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c. **Disputes Not Covered By Arbitration.** Disputes filed by you or by us individually in a small claims court are not subject to arbitration if the disputes remain in such court and advance only as an individual claim for relief.

d. **Opt Out.** You have the right to opt out of arbitration by sending a signed written notice stating your decision to opt out of arbitration to BANK OF THE WEST at Loan Servicing, P.O. Box 3631, Omaha, NE 68103 within 30 days after the date you opened your Account ("Account Open Date").

e. **Commencing an Arbitration.** The party initiating arbitration must choose one of the following arbitration forums to administer arbitration under the forum's rules (except as modified by this Agreement): (i) the American Arbitration Association ("AAA") under AAA's Consumer Arbitration Rules available at [www.adr.org](http://www.adr.org) or 1-800-778-7879; (ii) JAMS under JAMS' Comprehensive Arbitration Rules & Procedures or Streamlined Arbitration Rules & Procedures, including JAMS' Consumer Minimum Standards (but not JAMS' Class Action Procedures), available at [www.jamsadr.com](http://www.jamsadr.com) or 1-800-352-5267.

f. **Arbitration Procedure.** Arbitration shall be decided by a single neutral arbitrator selected in accordance with AAA's or JAMS' rules, as applicable. The arbitrator will decide the dispute in accordance with the terms of our agreements and applicable substantive law, including the Federal Arbitration Act and applicable statutes of limitation. The arbitrator shall honor claims of privilege recognized at law. Except as otherwise provided, the arbitrator may award damages or other relief (including injunctive relief) available to the individual claimant under applicable law. The arbitrator will not have the authority to award relief to, or against, any person or entity who is not a party to the arbitration. An award in arbitration shall determine the rights and obligations between the named parties only, and only with respect to the dispute in arbitration and shall not have any bearing on the rights and obligations of any other persons, or on the resolution of any other dispute. The arbitrator will take reasonable steps to protect your Account information and other proprietary or confidential information. Any arbitration hearing shall take place in the same city as the U.S. District Court closest to your home address, unless the parties agree in writing to a different location or the arbitrator so orders. If you seek a total recovery of \$10,000 or less, you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing in accordance with AAA's or JAMS' rules. At your or

our request, the arbitrator will issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based. The arbitrator's award shall be final and binding, subject to judicial review only to the extent allowed under the Federal Arbitration Act. You or we may seek to have the award vacated or confirmed and entered as a judgment in any court with jurisdiction.

g. **No Class Action or Joinder of Parties.** You and we agree that no class action, private attorney general or other representative claims may be pursued in arbitration and no such action may be pursued in court if either you or we elect arbitration. Unless mutually agreed to by you and us, claims of two or more persons may not be joined, consolidated, or otherwise brought together in the same arbitration (unless those persons are joint account holders or beneficiaries on your Account or related accounts, or parties to a single transaction or related transaction).

h. **Public Injunctive Relief Waiver.** If either you or we elect to arbitrate a dispute, neither you nor we will have the right to seek a public injunction in arbitration or in court, if such a waiver is permitted by the FAA. If any waiver of public injunctive relief in this arbitration provision (as set forth in any part of this arbitration provision) is found to be invalid or unenforceable, and that decision is not reversed on appeal, any claim for a public injunction will be decided in court after all other disputes to be decided in arbitration under this arbitration provision are arbitrated and the arbitration award regarding individual relief has been entered in court. In no event will a claim for public injunctive relief be arbitrated. As set forth in "Severability" below, the invalidity or unenforceability of this paragraph will not affect the validity or enforceability of the remainder of this arbitration provision.

i. **Arbitration Costs.** We will pay the filing, administrative and/or arbitrator's fees or compensation ("Arbitration Fees") that we are required to pay pursuant to the arbitration forums' rules or the law. In addition, with respect to Arbitration Fees that you are required to pay under the arbitration forum's rules in connection with an individual arbitration you have commenced against us, if you would like us to consider paying them because you are unable to do so, you must first request a waiver or reduction of the Arbitration Fees from the arbitration forum. If the request is denied or you remain unable to pay the reduced Arbitration Fees, we will consider paying them if we receive a written request by you sent to Bank of the West Legal Department, 180 Montgomery Street, San Francisco, California 94104.

j. **Applicable Law.** You and we are participating in transactions that involve interstate commerce and this arbitration provision and any resulting arbitration are governed by the Federal Arbitration Act. To the extent state law applies, the laws of the state governing your Account relationship apply. No state statute pertaining to arbitration shall apply.

k. **Severability.** Except as provided in "Public Injunctive Relief Waiver," if any part of this arbitration provision regarding joinder, consolidation, class actions, class arbitrations, general public or private attorney general actions is found to be illegal or unenforceable, that invalid part shall not be severable and this entire agreement to arbitrate disputes shall be unenforceable. If any other part of this arbitration provision, including "Public Injunctive Relief Waiver," is deemed to be invalid or unenforceable, that invalid part will be severed from the remainder of this arbitration provision and the remainder of this arbitration provision will be enforced.

**33. Miscellaneous.** By signing the Application, you agreed that:

- ◆ When we give you notice, we may give the notice by mailing it to you at the address shown in the application or at any address you may later give to us in writing;

- ◆ This Agreement will be governed by the laws of the State of Nebraska, and, as applicable, federal law, regardless of where the Purchases or Cash Advances are made.

- ◆ Our supervisory personnel may listen to and record your telephone calls to us for the purpose of monitoring and improving the quality of service you receive.

◆ You will not assign this Agreement to any other entity or person, including any purchaser of your business or any company into which you may be merged, if applicable, without our written consent.

◆ You will notify us promptly in writing of any (i) changes to your name, address, legal status or corporate structure, or (ii) the occurrence of any default on your part under the terms of this Agreement; or (iii) any litigation or claims of any kind which might subject you to any liability exceeding \$10,000.

◆ We reserve the right to waive a fee from time to time but a waiver does not mean we will continue to waive such fee in the future.