

Recording Requested by:

Cow County Title
43880

APN 008-130-01

And when recorded return to:

Joseph Lewis Horswill
HORSWILL, MEDEROS & SOARES
Post Office Box 29
Tulare, CA 93275

DOC# 221030

08/27/2012

01:24PM

Official Record

Requested By
COW COUNTY TITLE CO.

Eureka County - NV

Mike Rebaleati - Recorder

Page: 1 of 11 Fee: \$24.00

Recorded By FS RPTT: \$0.00

Book- 0536 Page- 0030



0221030

DEED OF TRUST
with Security Agreement and Fixture Filing

THIS DEED OF TRUST, made this 23rd day of August, 2012, between KEVIN R. BORBA and SUSAN A. BORBA, Husband and Wife, herein called Trustor, whose address is 3785 New Idria Road, Paicines, California 95043, TITLE SERVICE AND ESCROW COMPANY, a Nevada corporation, herein called TRUSTEE, and MANUEL FARIA, JR. and DOLLILE FARIA, husband and wife, and DANIEL J. FARIA, individually and as trustee of the ARLET N. FARIA MARITAL DEDUCTION TRUST and the ARLET N. FARIA FAMILY TRUST, whose address is 13927 Road 136, Tipton, California, 93272.

ARTICLE 1. GRANT IN TRUST

For the purposes and upon the terms and conditions in this Deed of Trust, Trustor irrevocably grants, conveys and assigns unto said Trustee, in trust, with power of sale, together with right of entry and possession, the following described real property situated in the County of Eureka, State of Nevada, defined and designated as Assessor's Parcel Number 008-130-01, and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference ("Property"), together with all the Trustor's right, title and interest in and to the following (all of which together with said Real Property, is referred to herein as the "Subject Property");

(a) All appurtenances, easements, rights and rights of way appurtenant or related thereto;

(b) All buildings, other improvements and fixtures now or hereafter located thereon (the "Improvements");

(c) All insurance policies (and unearned premiums thereon) and all proceeds of insurance carried on the Real Property;

(d) Any evidence of title to the Subject Property provided by Trustor to Beneficiary;

(e) All water and water rights, ditches and ditch rights, reservoir and reservoir rights, stock or interests in irrigation or ditch companies, minerals, oil and gas rights, royalties, livestock grazing allotments, lease or leasehold interests owned by Trustor, now or hereafter used or useful in connection with, appurtenant to or related to subject Property; and

(f) All interest or estate which Trustor may hereafter acquire in the property described above, and all replacements, proceeds, additions and accretions thereto. The listing of specific rights or property shall not be interpreted as a limit of general terms.

In the event the Property or any part thereof, or any interest therein is sold, conveyed or alienated by the Trustor, whether voluntarily or involuntarily, except as prohibited by law, all obligation secured by this instrument, irrespective of the maturity dates express therein, at the option of the holders hereof and without demand or notice, shall immediately become due and payable.

ARTICLE 2. OBLIGATIONS SECURED

Trustor makes this grant and assignment for the purpose of securing the following obligations ("Secured Obligations"):

(a) payment of the indebtedness evidenced by Promissory Note of even date and any extensions or renewals thereof, in the principal amount of \$400,000.00;

(b) the payment of any substitute notes, renewals, reamortizations and extensions of all indebtedness secured by this Deed of Trust;

(c) the performance of every obligation and agreement of Trustor whether contained or incorporated by reference in this Deed of Trust, or contained in any document or guaranty executed by Trustor in favor of Beneficiary, with respect to any loans or advances secured by this Deed of Trust; and

(d) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms of this Deed of Trust, together with interest thereon as herein provided.

ARTICLE 3. SECURITY AGREEMENT AND FIXTURE FILING

3.1 Security Interest. Trustor hereby grants and assigns to Beneficiary as of the Effective Date a security interest, to secure payment and performance of all of the Secured Obligations, in all of the Subject Property which is or may be held to be personal property and in which Trustor now or at any time hereafter has any interest. As to all of the Subject Property



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which is or which hereafter becomes a "fixture" under applicable law, this Deed of Trust is to be recorded in the real property records and filed as a fixture filing under the Nevada Revised Statutes, as amended, revised or recodified from time to time.

ARTICLE 4. REPRESENTATIONS AND COVENANTS

4.1 Warranties and Representations. Trustor represents, warrants, and undertakes that; (a) Trustor has full right and authority to execute and deliver this Deed of Trust; and (b) Trustor has in its own right good and indefeasible title in fee simple to the Property free from any encumbrance superior to the indebtedness hereby secured, except for a permitted prior lien in favor of Manuel Faria in the original principal amount of \$1,200,000.00.

4.2 Covenants. Trustor, for Trustor and Trustor's successors and permitted assigns hereunder, covenants, agrees, and undertakes to:

(a) pay, or cause to be paid, before delinquent, all taxes and assessments of every kind or character in respect to the Property, or any part thereof, from time to time, and, upon request of Beneficiary, to furnish to Beneficiary evidence satisfactory to Beneficiary of the timely payment of such taxes and assessments and governmental charges (including, but not limited to, any general or special taxes or ditch or water assessments levied or accruing against the Property);

(b) purchase policies of insurance with respect to the Property with such insurers, in such amounts and covering such risks as shall be satisfactory to Beneficiary, including, but not limited to, (1) owner's and contractors' policies of comprehensive general public liability insurance; (2) hazard insurance against all risks of loss, including collapse, in an amount not less than the full replacement cost of all Improvements, including the cost of debris removal, with annual agreed amount endorsement and sufficient at all times to prevent Trustor from becoming a co-insurer, such insurance prior to completion of the Improvements to be in builder's risk form on a non-reporting basis and including coverage for all materials and equipment, wherever located, intended to be installed in or utilized in the construction of the Improvements; (3) if the Property is in a "Flood Hazard Area", a flood insurance policy, or binder therefor, in an amount equal to the principal amount of the Note or the maximum amount available under the Flood Disaster Protection Act of 1973, and regulations issued pursuant thereto, as amended from time to time, whichever is less, in form complying with the "insurance purchase requirements" of that act; (4) such policies of mortgagee's title insurance insuring the validity and priority of this Deed of Trust and any future renewals or extensions of this Deed of Trust, including any such mortgagee's title insurance which the Beneficiary may require during the term of the Obligation to supplement or replace any mortgagee's title policy earlier provided to Beneficiary insuring the validity and priority of the Deed of Trust; and (5) such other insurance, if any, as Beneficiary may require from time to time;

(c) cause all insurance carried in accordance with Section 4.2(b) to be payable to Beneficiary as a mortgagee, to deliver the original policies of insurance carried by each Lessee



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(as that term is hereinafter defined) for the benefit of Trustor, and to cause all such policies to be payable to Beneficiary as its interest may appear;

(d) pay, or cause to be paid, all premiums for such insurance at least ten (10) days before such premiums become due, furnish to Beneficiary satisfactory proof of the timeliness of such payments and deliver all renewal policies to Beneficiary at least ten (10) days before the expiration date of each expiring policy;

(e) comply with all federal, state, or municipal laws, rules, ordinances, and regulations applicable to the Property and its ownership, use and operation, including but not limited to maintenance of the Property in compliance with the Americans with Disabilities Act of 1990, and comply with all, and not violate any, easements, restrictions, agreements, covenants, and conditions with respect to or affecting the Property or any part thereof;

(f) at all times maintain, preserve, and keep the Property in good repair and condition and presenting a first-class appearance, and from time to time make all necessary and proper repairs, replacements, and renewals, and not commit or permit any waste on or of the Property, and not do anything to the Property that may impair its value;

(g) promptly pay all bills for labor and materials incurred in connection with the Property and never permit to be created or to exist in respect to the Property or any part thereof any lien or security interest even though inferior to the liens and security interest hereof for any such bill, and in any event never permit to be created or exist in respect to the Property or any part thereof any other or additional lien or security interest on a parity with or superior to any of the liens or security interest hereof;

(h) at any time, and from time to time, upon request of Beneficiary, forthwith, execute and deliver to Beneficiary any and all additional instruments and further assurances, and do all other acts and things, as may be reasonably necessary or proper, in Beneficiary's opinion, to effect the intent of these presents, more fully evidence and perfect the rights, titles, liens, and security interests herein created or intended to be created and to protect the rights, remedies, powers, and privileges of Beneficiary hereunder;

(i) from time to time, upon request of Beneficiary, promptly furnish to Beneficiary financial statements and reports relating to the Trustor and the Property;

(j) continuously maintain Trustor's existence and its right to do business in every state in which it transacts business;

(k) pay and perform all of the Obligation in accordance with the terms thereof or of this Deed of Trust;

(l) at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Obligation, or any part thereof, immediately pay all such taxes; provided



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that, in the alternative, Trustor may, in the event of the enactment of such a law, and must, if it is unlawful for Trustor to pay such taxes, prepay the Obligation in full within sixty (60) days after demand therefor by Beneficiary;

(m) at any time and from time to time, furnish promptly upon request of Beneficiary a written statement or affidavit, in such form as shall be satisfactory to Beneficiary, stating the unpaid balance of the Obligation and that there are no offsets or defenses against full payment of the Obligation and the terms hereof, or, if there are any such offsets or defenses, specifying them;

(n) punctually and properly perform all of Trustor's covenants, duties, and liabilities under any other security agreement, mortgage, deed of trust, collateral pledge agreement, contract, or assignment of any kind now or hereafter existing as security for or in connection with payment of the Obligation, or any part thereof (each such security agreement being herein called "other security instrument");

(o) allow Beneficiary from time to time to inspect the Property and all records relating thereto or to the Obligation, and to make and take away copies of such records;

(p) not cause or permit the Accessories, or any part thereof, to be removed from the county and state where the Land is located, except items of the Accessories which have become obsolete or worn beyond practical use and which have been replaced by adequate substitutes having a value equal to or greater than the replaced items when new;

(q) not without the prior written consent of Beneficiary sell, trade, transfer, assign, or exchange or otherwise dispose of (or suffer or permit any of the same to occur with respect to) (1) any capital stock of Trustor if Trustor is a corporation, (2) any partnership interest either general or limited if Trustor is a partnership, or (3) any membership interest in Trustor, if Trustor is a limited liability company, except by devise, descent, or operation of law upon the death of a shareholder, partner, joint venturer, or member, as the case may be; and

(r) pay, or cause to be paid, any and all attorneys' fees, filing fees and expenses incurred by Beneficiary for the preparation and recordation of any and all legal instruments which the Beneficiary may require at the time of the creation of this Obligation (including this Deed of Trust and/or any and all other instruments which Lender may require in connection herewith) or which Beneficiary may require during the term of the Obligation.

4.3 Nevada Covenants. The statutory covenants of NRS 107.030 ("Statutory Covenants"), Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 are hereby adopted and made a part of this Deed of Trust. To the extent possible, the Statutory Covenants will be construed so as to augment, and be compatible with, but not replace, the other agreements and Statutory Covenants contained in this Deed of Trust. Except for Statutory Covenants 6, 7, and 8, to the extent that any of the described Statutory Covenants are determined to be in conflict with any of the other agreements and covenants contained in this Deed of Trust, the agreement or covenant which is more favorable to Beneficiary, as determined by Beneficiary in its sole discretion, shall control and be enforceable



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by Beneficiary. Statutory Covenants 6, 7, and 8 shall control over the express terms of any inconsistent terms of this Deed of Trust.

ARTICLE 5. DEFAULT

Default. For all purposes hereof, the term "Default" shall mean (a) the failure of Trustor to perform any material obligation hereunder, or the failure to be true of any material representation or warranty of Trustor contained herein upon ten (10) business days after notice of such failure or (b) the existence of any Default or Event of Default as defined in the Note.

5.2 Rights and Remedies. At any time after Default, Beneficiary and Trustee shall each have all the following rights and remedies:

- (a) To declare all Secured Obligations immediately due and payable as and when provided in the Note;
- (b) Without releasing Trustor from any Secured Obligation, and without becoming a mortgagee in possession, to cure any breach or default of Trustor and, in connection therewith, to enter upon the Subject Property and do such acts and things as Beneficiary or Trustee deems necessary or desirable to protect the security hereof, including, without limitation: (i) to appear in and defend any action or proceeding purporting to affect the security of this Deed of Trust or the rights or powers of Beneficiary or Trustee under this Deed of Trust; (ii) to pay, purchase, contest or compromise any encumbrance, charge, lien or claim of lien which, in the sole judgment of either Beneficiary or Trustee, is or may be senior in priority to this Deed of Trust, the judgment of Beneficiary or Trustee being conclusive as between the parties hereto; (iii) to obtain insurance; (iv) to pay any premiums or charges with respect to insurance required to be carried under this Deed of Trust; or (v) to employ counsel, accountants, contractors and other appropriate persons;
- (c) To commence and maintain an action or actions in any court of competent jurisdiction to foreclose this instrument as a mortgage or to obtain specific enforcement of the covenants of Trustor hereunder, and Trustor agrees that such covenants shall be specifically enforceable by injunction or any other appropriate equitable remedy and that for the purposes of any suit brought under this subparagraph, Trustor waives the defense of laches and any applicable statute of limitations;
- (d) To apply to a court of competent jurisdiction for and obtain appointment of a receiver of the Subject Property as a matter of strict right and without regard to the adequacy of the security for the repayment of the Secured Obligations, the existence of a declaration that the Secured Obligations are immediately due and payable, or the filing of a notice of default, and Trustor hereby consents to such appointment;
- (e) To enter upon and possess the Subject Property or any part thereof and to make repairs, alterations and improvements to the Subject Property as necessary, in Trustee's or Beneficiary's reasonable judgment, to protect or enhance the security hereof;



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(f) To execute a written notice of such Default and of its election to cause the Subject Property to be sold to satisfy the Secured Obligations. As a condition precedent to any such sale, Trustee shall give and record such notice as the law then requires. When the minimum period of time required by law after such notice has elapsed, Trustee, without notice to or demand upon Trustor except as required by law, shall sell the Subject Property at the time and place of sale fixed by it in the notice of sale, at one or several sales, either as a whole or in separate parcels and in such manner and order, all as Beneficiary in its sole discretion may determine, at public auction to the highest bidder for cash, in lawful money of the United States, payable at time of sale. Neither Trustor nor any other person or entity other than Beneficiary shall have the right to direct the order in which the Subject Property is sold. Subject to requirements and limits imposed by law, Trustee may from time to time postpone sale of all or any portion of the Subject Property by public announcement at such time and place of sale. Trustee shall deliver to the purchaser at such sale a deed conveying the Subject Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustee, Trustor or Beneficiary may purchase at the sale;

(g) To exercise any other rights or remedies available to Beneficiary at law, in equity, by statute or otherwise.

ARTICLE 6. MISCELLANEOUS

6.1 Waiver. The failure on the part of the Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent defaults. Subsequent acceptance of any payment by the holder hereof shall not be deemed a waiver of any default by Trustor, or of Beneficiary's rights hereunder as the result of any sale, agreement to sell, conveyance or alienation, regardless of holder's knowledge of such default, sale, agreement to sell, conveyance or alienation at the time of acceptance of such payment.

6.2 Successors in Interest. 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 holder and owner of any note secured hereby; or, if the note has been pledged, the pledgee thereof. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural. All obligations of Trustor hereunder are joint and several.

6.3 Notice of Another Party. 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 shall be a party unless brought by Trustee.

6.4 Substitution of Trustee. Beneficiary may, from time to time or at any time, substitute a Trustee or Trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of the county in which the Property herein described is situated, it shall be conclusive evidence of the appointment of such



STATE Nevada)
) ss.
COUNTY OF Lyon)

On 8/23/12 personally appeared before me, a Notary Public
(or Judge or other authorized person, as the case may be),

Kevin R. Borba and Susan A. Borba

who acknowledged to me that they executed the within
instrument.



Notary Public



COPIES



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EXHIBIT "A"

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

TOWNSHIP 18 NORTH, RANGE 51 EAST, M.D.B.&M.

- Section 18: The West Half (W1/2) of the Northeast Quarter (NE1/4) and the East Half (E1/2) of the Northwest Quarter (NW1/4) and the West Half (W1/2) of the Southeast Quarter (SE1/4) and the Southwest Quarter (SW1/4)
- Section 19: The Northwest Quarter (NW1/4) of the Northeast Quarter (NE1/4) and the West Half (W1/2) and the West Half (W1/2) of the Southeast Quarter (SE1/4)
- Section 30: The North Half (N1/2) and the North Half (N1/2) of the South Half (S1/2)

EXCEPTING FROM Lots 1, 2, 3 and 4: The Southeast Quarter (SE1/4) of the Northwest Quarter (NW1/4) of Section 19 and Lots 1, 2, and 3; the Northeast Quarter (NE1/4) of the Southwest Quarter (SW1/4); the Southwest Quarter (SW1/4) of the Northeast Quarter (NE1/4) and the Northwest Quarter (NW1/4) of the Southeast Quarter (SE1/4) of Section 30, Township 18 North, Range 51 East, M.D.B.&M., all uranium, thorium, or any other material which is or may be determined to be peculiarly essential to the production of fissionable materials, whether or not of commercial value as reserved in patent executed by the State of Nevada, recorded March 14, 1975 in Book 51 of Official Records, page 102, Eureka County, Nevada records.

EXCEPTING FROM the above described parcels, all mineral rights and interest, including coal, oil, gas and other hydrocarbons, and all other metallic and non-metallic mineral ores and substances, and geothermal steam, hot water, hot brines, thermal energy and gases as conveyed by VALIANT FARMS-EUREKA, INC., to APAL, a Limited Partnership, by various documents of record.

TOGETHER WITH WATER RIGHTS:

Permit No.

Permit No.

11031
11064

17165
17191
10859
10904
12187
12194
12195



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11065	12196
11700	12197
12175	12198
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12200	13481
12201	13483
12203	13484
12204	13485
12205	13486
12206	13487
12207	17927
12209	13488
26094	
13489	
13490	
13678	

Together with any other water rights or interest in water rights described above which are situate within Eureka County, State of Nevada, which Grantor may have a record interest, as they pertain and/or are appurtenant to the subject property herein.

TOGETHER WITH The Antelope Valley Grazing Preference which has an active preference of 2,513 AUMs and a suspended preference of 23,915 AUMs. The Eastern boundary of said preference shall be defined as follows: from the point where Roy Rissi's BLM permit intersects the Arambel allotment then following the Arambel boundary South by Southeast to the Fish Creek Mountain Ridge Line, then bearing south along the ridge line of the Fish Creek Mountains to a point where said line intersects the Duck Water Allotment. Transferee shall graze no cattle east of this line.

The Nine Mile Allotment has an active preference of 802 sheep AUMs.



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