

WHEN RECORDED, MAIL TO:  
ZIONS FIRST NATIONAL BANK  
2185 South 3270 West  
West Valley City, Utah 84119

Title Company FIRST AMERICAN  
Commitment # 430687WP

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**ZIONS FIRST NATIONAL BANK  
TRUST DEED AND SECURITY AGREEMENT  
WITH ASSIGNMENT OF RENTS**

PRINCIPAL	LOAN DATE	ACCOUNT NUMBER	APPLICATION ID
\$ 50000.00	06/18/98	001000360004002992	296216

THIS TRUST DEED is made on June 18, 19 98, between:  
HOWARD S FACKRELL AND SHERLYN FACKRELL, HUSBAND AND WIFE, AS  
JOINT TENANTS

as TRUSTOR, whose address is 505 SOUTH 4TH STREET, PANACA, NV, 89042;  
ZIONS FIRST NATIONAL BANK, a national banking association, as TRUSTEE, whose address is  
ST GEORGE, UT 84770 and ZIONS FIRST NATIONAL BANK, a national banking association, as  
BENEFICIARY, whose address is noted above.

WITNESSETH: That Trustor GRANTS, BARGAINS, SELLS, CONVEYS AND WARRANTS TO TRUSTEE IN TRUST,  
WITH POWER OF SALE, the following described land, situated in LINCOLN County, State of Nevada and  
more fully described as follows:

SEE ATTACHED EXHIBIT A

which is commonly known as, or has the address of

505 SOUTH 4TH STREET, PANACA, NEVADA, 89042

together with all of the following property, whether now existing, or hereafter arising: all buildings, structures and other  
improvements of every nature whatsoever now or at any time hereafter constructed or situated on said land and all  
tangible personal property and fixtures owned by Trustor and now or hereafter located on, attached to or used in  
connection with the operation or maintenance of such land, buildings, structures or other improvements, including all  
replacements of any of the foregoing and any and all additions thereto; all rights-of-way, easements, gores of land, and

licenses relating or appurtenant to said land; all water rights and stock; all mineral, oil and gas rights and profits; all rents, issues, profits, and income of whatever nature of and from the foregoing; all right, title and interest of Trustor in and to any and all present and future leases of said land or space in any building erected thereon, including the right to receive rent; all tenements, hereditaments, rights, privileges, and appurtenances relating or belonging to the foregoing; all awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the foregoing or any portion thereof; and all proceeds of insurance paid on account of any partial or total destruction of the foregoing. All of the foregoing land and property is hereinafter referred to as the "Property". This Trust Deed is also intended to be a fixtures and mineral filing and is to be indexed as such in the real property records.

This conveyance and warranty by Trustor to Trustee is made for the purpose of securing: (1) the payment and performance of each and every obligation under that certain promissory note (the "Note") dated June 18, 19 98, in the original principal sum of \$ 50000.00, executed by HOWARD S FACKRELL AND SHERLYN FACKRELL payable to the order of Beneficiary; (2) any extensions, renewals, or modifications of the Note or the obligations evidenced thereby; (3) the payment and performance of each and every agreement and obligation of Trustor under this Trust Deed and under any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby; (4) the payment of such additional loans or advances as hereafter may be made to Trustor, or Trustor's successors or assigns, when evidenced by an instrument or instruments reciting that they are secured by this Trust Deed; and (5) the payment of all sums expended or advanced by Beneficiary or Trustee under or pursuant to the terms of this Trust Deed, the Note, or any instrument further evidencing or securing any obligation secured hereby, together with interest thereon as herein provided (collectively the "Obligations"). The Note, this Trust Deed and every other instrument further evidencing or securing any Obligation secured hereby are sometimes hereinafter collectively referred to as the "Loan Documents".

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 encumbrances accepted by Beneficiary. Trustor warrants and will defend the title to the Property against all claims and demands, subject to the encumbrances accepted by Beneficiary.

NOW, THEREFORE, in order to protect the security of this Trust Deed, Trustor agrees as follows:

1. **Maintenance of the Property.** Trustor shall (a) keep the Property in good condition and repair and do all acts reasonably necessary in order so to do; (b) not remove or demolish any building on the Property; (c) complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged, or destroyed on the Property, and pay when due all claims for labor performed and materials furnished therefor; (d) comply with all laws, ordinances, regulations, covenants, conditions, and restrictions affecting the Property; (e) not commit or permit any waste of the Property; (f) not commit or permit any act upon the Property in violation of law; and (g) not destroy, damage, or substantially change the Property.
2. **Insurance.** Trustor shall provide and maintain (a) multi-peril policy of property insurance covering all completed improvements on the Property, providing as a minimum fire and extended coverage (including all perils normally covered by the standard "all risk" endorsement, if such is available), on a full replacement cost basis in an amount not less than 100% of the insurable value of the completed improvements, exclusive of the land, foundations and other items normally excluded from coverage; (b) bodily injury liability insurance with such limits as Beneficiary may reasonably require; (c) if the Property, or any portion thereof, is or at some future time is determined to be located in a special flood hazard area as identified by the Secretary of Housing and Urban Development or the Federal Emergency Management Agency, then Trustor shall obtain and maintain a blanket policy of flood insurance of such type and types and in such amounts as Beneficiary may require on the Property; and (d) such other insurance coverage of such type or types and in such amounts as Beneficiary may require on the Property. Trustor shall promptly pay when due any premiums for such insurance. Such insurance shall be in form and carried with companies approved by Beneficiary and shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such insurance notwithstanding any negligent act of Trustor which might otherwise result in forfeiture of the insurance. The policies shall provide that the insurer will waive all rights of set-off, counterclaim or deduction against Trustor, and shall contain a provision that such policies will not be cancelled or materially amended or altered without first affording Beneficiary at least thirty (30) days prior written notice. All such insurance shall contain a standard "mortgagee protection clause" and shall name Beneficiary as an additional insured or loss payee, whichever is appropriate. In the event of loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurer concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor and Beneficiary jointly. If Trustor fails to provide satisfactory hazard insurance, Beneficiary may procure (but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof), on Trustor's behalf, insurance in favor of Beneficiary alone.

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**3. Evidence of Title.** Trustor shall deliver to, pay for, and maintain with Beneficiary, until the Obligations are paid in full, such evidence of title to the Property as Beneficiary may require, including, without limitation, a policy or policies of title insurance and any extensions or renewals thereof, or supplement or endorsements thereto. Trustor shall execute and deliver to Beneficiary such further instruments, including without limitation, Uniform Commercial Code Financing Statements and Continuation Statements, and do such further acts as may be necessary or reasonably required by Beneficiary to fully subject the Property to the lien created hereby, and to otherwise carry out more effectively the purposes of this Trust Deed. To the extent the Property includes personal property covered by the UCC, Trustor hereby grants a security interest therein to Trustee for the benefit of the Beneficiary.

**4. Defense of Title.** Trustor shall appear in and defend, and indemnify Beneficiary against any action or proceeding purporting to affect the security for the Obligations, the title to the Property, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect also to appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees incurred by Beneficiary or Trustee.

**5. Payment of Taxes, Assessments, Etc.** Trustor shall pay, at least ten (10) days before delinquency, all taxes, assessments, charges, fines, and impositions relating to the Property, including all assessments upon water company stock, and all rents, assessments, and charges for water, appurtenant to or used in connection with the Property. Trustor shall also pay, when due, all encumbrances, charges, and liens, with interest, on the Property or any part thereof, which at any time appear to be prior or superior to this Trust Deed, except as allowed in accordance with Section 6.

**6. Discharge of Liens.** Trustor shall promptly discharge any lien which has priority over this Trust Deed unless (a) Trustor obtains Beneficiary's written agreement to permit said lien to continue to encumber the Property, or (b) Trustor bonds over the obligation secured by the lien in an amount and with a bonding company acceptable to Beneficiary, contests the lien diligently and in good faith and defends against enforcement of the lien in legal proceedings which in the Beneficiary's opinion operate to prevent the enforcement of the lien or forfeiture of any part of the Property. If Beneficiary determines that any of the Property is subject to a lien which may attain priority over this Trust Deed, Beneficiary may give Trustor a notice identifying the lien. Trustor shall satisfy the lien or take one or more of the actions set forth above within ten (10) days of the giving of such notice.

**7. Performance in Trustor's Stead.** If Trustor fails to do any other act as required by this Trust Deed, or satisfy any duty of Trustor under any Obligation, 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 do any or all of the following: make or do the same in such manner and to such extent as either may deem necessary to protect the security for the Obligations, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; commence, appear in, and defend any action or proceeding purporting to affect the security for the Obligations or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge, or lien which in the judgment of Beneficiary or Trustee appears to be prior to or superior to the Trust Deed and which has not been approved in writing by Beneficiary; and in exercising any such powers, incur any liability, expend whatever amounts are reasonably necessary therefor, including cost of evidence of title and reasonable attorney's fees. Any amounts so expended shall be secured by this Trust Deed and shall accrue interest at the rate provided in the Note.

**8. Monthly Tax and Insurance Payments.** Upon written notice from Beneficiary, Trustor shall pay to Beneficiary on the first day of each month, for such period as Beneficiary may specify, an amount estimated by Beneficiary to be equal to one-twelfth of the annual taxes, assessments and other charges against the Property and one-twelfth of the estimated annual aggregate insurance premiums on all policies of insurance that Trustor is required to provide hereunder. If at any time or for any reason the funds deposited with Beneficiary are or will be insufficient to pay such amounts as may then or subsequently be due, Beneficiary shall notify Trustor and Trustor shall immediately deposit an amount equal to such deficiency with Beneficiary. Beneficiary shall not be obligated to pay any interest on any sums held by Beneficiary pending disbursement or application hereunder.

**9. Repayment of Advances.** Trustor shall pay within thirty (30) days after demand all sums properly expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate provided in the Note, and the payment thereof shall be secured by this Trust Deed.

**10. Due on Transfer.** In the event Trustor shall either sell, convey or alienate the Property, or any part thereof, or any interest therein, without the express prior written permission of Beneficiary or be divested of title in any manner, whether voluntarily or involuntarily, then the full principal indebtedness of the Note, and the Obligations secured by this Trust Deed, irrespective of the maturity date expressed therein, at the option of Beneficiary and without demand or notice, shall immediately become due and payable.

**11. Taking or Damage of the Property.** If the Property or any part thereof is condemned or taken in any manner or damaged by fire, earthquake, or in any other manner, Beneficiary shall be entitled to receive all compensation, awards, and other payments or relief therefor, and shall, at its option, have the right to commence, appear in, and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with such taking or

damage. All such compensation, awards, damages, rights of action, and proceeds, including all insurance proceeds, are hereby assigned to Beneficiary who shall, after deducting therefrom all of Beneficiary's expenses, have the right, exercisable in its sole discretion, to apply the moneys so received to the reduction of the Obligations or to the restoration, repair, or rebuilding of the Property. If Trustor abandons the Property, or does not answer within thirty (30) days a notice from Beneficiary that the insurance carrier has offered to settle a claim, then Beneficiary may collect the insurance proceeds, and, at Beneficiary's sole discretion, may use such proceeds to repair or restore the Property or to reduce the Obligations. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

**12. Acceptance of Late Payment Not a Waiver.** By accepting any payment on the Obligations after the payment due date, Beneficiary does not waive its right either to require prompt payment due of all other payments or to declare a default for failure to make such payment when due.

**13. Continued Effectiveness During Any Extension.** This Trust Deed shall remain in full force and effect during any postponement or extension of the time of payment of the Obligations or any portion thereof.

**14. Right to Inspect Property and Obtain Appraisals.** Beneficiary or its agent may make reasonable entries upon the Property for the purposes of conducting inspections and obtaining appraisals of the Property. Beneficiary shall give Trustor notice at the time of or prior to any inspection specifying the reasonable cause for the inspection. Should Beneficiary be required to obtain appraisals of the Property in order to comply with any laws or regulations imposed or adopted by any governmental entity or regulatory agency having jurisdiction over Beneficiary, Trustor shall cooperate with Beneficiary to obtain such appraisals and shall pay all costs of such appraisals upon demand. Any such costs not paid by Trustor shall constitute an Obligation secured by this Deed of Trust and shall bear interest as provided in Section 9.

**15. 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) petroleum and petroleum products 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 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.

**16. Reconveyance.** At any time and from time to time; if Trustee obtains the written consent of Beneficiary and pays its fees and presents this Trust Deed and the Note and any other instruments evidencing the Obligations for endorsement (or, in case of full reconveyance, for cancellation and retention), Trustee may (without affecting the liability of any person for the payment of the Obligations) do any of the following: (a) consent to the making of any map or plat of the Property; (b) join in granting any easement or creating any restriction on the Property; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) grant any extension, modification, or renewal of the terms of the Note or other instruments governing the Obligations; and (e) reconvey, without warranty, all or any part of the Property. The grantee in any reconveyance may be described as "the person or persons entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

**17. Assignment of Leases and Rents.** As additional security, Trustor hereby assigns to Beneficiary, during the continuance of this trust, all leases of and all rents, issues, royalties, and profits on or forming part of the Property and of any personal property located on the Property. Until the occurrence of a default in the payment of the Obligations or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable; however, in the event of a default as described herein, Trustor's right to collect any such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the Property, to collect all such rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect such moneys. Nothing contained herein, nor the exercise of Beneficiary's right to collect such moneys, shall be or be deemed or construed to be an affirmation by Beneficiary of any tenancy, lease, or option, nor an assumption of liability thereunder, nor a subordination of the lien or charge of this Trust Deed to any such tenancy, lease or option. All future lease agreements entered into by Trustor, as



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landlord, which have a term of one (1) year or more and which pertain to the Property, or any portion thereof, shall contain a covenant on the part of the tenant thereunder, enforceable by Beneficiary, obligating such tenant upon request of Beneficiary, to attorn to and become a tenant of Beneficiary, or any purchaser from Trustee or through foreclosure of this Trust Deed, for the unexpired term of, and subject to the terms and conditions of such future lease agreement.

**18. Receiver.** Upon any default under this Trust Deed or under any Loan Documents, Beneficiary, as a matter of right and without regard to the then value of the Property or the interest of Trustor therein, shall have the right upon notice to Trustor to apply to any court having jurisdiction to appoint a receiver or receivers of the Property and Trustor hereby irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of a receiver and shall continue as such and exercise all such powers until completion of the sale of the Property or the foreclosure proceeding, unless the receivership is sooner terminated.

**19. Possession No Waiver of Default.** The entering upon and taking possession of the Property, the collection of such rents, royalties, issues, and profits, insurance proceeds, or compensation or awards for any taking or damage of the Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

**20. No Waiver of Remedies.** The failure on the part of 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 default.

**21. Default.** Trustor will be in default under this Trust Deed upon the occurrence and continuance of any one of the following:

- (a) Except as provided otherwise in Paragraph 21(b), failure by Trustor to observe and perform any of the terms, covenants, or conditions to be observed or performed by Trustor contained in this Trust Deed or any Loan Document, for a period of fifteen (15) days after written notice, specifying such failure and requesting that it be remedied, given to Trustor by Beneficiary, unless Beneficiary shall agree in writing to an extension of such time prior to its expiration;
- (b) Trustor or the person obligated thereon shall fail to make any payment due and payable under the terms of this Trust Deed, the Note or any Loan Document;
- (c) Any material representation or warranty of the Trustor contained in this Trust Deed or any Loan Document, was untrue when made;
- (d) If (1) Trustor or any person liable on any Obligation commences any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of Trustor or such other person of Trustor's or such other person's debts under any law relating to bankruptcy, reorganization, or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for Trustor or such other person or for all or any substantial part of Trustor's or such other person's property; (2) any guarantor of the Note commences any case, proceeding, or other action seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of such guarantor or such guarantor's debts under any law relating to bankruptcy, reorganization, or relief of debtors, or seeking appointment of a receiver, trustee, custodian, or other similar official for such guarantor or for any substantial part of such guarantor's property; or (3) any such case, proceeding, or other action is commenced against either Trustor or any other person liable on any Obligation, or any guarantor of the Note and such case, proceeding, or other action either results in an order for relief against either Trustor, such other person or any guarantor of the Note which is not fully stayed within seven (7) business days after the entry thereof, or remains undismissed for a period of forty-five (45) days;
- (e) Trustor fails to pay Trustor's debts as they become due, admits in writing Trustor's inability to pay Trustor's debts, or makes a general assignment for the benefit of creditors; or
- (f) The occurrence of an event of default under any Loan Document.

**22. Notice of Default.** Time is of the essence hereof. Upon default in the performance of any agreement hereunder, under any of the Obligations secured hereby or under any Loan Document, Beneficiary may declare the Obligations immediately due and payable. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Property to be sold to satisfy the Obligations hereof.

and Trustee shall file such notice for record in each county wherein the Property or any part or parcel thereof is situated.

**23. Power of Sale.** After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as Trustee may determine (but subject to any statutory right of Trustor to direct the order in which the Property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause deemed expedient, postpone the sale from time to time until it shall be completed in accordance with the laws then in effect relating to postponement. Trustee shall execute and deliver to the purchaser its Deed conveying the Property or part 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 Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of: (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's fees and attorney's fees; (b) the cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (c) all sums expended under the terms hereof, not then repaid, with accrued interest from date of expenditure at the rate provided herein; (d) all other Obligations; and the remainder, if any, to (e) the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

**24. Surrender of Possession.** Trustor agrees to surrender possession of the Property to the Purchaser immediately after such sale, in the event such possession has not previously been surrendered by Trustor.

**25. Foreclosure as a Mortgage.** Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare the Obligations immediately due and payable and foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property, and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys' fees.

**26. Successor Trustees.** Beneficiary may from time to time substitute a successor or successors to any Trustee named herein or acting hereunder to execute this Trust Deed. Upon such appointment, and without conveyance to the successor Trustee, the latter shall be vested with all title, power, and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by Beneficiary, containing reference to this Trust Deed and its place of record, which, when recorded in the office of the County Recorder of the county or counties in which the Property is situated, shall be conclusive proof of proper appointment of the successor Trustee. The foregoing power of substitution and the procedure therefor shall not be exclusive of the power and procedure provided for by law for the substitution of a Trustee or Trustees in the place of the Trustee named herein.

**27. No Remedy Exclusive.** No power or remedy herein conferred is exclusive of or shall prejudice any other power or remedy of Trustee or Beneficiary.

**28. Exercise of Remedies.** The exercise of any power or remedy on one or more occasions shall not exclude the future exercise thereof from time to time upon the conditions prescribed herein or by operation of law.

**29. Heirs, Successors and Assigns.** This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. In this Trust Deed, whenever the context so requires, the masculine gender includes both the feminine and neuter, and the singular number includes the plural.

**30. Obligations Joint and Several.** All obligations of each Trustor (if more than one) under this Trust Deed are joint and several.

**31. Beneficiary Includes Any Note Holder.** As used in this Trust Deed, the term "Beneficiary" shall mean the owner and holder, including any pledgee, of the Note.

**32. Trustee's Acceptance of Trust.** Trustee accepts this Trust when this Trust Deed, 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 Trust Deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

**33. 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 Salt Lake City, Utah, 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 Four Million Dollars (\$4,000,000.00); 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 thereof 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.

34. **Governing Law.** This Trust Deed shall be governed by and construed in accordance with the laws of the State of Nevada.

35. **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.

36. **Request for Notice.** The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Trustor at Trustor's address hereinafter set forth.

37. **Construction Mortgage.** If the line appearing at the left is checked, this Trust Deed constitutes a "construction mortgage" within the meaning of Section 70A-9-542(H)(ii), Utah Code Annotated, as amended. Trustor agrees (a) to commence construction promptly and to pursue the same with reasonable diligence to completion in accordance with the construction budget, plans and specifications delivered to and approved in writing by Beneficiary; (b) to allow Beneficiary or its agent to inspect the Property at all times during construction and to pay any costs reasonably incurred by Beneficiary in connection with said inspections; (c) to satisfy such loan disbursement procedures and requirements as Beneficiary shall otherwise require, including, without limitation, furnishing to Beneficiary such lien waivers and receipts from all those furnishing materials or performing labor in constructing the improvements on the Property; and (d) to provide such additional information and satisfy such other requirements as Beneficiary may from time to time require in connection with financing the construction of the improvements to be constructed on the Property.

IN WITNESS WHEREOF, Trustor has executed and delivered this Trust Deed as of the date first above written.

SIGNATURE(S) OF TRUSTOR:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Individually:

Howard S. Fackrell  
HOWARD S FACKRELL

Sherlyn Fackrell  
SHERLYN FACKRELL

INDIVIDUAL ACKNOWLEDGMENT(S)

STATE OF UTAH )

COUNTY OF Washington )

On this 18<sup>th</sup> day of June, 19 98, personally appeared before me Howard S. Fackrell & Sherlyn Fackrell, the signer(s) of the above instrument, who duly acknowledged to me that he executed the same.

Bart Merrill  
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_ Residing at: \_\_\_\_\_

3-1-01 Enterprise, UT





06/18/98 TUE 08:34 FAX 9 801 974 7093

Zions Retail Loans

ENTERPRISE

0002

03-05-98 03:38pm From-FIRST AMERICAN TITLE DEPT.

7027786931

T-870 P.04/05 F-370

DESCRIPTION

All that certain lot, piece or parcel of land situate in the County of Lincoln, State of Nevada, described as follows:

A parcel of land situate in the Southwest quarter of the Southwest quarter of Section 9, Township 2 South, Range 68 East, M.D.B.&M., being more particularly described as follows:

BEGINNING at a point from which the Southwest corner of Section 9 bears North 89°51' West, a distance of 873.74 feet, more or less;

Thence North 48°40'06" East, a distance of 199.16 feet along the Southeasterly boundary of the flood control channel deeded to Lincoln County to an angle point;

Thence North 27°21'49" East, a distance of 638.79 feet along above-mentioned channel to the Northeast corner;

Thence South 0°01'05" West, a distance of 700.00 feet to the Southeast corner;

Thence North 89°51' West, a distance of 442.94 feet to the Southwest corner which is the Point of Beginning.

*Howard S. Fackrell  
Sherlyn Fackrell*

NO. 111167

FILED AND RECORDED AT REQUEST OF  
ZIONS FIRST NATIONAL BANK

JUNE 18, 1998

AT 30 MINUTES PAST 2 O'CLOCK

PM IN BOOK 135 OF OFFICIAL

RECORDS PAGE 290 LINCOLN

COUNTY CLERK

YURIKO SETZER

430687WP

BY *Lelia Brasher* DEPUTY