

2000-049803

**DEED OF TRUST**

THIS DEED OF TRUST is made by the Grantors, PAUL D. SMITH and wife, JOANNA SMITH, whose address is 12148 Goliad Lane, Willis, Texas 77378 (hereinafter collectively referred to as "Borrower") to ROBERT G. NEAL, SR., Trustee, of Sabine County, Texas (herein "Trustee") for the benefit of PINELAND STATE BANK, whose address is P.O. Drawer 1200, Pineland, Texas 75968 (herein "Lender").

Borrower, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, the power of sale, the real property described as follows, to-wit:

BEING Lots Six (6) and Seven (7), in Block Two (2), of Tres, an addition in Montgomery County, Texas, according to the map or plat thereof recorded in Plat Cabinet G, Sheet 39A, Map Records of Montgomery County, Texas.

Together with all the improvements, now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are herein referred to as the "Property":

Borrower covenants that Borrower lawfully owns the estate hereby conveyed and has the right to grant and convey the Property, that the Property is free and clear of all liens and encumbrances other than the prior existing purchase money lien held by Lender, and that Borrower will warrant and defend generally the title to the Property against all claims and demands.

This Deed of Trust is given to secure to Lender the repayment of the indebtedness evidenced by Borrower's Note dated of even date herewith (herein "Note"), in the maximum principal sum of TWO HUNDRED TEN THOUSAND AND 00/100THS (\$210,000.00) DOLLARS, with interest thereon, payable in one (1) installment, due 180 days from date of execution of Borrower's Note.

If Borrower shall repay the Note and Other Indebtednesses as they become due and payable and shall perform the covenants of this Deed of Trust, then this Deed of Trust shall cease and be void and the Property shall be released, at Borrower's expense.

**COVENANTS OF BORROWER**

Until the Note and Other Indebtednesses shall have been paid in full, Borrower hereby covenants and agrees with Lender as follows:

1. **Taxes; Charges; Liens.** Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust with exception made for the purchase money lien held by Lender, and ground rents, if any, at Lender's option by Borrower making payment into an Escrow Fund in the manner provided under Paragraph 3 hereof or by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Deed of Trust other than the above mentioned purchase money lien held by Lender; provided, that Borrower shall not be required to pay, or discharge the lien of taxes and assessments contested in the manner provided in Paragraph 7.

2. **Hazard Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", flood, and such other hazards as Lender may require and in such amounts

and for such periods as Lender may require; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Deed of Trust, provided that if co-insurance is applicable the amount of coverage shall comply with co-insurance provisions.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid at Lender's option by Borrower making payment into an Escrow Fund in the manner provided under Paragraph 3 hereof or by Borrower making payment, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender, and Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration of or repair of the Property damaged, provided, in Lender's sole opinion, such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If, in Lender's opinion, such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the property is abandoned by Borrower or if Borrower fails to respond to Lender within 30 days after notice by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

3. **Monthly payment of Taxes, Insurance and Other Charges.** If required by Lender, Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under Paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary") or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (iii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 USC 2601 et. seq. and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

If the amounts held by Lender for Escrow items exceed the amounts permitted to be held by RESPA, Lender shall deal with the excess funds as required by RESPA. If the amounts of funds held by Lender at any time are not sufficient to pay the Escrow items when due, Lender may notify the Borrower and require Borrower to make up the shortage or deficiency as permitted by RESPA.

The Escrow Funds are pledged as additional security for all sums secured by this Security Instrument. If Borrower tenders to Lender the full payment of all such sums, Borrower's account shall be credited with the balance remaining for all installment items (a), (b), and (c) and any mortgage insurance premium installment that Lender has not become obligated to pay to the

Secretary, and Lender shall promptly refund any excess funds to Borrower. Immediately prior to a foreclosure sale of the Property or its acquisition by Lender, Borrower's account shall be credited with any balance remaining for all installments for items (a), (b), and (c).

4. **Preservation, Maintenance and Inspection of Property.** Borrower shall keep the Property in good repair and shall not permit or commit waste, impairment or deterioration of the Property. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property. If this Deed of Trust is on a leasehold or a condominium unit, Borrower shall perform all of Borrower's obligations under any lease or the declaration of condominium or master deed, the bylaws and regulations of the condominium project and constituent documents.

5. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, the proceeds shall be applied, at Lender's option, either to restoration of the property or the payment on the Indebtedness secured hereby.

If the Property is abandoned by Borrower or if after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days of the date of such notice, Lender is authorized to collect and apply the proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

6. **Uninsured Casualty.** In the event of the happening of any casualty not covered by insurance under Paragraph 2 resulting in damage to or destruction of the Property, Borrower will give notice thereof to Lender and Borrower will promptly, at Borrower's sole cost and expense, commence and diligently continue to restore, repair, replace, rebuild or alter the damaged or destroyed Property as nearly as practicable to its value, condition and character immediately prior to such damage or destruction.

7. **Contest of Taxes and Assessments.** After prior written notice to Lender, Borrower, at its own expense, may defer payment and/or compliance with and contest by appropriate legal proceedings, promptly initiated and conducted in good faith and with due diligence, the amount, validity or application, in whole or in part, of any of the legal requirements referred to in Paragraph 1; provided that (i) in the case of any unpaid tax or assessment, such proceedings shall suspend the collection thereof from Borrower and from the Property, (ii) the Property will not be in danger of being sold, forfeited, terminated, canceled or lost, (iii) the use of the Property for its present intended purpose or purposes will not be lost or terminated, (iv) Borrower shall have set aside adequate reserves with respect thereto, and (v) Borrower shall have furnished such security as may be required in the proceedings or as may be reasonably requested by Lender.

8. **Use Violations.** Borrower will not use the Property or allow the same to be used or occupied for any unlawful purpose or in violation of any permit or certificate, or any law, ordinance, regulation or restrictive covenant, covering or affecting the use or occupancy thereof, or suffer any act to be done or any condition to exist on the Property or any article to be brought thereon, which may be dangerous, unless safeguarded as required by law, or which may, in law, constitute a nuisance, public or private.

9. **Alterations.** Borrower will not make or permit to be made any alterations or additions to the Property which would have the effect of materially diminishing the value thereof or, unless the additional risks are fully covered by appropriate insurance, which will in any way, increase any ordinary fire or other hazard arising out of construction or operation thereof.

10. **Replacement of Fixtures and Improvements.** Borrower will not permit any of the fixtures or improvements to be removed at any time from the Property, without the prior written consent of Lender, unless actually replaced by an article of equal suitability and value and unless such replacement articles are covered by this Deed of Trust as a first charge thereon, free and clear of any lien or security interest, except (a) a purchase money security interest in household appliances, and (b) such as may be approved in writing by Lender.

11. **Other Liens.** Borrower will not, without the prior written consent of Lender, create or permit to be created or to remain, any mortgage, pledge, lien, encumbrance or charge on, security interest in, or conditional sale of or other title retention agreement on the Property or income therefrom, except that purchase money lien held by Lender which are prior to or equal to the liens herein created.

12. **Abandonment.** Borrower will not, without the prior written consent of Lender, abandon the Property or any part thereof. Abandonment shall be conclusively presumed in the event the Property shall remain vacant for thirty consecutive days.

13. **Transfer of the Property.** Borrower will not, without Lender's prior written consent, sell or transfer all or any part of the Property, excluding (a) the creation of a lien or encumbrance subordinated to this Deed of Trust, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of Borrower or (d) the grant of any leasehold interest of three years or less not containing an option to purchase. This provision shall be deemed to have been waived by Lender, as to a specific sale or transfer if, prior to the sale or transfer, Lender shall approve in writing the credit of the transferee, if required by Lender; and the Borrower, the Lender, and the proposed transferee have entered into a written recordable instrument modifying the Note to provide an interest rate satisfactory to Lender. Waiver of this provision shall not release Borrower from his obligations under the Note and this Deed of Trust.

14. **Hold Harmless and Expenses.** Borrower will defend at its own cost and hold Lender harmless from any action, proceedings or claim affecting the Property, or the value of the Note or this Deed of Trust, arising out of action or inaction by Borrower. Borrower will pay or reimburse the Trustee and/or Lender for all reasonable attorney's fees, costs and expenses paid or incurred by the Trustee and/or Lender in any action, proceedings or dispute of any kind in which the Trustee and/or Lender is made a party or appears as party plaintiff or defendant affecting the Note, this Deed of Trust, Borrower or the Property, including, but not limited to the enforcement of this Deed of Trust, any condemnation action involving the Property, any action to protect the security hereof, or any proceeding in probate or bankruptcy, and any such amounts paid or incurred by the Trustee and/or Lender shall be added to the Note, shall bear interest at the rate specified in the Note from date of payment and shall be secured by this Deed of Trust.

15. **Reappraisal.** In the event that Lender shall, in its sole and absolute discretion, deem it necessary that a new appraisal of the Property, or any part thereof (including where required, a separate assessment of personal property, fixtures, or intangible items attached to or located on the Property [herein the "Personalty"]) be secured pursuant to (1) Lender's internal real estate appraisal policy or (2) any governmental or regulatory rule, statute, regulation or requirement (herein the "Requirements"), including but not limited to, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 and 55 Fed. Reg. 33879 (May 20, 1990), Lender shall have the right from time to time to obtain a new appraisal of the Property, or designated portion thereof, including where required, the Personalty, in the manner so required by the Requirements or Lender's internal real estate appraisal policy, as the case may be, and the expense thereof shall be paid by Borrower. In the event Lender so determines to secure such new appraisal, Lender shall give Borrower at least thirty (30) days written notice of its intent to secure such appraisal. If Borrowers' Note shall be greater than eighty (80%) percent of the new appraisal value for the Property, then in such event, Borrower shall immediately, but not later than thirty (30) days after date of such new appraisal, pay on such Note that amount necessary to reduce the unpaid principal Note balance to at least eighty (80%) percent of the new appraisal value for the Property.

### **EVENTS OF DEFAULT**

The term Event of Default, as used in this Deed of Trust and in the Note, shall mean the occurrence or happening, from time to time, of any one or more of the following:

16. **Non-payment.** If Borrower shall fail or refuse to duly and punctually pay the Note, Other Indebtednesses, the Escrow Fund or any other sums due and payable hereunder, or any installment or any part thereof, as and when the same shall become due and payable.

17. **Performance.** If Borrower transfers or conveys the Property without obtaining Lender's consent as required under Paragraph 13; or if Borrower shall fail or refuse to duly observe or perform any other of the Covenants of Borrower hereunder or the terms of any other instrument securing the Note, and such default continues for a period of ten (10) days after written notice thereof from Lender to Borrower.

18. **Voluntary Bankruptcy, etc.** If Borrower shall (a) voluntarily be adjudicated as bankrupt or insolvent, (b) seek or consent to the appointment of a receiver or trustee for itself or for all or any part of its property, (c) file a petition seeking relief under the bankruptcy or other similar laws of the United States or any state or any other competent jurisdiction, (d) make a general assignment for the benefit of creditors, or (e) admit in writing its inability to pay its debts as they mature.

19. **Involuntary Bankruptcy, etc.** If a court of competent jurisdiction shall enter an order, judgment or decree appointing without the consent of Borrower, a receiver or trustee for the Borrower or for all or any part of the property of the Borrower or approving a petition filed against the Borrower seeking relief under the bankruptcy or similar laws of the United States or any state or other competent jurisdiction, and such order, judgment or decree shall remain in force undischarged or unstayed for a period of sixty (60) days.

### **REMEDIES ON DEFAULT**

If an Event of Default shall occur and be continuing, then and in such case:

20. **Acceleration.** Lender may declare the unpaid portion of the Note and Other Indebtednesses to be immediately due and payable, without further notice or demand (each of which hereby is expressly waived by Borrower), whereupon the Note and Other Indebtednesses shall become immediately due and payable, anything in the Note or in the instruments evidencing the Other Indebtednesses to the contrary notwithstanding.

21. **Power of Sale.** Lender may request the Trustee, or his successor as hereinafter provided to enforce this trust and to sell the Property.

If Lender invokes the power of sale, Lender or Trustee shall give notice of the time, place and terms of sale by posting written notice at least 21 days prior to the day of sale at the courthouse door in each of the counties in which the Property is situated. Lender shall mail a copy of the notice of sale to Borrower (and any other persons required by law) in the manner prescribed by applicable law. Such sale shall be made at public vendue between the hours of 10 o'clock A.M. and 4 o'clock P.M. on the first Tuesday in any month. Borrower authorizes Trustee to sell the Property to the highest bidder for cash in one or more parcels and in such order as Trustee may determine. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold in fee simple with covenants of general warranty. Borrower covenants and agrees to defend generally the purchaser's title to the Property against all claims and demands. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements contained therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorney's fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

If the Property is sold pursuant to this paragraph, Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at such sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession.

22. **Cumulative Remedies.** The power of sale herein provided shall be cumulative to the right to enforce this trust by suit, and both remedies may be exercised at the same time and neither shall be a bar to the right to enforce the other, nor shall the exercise of one be an election, but both rights may be enforced at the same time, or one abandoned and thereafter the other enforced as the owner and holder of said indebtedness may think best.

23. **Substitute Trustee.** In case of the absence of the Trustee from the State, or of his death, inability, refusal or failure to act, or in the event Lender should elect at any time, with or without cause, to remove the Trustee, then Lender may appoint a successor or substitute trustee to the Trustee appointed hereunder by an instrument recorded in the county in which this Deed of Trust is recorded. Without conveyance of the Property, the successor substitute trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

#### **ASSIGNMENT OF LEASES AND RENTS**

24. **Approval of Leases.** Upon request by Lender, Borrower shall furnish Lender with copies of all leases now or hereafter created on the Property, and all leases now or hereafter entered into will either (i) expressly provide that any such lease is subordinate to this Deed of Trust or (ii) be in form and substance subject to the approval of the Lender.

25. **Assignment.** Without limiting the foregoing conveyance of the Property in trust, in order to further secure the payment of the Note and Other Indebtedness and the observance, performance and discharge of the Covenants of this Deed of Trust, Borrower hereby sells, assigns, transfers and sets over to Trustee, all of Borrower's right, title and interest in, to and under all leases and in and to all rents to be derived from the Property.

26. **Performance Under Leases.** Borrower covenants and agrees that it will, at its cost and expense, perform and discharge, or cause to be performed and discharged, all of the obligations and undertakings of Borrower or its agents under all leases and will use its best efforts to enforce or secure, or cause to be enforced or secured, the performance of each and every obligation and undertaking of the respective tenants under leases, and will appear in and defend, at its cost and expense, any action or proceeding arising under or in any manner connected with such leases or the obligations and undertakings of any tenant thereunder.

27. **No Rent Assignments or Prepayments.** Borrower, without written approval of Lender, shall not assign or otherwise encumber future rental payments under any leases or collect or accept rent for more than one (1) month in advance, except advance rent not in excess of two (2) months rent in lieu of or in addition to a security deposit.

28. **No Obligation of Trustee or Lender.** This Assignment shall not be deemed or construed to constitute Trustee or Lender as in possession of the Property nor to obligate Trustee or Lender to take any action or to incur expenses or perform or discharge any obligation, duty or liability of Borrower under any lease.

29. **Payment of Rents to Borrower until Default.** Borrower shall be entitled to collect all rents as and when they become due and payable unless and until an Event of Default is in existence. Borrower hereby agrees that tenants under any leases, upon notice from Lender of the occurrence of an Event of Default, shall thereafter, pay to Lender rents due and to become due under such leases without any obligation to determine whether or not such an Event of Default does in fact exist.

30. **Cumulative Remedies.** Each and every right, remedy and power granted to Trustee and Lender hereunder shall be cumulative and in addition to any other right, remedy and power given by the Note and any other security instruments, now or hereafter existing in equity,

## SECURITY AGREEMENT

## MISCELLANEOUS



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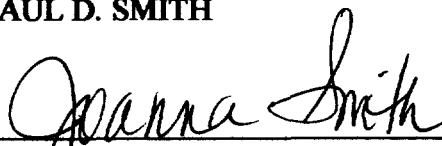
subject matter. In the event that any interest or other charges permitted to be collected under this Deed of Trust, whether considered separately or together with other charges that are considered a part of this loan transaction, violate such usury laws by reason of acceleration of maturity, or for any other reason, the amounts of such interest or other charges previously paid to Lender in excess of the amounts permitted by such usury laws shall be applied by Lender to reduce the principal of the Note and Other Indebtednesses, or, at Lender's option, shall be refunded to Borrower.

38. **Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

39. **Successors and Assigns Bound; Joint and Several Liability; Captions; Gender.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower. In the event of transfer or assignment by Lender of the indebtedness hereby secured, or part thereof, any owner and holder of the indebtedness hereby secured or any part thereof is hereby granted all the rights, powers and privileges conferred upon Lender by this instrument, including the appointment of Substitute Trustees, and may exercise such powers in like manner and as often as Lender might do so. Such powers shall then be possessed both by Lender and such other owners and holders of said indebtedness, and the exercise of such powers by some of them shall not be a bar to their exercise, either simultaneously or at a later date by others upon whom they are hereby conferred. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof. The pronouns used in this Deed of Trust, irrespective of gender, shall be construed as masculine, feminine, or neuter, as the occasion may require.

IN WITNESS WHEREOF, Borrower has executed this instrument this 15th day of May, 2000.

  
\_\_\_\_\_  
PAUL D. SMITH

  
\_\_\_\_\_  
JOANNA SMITH

**BENEFICIARY'S ADDRESS**

Pineland State Bank  
P.O. Drawer 1200  
Pineland, Texas 75968

**TRUSTEE'S ADDRESS:**

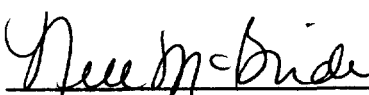
Robert G. Neal, Sr.  
P.O. Drawer 1200  
Pineland, Texas 75968

THE STATE OF TEXAS §

COUNTY OF SABINE §

This Deed of Trust was acknowledged before me on the 15th day of May, 2000, by PAUL D. SMITH and wife, JOANNA SMITH.



  
\_\_\_\_\_  
Notary Public, State of Texas  
9/21/2001  
\_\_\_\_\_  
COMMISSION EXPIRES



724-00-0484

**RIDER TO DEED OF TRUST**  
**RELATING TO CONTRACT FOR IMPROVEMENTS**

This Rider to the foregoing Deed of Trust relates to a Contract of Improvements ("Contract") dated May 15th, 2000, between PAUL D. SMITH and wife, JOANNA SMITH, (sometimes referred to as "Grantor", "Owner" or "Borrower") and TOWN AND COUNTRY BUILDERS (sometimes referred to as "Contractor").

40. **Renewal of Contractor's Lien.** Borrower and Contractor have entered into a Contract for Improvements to be made to the Property. Borrower shall perform all of Borrower's obligations under that Contract. Under that Contract, Borrower granted to Contractor a lien on the Property. Contractor has transferred and assigned that lien and any other interest of Contractor in the Property to Lender and subordinates that lien to the lien of this Deed of Trust to provide further security for Lender and in consideration for Lender's loan to Borrower. That loan is evidenced by the Note and is for the purpose of paying in whole or in part for the Improvements to be made by Contractor. Borrower and Contractor agree that the lien and any other interest in the Property assigned to Lender by Contractor hereby shall be for the sole benefit of Lender and shall hereby be merged with, and may be enforced by Lender in accordance with the terms of this Deed of Trust. Borrower and Contractor further agree that their Contract was executed prior to the commencement of any work or the delivery of any materials pursuant to their Contract.

41. **Construction Loan Mortgage.** This Deed of Trust is a "construction mortgage" within the meaning of Section 9.313 of the Uniform Commercial Code in that it secures an obligation incurred for the construction of improvements on land.

42. **Construction Loan Agreement.** Borrower agrees to comply with the covenants and conditions of the Tri-Party Construction Loan Agreement, if any, which is hereby incorporated by reference in and made a part of this Deed of Trust. All advances made by Lender pursuant to the Tri-Party Construction Loan Agreement shall be an indebtedness of Borrower secured by this Deed of Trust, and such advances may be obligatory as provided in the Tri-Party Construction Loan Agreement.

43. **Disbursements to Protect Security.** All sums disbursed by Lender prior to completion of the improvements to protect the security of this Deed of Trust up to the principal amount of the Note shall be treated as disbursements pursuant to the Tri-Party Construction Loan Agreement. All such sums shall bear interest from the date of disbursement at the rate stated in the Note, unless collection from Borrower of interest at such rate would be contrary to applicable law in which event such amounts shall bear interest at the highest rate which may be collected from Borrower under applicable law and shall be payable upon notice from Lender to Borrower requesting payment therefor.

44. **Assignment of Rights or Claims.** From time to time as Lender deems necessary to protect Lender's interests, Borrower shall, upon request of Lender, execute and deliver to Lender, in such form as Lender shall direct, assignments of any and all rights or claims which relate to the construction of the Property.

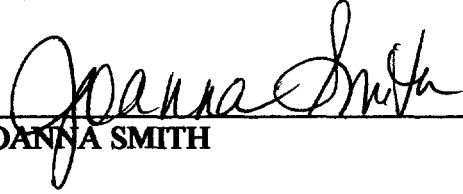
45. **Breach by Borrower.** In case of breach by Borrower of the covenants and conditions of the Tri-Party Construction Loan Agreement, Lender, at Lender's option, with or without entry upon the Property, (a) may invoke any of the rights or remedies provided in the Tri-Party Construction Loan Agreement, (b) may accelerate the sums secured by this Deed of Trust and invoke those remedies provided in this Deed of Trust, or (c) may do both.

724-00-0485

IN WITNESS WHEREOF, Borrower has executed this instrument this 15th day of May, 2000.



PAUL D. SMITH

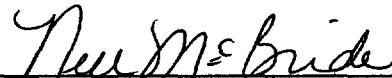
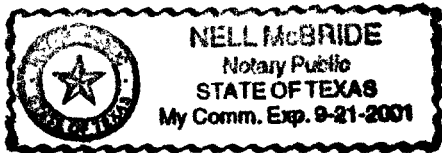


JOANNA SMITH

THE STATE OF TEXAS §

COUNTY OF SABINE §

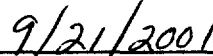
This Rider to Deed of Trust was acknowledged before me on the 15th day of May, 2000, by PAUL D. SMITH and wife, JOANNA SMITH.



Notary Public, State of Texas



PRINTED NAME:



COMMISSION EXPIRES


**ORIGINAL DIM**

FILED FOR RECORD  
00 JUN 15 PM 2:22  
MARK TURNBULL, CO. CLERK  
MONTGOMERY COUNTY, TEXAS  
~~DEPUTY~~

STATE OF TEXAS  
COUNTY OF MONTGOMERY  
I hereby certify that this instrument was filed in  
File Number Sequence on the date and at the time  
stamped herein by me and was duly RECORDED in  
the official Public Records of Real Property of  
Montgomery County, Texas

JUN 15 2000



  
COUNTY CLERK  
MONTGOMERY COUNTY TEXAS