

APN: 7-440-19

After Recording Return To:

James & Marilyn McDermott  
HC 62 Box 62182  
Eureka, NV 89316

BOOK 402 PAGE 342-349  
OFFICIAL RECORDS  
RECORDED AT THE REQUEST OF  
Lynford Miller  
2004 DEC 28 AM 9:29

EUREKA COUNTY, NEVADA  
M.N. REBALEATI, RECORDER  
FILE NO. 194773  
FEES 21.00

## **DEED OF TRUST AND ASSIGNMENT OF RENTS**

**THIS DEED OF TRUST**, made and entered into as of the 31<sup>st</sup> day of December, 2004, by and between LYNFORD M. MILLER and SUSAN M. MILLER, husband and wife, hereinafter called Trustors; STEWART TITLE COMPANY OF NORTHEASTERN NEVADA, hereinafter called Trustee; and JAMES McDERMOTT and MARILYN McDERMOTT, husband and wife, hereinafter called Beneficiaries;

### **WITNESSETH:**

**THAT WHEREAS**, the Trustors are indebted to the said Beneficiaries, in lawful money of the United States of America, in the amount of ONE HUNDRED THOUSAND DOLLARS and 00/100 (\$100,000.00) as described in that certain Promissory Note dated December 31, 2004, and delivered on even date herewith, and have agreed to pay the same according to the terms of said Promissory Note;

**NOW THEREFORE**, the said Trustors, for the purpose of securing the payment of said Promissory Note, and also the payment of all monies herein agreed or provided to be paid by the said Trustors, or which may be paid out, or advanced by the said Beneficiaries or Trustee under the provisions of this instrument with interest, and further in consideration of the sum of ONE DOLLARS (\$1.00), lawful money of the United States of America, in hand paid by the said Trustee,

do hereby grant, bargain and sell unto the said Trustee, its successors and assigns, all that certain real property situate in the County of Eureka, State of Nevada, and more particularly described as follows:

Township 21½ North, Range 54 East, M.D.B.&M.

Section 32: The Northerly 2,640 feet excepting therefrom Lots 3 and 4 and S½NW¼;

EXCEPTING THEREFROM, all oil, gas, potash and sodium as reserved in Patents executed by the United States of America recorded January 31, 1964, in Book 2, Page 400, Official Records, and on March 1, 1965, in Book 6, Page 526, Official Records, Eureka County, Nevada.

TOGETHER WITH all water and water rights owned by Trustors.

TOGETHER WITH any and 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.

SUBJECT TO all easements, reservations, restrictions, covenants and conditions of record.

Being in trust, nevertheless, for the benefit and security of the Beneficiaries herein named, and the holder or holders of said Promissory Note secured hereby, as well as security for the repayment of all sums of money which may hereafter become due and payable from the said Trustors to said Beneficiaries, as well as security for the renewal or renewals of said Note, or the debt evidenced thereby.

The following covenants: One; Two (insurable value); Three; Four (7%); 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.

The Trustors promise to properly care for and keep the property herein described, and all

buildings and improvements located thereon, in the same condition as the same now exists, subject to normal wear and tear, and to care for, protect and repair all buildings and improvements situate, or to be constructed thereon, not to remove or demolish any buildings or other improvements situate thereon, and to otherwise protect and preserve the said premises and improvements thereon, and not to commit, or permit any waste or deterioration of said buildings and improvements, or of said premises, and to pay when due all claims for labor performed and materials furnished therefore.

Beneficiaries and any persons authorized by the Beneficiaries, shall have the right to enter upon and inspect the premises at all reasonable times. Beneficiaries shall give Trustors not less than 24 hours notice of the date and time for inspection. Beneficiaries shall be entitled to inspect the premises more frequently, in the event Beneficiaries shall have reasonable suspicion of the deterioration or destruction of Beneficiaries's security.

Trustors, and agents and representatives of Trustors, shall not allow or permit and shall not use, generate, store, treat, dispose or transport Hazardous Materials to or upon the property. Trustors will indemnify, defend and hold Seller harmless from the cost of any required or necessary investigation, repair, cleanup, remediation or detoxification of the real property and the preparation of any closure or other required plans relating thereto. "Hazardous Materials" shall mean those materials defined as hazardous materials, hazardous substances, toxic substances or solid waste by 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 any material, waste or substance which is (1) petroleum; (2) asbestos; (3) polychlorinated biphenyls; (4) 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); (5) flammable explosives; or (6) radioactive materials, and further including, without limitation, those substances defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") as amended, 42 U.S.C. Sections 9601 et seq.; the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801 et seq. and in the regulations promulgated pursuant to said laws.

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 Beneficiaries, 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.

Trustors hereby give to and confer upon Beneficiaries 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, Beneficiaries 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 Beneficiaries'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 attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiaries 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 Beneficiaries's acceptance or exercise of the right to collect rents shall not subordinate this Deed of Trust to any leasing or be Beneficiaries's affirmation of any leasing or assumption of any liability under any leasing.

This Deed of Trust shall also be security for such additional amounts as may be hereafter loaned by Beneficiaries or its successors and assigns, to the Trustors, or any successor in interest of the Trustors, and any other indebtedness of the Trustors, and any present or future demands of any kind or nature which the Beneficiaries or its successors and assigns may have against the Trustors, whether absolute or contingent; whether due or not, or whether otherwise secured or not, or whether existing at the time of the execution of this instrument, or arising thereafter; also as security for the payment and performance of every obligation, covenant, promise or agreement herein, or in said Note contained.

The rights and remedies hereby granted shall not exclude any other rights or remedies granted

herein, or by law, and all rights or remedies hereunder granted, or permitted by law, shall be concurrent and cumulative.

Said Trustors, in consideration of the premises, do hereby covenant and agree, that neither the acceptance nor the existence, now or hereafter, of other security for the indebtedness secured hereby, nor the release thereof, shall operate as a waiver of the security of this Deed of Trust, nor shall this Deed of Trust, nor its satisfaction, or a reconveyance made thereunder operate as a waiver of any such other security now held or hereafter acquired.

It is further covenanted and agreed that any breach in the performance of any of the covenants contained herein or adopted by reference, other than the payment of the Promissory Note for which this Deed of Trust is security, and which breach shall continue for a period of thirty-five (35) days after notice without being corrected or remedied, shall authorize the Beneficiaries, at its option, to declare the entire amount of the unpaid principal and accrued interest immediately due and payable.

The entire principal balance shall be due and owing upon any assignment, sale or transfer of either all or a portion of the real property, without Beneficiaries's prior written consent. Trustors shall not be entitled to sell, transfer or convey easements or adjust boundary lines, or otherwise divide or sell a portion of the property, without Beneficiaries's joinder and consent.

If all or any part of the property or an interest therein is sold or transferred, or if Trustors shall attempt to sell, convey, divide or transfer the property or any interest therein, including easements, without Beneficiaries's prior written consent, the Beneficiaries may, at their option, declare all sums secured by this Deed of Trust to be immediately due and payable.

Trustors shall not sell or attempt to sell, transfer or convey all or any portion of the real property before payment in full of all principal, interest, advancements and late charges secured

hereby, and any such sale, or attempt to sell, transfer or conveyance shall constitute a default hereunder.

All covenants and agreements contained herein, or by reference made a part hereof, shall be binding upon the successors and assigns of the said Trustors, to the extent successors and assigns may be permitted by the terms hereof, and this indenture shall not be modified in any respect by the amendment or repeal of any law which has been by reference made a part hereof.

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.

**IN WITNESS WHEREOF**, the Trustors have hereunto set their hands as of the day and year first herein above written.

  
LYNFORD M. MILLER

  
SUSAN M. MILLER

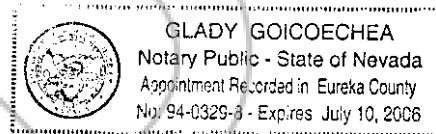
STATE OF NEVADA )

) SS.

COUNTY OF EUREKA )

On this 28 day of December, 2004, personally appeared before me, a Notary Public, LYNFORD M. MILLER and SUSAN M. MILLER, known or proved to me to be said person, who acknowledged that they executed the foregoing Deed of Trust.

*Glady Goicoechea*  
NOTARY PUBLIC



**194773**

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