

SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS

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THIS DEED OF TRUST, made this 17th day of August, 1984, between George A. Fisk, Charles E. Fisk, Jr., Andrew P. Fisk and Larry E. Young, dba Tahoe Venture, a Texas joint venture, herein called TRUSTOR,

whose address is 5400 LBJ Freeway, Suite 450, Dallas Texas 75240 and (number and address) (city) (state) (zip)

DOUGLAS COUNTY TITLE CO., INC., a Nevada corporation, herein called TRUSTEE, and BENT TREE NATIONAL BANK, a national banking association at 16475 Dallas Parkway Dallas, Texas 75248, herein called BENEFICIARY,

WITNESSETH: That Trustor irrevocably grants, transfers and assigns to Trustee in trust, with power of sale, that property in Douglas County, Nevada, described as:

Lot 26, in Block B, of LAKEWOOD KNOLLS ANNEX, according to the map thereof, filed for record in the Office of the County Recorder of Douglas County, Nevada on May 12, 1959, as Document No. 14378.

AP#07-263-41-1

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the purpose of securing (1) payment of the sum of \$200,000.00 with interest thereon according to the terms of a promissory note or notes of even date herewith made by Trustor, payable to order of Beneficiary, and all extensions or renewals thereof; and (2) the performance of each agreement of Trustor incorporated herein by reference or contained herein; (3) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or to his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious Deed of Trust recorded in the office of each County Recorder in the State of Nevada on January 30, 1968, in the book and at the page thereof, or under the document or file number, noted below opposite the name of such county, namely:

Table with 8 columns: COUNTY, BOOK, PAGE, DOC. NO., COUNTY, BOOK, PAGE, DOC. NO. Lists various counties and their corresponding record details.

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said subdivision A and B, (identical in all counties, and printed on the reverse side hereof) are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as if set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed a reasonable amount. The Beneficiary or the collection agent appointed by him may charge a fee of not to exceed \$15.00 for each change in parties, or for each change in a party making or receiving a payment secured hereby.

The undersigned Trustor requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

STATE OF ~~MISSISSIPPI~~ TEXAS } ss. COUNTY OF DALLAS }

On August 10, 1984, personally appeared before me, a Notary Public, George A. Fisk, venturer of Tahoe Venture, a Texas joint venture,

TAHOE VENTURE, a Texas joint venture

By [Signature] George A. Fisk

who acknowledged that he executed the above instrument. on behalf of said joint venture.

Signature [Signature] (Notary Public) 8/11/84

SEAL

ORDER NO. } ESCROW NO. }

WHEN RECORDED MAIL TO:

Geary, Stahl & Spencer 16479 Dallas Parkway, Suite 800 Dallas, Texas 75248

FOR RECORDER'S USE

105581

BOOK 884 PAGE 2417

A. TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES.

- (1) To keep said property in good condition and repair; not to remove or demolish any building thereon to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor, to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon, not to commit or permit waste thereof, not to commit suffer or permit any act upon said property in violation of law, to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.
- (2) Trustor covenants to keep all buildings that may now or at any time be on said property during the continuance of this trust in good repair and insured against loss by fire, with extended coverage endorsement, in a company or companies authorized to issue such insurance in the State of Nevada, and as may be approved by Beneficiary, for such sum or sums as shall equal the total indebtedness secured by this Deed of Trust and all obligations having priority over this Deed of Trust and shall be payable to Beneficiary to the amount of the unsatisfied obligation to Beneficiary hereby secured, and to deliver the policy to Beneficiary, or to collection agent of Beneficiary, and in default thereof, Beneficiary may procure such insurance and/or make such repairs, and expend for either of such purposes such sum or sums as Beneficiary shall deem proper.
- (3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.
- (4) To pay at least ten days before delinquency all taxes and assessments affecting said property, including assessments on appurtenant water stock, water rights and grazing privileges, when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto, and all costs, fees and expenses of this trust.
Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor, and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.
- (5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at ten per cent per annum.
- (6) At Beneficiary's option, Trustor will pay a "late charge" not exceeding four per cent (4%) of any instalment when paid more than fifteen (15) days after the due date thereof to cover the extra expense involved in handling delinquent payments, but such "late charge" shall not be payable out of the proceeds of any sale made to satisfy the indebtedness secured hereby, unless such proceeds are sufficient to discharge the entire indebtedness and all proper costs and expenses secured thereby.

B. IT IS MUTUALLY AGREED:

- (1) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.
- (2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.
- (3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.
- (4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this deed and said note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose, and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto".
- (5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- (6) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be recorded. Beneficiary also shall deposit with Trustee this Deed of Trust, said note and all documents evidencing expenditures secured hereby.
After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law for the sale of real property under writ of execution, Trustee, without demand on Trustor, shall sell said property or any part thereof at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. In the event that any indebtedness secured hereby shall not have been fully satisfied by said sale, Trustee may give notice of sale of any property not previously noticed for sale in the manner set forth above and sell the same in the manner set forth above.
Trustee shall deliver to any purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.
After deducting all costs, fees and expenses of Trustee, including a reasonable fee for the attorney of Trustee, and of this trust, including cost evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at ten per cent per annum; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.
- (7) That Beneficiary, or his assignee, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where, or document or file number under which, this Deed of Trust is recorded, and the name and address of the new Trustee. If notice of default shall have been recorded, this power of substitution cannot be exercised until after the costs, fees and expenses of the then acting Trustee shall have been paid to such Trustee, who shall endorse receipt thereof upon such instrument of substitution. The procedure herein provided for substitution of Trustee shall be exclusive of all other provisions for substitution, statutory or otherwise.
- (8) The following covenants: Nos. 1, 3, 4, (interest 10%) 5, 6, 8 and 9 of Nevada Revised Statutes 107.030, when not inconsistent with other covenants and provisions herein contained, are hereby adopted and made a part of this Deed of Trust.
- (9) The rights and remedies hereby granted shall not exclude any other rights or remedies granted by law, and all rights and remedies granted hereunder or permitted by law shall be concurrent and cumulative. A violation of any of the covenants herein expressly set forth shall have the same effect as the violation of any covenant herein adopted by reference.
- (10) It is expressly agreed that the trust created hereby is irrevocable by Trustor.
- (11) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.
- (12) That Trustee accepts this trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.
- (13) Trustor agrees to pay any deficiency arising from any cause after application of the proceeds of the sale held in accordance with the provisions of the covenants hereinabove adopted by reference.

The undersigned Trustor requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

REQUEST FOR FULL RECONVEYANCE

~~CONFIDENTIAL~~
~~CONFIDENTIAL~~
TO TRUSTEE

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated _____

Please mail Deed of Trust,
Note and Reconveyance to _____

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

ADDENDUM
TO
MORTGAGE OR DEED OF TRUST
FROM
TAHOE VENTURE
TO
BENT TREE NATIONAL BANK

A. This Addendum contains additional Agreements of the Parties hereto and to the security document to which it is attached for all purposes as if they were contained in the body hereof; however, if in any way any provision hereof contravenes any law, statute, constitutional provision of public policy of the State or jurisdiction governing this instrument or the collateral (including the real property covered hereby), then ipso facto, said provision shall be of no force or effect and shall be severed herefrom and the remainder hereof shall remain valid and be construed as if said severed provision had never been contained herein.

B. As used through this Addendum, the terms "Security Documents" and "Deed of Trust" shall mean the Mortgage or Deed of Trust created hereby; "Beneficiary" shall mean Bent Tree National Bank or any other or subsequent holder of the indebtedness secured hereby; "Grantor" shall mean Tahoe Venture, a Texas joint venture; "Indebtedness" shall mean the aforescribed promissory note and all other sums of money or obligations secured hereby; "Property", "Improvements", "Land", "Premises" or "Collateral" shall mean all that real estate, improvements, fixtures and personalty described on the face of this Mortgage or Deed of Trust and secured hereby; "Code" shall mean the Uniform Commercial Code governing secured transactions of personalty; and "Trustee" shall mean any person empowered hereunder or by Court order to act on behalf of Beneficiary with regard to the Real Property, Fixtures, Collateral and Personalty secured hereby.

C. **WARRANTIES, REPRESENTATIONS, COVENANTS AND OTHER AGREEMENTS.** Grantor unconditionally warrants, represents, covenants and agrees that:

1. The Obligations set forth in the Security Documents are legal, valid and binding on Grantor and any Obligated Party, in accordance with their terms, and the execution and delivery of, and performance under, the Security Documents: (A) are within Grantor's powers and have been duly authorized by all requisite action (corporate, partnership, trust or otherwise); (B) have received all requisite approval by Governmental Authority; and (C) will not violate, conflict with, breach or constitute a default under, any Legal Requirement or result in the imposition of any lien charge or encumbrance of any nature upon any of Grantor's assets, except as contemplated in the Security Documents.
2. Grantor has good and marketable titles to the Land, Improvements, Fixtures and Personalty, free and clear of any liens, encumbrances, security interests or adverse claims. This Deed of Trust shall constitute a valid, subsisting, first lien on the Land, Improvements and Fixtures and a valid, subsisting, perfected and prior security interest in and to the Personalty and Leases, all in accordance with the terms hereof.
3. The Property forms no part of any property owned, used or claimed by Grantor as a residence or business homestead, is not exempt from forced sale under the laws of the State of Texas, and Grantor hereby disclaims and renounces all and every claim to the Property as a homestead.
4. Grantor and any Obligated Party are now solvent, and no bankruptcy or insolvency proceedings are pending or contemplated by or against any of them, and all reports, statements, cost estimates and other data, furnished by or on behalf of any of them are true and correct.
5. Grantor will promptly and fully comply with all present and future Legal Requirements, and all Improvements included or to be included in the Property comply or will comply with all Legal Requirements.
6. Grantor (if a corporation) is duly incorporated and in good standing under the laws of the state of its incorporation and is duly qualified to do business in the State of Texas. Grantor (if a partnership, trust or joint venture), is validly and legally created and has the right to do business in the State of Texas.
7. Grantor and all Obligated Parties, as their interests appear and as the case may be, will duly and punctually: (A) pay the Indebtedness, as and when called for in the Security Documents; (B) perform all of the Obligations, in full, on or before the dates same are to be performed; and (C) cause each of the Impositions to be paid and discharged not later than the due dates thereof and furnish Beneficiary with evidence of such payment.
8. Grantor will cause the Property to be maintained and operated in first-class order and condition, and will make all interior and exterior repairs, replacements, additions, improvements and alterations thereof and thereto, both structural and non-structural, which are reasonably appropriate to keep same in such first-class order and condition.
9. Grantor will keep the Property insured against fire, tornado, flood (if the Property is located in an identified "flood hazard area", in which flood insurance has been made available, pursuant to the National Flood Insurance Act of 1968), hail, explosion and such other risks, and in such amounts and with such companies, all as may be acceptable to Beneficiary, with loss made payable to Beneficiary by mortgage clauses of standard form. Such policies of insurance shall be delivered to Beneficiary promptly as issued, containing written undertakings from such insurance companies to provide Beneficiary with at least ten (10) days written notice prior to cancellation of any such policy. In case of loss, Beneficiary, at its option, shall be entitled to receive and retain the proceeds of the insurance policies, applying the same upon the Indebtedness or to apply such proceeds to the repair or restoration of the Improvements. If any loss shall occur at any time when Grantor shall be in default as to the performance of this covenant, Beneficiary shall nonetheless be entitled to the benefit of all insurance held by or for Grantor, to the same extent as if it had been made payable to Beneficiary.
10. Upon request from time to time and at any time, Grantor will deposit with Beneficiary each month in advance a monetary sum estimated by Beneficiary to equal on a monthly basis all or such portion of the Impositions as Beneficiary may require. At least thirty (30) days prior to the date on which any tax or insurance premium must be paid to prevent delinquency thereof, Grantor will, on request of Beneficiary, deliver to Beneficiary statement or statements showing the amount of tax or premium required to be paid and the concern or authority to which same is payable and will, at the same time, deposit with Beneficiary such amount as will, when added to the amount of such deposits previously made and then remaining available for the purpose, be sufficient to pay such insurance or tax obligations. Beneficiary shall have the right ~~between the obligations~~ to apply any or all of the foregoing deposits in payment of such insurance, tax and other Impositions.
11. Grantor will: (A) duly and punctually perform and comply with all representations, warranties, covenants and agreements binding upon it under the Leases; (B) not voluntarily terminate or waive its rights under any of the Leases; (C) use all reasonable efforts to maintain each of the Leases in force and effect during the full term thereof; and (D) appear in and defend any action or proceeding in any manner connected with any of the Leases.
12. Grantor will permit Trustee or Beneficiary, and their agents, attorneys, representatives and employees, to enter upon and inspect the Property at all reasonable times and intervals.
13. Grantor will defend and hold Beneficiary harmless from any action, proceeding or claim affecting the Property or the Security Documents or the lien or other interests created thereby. Further, Grantor will notify Beneficiary, in writing, promptly of the commencement of any legal proceedings affecting the Property, or any part thereof, and will take such action as necessary to preserve Beneficiary's rights affected thereby; and Beneficiary may, at its election, take such action in behalf of and in the name of Grantor, and at Grantor's expense.
14. Grantor will promptly pay all debts and liabilities of any character, including without limitation, all debts and liabilities for labor, material and equipment incurred in the construction, operation or development of the Property, and will complete in a good and workmanlike manner any Improvements that may be constructed or repaired thereon.
15. Grantor will keep separate and proper books of record and account pertaining to the Property in accordance with sound accounting practice and set aside from its earnings for each fiscal year, and cause to be reflected in its books, reserves for depreciation, depletion, obsolescence and amortization of the Property, as well as for the Impositions and other appropriate reserves, during such fiscal year determined in accordance with sound accounting practice, consistently applied. Beneficiary shall have the right to examine the books of account of Grantor and to discuss the affairs, finances and accounts of Grantor with, and to be informed as to the same by, its and their officers or any other party, all at such reasonable times and intervals as Beneficiary may desire. Upon request from time to time and at any time, Grantor will deliver to Beneficiary such certified financial statements and other financial reports as Beneficiary may require, including without limitation, financial statements of Grantor, of the Property or of any Obligated Party.
16. Upon request from time to time and at any time, Grantor will promptly correct any defect, error or omission, which may be discovered in the contents of this Deed of Trust or the Security Documents, and will execute and deliver any and all additional instruments as may be requested by Beneficiary to correct such defect, error or omission or to identify any additional properties which are or become subject to this Deed of Trust.
17. Grantor will give immediate written notice to Beneficiary of any condemnation proceeding or casualty loss affecting the Property and in each such instance, afford Beneficiary an opportunity to participate in any such proceeding or in the settlement of any awards thereunder.
18. Grantor will promptly pay and hold Beneficiary harmless from all appraisal fees, recording fees, taxes, abstract fees, title policy fees, escrow fees, attorneys' fees, and all other costs of every character incurred by Grantor or Beneficiary in connection with the closing of the loan evidenced by the Security Documents or the performance of the covenants of this Deed of Trust, or otherwise attributable or chargeable to Grantor as owner of the Property.
19. Grantor will not use or occupy, or permit any use or occupancy of, the Property in any manner which: (A) violates any Legal Requirement; (B) may be dangerous; (C) constitutes a public or private nuisance; or (D) makes void or voidable any of the Leases or any insurance on the Property.
20. Grantor will not permit: (A) any waste or deterioration of any part of the Property; (B) any alterations or additions to the Property of a material nature; or (C) any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless the removed item is removed temporarily for maintenance and repair or, if removed permanently, is replaced by an article of at least equal suitability and value, and owned by Grantor free and clear of any other lien or security interest.
21. Grantor will not, without the prior written consent of Beneficiary: (A) create, place or permit to be created or placed, or allow to remain, any mortgage, pledge, lien (statutory, constitutional or contractual), security interest, encumbrance or charge, or conditional sale or other title retention agreement, regardless of whether same are expressly subordinate to the liens and security interests of the Security Documents, with respect to the Property or the Leases; or (B) sell, lease, exchange, assign, convey, transfer possession of or otherwise dispose of all or any portion of the Property, or any interest therein, but if ownership of the Property or any part thereof or interest therein becomes vested in any person or entity other than Grantor, Beneficiary or any other holder of the Indebtedness may, without notice to Grantor, deal with such successor or successors in interest with reference to this Deed of Trust and the Indebtedness in the same manner as with Grantor without in any way discharging Grantor or any Obligated Party from the Indebtedness or the Obligations. Without limiting the right of Beneficiary to withhold its consent or to make other requirements prior to granting its consent, Beneficiary: (i) may require evidence satisfactory to Beneficiary that transferee is creditworthy and has such management ability as Beneficiary shall deem in its sole discretion to be necessary and (ii) may require transferee to execute such written modification and assumption agreements with regard to the Security Documents as Beneficiary shall deem necessary or desirable, including but not limited to provisions increasing the interest rate on the Note. No transfer of the Property, no forbearance by Beneficiary and no extension of the time for the payment of the Indebtedness or the performance of the Obligations granted by Beneficiary shall release, discharge or affect in any way Grantor's or any Obligated Party's liability hereunder.

Initials: 

105581

BOOK 884 PAGE 2419

D. EVENTS OF DEFAULT. The term "Event of Default," as used in this Deed of Trust, shall mean the occurrence at any time and from time to time, of any one or more of the following:

1. If any portion of the Indebtedness, as and when the same shall become due and payable, shall fail to be paid.
2. If any of the Obligations shall fail to be discharged fully and timely.
3. If any representation, warranty or other information, including without limitation financial statements, marketing studies or cost estimates, supplied to Beneficiary shall be false, misleading or erroneous in any material respect.
4. If Grantor, or any Obligated Party shall: (A) voluntarily be adjudicated a bankrupt or insolvent; (B) seek, consent to or not contest the appointment of a receiver or trustee for itself or himself or for all or any part of its or his property; (C) file a petition seeking relief under bankruptcy, arrangement, reorganization or other debtor relief laws of the United States or any state or any other competent jurisdiction; (D) make a general assignment for the benefit of its or his creditors; or (E) admit in writing its or his inability to pay its or his debts as they mature.
5. If: (A) a petition is filed against Grantor or any Obligated Party seeking relief under bankruptcy, arrangement, reorganization or other debtor relief laws of the United States or any state or other competent jurisdiction; or (B) a court of competent jurisdiction enters an order, judgment or decree appointing a receiver or trustee for any part of Grantor's or an Obligated Party's property.
6. If (where applicable to Grantor) Grantor shall dissolve or liquidate, merge with or be consolidated into any other corporation, or transfer any portion of or interest in the Property, or shall attempt to do any of the same, or if Grantor shall die or become mentally incompetent.
7. If the Property is abandoned, substantially damaged, or threatened with substantial damage, so that in Beneficiary's judgment it cannot promptly be restored with available funds to a profitable condition.
8. If the holder of any lien or security interest on the Property (notwithstanding that the creation of the same may constitute a separate default hereunder) institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.
9. If Beneficiary, in its sole judgment, determines that the ability of Grantor or any Obligated Party to pay the Indebtedness or any part thereof or perform the Obligations or any part thereof has deteriorated or been significantly impaired, or the Property is insufficient as security for the Indebtedness.
10. If any condemnation proceeding is instituted or threatened which would, in Beneficiary's sole judgment, materially impair the use or enjoyment of the Property for its intended purposes.
11. If Grantor is a corporation, partnership or entity other than an individual and, without the prior written consent of Beneficiary, there is: (A) a change in the legal or beneficial ownership of such corporation, partnership or entity; (B) a conveyance or other transfer of any of the capital stock of such corporation, including the grant of a security interest therein; or (C) a conveyance or other transfer of an interest in such partnership or entity, including the grant of a security interest therein.

E. DEFAULT AND FORECLOSURE. To the fullest extent permitted in equity or at law, by statute or otherwise:

1. If an Event of Default shall occur, Beneficiary may, at Beneficiary's sole election and by or through Trustee or otherwise, exercise any or all of the following:
 - (A) Declare all unpaid amounts under the Note and any other unpaid portion of the Indebtedness immediately due and payable, without further notice, presentment, protest, demand or action of any nature whatsoever (each of which is hereby expressly waived by Grantor), whereupon the same shall become immediately due and payable.
 - (B) Enter upon the Property and take exclusive possession thereof and of all books, records and accounts relating thereto, and, if necessary to obtain such possession, Beneficiary may invoke any and all legal remedies to dispossess Grantor, including specifically one or more actions for forcible entry and detainer, trespass to try title and writ of restitution.
 - (C) Hold, lease, manage, operate or otherwise use or permit the use of the Property, either itself or by other persons, firms or entities, in such manner, for such time and upon such other terms as Beneficiary may deem prudent under the circumstances (making such repairs, alterations, additions and improvements thereto and taking such other action from time to time as Beneficiary shall deem necessary or desirable), and apply all Rents collected in connection therewith in accordance with the provisions of Paragraph 7 of this Section E.
 - (D) Upon, or at any time after, commencement of foreclosure of the lien and security interest provided for herein, or any legal proceedings hereunder, make application to a court of competent jurisdiction as a matter of strict right and without notice to Grantor or regard to the adequacy of the Property for the repayment of the Indebtedness, for appointment of a receiver of the Property and Grantor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases.
 - (E) Exercise any and all other rights, remedies and recourse granted under the Security Documents or as may be now or hereafter existing in equity or at law, by virtue of statute or otherwise.
2. Should the Property be sold in one or more parcels as permitted by Paragraph 1(D) of this Section E, the right of sale arising out of any Event of Default shall not be exhausted by any one or more such sales, but other and successive sales may be made until all of the Property has been sold or until the Indebtedness has been fully satisfied.
3. All rights, remedies and recourse of Beneficiary granted in the Security Documents or otherwise available at law or equity: (A) shall be cumulative and concurrent; (B) may be pursued separately, successively or concurrently against Grantor or any Obligated Party, or against the Property, or against any one or more of them, at the sole discretion of Beneficiary; (C) may be exercised as often as occasion therefor shall arise, it being agreed by Grantor that the exercise or failure to exercise any of same shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse; and (D) shall be non-exclusive.
4. Beneficiary may release, regardless of consideration, any part of the Property without, as to the remainder, in any way impairing, affecting, subordinating or releasing the lien or security interests evidenced by the Security Documents, or affecting the obligations of Grantor or any Obligated Party to pay or perform, as their interests may appear, the Indebtedness or Obligations. For payment of the Indebtedness, Beneficiary may resort to any of the security therefor in such order and manner as Beneficiary may elect. No security heretofore, herewith or subsequently taken by Beneficiary shall in any manner impair or affect the security given by the Security Documents, and all security shall be taken, considered and held as cumulative.
5. Grantor hereby irrevocably and unconditionally waives and releases (A) all benefits that might accrue to Grantor by virtue of any present or future law exempting the Property from attachment, levy or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption or extension of time for payment; (B) all notices of any Event of Default or of Trustee's exercise of any right, remedy or recourse provided for under the Security Documents; and (C) any right to a marshalling of assets or a sale in inverse order of alienation.
6. In case Beneficiary shall have proceeded to invoke any right, remedy or recourse permitted under the Security Documents and shall thereafter elect to discontinue or abandon same for any reason, Beneficiary shall have the unqualified right so to do and, in such event, Grantor and Beneficiary shall be restored to their former positions with respect to the Indebtedness, the Obligations, the Security Documents, the Property and otherwise, and the rights, remedies, recourse and powers of Beneficiary shall continue as if same had never been invoked.
7. Any proceeds of any sale, of and any Rents except as otherwise provided in Paragraph 2 of Section H or other amounts generated by the holding, leasing, operation or other use of the Property shall be applied in the following orders of priority: (A) first, to the payment of all costs and expenses of taking possession of the Property and of holding, leasing, operating, using, repairing, improving and selling the same, including, without limitation, fees of the Trustee and attorneys retained by Beneficiary or Trustee (which fees in connection with any sale shall be equal to five percent and ten percent, respectively, of the gross proceeds of such sale); fees of any receiver or accountants; recording and filing fees; court costs; costs of advertisement, and the payment of any and all impositions, liens, security interests or other rights, titles or interests equal or superior to the lien and security interest of this Deed of Trust (except those to which the Property has been sold subject to and without in any way implying Beneficiary's consent to the creation thereof); (B) second, to the payment of all accrued and unpaid interest due on the Note; (C) third, to the payment of the unpaid principal balance of the Note; (D) fourth, to the payment of all amounts, other than unpaid principal and accrued interest on the Note, which may be due to Beneficiary under the Security Documents, together with interest thereon as provided therein; (E) fifth, to the payment of the unpaid Indebtedness; (F) sixth, to Grantor.

F. CONDEMNATION AND OTHER AWARDS. All judgments, decrees or awards now or hereafter made for injury or damage to the Property, or awards, settlements or other compensation now or hereafter made by any Governmental Authority, including those for any variation of, or change of grade in, any streets affecting the Land or the Improvements, are hereby assigned in their entirety to Beneficiary, who may apply the same to the Indebtedness secured hereby in such manner as Beneficiary may elect; and Beneficiary is hereby authorized, in the name of Grantor, to execute and deliver valid acquittances for, and to appeal from, any such award, judgment or decree.

G. SECURITY AGREEMENT. Grantor hereby grants to Beneficiary a security interest in and to certain property as follows:

1. This Deed of Trust shall also constitute and serve as a "Security Agreement" on personal property within the meaning of, and shall constitute a first and prior security interest under Chapter 9 of the Code, with respect to the Personality, Fixtures and Leases. To this end, Grantor has Granted, Bargained, Conveyed, Assigned, Transferred and Set Over, and by these presents does Grant, Bargain, Convey, Assign, Transfer and Set Over, unto Trustee, for the benefit of Beneficiary as a secured party, a first and prior security interest and all of Grantor's right, title and interest in, to and under the Personality, Fixtures and Leases, in trust, to secure the full and timely payment of the Indebtedness and performance of the Obligations.
2. Grantor agrees to execute and deliver to Beneficiary, in form and substance satisfactory to Beneficiary, such financing statements and such further assurances as Beneficiary may, from time to time, consider necessary to create, perfect, and preserve the security interest herein granted, and Beneficiary may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to create, perfect and preserve such security interest.
3. Beneficiary, as well as Trustee on Beneficiary's behalf, shall have all the rights, remedies and recourse with respect to the Personality, Fixtures and Leases afforded a "Secured Party" by Chapter 9 of the Code, in addition to, and not in limitation of, the other rights, remedies and recourse afforded Beneficiary and/or Trustee by the Security Documents.
4. The security interest herein granted shall not be deemed or construed to constitute Trustee or Beneficiary as a trustee in possession of the Property, to obligate Trustee or Beneficiary to lease the Property, or to take any action, incur any expenses or perform any obligation whatsoever under any of the Leases or otherwise.
5. Upon the occurrence of an Event of Default as provided in Section E of this Deed of Trust and at any time thereafter:
 - (A) Trustee or Beneficiary shall have, with regard to the Personality, Fixtures and Leases the remedies provided in this Deed of Trust and in the Code (no such remedy granted by the Code being excepted, modified or waived herein). Trustee or Beneficiary may use his or its discretion in exercising the rights and electing the remedies; provided, however, all acts shall be in compliance with the standards of the Code, where applicable and required. For purposes of the notice requirements of the Code and this Section G, it is agreed that notice sent or given not less than five (5) calendar days prior to the taking of the action to which the notice relates, is reasonable notice.
 - (B) Trustee or Beneficiary shall be entitled, acting in his or its sole discretion, to apply the proceeds of any disposition of the Personality, Fixtures and Leases in the order set forth in Chapter 9 of the Code, or, if allowed by the Code, in the order set forth in Paragraph 7 of Section E hereof.
 - (C) Notwithstanding anything herein to the contrary, Beneficiary, or the Trustee, acting on Beneficiary's behalf, may at its or his option, dispose of the Fixtures, Personality and other items of personal property covered by this Deed of Trust in accordance with Beneficiary's rights and remedies in respect of the Land pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the Code.
6. Beneficiary may require Grantor to assemble the Personality, Fixtures and Leases and make them available to Beneficiary or Trustee at a place to be designated by Beneficiary that is reasonably convenient to both parties. All expenses of retaking, holding, preparing for sale, lease or other use or disposition, selling, leasing or otherwise using or disposing of the Personality, Fixtures and Leases and the like which are incurred or paid by Beneficiary as authorized or permitted hereunder, including also all attorneys' fees, legal expenses and costs, shall be added to the Indebtedness and Grantor shall be liable therefor.
7. As to the Personality, Fixtures and Leases, this Deed of Trust shall be effective as a financing statement when filed for record in the Deed of Trust Records of any county in which any portion of the Land is located. The record owner of the Land is Grantor, whose mailing address for purposes of such financing statement is set forth in the opening recital hereinabove. Information concerning the security interest created by this instrument may be obtained from Beneficiary at its address similarly set forth in such opening recital.

I. THE TRUSTEE. The following provisions shall govern with respect to the Trustee:

1. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable to Grantor under any circumstances whatsoever, nor shall Trustee be personally liable in case of entry by him, or anyone entering by virtue of the powers herein granted, upon the Property for debts contracted or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by him hereunder, believed by him in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by him in the performance of his duties hereunder and to reasonable compensation for such of his services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save him harmless against, any and all liability and expenses which may be incurred by him in the performance of his duties.
2. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any money received by him hereunder.
3. Trustee may resign at any time with or without notice. If Trustee shall die, resign or become disqualified from acting in the execution of this trust or shall fail or refuse to execute the same when requested by Beneficiary so to do, or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all the estates, rights, powers and duties of the aforementioned Trustee.
4. Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and money held by such Trustee to the successor Trustee so appointed in his place.

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Initials: _____



J. MISCELLANEOUS. The following provisions shall also apply to and govern this Deed of Trust and the interpretation hereof:

1. Each and all of the Obligations shall survive the execution and delivery of the Security Documents, and the consummation of the loan called for therein, and shall continue in full force and effect until the Indebtedness shall have been paid in full.
2. Grantor, upon the request of Trustee or Beneficiary, will execute, acknowledge, deliver and record and/or file such further instruments and do such further acts as may be necessary, desirable or proper to carry out more effectively the purposes of the Security Documents and to subject to the liens and security interests thereof any property intended by the terms thereof to be covered thereby, including specifically, but without limitation, any renewals, additions, substitutions, replacements, or aperturances to the then Property. Grantor will pay all such recording, filing, re-recording and re-filing taxes, fees and other charges, including those for security interest searches.
3. All notices or other communications required or permitted to be given pursuant to this Deed of Trust (except for notices of a foreclosure sale which shall be given in the manner set forth in Paragraph 1(D) of Section E hereof) shall be in writing and shall be deemed served and given upon deposit in the United States mail, postage prepaid, registered or certified with return receipt requested, or by delivering same in person to the intended addressee or upon sending a prepaid telegram. Notices given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be as set forth in the opening recital hereinabove; provided, however, that either party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of fifteen (15) days notice to the other party in the manner set forth hereinabove.
4. Any failure by Trustee or Beneficiary to insist, or any election by Trustee or Beneficiary not to insist, upon strict performance by Grantor of any of the terms, provisions or conditions of the Security Documents shall not be deemed to be a waiver of same or of any other term, provision or condition thereof, and Trustee or Beneficiary shall have the right at any time or times thereafter to insist upon strict performance by Grantor of any and all of such terms, provisions and conditions.
5. If Grantor shall fail, refuse or neglect to make any payment or perform any act required by the Security Documents, then at any time thereafter, and without notice to or demand upon Grantor and without waiving or releasing any other right, remedy or recourse Beneficiary may have because of same, Beneficiary may (but shall not be obligated to) make such payment or perform such act for the account of and at the expense of Grantor, and shall have the right to enter the Land and Improvements for such purpose and to take all such action thereon and with respect to the Property as it may deem necessary or appropriate. Grantor shall indemnify Beneficiary for all losses, expenses, damage, claims and causes of action, including reasonable attorneys' fees, incurred or accruing by reason of any acts performed by Beneficiary pursuant to this Paragraph 5 of Section J or by reason of any other provision in the Security Documents. All sums paid by Beneficiary pursuant to this Paragraph 5 of Section J and all other sums expended by Beneficiary to which it shall be entitled to be indemnified, together with interest thereon at the maximum rate allowed by law (if there be no maximum rate then an annual rate equal to the sum of six percent plus Bank Prime) from the date of such payment or expenditure until paid, shall constitute additions to the Indebtedness, shall be secured by the Security Documents and shall be paid by Grantor to Beneficiary upon demand. As used herein, the term "Bank Prime" means at any time the rate of interest per annum then most recently established by Beneficiary as its prime rate on commercial loans.
6. All Obligations contained in the Security Documents are intended by the parties to be, and shall be construed as, covenants running with the Property.
7. All of the terms of the Security Documents shall apply to, be binding upon and inure to the benefit of the parties thereto, their respective successors, assigns, heirs and legal representatives, and all other persons claiming by, through or under them.
8. The Security Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Security Documents or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of the instrument in which such provision is contained nor the application of such provision to other persons or circumstances nor the other instruments referred to hereinabove shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law. It is hereby expressly stipulated and agreed to be the intent of Grantor and Beneficiary at all times to comply with the usury, and all other laws relating to the Security Documents. If, at any time, the applicable Legal Requirements render usurious any amount called for in any Security Document, then it is Grantor's, Trustee's and Beneficiary's express intent that such document be immediately deemed reformed and the amounts collectible reduced or spread, without the necessity of the execution of any new document, so as to comply with the then applicable law but so as to permit the recovery of the fullest amount otherwise called for in such Security Documents.
9. In the event of the passage after the date of this Deed of Trust of any applicable law changing in any way the laws for the taxation of deeds of trust and/or the debts secured thereby so as to affect this Deed of Trust, Beneficiary shall have the right, at Beneficiary's option, to declare the Indebtedness immediately due and payable.
10. The Security Documents contain the entire agreements between the parties relating to the subject matter hereof and thereof and all prior agreements relative thereto which are not contained herein or therein are terminated. The Security Documents may be amended, revised, waived, discharged, released or terminated only by a written instrument or instruments, executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted. Any alleged amendment, revision, waiver, discharge, release or termination which is not so documented shall not be effective as to any party.
11. This Deed of Trust may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute but one instrument.
12. If any or all of the proceeds of the Note have been used to extinguish, extend or renew any indebtedness heretofore existing against the Property, then, to the extent of such funds so used, the Indebtedness and this Deed of Trust shall be subrogated to all of the rights, claims, liens, titles and interests heretofore existing against the Property to secure the indebtedness so extinguished, extended or renewed and the former rights, claims, liens, titles and interests, if any, are not waived but rather are continued in full force and effect in favor of Beneficiary and are merged with the lien and security interest created herein as cumulative security for the repayment of the Indebtedness and the satisfaction of the Obligations.
13. The Security Documents shall be governed by and construed according to the laws of the State of Texas and the applicable laws of the United States of America.
14. The Section entitlements hereof are inserted for convenience of reference only and shall in no way alter, modify or define, or be used in construing, the text of such Sections. Whenever the context hereof requires, references herein to the singular number shall include the plural, and likewise the plural shall include the singular; words denoting sex shall be construed to include the masculine, feminine and neuter, where appropriate; and specific enumeration shall not exclude the general, but shall be considered as cumulative.
15. If Grantor consists of more than one party, the obligations of each party constituting Grantor to pay the Indebtedness and perform the Obligations shall be joint and several; and if the Obligated Party consists of more than one party, the obligations of each party constituting the Obligated Party to pay the Indebtedness and perform the Obligations shall be joint and several.

REQUESTED BY
DOUGLAS COUNTY TITLE
 IN OFFICE OF RECORDS OF
 DOWNTOWN HOUSTON, TEXAS

'84 AUG 22 P3:53

SUZANNE DEAUDREAU
 RECORDER
 \$9⁰⁰ PAID *Bk* DEPUTY

Initials: *BPB*