

23-

REQUESTED BY
U.S. AA Federal Sav
IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

Assessor's Parcel Number: 1219-15-001-012
Mail Tax Statements To (name and address):
RICHARD P. OSWITT
JANE E. OSWITT
930 FOOTHILL RD
GARDNERVILLE, NV 89460

2004 APR 20 AM 8:11

WERNER CHRISTEN
RECORDER

\$23⁰⁰ PAID K2 DEPUTY

Return To (name and address):
When recorded return to:
USAA FEDERAL SAVINGS BANK
HOME EQUITY LOAN SERVICING
10750 McDERMOTT FREEWAY
SAN ANTONIO, TX 78288-0558

✓

State of Nevada Space Above This Line For Recording Data

App# 228855

DEED OF TRUST
(With Future Advance Clause)
For Lines of Credit

1. **DATE AND PARTIES.** The date of this Deed of Trust (Security Instrument) is
April 5, 2004..... and the parties, their addresses and tax identification numbers, if
required, are as follows:
GRANTOR:

Richard P. Oswitt and Jane E. Oswitt, husband and wife; whose address is 930 FOOTHILL RD,
GARDNERVILLE, NV 89460

If checked, refer to the attached Addendum incorporated herein, for additional Grantors,
their signatures and acknowledgments.

TRUSTEE:

Jetta Darr
10750 McDermott Freeway
San Antonio, TX 78288

LENDER:

USAA FEDERAL SAVINGS BANK ("USAA FSB")
10750 McDERMOTT FREEWAY
SAN ANTONIO, TX 78288-0558

2. **CONVEYANCE.** For good and valuable consideration, the receipt and sufficiency of which is
acknowledged, and to secure the Secured Debt (defined on page 2) and Grantor's performance
under this Security Instrument, Grantor irrevocably grants, bargains, conveys and sells to
Trustee, in trust for the benefit of Lender, with power of sale, the following described property
*(if property description is in metes and bounds the name and mailing address of the person who
prepared the legal description must be included):*

**See Exhibit A, which is attached to this Deed of Trust and made a part of
this Deed of Trust as if fully set forth herein.**

NEVADA - HOME EQUITY LINE OF CREDIT DEED OF TRUST
(NOT FOR FNMA, FHLMC, FHA OR VA USE)

Expires ©1994 Bankers Systems, Inc., St. Cloud, MN Form USAAHEDT-NV 8/19/2003
(page 1 of 9)

0610664

BK0404PG09231

The property is located in Douglas at
..... (County)
..... 930 FOOTHILL RD GARDNERVILLE Nevada 89460
..... (Address) (City) (ZIP Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, all water and riparian rights, ditches, and water stock and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property").

3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount secured by this Security Instrument at any one time shall not exceed \$ 75,000.00 This limitation of amount does not include interest and other fees and charges validly made pursuant to this Security Instrument. Also, this limitation does not apply to advances made under the terms of this Security Instrument to protect Lender's security and to perform any of the covenants contained in this Security Instrument.

4. **SECURED DEBT AND FUTURE ADVANCES.** The term "Secured Debt" is defined as follows:
A. Debt incurred under the terms of all promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all their extensions, renewals, modifications or substitutions. (*You must specifically identify the debt(s) secured and you should include the final maturity date of such debt(s).*)

That Line of Credit Agreement dated 04/05/2004 having a Credit Limit of \$75,000.00 executed by [Borrower(s):] RICHARD P. OSWITT, JANE E. OSWITT to USAA FSB as Lender and having a Maturity Date of 4/5/2024.

B. All future advances from Lender to Grantor. If more than one person signs this Security Instrument, each Grantor agrees that this Security Instrument will secure all future advances that are given to or incurred by any one or more Grantor, or any one or more Grantor and others. **Future advances are contemplated and are governed by the provisions of NRS 106.300 to 106.400, inclusive.** All future advances are secured by this Security Instrument even though all or part may not yet be advanced. All future advances are secured as if made on the date of this Security Instrument. Nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment must be agreed to in a separate writing.

C. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument.

5. **DEED OF TRUST COVENANTS.** Grantor agrees that the covenants in this section are material obligations under the Secured Debt and this Security Instrument. If Grantor breaches any covenant in this section, Lender may refuse to make additional extensions of credit and reduce the credit limit. By not exercising either remedy on Grantor's breach, Lender does not waive Lender's right to later consider the event a breach if it happens again.

Payments. Grantor agrees that all payments under the Secured Debt will be paid when due and in accordance with the terms of the Secured Debt and this Security Instrument.

Prior Security Interests. With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property, Grantor agrees to make all payments when due and to perform or comply with all covenants. Grantor also agrees not to allow any modification or extension of, nor to request any future advances under any note or agreement secured by the lien document without Lender's prior written approval.

0610664
BK0404PG09232

Claims Against Title. Grantor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Grantor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Grantor's payment. Grantor will defend title to the Property against any claims that would impair the lien of this Security Instrument. Grantor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses Grantor may have against parties who supply labor or materials to maintain or improve the Property.

Property Condition, Alterations and Inspection. Grantor will keep the Property in good condition and make all repairs that are reasonably necessary. Grantor shall not commit or allow any waste, impairment, or deterioration of the Property. Grantor agrees that the nature of the occupancy and use will not substantially change without Lender's prior written consent. Grantor will not permit any change in any license, restrictive covenant or easement without Lender's prior written consent. Grantor will notify Lender of all demands, proceedings, claims, and actions against Grantor, and of any loss or damage to the Property.

Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Lender shall give Grantor notice at the time of or before an inspection specifying a reasonable purpose for the inspection. Any inspection of the Property shall be entirely for Lender's benefit and Grantor will in no way rely on Lender's inspection.

Authority to Perform. If Grantor fails to perform any duty or any of the covenants contained in this Security Instrument, Lender may, without notice, perform or cause them to be performed. Grantor appoints Lender as attorney in fact to sign Grantor's name or pay any amount necessary for performance. Lender's right to perform for Grantor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Security Instrument.

Leaseholds; Condominiums; Planned Unit Developments. Grantor agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If the Property includes a unit in a condominium or is part of a planned unit development ("PUD"), Grantor agrees to the following: (i) The Property includes not only the property described above, but also an undivided interest in certain common elements and facilities of the condominium or PUD, and any interest of the Grantor in the homeowners' association or other equivalent entity owning or managing the common areas and facilities and the uses, benefits and proceeds of that interest; (ii) Grantor will perform all of Grantor's duties under the covenants, by-laws, or regulations of the condominium or PUD; (iii) Grantor will take such actions as are reasonable to ensure that any homeowners' association or equivalent entity maintains a public liability insurance policy and a "master" or "blanket" policy on the Property providing insurance coverage against loss by fire, hazards included within the term "extended coverage," and any other hazards, including but not limited to, earthquakes and floods, from which Lender requires insurance that is acceptable in form, amount, and extent of coverage to Lender.

Condemnation. Grantor will give Lender prompt notice of any pending or threatened action, by private or public entities to purchase or take any or all of the Property through condemnation, eminent domain, or any other means. Grantor authorizes Lender to intervene in Grantor's name in any of the above described actions or claims. Grantor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Security Instrument. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.

Insurance. Grantor shall keep Property insured against loss by fire, flood, theft and other hazards and risks reasonably associated with the Property due to its type and location. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding two sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Grantor subject to Lender's approval, which shall not be unreasonably withheld. If Grantor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Security Instrument.

0610664

BK0404PG09233

All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "loss payee clause." Grantor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Grantor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Grantor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Grantor.

Unless otherwise agreed in writing, all insurance proceeds shall be applied to the restoration or repair of the Property or to the Secured Debt, whether or not then due, at Lender's option. Any application of proceeds to principal shall not extend or postpone the due date of the scheduled payment nor change the amount of any payment. Any excess will be paid to the Grantor. If the Property is acquired by Lender, Grantor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

Financial Reports and Additional Documents. Grantor will provide to Lender upon request, any financial statement or information Lender may deem reasonably necessary. Grantor agrees to sign, deliver, and file any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Grantor's obligations under this Security Instrument and Lender's lien status on the Property.

6. **ASSIGNMENT OF LEASES AND RENTS.** Grantor absolutely, unconditionally, irrevocably and immediately assigns, grants and conveys to Trustee, in trust for the benefit of Lender all the right, title and interest in the following (all referred to as "Property"): existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including any extensions, renewals, modifications or replacements (all referred to as "Leases"); and rents, issues and profits (all referred to as "Rents"). In the event any item listed as Leases or Rents is determined to be personal Property, this Assignment will also be regarded as a security agreement. Grantor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed.

Lender grants Grantor a revocable license to collect, receive, enjoy and use the Rents as long as Grantor is not in default. Grantor's default automatically and immediately revokes this license. Upon default, Grantor will receive any Rents in trust for Lender and Grantor will not commingle the Rents with any other funds. When Lender so directs, Grantor will endorse and deliver any payments of Rents from the Property to Lender. Grantor agrees that Lender will not be considered to be a mortgagee-in-possession by executing this Security Instrument or by collecting or receiving payments on the Secured Debts, but only may become a mortgagee-in-possession after Grantor's license to collect, receive, enjoy and use the Rents is revoked by Lender or automatically revoked on Grantor's default, and Lender takes actual possession of the Property. Consequently, until Lender takes actual possession of the Property, Lender is not obligated to perform or discharge any obligation of Grantor under the Leases, appear in or defend any action or proceeding relating to the Rents, the Leases or the Property, or be liable in any way for any injury or damage to any person or property sustained in or about the Property. Grantor agrees that this Security Instrument is immediately effective between Grantor and Lender and effective as to third parties on the recording of this Assignment. As long as this Assignment is in effect, Grantor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants.

7. **WARRANTY OF TITLE.** Grantor warrants that Grantor is or will be lawfully seized of the estate conveyed by this Security Instrument and has the right to irrevocably grant, bargain, convey and sell the Property to Trustee, in trust, with power of sale. Grantor also warrants that the Property is unencumbered, except for encumbrances of record.
8. **DUE ON SALE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of, or contract for the creation of, a transfer

0610664

BK0404PG09234

or sale of the Property. This right is subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable.

9. **DEFAULT.** Grantor will be in default if any of the following occur:

Fraud. Any Consumer Borrower engages in fraud or material misrepresentation in connection with the Secured Debt that is an open end home equity plan.

Payments. Any Consumer Borrower on any Secured Debt that is an open end home equity plan fails to make a payment when due.

Property. Any action or inaction by the Borrower or Grantor occurs that adversely affects the Property or Lender's rights in the Property. This includes, but is not limited to, the following: (a) Grantor fails to maintain required insurance on the Property; (b) Grantor transfers the Property; (c) Grantor commits waste or otherwise destructively uses or fails to maintain the Property such that the action or inaction adversely affects Lender's security; (d) Grantor fails to pay taxes on the Property or otherwise fails to act and thereby causes a lien to be filed against the Property that is senior to the lien of this Security Instrument; (e) a sole Grantor dies; (f) if more than one Grantor, any Grantor dies and Lender's security is adversely affected; (g) the Property is taken through eminent domain; (h) a judgment is filed against Grantor and subjects Grantor and the Property to action that adversely affects Lender's interest; or (i) a prior lienholder forecloses on the Property and as a result, Lender's interest is adversely affected.

Executive Officers. Any Borrower is an executive officer of Lender or an affiliate and such Borrower becomes indebted to Lender or another lender in an aggregate amount greater than the amount permitted under federal laws and regulations.

10. **REMEDIES ON DEFAULT.** In addition to any other remedy available under the terms of this Security Instrument, Lender may accelerate the Secured Debt and foreclose this Security Instrument in a manner provided by law if Grantor is in default. In some instances, federal and state law will require Lender to provide Grantor with notice of the right to cure, or other notices and may establish time schedules for foreclosure actions.

At the option of the Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. Lender shall be entitled to, without limitation, the power to sell the Property.

If there is a default, Trustee shall, at the request of Lender, advertise and sell the Property as a whole or in separate parcels at public auction to the highest bidder for cash and convey absolute title free and clear of all right, title and interest of Grantor at such time and place as Trustee designates. Trustee shall give notice of sale, including the time, terms and place of sale and a description of the Property to be sold as required by the applicable law.

Upon the sale of the Property and to the extent not prohibited by law, Trustee shall make and deliver a deed to the Property sold which conveys absolute title to the purchaser, and after first paying all fees, charges, and costs, shall pay to Lender all moneys advanced for repairs, taxes, insurance, liens, assessments and prior encumbrances and interest thereon, and the principal and interest on the Secured Debt, paying the surplus, if any, to Grantor. Lender may purchase the Property. The recitals in any deed of conveyance shall be prima facie evidence of the facts set forth therein.

The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require complete cure of any existing default. By not exercising any remedy on Grantor's default, Lender does not waive Lender's right to later consider the event a default if it happens again.

11. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** If Grantor breaches any covenant in this Security Instrument, Grantor agrees to pay all expenses Lender incurs in performing such covenants or protecting its security interest in the Property. Such expenses include, but are not limited to, fees incurred for inspecting, preserving, or otherwise protecting the Property and Lender's security interest. These expenses are payable on demand and will bear interest from the date of payment until paid in full at the highest rate of interest in effect as provided in the terms of the Secured Debt. Grantor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender's

0610664

BK0404PG09235

rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorneys' fees, court costs, and other legal expenses. To the extent permitted by the United States Bankruptcy Code, Grantor agrees to pay the reasonable attorneys' fees Lender incurs to collect the Secured Debt as awarded by any court exercising jurisdiction under the Bankruptcy Code. This Security Instrument shall remain in effect until released. Grantor agrees to pay for any recordation costs of such release.

- 12. ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) Environmental Law means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), and all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) Hazardous Substance means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law.

Grantor represents, warrants and agrees that:

- A. Except as previously disclosed and acknowledged in writing to Lender, no Hazardous Substance is or will be located, stored or released on or in the Property. This restriction does not apply to small quantities of Hazardous Substances that are generally recognized to be appropriate for the normal use and maintenance of the Property.
 - B. Except as previously disclosed and acknowledged in writing to Lender, Grantor and every tenant have been, are, and shall remain in full compliance with any applicable Environmental Law.
 - C. Grantor shall immediately notify Lender if a release or threatened release of a Hazardous Substance occurs on, under or about the Property or there is a violation of any Environmental Law concerning the Property. In such an event, Grantor shall take all necessary remedial action in accordance with any Environmental Law.
 - D. Grantor shall immediately notify Lender in writing as soon as Grantor has reason to believe there is any pending or threatened investigation, claim, or proceeding relating to the release or threatened release of any Hazardous Substance or the violation of any Environmental Law.
- 13. ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Grantor will not be required to pay to Lender funds for taxes and insurance in escrow.
- 14. JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Security Instrument are joint and individual. If Grantor signs this Security Instrument but does not sign an evidence of debt, Grantor does so only to mortgage Grantor's interest in the Property to secure payment of the Secured Debt and Grantor does not agree to be personally liable on the Secured Debt. If this Security Instrument secures a guaranty between Lender and Grantor, Grantor agrees to waive any rights that may prevent Lender from bringing any action or claim against Grantor or any party indebted under the obligation. These rights may include, but are not limited to, any anti-deficiency or one-action laws. The duties and benefits of this Security Instrument shall bind and benefit the successors and assigns of Grantor and Lender.
- 15. SEVERABILITY; INTERPRETATION.** This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section of this Security Instrument cannot be enforced according to its terms, that section will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this

0610664

BK0404PG09236

Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.

- 16. **SUCCESSOR TRUSTEE.** Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee without any other formality than the designation in writing. The successor trustee, without conveyance of the Property, shall succeed to all the title, power and duties conferred upon Trustee by this Security Instrument and applicable law.
- 17. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Security Instrument, or to any other address designated in writing. Notice to one grantor will be deemed to be notice to all grantors.
- 18. **WAIVERS.** Except to the extent prohibited by law, Grantor waives all appraisalment and homestead exemption rights relating to the Property.
- 19. **LINE OF CREDIT.** The Secured Debt includes a revolving line of credit. Although the Secured Debt may be reduced to a zero balance, this Security Instrument will remain in effect until released.
- 20. **APPLICABLE LAW.** This Security Instrument will be governed by applicable federal law and the law of the state of Texas without regard to its rules regarding the conflicts of laws, except for matters regarding the perfection and enforcement of the lien on real property, which will be governed by the law of the state where the Property is located.
- 21. **RIDERS.** The covenants and agreements of each of the riders described below are incorporated into and supplement and amend the terms of this Security Instrument:

.....
.....

22. **ADDITIONAL TERMS.**

SIGNATURES: By signing below, Grantor agrees to the terms and covenants contained in this Security Instrument and in any attachments. Grantor also acknowledges receipt of a copy of this Security Instrument on the date stated on page 1.

<i>Richard P Oswitt</i>	<i>4/15/04</i>	<i>Jane E Oswitt</i>	<i>4-5-04</i>
(Signature) RICHARD P OSWITT	(Date)	(Signature) JANE E OSWITT	(Date)
.....
(Signature)	(Date)	(Signature)	(Date)

0610664
BK0404PG09237

ACKNOWLEDGMENT:

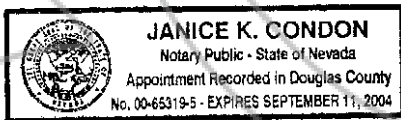
STATE OF NEVADA....., COUNTY OF Douglas } ss.
This instrument was acknowledged before me this 5th day of April 2004
(Individual) by RICHARD P OSWITT
My commission expires:
(Seal)

Janice K. Condon
JANICE K. CONDON (Notary Public)
State Officer
(Title and Rank)



STATE OF NEVADA....., COUNTY OF Douglas } ss.
This instrument was acknowledged before me this 5th day of April 2004
(Individual) by JANE E OSWITT
My commission expires:
(Seal)

Janice K. Condon
JANICE K. CONDON (Notary Public)
State Officer
(Title and Rank)



0610664

BK0404PG09238

STATE OF NEVADA....., COUNTY OF} ss.
(Individual) This instrument was acknowledged before me this day of
by
My commission expires:
(Seal)
.....
(Notary Public)
.....
(Title and Rank)

STATE OF NEVADA....., COUNTY OF} ss.
(Individual) This instrument was acknowledged before me this day of
by
My commission expires:
(Seal)
.....
(Notary Public)
.....
(Title and Rank)

0610664
BK0404PG09239

EXHIBIT A
LEGAL DESCRIPTION

The land referred to herein is situated in the State of Nevada, County of Douglas, described as follows:
All that certain lot, piece or parcel of land situate in the Easterly 1/2, Northeast 1/4 of Section 15,
Township 12 North, Range 19 East, M.D.B. & M., in the County of Douglas, State of Nevada, described
as follows:

Parcel 3 as set forth on that certain Parcel Map for A & K CABLE T.V. INC., Donald O. Ashurst,
President, filed for record on September 29, 1986, in Book 696, Page 3394, as Document No. 141825.

*** Derivation - grantor and grantee names only as shown on recorded document ***

*** Being the same parcel conveyed to Richard P. Oswitt and Jane E. Oswitt From Robert L. Gonzales
and Arline V. Gonzales by virtue of a Deed date 6/1/1998 recorded 8/7/1998 in Deed Book 0898 , Page
1594 in County of DOUGLAS ***

0610664

BK0404PG09240