

20-  
APN: 1220-23-000-014

After recordation, return Deed of Trust to the following address:

✓ Whear Family Investments, a Nevada limited partnership  
P. O. Box 250  
Minden, Nevada 89423

REQUESTED BY  
*Whear Family Investment*  
IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

2004 JAN -2 AM 11:21

WERNER CHRISTEN  
RECORDER

*W.C.* PAID *De* DEPUTY

## DEED OF TRUST

This Deed of Trust is executed by Todd R. Whear and Lisa M. Whear, husband and wife, as community property with right of survivorship, jointly and severally, as Trustor, to Stewart Title of Douglas County, a Nevada corporation, as Trustee, for the benefit of Whear Family Investments, a Nevada limited partnership, as Beneficiary.

### I

#### PURPOSE

Trustor hereby irrevocably grants, transfers, and assigns to Trustee, in trust, with power of sale, an undivided one-half (1/2) interest in the real property situated in the Douglas County, Nevada, described as follows:

All that certain real property situate, lying and being a portion of the Northeast 1/4 of the Southeast 1/4 of Section 23, Township 23, and the Northwest 1/4 of the Southwest 1/4 of Section 24, Township 12 North, Range 20 East, M.D.B.&M., more particularly described as follows:

Parcel 1-C as shown on that certain Record of Survey for SMS Enterprises recorded February 23, 1982, in Book 272, of Official Records at Page 1257, Douglas County, Nevada, as Document No. 65166, being a division of Parcel A-C, as shown on that Parcel Map for SMS Enterprises, recorded January 10, 1978, in Book 178, of Official Records at Page 560, Douglas County, Nevada, said map being a redivision of Parcel 1 as shown on that Record of Survey for SMS Enterprises, recorded April 19, 1973, in Book 473, of Official Records at Page 157, Douglas County, Nevada.

APN: 1220-23-000-014

together with the rents, issues, and profits thereof. The undivided one-half (1/2) interest in the real property described above is hereafter referred to as the "Real Property." This Deed of Trust secures the following:

- A. The performance of each covenant of Trustor contained in article III.
- B. The payment of the indebtedness evidenced by a Promissory Note dated July 29, 2003, in the principal amount of Eighty Eight Thousand, Seven Hundred Seven and 19/100 Dollars (\$88,707.19), bearing interest on the declining principal balance at the rate of two and 75/100 percent (2.75%) per annum, payable to the order of Beneficiary, including any modifications,

additions, or extensions thereof. This Promissory Note is incorporated by reference as a part of this Deed of Trust.

C. The payment of such additional sums, with interest thereon, as may hereafter be loaned by Beneficiary to Trustor when evidenced by a promissory note of Trustor. The promissory note is to state that it is secured by this Deed of Trust. As used in this Deed of Trust, the term "Promissory Note" includes the Promissory Note referred to in paragraph B. above and any subsequent promissory note that evidences the additional advances that are secured by this Deed of Trust.

D. The payment of any costs that might be incurred by Trustee or Beneficiary to protect the security of this Deed of Trust or to enforce any of the rights and remedies hereunder.

## II

### ASSIGNMENT OF RENTS AND PROFITS

Trustor further irrevocably grants, transfers, and assigns to Beneficiary the rents, issues, and profits of the Real Property, absolutely and unconditionally, and not merely as additional security for the indebtedness secured by this Deed of Trust. Prior to the occurrence of an event of default under this Deed of Trust, Beneficiary grants permission to Trustor to collect and retain the rents, issues, and profits of the Real Property as they become due and payable. In the event of a default under the Promissory Note or this Deed of Trust, Beneficiary may, with or without taking possession of the Real Property, collect all rents, issues, and profits, and may, either personally or by attorney or agent, without bringing any action or proceeding, or by a receiver to be appointed by the court, enter into possession of, make, cancel, enforce, and modify leases, obtain and evict tenants, and set and modify rents and other lease terms. Beneficiary may also sue for and collect all or any part of the rents, issues, and profits of the Real Property, and after payment of all expenses of maintenance, operation, and collection, including reasonable attorneys' fees, as Beneficiary may deem proper, apply the balance to the indebtedness then secured by this Deed of Trust. The receipt and application by Beneficiary of such rents, issues, and profits, after execution and delivery of a Notice of Default and Election to Sell or during the pendency of Trustee's foreclosure proceedings under this Deed of Trust, will not cure the breach or default and are not to affect the foreclosure proceedings or any foreclosure sale resulting therefrom. All such rents, issues, and profits, less the expenses of operation, maintenance, collection, and reasonable attorneys' fees, when received by Beneficiary, are to be applied to the reduction of the indebtedness that is secured by this Deed of Trust, in such order as Beneficiary may determine.

If the rents, issues, and profits of the Real Property are not sufficient to satisfy the expenses, if any, of taking control of and managing the Real Property and collecting the rents, issues, and profits therefrom, any funds expended by Beneficiary for such purposes are to become additional indebtedness of Trustor to Beneficiary that is secured by this Deed of Trust. Such amounts are to be repayable to Beneficiary upon demand and are to bear interest from the date of disbursement at the rate of ten percent (10%) per annum.

## III

### COVENANTS OF TRUSTOR

A. Trustor covenants and agrees to pay when due all claims for labor performed and materials furnished for any construction, alterations, or repairs upon the Real Property; to comply with all laws affecting the Real Property or relating to any alterations or improvements that may be made thereon; not to commit or permit waste thereon, nor to commit, suffer, or permit any acts upon

the Real Property in violation of any law, covenant, condition, or restriction affecting the Real Property; to maintain the Real Property in a good state of repair and not to make any alterations to the Real Property that would in any way reduce or impair or tend to reduce or impair its value; not to permit any hazardous substances, wastes, or other contaminants to be spilled, discharged, or stored on the Real Property in violation of any federal, state, or local environmental laws, ordinances, rules, or regulations; and to promptly notify Beneficiary of any notice, action, lien, or other similar action alleging the existence of hazardous substances, wastes, or other contaminants on, or the violation of any environmental law with respect to, the Real Property.

B. Trustor covenants and agrees to pay all reconveyance fees charged by Trustee at the time of payment of the indebtedness secured by this Deed of Trust.

C. The following covenants of Section 107.030 of the Nevada Revised Statutes are hereby adopted and made a part of this Deed of Trust: Covenant No. 1, Covenant No. 2 (fire insurance, full insurable value); Covenant No. 3, Covenant No. 4 (interest, 10%), Covenant No. 5, Covenant No. 6, Covenant No. 7 (attorneys' fees, reasonable), Covenant No. 8, and Covenant No. 9.

#### IV DEFAULT

A. Any of the following are to constitute a default under the terms of this Deed of Trust:

1. The failure to make any of the payments required by the terms of the Promissory Note.
2. The failure to perform any of the covenants contained in articles II and III.
3. The default under any of the terms of any deed of trust to which this Deed of Trust is subject and subordinate.
4. The sale, exchange, or other disposition of the Real Property, or of any part thereof, or of any interest therein, whether voluntarily or involuntarily, without the prior written consent of Beneficiary.

B. Upon any default, Beneficiary may, at Beneficiary's option, declare the entire amount of the indebtedness evidenced by the Promissory Note immediately due and payable although the time of maturity as expressed in the Promissory Note may not have then arrived, and Beneficiary, in person, by agent, or by a judicially appointed receiver, may enter upon and take possession of the Real Property, or any part thereof, may perform such acts of repair or protection as may be necessary or proper to preserve the value thereof, may rent or lease the Real Property or any part thereof for such rental, term, and upon such conditions as Beneficiary or the receiver considers necessary or proper, and may collect the rents, issues, and profits thereof as additional security. All rents, issues, and profits collected by Beneficiary or the receiver are to be applied first to payment of the costs of the management of the Real Property and the collection of the rents, including, but not limited to, receiver's fees, premiums on receiver's bonds, and reasonable attorneys' fees, and then to the payment of other sums secured by this Deed of Trust. Beneficiary and the receiver are to be accountable only for those rents actually received. Beneficiary may have a receiver appointed as a matter of right without regard to the adequacy of Beneficiary's security and without any showing otherwise required by Section 107.100 of the Nevada Revised Statutes.

The rights and remedies expressly granted by the terms of this Deed of Trust do not exclude any other rights or remedies granted by law, and all rights and remedies granted by this Deed of Trust or permitted by law are concurrent and cumulative. The exercise of any one or more such rights or remedies by Beneficiary, or by Trustee at the direction of Beneficiary, is not to be construed as an election of remedies or as a waiver of any other right or remedy that Beneficiary may have.

V

PRIOR DEED OF TRUST

A. This Deed of Trust is executed by Trustor and accepted by Trustee and Beneficiary as a Deed of Trust upon the Real Property, subject and subordinate to a Deed of Trust recorded July 29, 2003, of which Bank of America is Beneficiary. The Deed of Trust was recorded July 29, 2003, as Document Number 584749, in Book 0703, Page 14951, of Official Records of Douglas County, Nevada.

B. Beneficiary requests that a copy of any notice of default or notice of sale issued by Trustee under the Deed of Trust described above be mailed to Beneficiary at the following address:

Whear Family Investments, a Nevada limited partnership  
P. O. Box 250  
Minden, Nevada 89423

VI

HAZARDOUS SUBSTANCE INDEMNITY

A. Definition. For purposes of this Deed of Trust, the term "Hazardous Substances" means any hazardous or toxic substances, materials, or wastes the removal of which is required, the storage, maintenance, or transportation of which is prohibited or penalized, or for which a permit is required under applicable law, including, but not limited to, (1) any "hazardous substance," as defined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC §9601, et seq.) ("CERCLA"), or any other similar substance or waste regulated pursuant to any similar state or local law, regulation, or ordinance; (2) any "waste" or "hazardous waste," as defined by the Resource Conservation and Recovery Act, as amended (42 USC §6901, et seq.), or any other similar substance or waste regulated pursuant to any similar state or local law, regulation, or ordinance; (3) any pollutant, contaminant, material, substance, or waste regulated by the Clean Water Act, as amended (33 USC §1251, et seq.), or any other similar substance or waste regulated pursuant to any similar state or local law, regulation, or ordinance; (4) any pollutant, contaminant, material, substance, or waste regulated by the Clean Air Act, as amended (42 USC §7401, et seq.), or any other similar substance or waste regulated pursuant to any similar state or local law, regulation, or ordinance; (5) any petroleum product; (6) any polychlorinated biphenyls; or (7) any radioactive material or substances.

B. Representation by Beneficiary. Beneficiary represents that, to the best of its knowledge, no past owner or occupant of the Real Property has released, discharged, or disposed of any Hazardous Substance on or about the Real Property, whether lawfully or unlawfully, and no Hazardous Substance is, as of the date of this Deed of Trust, present in, on, or about the Real Property, except as described in writing to Trustor. To the best of the knowledge of Beneficiary, the Real Property complies with all applicable laws and regulations pertaining to Hazardous Substances.

0601058

C. Covenants. Trustor may not cause or permit the release, discharge, or disposal, nor the presence, use, generation, or storage, of any Hazardous Substance in, on, or about the Real Property in violation of any federal, state, or local laws and regulations pertaining to Hazardous Substances. Trustor must test for, investigate, and remove, at Trustor's sole cost and expense, all Hazardous Substances present or alleged to be present in, on, or about the Real Property upon demand of any federal, state, or local governmental agency, court, or Beneficiary at any time prior to full payment of the Promissory Note.

D. Indemnity. Trustor agrees to indemnify and hold Beneficiary harmless from any claims, loss, cost, damage (including, without limitation, bodily injury, death, property damage, economic loss, or damage to natural resources or the environment), liability, deficiency, fine, penalty, settlement, judgment, or expense (including, without limitation, all investigation and remediation costs and attorneys' fees) directly or indirectly related to any of the following: (i) the actual, alleged, or suspected presence, release, use, generation, discharge, storage, or disposal of any Hazardous Substance in, on, or about the Real Property; (ii) the transportation of any Hazardous Substance to or from the Real Property; or (iii) the violation, whether actual or alleged by or before any federal, state, or local governmental agency or court, of any statute, ordinance, order, rule, regulation, permit, license, judgment, or common law duty applicable to the use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Substance in, on, or about the Real Property. The foregoing indemnification obligations are to exist regardless of whether there is any fault on the part of Trustor, regardless of whether Beneficiary knew or should have known of the actual or alleged presence of Hazardous Substances or any violation of law, and regardless of whether such claim, loss, cost, damage, liability, deficiency, fine, penalty, settlement, judgment, or expense is caused by Trustor's failure, or the failure of any of Trustor's tenants, to perform any of its or their obligations pursuant to any federal, state, or local environmental protection laws and regulations. However, the indemnification obligation of Trustor specifically excludes any claim, loss, cost, damage, liability, deficiency, fine, penalty, settlement, judgment, or expense that arises from or is caused in whole or in part, directly or indirectly, by the actual presence or existence in, on, under, or about the Real Property of any Hazardous Substances as of the date of this Deed of Trust, excluding, however, any such liability resulting from any such Hazardous Substances placed in, on, under, or about the Real Property by Trustor or Trustor's representatives prior to such date.

E. Nature Of Obligation. The obligations of Trustor under this article VI are to be independent of Trustor's other obligations under this Deed of Trust and the Promissory Note, and Trustor's obligations under this article VI may be enforced independently of or concurrently with Trustor's obligations under the other provisions of this Deed of Trust. The obligations of Trustor under this article VI are to survive the repayment of the Promissory Note, the reconveyance of this Deed of Trust, or Beneficiary's acquisition of the Real Property by foreclosure, deed in lieu of foreclosure, or in any other manner. Trustor acknowledges and agrees that the provisions of this article VI are intended to constitute an "environmental provision," as such term is defined in Section 40.502 of the Nevada Revised Statutes, and that Beneficiary is to be entitled to the remedies set forth in Sections 40.501 through 40.512 of the Nevada Revised Statutes, as amended from time to time, in addition to any other remedies authorized by this Deed of Trust and the Promissory Note or otherwise provided by law. Nothing contained in this article VI is intended in any way to limit, impair, or otherwise affect any rights and remedies of Beneficiary under any other provisions of this Deed of Trust, or otherwise provided by law.

## VII

### CONDEMNATION PROCEEDS

If all or any portion of the Real Property is taken by eminent domain, by inverse condemnation, or for any public or quasi-public use under any statute, all sums paid as a result of

the taking are, to the extent required to discharge all obligations of Trustor that are secured by the terms of this Deed of Trust, to be paid to Beneficiary, and the balance remaining, if any, is to be paid to Trustor.

VIII

DEFICIENCY JUDGMENT

Trustor agrees to pay any deficiency arising in any manner after the application of the proceeds of any foreclosure sale held by Trustee pursuant to the provisions of this Deed of Trust.

IX

MISCELLANEOUS

A. Trustee is not obligated to notify any party to this Deed of Trust of any 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 by Trustee.

B. This Deed of Trust is to be binding upon and is to inure to the benefit and detriment of the parties hereto and their respective personal representatives, heirs, successors, and assigns.


C. The waiver of any breach of any of the terms or conditions of this Deed of Trust, or of any of the terms and conditions of the Promissory Note, is not to constitute a waiver of any subsequent breach of the same or of any other term or condition.

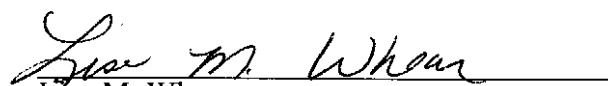
D. As used in this Deed of Trust, the masculine, feminine, or neuter gender, and the singular or plural number, are to each be considered to include the others whenever the context so indicates.

E. All notices of default are to be mailed to Trustor at the following address:

Todd R. Whear and Lisa M. Whear  
659 Stone's Throw Road  
Gardnerville, Nevada 89410

Dated as of July 29, 2003.

  
\_\_\_\_\_  
Todd R. Whear

  
\_\_\_\_\_  
Lisa M. Whear

TRUSTOR

STATE OF NEVADA        )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

This Deed of Trust was acknowledged before me on December 29th, 2003, by Todd R. Whear and Lisa M. Whear, husband and wife.

Karen Chaton  
Notary Public

