

4. Jurisdiction is a question of law and TCB therefore neither admits nor denies the allegations contained in paragraph 4 of the Complaint to the extent they constitute allegations of conclusions of law and TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of any factual allegations contained therein and therefore denies such allegations.

5. Venue is a question of law and TCB therefore neither admits nor denies the allegations contained in paragraph 5 of the Complaint to the extent they constitute allegations of conclusions of law and TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of any factual allegations contained therein and therefore denies such allegations.

6. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 6 of the Complaint and therefore denies such allegations.

7. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 7 of the Complaint and therefore denies such allegations.

8. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 8 of the Complaint and therefore denies such allegations.

9. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 9 of the Complaint and therefore denies such allegations.

10. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 10 of the Complaint and therefore denies such allegations.

11. TCB admits that Holcomb has over 40 years of banking experience, but denies the allegations contained in the rest and remainder of paragraph 11 of the Complaint.

12. TCB admits that accounts were established at TCB in the names of WinterHawk and Robert Cord, but denies the remaining allegations of paragraph 12 of the Complaint.

13. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 13 of the Complaint and therefore denies such allegations.

14. TCB denies the allegations of paragraph 14 of the Complaint.

15. TCB denies the allegations of paragraph 15 of the Complaint.

16. TCB denies the allegations of paragraph 16 of the Complaint.

17. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of the first sentence of paragraph 17 of the Complaint and therefore denies such allegations. TCB admits that Holcomb informed inquirers that TCB's business relationship with Cord and WinterHawk was in good standing, but denies the allegations contained in the rest and remainder of paragraph 17 of the Complaint.

18. TCB admits that WinterHawk purchased Certificates of Deposit ("CDs") from TCB, that TCB made loans to WinterHawk and that the loans were secured by Winterhawk's CDs, but denies the allegations contained in the rest and remainder of paragraph 18 of the Complaint.

19. TCB denies the allegations of paragraph 19 of the Complaint.

20. TCB denies the allegations of paragraph 20 of the Complaint.

21. TCB denies the allegations of paragraph 21 of the Complaint.

22. TCB denies the allegations of paragraph 22 of the Complaint.

23. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 23 of the Complaint and therefore denies such allegations.

24. TCB denies the allegations of paragraph 24 of the Complaint.

25. TCB denies the allegations of paragraph 25 of the Complaint.

26. TCB denies the allegations of paragraph 26 of the Complaint.
27. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 27 of the Complaint and therefore denies such allegations.
28. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 28 of the Complaint and therefore denies such allegations.
29. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 29 of the Complaint and therefore denies such allegations.
30. TCB admits that, at some point in time, TCB was provided with WinterHawk's articles of incorporation, but is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 30 of the Complaint and therefore denies such allegations.
31. TCB admits that Holcomb has given testimony about the proposed business plan for the Belize bank venture and that his testimony speaks for itself, but is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 31 of the Complaint and therefore denies such allegations.
32. TCB admits that Cord and Holcomb have given testimony independently about the proposed Belize bank venture and that their testimony speaks for itself, but is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 32 of the Complaint and therefore denies such allegations.
33. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of the first sentence of paragraph 33 of the Complaint and therefore denies such allegations. TCB admits that it was directed by the FBI to continue normal banking

practices with Cord and WinterHawk, but denies the allegations contained in the rest and remainder of paragraph 33 of the Complaint.

34. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 34 of the Complaint and therefore denies such allegations.

35. TCB admits the allegations contained in the first 19 words of the first sentence of paragraph 35 of the Complaint. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained words 20 through 31 of the first sentence of paragraph 35 of the Complaint and therefore denies such allegations. TCB admits that the Forfeiture Proceeding was transferred to the Northern District of Texas, Dallas Division, but denies the allegations contained in the rest and remainder of paragraph 35 of the Complaint.

36. TCB admits the allegations contained in the first two sentences of paragraph 36 of the Complaint. TCB admits that it claims a security interest in the CDs, but is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the rest and remainder of paragraph 36 of the Complaint and therefore denies such allegations.

37. TCB admits that Roberts contacted TCB and spoke to Holcomb, but is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the rest and remainder of paragraph 37 of the Complaint and therefore denies such allegations.

38. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 38 of the Complaint and therefore denies such allegations.

39. TCB denies the allegations contained in words 10 through 16 of the first sentence and in words 11 through 17 of the third and last sentence of paragraph 39 of the Complaint, but is without knowledge or information sufficient to form a belief as to the truth or falsity of the

allegations contained in the rest and remainder of paragraph 39 of the Complaint and therefore denies such allegations.

40. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 40 of the Complaint and therefore denies such allegations.

41. TCB denies the allegations of the last two sentences of paragraph 41 of the Complaint and is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 41 of the Complaint and therefore denies such allegations.

42. TCB denies the allegations contained in words 6 through 14 of the first sentence of paragraph 42 of the Complaint, but is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the rest and remainder of the first sentence of paragraph 42 of the Complaint and therefore denies such allegations. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the second, third and fourth sentences of paragraph 42 of the Complaint and therefore denies such allegations. TCB denies that it was aware of how the Saber Industries investment opportunity was being marketed, but is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the rest and remainder of the fifth sentence of paragraph 42 of the Complaint and therefore denies such allegations. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the first 10 words of the sixth and last sentence of paragraph 42 of the Complaint and therefore denies such allegations. TCB denies the allegations contained in the rest and remainder of the sixth and last sentence of paragraph 42 of the Complaint.

43. TCB denies the allegations contained in words 6 through 12 of the first sentence of paragraph 43 of the Complaint. TCB is without knowledge or information sufficient to form a belief

as to the truth or falsity of the allegations contained in the rest and remainder of paragraph 43 of the Complaint and therefore denies such allegations.

44. TCB admits that a Saber Industries account was opened and that money was deposited into such account, but denies the allegations contained in the rest and remainder of paragraph 44 of the Complaint.

45. TCB denies the allegations contained in words 11 through 17 of the first sentence of paragraph 45 of the Complaint, but admits the allegations contained in the rest and remainder of such sentence. TCB admits the allegations contained in the first 21 words of the second sentence of paragraph 45 of the Complaint, but denies the allegations contained in the rest and remainder of such sentence. TCB denies the allegations contained in the rest and remainder of paragraph 45 of the Complaint.

46. TCB admits that it has a superior right to the Deposit Monies to the extent of certain amounts owed to it by Saber Industries, Winterhawk and/or Cord, but denies the allegations contained in the rest and remainder of paragraph 46 of the Complaint.

COUNT ONE - DECLARATORY JUDGMENT
(As to TCB Only)

47. For answer to the allegations contained in paragraph 47 of the Complaint, TCB incorporates herein by reference and realleges each and all of the above and foregoing answers to the allegations contained in paragraphs 1 through 46 of the Complaint with like effect and as if repeated here in full.

48. TCB admits the allegations contained in paragraph 48 of the Complaint to the extent it is alleged that an actual controversy exists, but denies that Plaintiff has a right to the CDs, that TCB's loans to Winterhawk are invalid, and that TCB's claim to the Deposit Monies lacks priority over other claims.

49. TCB admits the allegations of paragraph 49 of the Complaint to the extent it is alleged that Plaintiff seeks declaratory relief, but denies that Plaintiff has any rights, title or interest in the CDs or the Deposit Monies.

50. TCB denies that Plaintiff is entitled to recover his attorneys fees and court costs from TCB as alleged in paragraph 50 of the Complaint.

COUNT TWO - DISALLOWANCE OF CLAIMS
(As to TCB Only)

51. For answer to the allegations contained in paragraph 51 of the Complaint, TCB incorporates herein by reference and realleges each and all of the above and foregoing answers to the allegations contained in paragraphs 1 through 46 of the Complaint with like effect and as if repeated here in full.

52. TCB denies the allegations of paragraph 52 of the Complaint.

53. TCB denies that Plaintiff is entitled to recover his attorneys fees and court costs from TCB as alleged in paragraph 53 of the Complaint.

COUNT THREE - UNJUST ENRICHMENT
(As to TCB Only)

54. For answer to the allegations contained in paragraph 54 of the Complaint, TCB incorporates herein by reference and realleges each and all of the above and foregoing answers to the allegations contained in paragraphs 1 through 46 of the Complaint with like effect and as if repeated here in full.

55. TCB denies the allegations of paragraph 55 of the Complaint.

56. TCB denies that Plaintiff is entitled to recover his attorneys fees and court costs from TCB as alleged in paragraph 56 of the Complaint.

COUNT FOUR - AIDING AND ABETTING CORPORATE WASTE
(As to TCB and Holcomb)

57. For answer to the allegations contained in paragraph 57 of the Complaint, TCB incorporates herein by reference and realleges each and all of the above and foregoing answers to the allegations contained in paragraphs 1 through 46 of the Complaint with like effect and as if repeated here in full.

58. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the first three sentences of paragraph 58 of the Complaint and therefore denies such allegations. TCB denies the allegations contained in the rest and remainder of paragraph 58 of the Complaint.

59. TCB denies the allegations of paragraph 59 of the Complaint.

60. TCB denies the allegations of paragraph 60 of the Complaint.

61. TCB denies the allegations of paragraph 61 of the Complaint.

COUNT FIVE - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(As to TCB and Holcomb)

62. For answer to the allegations contained in paragraph 62 of the Complaint, TCB incorporates herein by reference and realleges each and all of the above and foregoing answers to the allegations contained in paragraphs 1 through 46 of the Complaint with like effect and as if repeated here in full.

63. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the first sentence of paragraph 63 of the Complaint and therefore denies such allegations. TCB denies the allegations contained in the second sentence of paragraph 63 of the Complaint. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in the rest and remainder of paragraph 63 of the Complaint and therefore denies such allegations.

64. TCB denies the allegations of paragraph 64 of the Complaint.

65. TCB denies the allegations of paragraph 65 of the Complaint.

66. TCB denies the allegations of paragraph 66 of the Complaint.

COUNT SIX - FRAUD
(As to TCB and Holcomb)

67. For answer to the allegations contained in paragraph 67 of the Complaint, TCB incorporates herein by reference and realleges each and all of the above and foregoing answers to the allegations contained in paragraphs 1 through 46 of the Complaint with like effect and as if repeated here in full.

68. TCB denies the allegations of paragraph 68 of the Complaint.

69. TCB denies the allegations of paragraph 69 of the Complaint.

COUNT SEVEN - NEGLIGENCE
(As to TCB and Holcomb)

70. For answer to the allegations contained in paragraph 70 of the Complaint, TCB incorporates herein by reference and realleges each and all of the above and foregoing answers to the allegations contained in paragraphs 1 through 46 of the Complaint with like effect and as if repeated here in full.

71. TCB denies the allegations of paragraph 71 of the Complaint.

72. TCB denies the allegations of paragraph 72 of the Complaint.

73. TCB denies the allegations of paragraph 73 of the Complaint.

74. TCB denies the allegations of paragraph 74 of the Complaint.

COUNT EIGHT - UNJUST ENRICHMENT
(As to Holcomb Only)

75. For answer to the allegations contained in paragraph 75 of the Complaint, TCB incorporates herein by reference and realleges each and all of the above and foregoing answers to

the allegations contained in paragraphs 1 through 46 of the Complaint with like effect and as if repeated here in full.

76. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 76 of the Complaint and therefore denies such allegations.

77. TCB denies the allegations of paragraph 77 of the Complaint.

COUNT NINE - FRAUDULENT TRANSFER
(As to Holcomb Only)

78. For answer to the allegations contained in paragraph 78 of the Complaint, TCB incorporates herein by reference and realleges each and all of the above and foregoing answers to the allegations contained in paragraphs 1 through 46 of the Complaint with like effect and as if repeated here in full.

79. TCB denies the allegations of paragraph 79 of the Complaint.

80. TCB is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 80 of the Complaint and therefore denies such allegations.

81. TCB denies the allegations of paragraph 81 of the Complaint.

82. TCB denies the allegations of paragraph 82 of the Complaint.

COUNT TEN - RECISSION OF NEGOTIATION AND RECOUPMENT OF PROCEEDS
(As to TCB and Holcomb)

83. For answer to the allegations contained in paragraph 83 of the Complaint, TCB incorporates herein by reference and realleges each and all of the above and foregoing answers to the allegations contained in paragraphs 1 through 46 of the Complaint with like effect and as if repeated here in full.

84. TCB denies the allegations contained in paragraph 84 of the Complaint.

85. TCB denies the allegations contained in paragraph 85 of the Complaint.

86. TCB denies the allegations contained in paragraph 86 of the Complaint.

87. TCB denies the allegations contained in paragraph 87 of the Complaint.

88. TCB denies the allegations contained in paragraph 88 of the Complaint.

JURY DEMAND

89. TCB admits that Plaintiff has requested by jury in paragraph 89 of the Complaint.

Pursuant to Fed. R. Civ. P. 38, TCB hereby demands a trial by jury.

90. TCB denies all facts and allegations contained in the Complaint which must be admitted or denied and which are not otherwise specifically admitted.

SECOND DEFENSE

91. The Complaint fails to state a claim against TCB upon which relief can be granted.

THIRD DEFENSE

92. If any loss or damage was sustained by Plaintiff which loss or damage is not admitted, but is denied by TCB, it was caused or contributed to by the fault or conduct of Plaintiff or the parties whose interests he purports to represent, the conduct of agents or attorneys of Plaintiff or the parties whose interests he purports to represent or by the conduct of others for whom TCB is not responsible and over whom TCB has no control.

FOURTH DEFENSE

93. TCB denies the existence of any joint venture, partnership or agency relationship alleged in the Complaint and denies that the deposits or other monies at issue were joint venture or partnership funds.

FIFTH DEFENSE

94. TCB denies that Plaintiff is entitled to recover in the capacity in which he sues.

SIXTH DEFENSE

95. TCB asserts that Plaintiff or the parties whose interests he purports to represent failed to exercise such due diligence or ordinary care with respect to their investments as would be expected of a reasonable person under the same or similar circumstances and therefore may not recover from TCB any losses occasioned by their own lack of due diligence or ordinary care.

SEVENTH DEFENSE

96. Plaintiff's claims are barred by the doctrines of laches, waiver, estoppel and/or ratification.

EIGHTH DEFENSE

97. Plaintiff or the parties whose interests he purports to represent failed reasonably to mitigate any damages which they may have incurred.

NINTH DEFENSE

98. TCB asserts that it acted in good faith and did not directly or indirectly induce and was not involved in any act or acts constituting any violation or cause of action asserted by Plaintiff.

TENTH DEFENSE

99. TCB asserts that Plaintiff or the parties whose interests he purports to represent knew or should have known of any alleged misconduct, untruth or omission, if any occurred.

ELEVENTH DEFENSE

100. TCB denies that it marketed, distributed, offered, sold or solicited the purchase or sale of any investment by or to Plaintiff or the parties whose interests he purports to represent and further denies that TCB was a seller, solicitor, a proximate cause, a producing cause or a substantial factor in any purchase or sale of any investment by or to Plaintiff or any of the parties he purports to represent.

TWELFTH DEFENSE

101. Plaintiff and/or the parties he purports to represent knowingly and voluntarily assumed all risk attendant to investing in the investments in question, did not rely upon TCB with respect thereto and such parties are therefore not entitled to recover from TCB any losses sustained in connection with such investments.

THIRTEENTH DEFENSE

102. TCB denies that it engaged in any conduct which was a proximate cause or a producing cause of any loss or damage, if any, sustained by Plaintiff or the parties whose interests he purports to represent.

FOURTEENTH DEFENSE

103. TCB denies that it engaged in any conduct which constitutes negligence, common law fraud, statutory fraud, breach of fiduciary duty or violation of any statute.

FIFTEENTH DEFENSE

104. TCB denies that Plaintiff or the parties whose interests he purports to represent relied in any way or reasonably relied on TCB in making the investments in question.

SIXTEENTH DEFENSE

105. TCB denies that it has a duty, fiduciary or otherwise, to Plaintiff or the parties whose interests he purports to represent and further denies that it breached any duty owed to Plaintiff or the parties whose interests he purports to represent.

SEVENTEENTH DEFENSE

106. TCB denies that Plaintiff or the parties whose interests he purports to represent reasonably relied on any misrepresentations, acts or omissions, if any, by TCB.

EIGHTEENTH DEFENSE

107. TCB denies that it engaged in any conduct or made any misrepresentation or omission that constitutes common law or statutory fraud.

NINETEENTH DEFENSE

108. Damages, if any, of Plaintiff or the parties whose interests he purports to represent were proximately caused in whole or in part by new, superceding or intervening acts or events over which TCB had no control or right of control.

TWENTIETH DEFENSE

109. TCB denies that Plaintiff is entitled to any award of attorneys' fees.

TWENTY-FIRST DEFENSE

110. TCB asserts that it is entitled to an appropriate credit, offset and/or reduction in any potential liability in the event of the settlement by any person or party and/or in the event of any payment, restitution, remission or distribution to Plaintiff or the parties whose interests he purports to represent and/or with respect to the contributory negligence, fault or comparative responsibility of any other person or party hereto.

TWENTY-SECOND DEFENSE

111. TCB denies that it directly or indirectly with intent to deceive or defraud or with reckless disregard for the truth or the law materially aided any other party in connection with the transactions made the basis of Plaintiff's Complaint.

TWENTY-THIRD DEFENSE

112. TCB denies that Plaintiff or the parties he purports to represent have complied with all requirements for rescission.

TWENTY-FOURTH DEFENSE

113. TCB did not know and in the exercise of reasonable care could not have known of any alleged misconduct, untruth or omission, if any occurred.

TWENTY-FIFTH DEFENSE

114. TCB asserts that it did not know of, or in the exercise of reasonable care could not have known of, and did not have reasonable ground to believe in, the existence of any facts by reason of which the liability of another person, if any, is alleged to exist.

WHEREFORE, PREMISES CONSIDERED, TCB respectfully prays that upon final trial and hearing it have judgment according to the law and the facts as determined by this Honorable Court; that the Plaintiff take nothing by reason of this suit; that this action be dismissed with prejudice; that TCB recover its attorneys' fees and costs incurred herein and that TCB have such other and further relief, both general and special, legal and equitable, to which it may show itself justly entitled.

TEXAS COASTAL BANK'S COUNTERCLAIM

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Texas Coastal Bank, as Counter-Plaintiff in the above entitled and numbered cause, and files this Counterclaim, and in support thereof would respectfully show unto the court the following:

PARTIES

115. Counter-Plaintiff Texas Coastal Bank (hereinafter "TCB") is a banking corporation organized and existing under the laws of the State of Texas with its principal office and place of business in Pasadena, Harris County, Texas. TCB has previously appeared in this cause.

116. Counter-Defendant Michael J. Quilling (hereinafter "Counter-Defendant") is an individual who has been appointed by this court as temporary receiver for Robert Cord a/k/a Robert Schoonover, Jr., Winterhawk West Indies, Ltd. and certain other parties to this action. Counter-

Defendant has previously appeared in this cause and may be served with this pleading by serving his attorney of record herein, Michael D. Clark, pursuant to Fed. R. Civ. P. 5.

JURISDICTION AND VENUE

117. Without waiver of any objections to this court's subject matter jurisdiction or venue, TCB asserts that if this court has jurisdiction of the claims brought herein by the Securities and Exchange Commission and/or Counter-Defendant, then it also has subject matter jurisdiction and venue of the claims asserted herein under the doctrines of ancillary jurisdiction and/or supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

GENERAL ALLEGATIONS AS TO ALL CAUSES OF ACTION

TCB's Security Interests in Winterhawk's Certificate of Deposit Accounts.

118. On or about January 30, 1997, Winterhawk opened a certificate of deposit account with TCB under account number 20003631 and deposited therein funds in the amount of \$160,000.00. In connection therewith and to evidence the terms and conditions of the deposit, TCB issued to Winterhawk certificate of deposit number 3631 in the amount of \$160,000.00. The maturity date of certificate of deposit number 3631 was January 30, 1998. A true and correct copy of certificate of deposit number 3631 is attached hereto at pp. 1-2 of the Appendix (also marked Exhibit "1-A") and is incorporated herein by reference for all purposes. At or about the same time, TCB made a loan of money to Winterhawk under loan number 410346172 in the amount of \$160,000.00. In connection therewith and to evidence the terms of the loan and the repayment obligation, Winterhawk executed and delivered to TCB a promissory note payable to TCB in the original principal amount of \$160,000.00. A true and correct copy of such promissory note is attached hereto at p. 3 of the Appendix (also marked Exhibit "1-B") and is incorporated herein by reference for all purposes. TCB has at all times been the owner and holder of such promissory note.

At or about the same time, Winterhawk granted to TCB a security interest in certificate of deposit number 3631 to secure payment of its obligations under the promissory note executed in connection with loan number 410346172. In connection therewith and to evidence such security interest, Winterhawk executed and delivered to TCB a security agreement entitled Pledge Security Agreement. A true and correct copy of such security agreement is attached hereto at p. 4 of the Appendix (also marked Exhibit "1-C") and is incorporated herein by reference for all purposes. Winterhawk also delivered possession of the original of certificate of deposit number 3631 to TCB and, as a result, TCB has a valid and subsisting security interest in such certificate of deposit.

119. On or about May 15, 1997, Winterhawk opened a certificate of deposit account with TCB under account number 20003680 and deposited therein funds in the amount of \$280,000.00. In connection therewith and to evidence the terms and conditions of the deposit, TCB issued to Winterhawk certificate of deposit number 3680 in the amount of \$280,000.00. The maturity date of certificate of deposit number 3680 was May 15, 1998. A true and correct copy of certificate of deposit number 3680 is attached hereto at pp. 5-6 of the Appendix (also marked Exhibit "2-A") and is incorporated herein by reference for all purposes. At or about the same time, TCB made a loan of money to Winterhawk under loan number 410346173 in the amount of \$266,000.00. In connection therewith and to evidence of the terms of the loan and the repayment obligation, Winterhawk executed and delivered to TCB a promissory note payable to TCB in the original principal amount of \$266,000.00. A true and correct copy of such promissory note is attached hereto at pp. 7-8 of the Appendix (also marked Exhibit "2-B") and is incorporated herein by reference for all purposes. TCB has at all times been the owner and holder of such promissory note. At or about the same time, Winterhawk granted to TCB a security interest in certificate of deposit number 3680 to secure payment of its obligations under the promissory note executed in connection with loan

number 410346173. In connection therewith and to evidence such security interest, Winterhawk executed and delivered to TCB a security agreement entitled Assignment of Deposit Account. A true and correct copy of such security agreement is attached hereto at pp. 9-11 of the Appendix (also marked Exhibit "2-C") and is incorporated herein by reference for all purposes. Winterhawk also delivered possession of the original of certificate of deposit number 3680 to TCB and, as a result, TCB has a valid and subsisting security interest in such certificate of deposit.

120. On or about May 15, 1997, Winterhawk opened a certificate of deposit account with TCB under account number 20003687 and deposited therein funds in the amount of \$280,000.00. In connection therewith and to evidence the terms and conditions of the deposit, TCB issued to Winterhawk certificate of deposit number 3687 in the amount of \$280,000.00. The maturity date of certificate of deposit number 3687 was May 15, 1998. A true and correct copy of certificate of deposit number 3687 is attached hereto at pp. 12-13 of the Appendix (also marked Exhibit "3-A") and is incorporated herein by reference for all purposes. At or about the same time, TCB made a loan of money to Winterhawk under loan number 410346174 in the amount of \$266,000.00. In connection therewith and to evidence the terms of the loan and the repayment obligation, Winterhawk executed and delivered to TCB a promissory note payable to TCB in the original principal amount of \$266,000.00. A true and correct copy of such promissory note is attached hereto at p. 14 of the Appendix (also marked Exhibit "3-B") and is incorporated herein by reference for all purposes. TCB has at all times been the owner and holder of such promissory note. At or about the same time, Winterhawk granted to TCB a security interest in certificate of deposit number 3687 to secure payment of its obligations under the promissory note executed in connection with loan number 410346174. In connection therewith and to evidence such security interest, Winterhawk executed and delivered to TCB a security agreement entitled Assignment of Deposit Account. A true

and correct copy of such security agreement is attached hereto at pp. 15-17 of the Appendix (also marked Exhibit "3-C") and is incorporated herein by reference for all purposes. Winterhawk also delivered possession of the originals of certificate of deposit number 3687 to TCB and, as a result, TCB has a valid and subsisting security interest in such certificate of deposit.

121. On or about May 22, 1997, Winterhawk opened a certificate of deposit account with TCB under account number 20003690 and deposited therein funds in the amount of \$280,000.00. In connection therewith and to evidence the terms and conditions of the deposit, TCB issued to Winterhawk certificate of deposit number 3690 in the amount of \$280,000.00. The maturity date of certificate of deposit number 3690 was May 22, 1998. A true and correct copy of certificate of deposit number 3690 is attached hereto at pp. 18-19 of the Appendix (also marked Exhibit "4-A") and is incorporated herein by reference for all purposes. At or about the same time, TCB made a loan of money to Winterhawk under loan number 410346175 in the amount of \$266,000.00. In connection therewith and to evidence of the terms of the loan and the repayment obligation, Winterhawk executed and delivered to TCB a promissory note payable to TCB in the original principal amount of \$266,000.00. A true and correct copy of such promissory note is attached hereto at p. 20 of the Appendix (also marked Exhibit "4-B") and is incorporated herein by reference for all purposes. TCB has at all times been the owner and holder of such promissory note. At or about the same time, Winterhawk granted to TCB a security interest in certificate of deposit number 3690 to secure payment of its obligations under the promissory note executed in connection with loan number 410346175. In connection therewith and to evidence such security interest, Winterhawk executed and delivered to TCB a security agreement entitled Assignment of Deposit Account. A true and correct copy of such security agreement is attached hereto at pp. 21-23 of the Appendix (also marked Exhibit "4-C") and is incorporated herein by reference for all purposes. Winterhawk also

delivered possession of the original of certificate of deposit number 3690 to TCB and, as a result, TCB has a valid and subsisting security interest in such certificate of deposit.

122. To further perfect and give notice of its security interest in certificate of deposit numbers 3631, 3680, 3687 and 3690, TCB filed Uniform Commercial Code financing statements with the Secretary of State of the State of Texas. True and correct copies of such financing statements are attached hereto at pp. 24-25 of the Appendix (also marked Exhibits "5-A" and "5-B") and are incorporated herein by reference for all purposes.

123. Winterhawk defaulted in payment of its obligations under the terms of the above described promissory notes and, as a result, TCB declared the unpaid balance of the notes to be due and payable. After allowing for all offsets, payments and credits, the principal amount of \$958,000.00, accrued interest, collection costs and expenses incurred, and reasonable attorney's fees are due, owing and unpaid under the terms of the promissory notes.

124. Counter-Defendant has asserted that on or about November 13, 1998, he was appointed as temporary receiver for Cord, Winterhawk and certain other defendants in Civil Action No. 3-98-CV-2689-X in the United States District Court for the Northern District of Texas, Dallas Division, and that he is entitled to the funds on deposit at TCB in certificate of deposit account numbers 20003631, 20003680, 20003687 and 20003690.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

125. TCB repeats and realleges the allegations contained in paragraphs 115 through 124 above and incorporates such allegations herein by reference as if set forth in full.

126. There is an actual controversy as to who is entitled to the funds on deposit at TCB under certificate of deposit account numbers 20003631, 20003680, 20003687 and 20003690. TCB and Counter-Defendant have claimed an interest in these funds.

127. TCB's right to the funds on deposit is superior to any right or interest of Counter-Defendant. TCB has a prior perfected first lien security interest in the certificate of deposit accounts and in the certificates of deposit. TCB is the owner and holder of the promissory notes for which the certificate of deposit accounts have been pledged as collateral and such promissory notes are in default. In addition to its security interest, TCB has contractual, common law and statutory rights to set off the funds in the certificate of deposit accounts against the debt owed to it by Winterhawk. Furthermore, pursuant to 18 U.S.C. § 981(a)(2), the funds on deposit in the certificate of deposit accounts are not subject to forfeiture because TCB did not know of or consent to any allegedly illegal conduct.

128. Counter-Defendant succeeded only to the interest in the certificate of deposit accounts belonging to Winterhawk subject to the rights and equities of third persons such as TCB. Furthermore, TCB was not aware of and did not assist or participate in any allegedly wrongful conduct. Finally, TCB has no deposit agreement with anyone other than Cord and/or Winterhawk and no other party can demonstrate an ownership interest in the funds on deposit in the certificate of deposit accounts.

129. TCB therefore requests that the court enter a declaratory judgment pursuant to the provisions of 28 U.S.C. § 2201 - 2202 that (a) TCB is entitled to foreclose on and/or set off the funds on deposit in the certificate of deposit accounts against an amount equal to (i) all principal and interest due to TCB under the promissory notes; (ii) all fees, costs and expenses owed to TCB by Winterhawk; and (iii) reasonable attorney's fees incurred by TCB in collection of the amounts due under the promissory notes, which fees Winterhawk contractually agreed to pay; and (b) that Counter-Defendant has no interest in and take nothing by reason of his claims to the funds on deposit in the certificate of deposit accounts.

130. TCB also seeks recovery of its reasonable and necessary attorney's fees and costs incurred in this proceeding.

CONDITIONS PRECEDENT

131. All conditions precedent to the right of TCB to recover have been performed or have occurred.

WHEREFORE, PREMISES CONSIDERED, TCB prays that it have judgment according to the law and the facts as determined by this Honorable Court; that upon final trial and hearing hereof, judgment be entered for the declaratory relief requested herein; that TCB recover its reasonable attorney's fees, expenses and costs of court incurred herein; and that TCB have such other and further relief, both general and special, legal and equitable, to which it may show itself justly entitled.

Respectfully submitted,

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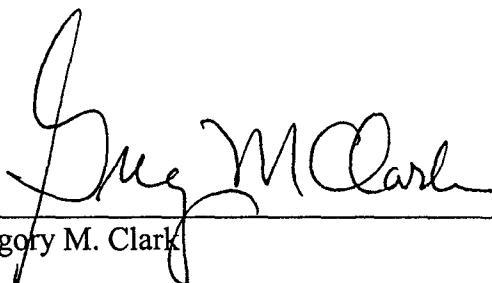
CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of February, 2000, a true and correct copy of the above and foregoing was served in compliance with the Federal Rules of Civil Procedure on the following:

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