

RECORDATION REQUESTED BY:

BANK ONE, UTAH, NA
U340
2200 S STATE, 2ND FLOOR
SALT LAKE CITY, UT 84115

6748776
09/26/97 11:07 AM 19.00
NANCY WORKMAN
RECORDER, SALT LAKE COUNTY, UTAH
METRO NATIONAL TITLE
REC BY: V ASHBY DEPUTY - WI

WHEN RECORDED MAIL TO:

Business Banking Servicing
AZ1 - 2565
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Mesa, AZ 85211-4190

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HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY AGREEMENT

THIS HAZARDOUS SUBSTANCES CERTIFICATE AND INDEMNITY AGREEMENT DATED SEPTEMBER 25, 1997, IS MADE BY JACK H FOUCAULT (sometimes referred to below as "Borrower", sometimes as "Trustor" and sometimes as "Indemnitor"), for the benefit of BANK ONE, UTAH, NA (referred to below as "Lender"). For good and valuable consideration and to induce Lender to make a Loan to Borrower, each party executing this Agreement hereby represents and agrees with Lender as follows:

DEFINITIONS. The following words shall have the following meanings when used in this Agreement. All references to dollar amounts shall mean amounts in lawful money of the United States of America.

Agreement. The word "Agreement" means this Hazardous Substances Certificate and Indemnity Agreement, as this Hazardous Substances Certificate and Indemnity Agreement may be modified from time to time, together with all exhibits and schedules attached to this Hazardous Substances Certificate and Indemnity Agreement

Borrower. The word "Borrower" means individually and collectively JACK H FOUCAULT.

Clean-Up. The word "Clean-up" means the removal or remediation of the Release of any Hazardous Substance on, in or under the Property, or the presence of any Hazardous Substance on, in or under the Property as the result of a Release, or the emanation of any Hazardous Substance from the Property.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations, rules and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Clean Water Act, as amended, the Clean Air Act, as amended, the Federal Insecticide, Fungicide and Rodenticide Act, as amended and other applicable state or federal laws, rules, or regulations adopted pursuant to any of the foregoing.

Hazardous Substance. The words "Hazardous Substance" are used in their very broadest sense and refer to materials that, because of their quantity, concentration or physical chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. "Hazardous Substances" include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof, asbestos, and polychlorinated biphenyls.

Lender. The word "Lender" means BANK ONE, UTAH, NA, its successors and assigns.

Loan. The word "Loan" or "Loans" means and includes any and all commercial loans and financial accommodations from Lender to Borrower, whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

Occupant. The word "Occupant" means individually and collectively all persons or entities occupying or utilizing the Property, whether as owner, tenant, operator or other occupant.

Property. The word "Property" means the following described real property, and all improvements thereon located in SALT LAKE County, the State of Utah:

ALL OF LOTS 7, 8, 9, AND 10. BLOCK 5, SOUTH BOULEVARD, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE SALT LAKE COUNTY RECORDER'S OFFICE

Release. The word "Release" means the spilling, leaking, disposing, discharging, dumping, pouring, emitting, depositing, injecting, leaching, escaping or other release or threatened release, whether intentional or unintentional, of any Hazardous Substance.

Trustor. The word "Trustor" means individually and collectively JACK H FOUCAULT.

REPRESENTATIONS. The following representations are made to Lender, subject to disclosures made and accepted by Lender in writing:

Use Of Property. After due inquiry and investigation, Borrower has no knowledge, or reason to believe, that there has been any use, generation, manufacture, storage, treatment, refinement, transportation, disposal, Release, or threatened Release of any Hazardous Substance by any person on, under, or about the Property. There are no underground storage tanks on the Property except as have been disclosed to Lender in writing and which are in compliance with all Environmental Laws.

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Hazardous Substances. After due inquiry and investigation, Borrower has no knowledge, or reason to believe, that the Property, whenever and whether owned by previous Occupants, has ever contained asbestos, PCB or other Hazardous Substances, whether used in construction or stored on the Property.

No Notices. Borrower has received no summons, citation, directive, letter or other communication, written or oral, from any agency or department of any county or state or the U.S. Government concerning any intentional or unintentional Release on, under, or about the Property of Hazardous Substances into any waters, air, or lands or where damage may have resulted to the lands, waters, fish, shellfish, wildlife, biota, air or other natural resources.

AFFIRMATIVE COVENANTS. Subject to disclosures made and accepted by Lender in writing, Borrower hereby covenants with Lender as follows:

Use Of Property. Borrower will not use and does not intend to use the Property to generate, manufacture, refine, transport, treat, store, handle or dispose of any Hazardous Substances, nor permit such use by any Occupant.

Compliance with Environmental Laws. Borrower shall cause the Property and the operations conducted thereon to comply with all Environmental Laws and orders of any governmental authorities having jurisdiction under any Environmental Laws and shall obtain, keep in effect and comply with all governmental permits and authorizations required by Environmental Laws with respect to such Property and operations. Borrower shall furnish Lender with copies of all such permits and authorizations and any amendments or renewals thereof and shall notify Lender of any expiration or revocation of such permits or authorizations.

Preventive, Investigatory and Remedial Action. Borrower shall exercise and shall cause any Occupant to utilize extreme care in handling Hazardous Substances if Borrower or Occupant uses or encounters any. Borrower, at Borrower's expense, shall undertake any and all preventive, investigatory or remedial action (including emergency response, removal, containment and other remedial action) (a) required by any applicable Environmental Laws or orders by any governmental authority having jurisdiction under Environmental Laws, or (b) necessary to prevent or minimize property damage (including damage to Occupant's own property), personal injury or damage to the environment, or the threat of any such damage or injury, by Releases of or exposure to Hazardous Substances in connection with the Property or operations of any Occupant on the Property. In the event Borrower fails to perform any of Borrower's obligations under this section of the Agreement, Lender may (but shall not be required to) perform such obligations at Borrower's expense. All such costs and expenses incurred by Lender under this section and otherwise under this Agreement shall be reimbursed by Borrower to Lender upon demand with interest at the Loan default rate, or in the absence of a default rate, at the Loan interest rate. Lender and Borrower intend that Lender shall have full recourse to Borrower for any sum at any time due to Lender under this Agreement. In performing any such obligations of Borrower, Lender shall at all times be deemed to be the agent of Borrower and shall not by reason of such performance be deemed to be assuming any responsibility of Borrower under any Environmental Law or to any third party. Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact with full power to perform such of Borrower's obligations under this section of the Agreement as Lender deems necessary and appropriate.

Notices. Borrower shall immediately notify Lender upon becoming aware of any of the following:

- (a) Any spill, Release or disposal of a Hazardous Substance on any of the Property, or in connection with any of its operations if such spill, Release or disposal must be reported to any governmental authority under applicable Environmental Laws.
- (b) Any contamination, or imminent threat of contamination, of the Property by Hazardous Substances, or any violation of Environmental Laws in connection with the Property operations conducted on the Property.
- (c) Any order, notice of violation, fine or penalty or other similar action by any governmental authority relating to Hazardous Substances or Environmental Laws and the Property or the operations conducted on the Property.
- (d) Any judicial or administrative investigation or proceeding relating to Hazardous Substances or Environmental Laws and to the Property or the operations conducted on the Property.
- (e) Any matters relating to Hazardous Substances or Environmental Laws that would give a reasonably prudent Lender cause to be concerned that the value of Lender's security interest in the Property may be reduced or threatened or that may impair, or threaten to impair, Borrower's ability to perform any of its obligations under this Agreement when such performance is due.

Access to Records. Borrower shall deliver to Lender, at Lender's request, copies of any and all documents in Borrower's possession or to which it has access relating to Hazardous Substances or Environmental Laws and the Property and the operations conducted on the Property, including without limitation results of laboratory analyses, site assessments or studies, environmental audit reports and other consultants' studies and reports.

Inspections. Lender reserves the right to inspect and investigate the Property and operations thereon at any time and from time to time, and Borrower shall cooperate fully with Lender in such inspection and investigations. If Lender at any time has reason to believe that Borrower or any Occupants of the Property are not complying with all applicable Environmental Laws or with the requirements of this Agreement or that a material spill, Release or disposal of Hazardous Substances has occurred on or under the Property, Lender may require Borrower to furnish Lender at Borrower's expense an environmental audit or a site assessment with respect to the matters of concern to Lender. Such audit or assessment shall be performed by a qualified consultant approved by Lender. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person.

BORROWER'S WAIVER AND INDEMNIFICATION. Borrower hereby indemnifies and holds harmless Lender and Lender's officers, directors, employees and agents, and Lender's successors and assigns and their officers, directors, employees and agents against any and all claims demands, losses, liabilities, costs, fines, penalties and expenses (including without limitation attorneys' fees at trial and on any appeal or petition for review) incurred by such person (a) arising out of or relating to any investigatory or remedial action involving the Property, the operations conducted on the Property or any other operations of Borrower or any Occupant and required by Environmental Laws or by orders of any governmental authority having jurisdiction under any Environmental Laws, (b) on account of injury to any person whatsoever or damage to any property arising out of, in connection with, or in any way relating to (i) the breach of any covenant contained in this Agreement, (ii) the violation of any Environmental Laws, (iii) the use, treatment, storage, generation, manufacture, transport, Release, spill disposal or other handling of Hazardous Substances on the Property, (iv) the contamination of any of the Property by Hazardous Substances by any means whatsoever (including without limitation any presently existing contamination of the Property, whether such contamination occurred before or after any ownership or use of the Property by Borrower), or (v) any costs incurred by Lender pursuant to this Agreement, (c) arising out of any lien imposed upon the Property in favor of any governmental entity as a result of (i) any Release of any Hazardous Substance on, in or under the Property, (ii) the presence of any Hazardous Substance on, in or under the Property as a result of a Release, or (iii) the emanation of any Hazardous Substance from the Property, or (d) in connection with any Clean-Up or other response to such contamination in compliance with all Environmental Laws, to the satisfaction of all applicable governmental agencies and/or in compliance with good commercial practice. In addition to this indemnity, Borrower hereby releases and waives all present and future claims against Lender for indemnity or contribution in the event

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Borrower becomes liable for cleanup or other costs under any Environmental Laws.

Borrower's Obligation to Clean-Up. If any Clean-Up is required with respect to the Property, the Borrower shall expeditiously complete such Clean-Up at the Borrower's expense and without the necessity of demand by the Lender. If the Borrower should fail to initiate and diligently pursue any Clean-Up, or should otherwise fail to perform any obligation under the terms of this paragraph, the Lender may, at its sole direction and without any obligation to complete any Clean-Up which it may cause to be commenced, cause the Clean-Up or partial Clean-Up of the Property and pay on behalf of the Borrower any costs, fines or penalties imposed on the Borrower pursuant to any Environmental Laws or make any other payment or perform any other action which will prevent a lien in favor of any federal, state or local government authority or any other person from attaching to the Property pursuant to the provisions of any Environmental Law. All costs and expenses of the Lender incurred in pursuing any of the remedies provided in this paragraph shall be added to the Loan, which costs and expenses shall become due and payable as incurred by the Lender, together with interest thereon, at the default rate of interest provided for under the Loan or in the absence of a default rate, at the Loan interest rate.

PAYMENT: FULL RECOURSE TO BORROWER. Borrower intends that Lender shall have full recourse to Borrower for Borrower's obligations hereunder as they become due to Lender under this Agreement. Such liabilities, losses, claims, damages and expenses shall be reimbursable to Lender as Lender's obligations to make payments with respect thereto are incurred, without any requirement of waiting for the final outcome of any litigation, claim or other proceeding, and Borrower shall pay such liability, losses, claims, damages and expenses to Lender as so incurred on demand and in no event more than thirty (30) days after written notice from Lender. Lender's notice shall contain a brief itemization of the amounts incurred to the date of such notice. In addition to any remedy available for failure to pay periodically such amounts, such amounts shall thereafter bear interest at the Loan default rate, or in the absence of a default rate, at the Loan interest rate.

SURVIVAL. The covenants contained in this Agreement shall survive (a) the repayment of the Loan, (b) any foreclosure, whether judicial or nonjudicial, of the Property, and (c) any delivery of a deed in lieu of foreclosure to Lender or any successor of Lender. The covenants contained in this Agreement shall be for the benefit of Lender and any successor to Lender, as holder of any security interest in the Property or the indebtedness secured thereby, or as owner of the Property following foreclosure or the delivery of a deed in lieu of foreclosure.

MISCELLANEOUS PROVISIONS.

Applicable Law. This Agreement has been delivered to Lender and accepted by Lender in the State of Utah. Subject to the provisions on arbitration in any note, document or agreement related hereto, this Agreement shall be governed by and construed in accordance with the laws of the State of Utah without regard to any conflict of laws or provisions thereof.

JURY WAIVER. THE UNDERSIGNED AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG THE UNDERSIGNED AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS DOCUMENT OR ANY OTHER RELATED DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER RELATED DOCUMENTS.

Attorneys' Fees and Other Costs. Lender may hire an attorney to help collect all amounts payable hereunder if Borrower does not pay all obligations of the Borrower hereunder, and Borrower will pay Lender's reasonable attorneys' fees. Borrower also will pay Lender all other amounts actually incurred by Lender as court costs, lawful fees for filing, any action to enforce the obligations of the Borrower hereunder or for recording, or releasing to any public office any instrument required in any investigation.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Agreement in all other respects shall remain valid and enforceable.

Waivers and Consents. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by any party of a provision of this Agreement shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, shall constitute a waiver of any of Lender's rights or any of Borrower's obligations as to any future transactions. Whenever consent by Lender is required in this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required. Borrower hereby waives notice of acceptance of this Agreement by Lender.

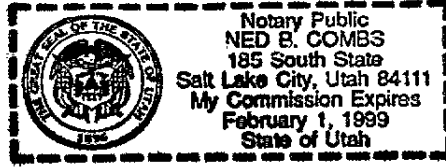
EACH PARTY TO THIS AGREEMENT ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS AGREEMENT, AND EACH AGREES TO ITS TERMS. NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS AGREEMENT EFFECTIVE.

INDEMNITOR:
X 
JACK H FOUCAULT

BK 7766 PG 2980

INDIVIDUAL ACKNOWLEDGMENT

STATE OF Utah)
COUNTY OF Salt Lake) SS



On this day before me, the undersigned Notary Public, personally appeared JACK H FOUCAULT, to me known to be the individual described in and who executed the Hazardous Substances Certificate and Indemnity Agreement, and acknowledged that he or she signed the Agreement as his or her free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 25 day of September, 19 97.

By Ned B. Combs Residing at _____

Notary Public in and for the State of _____ My commission expires _____

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