



Control Number: 49924



Item Number: 1

Addendum StartPage: 0

49924

PUC DOCKET NO. \_\_\_\_\_

PETITION BY MAPLE  
HEIGHTS DEVELOPMENT LLC  
FOR EXPEDITED RELEASE  
FROM SEWER CCN NO. 20573  
HELD BY PORTER MUNICIPAL  
UTILITY DISTRICT

§  
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§  
§  
§

BEFORE THE  
PUBLIC UTILITY COMMISSION  
OF TEXAS

**PETITION BY MAPLE HEIGHTS DEVELOPMENT LLC FOR EXPEDITED RELEASE  
PURSUANT TO TEXAS WATER CODE SECTION 13.254(A-5)**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

COMES NOW, Maple Heights Development LLC, (Petitioner) and files this Petition with the Public Utility Commission of Texas (PUC) for expedited release from the Porter Municipal Utility District (Porter MUD) sewer certificate of convenience and necessity (CCN) No. 20573, pursuant to Texas Water Code Section 13.254 (a-5) and Rule 24.245 of the PUC's Rules found at 16 Texas Administrative Code § 24.245 and, in support thereof, would respectfully show the following:

**I. APPLICABLE REGULATIONS**

Section 13.254(a-5) of the Texas Water Code provides that the owner of a tract of land that is at least 25 acres and is not receiving water or sewer service may petition for expedited release of the area from a CCN. TEX. WATER CODE ANN. § 13.254(a-5). For land that is located within a county with a population of at least one million, or a county adjacent to a county with a population of at least one million, the owner of the qualifying tract "is entitled to that release." *Id.* The rule adopted by the PUC pursuant to Section 13.254(a-5) provides the same, and it recognizes that Montgomery County is a county in which owners of at least 25 acres are entitled to expedited release. *See* 16 TEX. ADMIN. CODE § 24.245. Under Section 13.254(a-6), the PUC "shall grant a petition received under Section (a-5) not later than the 60<sup>th</sup> day after the date the landowner filed the petition."

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## **II. INFORMATION ABOUT THE PETITIONER**

The Petitioner's legal name is Maple Heights Development LLC. It has no assumed names. The Petitioner is a limited liability corporation. The Certificate of Formation was filed with the Texas Secretary of State of June 4, 2019, under Filing Number 803335344. Maple Heights Holding LLC is the parent company and manager of Maple Heights Development LLC. The primary business of Maple Heights Holding LLC is real estate development.

## **III. REQUEST FOR EXPEDITED RELEASE**

Petitioner owns approximately 211.094 acres of contiguous property in Montgomery County (Property). The Property is within the boundaries of sewer CCN No. 20573 held by Porter MUD. The Property does not receive service from any water or sewer provider. An affidavit in support of this Petition is attached hereto as Exhibit A. Maps showing the location of the Property, along with the digital data, are attached hereto as Exhibit B. The deed showing ownership of the Property is attached hereto as Exhibit C. A copy of this petition has been mailed to Porter MUD via certified mail.

## **IV. CONCLUSION AND PRAYER**

Texas Water Code Section 13.254(a-5) entitles Petitioner to expedited release of the Property described herein. The Property is greater than 25 acres, is not receiving water or sewer service, and is entirely within Montgomery County. Under Section 13.254(a-6), the PUC should grant this Petition no later than the 60<sup>th</sup> day after the date of filing. Petitioner respectfully requests that the PUC grant this Petition and issue an order under the authority of Section 13.254(a-5) releasing all portions of the Property that is within the boundaries of sewer CCN No. 20573.

Respectfully submitted,

Emily W. Rogers  
State Bar No. 24002863  
[erogers@bickerstaff.com](mailto:erogers@bickerstaff.com)

Bickerstaff Heath Delgado Acosta LLP  
3711 S. MoPac Expressway  
Building One, Suite 300  
Austin, TX 78746  
Telephone: (512) 472-8021  
Facsimile: (512) 320-5638

BY: Emily W. Rogers  
Emily W. Rogers

**CERTIFICATE OF SERVICE**

I hereby certify by my signature below that on the 30<sup>th</sup> day of August, 2019, a true and correct copy of the above and foregoing document was forwarded via hand delivery, facsimile, U.S. mail or electronic mail to all parties of record and a true and correct copy of the above and foregoing document has been mailed by certified mail to Porter Municipal Utility District, 23922 Loop 494, Porter, TX, 77365.

Emily W. Rogers  
Emily W. Rogers

PUC DOCKET NO. \_\_\_\_\_

PETITION BY MAPLE	§	
HEIGHTS DEVELOPMENT LLC	§	BEFORE THE
FOR EXPEDITED RELEASE	§	
FROM SEWER CCN NO. 20573	§	PUBLIC UTILITY COMMISSION
HELD BY PORTER MUNICIPAL	§	
UTILITY DISTRICT	§	OF TEXAS

**AFFIDAVIT FOR PETITION BY MAPLE HEIGHTS DEVELOPMENT LLC FOR  
EXPEDITED RELEASE PURSUANT TO TEXAS WATER CODE SECTION 13.254(A-5)**

State of New Jersey §  
County of Bergen §

BEFORE ME, the undersigned notary, personally appeared Itiel Kaplan, the affiant, a person who is known to me. After administering an oath, the affiant testified that:

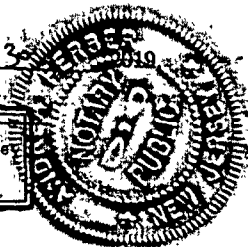
1. "My name is Itiel Kaplan. I am over the age of eighteen years, of sound mind, and am capable of making this affidavit. The facts stated in the affidavit are within my personal knowledge and are true and correct.
2. I am the Chief Executive Officer of New Development for 3 Points Realty Partners and I represent Maple Heights Development LLC, the Petitioner in the above-captioned matter. Maple Heights Development LLC owns approximately 211.094 acres of land, which is located within the boundaries of sewer Certificate of Convenience and Necessity No. 20573 issued to Porter Municipal Utility District. This property is located in Montgomery County, Texas. Exhibit B attached to this Petition is a true and correct copy of a map identifying the property, its location, and the area of the CCNs.
3. The property in question is not receiving sewer service from Porter Municipal Utility District or any other sewer service provider. The property has not requested sewer service from Porter Municipal Utility District or paid any fees or charges to initiate or maintain sewer service, and there are no billing records or other documents indicating an existing account for the property.
4. I request that the Public Utility Commission on Texas release this property from sewer CCN No. 20573."

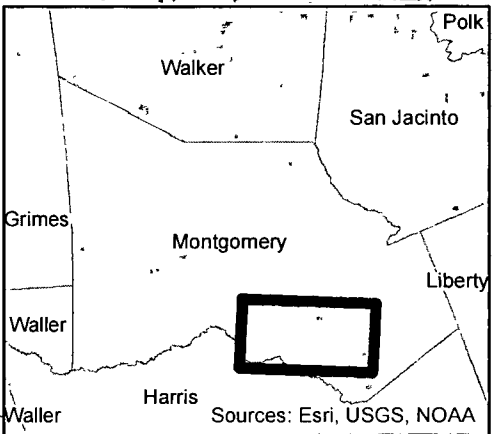
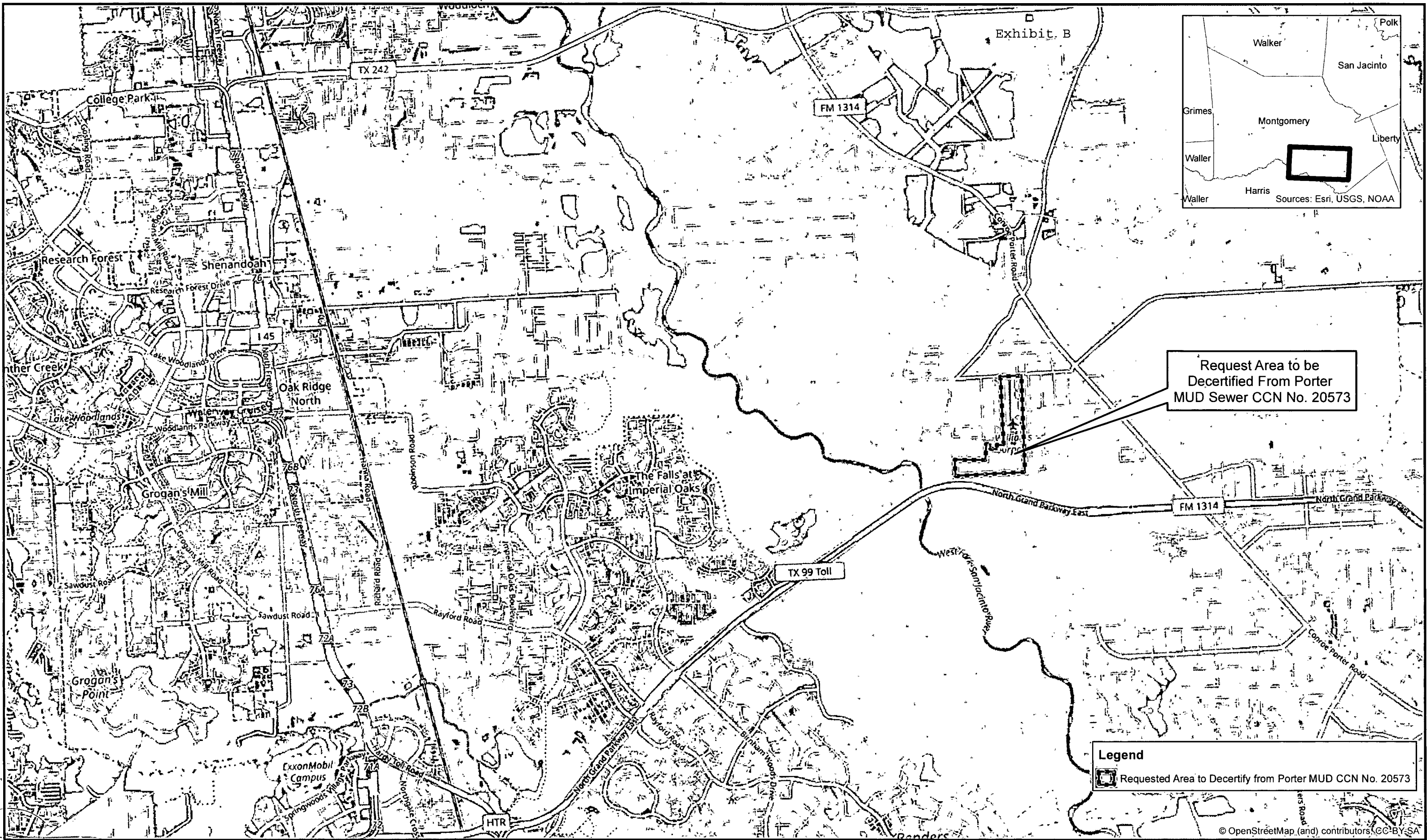
FURTHER AFFIANT SAYETH NOT.

Itiel Kaplan  
Itiel Kaplan

SWORN TO AND SUBSCRIBED TO BEFORE ME by Itiel Kaplan on August 3, 2019

Notary Public, State of New Jersey  
My Commission Expires  
September 28, 2020





Request Area to be  
Decertified From Porter  
MUD Sewer CCN No. 20573

**Legend**

Requested Area to Decertify from Porter MUD CCN No. 20573

0 0.5 1 2 Miles

Created 8/28/2019  
Background Image: ESRI Imagery Map

**Maple Heights Development LLC.**  
**Request Area to be Decertified from Porter MUD Sewer CCN Service Area (CCN No. 20573)**  
**GENERAL LOCATION MAP**

© 2019 Bickerstaff Heath Delgado Acosta LLP  
 Data Source: Maple Heights Development LLC area  
 obtained from Kimley-Horn.  
 Porter MUD Sewer CCN No. 20573 obtained from  
 PUC Utilities - Water Mapping.



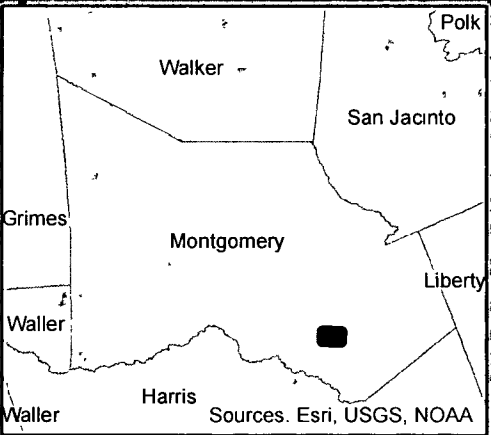


**Legend**

Requested Area for Maple Heights Development LLC to Decertify from Porter MUD CCN No. 20573

Centerline

**Request Area to be  
Decertified From Porter  
MUD Sewer CCN No. 20573**



0 0.075 0.15 0.3 Miles

Created 8/28/2019  
Background Image: ESRI Imagery Map

**Maple Heights Development LLC.**

**Request Area to be Decertified from Porter MUD Sewer CCN Service Area (CCN No. 20573)**

**DETAIL MAP**

Exhibit B

© 2019 Bickerstaff Heath Delgado Acosta LLP  
Data Source: Maple Heights Development LLC area  
obtained from Kimley-Horn.  
Porter MUD Sewer CCN No. 20573 obtained from  
PUC Utilities - Water Mapping.



Petition by Maple Heights Development LLC  
for Expedited Release from  
Sewer CCN No. 20573



**DEED OF TRUST**

STATE OF TEXAS

§  
§  
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF MONTGOMERY

THAT THE UNDERSIGNED, MAPLE HEIGHTS DEVELOPMENT LLC, a Texas limited liability company (hereinafter called "Grantors," whether one or more), whose mailing address is 411 Hackensack Avenue, Suite 301, Hackensack, New Jersey 07601, for and in consideration of the debt hereinafter described, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey, in trust, unto Steve Smith of Fort Bend County, Texas, as Trustee, and unto his successors in the trust hereby created and unto his or their assigns and the heirs of such assigns (all of whom are hereinafter called "Trustee"), forever, all the property described in Exhibit "A" attached hereto and made a part hereof for all purposes. To have and to hold unto Trustee and his substitutes, successors and assigns the property described in Exhibit "A", together with any and all personal property now or hereafter located thereon owned by Grantors and any and all buildings and improvements of every kind and character now or hereafter situated or placed thereon (including, but not limited to, any and all plumbing, electrical, heating, cooling and other fixtures, equipment and appliances), and all replacements of and additions thereto, and all of Grantors' rights with respect to utility capacity, utilities and utility taps, wastewater capacity, proceeds arising from any claim pursuant to any policy of title insurance covering the property described in Exhibit "A" and all and singular the rights, privileges, hereditaments, appurtenances, rents, revenues, profits and income thereunto now or hereafter incident or belonging thereto (collectively referred to herein as the "Mortgaged Property"), forever and Grantors do hereby bind themselves, their heirs, successors, assigns and legal representatives to warrant and forever defend, all and singular the Mortgaged Property unto Trustee, his substitutes or successors and assigns forever, against the claim or claims of all persons to claim the same or any part thereof. It is hereby agreed that to the extent permitted by law all of the foregoing property is to be deemed and held to be a part of and affixed to the realty.

This conveyance is made in trust, however, to secure and enforce the payment of a promissory note (hereinafter referred to as "Note," whether one or more) of even date herewith, executed by Grantors, payable to the order of BANCORPSOUTH BANK (hereinafter called "Beneficiary"), whose mailing address is 4920-A San Felipe, Houston, Texas 77056, in the principal amount of \$4,800,000.00, bearing interest and being payable as provided therein.

This Deed of Trust shall secure, in addition to the Note, all funds hereafter advanced by Beneficiary to or for the benefit of Grantors, as contemplated by any covenant or provision herein contained or for any other purpose, and all other indebtedness, of whatever kind or character, owing or which may hereafter become owing by Grantors to Beneficiary, whether such indebtedness is evidenced by note, open account, overdraft, endorsement, surety agreement, guaranty or otherwise, it being contemplated that Grantors may hereafter become indebted to Beneficiary in further sum or sums. All indebtedness secured hereby shall be payable in Harris County, Texas, until Beneficiary gives written notice to Grantors designating another place of payment; and unless otherwise provided in the instrument evidencing said indebtedness, shall bear interest at the maximum non-usurious rate allowed by applicable law. If the Note or any other indebtedness secured hereby shall be collected by legal proceedings or through a probate or bankruptcy court or shall be placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by the option given to Beneficiary to mature same, Grantors agree that all attorneys' or collection fees as provided for in the Note shall be paid by Grantors and shall be a part of the indebtedness secured hereby. This Deed of Trust shall also secure all renewals, rearrangements and extensions of any of the indebtedness secured hereby.

Better to secure payment of said indebtedness, Grantors do hereby jointly and severally covenant and agree with Beneficiary and with Trustee as follows:

(1) Grantors will pay all of the indebtedness secured hereby, together with the interest and other appurtenant charges thereon, when the same shall become due in accordance with the terms of the Note or other instruments evidencing said indebtedness or evidencing any renewal or extension of the same or any part thereof.

(2) Grantors have, in their own right, good and perfect title in fee simple to the Mortgaged Property, which is free from encumbrance superior to the liens and security interests hereby created unless otherwise herein

provided and have full right and authority to make this conveyance. Grantors shall at all times comply with and perform all obligations under any applicable laws, statutes, regulations, covenants, restrictions or ordinances relating to the Mortgaged Property.

(3) Grantors will keep all buildings and other property covered by this Deed of Trust insured against fire, lightning, tornado, hail, explosion and against such other risks as Beneficiary may require, all in amounts approved by Beneficiary. In addition to the above required insurance, Grantors will keep all buildings and other property covered by this Deed of Trust and all personal property covered hereby or covered by any other instrument securing payment of the Note insured for the term of the Note with flood insurance in an amount at least equal to the outstanding principal of the Note or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less. Such flood insurance is required hereunder only when such property is located or to be located in an area that has been identified by the Secretary of Housing and Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968. Such insurance is to be written in form and in companies acceptable to Beneficiary with mortgagee clauses of standard form in favor of Beneficiary and will deliver the policies of insurance to Beneficiary promptly as issued; and, in case Grantors fail so to do, Beneficiary, at its option, may procure such insurance at Grantors' expense. All renewal and substitute policies of insurance shall be delivered at the office of Beneficiary, premiums paid, at least ten (10) days before termination of policies theretofore delivered to Beneficiary. All policies shall provide, by way of riders, endorsements or otherwise, that the insurance provided thereby shall not be terminated, reduced or otherwise limited, regardless of any breach of the representations and agreements set forth therein and that the interest of Beneficiary will not be invalidated by any act or omission of Grantors and that no such policy shall be canceled, endorsed or amended to any extent unless the issuer thereof shall have first given Beneficiary at least fifteen (15) days prior written notice. In case Grantors fail to furnish such policies, Beneficiary, at its option, may procure such insurance at Grantors' expense. In case of loss, Beneficiary, at its option, shall be entitled to receive and retain the proceeds of the insurance policies, applying the same toward payment of said indebtedness as Beneficiary shall see fit or, at Beneficiary's option, Beneficiary may pay the same over wholly or in part to Grantors for the repair of said building or buildings or for the erection of a new building or buildings in their place or for any other purpose satisfactory to Beneficiary, but Beneficiary shall not be obligated to see to the proper application of any amount paid over to Grantors. If Beneficiary elects to allow payment of all or part of such proceeds to Grantors, such payments shall be disbursed on such terms and subject to such conditions as Beneficiary may specify. Should Beneficiary elect to allow Grantors to repair such damage, Grantors agree that, regardless of whether any insurance proceeds payable to them are sufficient to pay the costs of repair and restoration of the Mortgaged Property, Grantors shall promptly commence and carry out the repair, replacement, restoration and rebuilding of any and all of the Mortgaged Property damaged or destroyed by fire or other casualty so as to return same, to the extent practicable, to its condition immediately prior to such damage to or destruction thereof. Grantors shall not permit or carry on any activities within or relating to the Mortgaged Property that is prohibited by the terms of any insurance policy covering any part of the Mortgaged Property or which permits cancellation of or increase in the premium payable for any insurance policy covering any part of the Mortgaged Property. In the event of a foreclosure of this Deed of Trust, the purchaser of the Mortgaged Property shall succeed to all the rights of Grantors, including any right to unearned premiums, in and to all policies of insurance assigned and delivered to Beneficiary pursuant to the provisions of this Deed of Trust. Regardless of the types or amounts of insurance required and approved by Beneficiary, Grantors shall assign and deliver to Beneficiary all policies of insurance that insure against any loss or damage to the Mortgaged Property as collateral and further security for the payment of the Note and any other indebtedness secured hereby. Grantors shall also obtain and maintain in force and effect such liability and other insurance policies and protection as Beneficiary may from time to time specify.

(4) Grantors will pay all taxes and assessments against the Mortgaged Property including, without limitation, all taxes in lieu of ad valorem taxes as the same become due and payable and provide Beneficiary with copies of paid tax receipts or tax certificates evidencing payment, from each taxing authority having jurisdiction over the Mortgaged Property. If Grantors fail to provide such evidence of payment within thirty (30) days from the date such taxes are due and payable, Beneficiary may procure a tax certificate(s) at Grantors' sole cost and expense. In the event of the passage after date of this Deed of Trust of any law by the State of Texas deducting from the Mortgaged Property for the purposes of taxation any lien thereon or changing in any way the laws now in force for the taxation of mortgages, deeds of trust or indebtedness secured thereby for state or local purposes or the manner of the operation of any such taxes so as to affect the interest of Beneficiary, then, and in such event, Grantors shall bear and pay the full amount of such taxes. If Grantors fail to pay any such taxes and assessments including, without limitation, taxes in

lieu of ad valorem taxes and taxes against this Deed of Trust or said indebtedness secured hereby, Beneficiary may pay the same, together with all costs and penalties thereon, at Grantors' expense; provided, however, that if, for any reason, payment by Grantors of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render said indebtedness wholly or partially usurious under any of the terms or provisions of the Note or this Deed of Trust or otherwise, Beneficiary may, at its option, declare the indebtedness secured hereby, with all accrued interest thereon, to be immediately due and payable or Beneficiary may, at its option, pay the amount or portion of such taxes as renders the indebtedness secured hereby unlawful or usurious, in which event Grantors shall concurrently therewith pay the remaining lawful and non-usurious portion or balance of said taxes.

(5) All judgments, decrees, awards or payment for injury or damage to the Mortgaged Property and all awards pursuant to proceeding for condemnation thereof, including interest thereon, are hereby assigned in their entirety to Beneficiary, who may apply the same first to reimbursement of all costs and expenses incurred by Beneficiary in connection with such condemnation proceeding and the balance to the indebtedness secured hereby in such manner as it may elect; and Beneficiary is hereby authorized, in the name of Grantors, to execute and deliver valid acquittances for and to appeal from any such award, judgment or decree. Grantors shall promptly notify Beneficiary of the institution or threatened institution of any proceeding for the condemnation of any of the Mortgaged Property. Beneficiary shall have the right to participate in any such condemnation proceeding.

(6) If, while this trust is in force, the title of Trustee to the Mortgaged Property or any part thereof shall be endangered or shall be attacked directly or indirectly, Grantors hereby authorize Beneficiary, at Grantors' expense, to take all necessary and proper steps for the defense of said title, including the employment of counsel, the prosecution or defense of litigation and the compromise or discharge of claims made against said title.

(7) If, in pursuance of any covenant herein contained, Beneficiary shall pay out any money chargeable to Grantors or subject to reimbursement by Grantors under the terms of said covenant or agreement, Grantors will repay the same to Beneficiary immediately at the place where the Note or other indebtedness hereby secured is payable, together with interest thereon at the maximum non-usurious rate allowed by applicable law from and after the date of Beneficiary's making such payment. The sum of each such payment shall be added to the Note and thereafter shall form a part of the same; and it shall be secured by this Deed of Trust and by subrogation to all the rights of the person, corporation or body politic receiving such payment.

(8) Grantors will keep every part of the Mortgaged Property in good condition and presenting a good appearance, making promptly all repairs, renewals and replacements necessary to such end and doing promptly all else necessary to such end; but Grantors will discharge all claims for labor performed and material furnished therefor; and will not suffer any lien of mechanics or materialmen therefor to attach to any part of the Mortgaged Property; and Grantors will guard every part of the Mortgaged Property from removal, destruction and damage, and will not do or suffer to be done any act whereby the value of any part of the Mortgaged Property may be lessened. No building or other property now or hereafter covered by the lien of this Deed of Trust shall be removed, demolished or materially altered or enlarged, nor shall any new building be constructed, without the prior written consent of Beneficiary, which shall not be unreasonably withheld, conditioned or delayed. Grantors shall not initiate, join in or consent to any change in any private restrictive covenants, zoning ordinances or other public or private restrictions limiting or defining the uses that may be made of the Mortgaged Property or any part thereof without the prior written consent of Beneficiary, which shall not be unreasonably withheld, conditioned or delayed. Beneficiary and its agents or representatives shall have access to the Mortgaged Property at all reasonable times in order to inspect same and verify Grantors' compliance with their duties and obligations under this Deed of Trust. Grantors shall not, without prior written approval of Beneficiary, grant, convey or otherwise create or permit to be created, any type of mortgage, lien, security interest or other encumbrance on any of the Mortgaged Property, regardless whether same shall be inferior and subordinate to the liens and security interests of Beneficiary in and to the Mortgaged Property.

(9) Grantors shall not sell, transfer, assign or mortgage all or any portion of the Mortgaged Property (including any utilities, utility capacity, utility taps or any rights or interests thereto), nor shall Grantors grant any easement or right-of-way, or file of record any restrictive covenants or restrictions whatsoever with respect to the Mortgaged Property, nor shall Grantors rent or lease any or all of the Mortgaged Property for a period in excess of one (1) year without the express written consent of Beneficiary, which shall not be unreasonably withheld, conditioned or delayed. Any sale of membership interests of Borrower or any of its members shall constitute a sale of the Mortgaged Property for the purposes hereof.

(10) In the event the ownership of the Mortgaged Property or any part thereof becomes vested in a person other than Grantors, Beneficiary may, without notice to Grantors, deal with such successor or successors in interest with reference to this Deed of Trust and to said indebtedness in the same manner as with Grantors, without in any way vitiating or discharging Grantors' liability hereunder or upon said indebtedness. No sale of the Mortgaged Property and no forbearance on the part of Beneficiary and no extension of the time for the payment of said indebtedness given by Beneficiary shall operate to release, discharge, modify, change or affect, either in whole or in part, any original liability of Grantors or the liability of the guarantors or sureties of Grantors or of any other party liable for payment of said indebtedness or any part thereof.

(11) In the event Grantors shall default in the prompt payment when due of the indebtedness secured hereby or any part thereof or any part of any indebtedness of Grantors to any other person or entity, or fail to keep and perform any of the covenants or agreements herein contained (and such failure continues past applicable notice and cure provisions); or in the event any of the representations or warranties made to Beneficiary or set forth herein prove to be false; or in the event Grantors or any person liable for the indebtedness secured hereby or any part thereof file a voluntary petition in bankruptcy, make an assignment for the benefit of any creditor or are adjudicated a bankrupt or insolvent or if the Mortgaged Property is placed under control or in the custody of any court or if Grantors abandon any of the Mortgaged Property; then Beneficiary, at its option, may declare the entire indebtedness secured hereby immediately due and payable, whereupon it shall be so due and payable.

(12) All of the covenants and agreements of Grantors set forth herein shall survive the execution and delivery of this Deed of Trust and shall continue in force until the indebtedness secured hereby is paid in full. Accordingly, if Grantors shall perform faithfully each and all of the covenants and agreements herein contained, then, and then only, this conveyance shall become null and void and shall be released in due form at Grantors' expense; otherwise, it shall remain in full force and effect. No release of this conveyance or the lien thereof shall be valid unless executed by Beneficiary.

(13) If Grantors shall fail to perform faithfully any covenant or agreement herein contained, Grantors hereby authorize and empower Trustee and each and all of his successors in this trust, at the request of Beneficiary, at any time when Grantors shall be in default in the performance of any such covenant or agreement, to sell the Mortgaged Property at public venue to the highest bidder for cash at the door of the county courthouse of the county in Texas in which the Mortgaged Property or any part thereof is situated, as herein described, between the hours of 10:00 a.m. and 4:00 p.m. (as more particularly described in the hereinafter described notice) of the first Tuesday of any month, after advertising the time, place and terms of said sale and the Mortgaged Property to be sold, by posting (or by having some person or persons acting for him post) for at least twenty-one (21) days preceding the date of the sale, written or printed notice of the proposed sale at the courthouse of said county in the area of the courthouse designated by the Commissioner's Court as the area for sales pursuant to Section 51.002 of the Texas Property Code and if no area is designated by the Commissioner's Court, the notice of sale shall designate the area of the courthouse where the sale is to take place; in addition to such posting of notice, the holder of the indebtedness hereby secured shall, at least twenty-one (21) days preceding the date of sale: (a) serve written or printed notice of the proposed sale by certified mail on Grantors and on each other debtor, if any, obligated to pay the indebtedness hereby secured according to records of such holder, which shall state the earliest time at which the sale will begin and the sale shall begin at such time or not later than three (3) hours after that time, and (b) file a copy of the notice of proposed sale with the county clerk or county clerks of the county or counties where such notice was posted. Service of such notice shall be completed upon deposit of the notice, enclosed in a postpaid wrapper, properly addressed to Grantors and such other debtors at their most recent address or addresses as shown by the records of the holder of the indebtedness hereby secured, in a post office or official depository under the care and custody of the United States Postal Service. The affidavit of any person having knowledge of the facts to the effect that such service was completed shall be *prima facie* evidence of the fact of service. The provisions hereof with respect to posting and giving notices of sale are intended to comply with the provisions of Section 51.002 of the Property Code of the State of Texas, and, in the event the requirement for any notice under such Section 51.002 shall be eliminated or the prescribed manner of giving same modified by future amendment to or adoption of any statute superseding such Section 51.002, the requirement for such particular notice shall be deemed stricken from or modified in this instrument in conformity with such amendment or superseding statute, effective as of the effective date of same. The manner herein prescribed for serving or giving any notice, other than that to be posted or caused to be posted by Trustee, shall not be deemed exclusive, but such notice or notices may be given in any other manner which may be permitted by applicable law. Grantors agree that no notice of any sale other than as set out in this paragraph need be given by Trustee, Beneficiary or any other person.

Grantors hereby designate as their address for the purposes of such notice the address set out in the first paragraph hereof and agree that such address shall be changed only by depositing notice of such change, enclosed in a postpaid wrapper, in a post office or official depository under the care and custody of the United States Postal Service, certified mail, postage prepaid, return receipt requested, addressed to Beneficiary at the address for Beneficiary set out herein (or to such other address as Beneficiary may have designated by notice given as above provided to Grantors and such other debtors), any such notice of change of address of Grantors or other debtors shall be effective upon receipt by Beneficiary. Any change of address of Beneficiary shall be effective three (3) business days after deposit thereof in the above described manner in a post office or official depository under the care and custody of the United States Postal Service. Grantors do hereby authorize and empower Trustee and each and all of his successors in this trust to sell the Mortgaged Property or any interest or estate in the Mortgaged Property, together or in lots or parcels, as such Trustee shall deem expedient and to execute and deliver to the purchaser or purchasers of the Mortgaged Property good and sufficient deed or deeds of conveyance thereof and bills of sale with covenants of general warranty binding on Grantors and Grantors' respective heirs, legal representatives, successors and assigns. Trustee making such sale shall receive the proceeds thereof and shall apply the same as follows: (a) he shall pay the reasonable expense of executing this trust, including a commission to himself of five percent (5%) of the gross proceeds of the sale; (b) after paying such expenses, he shall pay, so far as may be possible, the indebtedness hereby secured, discharging first that portion of said indebtedness arising under the covenants or agreements herein contained and not evidenced by note; (c) then, he shall pay, so far as may be possible, the indebtedness secured by any liens equal or superior to the lien created hereby; and (d) he shall pay the residue, if any, to Grantors, their respective heirs, legal representatives, successors or assigns. Payment of the purchase price to Trustee shall satisfy the obligation of the purchaser at such sale therefor and he shall not be bound to look after the application thereof.

(14) If the herein-named Trustee shall die 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 herein-named Trustee, Beneficiary shall have full power to appoint, by written instrument, a substitute trustee and, if necessary, several substitute trustees in succession, who shall succeed to all the estate, rights, powers and duties of Trustee named herein and no notice of such appointment need be given to Grantors or to any other person or filed for record in any public office. Such appointment may be executed by any authorized agent of Beneficiary; and such appointment executed in its behalf by any officer of such entity shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of such entity. Grantors severally hereby ratify and confirm any and all acts that Trustee, or his successor or successors in this trust shall do lawfully by virtue hereof. Grantors hereby agree, on behalf of Grantors and of Grantors' heirs, legal representatives, successors and assigns, that the recitals contained in any deed or deeds or other instrument executed in due form by any Trustee or substitute trustee acting under the provisions of this Deed of Trust shall be *prima facie* evidence of the facts recited and that it shall not be necessary to prove in any court, otherwise than by such recitals, the existence of the facts essential to authorize the execution and delivery of such deed or deeds or other instrument and the passing of title thereby and all prerequisites and requirements of any sale or sales shall be conclusively presumed to have been performed and all persons subsequently dealing with the Mortgaged Property purported to be conveyed by such deed or deeds or other instrument including, without limitation, the purchaser or purchasers thereof, shall be fully protected in relying upon the truthfulness of such recitals.

(15) The purchaser at any trustee's or foreclosure sale hereunder may disaffirm any easement granted or rental or lease contract made in violation of any provision of this Deed of Trust and may take immediate possession of the Mortgaged Property free from and despite the terms of such grant of easement and rental or lease contract.

(16) Beneficiary may bid and become the purchaser of the Mortgaged Property at any trustee's or foreclosure sale hereunder.

(17) Subsequent to an uncured default hereunder or an uncured default pursuant to the Note or any other instrument securing payment thereof, Grantors hereby authorize Beneficiary, if and whenever it shall desire, to demand and receive, in Grantors' right, all sums that may become due under any and each oil, gas, mineral or other lease, rental contract and easement contract pertaining to any portion of the Mortgaged Property and, when received, to apply the same on the indebtedness secured hereby. No demand for and no receipt or application of any such sum shall be deemed to minimize, subordinate or affect in any way the liens and rights hereunder of Beneficiary or any rights of a purchaser of the Mortgaged Property at trustee's or foreclosure sale hereunder as against the person from

whom such sum was demanded or received or his executors, administrators or assigns or anyone claiming under such lease, rental or easement contract.

(18) Any part of the Mortgaged Property may be released by Beneficiary without affecting the lien hereof against the remainder. The lien and rights hereby granted shall not affect or be affected by any other security taken for the same indebtedness or any part thereof. The taking of additional security or the extension, renewal or rearrangement of the same indebtedness or any part thereof, shall at no time release or impair the lien and rights granted hereby or affect the liability of any endorser or surety or improve the right of any junior lienholder; and this Deed of Trust, as well as any instrument given to secure any renewal or extension of the indebtedness secured hereby or any part thereof, shall be and remain a first and prior lien on all of the Mortgaged Property not expressly released until the said indebtedness is completely paid.

(19) The invalidity or unenforceability in particular circumstances of any provision of this Deed of Trust shall not extend beyond such provision or such circumstances and no other provision of this Deed of Trust shall be affected thereby. It is the intention of the parties hereto to comply with applicable usury laws; accordingly, it is agreed that, notwithstanding any provisions to the contrary in the Note, or any instrument evidencing any indebtedness secured hereby, in this Deed of Trust or in any of the documents or instruments securing payment of said indebtedness or otherwise relating thereto, in no event shall the Note or such documents require the payment or permit the collection of interest in excess of the maximum amount permitted by such laws. If any such excess of interest is contracted for, charged or received under the Note or any instrument evidencing said indebtedness under this Deed of Trust or under the terms of any of the other documents securing payment of said indebtedness or otherwise relating thereto or in the event the maturity of any of said indebtedness is accelerated in whole or in part or in the event that all or part of the principal or interest of said indebtedness shall be prepaid so that, under any of such circumstances, the amount of interest contracted for, charged or received under the Note or any instruments evidencing said indebtedness under this Deed of Trust or under any of the instruments securing payment of said indebtedness or otherwise relating thereto on the amount of principal actually outstanding from time to time under the Note and other instruments evidencing said indebtedness shall exceed the maximum amount of interest permitted by applicable usury laws, then, in any such event, (a) the provisions of this paragraph shall govern and control, (b) neither Grantors nor any other person or entity now or hereafter liable for the payment of the Note or any instrument evidencing said indebtedness shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest permitted by applicable usury laws, (c) any such excess that may have been collected shall be either applied as a credit against the then unpaid principal amount of the Note or refunded to Grantors, at the holder's option, and (d) the effective rate of interest shall be automatically reduced to the maximum non-usurious rate allowed under applicable usury laws as now or hereafter construed by the courts having jurisdiction thereof. It is further agreed that, without limitation of the foregoing, all calculations of the rate of interest contracted for, charged or received under the Note or any instrument evidencing said indebtedness under this Deed of Trust or under such other documents that are made for the purpose of determining whether such rate exceeds the maximum non-usurious applicable rate, shall be made, to the extent permitted, by amortizing, prorating, allocating and spreading in equal parts during the period of the full stated term of the loans evidenced by the Note or the instruments evidencing said indebtedness, all interest at any time contracted for, charged or received from Grantors or otherwise by the holder or holders hereof in connection with such loans.

(20) None of Grantors, their heirs, executors, administrators or assigns, ever shall have or assert any right under any statute or rule of law pertaining to the marshaling of assets, the exemption of homestead, the administration of estates of decedents or other matter whatever to defeat, reduce or affect the right of Beneficiary under the terms of this Deed of Trust to a sale of the Mortgaged Property for the collection of said indebtedness (without any prior or different resort for collection) or the right of Beneficiary under the terms of this Deed of Trust to the payment of such indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other person and claimant whatever (only reasonable expenses as aforesaid being first deducted).

(21) It is agreed that if default be made in the payment of any installment of the Note, beyond applicable notice and cure provisions therein, the holder of the indebtedness or any part thereof on which the payment is delinquent shall have the option to proceed with foreclosure in satisfaction of such item, either through the courts or by directing Trustee or his successors in trust to proceed as if under a full foreclosure, conducting the sale as herein provided and without declaring the whole debt due and provided that, if sale is made because of an uncured default of an installment or a part of an installment, such sale may be made subject to the unmatured part of the Note and debt secured by this Deed of Trust; and it is agreed that such sale, if so made, shall not in any manner affect the unmatured

part of the debt secured by this Deed of Trust but, as to such unmatured part of this Deed of Trust, shall remain in full force and effect just as though no sale had been made under the provisions of this paragraph. And it is further agreed that several sales may be made hereunder without exhausting the right of sale for any unmatured part of the debt secured hereby, it being the purpose to provide for a foreclosure and sale of the security for any matured portion of the debt secured hereby without exhausting the power to foreclose and to sell the security for any other part of the debt secured hereby, whether matured at the time or subsequently maturing. It is agreed that an assignee holding any installment or installments or part of any installment of the Note secured hereby shall have the same powers as are hereby conferred on the holder of the indebtedness to proceed with foreclosure on a matured installment or installments and also to request Trustee or successors in trust to sell the Mortgaged Property; but if an assignee forecloses or causes a sale to be made to satisfy any installment, part of an installment or installments, then such foreclosure or sale shall be made subject to the unmatured part of the Note and the debt secured hereby owned by the holder of the indebtedness at the time or assigned subsequent to the assignment of the item to satisfy which the sale is being made.

(22) It is expressly agreed that (a) no waiver of any default on the part of Grantors or breach of any of the provisions of this Deed of Trust shall be considered a waiver of any other or subsequent default or breach and no delay or omission in exercising or enforcing the rights and powers herein granted shall be construed as a waiver of such rights and powers and, likewise, no exercise or enforcement of any right or powers hereunder shall be held to exhaust such rights and powers and every such right and power may be exercised from time to time; (b) any failure by Beneficiary to insist upon the strict performance by Grantors of any of the terms and provisions hereof shall not be deemed to be a waiver of any of the terms and provisions hereof and Beneficiary, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Grantors of any and all of the terms and provisions of this Deed of Trust; (c) neither Grantors nor any other person now or hereafter obligated for the payment of the whole or any part of said indebtedness shall be relieved of such obligation by reason of the failure of Beneficiary or Trustee to comply with any request of Grantors or of any other person so obligated to take action to foreclose this Deed of Trust or otherwise enforce any of the provisions of this Deed of Trust or of any obligations secured by this Deed of Trust or by reason of the release, regardless of consideration, of the whole or any part of the security held for said indebtedness or by reason of the subordination in whole or in part by Beneficiary of the lien, security interest or rights evidenced hereby or by reason of any agreement or stipulation which any subsequent owner or owners of the Mortgaged Property extending the time of payment or modifying the terms of said indebtedness or this Deed of Trust without first having obtained the consent of Grantors or such other person and, in the latter event, Grantors and all such other persons shall continue liable to make such payments according to the terms of any such agreement of extension or modification unless expressly released and discharged in writing by Beneficiary; (d) regardless of consideration and without the necessity for any notice to or consent by the holder of any subordinate lien or security interest on the Mortgaged Property, Beneficiary may release the obligation of anyone at any time liable for any of said indebtedness or any part of the security held for said indebtedness and may extend the time of payment or otherwise modify the terms of said indebtedness and/or this Deed of Trust without, as to the security or the remainder thereof, in anywise impairing or affecting the lien or security interest of this Deed of Trust or the priority of such lien or security interest as security for the payment of said indebtedness as it may be so extended or modified over any subordinate lien or security interest; (e) the holder of any subordinate lien or security interest shall have no right to terminate any lease affecting the Mortgaged Property, whether or not such lease be subordinate to this Deed of Trust; and (f) Beneficiary may resort, for the payment of said indebtedness, to any security therefor held by Beneficiary in such order and manner as Beneficiary may elect. Anything herein to the contrary notwithstanding, Grantors, to the greatest extent permitted by law, hereby waive all rights, remedies, claims and defenses based upon or related to Section 51.003 of the Texas Property Code, including, without limitation, the right to introduce evidence of the amount of the sales price of the Mortgaged Property or the fair market value thereof. To the extent the prior sentence is not enforceable, then notwithstanding the provisions of Sections 51.003, 51.004 and 51.005 of the Texas Property Code, as the same may be amended from time to time, and to the extent permitted by law, Grantors agree that Beneficiary shall be entitled to seek a deficiency judgment from Grantors and any other party obligated on the Note or guaranty of the Note equal to the difference between the amount owing on the Note and the fair market value of the Mortgaged Property as hereinafter determined. The following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time):

- (a) The Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure;



- (b) The valuation shall be based upon an assumption that the foreclosure purchaser desires a prompt resale of the Mortgaged Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale;
- (c) All reasonable closing costs customarily borne by the seller in a commercial real estate transaction should be deducted from the gross fair market value of the Mortgaged Property, including, without limitation, brokerage commissions, title insurance, a survey of the Mortgaged Property, tax prorrations, attorneys' fees and marketing costs;
- (d) The gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in subparagraph (c) above), and other maintenance expenses; and
- (e) Any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five (5) years experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property taking into consideration the factors set forth above.

(23) In the event that there be a trustee's sale hereunder and if, at the time of such sale, Grantors, their heirs, executors, administrators or assigns, be occupying the premises so sold, each and all shall immediately become the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day to day, terminable at the will of either tenant or landlord, at a reasonable rental per day, based upon the value of the Mortgaged Property, such rental to be due daily to the purchaser. An action of forcible detainer shall lie if the tenant holds over after a demand in writing for possession of the Mortgaged Property; and this Deed of Trust and Trustee's deed shall constitute a lease and agreement under which the tenant's possession, each and all, arose and continued.

(24) In the event any portion of said indebtedness is not, for any reason whatsoever, secured by this Deed of Trust on the Mortgaged Property, the full amount of all payments made on said indebtedness shall first be applied to such unsecured portion of said indebtedness until the same has been fully paid.

(25) It is agreed that the lien hereby created shall take precedence over and be a prior lien to any other lien of any character, whether vendors', materialmen's or mechanics' lien hereafter created on the Mortgaged Property and, in the event the proceeds of the Note are used to pay off and satisfy any liens heretofore existing on the Mortgaged Property, then Beneficiary is and shall be subrogated to all of the rights, liens and remedies of the holders of the indebtedness so paid.

(26) The covenants herein contained shall bind and the benefits and advantages shall inure to the respective heirs, executors, administrators, successors and assigns of the parties hereto and to any substitute trustee. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. The term "Beneficiary" shall also include any lawful owner, holder or pledgee of any indebtedness secured hereby.

(27) Without limiting any of the provisions of this Deed of Trust, Grantors, as Debtors and referred to in this Paragraph as "Debtors," expressly:

- (a) Grant unto the holder of all indebtedness described herein, as Secured Party and referred to in this Paragraph as "Secured Party," a security interest in all of the properties hereinabove described (including both those now and those hereafter existing) to the full extent that same may be subject to Article 9 of the National Uniform Commercial Code as now adopted and existing and as it may hereinafter be amended or succeeded (hereinafter called "Uniform Commercial Code").
- (b) Agree that, in addition to any other remedies granted in this instrument to the Secured Party or Trustee, the Secured Party may, in the event of any uncured default, proceed under the Uniform Commercial Code as to all or any part of the personal property (tangible or intangible) and fixtures



included in the properties described herein or located on or affixed to the Mortgaged Property (such portion of the properties being herein referred to as "Collateral") and shall have and may exercise, with respect to the Collateral, all the rights, remedies and powers of a Secured Party under the Uniform Commercial Code including, without limitation, the right and power to sell at public or private sale or sales or otherwise dispose of, lease or utilize the Collateral and any part or parts thereof in any manner authorized or permitted under said Uniform Commercial Code after default by a debtor and to apply the proceeds thereof toward payment of any costs and expenses and attorneys' fees and legal expenses thereby incurred by Secured Party and toward payment of Debtors' obligations including the Note and all other indebtedness described in this instrument in such order or manner as Secured Party may elect. Among the rights of Secured Party in the event of default and, without limitation, Secured Party shall have the right to take possession of the Collateral and to enter upon any premises where same may be situated for such purpose without being deemed guilty of trespass and without liability for damages thereby occasioned and to take any action deemed necessary or appropriate or desirable by Secured Party, at its option and in its discretion, to repair, refurbish or otherwise prepare the Collateral for sale, lease, or other use or disposition as herein authorized. To the extent permitted by law, Debtors expressly waive any notice of sale or other disposition of the Collateral and any other rights or remedies of a debtor or formalities prescribed by law relative to sale or disposition of the Collateral or exercise of any other right or remedy of Secured Party existing after default hereunder; and to the extent any such notice is required and cannot be waived, Debtors agree that if such notice is mailed, postage prepaid, to Debtors at the address shown herein at least five (5) days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving of said notice.

- (c) Grant to the Secured Party, after default hereunder, the right, at its option, to transfer at any time to itself or to its nominee the Collateral or any part thereof and to receive the monies, income, proceeds or benefits attributable or accruing thereto and to hold the same as security for Debtors' obligations or to apply it on the principal and interest or other amounts owing on any of Debtors' obligations, whether or not then due, in such order or manner as Secured Party may elect. All rights or marshaling of assets of Debtors, including any such right with respect to the Collateral, are hereby waived.
- (d) Covenant, stipulate and agree that all recitals in any instrument of assignment or any other instrument executed by Secured Party incident to sale, transfer, assignment, lease, or other disposition or utilization of the Collateral or any part thereof hereunder shall be full proof of the matters stated therein and no other proof shall be requisite to establish full legal propriety of the sale or other action taken by Secured Party or of any fact, condition or thing incident thereto and all prerequisites of such sale or other action or of any fact, condition or thing incident thereto shall be presumed conclusively to have been performed or to have occurred.
- (e) Covenant and agree that Secured Party may require Debtors, after an uncured default hereunder, to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party 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 Collateral and the like which are incurred or paid by Secured Party as authorized or permitted hereunder, including also all attorneys' fees, legal expenses and costs, shall be added to Debtors' obligations and Debtors shall be liable therefor.
- (f) Covenant and agree that Secured Party may, at its election, at any time after delivery of this instrument, sign one or more copies of this instrument in order that such copies may be used as a Financing Statement under the Uniform Commercial Code. Such signature by Secured Party may be placed between the last sentence of the instrument and Debtors' acknowledgment or may follow Debtors' acknowledgment. Secured Party's signature need not be acknowledged and is not necessary to the effectiveness of this instrument as a deed of trust, mortgage, assignment, pledge or security agreement.

Except for the security interest granted hereby in the Collateral, Debtors are the owners and holders of the Collateral free of any adverse claim, security interest or encumbrance, and Debtors will defend the Collateral against all claims and demands of any person at any time claiming the same or any interest therein. Debtors have not heretofore signed any financing statement covering the Collateral and no such financing statement signed by Debtors is now on file in any public office except those statements true and correct copies of which have been delivered to Secured Party. So long as any amount remains unpaid on any indebtednesses described in this Deed of Trust, Debtors will not execute and there will not be filed in any public office such financing statement or statements affecting the Collateral other than financing statements in favor of Secured Party hereunder unless the prior written specific consent and approval of Secured Party shall have first been obtained. Debtors authorize Secured Party to file, in jurisdictions where this authorization will be given effect, a financing statement covering the Collateral and, at the request of Secured Party, Debtors will pay the cost of filing the same or filing or recording this instrument as a financing statement in all public offices at any time and from time to time whenever filing or recording of any financing statement or of this instrument is deemed by Secured Party to be necessary or desirable.

(28) Portions of the Mortgaged Property are goods which are or are to become fixtures relating to the property described in Exhibit "A", and Grantors herein expressly covenant and agree that the filing of this Deed of Trust in the real estate records of the county where the Mortgaged Property is located shall also operate from time of filing therein as a financing statement filed as a fixture filing in accordance with Section 9.402(f) of the Uniform Commercial Code - Secured Transaction of the State of Texas.

(29) Grantors will pay all fees or costs for appraisals that Beneficiary may reasonably require from time to time, including, without limitation, at the time any partial release of liens as contemplated by Section (32) is requested. In addition, Grantors will pay all recording fees, taxes, abstract fees, attorneys' fees, and all other costs and expenses of every character from time to time incurred in connection with the making, closing and servicing of the loan evidenced by the Note, or any renewal, modification, rearrangement or extension thereof and will pay all reasonable fees and charges made by Trustee for services performed hereunder and will reimburse Beneficiary and Trustee for all expenses incurred by them, respectively, and will indemnify and hold harmless Beneficiary and Trustee from and against all claims, demands, liabilities and causes of action asserted against either of them on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Mortgaged Property or this Deed of Trust, save and except for their gross negligence or willful misconduct. In the event that Beneficiary should pay for expenses incurred in way of attorneys' fees in connection with title examination and legal matters and/or appraisal fees or costs connected with the making, closing or servicing the Note or any renewal, modification, rearrangement or extension thereof, or pay any recording or filing fee or fees incident to recording instruments, title insurance premiums and title insurance endorsement fees, Grantors shall reimburse Beneficiary for all such sums upon demand. Any such sums shall become part of the indebtedness secured by this Deed of Trust and shall bear interest from the date incurred by Beneficiary at the rate provided in the Note. Notwithstanding anything contained herein to the contrary, the obligations of Grantors under this Section (29) shall not apply to any claims, losses, damages, liabilities, costs and expenses incurred by or imposed upon Grantors which arise solely as a consequence of a condition coming into existence on the Property subsequent to such time as title is transferred by foreclosure or deed in lieu of foreclosure to Beneficiary or Beneficiary's taking physical possession of the Property, unless such claims, losses, damages, liabilities, costs and expenses are incurred in connection with an event or events related to a condition existing at the Property prior to or at the time of such transfer of title or taking of physical possession of the Property.

(30) Grantors hereby specifically agree with Beneficiary that they will in no event or under any circumstances allow any entity or individual, other than Grantors and/or Beneficiary, to pay any ad valorem taxes in connection with all or any portion of the Mortgaged Property to any taxing unit. Specifically, under no event shall Grantors authorize or consent to the transfer of any tax lien in connection with the Mortgaged Property or any portion thereof, including, without limitation, pursuant to Section 32.06 of the Texas Tax Code, as amended. In the event any tax lien in connection with the Mortgaged Property or any portion thereof is transferred to any individual or entity or Grantors authorize any individual or entity to pay the taxes with respect to the Mortgaged Property or any portion thereof (other than Beneficiary), then, in such event, any and all indebtedness secured hereby or referenced herein shall become immediately due and payable, notwithstanding any notice or opportunity to cure or any other waiver set forth herein. Although specifically prohibited hereby, in the event Grantors consent to the transfer of a tax lien in connection with all or any portion of the Mortgaged Property, authorize any individual or entity to pay any taxes covering all or any portion of the Mortgaged Property, or otherwise cause any lien covering all or any portion of the

Mortgaged Property in favor of any taxing unit to be transferred, assigned or conveyed in any manner to any individual or entity, Grantors specifically authorize Beneficiary to deal directly with any Transferee (as hereinafter defined). Specifically, Grantors hereby irrevocably constitute and appoint Beneficiary, herein sometimes referred to as "Attorney" (and all officers, employees or agents designated by Attorney), with full power of substitution, as Grantors' true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Grantors and in the name of Grantors or their own name, from time to time in Attorney's discretion, to take any and all appropriate action and to execute and deliver any and all documents and instruments which may be necessary or desirable to (a) deal in any manner with a Transferee (herein so called and/or as such term is defined in Section 32.06(a)(2) of the Texas Tax Code, as the same may be amended from time to time) of a tax lien in connection with all or any portion of the Mortgaged Property; (b) pay or discharge any taxes, liens, or other encumbrances levied or placed on or threatened against Grantors or the Mortgaged Property or any portion thereof in connection with any transferred tax lien in connection with all or any portion of the Mortgaged Property, including, without limitation, payment to any Transferee; (c) defend any suit, action or proceeding brought against Grantors if Grantors do not defend such suit, action or proceeding or if Attorney believes that Grantors are not pursuing such defense in a manner that will maximize the recovery to Beneficiary and/or Attorney, and settle, compromise or adjust any suit, action or proceeding and, in connection therewith, give such discharges or releases as Attorney may deem appropriate, all in connection with any transferred tax lien in connection with all or any portion of the Mortgaged Property; (d) communicate in its own name with any Transferee with regard to the assignment of any tax lien in connection with the Mortgaged Property or any portion thereof, and other matters relating thereto, including, without limitation, requesting payoff statements from any Transferee; and (e) do, at Attorney's option and Grantors' expense, at any time or from time to time, all acts and other things that Attorney reasonably deems necessary in connection with this power of attorney, all as fully and effectively as Grantors might do. Grantors hereby ratify, to the extent permitted by law, all that said Attorney shall lawfully do or cause to be done by virtue hereof. No person to whom this power of attorney is presented, as authority for Attorney to take any action or actions contemplated hereby, shall be required to inquire into or seek confirmation from Grantors as to the authority of Attorney to take any action set forth herein, or as to the existence of or fulfillment of any condition to this power of attorney, which is intended to grant to Attorney unconditionally the authority to take and perform the actions contemplated herein, and Grantors irrevocably waive any right to commence any suit or action, in law or equity, against any person or entity which acts in reliance upon or acknowledges the authority granted under this power of attorney. The power of attorney granted hereby is coupled with an interest, and may not be revoked or canceled by Grantors without Attorney's prior written consent recorded of record in the real property records of the county in which the Mortgaged Property is located.

(31) The term "Hazardous Materials" shall mean (a) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (c) asbestos; (d) polychlorinated biphenyls; (e) underground storage tanks, whether empty, filled or partially filled with any substances; (f) any substance the presence of which on the Mortgaged Property is prohibited by any Governmental Requirements; and (g) any other substance which by any Governmental Requirement requires special handling or notification of any federal, state or local governmental entity in its collection, storage, treatment or disposal. The term "Governmental Requirements" shall mean all laws, ordinances, rules and regulation of the United States, the state, the county, the city or any other political subdivision in which the Mortgaged Property is located, and any other political subdivision, agency or instrumentality exercising jurisdiction over Grantors, any guarantor of the Note, or the Mortgaged Property.

The term "Hazardous Materials Contamination" shall mean the contamination (whether presently existing or hereafter occurring) of the Mortgaged Property, any improvements, facilities, soil, groundwater, air or other elements on or of the Mortgaged Property by Hazardous Materials, or the contamination of the buildings, facilities, soil, groundwater, air or other elements on or of any other property as a result of Hazardous Materials at any time (whether before or after the date hereof) emanating from the Mortgaged Property.

Grantors represent and warrant to Beneficiary that:

- (a) No Hazardous Materials are located on the Mortgaged Property or have been released into the environment, or deposited, discharged, placed or disposed of at, on, under or near the Mortgaged Property. No portion of the Mortgaged Property is being used or, to the actual knowledge of

Grantors, has been used at any previous time for the disposal, storage, treatment, processing or other handling of Hazardous Materials nor is the Mortgaged Property affected by any Hazardous Materials Contamination.

- (b) To the best of Grantors' knowledge, no Hazardous Materials are located in the vicinity of the Mortgaged Property, no property adjoining the Mortgaged Property is being used, or has ever been used at any previous time, for the disposal, storage, treatment, processing or other handling of Hazardous Materials, nor is any other property adjoining the Mortgaged Property affected by Hazardous Materials Contamination.
- (c) No polychlorinated biphenyls are located on or in the Mortgaged Property, in the form of electrical transformers, fluorescent light fixtures with ballasts, cooling oils, or any other device or form.
- (d) No investigation, administrative order, consent order and agreement, litigation or settlement with respect to Hazardous Materials or Hazardous Materials Contamination is proposed, threatened, anticipated or in existence with respect to the Mortgaged Property. The Mortgaged Property and its existing and prior uses comply and at all times have complied with any applicable Governmental Requirements relating to environmental matters or Hazardous Materials. There is no condition on the Mortgaged Property which is in violation of any applicable Governmental Requirements relating to Hazardous Materials, and Grantors have received no communication from or on behalf of any Governmental Authority that any such condition exists. The Mortgaged Property is not currently on and, to Grantors' actual knowledge after diligent investigation and inquiry, has never been on any federal or state "Superfund" or "Superlien" list.
- (e) All representations and warranties contained in this Section shall survive the consummation of the transactions contemplated hereby.

Grantors further represent and warrant that:

- (a) Grantors agree to (i) give notice to Beneficiary immediately upon Grantors' acquiring knowledge of the presence of any Hazardous Materials on the Mortgaged Property or of any Hazardous Materials Contamination with a full description thereof; (ii) promptly, at Grantors' sole cost and expense, comply with any Governmental Requirements requiring the removal, treatment or disposal of such Hazardous Materials or Hazardous Materials Contamination and provide Beneficiary with satisfactory evidence of such compliance; and (iii) provide Beneficiary, within thirty (30) days after demand by Beneficiary, with a bond, letter of credit or similar financial assurance evidencing to Beneficiary's satisfaction that the necessary funds are available to pay the cost of removing, treating and disposing of such Hazardous Materials or Hazardous Materials Contamination and discharging any assessments which may be established on the Mortgaged Property as a result thereof.
- (b) Grantors shall not cause or suffer any liens to be recorded against the Mortgaged Property as a consequence of, or in any way related to, the presence, remediation or disposal of Hazardous Material in or about the Mortgaged Property, including any state, federal or local so-called "Superfund" lien relating to such matters.
- (c) Grantors shall at all times retain any and all liabilities arising from the presence, handling, treatment, storage, transportation, removal or disposal of Hazardous Materials on the Mortgaged Property. Regardless of whether any Event of Default shall have occurred and be continuing or any remedies in respect of the Mortgaged Property are exercised by Beneficiary, Grantors shall defend, indemnify and hold harmless Beneficiary from and against any and all liabilities (including strict liability), suits, actions, claims, demands, penalties, damages (including, without limitation, lost profits, consequential damages, interest, penalties, fines and monetary sanctions), losses, costs or expenses (including, without limitation, attorneys' fees and expenses, and remedial costs) (the foregoing are hereinafter collectively referred to as "Liabilities") which may now or in the future (whether before or after the culmination of the transactions contemplated hereby) be incurred or suffered by Beneficiary by reason of, resulting from, in connection with, or arising in any manner whatsoever out of the breach of any warranty or covenant or the inaccuracy of any representation of Grantors

contained or referred to in this Section or which may be asserted as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from the Mortgaged Property of any Hazardous Materials or any Hazardous Materials Contamination or arise out of or result from the environmental condition of the Mortgaged Property or the applicability of any Governmental Requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Beneficiary.

Such Liabilities shall include, without limitation; (i) injury or death to any person; (ii) damage to or loss of the use of any property; (iii) the cost of any demolition and rebuilding of the improvements, repair or remediation, and the preparation of any activity required by any Governmental Authority; (iv) any lawsuit brought or threatened, good faith settlement reached, or governmental order relating to the presence, disposal, release or threatened release of any Hazardous Material on, from or under the Mortgaged Property; and (v) the imposition of any lien on the Mortgaged Property arising from the activity of Grantors or Grantors' predecessors in interest on the Mortgaged Property or from the existence of Hazardous Materials or Hazardous Materials Contamination upon the Mortgaged Property.

The covenants and agreements contained in this Section shall survive the consummation of the transactions contemplated hereby.

Notwithstanding anything contained in the Note, this Deed of Trust or in any of the loan documents, Grantors shall not be released of personal liability and shall have personal liability for any and all of Beneficiary's costs, expenses, damages or liabilities (including, without limitation, all reasonable attorneys' fees, whether incurred by Beneficiary prior to or following foreclosure of the Deed of Trust and whether Beneficiary shall be in the status of a lienholder or an owner of the Mortgaged Property following foreclosure) directly or indirectly arising out of or attributable to the use, generation, manufacture, storage, release, threatened release, discharge, disposal, or presence on, under, to, from or about the Mortgaged Property of any Hazardous Materials and/or Hazardous Materials Contamination.

(32) Beneficiary agrees that, at the time and from time to time upon receiving written request from Grantors, Beneficiary will, with reasonable dispatch in the normal course of business, mail or deliver to such place designated in writing by Grantors as may be acceptable to Beneficiary, an instrument prepared by Beneficiary releasing from the lien and security interests of this Deed of Trust one or more tracts comprising the Mortgaged Property, each such tract being herein called a "Tract"; provided, however, Beneficiary's obligations to grant partial releases shall be subject to compliance by Grantors with the following conditions with respect to each partial release:

- (a) At the time Beneficiary is to transmit such instrument, Grantors shall not be in default (i) under the Note, (ii) under any of the provisions of this Deed of Trust, or (iii) under any other instrument held by Beneficiary as additional security for the Note; subject to applicable notice and cure provisions in such documents;
- (b) Beneficiary shall have been furnished by Grantors, at Grantors' expense and at least five (5) days prior to the date such release is desired, an exact metes and bounds legal description (or other legal description satisfactory to Beneficiary) of the Tract to be released, which description shall be satisfactory to Beneficiary and shall be in accordance with an accurate on-the-ground survey with plat and field notes certified by a licensed Texas land surveyor or professional engineer, all certified by such surveyor or engineer for the benefit of Beneficiary and describing the Tract to be released, a certified counterpart of which survey, plat and field notes shall be furnished to Beneficiary at Grantors' expense at the time the release is requested;
- (c) Grantors shall have paid to Beneficiary for the account of Beneficiary, by certified check, at such place designated by Beneficiary in writing: (i) for each Tract to be released, a sum on account of principal equal to an amount that, when subtracted from the then current balance of the Note, will maintain a LTV (as defined in the Loan Agreement) of not less than sixty percent (60%) based on the value of the Mortgaged Property subsequent to such partial release as determined by a current appraisal in form and substance satisfactory to Beneficiary; provided, however, in no event shall the total of said principal amounts repaid exceed the amount of the Note; (ii) for each Tract to be

released, accrued but unpaid interest to the date Grantors transmit or cause to be transmitted the release payment for such Tract, as the case may be, to Beneficiary (after satisfaction of the other requirements of this Paragraph) at the rate then payable under the Note; provided, however, in no event shall Grantors be required to pay interest in excess of that permitted by applicable federal law or by the applicable laws of the State of Texas pertaining to usury;

- (d) The requested release will not have the effect of causing the remainder of the Mortgaged Property to be in violation of any zoning or other law or ordinance or any private restriction or contract; and
- (e) That, in the judgment of Beneficiary, such requested release shall not impair adequate access to the unreleased portions of the Mortgaged Property.

(33) This Deed of Trust is executed and delivered pursuant to and is entitled to the benefits of that certain Loan Agreement of even date herewith between Grantors and Beneficiary.

(34) The Note is given as a part of the purchase price of the Mortgaged Property, and this Deed of Trust is in addition to the vendor's lien retained in a deed of even date to Grantors securing the payment of the Note; and it is expressly agreed that the same shall not operate as a waiver of the lien created by this Deed of Trust, it being agreed that said lien and rights created by this instrument shall be cumulative and in addition to said vendor's lien retained in the aforementioned deed and that the owner or holder of the Note may foreclose under either or both of said liens, as he or it may elect, without waiving the other, the aforementioned deed, together with its record, being here referred to and made a part of this instrument for all purposes.

(35) GRANTORS HEREBY EXPRESSLY RECOGNIZE THAT CONTAINED IN SECTIONS (29) AND (30) OF THIS DEED OF TRUST ARE PROVISIONS WHICH REQUIRE GRANTORS TO INDEMNIFY BENEFICIARY UNDER CERTAIN CIRCUMSTANCES, AND GRANTORS HEREBY ACKNOWLEDGE THAT BY EXECUTING THIS DEED OF TRUST, GRANTORS ACCEPT THESE PROVISIONS AND THE OBLIGATIONS TO INDEMNIFY BENEFICIARY UNDER SUCH CIRCUMSTANCES.

EXECUTED this 26 day of June, 2019.

MAPLE HEIGHTS DEVELOPMENT LLC,  
a Texas limited liability company

By: Maple Heights Holdings LLC, a Delaware limited liability company, its manager

By: Maple Heights GP LLC, a Delaware limited liability company, its manager

By: 3 Points Realty Partners Holdings LLC,  
a Delaware limited liability company,  
its manager

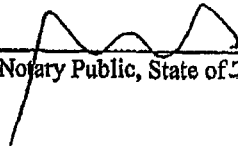
By:   
Michael Sabo, Manager

STATE OF ~~TEXAS~~ <sup>New York</sup> §  
§  
COUNTY OF ~~HARRIS~~ <sup>New York</sup> §


This instrument was acknowledged before me on the 26 day of June, 2019, by Michael Sabo, Manager of 3 Points Realty Partners Holdings LLC, a Delaware limited liability company, in its capacity as manager of Maple Heights GP LLC, a Delaware limited liability company, in its capacity as manager of Maple Heights Holdings LLC, a Delaware limited liability company, in its capacity as manager of Maple Heights Development LLC, a Texas limited liability company, on behalf of said company.

[SEAL]

DORON NATAN GREENBERG  
Notary Public, State of New York  
Registration #02GR6350259  
Qualified in New York County  
Commission Expires Nov. 7, 2020

  
Notary Public, State of ~~Texas~~ <sup>New York</sup>

**After Recording Return To:**  
Riverway Title  
5 Riverway, Suite 300  
Houston, Texas 77056

181703 

## EXHIBIT " A "

All of that certain 211.003 acres tract of land described in deed to North Houston Airport, LLC in Montgomery County Clerk's No. 2018107665, of the Official Public Records of Montgomery County, Texas, being in the Wyatt Anderson Survey, Abstract 53, and the Allen Vince Survey, Abstract 582, in Montgomery County, Texas, consisting of a 136.90 acre tract, Tract 1, described in Special Warranty Deed to NORTH HOUSTON AIRPORT, L.L.C., a Texas limited liability company, recorded under Clerk's File No. 2014012132 of the Official Public Records of Real Property, Montgomery County, Texas, and a 74.194 acre tract, Tract 2, described in deed to NORTH HOUSTON AIRPORT, L.L.C., recorded under Clerk's File No. 2014117231, and being further described by metes and bounds as follows:

Beginning at a 1/4 inch iron rod found in the south right-of-way line of Porter Lane (called 60 feet wide), at the northwest corner of Porter Heights Section 1 according to the map or plat recorded under Volume 5, Page 339 of the Map Records, for the northeast corner of said Tract 1 and the herein described parcel;

Thence, departing the south right-of-way line of said Porter Lane, South 00 degrees 04 minutes 21 seconds West a distance of 417.48 feet along the west line of said Porter Heights Section 1 to a 1/2 inch iron pipe found;

Thence, continuing along the west line of said Porter Heights Section 1, South 00 degrees 00 minutes 33 seconds West, a distance of 1479.24 feet to an iron rod set in Louis Lane, a 60 feet wide right-of-way;

Thence, continuing along the east line of the herein described tract, South 00 degrees 21 minutes 26 seconds East a distance of 1294.27 feet to a 1/2 inch iron pipe found;

Thence, South 00 degrees 00 minutes 13 seconds West a distance of 160.79 feet to an angle point in the common line where a 5/8 inch iron rod with a yellow plastic cap marked "1ST AMER 4052532444" is set;

Thence, South 00 degrees 17 minutes 55 seconds East a distance of 735.81 feet to a 1/2 inch iron rod found for an angle point in the common line;

Thence, continuing along the west line of said Porter Heights, Section 1, South 00 degrees 17 minutes 56 seconds East, at 132.01 feet passing a 1/2 inch iron rod found for the northwest corner of Lot 94 and the southwest corner of lot 93, of Porter Heights, Section, 1 and at 980.75 feet passing a 5/8 inch iron rod found for the northwest corner of Lot 100 and the southwest corner of Moss Lane, and continuing for a total distance of 1193.75 feet to a 5/8 inch capped iron rod marked "GLEZMAN RPLS 4627" for the southeast corner of said Tract 1;

Thence, South 00 degrees 04 minutes 41 seconds West a distance of 59.95 feet to a 1/2 inch iron rod found for the southeast corner of Tract 2 and the tract herein described;

Thence, along the south line of the said Tract 2 and the herein described tract, South 88 degrees 22 minutes 40 seconds West a distance of 1097.06 feet to a 3/8 inch iron rod found corner;

Thence, continuing along the south line of said Tract 2 and the herein described tract South 88 degrees 31 minutes 24 seconds West a distance of 2707.15 feet to a 5/8 inch iron rod found for the southwest corner of said tract 2 and the herein described tract;

Thence, along the west line of said Tract 2, North 01 degrees 41 minutes 06 seconds West a distance of 969.21 feet to a 5/8 inch iron rod with a yellow plastic cap marked "1ST AMER 4052532444" set for corner;

Thence, South 88 degrees 03 minutes 06 seconds East a distance of 1684.97 feet to an interior corner where a 5/8 inch iron rod with a yellow plastic cap marked "1ST AMER 4052532444" is set;

Thence, North 05 degrees 20 minutes 52 seconds East a distance of 875.45 feet to a 1/2 inch capped iron rod marked "GEOMATICS INC" found for corner in the south line of Golden Trails, a subdivision in Montgomery County, Texas, recorded in Cabinet A, Sheet 33-B, of the Map Records of Montgomery County, Texas;



Thence, continuing along south line of said Golden Trails, South 84 degrees 39 minutes 08 seconds East a distance of 225.34 feet to a 1/4 inch iron rod found for corner;

Thence, South 05 degrees 25 minutes 39 seconds West a distance of 241.58 feet to a 5/8 inch iron rod found for an interior corner;

Thence, South 84 degrees 35 minutes 07 seconds East a distance of 360.00 feet to a 5/8 inch iron rod found for corner;

Thence, North 05 degrees 20 minutes 52 seconds East, a distance of 242.00 feet to a fence post found for corner in the south line of said Golden Trails that bears North 84 degrees 08 minutes West a distance of 0.5 feet;

Thence, South 84 degrees 39 minutes 08 seconds East a distance of 369.36 feet to a one inch iron pipe found for the northeast corner of said Tract 2 and the southeast corner of said Golden Trails;

Thence, along the west line of said Golden Trails, North 00 degrees 49 minutes 00 seconds West a distance of 651.54 feet to a 5/8 inch iron rod found;

Thence, continuing along the west line of said Golden Trails, North 00 degrees 22 minutes 09 seconds West a distance of 450.92 feet to a 5/8 inch iron rod with a yellow plastic cap marked "1ST AMER 4052532444" set for angle point in common line;

Thence, continuing along said common line, North 00 degrees 44 minutes 25 seconds West a distance of 2668.80 feet to the northwest corner of Tract 1, the herein described tract, the northeast corner of said Golden Trails, in the South line of said Porter Lane;

Thence, along the south line of said Porter Lane North 88 degrees 19 minutes 52 seconds East a distance of 1144.09 feet to the Point of Beginning and containing 211.003 acres or 9,191,280 square feet of land, more or less.

**E-FILED FOR RECORD**

**06/27/2019 04:23PM**

*Mark Turnbull*

COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS,  
COUNTY OF MONTGOMERY

I hereby certify that this instrument was e-filed in the file number  
sequence on the date and time stamped herein  
by me and was duly e-RECORDED in the Official Public  
Records of Montgomery County, Texas.

**06/27/2019**



*Mark Turnbull*

County Clerk  
Montgomery County, Texas

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OF YOUR DRIVER'S LICENSE NUMBER.

**SPECIAL WARRANTY DEED**

STATE OF TEXAS

§

KNOW ALL PERSONS BY THESE PRESENTS:

§

COUNTY OF MONTGOMERY

§

That, NORTH HOUSTON AIRPORT, L.L.C., a Texas limited liability company ("Grantor"), for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration in hand paid and caused to be paid in the manner hereinafter stated by MAPLE HEIGHTS DEVELOPMENT LLC, a Texas limited liability company ("Grantee"), whose mailing address is 411 Hackensack Avenue, Suite 301, Hackensack, New Jersey 07601, the receipt and sufficiency of which is hereby acknowledged and confessed, and in further consideration of the sum of Four Million Eight Hundred Thousand and No/100 Dollars (\$4,800,000.00) loaned to Grantee by BANCORPSOUTH BANK ("Mortgagee") at the special instance and request of Grantee as evidenced by a promissory note (the "Note") dated of even date herewith executed by Grantee payable to the order of Mortgagee in the principal sum of such amount, bearing interest at the rate specified therein being payable in installments as therein provided with a final maturity date as stated therein, which Note is secured by that certain vendor's lien herein reserved and is additionally secured by a deed of trust of even date herewith executed by Grantee to Steve Smith, Trustee, reference to which is here made for all purposes, has GRANTED, BARGAINED, SOLD, ASSIGNED AND CONVEYED AND BY THESE PRESENTS DOES GRANT, BARGAIN, SELL, ASSIGN AND CONVEY unto Grantee that certain land (the "Land") described on Exhibit A attached hereto, and hereby made a part hereof, together with (i) all buildings, improvements and fixtures located thereon, and (ii) all rights, privileges and appurtenances pertaining thereto, including Grantor's right, title and interest in any minerals, utilities, adjacent streets, alleys, strips, gores and rights-of-way (such Land, buildings, improvements, fixtures, rights, privileges and appurtenances being herein referred to as the "Property").

This conveyance is made subject and subordinate to the encumbrances and exceptions ("Permitted Exceptions") described in Exhibit B attached hereto and incorporated herein by reference for all purposes.

TO HAVE AND TO HOLD the Property, subject to the Permitted Exceptions as aforesaid, unto Grantee, and Grantee's successors and assigns, forever; and Grantor does hereby bind Grantor, and Grantor's successors, to WARRANT and FOREVER DEFEND, all and singular, the Property, subject to the Permitted Exceptions, unto Grantee, and Grantee's successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof by, through or under Grantor, but not otherwise.

But it is expressly agreed and stipulated that the vendor's lien and superior title is retained against the Property, premises, and improvements, until the Note, together with all interest thereon and all other sums that may become due and payable thereunder are fully paid according to its face, tenor, effect and reading, when this deed shall become absolute and Grantor hereby transfers, sets over, assigns and conveys unto Mortgagee the vendor's lien and superior title herein retained and reserved against the Property, but without recourse of any kind on Grantor.

As-Is, Where-Is. This conveyance is made on an "AS IS, WHERE IS, AND WITH ALL FAULTS" condition. The consummation of the sales transaction, the delivery of this deed and the survival of the disclaimers of representations and warranty shall constitute an acknowledgement by Grantee that the Property was accepted without representation or warranty, statutory, express or implied and otherwise in an "AS IS, WHERE IS AND WITH ALL FAULTS" condition based solely upon Grantee's own inspection thereof.

[Signature Page Follows]

Executed as of June 22, 2019.

GRANTOR:

NORTH HOUSTON AIRPORT, L.L.C.,  
a Texas limited liability company

By: Joseph R. Norren

Name: Joseph R. Norren

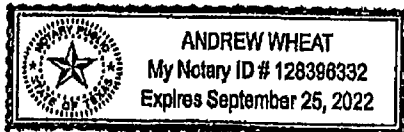
Title: Manager

STATE OF TEXAS

COUNTY OF Harris

§  
§  
§

This instrument was acknowledged before me on June 22, 2019, by Joseph R. Norren of NORTH HOUSTON AIRPORT, L.L.C., a Texas limited liability company, on behalf of said limited liability company.



Andrew Wheat  
NOTARY PUBLIC, State of Texas

Printed Name: ANDREW WHEAT

My Commission Expires: \_\_\_\_\_

Exhibit A – Property Description  
Exhibit B – Permitted Exceptions

**After Recording Return To:**  
**Riverway Title**  
**5 Riverway, Suite 300**  
**Houston, Texas 77056**

181303 - AW

## **EXHIBIT A**

### **Legal Description of Property**

All of that certain 211.003 acres tract of land described in deed to North Houston Airport, LLC in Montgomery County Clerk's No. 2018107665, of the Official Public Records of Montgomery County, Texas, being in the Wyatt Anderson Survey, Abstract 53, and the Allen Vince Survey, Abstract 582, in Montgomery County, Texas, consisting of a 136.90 acre tract, Tract 1, described in Special Warranty Deed to NORTH HOUSTON AIRPORT, L.L.C., a Texas limited liability company, recorded under Clerk's File No. 2014012132 of the Official Public Records of Real Property, Montgomery County, Texas, and a 74.194 acre tract, Tract 2, described in deed to NORTH HOUSTON AIRPORT, L.L.C., recorded under Clerk's File No. 2014117231, and being further described by metes and bounds as follows:

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Thence, departing the south right-of-way line of said Porter Lane, South 00 degrees 04 minutes 21 seconds West a distance of 417.48 feet along the west line of said Porter Heights Section 1 to a 1/2 inch iron pipe found;

Thence, continuing along the west line of said Porter Heights Section 1, South 00 degrees 00 minutes 33 seconds West, a distance of 1479.24 feet to an iron rod set in Louis Lane, a 60 feet wide right-of-way;

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Thence, South 00 degrees 04 minutes 41 seconds West a distance of 59.95 feet to a 1/2 inch iron rod found for the southeast corner of Tract 2 and the tract herein described;

Thence, along the south line of the said Tract 2 and the herein described tract, South 88 degrees 22 minutes 40 seconds West a distance of 1097.06 feet to a 3/8 inch iron rod found corner;

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Thence, along the south line of said Porter Lane North 88 degrees 19 minutes 52 seconds East a distance of 1144.09 feet to the Point of Beginning and containing 211.003 acres or 9,191,280 square feet of land, more or less.

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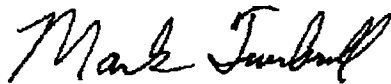
## **EXHIBIT B**

### **Permitted Exceptions**

1. Easement granted to Gulf States Utilities Company, as set forth and defined in instrument recorded in Volume 964, Page 256 (Montgomery County Clerk's File No. 76034263) of the Deed Records of Montgomery County, Texas.
2. A right-of-way, servitude and easement 10 feet in width for the location, construction, reconstruction, improvements, repairs, operations, inspection, patrol, replacement and maintenance of electric power and communication facilities, as set forth and defined in that certain Right-of-Way Instrument granted to Entergy Texas, Inc., recorded under Montgomery County Clerk's File No. 2009-028689.
3. Grant of Access Easement recorded under Montgomery County Clerk's File No. 2008-040414.
4. Exception of all oil, gas and other minerals, except a 1/32nd royalty interest, contained in deed from Floyd Vick et ux to Russell Vick dated October 13, 1951 recorded in Volume 320, Page 631 of the Deed Records of Montgomery County, Texas.
5. Exception of all oil, gas and other minerals, except a 1/32nd royalty interest contained in deed from Floyd Vick to Russell Vick dated February 16, 1952, recorded in Volume 328, Page 5 of the Deed Records of Montgomery County, Texas.
6. A 1/32nd royalty interest in and to all of the oil, gas and other minerals in, on, under or that may be produced from the subject property, as set forth and reserved in instrument recorded in Volume 130, Page 263 of the Deed Records of Montgomery County, Texas.
7. All of the oil, gas and other minerals, the royalties, bonuses, rentals, and all other rights in connection with the same, (Save and Except a 1/32nd interest) as the same is set forth in instrument recorded in Volume 319, Page 357 of the Deed Records of Montgomery County, Texas.
8. All of the oil, gas and other minerals, the royalties, bonuses, rentals, and all other rights in connection with the same, (Save and Except a 1/32nd interest) as the same is set forth in instrument recorded in Volume 320, Page 629 of the Deed Records of Montgomery County, Texas.
9. All of the oil, gas and other minerals, the royalties, bonuses, rentals, and all other rights in connection with the same, (Save and Except a 1/32nd interest) as the same is set forth in instrument recorded in Volume 328, Page 1 of the Deed Records of Montgomery County, Texas.
10. All oil, gas and other minerals in and under and that may be produced from the Property, (except sand, gravel or soil), as set forth and reserved in instrument recorded under Montgomery County Clerk's File No. 2014117231.

**E-FILED FOR RECORD**

**06/27/2019 04:23PM**



COUNTY CLERK  
MONTGOMERY COUNTY, TEXAS

**STATE OF TEXAS,  
COUNTY OF MONTGOMERY**

I hereby certify that this instrument was e-filed in the file number  
sequence on the date and time stamped herein  
by me and was duly e-RECORDED in the Official Public  
Records of Montgomery County, Texas.

**06/27/2019**



County Clerk  
Montgomery County, Texas