST**

THIS DEED OF TRUST, made and entered into this 20<sup>th</sup> day of July, 2004, by and between **CRAIG ALLAN SMITH and SHELBA KAY SMITH, husband and wife, as joint tenants with full right of survivorship**, hereinafter called "Trustor", and **STEWART TITLE OF NORTHEASTERN NEVADA, a Nevada corporation**, hereinafter called "Trustee", and **HERMAN E. SMITH AND SHIRLEY E. SMITH, Co-Trustees of the Smith Family Trust, UTD March 10, 1992**, hereinafter called "Beneficiary".

**WITNESSETH:**

That Trustor conveys, transfers and assigns to Trustee in Trust with power of sale the following described real property located in the County of Eureka, State of Nevada, to wit:

All that certain real property situate in the County of Eureka, State of Nevada, more particularly described as follows:

Township 21 North, Range 53 East, M.D.B. & M. Section 23: S1/2; and consisting of Three Hundred Twenty Acres (320 acres), more or less.

TOGETHER with all dwellings, buildings and improvements situate thereon.

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

TOGETHER with all water, water rights, rights to the use of water, dams, ditches, canals, pipelines, wells, reservoirs, rights of way, and all other means for the diversion or use of water appurtenant to the

said property or any part thereof, or now or hereafter used or enjoyed in connection therewith, for irrigation, domestic or any other use, or for the drainage of all or any part of said lands, including vested water rights, permitted water rights and certified water rights, together with all certificates of appropriation and any and all applications to appropriate the waters of the State of Nevada, which are appurtenant to the above described real property, or any part thereof, or used or enjoyed in connection therewith. Certificate Number 6482 and Certificate Number 6483.

EXCEPTING THEREFROM all oil and gas as reserved in Patent executed by United States of America, recorded on July 16, 1962, in Book 26, of Deeds, at Page 240, Eureka County, Nevada.

SUBJECT TO: Easements and reservations contained in the Patent from the United States of America recorded in Book 26, Page 240, Deed Records, Eureka County, Nevada, which recite as follows:

"...SUBJECT to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of Courts, and there is reserved from the lands hereby granted, a right-of-way thereon for ditches or canals constructed by the authority of the United States.

EXCEPTING AND RESERVING, also, to the United States all the oil and gas in the lands so patented and to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of July 17, 1914 (38 Stat. 509)."

SUBJECT TO: An Easement over the westerly 33 feet of said land for a drainage ditch and incidental purposes as granted to Ruby Hill Mining Company, by Instrument recorded November 26, 1963, in Book 2, Page 11, Official Records, Eureka County, Nevada.

SUBJECT TO: An Easement over a portion of the land (located undisclosed) for electric transmission and/or distribution line or system as granted to Mt. Wheeler Power, Inc., by Deed recorded December 1, 1971, in Book 41, Page 65, Official Records, Eureka County, Nevada.

TO HAVE AND TO HOLD the described premises to the Grantees,

as joint tenants with right of survivorship and not as tenants in common, their assigns, and heirs and assigns of the survivor, forever.

Trustor irrevocably grants and conveys to Trustee in Trust with power of sale, the above-described real property together with leases, rents, issues, profits or income thereof, all of which are herein called property income; subject, however, to the right, power and authority herein given to Beneficiary to collect and apply such property income; and subject to the existing taxes, assessments, liens, encumbrances, covenants, conditions, restrictions, rights of way and easements of record.

For the purpose of securing (a) performance of each agreement of Trustor herein contained; (b) payment of an indebtedness evidenced by a Promissory Note dated the 1<sup>st</sup> day of July, 2004, and any extension or renewal thereof in the principal sum of ONE HUNDRED THIRTY-SIX THOUSAND, FOUR HUNDRED FIFTY-ONE DOLLARS AND EIGHT CENTS (\$136,451.08) executed by Trustor in favor of Beneficiary or order; and (c) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, when approved in writing by the Beneficiary, and when evidenced by a Promissory Note reciting that it is secured by this Deed of Trust.

The following provisions of N.R.S. 107.030 are adopted by reference as though more fully set out herein: Covenant 1, Covenant 2--\$136,451.08, Covenant 3, Covenant 4--(4%), Covenant 5, Covenant 6, Covenant 7--(4%), and Covenant 9.

The Trustor shall bear the cost of the recording of this document.

To protect the security of this Deed of Trust, Trustor agrees:

1. To keep the property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting the property or requiring any alterations or improvements to be made thereon; not to commit, suffer, or permit any act upon the property in violation of law; and to do all other acts which from the care or use of the property may be reasonably necessary, the specific enumerations herein not excluding the general.

2. To appear in and defend any action or proceeding purporting to affect the security hereof or the right or powers of Beneficiary or Trustee; and to pay all costs and expenses of Beneficiary and Trustee including costs of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear or be named, and in any suit brought by Beneficiary or Trustee to foreclose this Deed of Trust.

3. To pay before delinquent, and/or keep current all taxes and assessments affecting the property (including past, present or future assessments which act as a charge against the security); when due, all encumbrances, charges, and liens, with interest, on the property or any part thereof, which appear to be prior or superior thereto; all costs, fees and expenses to this Trust, including without limiting the generality of the foregoing, the fees of Trustee for issuance of any nonwarranty release and/or reconveyance or deed of release and full reconveyance, and all lawful charges, costs, and expenses in the event of reinstatement of, following default in this Deed of Trust or the obligation secured hereby.

4. If Trustor fails to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice to or demand on Trustor and without releasing Trustor from any obligations thereof, may make or do the same in such manner and to such extent as either may deem necessary to protect the security thereof, Beneficiary or Trustee being authorized to enter on the property for such purpose; appear in and defend any action or proceeding purporting to affect the security thereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of either appears to be prior or superior thereto; and in exercising any such powers, pay necessary expenses, employ counsel, and pay reasonable counsel fees.

5. To pay immediately and without demand all sums expended by Beneficiary or Trustee pursuant to the provisions hereof, together with interest from date of expenditure at the same rate as provided for in the Note secured hereby. Any amounts paid by Beneficiary or Trustee shall become a part of the debt secured by this Deed of Trust and a lien on the premises, or immediately due and payable at option of Beneficiary or Trustee.

IT IS MUTUALLY AGREED THAT:

6. The amount collected by Trustor under any insurance policy may be applied by Beneficiary on any indebtedness secured hereby and in such order as Beneficiary may determine or at the option of the Beneficiary the entire amount so collected or any part thereof, may be released to Trustor. Such application for release shall not cure or waive any default or notice of Trustee sale hereunder or invalidate any act pursuant to such notice or any costs related to the commencement of the same. To the extent that there is a partial destruction of the premise or improvements on the real property for which this Deed of Trust acts as security, Beneficiary shall have the sole and exclusive election as to the manner in which the insurance proceeds paid to Trustor shall be applied either to the reconstruction of the premise, or to the reduction or full payment of the unpaid principal obligation then due and owing to Beneficiary at the time of said insurance payment. Any partial or total destruction of the improvements situate on the real property for which this Deed of Trust acts as security, shall not operate to delay payments made thereon and required to be made as set out in the Promissory Note for which this Deed of Trust acts as security.

7. Any award of damages in connection with any condemnation or taking, or for injury to the property by reason of public use, or for damages for private trespass or injury thereto, is assigned and shall be paid to Beneficiary as further security for all obligations secured hereby (reserving unto Trustor, however, the right to sue therefor and the ownership thereof subject to this Deed of Trust), and on receipt of such moneys Beneficiary may hold them as such further security, or apply or release them in the same manner and with the same effect as above provided for disposition of proceeds of insurance.

8. Time is of the essence of this Deed of Trust. By accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

9. At any time or from time to time, and without notice, on written request of Beneficiary and presentation of this Deed of Trust and Note for endorsement, without liability for payment of the indebtedness secured hereby, without affecting the security hereof for the full amount secured hereby and all property remaining subject hereto, and without the necessity that any sum representing the value or any portion thereof of the property affected by Trustee's action be credited on the indebtedness, Trustee may (a) release and reconvey all or any part of the property; (b) consent to the making and/or recording of any map or plat of the property or any part thereof; (c) join in granting any easement thereon; and (d) join in or consent to any extension agreement or any agreement subordinating the lien, encumbrance, or charge hereof.

10. On written request of Beneficiary stating that all sums secured hereby have been paid, on surrender of this Deed of Trust and Note to Trustee for cancellation and retention, and on payment of its fees, Trustee shall release and reconvey, without covenant or warranty, express or implied, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

11. As an additional security, Trustor hereby gives to and confers on Beneficiary the right, power and authority, during the continuance of this Trust to collect the property income, reserving to Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such property income as it becomes due and payable. On 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 on and take possession of the property or any part thereof, in his own name sue for or otherwise collect such property income, including that past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, on any indebtedness secured hereby, and



in such order as Beneficiary may determine. The entering on and taking possession of the property, the collection of such property income, and the application thereof shall not cure or waive any default or notice of Trustee's sale hereunder or invalidate any act done pursuant to such notice.

12. On default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice thereof, setting forth the nature thereof, and of election to cause to be sold the property under this Deed of Trust. Beneficiary shall also deposit with Trustee this Deed of Trust, the Note and all documents evidencing expenditures secured hereby.

To the extent permitted by law, an action may be maintained by the Beneficiary to recover a deficiency judgment for any balance due hereunder.

13. Beneficiary may appoint a successor Trustee in the manner prescribed by law. A successor trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. Trustee may resign by mailing or delivering notice thereof to Beneficiary and Trustor.

14. This Deed of Trust applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term "Beneficiary" shall mean the owner and holder of the Note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

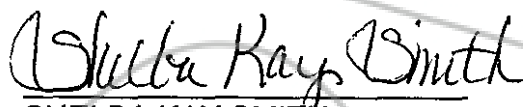
15. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary, or Trustee is a party unless brought to Trustee. In all events, notice must be provided to Trustor with respect to that certain Deed of Trust executed and dated contemporaneously herewith from Trustor in favor of Beneficiary whenever Beneficiary commences any foreclosure under an Deed of Trust executed by Trustor in favor of Beneficiary, including Notice of Trustee Sale as may be required to be given.

16. Any default occurring under any Deeds of Trust on the within described property during the term the Beneficiary is owed any sums secured by this Deed of Trust shall constitute a default under this Deed of Trust.

17. No prepayment penalty is made a part of the Promissory Note for which this Deed of Trust exists or made a part of this Deed of Trust, and Trustor is granted full prepayment rights without penalty.

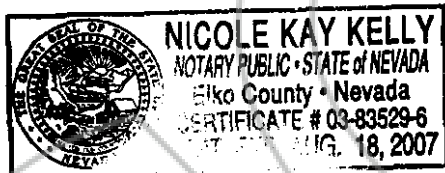
18. For all purposes of any notices or default required by law or otherwise to be given to Trustor, and unless Beneficiary is otherwise instructed hereafter in writing by Trustor, Trustor's address shall be: Craig Allan Smith and Shelba Kay Smith, Trustors, 29050 Envoy Dr., Nuevo, CA 92567.

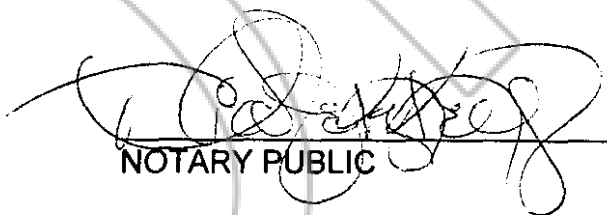
  
CRAIG ALLAN SMITH

  
SHELBA KAY SMITH

STATE OF NEVADA     )  
                                  ) SS.  
COUNTY OF ELKO     )

This instrument was acknowledged before me on July 20, 2004 by both CRAIG ALLEN SMITH and SHELBA KAY SMITH, Trustor in the above executed Deed of Trust.



  
NOTARY PUBLIC

**191961**

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