

M 74713 LCP 97119366-AS

# Open-End Deed of Trust

**NOTICE: THIS IS A CREDIT LINE DEED OF TRUST. THIS DOCUMENT CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE.**

IL-1231NV Rev.(5/96) L.C. 3/96 LD 3/97

## Nevada-Residential Property

This Deed of Trust is made this 25 day of

JULY 1997,

between JAMES W MCMASTERS

ELIZABETH V MCMASTERS

(hereinafter called "Trustor"),

whose mailing address is

3596 CHEROKEE DR  
CARSON CITY NV 89705

and American Title Insurance Company,

(hereinafter called "Trustee"), whose address is

7011 Koll Center Parkway  
Pleasanton, CA 94566

and MELLON BANK, N. A.

(hereinafter called "Beneficiary"), whose mailing address is

152-0825 PO BOX 535002  
PITTSBURGH, PA 15230-5002

As used herein, the term "Trustor" refers individually and collectively to all Trustors, and all such persons shall be jointly and severally bound by the terms hereof.

JAMES W MCMASTERS

**WHEREAS,** ELIZABETH V MCMASTERS

(hereinafter individually and collectively called "Borrower") (has) (have) entered into an agreement (the "Agreement")

dated JULY 25, 1997

with MELLON BANK, N. A.

pursuant to which Borrower is entitled to obtain advances from Beneficiary from time to time in an amount not to

exceed at any one time, in the aggregate, \$ 25,000.00, which Agreement evidences Borrower's obligation to pay loans and advances made under the Agreement:

**NOW, THEREFORE,** to induce Beneficiary to make loans and advances to or on behalf of Borrower pursuant to the Agreement, to secure the payment of all sums due or which may become due under the Agreement and any and all extensions or renewals thereof in whole or in part (all of which is hereinafter called the "Obligation"), and to secure performance of all obligations under the Agreement and this Deed of Trust, Trustor by these presents, intending to be legally bound, does grant, bargain, sell, and convey unto Trustee in trust, with power of sale, all that certain property situated in

DOUGLAS

City/County, Nevada, and more particularly described in Exhibit "A" attached hereto and made a part hereof;

**TOGETHER WITH ALL** the buildings and improvements now or hereafter erected thereon, the privileges and appurtenances thereunto belonging, and the reversions and remainders, rents, issues, and profits thereof (all of which is hereinafter called the "Property");

**THIS DOCUMENT IS RECORDED AS AN ACCOMODATION ONLY** and without liability for the consideration therefor; or as to the validity or sufficiency of said instrument or for the effect of such recording on the title of the property involved.

**TO HAVE AND TO HOLD** the same unto Trustee in trust, with power of sale.

**PROVIDED, HOWEVER,** that if the principal amount of the Obligation (which is the outstanding principal balance of loans or advances made pursuant to the Agreement and any amounts which Beneficiary has elected to pay under Paragraphs Fifth and Eighth hereof) shall at any time exceed the credit limit stated in the Agreement, which is

\$ 25,000.00, any amount in excess of the credit limit shall not be secured by this Deed of Trust, and provided further that upon payment in full of the Obligation and cancellation of the Agreement, Beneficiary shall request Trustee to release this Deed of Trust and shall produce for Trustee duly canceled all notes evidencing indebtedness secured hereby. Trustee shall release this Deed of Trust without further inquiry or liability.

**TRUSTOR and BENEFICIARY** represent, warrant, covenant, and agree as follows:

**FIRST:** This Deed of Trust shall secure not only existing indebtedness, but also future advances made pursuant to the Agreement (the terms of which are incorporated herein by reference as if fully set forth and the maximum amount of principal to be secured is \$ 25,000.00), and shall continue in full force and effect, although there may be no advances made at the time of execution of this Deed of Trust and although there may be no indebtedness outstanding at the time any advance is made; and this Deed of Trust shall be released only upon the occurrence of the conditions stated above.

**SECOND:** Trustor will keep and perform all the covenants and agreements contained herein.

**THIRD:** Except where permitted by federal law as of the date of this Deed of Trust, without prior written consent of Beneficiary, Trustor shall not cause or permit legal or equitable title to all or part of the Property or an interest therein to become vested in any other person or entity by sale, operation of law, or in any other manner, whether voluntarily or involuntarily.

**FOURTH:** Trustor warrants that Trustor owns the fee simple title to the Property free and clear of all liens, claims, and encumbrances except those to which Beneficiary has consented in writing. Trustor covenants that the Property shall continue to be held free and clear of all liens, claims, and encumbrances except: (1) where permitted by applicable law as of the date of this Deed of Trust, or (2) when expressly permitted by Beneficiary in writing.

**FIFTH:** Trustor will pay when due all taxes, assessments, levies, and other charges on or against the Property which may attain priority over this Deed of Trust. If Trustor fails to do so, at its sole option Beneficiary may elect to pay such taxes, assessments, levies, or other charges. At Beneficiary's request, Trustor shall deliver written evidence of all such payments to Beneficiary.

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**SIXTH:** Trustor shall keep the Property in good repair, excepting only reasonable wear and tear. Trustor will permit Beneficiary's authorized representatives to enter upon the Property at any reasonable time for the purpose of inspecting the condition of the Property. Without the written consent of Beneficiary, Trustor will not permit removal or demolition of improvements now or hereafter erected on the Property, nor will Trustor permit waste of the Property or alteration of improvements now or hereafter erected on the property which would adversely affect its market value as determined by Beneficiary.

**SEVENTH:** The term "hazardous substances" includes any substances, materials, or wastes that are or become regulated by any governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive, or other properties that may be hazardous to human health or the environment, as well as any materials or substances that are listed in the United States Department of Transportation Hazardous Materials Table, as amended from time to time.

Trustor warrants that the Property does not contain any hazardous substances and that no physical conditions hazardous to human health or safety are present on the Property, except as previously disclosed to Beneficiary in writing. Trustor will neither cause nor permit the deposit, creation, or presence of any hazardous substances or the creation or existence of any physical condition hazardous to human health or safety on the Property. Trustor will comply at Trustor's expense with all laws, regulations, rules, ordinances, and orders of courts or governmental agencies regarding the Property, now or hereafter in existence, including, but not limited to those relating to hazardous substances. If Trustor fails to do so, Beneficiary may, at its option, take any action it deems in its sole discretion to be necessary to effectuate such compliance.

Beneficiary shall have no obligation or liability at any time with regard to hazardous substances or any other physical conditions which may exist on the Property at any time. Trustor will indemnify and defend Beneficiary against any and all liabilities or losses of any type whatsoever which Beneficiary may incur by reason of any hazardous substances or other physical conditions which may exist on the Property at any time; provided, however, that if Beneficiary shall acquire sole possession of the Property, Trustor shall have no obligation under this paragraph on account of any condition which may thereafter come into existence and which was not caused by a previously existing condition. Trustor's obligations under this paragraph shall survive the termination and satisfaction of this Deed of Trust.

**EIGHTH:** Trustor shall keep the Property insured against loss by fire, all other hazards contemplated by the term "extended coverage," and such other risks and hazards as Beneficiary shall require, in such amounts and for such terms as Beneficiary shall require. Trustor will purchase flood insurance as and to the extent required by Beneficiary or by law or regulation. The insurer or insurers will be chosen by Trustor, subject to approval by Beneficiary, and approval shall not be unreasonably withheld. All insurance policies shall contain standard mortgage clauses in favor of Beneficiary and shall be cancellable by the insurer only after prior written notice by the insurer to Beneficiary. Trustor shall deliver written evidence of all such insurance to Beneficiary.

If Trustor fails to obtain and keep in force any required insurance or fails to pay the premiums on such insurance, Beneficiary at its sole option may elect to do so. In the event of loss, Trustor shall give prompt notice to Beneficiary and make proper proof of loss to the insurer. Beneficiary at its option may elect to make proper proof of loss if Trustor does not do so promptly, and to take any action it deems necessary to preserve Trustor's or Beneficiary's rights under any insurance policy. Beneficiary may require that the insurance proceeds for any loss be paid directly to Beneficiary only and not jointly to Trustor and Beneficiary. Trustor hereby appoints Beneficiary and its successors and assigns as Trustor's attorney-in-fact to endorse Trustor's name to any draft or check which may be payable to Trustor in order to collect any insurance proceeds.

Upon foreclosure of this Deed of Trust, or exercise of the power of sale given to Trustee, or acquisition of the Property by Beneficiary or its assigns, all right, title and interest of Trustor in and to the policies and proceeds thereof and sums payable thereunder shall forthwith pass automatically to the purchaser of said Property.

**NINTH:** Trustor hereby agrees to repay Beneficiary on demand all sums which Beneficiary has elected to pay under Paragraphs Fifth and/or Eighth, and all such sums, until repaid to Beneficiary, shall be a part of the Obligation and shall bear interest at the highest rate permitted by law (but not exceeding the contractual rate or rates of interest applicable to the Obligation by the terms of the Agreement).

**TENTH:** Subject to the rights of the holders of any prior mortgage or deed of trust, Trustor hereby assigns to Beneficiary all proceeds of any award in connection with any condemnation or other taking of the Property or any part thereof, or payment for conveyance in lieu of condemnation.

**ELEVENTH:** If the Property or any portion thereof consists of a unit in a condominium or a planned unit development, Trustor shall perform all of Trustor's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws, rules, and regulations of the condominium or planned unit development, and related documents. If a condominium or planned unit development rider is executed by Trustor and recorded with this Deed of Trust, the covenants and agreements of such rider shall be incorporated herein as if the rider were a part hereof.

**TWELFTH:** In order to further secure Beneficiary in the event of default in the payment of the Obligation or in the performance by Trustor of any of the covenants, conditions, or agreements contained herein, Trustor hereby assigns and transfers to Beneficiary and its successors and assigns any and all leases on the Property or any part thereof, now existing or which may hereafter be made at any time, together with any and all rents, issues, and profits arising from the Property under said leases or otherwise. Beneficiary shall have no obligation to perform or discharge any duty or liability under such leases, but shall have full authorization to collect all rents under the leases or otherwise, and to take any action,

including legal action, it deems necessary to preserve Trustor's or Beneficiary's rights under such leases. Trustor shall not collect any rent in advance of the date it is due. Assignment of the rents, issues, and profits is intended to be an absolute assignment from Trustor to Beneficiary and not merely the passing of a security interest.

**THIRTEENTH:** In the event that (a) any Borrower has engaged in fraud or material misrepresentation in connection with the line of credit evidenced by the Agreement; (b) Borrower(s) fail to meet any of the repayment terms of the Agreement; (c) action or inaction of any Borrower adversely affects the Property, any other property securing the Agreement, or Beneficiary's rights in the Property or such other property; (d) any Borrower sells or otherwise transfers ownership of the Property to someone who is not a Trustor; (e) any Borrower dies, and the death will result in transfer of ownership of the Property to someone who is not a Trustor; (f) all Borrowers have died; or (g) a Borrower is an executive officer, as defined in Federal Reserve Board Regulation O, of Beneficiary, and a condition described in a separate loan acceleration agreement executed by that Borrower has occurred; then, in addition to exercising any rights which Beneficiary may have under the terms of the Agreement or any agreement securing repayment of, or relating to, any portion of the Obligation or which are otherwise provided by law, Beneficiary may declare the Obligation immediately due and payable and may cause the exercise of the power of sale granted herein and direct Trustee to sell the Property for the collection of the Obligation and all expenses of the sale, such expenses to include (1) reasonable attorney's fees actually incurred not to exceed the lesser of (a) 20% of the amount due or \$500, whichever is greater, or (b) the maximum amount permitted by law; and (2) Trustee's fees not to exceed 5% of the gross sale price. In lieu of sale pursuant to the power of sale conferred hereby, at the option of Beneficiary this Deed of Trust may be foreclosed in the manner provided by law for the foreclosure of mortgages on real property. Trustor waives all exemptions from levy on and sale of the Property or any part thereof, and agrees that to the extent permitted by law, an action may be maintained by Beneficiary to recover a deficiency judgment for any balance due hereunder.

Beneficiary shall give notice to Trustor prior to acceleration following Trustor's breach of any covenant or agreement in this Deed of Trust by Notice of Default and Election to Sell (the "Notice"). The Notice shall specify (a) the default; (b) the action required to cure the default; (c) a date, not less than 35 days from the date the Notice is given to Trustor, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the Notice may result in acceleration of the sums secured by this Deed of Trust and result in the sale of the property. The Notice shall further inform Trustor of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Trustor to acceleration and sale. If the default is not cured on or before the date specified in the Notice, Beneficiary, at its option, and without further demand, may invoke the power of sale, including the right to accelerate full payment of the obligation, and any other remedies permitted by applicable law. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph, including, but not limited to, reasonable attorneys fees and costs of title evidence.

Beneficiary shall record, or cause Trustee to record, the Notice in each county in which any part of the property is located. Beneficiary or Trustee, shall mail copies of the Notice as prescribed by applicable law to Trustor and to the persons prescribed by applicable law. Trustee shall subsequently give public notice of sale to the persons and in the manner prescribed by applicable law. After the time required by applicable law, Trustee, without demand on Trustor, shall sell the property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of all or any parcel of the property by public announcement at the time and place of any previously schedule sale. Beneficiary or its designee may purchase the property at any sale.

Trustee shall deliver to the purchaser a Trustee's Deed conveying the property without any covenant or warranty, expressed or implied. The recitals in the 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 expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or person legally entitled to it.

**FOURTEENTH:** The rights and remedies of Beneficiary provided herein, in the Agreement, or in any other agreement securing repayment of, or relating to, any portion of the Obligation, or otherwise provided by law, shall be cumulative and may be pursued singly, concurrently, or successively at Beneficiary's sole discretion, and may be exercised as often as necessary, and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release of the same.

**FIFTEENTH:** Beneficiary, without notice to Trustor, may deal with the Obligation and any collateral security therefore in such manner as Beneficiary may deem advisable and may accept partial payment for or settle, release, or compromise the Obligation, may substitute or release any collateral security, and may release and discharge from liability any Trustor, all without impairing the estate granted hereby or the obligations of Trustor hereunder.

**SIXTEENTH:** The covenants, conditions, and agreements contained herein shall bind the heirs, personal representatives, and successors of Trustor, and the rights and privileges contained herein shall inure to the successors and assigns of Beneficiary.

**SEVENTEENTH:** This Deed of Trust shall be governed in all respects by the laws of the State of Nevada. If any provision hereof shall for any reason be held invalid or unenforceable, no other provision shall be affected thereby, and this Deed of Trust shall be construed as if the invalid or unenforceable provision had never been part of it.

**EIGHTEENTH:** Trustor hereby waives all right of homestead exemption in the Property.

**NINETEENTH:** 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,

return receipt requested, to Trustor's address stated herein 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 stated herein 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. The Address at which communications may be mailed or delivered to Beneficiary is that address which is set forth for Beneficiary on the first page of this Deed of Trust.

**TWENTIETH:** Beneficiary may, for any reason or cause, from time to time remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all title, power, and duties conferred upon Trustee herein and by applicable law.

**TWENTY-FIRST:** Trustee accepts these Trusts when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law.

**NOTICE: THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.**

Witness the due execution and sealing hereof the day and year first above written:

**Signatures**

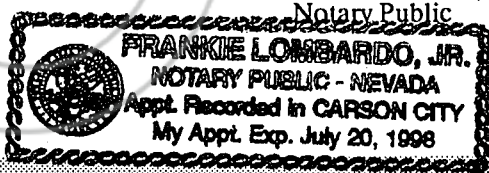
_____	<u>James W. McMasters</u> (Seal)
Witness	Trustor JAMES W MCMASTERS
_____	_____ (Seal)
Witness	Trustor
_____	<u>Elizabeth V. McMasters</u> (Seal)
Witness	Trustor ELIZABETH V MCMASTERS
_____	_____ (Seal)
Witness	Trustor

**Acknowledgment**

STATE OF NEVADA, CARSON CITY County ss: I hereby certify, that on this 30<sup>th</sup> day of JULY, in the year 1997, before the subscribed, a notary public, personally appeared James W. McMasters & Elizabeth V. McMasters and acknowledged the foregoing Deed of Trust to be \_\_\_\_\_ act, and that they executed the same for the purposes therein contained.

AS WITNESS: my hand and notarial seal.

Frankie Lombardo, Jr.



My Commission Expires: 7/20/98

**Recorder's Acknowledgment**

County of \_\_\_\_\_ ss  
Recorded in the Office of the Recorder of Deeds in and for said County on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in Mortgage Book Volume \_\_\_\_\_, page \_\_\_\_\_.  
Witness my hand and the seal of said office the day and year aforesaid.

Recorder

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From  
JAMES W MCMASTERS  
ELIZABETH V MCMASTERS

To  
MELLON BANK, N. A.

Recorder mail to  
MELLON BANK N.A.  
P.O. BOX 149  
PITTSBURGH, PA 15230-0149

A00796312  
0110 00941

Tax Parcel ID:

LEGAL DESCRIPTION: ALL THAT PARCEL OF LAND IN DOUGLAS COUNTY, STATE OF NEVADA, AS MORE FULLY DESCRIBED IN DEED BOOK 1193, PAGE 1047, ID# 13-071-01, BEING KNOWN AND DESIGNATED AS LOT 6, VALLEY VIEW SUBDIVISION UNIT NO.2, FILED ON APRIL 6, 1964 AS FILE NO. 24786.

Y FEE SIMPLE DEED FROM CLIFFORD M. COSTON AND SHERI A. COSTON, HUSBAND AND WIFE, AS JOINT TENANTS AS SET FORTH IN DEED BOOK 1193, PAGE 1047 DATED 11/05/1993 AND RECORDED 11/05/1993, DOUGLAS COUNTY RECORDS, STATE OF NEVADA.

REQUESTED BY  
WESTERN TITLE COMPANY, INC.

IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

'97 SEP -5 P12:44

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LINDA SLATER  
RECORDER

\$11.00 PAID *KJ* DEPUTY

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