

Lincoln County

LV-610210-LL

Deed of Trust

THIS DEED OF TRUST is made this 15 day of February, 1979, among the Grantor, James E. Manner and Anna Rae Manner, Public Trustee, and Mortgage Corp., a Washington Corporation with address at 4525 Northpark Drive, Suite 101, Colorado Springs, Colorado 80907

Whereas, Borrower and Lender have executed a Construction Loan Agreement of even date (herein "Agreement") under which Lender has made to Borrower a loan in the principal amount of FORTY TWO THOUSAND AND NO/100 Dollars ("Loan Amount") for the express purpose of performing certain work on the property described below, and

Whereas, in connection with the Agreement and pursuant to its terms, Borrower has executed a Note (herein "Note") of even date in the Loan Amount payable to the Lender whereby the Borrower obligated itself to pay to the Lender the amounts so advanced, plus interest as therein stated as follows: On the first day of September, 1979 and on the first day of each succeeding month thereafter until March 1, 1980 interest on the daily balances of the Loan Amount outstanding (amounts disbursed) during the prior month, and thereafter on March 1, 1980 a final payment in an amount equal to the sum of the following: outstanding balance of the Loan Amount, interest on the daily balances of the Loan Amount outstanding during the prior month and on the daily balances of the Loan Amount outstanding during the period commencing from the date of first disbursement to August 1, 1979

Borrower, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, the following described property located in the County of Lincoln and State of Nevada

Commencing at the Southwest corner of the NE 1/4 of the SW 1/4 of Section 5, Township 7 South, Range 61 East MDB&M, thence running due east along the south line of said NE 1/4 of SW 1/4 a distance of 910 Ft. more or less to the West line of Main Street at the Northeast corner of Lot 1, Block 46, Alamo townsite on file in the office of the County Recorder of said Lincoln County; running thence North 1°23' West along the west side of said Main Street and the projection thereof a distance of 109.17 ft. to the true point of beginning; thence South 88°37' West a distance of 108.50 ft., thence North 1°23' West a distance of 91.58 feet to the south edge of a rock and concrete wall, thence in a Northeasterly direction along the South edge of the said rock and concrete wall a distance of 120.67 ft. to a point which intersects the west line of Main Street, thence South 1°23' East along the west line of Main Street a distance of 138.33 ft. to the point of beginning. Subject to an easement and right of way ten (10) ft. wide, retained by the parties of the first part for an irrigation canal along the entire south edge of the said rock and concrete wall.

Together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property are herein referred to as the "Property"

To secure to Lender (a) the repayment of the indebtedness evidenced by the Note with interest thereon all as set forth in the Note, any extensions or renewals or modifications of such Note, the payment of all other sums with interest thereon advanced in accordance herewith to protect the security of this Deed of Trust and the performance of the covenants and agreements of the Borrower herein contained and contained in the Agreement; and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 20 hereof (herein "Future Advances").

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered and that Borrower will warrant and defend generally such title to the Property against all claims and demands and will execute such further assurance as the same may be requisite.

UNIFORM COVENANTS, Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note and late charges as provided in the Note.

2. Funds for Taxes and Insurance. Subject to Lender's option under Paragraphs 4 and 5 hereof, Borrower shall pay to Lender on the day monthly installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments which may attain priority over this Deed of Trust, plus one-twelfth of the yearly premium installments for hazard insurance, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof. Lender shall hold the Funds in an account which is insured by a Federal or State agency and shall apply the funds from said account to pay said taxes, assessments, and insurance premiums. Lender shall make no charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills. Borrower and Lender may agree in writing at the time of execution of this Deed of Trust that interest on the Funds shall be paid to Borrower, and unless such agreement is made, Lender shall not be required to pay Borrower any interest on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds, interest, if any, paid to Borrower on the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Deed of Trust.

If the amount of Funds held by Lender, together with the future monthly installments of funds payable prior to the due dates of taxes, assessments, and insurance premiums shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, and insurance premiums as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days after notice from Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by this Deed of Trust, Lender shall promptly refund to Borrower any Funds held by Lender.

If under Paragraph 17 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and Paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under Paragraph 2 hereof, then to interest payable on the Note, and then to the principal of the Note.

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NON-UNIFORM COVENANTS. Borrower and Lender further agree as follows:

- 17. **Acceleration Remedies.** Upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14 hereof specifying (1) the breach; (2) the action required to cure such breach; (3) a date not less than provided for by state law from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power to sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorney's fees if permitted by applicable law.
- If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold, Lender shall mail a copy of such notice to Borrower as provided in paragraph 14 hereof. Trustee shall record a copy of such notice in the county in which the Property is located. Trustee shall publish a notice of sale for the time and in the manner provided by applicable law and shall mail copies of such notice of sale in the manner prescribed by applicable law to Borrower and to the other persons prescribed by applicable law. After the lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.
- Trustee shall deliver to the purchaser, Trustee's certificate describing the Property and the time when the purchaser will be entitled to Trustee's deed thereon. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.
- 18. **Borrower's Right to Reinstate.** Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust, the Note and notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust and in enforcing Lender's and Trustee's remedies as provided in paragraph 17 hereof, including, but not limited to, reasonable attorney's fees and Trustee's expenses and withdrawal fee; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.
- 19. **Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 17 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable. Upon acceleration under paragraph 17 hereof or abandonment of the Property, Lender, in person, by agent, or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.
- 20. **Future Advances.** Upon request of Borrower, Lender, at Lender's option prior to release of this Deed of Trust, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby.
- 21. **Release.** Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to release this Deed of Trust and shall produce for Trustee duly cancelled all notes evidencing indebtedness secured by this Deed of Trust. Trustee shall release this Deed of Trust without further inquiry or liability. Borrower shall pay all costs of recordation, if any, and shall pay the statutory Trustee's fees.
- 22. **Waiver of Homestead.** Borrower hereby waives all right of homestead exemption in the property.
- 23. **Borrower's Mailing Address.** If an address is entered after Borrower's name on the first page hereof, notices from Lender to Borrower which, pursuant to paragraph 14 hereof, would be mailed to the Borrower at the Property Address, may at the option of Lender, be mailed to such Borrower's address.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

X *James E. Manner*
 JAMES E. MANNER - Borrower
 X *Anna Rae Manner*
 ANNA RAE MANNER - Borrower

STATE OF Nevada, COUNTY of Lincoln ss:

The foregoing instrument was acknowledged before me this 22 day of February, 1979.

Witness my hand and official seal

My commission expires June 28, 1981

EVELYN HIGBEE
 Notary Public in and for the State of Nevada
 COUNTY OF LINCOLN
 My Commission Expires June 28, 1981

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James E. Manner
 Anna Rae Manner 63781
 P. O. Box 196
 Alamo, Nevada 89001

RECORDED AT REQUEST OF
 First American Title Co.
 of Nev. Mar. 5, 1979
 AT 1 MINUTES PAST 2 O'CLOCK
 A.M. IN BOOK 29 OF OFFICIAL
 RECORDS, PAGE 138 LINCOLN
 COUNTY, NEVADA.

WHEN RECORDED, MAIL TO: HOMEBUILDERS MORTGAGE CORP.
 P.O. BOX 7287
 COLORADO SPRINGS, COLORADO 80933

Frank Sitzer
 COUNTY RECORDER