

AP 1220-16-210-150

WHEN RECORDED, MAIL TO:  
Western Nevada Development District  
3208 Goni Road, #183  
Carson City, NV 89706

83527 CLH

## LONG FORM DEED OF TRUST AND ASSIGNMENTS OF RENTS

This DEED OF TRUST, made this 1st day of February 2001, by and between **John D. McGillivray and Danielle D. McGillivray, Husband and Wife**, hereinafter named TRUSTOR(s), and whose address is: **912 Rawhide Court, Gardnerville NV 89410**, and **Western Title Company, Inc.**, hereinafter named TRUSTEE, and Western Nevada HOME Consortium (Lyon County as Lead Agency) hereinafter named BENEFICIARY. WITNESSETH, that TRUSTOR IRREVOCABLY grants, transfers and assigns to TRUSTEE in trust with power of sale, that property located in **Gardnerville**, Nevada, legally described as follows:

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

Lot 28, in Block F, as said lot and block are shown on that certain map entitled "AMENDED MAP OF RANCHOS ESTATES", filed for record on October 30, 1972, in Book 1072, Page 642, as Document No. 62493. A.P.N. 1220-16-210-150

This deed of trust is subordinate to that deed of trust dated 1/31, 2001, between, **John D. McGillivray and Danielle D. McGillivray, Husband and Wife** as Trustors, and **Western Sunrise Mortgage Beneficiary**, securing a note in an original amount of **Ninety-nine Thousand Four Hundred Seventy and no/100 Dollars (\$99,470.00)**. Said deed of trust was recorded as Document No. Official Records of **Douglas County**, Nevada.

2. Trustor and Beneficiary hereby acknowledge and agree that this deed of trust is subject and subordinate in all respects to the liens, terms, covenants and conditions of the First Deed of Trust in favor of and to all advances heretofore made or which may hereafter be made pursuant to the First Deed of Trust, including all sums advanced for the purpose of (a) protecting or further securing the lien of the First Deed of Trust, curing defaults by the Trustor under the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust or (b) constructing, renovating, repairing, furnishing, fixturing or equipping the Property. The terms and provisions of the First Deed of Trust or for any other purpose expressly permitted by the First Deed of Trust and provisions of the First Deed of Trust are paramount and controlling, and they supersede any other terms and provisions hereof in conflict therewith. In the event of a foreclosure or deed in lieu or foreclosure of the First Deed of Trust, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate income households or otherwise restricting the Trustor's ability to sell the Property shall have no further force or effect on subsequent owners or purchasers of the property. Any person including his successors or assigns (other than the Trustor or a related entity of the Trustor), receiving title to the Property through a foreclosure or deed in lieu of foreclosure of the First Deed of Trust shall receive title to the Property free and clear from such restrictions.

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Further, if the holder of the First Deed of Trust acquires title to the Property pursuant to a deed in lieu of foreclosure, the lien of this Deed of Trust shall automatically terminate upon the holder of the First Deed of Trust's acquisition of title, provided that (I) the Beneficiary herein has been given written notice of a default under the First Deed of Trust and (II) the Beneficiary herein shall not have cured the default under the First Deed of Trust, or diligently pursued curing the default as determined by the holder of the First Deed of Trust within the 90 day period provided in such notice sent to the Beneficiary herein.

Together with all appurtenances in which Trustor has any interests, including water rights benefiting said real property, represented by shares of a company or otherwise; and

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the purpose of securing (1) performance of the Western Nevada HOME Consortium First Time Homebuyers Deferred Loan Agreement executed by Trustor on the \_\_\_\_\_ Day of \_\_\_\_\_, 2001, and incorporated by reference herein; and (2) payment of the sum of \$10,000.00, without interest according to the terms of a promissory note of even date herewith made by Trustor in favor of Beneficiary and all extensions or renewals thereof, and (3) the performance of each agreement of Trustor incorporated herein by reference or contained herein; (4) payment of additional sums with or without interest thereon which may hereafter be loaned to Trustor, or to his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

#### **SPECIAL COVENANTS OF TRUSTOR:**

1. Trustor covenants that this real estate shall remain his, her or their principal place of the residence and that he, she or they will not sell, give, donate, abandon, lease or rent any part of this real estate. In the event Trustor does sell, give, donate, abandon, lease or rent any part of this real estate, then in that event all funds received by Trustor from Western Nevada HOME Consortium under this First Time Homebuyers Program as evidenced by the promissory note of even date that is secured by this deed of trust shall become immediately due and payable. If Trustor does not repay these funds Western Nevada HOME Consortium may foreclose this deed of trust.
2. Upon the death of the applicant (Trustor) or in the case of multiple applicants (Trustors) upon the death of the last to survive all funds received by Trustor from Western Nevada HOME Consortium under this First Time Homebuyers Program as evidenced by the promissory note of even date that is secured by this deed of trust shall become immediately due and payable. If the estate of Trustor or heirs of Trustor do not repay these funds, then Western Nevada HOME Consortium may foreclose under this deed of trust.
3. In the event that Trustor files any petition in bankruptcy the amount due Western Nevada Home Consortium under this First Time Homebuyers Program shall become immediately due and payable.
4. Upon the divorce of the applicants (Trustors) the amount due Western Nevada HOME Consortium under the First Time Homebuyers Program shall become immediately due and payable unless a decree of divorce grants one applicant the right to maintain title and possessions of the real estate and that applicant continues to use the real estate as a primary residence.

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5. That Trustor or Trustors shall use this real estate as his, her or their primary residence.

**A. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:**

- (1) By the execution of this Deed of Trust that those provisions included in the Western Nevada HOME Consortium First Time Homebuyers Deferred Loan Agreement executed by Trustor are hereby incorporated herein by reference and made a part hereof as though fully set forth herein at length; that the Trustor or his successors will observe and perform said provision; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property obligations and parties set forth in this Deed of Trust.
- (2) To keep said 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 said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act on said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumeration's herein not excluding the general.
- (3) Trustor covenants to keep all buildings that may now or at any time be on said property during the continuance of this trust in good repair and insured against loss by fire, with extended coverage endorsement, in a company or companies authorized to issue such insurance in the State of Nevada, and as may be approved by Beneficiary, for such sum or sums as shall equal the total indebtedness secured by this Deed of Trust and all obligations having priority over this Deed of Trust and shall be payable to Beneficiary to the amount of the unsatisfied obligation to Beneficiary hereby secured, and to deliver the policy to Beneficiary, or to collection agent of Beneficiary, and in default thereof, Beneficiary may procure such insurance and/or make such repairs, and expend for either of such purposes such sum or sums as Beneficiary shall deem proper.
- (4) To appear and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary of Trustee; and to pay all costs and expenses, including cost 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, and in any suit brought by Beneficiary to foreclose this Deed of Trust.
- (5) To pay at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock, water rights and grazing privileges; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior to or superior hereto, and all costs, fees and expenses of this trust.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor, and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or

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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 hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

- (6) To Pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at twelve percent per annum.

**B. IT IS MUTUALLY AGREED:**

- (1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
- (2) That 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 for failure so to pay.
- (3) That at any time or from time to time, without ability therefor and without notice, upon written request of Beneficiary and presentation of this deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement subordinating the lien or charge hereof.
- (4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose, and upon payment of its fees, Trustee shall reconvey, without warranty, 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."
- (5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these trusts, to collect the rents, issues and profits of said property, reserving unto 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 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 his 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

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aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

- (6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be recorded. Beneficiary shall also deposit with Trustee this Deed of Trust, said note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law or the sale of real property under writ of execution, Trustee, without demand on Trustor, shall sell said property or any part thereof at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. In the event that any indebtedness secured hereby shall not have been fully satisfied by said sale, Trustee may give notice of sale of any property not previously noticed for sale in the manner set forth above and sell in the same manner set forth above.

Trustee shall deliver to any purchaser its deed conveying the property so sold, but without any covenant or warranty, expressed or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee, including a reasonable fee for the attorney of Trustee, and of this trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at ten percent per annum; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

- (7) That Beneficiary, or his assignee, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of property substitution of such successor Trustee or Trustees, who shall, without conveyance from the trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where, or document or file number under which, this Deed of Trust is recorded, and the name and address of the new Trustee. If notice of default shall have been recorded this power of substitution cannot be exercised until after the costs, fees and expenses of the then acting Trustee shall have been paid to such Trustee, who shall endorse receipt thereof upon such instrument of substitution. The procedure herein provided for substitution of Trustee shall be exclusive of all other provisions for substitution, statutory or otherwise.

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- (8) The following covenants: Nos. 1, 2, 3, 4 (interest 10%), 5, 6, 8, and 9 of Nevada Revised Statutes 107.030, when not inconsistent with other covenants and provisions herein contained, are hereby adopted and made a part of this Deed of Trust.
- (9) The rights and remedies hereby granted shall not exclude any other rights or remedies granted by law, and all rights and remedies granted hereunder or permitted by law shall be concurrent and cumulative. A violation of any of the covenants hereby expressly set forth shall have the same effect as the violation of any covenant hereby adopted by reference.
- (10) It is expressly agreed that the trust created hereby is irrevocable by Trustor.
- (11) That 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, including pledgees, 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/or neuter, and the singular number includes the plural.
- (12) That 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 shall be a party unless brought by Trustee.
- (13) Trustor agrees to pay any deficiency arising from or any cause after application of the proceeds of the sale held in accordance with the provisions of the covenants hereinabove adopted by reference.

The undersigned Trustor requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

IN WITNESS WHEREOF, the trustees have executed this deed of trust as of the \_\_\_\_\_ day of \_\_\_\_\_, 2000.

Name of Trustors

By: *[Signature]*  
 By: *[Signature]*

**John D. McGillivray & Danielle D. McGillivray**

STATE OF NEVADA    )  
                                   )ss.  
 COUNTY OF DOUGLAS )

On the 1st day of February, 2001 personally appeared before me, a Notary Public, JOHN D. MCGILLVRAY AND DANIELLE D. MCGILLVRAY, personally known or proved to me to be the persons whose name is subscribed to the above instrument and who acknowledged that they executed the above instrument.

*[Signature]*  
 NOTARY PUBLIC



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COPY

REQUESTED BY  
**WESTERN TITLE COMPANY, INC.**  
IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

2001 FEB -7 PM 3: 27

LINDA SLATER  
RECORDER

\$13<sup>00</sup> PAID *Ko* DEPUTY

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