

WHEN RECORDED, MAIL TO:
NEVADA STATE BANK
CONSUMER LOAN CENTER
P. O. BOX 30160
SALT LAKE CITY, UT 84130-0160

Title Company STEWART TITLE
Commitment # 1602-34516

THIS SPACE IS FOR RECORDER'S USE ONLY

**NEVADA STATE BANK
DEED OF TRUST WITH ASSIGNMENT OF RENTS
TO SECURE A HOME EQUITY CREDIT LINE AND DISCLOSURE AGREEMENT**

| PRINCIPAL | LOAN DATE | ACCOUNT NUMBER | APPLICATION ID |
|-------------|----------------|--------------------|----------------|
| \$ 28000.00 | March 23, 1999 | 018040510004000774 | 358949 |

THIS DEED OF TRUST is made on March 23, 1999 among
JON R WILKER AND RHONDA S WILKER, HUSBAND AND WIFE AS JOINT
TENANTS

(hereinafter referred to as "Trustor"), and **NEVADA STATE BANK**, (herein after referred to as "Beneficiary"), and
First American Title Company of Nevada as Trustee.

WITNESSETH:

TRUSTOR, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants, bargains, sells, conveys and warrants to Trustee, in trust, with power of sale, the following described property (the "Property") located in the County of EUREKA, State of

LOT 2 OF PARCEL 2 AS SHOWN ON THAT CERTAIN PARCEL MAP FOR TOM BUFFINGTON FILED IN THE OFFICE OF THE COUNTY RECORDER OF EUREKA COUNTY, STATE OF NEVADA, ON OCTOBER 15, 1990, AS FILE NUMBER 134148, BEING A PORTION OF THE SW1/4 OF SECTION 18, TOWNSHIP 21 NORTH, RANGE 53 EAST, M.D.B.&M. EXCEPTING THEREFROM, ALL OIL, GAS, POTASSIUM RESERVED IN PATENT EXECUTED BY UNITED STATES OF AMERICA RECORDED MAY 18, 1965, IN BOOK 7, PAGE 324, OFFICIAL RECORDS, EUREKA COUNTY, NEVADA.

which has the address of 10TH AND ROSE DIAMOND VALLEY, EUREKA,
(hereinafter referred to as the "Property Address") (Trustor's address, if different from the Property Address, is

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TOGETHER with all improvements now or hereafter erected on the Property, and all easements, rights, appurtenances, fixtures, minerals and rents (subject however to the rights and authority herein given to Beneficiary to collect and apply such rents), all of which 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 (or the leasehold estate if this Deed of Trust is on a leasehold), are hereinafter referred to collectively as the "Property". This Deed of Trust is also a fixtures and mineral filing and is to be indexed as such in the real property records. Trustor presently assigns absolutely and irrevocably to Beneficiary all of Trustor's right, title and interest in and to all present and future leases of the property and all Rents from the Property. In addition, Trustor grants Beneficiary a Uniform Commercial Code security interest in the Personal Property defined above.

This Deed of Trust, including the assignment of rents and the security interest in the personal property, is given to secure (1) payment of the indebtedness including future advances and (2) performance of each agreement and obligation of Trustor under the Agreement, the related documents, and this Deed of Trust. This Deed of Trust is governed in part by NRS 106.300 to 106.400 and therefore secures future advances made by lender. The maximum amount of advances secured by this Deed of trust is stated below, which maximum may increase or decrease from time to time by amendment of the Agreement.

TO SECURE to Beneficiary all of the following described items (the "Indebtedness"):

1. The repayment of all indebtedness owed to Beneficiary under an open-end line of credit evidenced by and described in that certain **AGREEMENT** between Beneficiary and JON R WILKER
AND RHONDA S WILKER (the "Borrower") dated March 23, 1999, together with all modifications, amendments, extensions and renewals thereof (hereinafter referred to as the "Agreement"). Beneficiary shall make advances to Borrower pursuant to the terms and conditions of the Agreement, which advances shall be repaid in whole or in part from time to time by Borrower. The maximum amount outstanding on the line of credit shall not exceed the aggregate principal balance of Twenty Eight Thousand and 00/100 Dollars (\$ 28000.00). The Indebtedness secured by this Deed of Trust, together with interest and other charges assessed on the unpaid balance thereof computed in accordance with the terms of the Agreement, shall be payable to Beneficiary in the manner and subject to the conditions set forth in the Agreement.
2. The payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust.
3. The performance of the covenants and agreements of Trustor contained in this Deed of Trust.

Specifically, without limitation, this Deed of Trust secures a revolving line of credit. Such advances may be made, repaid, and remade from time to time, subject to the limitation that the total outstanding balance owing at any one time, not including finance charges, and any amounts expended or advanced as provided in this paragraph, shall not exceed the credit limit as provided in the Agreement. It is the intention of Trustor and Beneficiary that this Deed of Trust secures the balance outstanding under the Agreement from time to time from zero up to the credit limit as provided and any intermediate balance.

Trustor covenants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered, except for any exceptions to title listed in any title insurance policy or report issued in favor of Beneficiary in connection with this Deed of Trust acceptable to Beneficiary. Trustor covenants that Trustor warrants and will defend the lien created by this Deed of Trust and the title to the Property against all claims and demands subject to encumbrances of record.

The word "Trustor" means any and all persons and entities executing this Deed of Trust, including without limitation those names listed above. Any Trustor who signs this Deed of Trust, but does not sign the Home Equity Agreement and Disclosure, is signing this Deed of Trust only to grant and convey that Trustor's interest in the Property and to grant a security interest in Trustor's interest in the Personal Property to Lender and is not personally liable under the Home Equity Agreement and Disclosure except as otherwise provided by contract or law.

Trustor covenants and agrees as follows:

1. **TAXES.** Trustor shall pay when due all taxes, special taxes, assessments, charges (including water and sewer) fines and impositions levied against or on account of the Property. Trustor shall keep the Property free and clear of all liens which have a priority over the interest of Beneficiary under this Deed of Trust except for the lien of any taxes and assessments not yet due and payable and other liens acceptable to Beneficiary. Upon demand, Trustor shall furnish to Beneficiary such evidence as Beneficiary may reasonably require, that Trustor has paid all taxes and assessments applicable to the Property. Trustor may withhold payment of any tax or assessment in connection with a good faith dispute over Trustor's obligation to pay such tax or assessment provided any such dispute is prosecuted with due diligence and Beneficiary's lien position is not jeopardized. Beneficiary retains the right to require Trustor to provide adequate assurances to Beneficiary that any dispute will not result in an impairment of Beneficiary's lien position granted by this Deed of Trust.
2. **PRIOR MORTGAGES AND DEEDS OF TRUST.** Trustor shall promptly perform all of Trustor's obligations under any mortgage, deed of trust or other security agreement with a lien which has priority over the lien of this Deed of Trust, including delivering to Beneficiary evidence of Trustor's prompt performance.
3. **HAZARD INSURANCE.** Trustor shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and such other hazards as Beneficiary may require, and in such amounts and for such periods as Beneficiary may require. Beneficiary shall be named as Loss Payee or Additional Insured, whichever may be appropriate, in all such insurance policies.

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The insurance carrier providing the insurance shall be chosen by Trustor subject to approval by Beneficiary, provided that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Beneficiary and shall include a standard mortgagee clause in favor of and in a form acceptable to Beneficiary. Beneficiary shall have the right to hold the policies and any renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over the lien of this Deed of Trust. At Beneficiary's request, Trustor will deliver certificates of insurance in form satisfactory to Beneficiary including endorsements that any coverage will not be cancelled or diminished without at least ten (10) days prior written notice to Beneficiary. Should the Property at any time become located in an area designated as a special flood hazard area, Trustor agrees to obtain and maintain Federal Flood Insurance to the extent such insurance is required and or becomes available for the term of the Indebtedness secured by this Deed of Trust and for the maximum balance available or the maximum limit of coverage that is available, whichever is less.

In the event of loss, Trustor shall give prompt notice to the insurance carrier and Beneficiary. Beneficiary may make proof of loss if not made promptly by Trustor.

4. **PRESERVATION AND MAINTENANCE OF PROPERTY; LEASEHOLDS; CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** Trustor shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Trustor shall perform all of Trustor's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

5. **PROTECTION OF BENEFICIARY'S SECURITY.** If Trustor fails to perform any covenants or agreements contained in this Deed of Trust, or if any action or proceeding is commenced which affects Beneficiary's interest in the Property, then Beneficiary, at Beneficiary's option, may make such appearances, disburse such sums, including reasonable attorneys' fees, and take such action as is necessary to protect Beneficiary's interest. Any amounts disbursed by Beneficiary pursuant hereto, with interest thereon, at the rate specified in the Agreement, shall become additional Indebtedness of Trustor secured by this Deed of Trust. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be payable upon notice from Beneficiary to Trustor requesting payment thereof. Nothing contained in this Deed of Trust shall require Beneficiary to incur any expense or take any action hereunder. Any action taken by Beneficiary shall not be construed as curing any default by Trustor.

6. **INSPECTION.** Beneficiary may make or cause to be made reasonable entries upon and inspections of the Property, provided that Beneficiary shall give Trustor notice prior to any such inspection specifying reasonable cause therefor related to Beneficiary's interest in the Property.

7. **APPRAISAL.** Beneficiary may obtain appraisals of the Property and Trustor shall cooperate with Beneficiary and grant access to the Property for the purposes of completing any such appraisals. In the event that Beneficiary is required to obtain appraisals in order to comply with any law or regulation imposed by any government entity which has jurisdiction over Beneficiary, Trustor shall bear the cost of any such appraisal and Beneficiary is hereby authorized to add such cost to the Indebtedness secured hereby.

8. **HAZARDOUS MATERIALS.** Trustor hereby represents and warrants that no Hazardous Materials, as defined below, are now located on the Property, and neither Trustor nor, to Trustor's knowledge, any other person has ever caused or permitted any Hazardous Materials to be placed, held, located or disposed of on, under or at the Property, or any part thereof. Trustor further represents and warrants that no investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials is proposed, threatened, anticipated or in existence with respect to the Property. Hazardous Materials shall mean (a) "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time and regulations promulgated thereunder; (b) "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) underground storage tanks, whether empty, filled or partially filled with any substance, (f) any substance the presence of which on the Property is prohibited by any federal, state or local law, ordinance, rule or regulation; and (g) any other substance which by any federal, state or local law, ordinance, rule or regulation requires special handling or notification in its collection, storage, treatment, or disposal. Trustor agrees not to cause or permit any Hazardous Materials to be placed, held located or disposed of on, under or at the Property or any part thereof. Trustor further agrees to give notice to Beneficiary immediately upon Trustor's learning of the presence of any Hazardous Materials on the Property, to promptly comply with any governmental requirements requiring the removal, treatment or disposal of such Hazardous Materials, and to defend, indemnify and hold harmless Beneficiary and Trustee from any and all liabilities, claims, losses or costs (including, without limitation attorney's fees) which may now or in the future be paid, incurred or suffered by or asserted against Beneficiary or Trustee by any person, entity or governmental agency with respect to the presence on or the discharge of Hazardous Materials from the Property. The representations, covenants, warranties and indemnifications contained in this paragraph shall survive the reconveyance of this Trust Deed.

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9. **USE OF PROPERTY.** Beneficiary shall not use the Property for any illegal purpose.

10. **CONDEMNATION.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or any part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Beneficiary to the extent of any Indebtedness which may be due and owing under the Agreement or pursuant to this Deed of Trust, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

11. **TRUSTOR NOT RELEASED; FORBEARANCE BY BENEFICIARY NOT A WAIVER.** Extension of time for payment or modification of the sums secured by this Deed of Trust granted by Beneficiary to any successor in interest of Trustor shall not operate to release, in any manner, the liability of the original Trustor or Trustor's successor in interest. Beneficiary shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify the Indebtedness secured by this Deed of Trust by reason of any demand made by Trustor or Trustor's successor in interest. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of nor shall preclude the exercise of any such right or remedy in the future.

Trustor's successor in interest. Any forbearance by Beneficiary in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of nor shall preclude the exercise of any such right or remedy in the future.

12. **SUCCESSORS AND ASSIGNS BOUND; JOINT AND SEVERAL LIABILITY; CO-SIGNERS.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Beneficiary and Trustor. All covenants and agreements of Trustor shall be joint and several. Any Trustor who signs this Deed of Trust, but does not execute the Agreement, (a) acknowledges having read and understood the Agreement, the obligations of which are secured by this Deed of Trust, (b) is not personally liable under the Agreement, and (c) agrees that Beneficiary and any other Trustor hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or the Agreement, without that Trustor's consent and without releasing that Trustor or modifying this Deed of Trust as to that Trustor's interest in the Property.

13. **NOTICE.** Except for any notice required under applicable law to be given in another manner, (a) any notice to Trustor provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Trustor at the Property Address or at such other address as Trustor may designate by notice to Beneficiary as provided herein, and (b) any notice to Beneficiary shall be given by certified mail to Beneficiary's address shown at the top of the first page hereof or to such other address as Beneficiary may designate by notice to Trustor as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Trustor or Beneficiary when given in the manner designated herein.

14. **GOVERNING LAW; SEVERABILITY; STATUTORY COVENANTS.** The state and local laws applicable to this Deed of Trust shall be the laws of the State of _____. In the event that any provision or clause of this Deed of Trust or the Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust are declared to be severable. The following Statutory Covenants are hereby adopted and made a part of this Deed of Trust: Covenants Nos. 1,3,4,5,6,7,8, and 9 of N.R.S. 107.030. The rate of interest default for Covenant No. 4 shall be 3.000 percentage points over the variable rate index defined in the Agreement. The percent of counsel fees under Covenant No. 7 shall be 10%. Except for Covenants Nos. 6,7, and 8 to the extent any terms of this Deed of Trust are inconsistent with the Statutory Covenants the terms of this Deed of Trust shall control. Covenants 6,7, and 8 shall control over the express terms of any inconsistent terms of this Deed of Trust

15. **EVENTS OF DEFAULT.** Each of the following shall constitute an Event of Default under this Deed of Trust (an "Event of Default"):

- (a) Borrower fails to make any payment when due under the Agreement.
- (b) Borrower or Trustor commits fraud or makes a material misrepresentation at any time in connection with the Agreement including but not limited to having provided false or misleading statements relating to Trustor's or Borrower's income, assets, liabilities or other aspects of Trustor's or Borrower's financial condition.
- (c) Trustor does not comply with the terms, conditions or obligations contained in this Trust Deed.
- (d) Trustor's action or inaction adversely affects the Property or Beneficiary's rights in the Property. This can include, but not be limited to, failure to maintain required insurance, waste or destructive use of the Property, failure to pay taxes, death of all persons liable on the Agreement, transfer of title or sale of the Property, creation of a lien on the Property without Beneficiary's permission, foreclosure by the holder of any other lien or use of the Property for prohibited purposes.
- (e) An event of default occurs under the Agreement.

16. **REMEDIES ON DEFAULT.** Upon the occurrence of any Event of Default and at any time thereafter, Trustee or Beneficiary, at its option may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

- (a) **Foreclosure.** With respect to all or part of the Property, the Trustee shall have the right to foreclose in accordance with and to the full extent provided by applicable law.
- (b) **Collect Rents.** Beneficiary shall have the right, without notice to Trustor, to take possession of and manage the Property and collect any rents, including amounts past due and unpaid and apply the net proceeds to the Indebtedness. Beneficiary may require any tenant or other user of the Property to make payments directly to Beneficiary. If any such amounts are collected by Beneficiary, Trustor hereby irrevocably designates Beneficiary as Trustor's attorney-in-fact to endorse instruments received in payment thereof in the name of Trustor and to negotiate the same and collect the proceeds.
- (c) **Receiver.** Beneficiary shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect any rents from the Property and apply the proceeds, over and above the cost of the receiver against the Indebtedness. The receiver may serve without bond if permitted by law. Beneficiary's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount and without any

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showing as required by N.R. S. 107.100. Employment by Beneficiary shall not disqualify a person from serving as a receiver.

- (d) Other Remedies. Trustee or Beneficiary shall have any other right or remedy provided in this Deed of Trust, the Agreement or by law.
- (e) Trustee. Trustee shall have all of the rights and duties of Beneficiary as described in this Deed of Trust.

17. **DUE ON SALE - CONSENT BY BENEFICIARY.** Beneficiary may, at its option, declare immediately due and payable all sums secured by this Deed of Trust upon the sale or transfer, without the Beneficiary's prior written consent, of all or any part of the real property, or any interest in the real property or any mobile home or manufactured home located on the property whether or not it is legally a part of the real property. A "sale or transfer" means the conveyance of real property or any right, title or interest therein; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the real property, or by any other method of conveyance of real property interest. If any Trustor is a corporation, partnership or limited liability company, transfer also includes any change of ownership of more than twenty-five percent (25%) of the voting stock, partnership interest or limited liability company interests, as the case may be, of Trustor. However, this option shall not be exercised by Beneficiary if such exercise is prohibited by federal law or by Nevada law.

18. **WAIVER.** A waiver by any party of a breach of a provision of this Deed of Trust shall not constitute a waiver of such party's rights otherwise to demand strict compliance with that provision or any other provision. Election by Beneficiary to pursue any remedy provided in this Deed of Trust, the Agreement or provided by law shall not exclude the exercise of any other remedy provided herein or pursuant to law or equity.

19. **ATTORNEY'S FEES AND EXPENSES.** In the event Beneficiary institutes any suit or action to enforce any of the terms of this Deed of Trust, Beneficiary shall be entitled to recover its reasonable attorneys' fees. Whether or not any court action is involved all reasonable expenses incurred by Beneficiary or the Trustee, which in Beneficiary's or Trustee's opinion are necessary at any time for the protection of its interest or the enforcement of its rights, shall become a part of the Indebtedness secured hereby, shall be payable on demand and shall bear interest at the rate provided in the Agreement. Expenses include, but are not limited to, reasonable attorneys' fees, whether or not there is a lawsuit (including efforts to modify or vacate any automatic stay or injunction, title reports, surveyor's reports, appraisal fees, title insurance, court costs and other amounts as provided by law).

20. **ARBITRATION DISCLOSURE.**

(a) Any claim or controversy ("Dispute") between or among the parties and their assigns, including but not limited to Disputes arising out of or relating to this agreement, this arbitration provision ("arbitration clause"), or any related agreements or instruments relating hereto or delivered in connection herewith ("Related Documents"), and including but not limited to a Dispute based on or arising from an alleged tort, shall at the request of any party be resolved by binding arbitration in accordance with the applicable arbitration rules of the American Arbitration Association ("the Administrator"). The provisions of this arbitration clause shall survive any termination, amendment, or expiration of this agreement or Related Documents. The provisions of this arbitration clause shall supersede any prior arbitration agreement between or among the parties. If any provision of this arbitration clause should be determined to be unenforceable, all other provisions of this arbitration clause shall remain in full force and effect.

1. ARBITRATION IS FINAL AND BINDING ON THE PARTIES AND SUBJECT TO ONLY VERY LIMITED REVIEW BY A COURT.
2. IN ARBITRATION THE PARTIES ARE WAIVING THEIR RIGHT TO LITIGATE IN COURT, INCLUDING THEIR RIGHT TO A JURY TRIAL.
3. DISCOVERY IN ARBITRATION IS MORE LIMITED THAN DISCOVERY IN COURT.
4. ARBITRATORS ARE NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING IN THEIR AWARDS. THE RIGHT TO APPEAL OR SEEK MODIFICATION OF ARBITRATORS' RULINGS IS VERY LIMITED.
5. A PANEL OF ARBITRATORS MIGHT INCLUDE AN ARBITRATOR WHO IS OR WAS AFFILIATED WITH THE BANKING INDUSTRY.
6. IF YOU HAVE QUESTIONS ABOUT ARBITRATION, CONSULT YOUR ATTORNEY OR THE AMERICAN ARBITRATION ASSOCIATION.

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- (b) The arbitration proceedings shall be conducted in Las Vegas, Nevada, at a place to be determined by the Administrator. The Administrator and the arbitrator(s) shall have the authority to the extent practicable to take any action to require the arbitration proceeding to be completed and the arbitrator(s)' award issued within one-hundred-fifty (150) days of the filing of the Dispute with the Administrator. The arbitrator(s) shall have the authority to impose sanctions on any party that fails to comply with time periods imposed by the Administrator or the arbitrator(s), including the sanction of summarily dismissing any Dispute or defense with prejudice. The arbitrator(s) shall have the authority to resolve any Dispute regarding the terms of this agreement, this arbitration clause or Related Documents, including any claim or controversy regarding the arbitrability of any Dispute. All limitations periods applicable to any Dispute or defense, whether by statute or agreement, shall apply to any arbitration proceeding hereunder and the arbitrator(s) shall have the authority to decide whether any Dispute or defense is barred by a limitations period and, if so, to summarily enter an award dismissing any Dispute or defense on that basis. The doctrines of compulsory counterclaim, res judicata, and collateral estoppel shall apply to any arbitration proceeding hereunder so that a party must state as a counterclaim in the arbitration proceeding any claim or controversy which arises out of the transaction or occurrence that is the subject matter of the Dispute. The arbitrator(s) may in the arbitrator(s)' discretion and at the request of any party: (1) consolidate in a single arbitration proceeding any other claim or controversy involving another party that is substantially related to the Dispute where that other party is bound by an arbitration clause with the Bank, such as borrowers, guarantors, sureties, and owners of collateral; (2) consolidate in a single arbitration proceeding any other claim or controversy that is substantially similar to the Dispute; and (3) administer multiple arbitration claims or controversies as class actions in accordance with the provisions of Rule 23 of the Federal Rules of Civil Procedure.
- (c) The arbitrator(s) shall be selected in accordance with the rules of the Administrator from panels maintained by the Administrator. A single arbitrator shall have expertise in the subject matter of the Dispute. Where three arbitrators conduct an arbitration proceeding, the Dispute shall be decided by a majority vote of the three arbitrators, at least one of whom must have expertise in the subject matter of the Dispute and at least one of whom must be a practicing attorney. The arbitrator(s) shall award to the prevailing party recovery of all costs and fees (including attorneys' fees and costs, arbitration administration fees and costs, and arbitrator(s)' fees). The arbitrator(s), either during the pendency of the arbitration proceeding or as part of the arbitration award, also may grant provisional or ancillary remedies including but not limited to an award of injunctive relief, foreclosure, sequestration, attachment, replevin, garnishment, or the appointment of a receiver.
- (d) Judgment upon an arbitration award may be entered in any court having jurisdiction, subject to the following limitation: the arbitration award is binding upon the parties only if the amount does not exceed Two Million Dollars (\$2,000,000.00); if the award exceeds that limit, either party may demand the right to a court trial. Such a demand must be filed with the Administrator within thirty (30) days following the date of the arbitration award; if such a demand is not made within that time period, the amount of the arbitration award shall be binding. The computation of the total amount of an arbitration award shall include amounts awarded for attorneys' fees and costs, arbitration administration fees and costs, and arbitrator(s)' fees.
- (e) No provision of this arbitration clause, nor the exercise of any rights hereunder, shall limit the right of any party to: (1) judicially or non-judicially foreclose against any real or personal property collateral or other security; (2) exercise self-help remedies, including but not limited to repossession and setoff rights; or (3) obtain from a court having jurisdiction thereover any provisional or ancillary remedies including but not limited to injunctive relief, foreclosure, sequestration, attachment, replevin, garnishment, or the appointment of a receiver. Such rights can be exercised at any time, before or during initiation of an arbitration proceeding, except to the extent such action is contrary to the arbitration award. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration, and any claim or controversy related to the exercise of such rights shall be a Dispute to be resolved under the provisions of this arbitration clause. Any party may initiate arbitration with the Administrator; however, if any party initiates litigation and another party disputes any allegation in that litigation, the disputing party--upon the request of the initiating party--must file a demand for arbitration with the Administrator and pay the Administrator's filing fee. The parties may serve by mail a notice of an initial motion for an order of arbitration.
- (f) Notwithstanding the applicability of any other law to the Agreement, the arbitration clause, or Related Documents between or among the parties, the Federal Arbitration Act, 9 U.S.C. § 1 et seq., shall apply to the construction and interpretation of this arbitration clause.

21. **RECONVEYANCE.** Upon payment by Trustor of all sums secured by this Deed of Trust, Beneficiary shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all instruments evidencing Indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled thereto. Such person or persons shall pay all costs of recordation, if any.

22. **SUBSTITUTE TRUSTEE.** Beneficiary, at Beneficiary's option, may from time to time remove Trustee and appoint a successor Trustee to any Trustee appointed hereunder. Without reconveyance of the Property, the successor Trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

23. **REQUEST FOR NOTICE.** Trustor requests that copies of the notice of default and notice of sale be sent to Trustor's address as shown above or to the last known address.

24. **TRUSTOR REPRESENTATIONS.** Trustor (i) represents that Trustor has no defenses to or setoffs against any indebtedness or other obligations owing to Lender or its affiliates (the "Obligations"), nor claims against Lender or its affiliates for any matter whatsoever, related or unrelated to the Obligations, and (ii) releases Lender and its affiliates from all claims, causes of action, and costs, in law or equity, existing as of the date of this Trust Deed, which Trustor has or may have by reason of any matter of any conceivable kind or character whatsoever, related or unrelated to the Obligations, including the subject matter of this Trust Deed. This provision shall not apply to claims for performance of express contractual obligations owing to Trustor by Lender or its affiliates.

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