



First American

Commitment

Commitment For Title Insurance T-7

ISSUED BY

First American Title Insurance Company

THE FOLLOWING COMMITMENT FOR TITLE INSURANCE IS NOT VALID UNLESS YOUR NAME AND THE POLICY AMOUNT ARE SHOWN IN SCHEDULE A, AND OUR AUTHORIZED REPRESENTATIVE HAS COUNTERSIGNED BELOW.

We FIRST AMERICAN TITLE INSURANCE COMPANY will issue our title insurance policy or policies (the Policy) to You (the proposed insured) upon payment of the premium and other charges due, and compliance with the requirements in Schedule C. Our Policy will be in the form approved by the Texas Department of Insurance at the date of issuance, and will insure your interest in the land described in Schedule A. The estimated premium for our Policy and applicable endorsements is shown on Schedule D. There may be additional charges such as recording fees, and expedited delivery expenses.

This Commitment ends ninety (90) days from the effective date, unless the Policy is issued sooner, or failure to issue the Policy is our fault. Our liability and obligations to you are under the express terms of this Commitment and end when this Commitment expires.

Authorized Signature

First American Title Insurance Company

Dennis J. Gilmore
President

Jeffrey S. Robinson
Secretary

TEXAS TITLE INSURANCE INFORMATION

Title insurance insures you against loss resulting from certain risks to your title.

The commitment for Title Insurance is the title insurance company's promise to issue the title insurance policy. The commitment is a legal document. You should review it carefully to completely understand it before your closing date.

El seguro de título le asegura en relación a pérdidas resultantes de ciertos riesgos que pueden afectar el título de su propiedad.

El Compromiso para Seguro de Título es la promesa de la compañía aseguradora de títulos de emitir la póliza de seguro de título. El Compromiso es un documento legal. Usted debe leerlo cuidadosamente y enterarlo completamente antes de la fecha para finalizar su transacción.

Your Commitment for Title Insurance is a legal contract between you and us. The Commitment is not an opinion or report of your title. It is a contract to issue you a policy subject to the Commitment's terms and requirements.

Before issuing a Commitment for Title Insurance (the Commitment) or a Title Insurance Policy (the Policy), the Title Insurance Company (the Company) determines whether the title is insurable. This determination has already been made. Part of that determination involves the Company's decision to insure the title except for certain risks that will not be covered by the Policy. Some of these risks are listed in Schedule B of the attached Commitment as Exceptions. Other risks are stated in the Policy as Exclusions. These risks will not be covered by the Policy. The Policy is not an abstract of title nor does a Company have an obligation to determine the ownership of any mineral interest.

- **MINERALS AND MINERAL RIGHTS** may not be covered by the Policy. The Company may be unwilling to insure title unless there is an exclusion or an exception as to Minerals and Mineral Rights in the Policy. Optional endorsements insuring certain risks involving minerals, and the use of improvements (excluding lawns, shrubbery and trees) and permanent buildings may be available for purchase. If the title insurer issues the title policy with an exclusion or exception to the minerals and mineral rights, neither this Policy, nor the optional endorsements, ensure that the purchaser has title to the mineral rights related to the surface estate.

Another part of the determination involves whether the promise to insure is conditioned upon certain requirements being met. Schedule C of the Commitment lists these requirements that must be satisfied or the Company will refuse to cover them. You may want to discuss any matters shown in Schedules B and C of the Commitment with an attorney. These matters will affect your title and your use of the land.

When your Policy is issued, the coverage will be limited by the Policy's Exceptions, Exclusions and Conditions, defined below.

- **EXCEPTIONS** are title risks that a Policy generally covers but does not cover in a particular instance. Exceptions are shown on Schedule B or discussed in Schedule C of the Commitment. They can also be added if you do not comply with the Conditions section of the Commitment. When the Policy is issued, all Exceptions will be on Schedule B of the Policy.
- **EXCLUSIONS** are title risks that a Policy generally does not cover. Exclusions are contained in the Policy but not shown or discussed in the Commitment.
- **CONDITIONS** are additional provisions that qualify or limit your coverage. Conditions include your responsibilities and those of the Company. They are contained in the Policy but not shown or discussed in the Commitment. The Policy Conditions are not the same as the Commitment Conditions.

You can get a copy of the policy form approved by the Texas Department of Insurance by calling the Title Insurance Company at 1-888-632-1642 or by calling the title insurance agent that issued the Commitment. The Texas Department of Insurance may revise the policy form from time to time.

You can also get a brochure that explains the policy from the Texas Department of Insurance by calling 1-800-252-3439.

Before the Policy is issued, you may request changes in the policy. Some of the changes to consider are:

- Request amendment of the "area and boundary" exception (Schedule B, paragraph 2). To get this amendment, you must furnish a survey and comply with other requirements of the Company. On the Owner's Policy, you must pay an additional premium for the amendment. If the survey is acceptable to the Company and if the Company's other requirements are met, your Policy will insure you against loss because of discrepancies or conflicts in boundary lines, encroachments or protrusions, or overlapping of improvements. The Company may then decide not to insure against specific boundary or survey problems by making special exceptions in the Policy. Whether or not you request amendment of the "area and boundary" exception, you should determine whether you want to purchase and review a survey if a survey is not being provided to you.
- Allow the Company to add an exception to "rights of parties in possession." If you refuse this exception, the Company or the title insurance agent may inspect the property. The Company may except to and not insure you against the rights of specific persons, such as renters, adverse owners or easement holders who occupy the land. The Company may charge you for the inspection. If you want to make your own inspection, you must sign a Waiver of Inspection form and allow the Company to add this exception to your Policy.

The entire premium for a Policy must be paid when the Policy is issued. You will not owe any additional premiums unless you want to increase your coverage at a later date and the Company agrees to add an Increased Value Endorsement.

CONDITIONS AND STIPULATIONS

1. If you have actual knowledge of any matter which may affect the title or mortgage covered by this Commitment, that is not shown in Schedule B, you must notify us in writing. If you do not notify us in writing, our liability to you is ended or reduced to the extent that your failure to notify us affects our liability. If you do notify us, or we learn of such matter, we may amend Schedule B, but we will not be relieved of liability already incurred.
2. Our liability is only to you, and others who are included in the definition of Insured in the Policy to be issued. Our liability is only for actual loss incurred in your reliance on this Commitment to comply with its requirements or to acquire the interest in the land. Our liability is limited to the amount shown in Schedule A of this Commitment and will be subject to the following terms of the Policy: Insuring Provisions, Conditions and Stipulations, and Exclusions.



First American

Commitment For Title Insurance T-7

ISSUED BY

First American Title Insurance Company

SCHEDULE A

Effective Date: **October 3 2017** at 8:00 a.m.

GF No. **NCS-872519-PHX1**

Commitment No. **NCS-872519-PHX1**, issued **November 01, 2017**, at 8:00 a.m.

1. The policy or policies to be issued are:
 - (a) OWNER'S POLICY OF TITLE INSURANCE (Form T-1)
(Not applicable for improved one-to-four family residential real estate)
Policy Amount: \$0.00
PROPOSED INSURED:
 - (b) TEXAS RESIDENTIAL OWNER'S POLICY OF TITLE INSURANCE
ONE-TO-FOUR FAMILY RESIDENCES (Form T-1R)
Policy Amount: \$
PROPOSED INSURED:
 - (c) LOAN POLICY OF TITLE INSURANCE (Form T-2)
Policy Amount: \$
PROPOSED INSURED:
Proposed Borrower:
 - (d) TEXAS SHORT FORM RESIDENTIAL LOAN POLICY OF TITLE INSURANCE (Form T-2R)
Policy Amount \$
PROPOSED INSURED:
Proposed Borrower:
 - (e) LOAN TITLE POLICY BINDER ON INTERIM CONSTRUCTION LOAN (Form T-13)
Binder Amount: \$
PROPOSED INSURED:
Proposed Borrower:
 - (f) OTHER
Policy Amount: \$
PROPOSED INSURED:
2. The interest in the land covered by this Commitment is:

Fee Simple - as to Tract I
Easement Estate - as to Tract II
3. Record title to the land on the Effective Date appears to be vested in:

Spirit Master Funding, LLC, a Delaware limited liability company
4. Legal description of land:

See Exhibit "A" attached hereto and made a part hereof.

EXHIBIT "A"

TRACT 1:

BEING A 2.256 ACRE TRACT OF LAND IN THE BIAS HERRERA SURVEY, ABSTRACT NO. 321, HARRIS COUNTY, TEXAS, AND BEING OUT OF RESTRICTED RESERVE "K", BLOCK 1, AS SHOWN ON THE PLAT OF TIM MILES SUBDIVISION, RECORDED IN VOLUME 334, PAGE 99 OF THE HARRIS COUNTY MAP RECORDS AND BEING OUT OF A 10.5943 ACRE TRACT DESCRIBED UNDER HARRIS COUNTY CLERK'S FILE NO. S015191, SAID 2.256 ACRE TRACT BEING MORE FULLY DESCRIBED AS METES AND BOUNDS AS FOLLOWS:

COMMENCING AT A 5/8" IRON ROD FOUND IN THE WEST RIGHT-OF-WAY LINE OF STATE HIGHWAY NO.6 AS DESCRIBED UNDER HARRIS COUNTY CLERK'S FILE NO. B647227 (VOL. 5032, PAGE 132, HARRIS COUNTY DEED RECORDS) AND BEING AT THE SOUTHEAST CORNER OF SAID RESTRICTED RESERVE "K" AND THE NORTHEAST CORNER OF RESTRICTED RESERVE "J", BLOCK 1;

THENCE N 04 DEG. 50 MIN. 30 SEC. W, 30.09 FEET ALONG THE SAID WEST RIGHT-OF-WAY OF STATE HIGHWAY NO. 6 AND ALONG THE WESTERLY BOUNDARY LINE OF SAID RESERVE "K" TO A 5/8" IRON ROD SET AT THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT;

THENCE S 89 DEG. 40 MIN. 53 SEC. W, 350.00 FEET TO A SET 5/8" IRON ROD FOR THE SOUTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE N 00 DEG. 19 MIN. 07 SEC. W, 290.00 FEET TO A 5/8" IRON ROD SET FOR THE NORTHWEST CORNER OF THE HEREIN DESCRIBED TRACT;

THENCE N 89 DEG. 40 MIN. 53 SEC. E, 329.48 FEET TO A 5/8" IRON ROD SET IN THE EAST LINE OF SAID RESTRICTED RESERVE "K" AND BEING IN THE SAID WEST RIGHT-OF-WAY LINE OF STATE HIGHWAY NO. 6;

THENCE IN A SOUTHERLY DIRECTION, 138.85 FEET ALONG THE SAID WEST RIGHT-OF-WAY LINE OF STATE HIGHWAY NO. 6 AND ALONG THE WESTERLY BOUNDARY LINE OF SAID RESERVE "K" AND FOLLOWING THE ARC OF SAID CURVE TO THE LEFT HAVING A RADIUS OF 3993.69 FEET, A CENTRAL ANGLE OF 01 DEG. 59 MIN. 31 SEC. AND A CHORD WHICH BEARS S 03 DEG. 50 MIN. 44 SEC. E, 138.84 FEET TO A ½" IRON ROD FOUND AND FROM SAID ½" IRON ROD, A FOUND CONCRETE MONUMENT BEARS S 18 DEG. 55 MIN. E, 0.56 FEET AND A FOUND 1" IRON ROD BEARS S 77 DEG. 40 MIN. W, 0.18 FEET;

THENCE S 04 DEG. 50 MIN. 30 SEC. E, 151.90 FEET ALONG THE SAID WEST RIGHT-OF-WAY LINE OF STATE HIGHWAY NO. 6 AND ALONG THE EASTERLY BOUNDARY LINE OF SAID RESERVE "K" TO THE POINT OF BEGINNING AND CONTAINING 2.256 ACRES OF LAND.

TRACT 2:

RIGHTS IN AND TO THOSE CERTAIN EASEMENT AS SET OUT AND MORE FULLY DESCRIBED IN INSTRUMENT RECORDED UNDER HARRIS COUNTY CLERK'S FILE NO. S464504.

Note: The Company is prohibited from insuring the area or quantity of the land described herein. Any statement in the above legal description of the area or quantity of land is not a representation that such area or quantity is correct, but is made only for informational and/or identification purposes and does not override Item 2 of Schedule B hereof.



First American

SCHEDULE B

Commitment For Title Insurance T-7

ISSUED BY

First American Title Insurance Company

G.F. No. or File No. **NCS-872519-PHX1**

EXCEPTIONS FROM COVERAGE

In addition to the Exclusions and Conditions and Stipulations, your Policy will not cover loss, costs, attorney's fees, and expenses resulting from:

1. The following restrictive covenants of record itemized below:

See Item 10 (a) below.

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments or protrusions, or any overlapping of improvements.
3. Homestead or community property or survivorship rights, if any of any spouse of any insured. (Applies to the Owner's Policy only.)
4. Any titles or rights asserted by anyone, including, but not limited to, persons, the public, corporations, governments or other entities,
 - a. to tidelands, or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
 - b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
 - c. to filled-in lands, or artificial islands, or
 - d. to statutory water rights, including riparian rights, or
 - e. to the area extending from the line of mean low tide to the line of vegetation, or the rights of access to that area or easement along and across that area.

(Applies to the Owner's Policy only.)

5. Standby fees, taxes and assessments by any taxing authority for the year 2017, and subsequent years; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year. (If Texas Short Form Residential Loan Policy of Title Insurance (T-2R) is issued, that policy will substitute "which become due and payable subsequent to Date of Policy" in lieu of "for the year 2017 and subsequent years.")
6. The terms and conditions of the documents creating your interest in the land.
7. Materials furnished or labor performed in connection with planned construction before signing and delivering the lien document described in Schedule A, if the land is part of the homestead of the owner. (Applies to the Loan Title Policy Binder on Interim Construction Loan only, and may be deleted if satisfactory evidence is furnished to us before a Binder is issued.)

8. Liens and leases that affect the title to the land, but that are subordinate to the lien of the insured mortgage. (Applies to Loan Policy (T-2) only.)
9. The Exceptions from Coverage and Express Insurance in Schedule B of the Texas Short Form Residential Loan Policy of Title Insurance (T-2R). (Applies to Texas Short Form Residential Loan Policy of Title Insurance (T-2R) only). Separate exceptions 1 through 8 of this Schedule B do not apply to the Texas Short Form Residential Loan Policy of Title Insurance (T-2R).
10. The following matters and all terms of the documents creating or offering evidence of the matters:
 - a. Any covenants, conditions or restrictions indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin are hereby deleted to the extent such covenants, conditions or restrictions violate 42 USC 3604 {c}. Recorded in Volume 334, Page 99, Map Records of Harris County, Texas. And County Clerk's File No(s). S464504 and S464505, Official Records of Harris County, Texas.
 - b. Rights of Parties in Possession. (OWNER POLICY ONLY)
 - c. Any portion of subject property lying within the boundaries of a public or private roadway whether dedicated or not.
 - d. All encumbrances, violations, variations, or adverse circumstances affecting Title that would be disclosed by an accurate and complete land survey of the Land, including, without limitation, all visible and apparent easements or uses and all underground easements or uses, the existence of which may arise by unrecorded grant or by use. (May be amended or deleted upon approval of survey.)
 - e. INTENTIONALLY DELETED
 - f. A 25' foot building setback line along the Northern most Easterly property line as set forth on the recorded plat and dedication.
 - g. A 35' foot building setback line along the Southern most Easterly property line as set forth on the recorded plat and dedication.
 - h. Easement as shown on the recorded plat and dedication:
Purpose: 10' Water line easement
Location: along the Easterly property line
 - i. Easement as shown on the recorded plat and dedication:
Purpose: 25' Storm and sanitary sewer easement
Location: along the Southern most Easterly property line
 - j. Easement as shown on the recorded plat and dedication:
Purpose: Drainage Easement
Location: 15 feet on each side of the center line of all gullies, ravines and other natural drainage courses on the herein described property. (OWNER POLICY ONLY)
 - k. Easement:
Purpose: Electric distribution facilities easement
Recorded: August 26, 1997 in County Clerk's File No. S607372, of the Official Public records, of Harris County, Texas.

- l. Terms, Conditions, provisions, easements, restrictions, reservations and other matters:
Document: Reciprocal Easement Agreement
Recorded: May 16, 2001 in County Clerk's File No. V055897 amended by County Clerk's File No(s). V105170, V269078 and V443017, of the Official records, of Harris County, Texas.

- m. Terms, Conditions, provisions, easements, restrictions, reservations and other matters:
Document: Easement Agreement
Recorded: December 12, 2001 in County Clerk's File No. V474090, of the Official records, of Harris County, Texas.

- n. Mineral and/or royalty interest:
Recorded: December 30, 1977 in County Clerk's File No. E999075, of the Official records, of Harris County, Texas.
Title to said interest has not been investigated subsequent to the date of the aforesaid instrument.

- o. Mineral and/or royalty interest:
Recorded: December 30, 1977 in County Clerk's File No. E999077, of the Official records, of Harris County, Texas.
Title to said interest has not been investigated subsequent to the date of the aforesaid instrument.

- p. Mineral and/or royalty interest:
Recorded: December 30, 1977 in County Clerk's File No. E997684, of the Official records, of Harris County, Texas.
Title to said interest has not been investigated subsequent to the date of the aforesaid instrument.

- q. Waiver of Surface Rights executed in instrument recorded April 23, 1978 in County Clerk's File No. F570806, Official Records of Harris County, Texas.

- r. Waiver of Surface Rights executed in instrument recorded October 18, 1974 in County Clerk's File No. E283509, Official Records of Harris County, Texas.

- s. Oil, Gas and Mineral Lease, and all terms, conditions and stipulations therein:
Recorded: in County Clerk's File No(s). V936419 as amended by Z253621, W175518, W175519, W175520, amended by Z253622, W175521, W175522, W175523 and W175524, of the Official records, of Harris County, Texas.

- t. The property covered herein is subject to the terms, conditions, provisions and stipulations of Ordinance #1999-262, of the City of Houston, passed March 24, 1999, and amendments, pertaining to the platting and replatting of real property and the establishment of building set back lines along major thoroughfares within such boundaries. (OWNER POLICY ONLY)

- u. Any claim that the Title is subject to a trust or lien created under The Perishable Agricultural Commodities Act, 1930 (7 U.S.C. §§499a, et seq.) or the Packers and Stockyards Act (7 U.S.C. §§181 et seq.) or under similar state laws.



First American

SCHEDULE C

Commitment For Title Insurance T-7

ISSUED BY

First American Title Insurance Company

G.F. No. or File No. **NCS-872519-PHX1**

Your Policy will not cover loss, costs, attorney's fees, and expenses resulting from the following requirements that will appear as Exceptions in Schedule B of the Policy, unless you dispose of these matters to our satisfaction, before the date the Policy is issued:

1. Documents creating your title or interest must be approved by us and must be signed, notarized and filed for record.
2. Satisfactory evidence must be provided that:
 - no person occupying the land claims any interest in that land against the persons named in paragraph 3 of Schedule A,
 - all standby fees, taxes, assessments and charges against the property have been paid,
 - all improvements or repairs to the property are completed and accepted by the owner, and that all contractors, sub-contractors, laborers, and suppliers have been fully paid, and that no mechanic's, laborer's or materialmen's liens have attached to the property,
 - there is legal right of access to and from the land,
 - (on a Loan Policy only) restrictions have not been and will not be violated that affect the validity and priority of the insured mortgage.
3. You must pay the seller or borrower the agreed amount for your property or interest.
4. Any defect, lien or other matter that may affect title to the land or interest insured, that arises or is filed after the effective date of this Commitment.
5. Record a Release of Deed of Trust to secure a Note:
 - Grantor: Spirit Master Funding, LLC, a Delaware limited liability company
 - Trustee: William Z. Fairbanks, Esq.
 - Beneficiary: Citibank, N.A.
 - Dated: June 29, 2007
 - Recorded: July 25, 2007 in County Clerk's File No. 20070454010, of the Official Public records, of Harris County, Texas.
 - Amount: \$As stated therein
6. Record a Release of Maintenance Lien Affidavit by Valderrama A/C & Refrigeration Inc.:
 - Against: Spirit Master Funding LLC
 - Recorded: September 12, 2017 in County Clerk's File No. 2017403300, of the Official Public records, of Harris County, Texas.
 - Amount: \$1,200.00, plus costs

7. As to Spirit Master Funding, LLC, a Delaware limited liability company, we will require a Resolution of the Managers specific as to the transaction to confirm who is authorized to execute documents on behalf of the company.

NOTE: Closer should be satisfied as to the status of said company and that same is in good standing.

8. The right is reserved to make and insert additional exceptions and/or requirements based upon the review of the survey, up to and including the issuance of the Policy.



First American

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First American Title Insurance Company

SCHEDULE D

The following Disclosures are made pursuant to Procedural Rule P-21 promulgated by the Texas Department of Insurance.

1. The following individuals are directors and/or officers, as indicated, of the Title Insurance Company issuing this Commitment

UNDERWRITER: First American Title Insurance Company, a Nebraska Corporation.

Shareholder owning or controlling, directly or indirectly, ten percent or more of the shares of the Underwriter: First American Title Insurance Company is a wholly owned subsidiary of First American Financial Corporation, a public company formed in Delaware.

Directors: Dennis J. Gilmore, Christopher M. Leavell, Jeffrey S. Robinson, Mark E. Seaton, Ellen C. Albrecht

Officers: President, Chief Executive Officer: Dennis J. Gilmore; Senior Vice President, Secretary: Jeffrey S. Robinson; and Chief Financial Officer: Mark E. Seaton

2. The following disclosures are made by the Title Insurance Agent issuing this Commitment:

AGENT: First American Title Insurance Company (Direct Operation)

Shareholder, owner, partner or other person having, owning or controlling one percent (1%) or more of the Title Insurance Agent:
First American Financial Corporation 100%

Shareholder, owner, partner or other person having, owning or controlling ten percent (10%) or more of an entity that has, owns or controls one percent (1%) or more of the Title Insurance Agent:
NONE

If the Title Insurance Agent is a corporation, the following is a list of the members of the Board of Directors:

If the Title Insurance Agent is a corporation, the following is a list of its officers:
Robert C. Sherman, Vice President; Brian J. Watts, Vice President

3. You are entitled to receive advance disclosure of settlement charges in connection with the proposed transaction to which this commitment relates. Upon your request, such disclosure will be made to you. Additionally, the name of any person, firm or corporation receiving a portion of the premium from the settlement of this transaction will be disclosed on the closing or settlement statement.

You are further advised that the estimated title premium* is:

Owner's Policy	\$TBD
Loan Policy	\$TBD
Endorsement Charges	\$TBD
Other	\$TBD
Total	\$TBD

Of this total amount \$_____ (or ____ %) will be paid to the policy issuing Title Insurance Company; \$_____ (or _____ %) will be retained by the Title Insurance Agent; and the remainder of the estimated premium will be paid to other parties as follows:

Amount	To Whom	For Service
\$_____ (or _____ %)	_____	_____
\$_____ (or _____ %)	_____	_____
\$_____ (or _____ %)	_____	_____

* The estimated premium is based upon information furnished to us as of the date of this Commitment for Title Insurance. Final determination of the amount of the premium will be made at closing in accordance with the Rules and Regulations adopted by the Commissioner of Insurance."



FIRST AMERICAN TITLE INSURANCE COMPANY

Commitment for Title Insurance Form (T-7)

DELETION OF ARBITRATION PROVISION

(Not applicable to the Texas Residential Owner's Policy)

ARBITRATION is a common form of alternative dispute resolution. It can be a quicker and cheaper means to settle a dispute with your Title Insurance Company. However, if you agree to arbitrate, you give up your right to take the Title Company to court and your rights to discovery of evidence may be limited in the arbitration process. In addition, you cannot usually appeal an arbitrator's award.

Your policy contains an arbitration provision (shown below). It allows you or the Company to require arbitration if the amount of insurance is \$2,000,000 or less. If you want to retain your right to sue the Company in case of a dispute over a claim, you must request deletion of the arbitration provision before the policy is issued. You can do this by signing this form and returning it to the Company at or before the closing of your real estate transaction or by writing to the Company. The arbitration provision in the Policy is as follows:

"Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured, unless the Insured is an individual person (as distinguished from an Entity). All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction."

SIGNATURE

DATE

4
11
NO

Return To:
LandAmerica Lawyers Title
2511 N. Loop 1604 W., #101
San Antonio, Texas 78258
GF # 1211005074

AFTER RECORDING:
HOLD FOR
CHARTER TITLE COMPANY
GF 1017001347
Closer LAVYN

So. Hwy 6, Houston

20070454009
07/25/2007 RP1 \$28.00

RECORDING REQUESTED BY:

Spirit Master Funding, LLC
14631 N. Scottsdale Road, Suite 200
Scottsdale, AZ 85254-2711

~~AND WHEN RECORDED MAIL TO:~~

Land America Commercial Services
NCS National Accounts Administrator
1850 N. Central Ave., Ste. 300
Phoenix, AZ 85004

Attn: Allen Brown
07-52828
AND WHEN RECORDED MAIL TAX
STATEMENTS TO:

Joe's Crab Shack Real Estate Holdings, Inc.,
a Delaware Corporation
Attention: Ed Engel
9900 Westpark Drive, Suite 300
Houston, TX 77063

With a copy to:

Spirit Master Funding, LLC
14631 N. Scottsdale Road, Suite 200
Scottsdale, AZ 85254-2711

Affix RPTT:

21098-95-278 RP

Kennedy R. Kuyfman
COUNTY CLERK
HARRIS COUNTY, TEXAS

2007 JUL 25 AM 11:05

FILED

GRANT DEED

THIS INDENTURE WITNESSETH THAT:

Sovereign JCS LLC, a Delaware Limited Liability Company,

in consideration of the reasonable value, the receipt of which is hereby acknowledged,
does hereby Grant, Bargain Sell and convey to

Spirit Master Funding, LLC, a Delaware Limited Liability Company,

all that real property situated in the County of Harris, State of Texas, described on
Exhibit A attached hereto.

TOGETHER WITH all and singular the tenements, hereditaments and appurtenances
thereunto belonging to in anywise appertaining.

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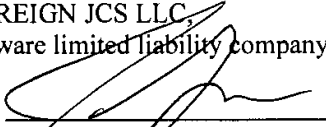
SUBJECT TO:

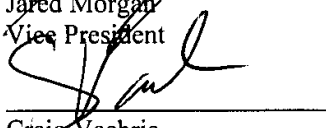
1. General and special taxes for the current fiscal year.
2. Covenants, conditions, restrictions, right of way, easements and reservations of record (collectively, Items 1 and 2, the "Permitted Encumbrances").

Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND all and singular the said Property, subject to the Permitted Encumbrances unto the said Grantee, its successors and assigns, against Grantor and every person whomsoever lawfully claiming or to claim the same or any part thereof, by through or under Grantor, but not otherwise.

Dated this 28 day of June, 2007

SOVEREIGN JCS LLC,
a Delaware limited liability company

By: 
Name: Jared Morgan
Title: Vice President

By: 
Name: Craig Vachris
Title: Vice President

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RP 247-56-964B

STATE OF NEW JERSEY
COUNTY OF MIDDLESEX

The foregoing instrument was acknowledged before me this 28 day of June, 2007, by Jared Morgan, as Vice President of Sovereign Investment Company, a California corporation, the manager of Sovereign NNN Ventures, LLC, a Delaware limited liability company, the manager of Sovereign FF Manager, LLC, a Delaware limited liability company, the manager of Sovereign JCS LLC, a Delaware limited liability company, on behalf of the company, and who () is personally known to me or (✓) has produced a driver license as identification.

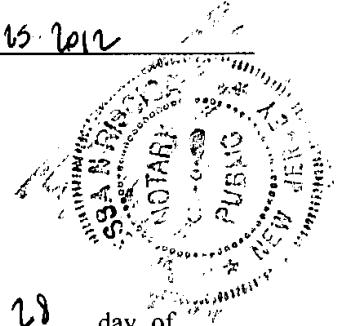
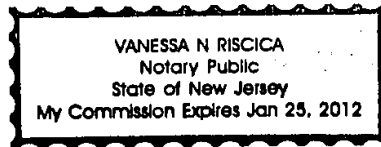
Vanessa N. Riscica

(Print/Type Name)

NOTARY PUBLIC

My Commission expires: 01-25-2012

(NOTARIAL SEAL)



STATE OF MIDDLESEX
COUNTY OF NEW JERSEY

The foregoing instrument was acknowledged before me this 28 day of June, 2007, by Craig Vachris, as Vice President of Sovereign Investment Company, a California corporation, the manager of Sovereign NNN Ventures, LLC, a Delaware limited liability company, the manager of Sovereign FF Manager, LLC, a Delaware limited liability company, the manager of Sovereign JCS LLC, a Delaware limited liability company, on behalf of the company, and who () is personally known to me or (✓) has produced a driver license as identification.

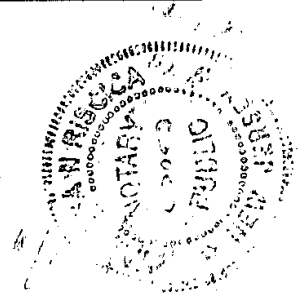
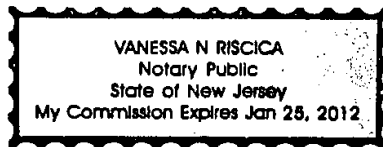
Vanessa N. Riscica

(Print/Type Name)

NOTARY PUBLIC

My Commission expires: 01-25-2012

(NOTARIAL SEAL)



HP 847-56-49

EXHIBIT "A"

TRACT 1:

BEING a 2.256 acre tract of land in the Bias Herrera Survey, Abstract No. 321, Harris County, Texas, and being out of Restricted Reserve "K", Block 1, as shown on the plat of TIM MILES SUBDIVISION, recorded in Volume 334, Page 99 of the Harris County Map Records and being out of a 10.5943 acre tract described under Harris County Clerk's File No. S015191, said 2.256 acre tract being more fully described as metes and bounds as follows:

DT

COMMENCING at a 5/8" iron rod found in the west right-of-way line of State Highway No. 6 as described under Harris County Clerk's File No. B647227 (Vol. 5032, Page 132, Harris County Deed Records) and being at the southeast corner of said Restricted Reserve "K" and the northeast corner of Restricted Reserve "J", Block 1;

THENCE N 04 deg. 50 min. 30 sec. W, 30.09 feet along the said west right-of-way of State Highway No. 6 and along the westerly boundary line of said Reserve "K" to a 5/8" iron rod set at the POINT OF BEGINNING of the herein described tract;

THENCE S 89 deg. 40 min. 53 sec. W, 350.00 feet to a set 5/8" iron rod for the southwest corner of the herein described tract;

THENCE N 00 deg. 19 min. 07 sec. W, 290.00 feet to a 5/8" iron rod set for the northwest corner of the herein described tract;

THENCE N 89 deg. 40 min. 53 sec. E, 329.48 feet to a 5/8" iron rod set in the east line of said Restricted Reserve "K" and being in the said west right-of-way line of State Highway No. 6;

THENCE in a southerly direction, 138.85 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" and following the arc of said curve to the left having a radius of 3993.69 feet, a central angle of 01 deg. 59 min. 31 sec. and a chord which bears S 03 deg. 50 min. 44 sec. E, 138.84 feet to a 1/2" iron rod found and from said 1/2" iron rod, a found concrete monument bears S 18 deg. 55 min. E, 0.56 feet and a found 1" iron rod bears S 77 deg. 40 min. W, 0.18 feet;

THENCE S 04 deg. 50 min. 30 sec. E, 151.90 feet along the said west right-of-way line of State Highway No. 6 and along the easterly boundary line of said Reserve "K" to the POINT OF BEGINNING and containing 2.256 acres of land.

TRACT 2:

Rights in and to those certain easement as set out and more fully described in instrument recorded under Harris County Clerk's File No. S464504.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW. THE STATE OF TEXAS COUNTY OF HARRIS I hereby certify that this instrument was FILED in the number Sequence on the date and at time stamped herein by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County Texas on

JUL 25 2007



Carolyn L. Hayden
COUNTY CLERK
HARRIS COUNTY, TEXAS

0450-95-278
HP

FEE \$30.88

**TAX CERTIFICATE
DATA TRACE**

10920 W. SAM HOUSTON PKWY N. SUITE 400
HOUSTON~ TX. 77064
PHONE (281)890-0381 FAX (281)890-2114

**REMIT CERT FEE TO:
DATA TRACE
P.O BOX 31001-2283
PASADENA, CA 91110-2283**

CUST: FIRST AMERICAN TITLE CO - NCS BRANCH:
ORDER: NCS-872519 CLOSER: ORDER TYPE: A SUBTYPE: R DATE: 10/06/2017

CAD ACCOUNT NUMBER SUMMARY

116-539-001-0010

SUMMARY OF ALL ACCOUNT(S)

	SUMMARY OF CURRENT YEAR		SUMMARY OF ALL TAXES DUE	
	TAX YEAR	BASE TAX	DUE 10/2017	DUE 11/2017
HARRIS COUNTY	2016	10,865.88	0.00	0.00
CITY OF HOUSTON	2016	10,031.76	0.00	0.00
ISD - KATY	2016	25,944.14	0.00	0.00
TOTAL TAX		46,841.78	0.00	0.00

******* COMMENTS ***** CAUTION ***** READ BEFORE CLOSING *******

- HARRIS COUNTY - EXEMPTS: 20%; O65-160,000; DIS-160,000
RATE INCLUDES COUNTY(.416560)
FLOOD CONTROL(.028290)PORT OF HOUSTON(.013340)
HOSPITAL(.171790) DEPARTMENT OF EDUCATION(.005200)
- CITY OF HOUSTON - EXEMPTS: HS-20%; O65-160,000; DIS-160,000
- ISD - KATY - EXEMPTS: HS-25,000; O65-20,000; DIS-10,000HARRIS
COUNTY COLLECTING AS OF SEPTEMBER 1,2012

061 040 019

NCP/JJA1

CAD# **116-539-001-0010**
DESC **RES K1 BLK 1 TIN MILES SUBDIVISION**
ACREAGE **2.256**
SITUS **2120 S HIGHWAY 6 061**
MAIL 16767 N PERIMETER DR STE 210 SCOTTSDALE AZ 85260-1062

ASSESSED OWNER(S)	2017 ASSESSED VALUES	
SPIRIT MASTER FUNDING LLC	LAND	1,046,331
	IMPROVEMENT	604,500
	TOTAL VALUE	1,650,831

CLASS CODE **F1 - REAL, COMMERCIAL**
HIGH LIABILITY

TAX ENTITY INFORMATION

HARRIS COUNTY	PAYMENTS AS OF				09/15/2017
PO BOX 3547 HOUSTON, TX 77253-3547			16 TAX RATE		0.6351800
PHONE 713-274-8000			W/O EXEMPT		10,485.75
EXEMPTIONS NONE	YR	BASE TAX	BASE DUE	DUE 10/2017	DUE 11/2017
	16	10,865.88	0.00		*** PAID ***
TS 10-06-17	SUBTOTAL	10,865.88	0.00	0.00	0.00

TAX CERTIFICATE**DATA TRACE**

10920 W. SAM HOUSTON PKWY N. SUITE 400

HOUSTON~ TX. 77064

PHONE (281)890-0381 FAX (281)890-2114

REMIT CERT FEE TO:**DATA TRACE****P.O BOX 31001-2283****PASADENA, CA 91110-2283**

CUST: FIRST AMERICAN TITLE CO - NCS	BRANCH:			
ORDER: NCS-872519	CLOSER:	ORDER TYPE: A	SUBTYPE: R	DATE: 10/06/2017

CITY OF HOUSTON	PAYMENTS AS OF			09/15/2017
COLLECTED BY COUNTY			16 TAX RATE	0.5864200
PHONE 713-274-8000			W/O EXEMPT	9,680.80
EXEMPTIONS NONE	YR	BASE TAX	BASE DUE	DUE 10/2017
	16	10,031.76	0.00	*** PAID ***
TS 10-06-17	SUBTOTAL	10,031.76	0.00	0.00

ISD - KATY	PAYMENTS AS OF			09/15/2017
COLLECTED BY COUNTY			16 TAX RATE	1.5166000
PHONE 713-274-8000			W/O EXEMPT	25,036.50
EXEMPTIONS NONE	YR	BASE TAX	BASE DUE	DUE 10/2017
	16	25,944.14	0.00	*** PAID ***
TS 10-06-17	SUBTOTAL	25,944.14	0.00	0.00

CONDITIONS, DISCLAIMERS AND EXCLUSIONS

This Tax Certificate/Tax Order Report does not constitute a report on or certification of: (1) mineral (productive and/or non-productive) taxes or leases; (2) personal property taxes; or (3) other non ad valorem taxes (such as paving liens, stand-by charges or maintenance assessments).

Data Trace Information Services LLC ("Data Trace") may have warranted the accuracy of this Tax Certificate/Tax Order Report to its customer (the "Data Trace Customer") pursuant to the terms and conditions of a written tax service agreement between Data Trace and said Data Trace Customer (the "Tax Service Agreement"). Any such warranty (hereinafter, "Data Trace Customer Warranty") does not: (a) extend to a third party bearer of this Tax Certificate/Tax Order Report; (b) cover any changes made to the records of the taxing authority after the "payments as of," "paid," or "payment" dates delineated above; and (c) cover any invalid tax information shown on the records of the taxing authority or resulting from an error by the Data Trace Customer (including, without limitation, submission of incorrect property information by said Data Trace Customer). DATA TRACE MAKES NO WARRANTIES (EXPRESS OR IMPLIED) WITH RESPECT TO THIS TAX CERTIFICATE/TAX ORDER REPORT OTHER THAN (WHERE APPLICABLE) THE DATA TRACE CUSTOMER WARRANTY. Any and all claims under a Data Trace Customer Warranty must be submitted to Data Trace by the corresponding Data Trace Customer and are subject to the terms and conditions set forth in the pertinent Tax Service Agreement (including, without limitation, the filing deadlines applicable to such claims). In some jurisdictions Data Trace's validation of a Tax Certificate/Tax Order Report is required to activate a Data Trace Customer Warranty.

PRINTED BY NCP/JJA1

HOA CERTIFICATE**DATA TRACE**

10920 W. SAM HOUSTON PKWY N. SUITE 400

HOUSTON~ TX. 77064

PHONE (281)890-0381 FAX (281)890-2114

REMIT CERT FEE TO:**DATA TRACE****P.O BOX 31001-2283****PASADENA, CA 91110-2283****CUST: FIRST AMERICAN TITLE CO - NCS****BRANCH:****ORDER: NCS-872519****CLOSER:****ORDER TYPE: A****SUBTYPE: R****DATE: 10/06/2017****SELLER** SPIRIT MASTER FUNDING LLC**BUYER****COUNTY** HARRIS**SUBD NAME / BLK TIM MILES****NO HOA FOUND FOR TIM MILES****GENERAL INFORMATION ONLY:****DATA TRACE RESEARCHED 11/16/2006 - UNABLE TO
LOCATE AN ACTIVE HOA FOR THIS ASSOCIATION.******* OUR RESEARCH DOES NOT INDICATE THE EXISTENCE OF AN ********** HOA. PLEASE VERIFY WITH YOUR TITLE REPORT. IF AN ********** HOA IS KNOWN, PLEASE CONTACT YOUR TAX SERVICE *******SUMMARY OF ACCOUNT 116-539-001-0010****DESC** RES K1 BLK 1 TIN MILES SUNDIVISION**SITUS** 2120 S HIGHWAY 6 061**CONDITIONS, DISCLAIMERS AND EXCLUSIONS**

This HOA Certificate does not constitute a report on or certification of: (1) mineral (productive and/or non-productive) taxes or leases; (2) personal property taxes; or (3) other non ad valorem taxes (such as paving liens, stand-by charges or maintenance assessments).

Data Trace Information Services LLC ("Data Trace") may have warranted the accuracy of this HOA Certificate to its customer (the "Data Trace Customer") pursuant to the terms and conditions of a written tax service agreement between Data Trace and said Data Trace Customer (the "Tax Service Agreement"). Any such warranty (hereinafter, "Data Trace Customer Warranty") does not: (a) extend to a third party bearer of this HOA Certificate; (b) cover any changes made to the records of the association or other assessment authority after the "payments as of," "paid," or "payment" dates delineated above; and (c) cover any invalid assessment information shown on the records of the association or other assessment authority or resulting from an error by the Data Trace Customer (including, without limitation, submission of incorrect property information by said Data Trace Customer). DATA TRACE MAKES NO WARRANTIES (EXPRESS OR IMPLIED) WITH RESPECT TO THIS HOA CERTIFICATE OTHER THAN (WHERE APPLICABLE) THE DATA TRACE CUSTOMER WARRANTY. Any and all claims under a Data Trace Customer Warranty must be submitted to Data Trace by the corresponding Data Trace Customer and are subject to the terms and conditions set forth in the pertinent Tax Service Agreement (including, without limitation, the filing deadlines applicable to such claims). In some jurisdictions Data Trace's validation of a HOA Certificate is required to activate a Data Trace Customer Warranty.

PLAN FOR
TIM MILES SUBDIVISION
 BEING A SUBDIVISION OF THE
 LANDS ACQUIRED BY THE
 STATE OF TEXAS
 MARRIS COUNTY, TEXAS

17 RESERVES — 4 BLANKS
 CONVEYANCE

WILLIAM MILES SR - PROSELYTE
 FERNAND LOPEZ MILES
 EARL J. MILES
 GERALD S. MILES
 JOHN W. MILES
 JOHN W. MILES, JR.
 JOHN W. MILES, III

SHEET 1 OF 1

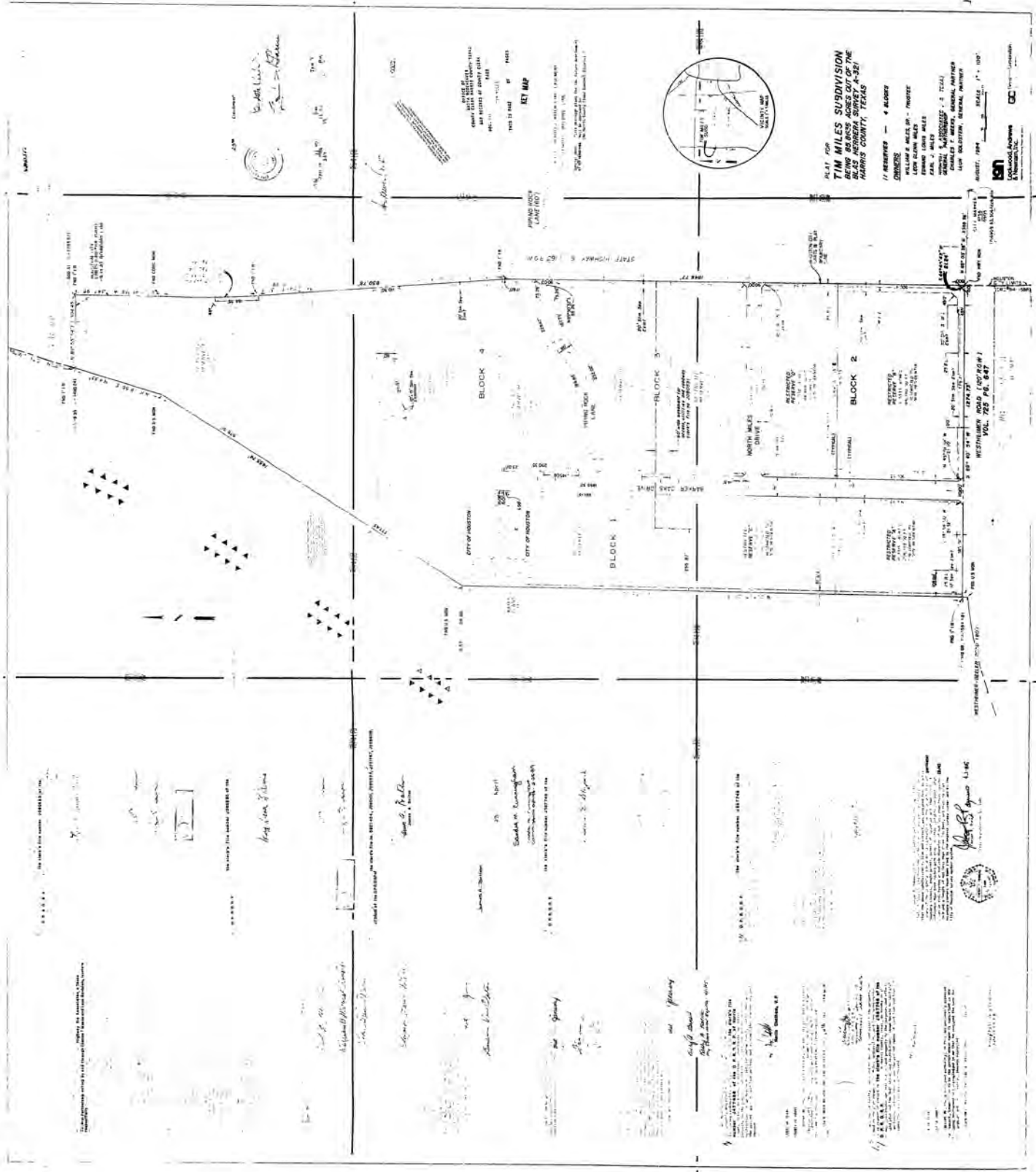
SCALE: 1" = 100'

DATE: 1942



KEY MAP

THIS MAP SHOWS THE LOCATION OF THE TRACTS DESCRIBED HEREIN WITHIN THE BOUNDARIES OF MARRIS COUNTY, TEXAS.



APPROVED FOR RECORDATION BY THE CLERK OF THE COUNTY COURTS, MARRIS COUNTY, TEXAS

James B. Butler
 County Clerk

Witness my hand and the seal of the County of Marris, State of Texas, this 25th day of April, 1942.

James B. Butler
 County Clerk

Witness my hand and the seal of the County of Marris, State of Texas, this 25th day of April, 1942.

James B. Butler
 County Clerk



James B. Butler
 County Clerk

STATE OF TEXAS
COUNTY OF HARRIS

Me, Earl J. Miles, William B. Miles, Sr., Trustees, Leon Glenn Miles,
Mary Lou Miles, Edward Louis Miles, and
General Warranty Deed through **Chloe T. Hicks and Leon Goldstein, Trustees**
of the above and foregoing map of Tim Miles Subdivision, do hereby make and
establish said subdivision and development plan as shown on said map or plat and
all lines, dedications, use of the public forever, all streets (except those
streets designated as private streets), alleys, parks, water courses, drains,
cessments and public places shown thereon for the purposes and restrictions therein
therein expressed, and do hereby bind and covenant ourselves, our heirs,
successors and assigns to warrant and forever defend the title to the land so
dedicated.

FURTHER, Owners have dedicated and by these presents do dedicate to the
use of the public for public utility purposes, for unobstructed aerial
service, a right-of-way (8'6") in width for perimeter lots, seven
feet (7'7") in width for back-to-back lots from a plane sixteen feet (16')
above the ground level upward, located adjacent to all public utility easements
that are designated with aerial easements (i.e. 8 aerial) shown herein.

FURTHER, Owners do hereby declare that all parcels of land designated as
lots on this plat are originally intended for the construction of residential
dwelling units thereon for the placement of mobile home subdivisions and shall
be restricted for same under the terms and conditions of such restriction
filed separately.

FURTHER, Owners do hereby covenant and agree that all of the property within
the boundaries of this plat shall be restricted to use for the placement of any
septic tanks into any public utility easement, road or alley or any drainage
ditch, either directly or indirectly.

FURTHER, Owners do hereby dedicate to the public a strip of land fifteen
(15) feet wide on each side of the centerline of all water courses, creeks,
gulches, ravines, in said plat, as easements for drainage purposes, giving the
City of Houston, Harris County or any other governmental agency the right to
enter upon said easement at any and all times for the purpose of construction
and maintenance of drainage facilities and structures.

FURTHER, Owners do hereby covenant and agree that all of the property
within the boundaries of this plat and adjacent to any drainage easement,
gully, creek or natural drainage way shall be restricted to use for such
drainage ways and for the construction, maintenance, planting and other
operations and maintenance of the drainage facility and that
such abutting property shall not be permitted to drain directly into this easement
except by means of an approved drainage structure.

WITNESS my hand in the City of Houston, Texas, this 4th day of
1985.

Earl J. Miles
Earl J. Miles

William B. Miles, Sr.
William B. Miles, Sr., Trustee

Leon Glenn Miles
Leon Glenn Miles

Mary Lou Miles
Mary Lou Miles

I, Linda Susan Richards, owner and holder of a lien against the property
described in the plat known as Tim Miles Subdivision, do hereby
by instrument recorded in the Public Records of Harris County, Texas, do hereby, in all things subordinate
to the interest in said property to the purposes and effects of said plat and
dedications and restrictions shown thereon to said plat and I hereby confirm
that I am the present owner of said lien and have not assigned the same nor
any part thereof.

Linda Susan Richards
Linda Susan Richards

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared
Linda Susan Richards, known to me to be the person whose name is subscribed
to the foregoing instrument, and acknowledged to me that he executed the same
for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 5th day of April,
1985.

Charles B. Burwell
Charles B. Burwell
Notary Public in and for the
State of Texas

OFFICE OF
ANITA WICKREWE
COUNTY CLERK HARRIS COUNTY TEXAS

MAP RECORDS OF COUNTY CLERK

PAGE 100

TIM MILES

THIS IS PAGE 2 OF 10 PAGES



I, Mary Lema Williams, owner and holder of a lien against the property
described in the plat known as Tim Miles Subdivision, do hereby, in all things subordinate
to the interest in said property to the purposes and effects of said plat and
dedications and restrictions shown thereon to said plat and I hereby confirm
that I am the present owner of said lien and have not assigned the same
nor any part thereof.

Mary Lema Williams
Mary Lema Williams

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared
Mary Lema Williams known to me to be the person whose name is subscribed
to the foregoing instrument and acknowledged to me that he executed the
same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 18th day of April,
1985.

Charles B. Burwell
Charles B. Burwell
Notary Public in and for the
State of Texas

OFFICE OF
ANITA WICKREWE
COUNTY CLERK HARRIS COUNTY TEXAS

MAP RECORDS OF COUNTY CLERK

PAGE 100

TIM MILES

THIS IS PAGE 2 OF 10 PAGES

James A. Baker
James A. Baker

William B. Miles, Sr.
William B. Miles, Sr., Trustee

Leon Glenn Miles
Leon Glenn Miles

Mary Lou Miles
Mary Lou Miles

MATCH LINE



BARKER RESERVOIR

SEE PAGE 101

SEE PAGE 100

SEE PAGE 103

MATCH LINE

MATCH LINE

N 32° 07' 05" E
771.44'

14360377

JAN 31 12 30 PM 1985
City of Houston
14360377

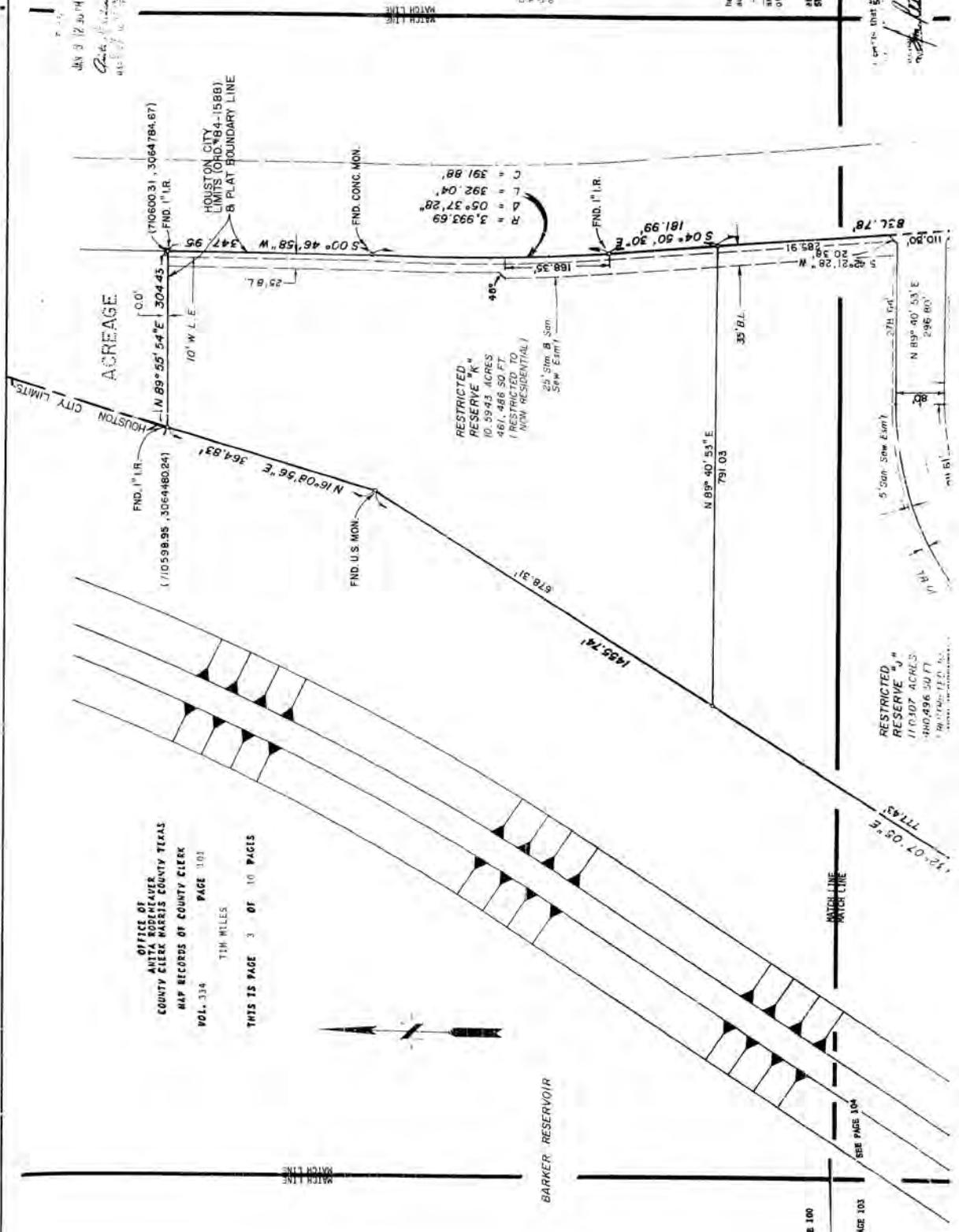
This is to certify that the City of Houston, Texas has approved this plat and that the same is a true and correct copy of the original plat as shown hereon of this plat this 22nd day of July 1984.



I, Anita Sodebeaver, Clerk of the City of Houston, Texas, do hereby certify that the within instrument was filed for registration in the City of Houston, Texas on this 22nd day of July 1984 at 11:30 o'clock AM and that the same is a true and correct copy of the map records of Harris County, Texas.

Witness my hand and seal of office this 22nd day of July 1984.

SEE PAGE 102
SEE PAGE 103
SEE PAGE 104
SEE PAGE 105
SEE PAGE 106
SEE PAGE 107
SEE PAGE 108
SEE PAGE 109
SEE PAGE 110



ACREAGE

RESTRICTED RESERVE "K"
10.5943 ACRES
461,486 SQ. FT.
(RESTRICTED TO NEW RESIDENTIAL)

RESTRICTED RESERVE "J"
110,107 ACRES
4,800,296 SQ. FT.
(RESTRICTED TO NEW RESIDENTIAL)

OFFICE OF ANITA SODEBEAVER
COUNTY CLERK HARRIS COUNTY TEXAS
MAP RECORDS OF COUNTY CLERK
POL. 334 PAGE 103
TIM MILES

THIS IS PAGE 3 OF 10 PAGES



I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat as shown hereon of this plat this 22nd day of July 1984.

Tim Miles
Tim Miles

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat as shown hereon of this plat this 22nd day of July 1984.

Tim Miles
Tim Miles

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat as shown hereon of this plat this 22nd day of July 1984.

Tim Miles
Tim Miles

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat as shown hereon of this plat this 22nd day of July 1984.

Tim Miles
Tim Miles

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat as shown hereon of this plat this 22nd day of July 1984.

Tim Miles
Tim Miles

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat as shown hereon of this plat this 22nd day of July 1984.

Tim Miles
Tim Miles

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat as shown hereon of this plat this 22nd day of July 1984.

Tim Miles
Tim Miles

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat as shown hereon of this plat this 22nd day of July 1984.

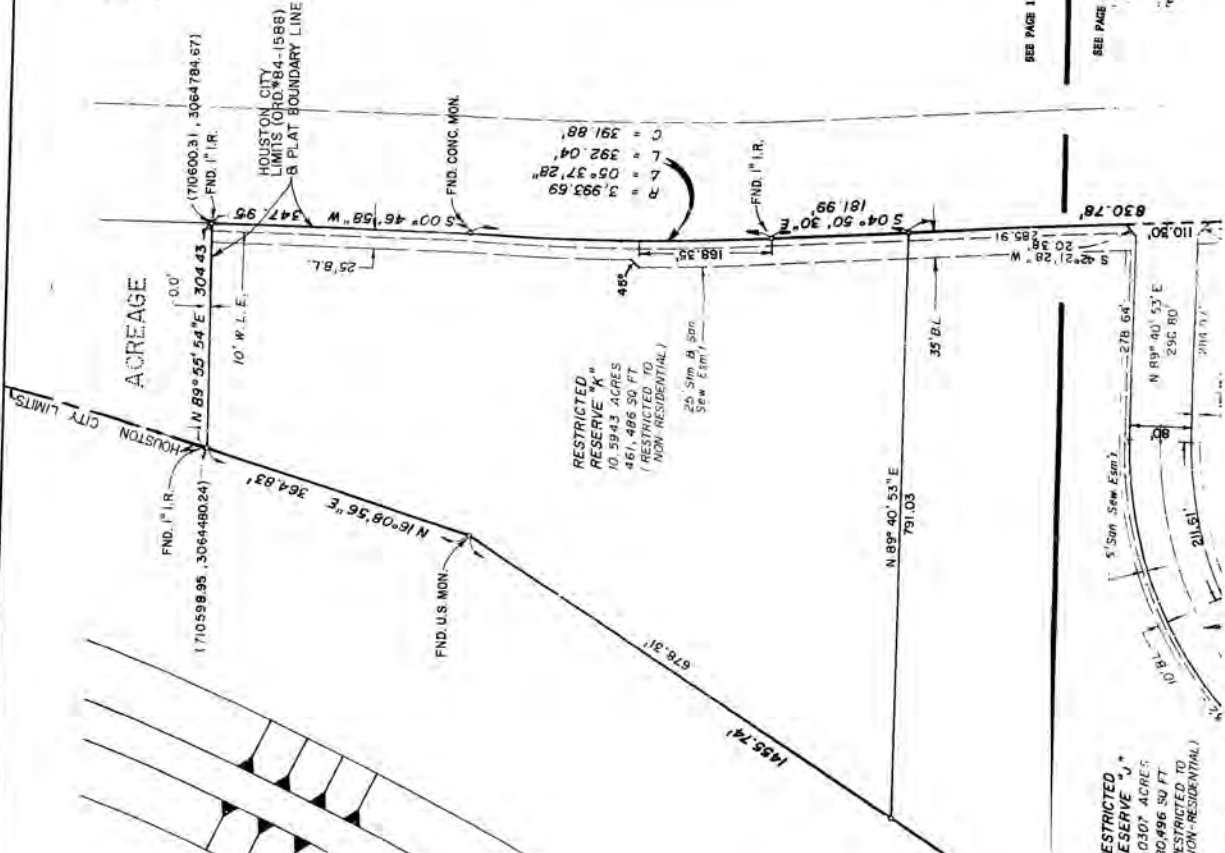
Tim Miles
Tim Miles

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat as shown hereon of this plat this 22nd day of July 1984.

Tim Miles
Tim Miles

NO 801577

JAN 3 1984
Anita Rodheaver
Clerk of the County
Court of Harris County, Texas



RESTRICTED RESERVE "K" 10.5943 ACRES 461,486 SQ FT (RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "J" 1.0507 ACRES 30,496 SQ FT (RESTRICTED TO NON-RESIDENTIAL)

R	=	2,993.69
L	=	05.37'28"
L	=	392.04'
C	=	391.88'

**OFFICE OF
ANITA RODHEAVER
COUNTY CLERK HARRIS COUNTY TEXAS
MAP RECORDS OF COUNTY CLERK
VOL. 334 PAGE 102**

TIM MILES

THIS IS PAGE 4 OF 10 PAGES

This is to certify that the City Planning Commission of the City of Houston, Texas has approved this plat and the boundaries of the City of Houston, Texas shown hereon and authorized the recording of this plat this 23rd day of December, 1983.



By: Bette Kuhn
Bonette Leavelle, Chairman

By: Patricia Garcia
Patricia Garcia, Secretary

I, Anita Rodheaver, Clerk of the County, Court of Harris County, do hereby certify that this plat for registration in my office on JAN 9 1984 at 12:30 P.M., and duly recorded on JAN 14 1984 at 12:50 P.M. in Volume 334 Page 99 of the map records of Harris for said county. File Code No. _____

Witness my hand and seal of office, at Houston, the day and date last above written.

Anita Rodheaver
Clerk of the County
Court of Harris County, Texas

[Signature]
Anita Rodheaver

MATCH LINE

SEE PAGE 104

SEE PAGE 101

STATE OF TEXAS
COUNTY OF HARRIS

WITNESS my hand in the City of Houston, Texas, this 14th day of June, 1985.

Earl B. Miles
Earl B. Miles

William P. Williams
William P. Williams, Trustee

Leon Glenn Atkins
Leon Glenn Atkins

Edward Sam Miley
Edward Sam Miley

STATE OF TEXAS
COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared Earl B. Miles, William B. Miles, Sr., Trustee, Leon Glenn Atkins, William P. Williams, Trustee, and Edward Sam Miley, all of whom I know to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14th day of June, 1985.

Stephen Van Patten
Notary Public in and for the State of Texas

IN TESTIMONY WHEREOF, the Highway 6 Associates, of Texas General Corporation has caused this instrument to be signed by Charles T. Neale, General Partner and Leon Goldstein, General Partner, this 30th day of January, 1985.

Charles T. Neale
Charles T. Neale, General Partner

Leon Goldstein
Leon Goldstein, General Partner

STATE OF TEXAS
COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared Charles T. Neale, General Partner and Leon Goldstein, General Partner of Highway 6 Associates, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and considerations therein expressed and in the capacity therein and herein stated, and as the act and deed of said partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 30th day of January, 1985.

Charles T. Neale
Charles T. Neale, General Partner

Leon Goldstein
Leon Goldstein, General Partner

Mr. Mainland Savings Associates, owner and holder of a lien against the property described in the plat known as The Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file number J477438 of the Public Records of Harris County, Texas, and the dedication and effects of said plat, and the restrictions, shown therein to said plat and we hereby confirm that we are the present owner of said lien and have not assigned the same nor any part thereof.

STATE OF TEXAS
COUNTY OF HARRIS

WITNESS my hand in the City of Houston, Texas, this 23rd day of April, 1985.

James A. Bolton
James A. Bolton

James A. Bolton
James A. Bolton

OFFICE OF
ANTHONY J. KAUFMAN
COUNTY CLERK HARRIS COUNTY TEXAS
MAP RECORDS OF COUNTY CLERK
PAGE 103

THIS IS PAGE 5 OF 10 PAGES

STATE OF TEXAS
COUNTY OF HARRIS

Before me, the undersigned authority, on this day personally appeared James A. Bolton, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 23rd day of April, 1985.

Sandra M. Cunningham
Sandra M. Cunningham
Notary Public in and for the State of Texas

Clarence D. Shepard
Clarence D. Shepard

STATE OF TEXAS
COUNTY OF HARRIS

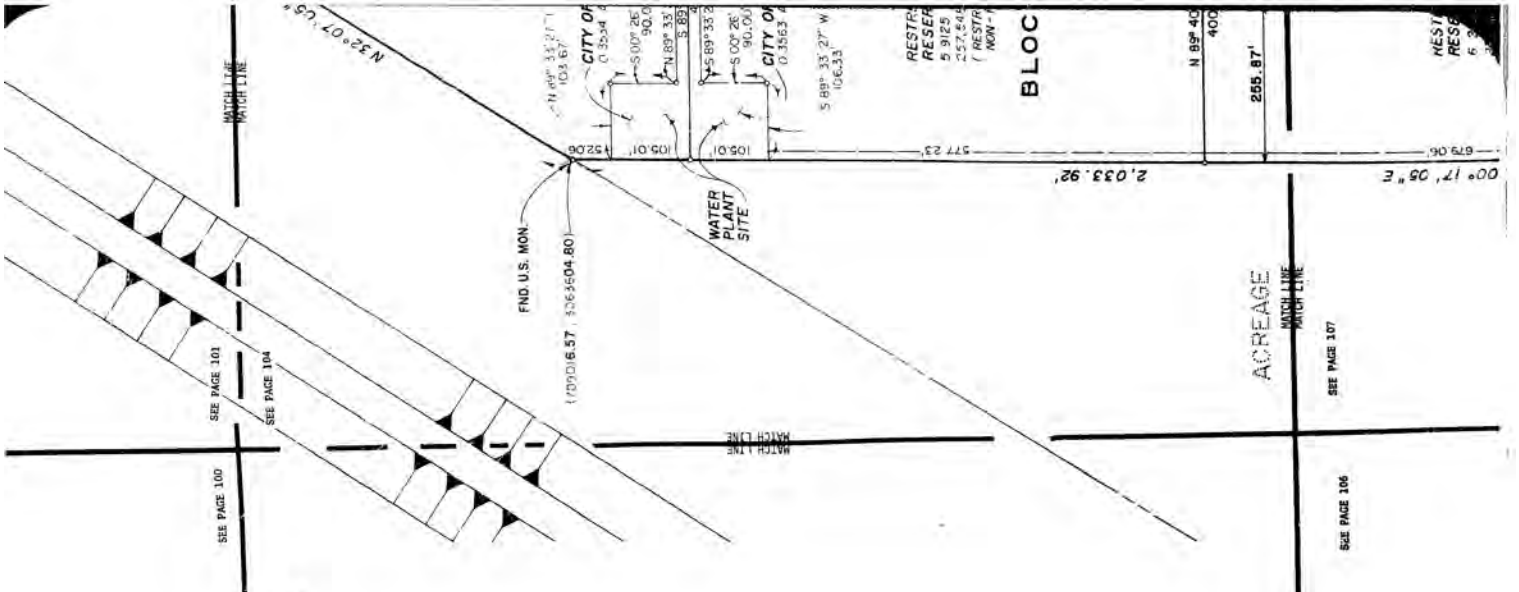
Before me, the undersigned authority, on this day personally appeared Clarence D. Shepard, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 20th day of February, 1985.



Clarence D. Shepard
Clarence D. Shepard

Mr. Samuel Pasack Trust, owner and holder of a lien against the property described in the plat known as The Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file number J477438 of the Public Records of Harris County, Texas, and the dedication and effects of said plat, and the restrictions, shown therein to said plat and we hereby confirm that we are the present owner of said lien and have not assigned the same nor any part thereof.



SEE PAGE 100
MATCH LINE

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By *Edna S. Lavin*
 COUNTY CLERK, SECRETARY

I, Anita Mulheuser, Clerk of the County Court of Harris County, Texas, do hereby certify that the within instrument with its exhibits and addendum was filed for registration in my office on **JAN 9 1985** at **10:30 AM**, and is a true and correct copy of the original as shown to me and is a true and correct copy of the map records of Harris County, Texas.

Witness my hand and seal of office at Houston, the day and date last above written.
 SEE PAGE 101

Anita Mulheuser
 Clerk of the County Court of Harris County, Texas

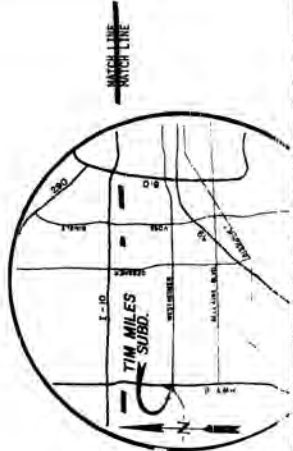
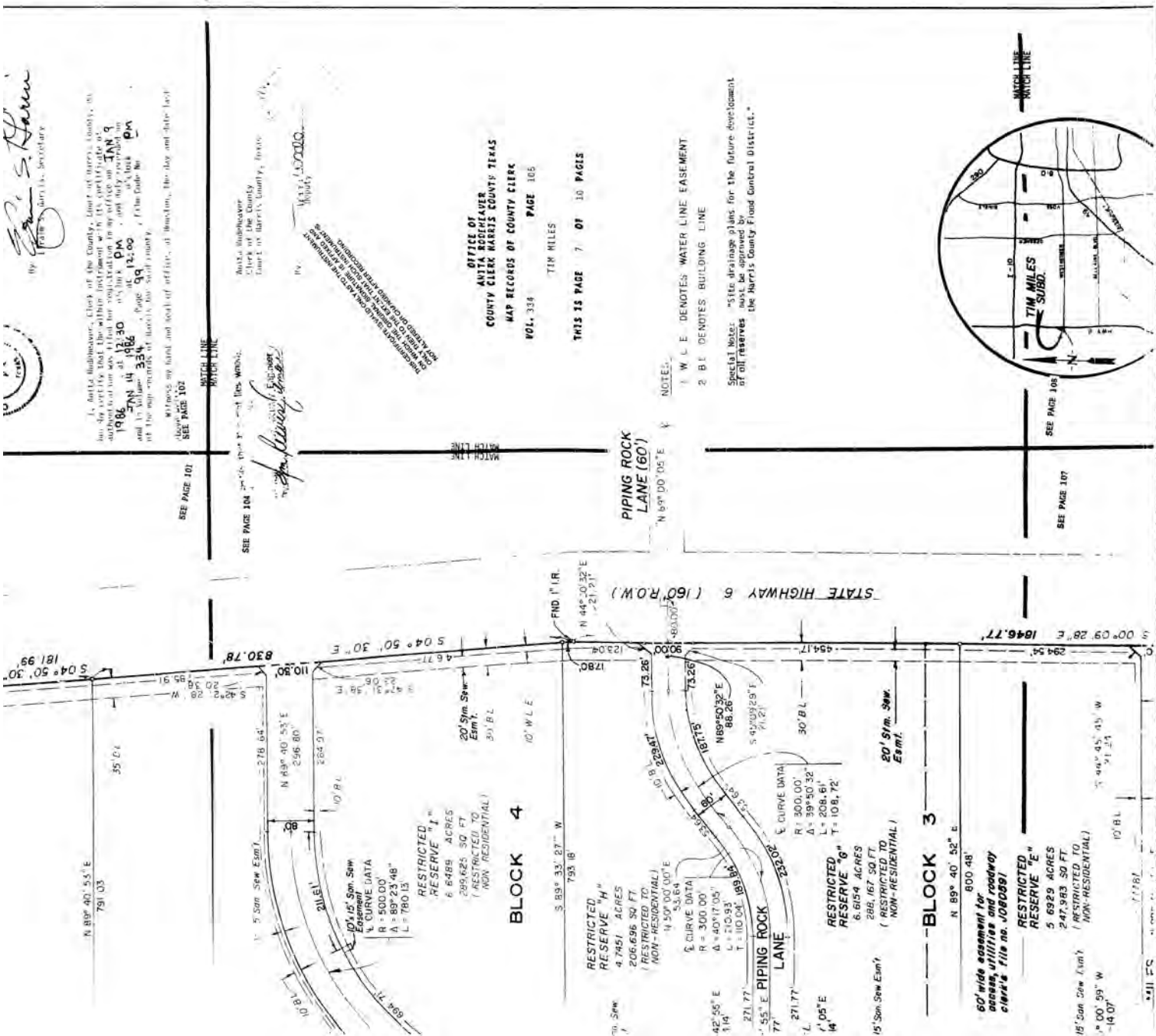
NOTICE: This instrument is subject to the provisions of the Texas Uniform Gifts to Minors Act (TUGMA) and the Texas Uniform Gifts to Minors Act (TUGMA) and the Texas Uniform Gifts to Minors Act (TUGMA).

OFFICE OF
 ANITA MULHEUSER
 COUNTY CLERK HARRIS COUNTY TEXAS
 MAP RECORDS OF COUNTY CLERK
 VOL. 334 PAGE 105
 TIM RILES

THIS IS PAGE 7 OF 10 PAGES

NOTE:
 1 W L E DENOTES WATER LINE EASEMENT
 2 B L E DENOTES BUILDING LINE

Special Note: "Site design plans for the future development of all reserves must be approved by the Harris County Flood Control District."



SEE PAGE 101

SEE PAGE 104

SEE PAGE 105

SEE PAGE 107

11/18/81

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Charles T. Hays, General Partner and Co-Administrator of the Highways 6 Associates, a Texas General Partnership, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and considerations therein expressed and in the capacity therein and here stated, and as the act and deed of said partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 24th day of February, 1985.

Kathy D. Rogers
Notary Public in and for the
State of Texas
Bobby B. Keatts
My Commission Expires: 4/1/85

Mr. Maryland Savings Associates, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said County of Harris, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owner of said lien and have not assigned the same nor any part thereof.

By: *Neil H. Chatham*
Neil H. Chatham, V.P.

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned authority, on this day personally appeared [Signature], known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14th day of February, 1985.



Neil H. Chatham
Notary Public in and for the
State of Texas
Commission Expires 2/28/86

Mr. Peacock Realty, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file number J367746 of the County of Harris, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owner of said lien and have not assigned the same nor any part thereof.

By: *Tom Peacock*
Tom Peacock

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned authority, on this day personally appeared [Signature], known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14th day of February, 1985.

Neil H. Chatham
Notary Public in and for the
State of Texas
Commission Expires 2/28/86

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Clarence B. Weaver, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 11th day of February, 1985.



Clarence B. Weaver
Notary Public in and for the
State of Texas
Commission Expires 2/28/86

SEE PAGE 103

SEE PAGE 104

MATCH LINE

MATCH LINE

SEE PAGE 107

Mr. Ira Caneth Peacock Trust, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file number J367746 of the County of Harris, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owner of said lien and have not assigned the same nor any part thereof.

Ira Caneth Peacock Trust
Ira Caneth Peacock Trust

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Ira Caneth Peacock Trust known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 11th day of February, 1985.

Ira Caneth Peacock Trust
Notary Public in and for the
State of Texas
Commission Expires 2/28/86

OFFICE OF
ANITA ROSENBAUM
COUNTY CLERK HARRIS COUNTY TEXAS
MAP RECORDS OF COUNTY CLERK
VOL. 334 PAGE 106
TEN MILES

THIS IS PAGE 0 OF 10 PAGES

I, Cesar R. Romero, a P.E., am authorized under the laws of the State of Texas to practice the profession of surveying and hereby certify that the foregoing instrument is a true and correct copy of the original survey of the property made under my supervision on the ground; that all boundary corners, angle points, points of curvature and other points of reference have been marked with iron (or other suitable permanent metal) pins and a length of not less than three (3) feet; and that the boundary corners have been tied to the nearest survey corner and to the City of Houston survey marker system.



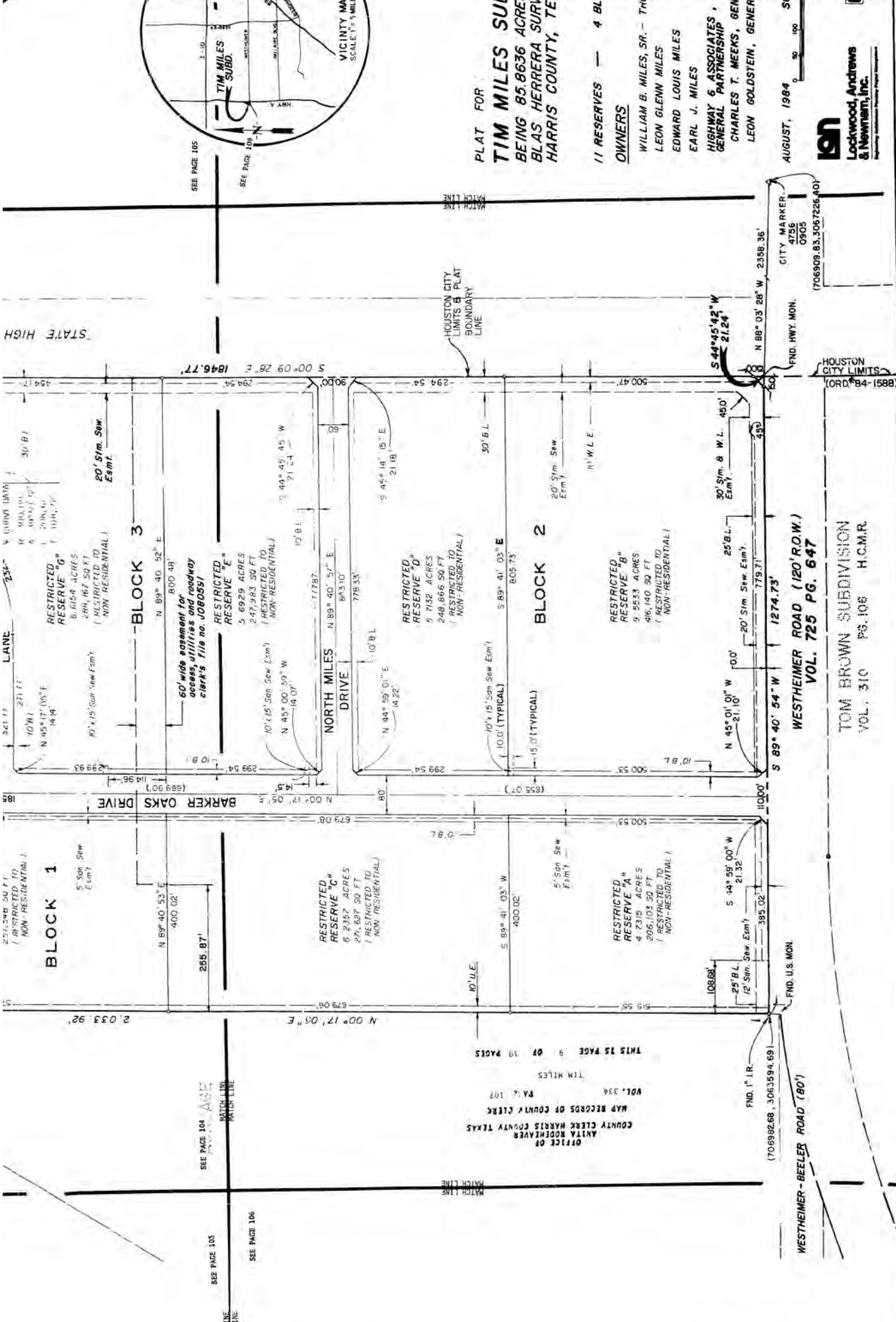
Cesar R. Romero
Cesar R. Romero
Texas Registration No. 1348

WESTHEIMER-BEELER ROAD (80')

FND. 1" I.R.
(706982.68, 3053594.69)

2,033.92

N 00° 17' 05" E



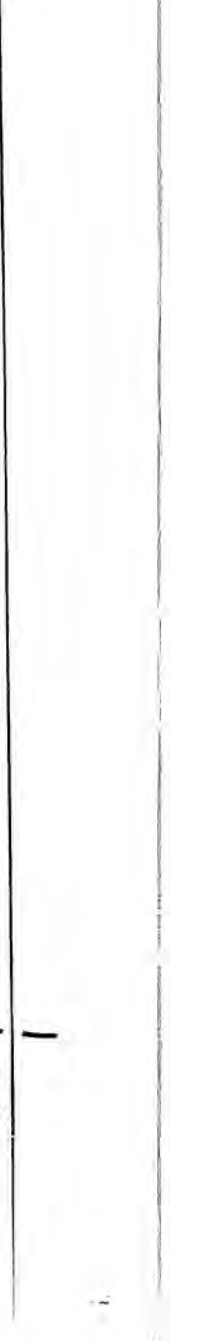
PLAT FOR
TIM MILES SUB
BEING 85.8636 ACRES
BLAS HERRERA SURV
HARRIS COUNTY, TEXAS

OWNERS
 WILLIAM B. MILES, SR. - THRU
 LEON GLENN MILES
 EDWARD LOUIS MILES
 EARL J. MILES
 HIGHWAY 6 ASSOCIATES
 GENERAL PARTNERSHIP
 CHARLES T. MEEKS, GENERAL
 LEON GOLDSTEIN, GENERAL

RESERVES - 4 BLO

AUGUST, 1984

Lockwood, Andrews & Newnam, Inc.
 Surveyors and Engineers
 10010 Katy Road, Houston, Texas 77055
 (713) 867-0000



1/2" = 100'

RESTRICTED RESERVE "G"
6,654 ACRES
288.167 50 FT
RESTRICTED TO NON-RESIDENTIAL

20' 51m. Sew. Esm't

-BLOCK 3
N 89° 40' 52" E
800.48'

assessment for utilities and roadway
File no. 0086381

RESTRICTED RESERVE "E"
5,692.9 ACRES
247.983 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "D"
5,732 ACRES
248,866 50 FT
RESTRICTED TO NON-RESIDENTIAL

BLOCK 2
S 89° 41' 03" E
805.73'

RESTRICTED RESERVE "B"
9,553 ACRES
416,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

30' 51m. Sew. Esm't

25' B L

OWN SUBDIVISION
PG. 106 H.C.M.R.
L. 725 PG. 647

1274.73'

187.73'

120' R.O.W.

STATE HIGHWAY

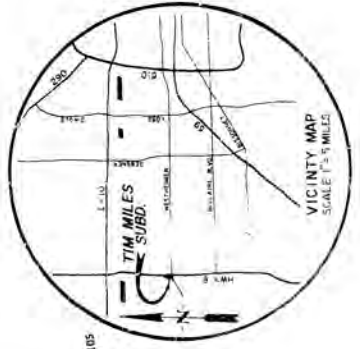
S 00° 09' 28" E 1846.77'

HOUSTON CITY LIMITS OF PLAT BOUNDARY LINE

CITY MARKER
4756
0905
(706909.83, 3067226.00)

FND. HWY. MON.
N 88° 03' 28" W 2958.36'

HOUSTON CITY LIMITS
(ORD. 84-1588)



**PLAT FOR
TIM MILES SUBDIVISION
BEING 85.8636 ACRES OUT OF THE
BLAS HERRERA SURVEY A-321
HARRIS COUNTY, TEXAS**

11 RESERVES — 4 BLOCKS

OWNERS

- WILLIAM B. MILES, SR. - TRUSTEE
- LEON GLENN MILES
- EDWARD LOUIS MILES
- EARL J. MILES
- HIGHWAY 6 ASSOCIATES, A TEXAS GENERAL PARTNERSHIP
- CHARLES T. WEEKS, GENERAL PARTNER
- LEON GOLDSTEIN, GENERAL PARTNER

AUGUST, 1984
SCALE: 1" = 100'



Lockwood, Andrews & Newnam, Inc.
Surveying, Consulting, Planning, Mapping



Geogram Corporation
Land Surveyors, Engineers

OFFICE OF
ANITA RODRIGUEZ
COUNTY CLERK HARRIS COUNTY TEXAS
MAP RECORDS OF COUNTY CLERK
101.334 PAGE 108
TIM MILES

THIS IS PAGE 10 OF 10 PAGES

MD

S015191

07/11/96 100289631 S015191

\$17.00

SPECIAL WARRANTY DEED AND BILL OF SALE

(NON-MERGER)

THE STATE OF TEXAS

§

COUNTY OF HARRIS

§

KNOW ALL MEN BY THESE PRESENTS

509-15-2098

That NAB ASSET CORPORATION, a Texas corporation (herein called "Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) cash and other good and valuable consideration in hand paid to it by Emil A. Nakfoor, Trustee, and Andrew K. Golden, Trustee (herein together called "Grantee"), whose address is 2801 Post Oak Boulevard, Suite 400, Houston, Texas 77056, the receipt and sufficiency of which are hereby acknowledged and confessed, and for the payment of which no right of rescission or lien, express or implied, is hereby retained or shall exist, and subject to the reservations from and exceptions to conveyance and warranty noted below, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto Grantee, the following described property, together with all improvements thereon (the "Subject Property"), situated in Harris County Texas, and being more fully described as set forth on Exhibit "A" attached hereto and hereby referred to and incorporated herein for all purposes.

200

Without intending to ratify any of same, this conveyance and special warranty herein contained are expressly made subject to all easements, rights-of-way, and prescriptive rights, whether of record or not; all validly existing liens, restrictions, mineral reservations, royalty reservations, covenants, conditions, oil and gas leases, mineral severances, and other encumbrances that affect the Subject Property, whether recorded or unrecorded; rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; taxes, the payment of which Grantee assumes; and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

TO HAVE AND TO HOLD the Subject Property, together with all and singular and rights and appurtenances thereunto in anywise belonging, unto Grantee, its successors and assigns, forever; and Grantor does hereby bind itself, its successors and legal representatives to warrant and forever defend, all and singular, the Subject Property unto Grantee, its 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, subject to the matters set forth herein.

For the same consideration herein recited, Grantor does hereby Grant, Bargain, Sell, Transfer, Convey, Assign and Set Over unto Grantee, its successors and assigns forever, all right, title and interest of Grantor, if any, as of the date hereof, in and to each and every item of personal property (the "Personalty"), if any, located in or upon the Subject Property. To have and to hold said interest in the Personalty to and for Grantee's use forever.

WITH RESPECT TO THE PERSONALTY GRANTOR IS MAKING NO WARRANTIES OF ANY KIND, INCLUDING WITHOUT LIMITATION, WARRANTIES OF QUALITY, FITNESS OR MERCHANTABILITY, EITHER EXPRESS OR IMPLIED, AND BY ITS ACCEPTANCE HEREOF, GRANTEE FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, ACKNOWLEDGES AND AGREES THAT SAID PERSONALTY IS BEING CONVEYED AND ACCEPTED "AS IS" ON THE DATE HEREOF.

Grantor further agrees that to the extent Grantor acquired the Subject Property by a deed in lieu of foreclosure or a non-merger deed subject to liens in favor of Grantor, then, in such event, to the extent such liens against the Subject Property in favor of Grantor (the "Liens") have not been extinguished, this conveyance is made and accepted expressly subject to, but not in extinguishment of, the Liens, and for the same consideration herein stated Grantor transfers and assigns to Grantee all of its right, title and interest in and to the Liens, and any notes or other debt thereby secured, without recourse and without warranty, express or implied. It is agreed by Grantor

509-15-2099

that to the extent of any such validly existing Liens assigned herein, Grantee intends that there should be no merger of the interests of Grantee herein, upon acceptance of this instrument, as the owner of the legal and equitable title of the Subject Property and as owner and holder of the Liens thereon.

This special warranty deed and bill of sale is being executed in several original counterparts, all of which are identical, except that to the extent this deed covers property in more than one county, to facilitate recordations, there may be omitted from certain counterparts property descriptions in Exhibit A which contain descriptions of property located in recording jurisdictions other than the jurisdiction in which the particular counterpart is to be recorded, provided the parties shall record a complete Exhibit A in the counterpart recorded in the Official Public Records of Real Property of Harris County, Texas. Each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts shall constitute but one and the same deed and bill of sale.

EXECUTED on the date of the acknowledgment herein below set forth, to be effective, however, for all purposes, as of the 5th day of June, 1996.

NAB ASSET CORPORATION

10V

By: Michael A. Hrebenar
Michael A. Hrebenar
President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me this 5th day of June, 1996, by Michael A. Hrebenar, President of NAB Asset Corporation, a Texas corporation, on behalf of said corporation.

Janet M. McMahon

Notary Public in and for
the State of Texas



(Printed Name of Notary)

My Commission Expires: _____

WHEN RECORDED, RETURN TO
MICHAEL W. MORGAN
FULBRIGHT & JAWORSKI L.L.P.
81st FLOOR
1301 MCKINNEY
HOUSTON, TEXAS 77010

EXHIBIT A TO SPECIAL WARRANTY DEED AND BILL OF SALE

The property hereinafter described, situated in the County of Harris and State of Texas, to wit:

5.9125 acres being all of Restricted Reserve "F" in Block 1 of the TIM MILES SUBDIVISION, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 334, Page 99 of the Map Records of Harris County, Texas. D

10.5943 acres being all of restricted Reserve "K" in Block 1 of the TIM MILES SUBDIVISION, a subdivision in Harris County, Texas, according to the map or plat thereof recorded in Volume 334, Page 99 of the Map Records of Harris County, Texas.

FILED

95 JUL 11 PM 2:29

[Handwritten Signature]
COUNTY CLERK
HARRIS COUNTY, TEXAS

509-15-210

TRACT "F"
FIELD NOTES FOR A
16.3390 ACRE TRACT
OUT OF THE ROSS-HALL PUQUA STREET DEDICATION
HARRIS COUNTY, TEXAS

A parcel of land containing 16.3390 acres out of Tract "B" of the Ross-Hall Puqua Street Dedication Plat as recorded in Volume 153, Page 1, Map Records, Harris County, Texas, said 16.3390 acre tract being in the E.P. Swisher Survey, Abstract Number 1062, Harris County, Texas and being more particularly described as follows:

BEGINNING at a 3/8 inch iron rod set at the intersection of the east line of Freeston Street (12th Street), 70 feet wide, and the north line of Fuqua Street, 100 feet wide;

THENCE N 01° 05' 00" W, along the east line of said Freeston Street, a distance of 371.83 feet (called 472.08 feet) to a set 3/8 inch iron rod;

THENCE S 88° 35' 00" E, a distance of 370.66 feet (called 370.00 feet) to a found 3/8 inch iron rod on the east line of Palmlake Street (13th Street), 70 feet wide;

THENCE N 01° 17' 25" W / called N 01° 05' 00" W, along the east line of said Palmlake Street, a distance of 140.10 feet (called 140.00 feet) to a found 3/4 inch iron rod, said iron rod being at the intersection of said east line of said Palmlake Street and the south line of Alameda-Genoa Road ("N" Street), 70 feet wide;

THENCE N 89° 01' 40" E / called S 88° 35' 00" E, along the south line of said Alameda-Genoa Road, a distance of 300.49 feet (called 300.00 feet) to a found 1/2 inch iron rod, said iron rod being at the intersection of the south line of said Alameda-Genoa Road and the west line of Freedale Street (12th Street), 70 feet wide;

THENCE S 00° 53' 12" E (called S 01° 05' 00" E), along the west line of Freedale Street (12th Street), 70 feet wide, a distance of 139.93 feet (called 140.00 feet) to a set 5/8 inch iron rod;

THENCE N 88° 38' 00" E (called N 88° 35' 00" E), a distance of 440.33 feet (called 440.00 feet) to a found 5/8 inch iron rod;

THENCE N 01° 01' 14" W (called N 01° 05' 00" W), along the east line of Palmgrove (11th Street) a distance of 150.17 feet (called 140.00 feet) to a found 5/8 inch iron rod, said rod marking the intersection of the south line of said Alameda-Genoa Road and the east line of Palmgrove (70-foot wide);

THENCE N 88° 55' 00" E, along the south line of said Alameda-Genoa Road a distance of 299.82 feet (called 300.00 feet) to a found 5/8 inch iron rod marking the intersection of the south line of said Alameda-Genoa Road and the west line of Freeston Street (10th), 70 feet wide;

THENCE S 01° 01' 35" E (called S 01° 05' 00" E), along the west line of said Freeston Street, a distance of 589.48 feet (called 590.00 feet) to a found 3/3 inch iron rod marking the intersection of the west line of said Freeston Street and the north line of Fuqua Street (100 feet wide);

THENCE S 88° 35' 00" W, along the north line of said Fuqua Street, a distance of 1109.56 feet (called 1110.00 feet) to a set 3/8 inch iron rod marking the point of curvature for a curve to the left;

THENCE along the north line of said Fuqua Street, along said curve to the left having a radius of 2049.80 feet and a central angle of 08° 25' 16" (called 08° 25' 10"), and having a chord, S 84° 34' 13" W, 309.87 feet (called S 84° 42' 25" W, 300.81 feet), a distance of 301.14 feet (called 301.08 feet) to the POINT OF BEGINNING and containing 16.3390 acres of land, more or less.

FIELD NOTES FOR A
7.3347 ACRE (CALLED 7.3364 ACRE) TRACT
OUT OF THE ROSE-NAIL FUQUA STREET DEDICATION
HARRIS COUNTY, TEXAS

A parcel of land containing 7.3347 acres (called 7.3364 acres) out of Tract 'A' of the Rose-Nail Fuqua Street Dedication plat as recorded in Volume 158, Page 1, Map Records, Harris County, Texas, said 7.3347 acre tract being in the G.F. Burnett Survey, Abstract Number 1061, Harris County, Texas and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod set at the intersection of the west line of Freeton Street (14th St.), 70 feet wide, and the north line of Fuqua Street, 100 feet wide, from which a found one inch (1") iron pipe bears S 21° 15' 23" E, 0.50 feet, said 5/8 inch iron rod being the point of curvature for a curve to the left;

THENCE along the north line of said Fuqua Street, along said curve to the left having a radius of 2048.90 feet and a central angle of 10° 43' 33", and having a chord of S 73° 00' 43" W, 382.99 feet, a distance of 383.55 feet to a found one inch (1") iron pipe;

THENCE N 23° 21' 04" W, a distance of 150.00 feet to a found one inch (1") iron pipe marking the point of curvature for a curve to the left;

THENCE along said curve to the left having a radius of 2198.90 feet, a central angle of 07° 06' 10", a chord of S 64° 05' 51" W, 272.42 feet, a distance of 272.56 feet to a found one inch (1") iron pipe, said iron pipe being on the east line of Gulf Palm Street (Burnett Street), 100 feet wide;

THENCE N 01° 05' 00" W, along the east line of said Gulf Palm Street, a distance of 373.45 feet (called 373.36 feet) to a found 5/8 inch iron rod, said iron rod being at the intersection of said east line of Gulf Palm Street and the south line of "O" Street, 70 feet wide;

THENCE N 88° 35' 00" E, along the south line of said "O" Street, a distance of 370.00 feet to a set 5/8 inch iron rod, said iron rod being at the intersection of the south line of said "O" Street and the east line of Palabluiff Street (15th Street), 70 feet wide;

THENCE N 01° 05' 00" W, along the east line of said Palabluiff Street, a distance of 330.20 feet (called 330.00 feet) to a found 5/8 inch iron rod, said iron rod being at the intersection of the east line of said Palabluiff Street and the south line of Alameda-Genoa Road, 70 feet wide;

THENCE N 88° 35' 00" E, along the south line of said Alameda-Genoa Road, a distance of 300.00 feet to a found 1/2 inch iron rod, said iron rod being at the intersection of the south line of said Alameda-Genoa Road and the west line of said Freeton Street;

THENCE S 91° 05' 00" E, along the west line of said Freeton Street, a distance of 623.84 feet to the POINT OF BEGINNING and containing 7.3347 acres (called 7.3364 acres) of land, more or less.

RECORDER'S MEMORANDUM

AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF BLEED THROUGH, DARKEN OR FADING COPY, DISCOLORED PAPER, ETC.

509-15-2103

WE PROMISE HEREIN WHICH PLACES THE SAIL HEREIN ON ONE OF THE DESIGNATED REAL
PROPERTY BECAUSE OF COLOR OR RACE IS UNLAWFUL AND UNENFORCEABLE UNDER FEDERAL LAW
THE STATE OF TEXAS
COUNTY OF HARRIS
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
FILED RECORDED, in the Official Public Records of Real Property of
Harris County, Texas on:

JUL 11 1996



Beverly B. Hoffman
COUNTY CLERK
HARRIS COUNTY TEXAS

3510

THIS IS A RECEIPT ONLY IF VALIDATED IN THIS COUNTY CLERK'S REGISTER

FEB-13-63 845104 CC 43010 B — PD\$\$\$3.75

116-17227

104

JOE RESWEBER
COUNTY ATTORNEY
202 HARRIS COUNTY COURTHOUSE
HOUSTON 2, TEXAS

DEED RECORDS
VOL 5032 PAGE 132

82563 116-17227 LS B PD

4.35

NO. 118051

FILM CODE

IN THE COUNTY CIVIL COURT AT LAW NO. 2
OF HARRIS COUNTY, TEXAS

704 04 0832

FILM CODE
084-17-037A

THE STATE OF TEXAS et al)
Plaintiffs)
VS.)
TIM MILES et al)
Defendants)

JUDGMENT

On the 27th day of November, 1962, was heard the above matter, before Henry Callihan, James Fonteno and Horace Pounds, Special Commissioners and freeholders of Harris County, Texas, duly appointed by the Judge of the County Civil Court at Law No. 2 of Harris County, Texas, upon the application and petition of the State of Texas and the County of Harris, a body corporate and politic, filed on the 5th day of November, 1962, in said court, naming as defendants Tim Miles and wife, Mary Miles, Carl S. Smith, Harris County Tax Assessor and Collector and Katy Independent School District, and praying for the condemnation of a certain parcel of land required for an easement and right of way for the purpose of opening, widening, draining, grading and constructing a portion of State Highway No. F.M. 1960, Addicks-Howell Road, County Road No. 1001-2, in the County of Harris and State of Texas; said parcel of land being described as follows:

983 FEB 25 PM 4 51

HARRIS COUNTY CLERK TEXAS

TRACT NO. 10
ADDICKS-HOWELL RD. (FM 1960) #1001-2

FILM CODE
704 04 0893

Being a variable width strip of land off of the East side of a tract of land D lying in the David Middleton Survey, Abstract 535, and the Blas Herrera Survey, Abstract 321, now or formerly owned by Tim Miles as conveyed to him by J. H. Arnold, et al. on April 25, 1929 as described in Vol. 797, Page 292 of the Deed Records of Harris County, Texas, and being more particularly described as follows:

BEGINNING at the Northeast corner of the above mentioned tract of land, same being at a one inch iron pipe set at the intersection of the existing West right of way line of Addicks-Howell Road and the existing South right of way line of Noble Road, same being at Engineer's Station 779+05.1 on the proposed F.M. 1960 centerline, same being North 88° 07' East (called North 89° 43' East) a distance of 182.2 feet from the Northwest corner of this tract of land,

THENCE South 2° 00' East (called South 0° 24' East) a distance of 3094.9 feet along the East line of this tract, same being the existing West right of way line of Addicks-Howell Road, to a point for corner, said point also being a P. T. in the proposed West right of way line of F.M. 1960, said point being located opposite Engineer's Station 810+00.0 on the proposed F.M. 1960 centerline;

THENCE South 2° 15' East a distance of 2247.3 feet along the existing West right of way line of Addicks-Howell Road, same being the East line of this tract, to a point for corner, said point being located in the proposed West right of way line of F.M. 1960;

THENCE North 7° 17' West a distance of 1013.1 feet along the proposed West right of way line of F.M. 1960, 80.0 feet from and parallel to the proposed F.M. 1960 centerline, to a point, said point being the P.T. of a curve, said point being located opposite Engineer's Station 822+31.8 on the proposed F.M. 1960 centerline;

THENCE Northerly along the proposed West right of way line of F.M. 1960 following the curve to the right having a central angle of 3° 46' and a radius of 3899.8 feet, a distance of 392.5 feet to the P.C. of said curve, said point being located opposite Engineer's Station 818+47.4 on the proposed F.M. 1960 centerline;

THENCE North 1° 31' West a distance of 2359.9 feet along the proposed West right of way line of F.M. 1960, 80.0 feet from and parallel to the proposed F.M. 1960 centerline to a point, said point being located at Engineer's Station 794+87.5 on the proposed F.M. 1960 centerline;

THENCE North 2° 00' West a distance of 1582.6 feet along the proposed West right of way line of F.M. 1960, 80.0 feet from and parallel to the proposed F.M. 1960 centerline, to a point for corner, said point being located in the North line of this tract, same being the existing South right of way line of Noble Road;

THENCE North 88° 07' East (called North 89° 43' East) a distance of 80.0 feet along the North line of this tract, same being the existing South right of way line of Noble Road, to the point of beginning and containing 9.816 acres more or less.

DEED RECORDS
FILM CODE
VA 5032 MAR 1933
064-17-0375

The said Special Commissioners having taken the oath required by law, set a place and time for hearing the parties herein, and having given notice and the said defendants having been duly and properly served with notice of the time of hearing and the place of meeting, all as required by law, and all parties having then and there appeared in person or by their attorneys and announced ready for trial, except the defendant Katy Independent School District, which neither appeared nor answered, all matters involved in said condemnation were submitted to the said Special Commissioners; and the pleadings and evidence having been heard by them, they found as follows:

For the value of the land taken, at the time of said hearing, the sum of Twenty-four Thousand, Forty-nine and 20/100 Dollars (\$24,049.20) and for the improvements located thereon, the further sum of Three Thousand, Four Hundred Twenty and no/100 Dollars (\$3,420.00), and for damages to the balance of defendants' property by reason of such condemnation and taking, the sum of Five Thousand, Eight Hundred Eighty and no/100 Dollars (\$5,880.00) being a total sum of Thirty-three Thousand, Three Hundred Forty-nine and 20/100 Dollars (\$33,349.20) awarded herein.

The said award was filed on the 11th day of December, 1962, together with all papers connected with said proceeding; and thereupon said Judge entered his order recommending fees of \$90.00 each for said Special Commissioners for their services in said cause; and twenty days having passed without the filing of objections to said award by any of the parties;

And it appearing to the Court that the Defendant Carl S. Smith, Harris County Tax Assessor and Collector, has filed his intervention showing taxes, interest, penalty and costs due the State of Texas and County of Harris on said above described property in the amount of Twenty and 31/100 Dollars (\$20.31); and that the defendant Katy Independent School District, although duly served with notice as required by law, has neither appeared nor answered herein;

It is therefore ORDERED, ADJUDGED and DECREED that the Award of the Special Commissioners rendered on December 11, 1962, be and the same

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701 04 0894

DEED RECORDS
WM 5032 PMS 134

FILM CODE
081-17-0376

is hereby adopted, made the judgment in this cause, and the Clerk is directed to enter the same in the Minutes of the Court.

It is further ORDERED, ADJUDGED and DECREED that this cause be and the same is hereby dismissed as to the defendant Katy Independent School District, and that it take nothing by this judgment.

It is further ORDERED, ADJUDGED and DECREED that said sum of Thirty-three Thousand, Three Hundred Forty-nine and 20/100 Dollars (\$33,349.20), be paid by the County of Harris into the Registry of the Court, to the order of the remaining defendants, Tim Miles and wife, Mary Miles, and Carl S. Smith, Harris County Tax Assessor and Collector.

It is further ORDERED, ADJUDGED and DECREED that all right, title and interest in and to the hereinabove described land be and the same is hereby divested out of said Defendants and vested in the State of Texas, for easement and right of way purposes, for a public road and a state highway; and that a writ of possession issue in favor of the plaintiff; and that out of said deposit the Clerk shall pay to Carl S. Smith, Harris County Tax Assessor and Collector, said sum of Twenty and 31/100 Dollars (\$20.31), and the balance of said deposit, being the sum of Thirty-three Thousand, Three Hundred Twenty-eight and 89/100 Dollars (\$33,328.89), the Clerk shall pay over to the defendants Tim Miles and wife, Mary Miles, all upon the filing of proper receipts therefor.

It is further ORDERED that the State of Texas and County of Harris pay all costs of court in this proceeding, including the fees of the Special Commissioners.

ENTERED this 11th day of February, 1963.

W. M. Miller
JUDGE, County Civil Court at Law No. 2
Of Harris County, Texas

APPROVED:

Joe Brasher
COUNTY ATTORNEY
Harris County, Texas

Charles J. Mitchell
ASSISTANT COUNTY ATTORNEY
Harris County, Texas

FILM CODE
701 01 0835

DEED RECORDS
FILM CODE
5032
135
084-17-0377

FILM CODE
064-17-0378

Film Code
704 04 0896

DEED RECORDS
NO. 115651 *116*
IN THE COUNTY CIVIL COURT AT LAW NO. 2
OF HARRIS COUNTY, TEXAS

THE STATE OF TEXAS et al

Plaintiffs

VS.

TIM WILES et al

Defendants

JUDGMENT

012

JOE RISWEBER

COUNTY ATTORNEY

202 HARRIS COUNTY COURTHOUSE
HOUSTON 2 TEXAS

DEED RECORDS
5032 PMA 137

FILM CODE #
084-17-0179

STATE OF TEXAS
COUNTY OF HARRIS

The foregoing is a true and correct photograph
copy of the original record now in my lawful custody and
possession and as recorded in the record stamped therein
I hereby certify, on February 8, 1963

R. J. TURRENTINE, JR. COUNTY CLERK
Harris County, Texas

By Fleta H. Gorton
Deputy

S464504

Return to: ①
James J. Tyler
9 Gateway Plaza, #3010
Houston, TX 77046

RESTRICTIVE COVENANTS

513-15-2568

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

05/23/97 200422091 5464504 \$27.00

RECITALS:

A. JAY KAPLAN, TRUSTEE ("Trustee") owns an approximately 10.5943 acre tract of land (the "Land"), being all of Reserve "K" of the Tim Miles Subdivision, according to the map or plat recorded in Volume 334, Page 99 of the Map Records of Harris County, Texas. *lee*

B. In order to satisfy the requirements of pending purchase and sale agreements to coordinate the uses of the Land for the possible sale of portions thereof, Trustee has agreed and does hereby impose and create certain rights, easements and protective covenants and restrictions on the Land as more fully set forth herein.

ARTICLE I. DEFINITIONS

Section 1.1 Applicable Deed. The term "Applicable Deed" shall mean the deed of a particular Tract from Trustee.

Section 1.2 Exclusive. The term "Exclusive" shall mean the specific use or uses reserved for the sole benefit of a Tract as provided herein.

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n
Section 1.3 Floor Area. The term "Floor Area" shall mean the total number of square feet of enclosed space in a building or buildings available for the exclusive use of a particular person or entity, whether or not actually occupied. The Floor Area of any building for purposes of these Restrictive Covenants shall be calculated from the exterior of all exterior walls.

Section 1.4 Owner. The term "Owner" shall mean the record owner(s) of fee title from time to time of the Land or any portion thereof, but shall not mean an entity holding only a lien, mineral interest, easement, leasehold estate or other interest burdening such fee title.

Section 1.5 Restrictive Covenants. The term "Restrictive Covenants" shall mean these Restrictive Covenants executed by Trustee.

Section 1.6 Tract. The term "Tract" shall mean the portions of the Land subdivided by the Applicable Deed.

Section 1.7 Other Definitions. Other definitions are contained throughout in these Restrictive Covenants.

ARTICLE II. EASEMENTS

Section 2.1 Utility Easements. Trustee hereby declares and reserves unto himself, his heirs, successors and assigns within the Land a non-exclusive easement on, over, under and across those portions of the Land within ten (10) feet of State Highway 6 for electrical, gas and other utilities, provided such easement does not unreasonably interfere with the use of any Tract. Each Owner agrees to execute and deliver such additional documents as may be requested by utility companies to evidence the grant of this utility easement.

Section 2.2 Access Easement. Trustee currently intends to subdivide a portion of the Land into a Tract for use as a hotel, containing approximately 2.717 acres of land as more particularly depicted on Exhibit "A" attached hereto (the "Hotel Tract"). Trustee declares and reserves a non-exclusive access easement for the sole benefit of the Owner, tenants and invitees of the Tract located immediately in front and to the east of the Hotel Tract (such benefitted tract [the "Restaurant Tract"] being more particularly described on Exhibit "B" attached hereto) over and across the most easterly 150 feet of the north 24 feet (the "Access Easement") of the 30 foot wide strip (the "Hotel Strip") which connects the Hotel Tract to State Highway 6. The Hotel Strip is more particularly described on Exhibit "A-1" attached hereto. The owner of the Hotel Strip may relocate the Access Easement so long as at least a 24-foot wide area is provided within the Hotel Strip connecting to the Restaurant Tract. Entry into the Access Easement by the Owner, tenants and invitees of the Restaurant Tract shall only be through a 30 foot wide entry or curb cut located between 50 feet and 150 feet of State Highway 6, unless the express prior written consent of the Owner of the Hotel Tract is obtained.

Section 2.3 Construction and Maintenance of Access Easement. The Owners of the Hotel Tract and the Restaurant Tract shall coordinate so that construction of the road over the Hotel Strip is consistent with any driveways and parking facilities situated on the Restaurant Tract. The owner of the Restaurant Tract shall have a non-exclusive easement for access across the Hotel Strip to construct and/or maintain the road. No party constructing the road shall be entitled to reimbursement for its construction costs. The road shall be constructed in a good and workmanlike manner (utilizing good faith efforts to coordinate with Trustee or the then owner of the Hotel Tract), and, upon completion, shall thereafter be repaired and maintained at the sole cost and expense of the Owner of the Hotel Tract; except, however, the Owner of the Restaurant Tract shall promptly pay for any damage caused to the road by the Owner of the Restaurant Tract, its tenants and invitees. The owner of the Restaurant Tract may construct a temporary road across the Access Easement in compliance with applicable laws. If the Hotel Tract should ever be reconfigured in the Applicable Deed, Trustee shall have the right to designate which portion thereof shall be responsible for maintaining the road, provided such designation is in writing, filed of record in the Office of the Clerk of Harris County, Texas, and is not done in a manner which would materially diminish the benefits of the road.

Section 2.4 Disclaimer. The use in these Restrictive Covenants of the phrases "Restaurant Tract" and "Hotel Tract" shall not imply or constitute a representation or warranty that a restaurant or hotel shall be constructed thereon or that such Tracts are limited to such uses.

ARTICLE III USE RESTRICTIONS

Section 3.1 Restricted Activities. The following activities are prohibited within the Land:

- (a) any activity which tends to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on a Tract;
- (b) any activity which emits foul or obnoxious odors, fumes, dust, smoke or pollution outside a Tract or which creates noise, unreasonable risk of fire or explosion, or other conditions which tend to disturb the peace or threaten the safety or comfort of occupants and invitees of other Tracts, in all cases beyond levels typical for a municipality;
- (c) any activity which violates applicable governmental laws or regulations;
- (d) outside burning of trash, leaves, debris or other materials;
- (e) unless permitted in the Applicable Deed, outdoor storage, except the outdoor storage of building materials shall be permitted during bona fide construction on a Tract on which such materials are stored;
- (f) any activity which is a public or private nuisance;
- (g) any activity which is, in whole or in part, for the dumping, disposing or commercial warehousing of garbage or refuse; and
- (h) the operation of a gasoline refining and/or twenty-four (24) hour manufacturing operation.

Land:

Section 3.2 Prohibited Uses. The following uses shall be prohibited within the

- (a) junkyards, scrap metal yards and sanitary landfills;
- (b) commercial excavation of building or construction materials, except in the usual course of construction of improvements on a Tract;
- (c) flea markets, and fire and bankruptcy sale operations;
- (d) the sale of indecent or pornographic literature, adult entertainment or any other form of sexually oriented business (except for the sale of books or videos as an incident part [*i.e.*, comprising no more than five percent (5%) of

the total space devoted for sales] of a general purpose bookstore, video store or other bona fide use);

- (e) no Tract may be used in violation of an Exclusive, except for the Tract specifically benefitting from the Exclusive; and
- (f) no Tract may be used in violation of any additional restrictions contained in the Applicable Deed for such Tract.

Section 3.3 Exclusives. The Land shall be subject to the following Exclusives for the sole benefit of the Tract indicated:

- (a) **Extended Stay Lodging Facility:** The Hotel Tract shall be the only Tract within the Land which may be operated as an Extended Stay Lodging Facility (defined as a hotel or motel with full kitchen facilities or which promotes itself for lodging for five (5) days or longer).
- (b) **Seafood Restaurant:** The Restaurant Tract shall have an exclusive as the only Tract within the Land which may be a "seafood restaurant" (defined as a restaurant that has more than forty percent (40%) of its food items containing seafood or which uses the word "seafood" in its proper name).

ARTICLE IV. OPERATIONAL MATTERS

Section 4.1 Trash Containers. All garbage and trash shall be placed and kept in covered trash containers and all such containers shall be placed within at least a solid-faced four-sided enclosure attached to the main building, unless the written consent of Trustee is obtained. Unless fully enclosed, the enclosure shall be constructed not to exceed six feet (6') in height and be fixed permanently to the ground in a manner designed to minimize the view of the interior thereof. The exterior of the trash container building shall be constructed with substantially the same material used on the exterior of the main building on the Tract. Any substantial amount of wet trash generated by a restaurant shall be removed on a daily basis to minimize foul odors.

Section 4.2 Casualty Damage. Any buildings or other improvements that are destroyed partially or totally by fire or other casualty, shall be repaired or demolished within a reasonable period of time or otherwise restored to an orderly and attractive condition.

Section 4.3 Signs. No Tract may have more than one (1) pylon sign and one (1) monument sign, without the prior written consent of Trustee. Any restrictions on the location, size and height of any pylon or monument sign shall be set forth in the Applicable Deed. The restrictions set forth above in this Section 4.3 shall not apply to (a) up to three (3) directional signs per Tract of less than 3 square feet and a height not exceeding five (5) feet from ground level, (b) other signs to the minimum extent necessary to comply with applicable laws, or (c) signs which are attached to a

building containing more than 5,000 square feet of Floor Area, provided such signs do not extend more than two feet (2') in any direction from an exterior wall. No sign may advertise any use except for the business conducted from a Tract, other than one professionally built sign advertising a Tract for sale or lease, provided the total square footage of such sign does not exceed 50 feet.

Section 4.4 Building Setbacks. No building or extension thereof shall be constructed (i) within sixty (60) feet of State Highway 6 for the northernmost 150 feet of the Land, (ii) within 75 feet of State Highway 6 for the next 280 feet of the Land, (iii) within one hundred feet (100') of State Highway 6 for the next two hundred feet (200') to the south, or (iv) within any additional setbacks contained in the Applicable Deed. Signs, parking spaces, driveways and landscaping shall be permitted within any building setback.

Section 4.5 Building Height. No buildings may be constructed within the Land in excess of any height limitation specified in the Applicable Deed.

Section 4.6 Drainage and Water Retention. Each Tract shall be self-sufficient, and provide for its own drainage and water retention, unless the express, prior written consent of another Owner is obtained.

Section 4.7 Landscaping. The Owner of each Tract shall keep all grass mowed, weeds cut and landscaping properly maintained on its Tract.

Section 4.8 Parking. Each Tract shall contain sufficient parking to comply with any parking requirements of the City of Houston, unless an express easement is obtained in writing from another Owner.

Section 4.9 Curb Cuts. Each Tract may only have curb cuts providing access to State Highway 6 at the location(s) set forth in the Applicable Deed.

ARTICLE V. TERM AND ENFORCEMENT

Section 5.1 Term. These Restrictive Covenants and other rights created herein shall constitute covenants running with and binding the land affected, and shall inure to the benefit and run with the land so benefitted, and shall, except as set forth in the next sentence, remain in effect for a period of one hundred (100) years from the date hereof. Any utility easements or access easements shall be perpetual.

Section 5.2 Enforcement. The provisions of these Restrictive Covenants may be enforced by any Owner, without the necessity of the joinder of any other party whatsoever. No tenant, subtenant or occupant of any Tract shall have any rights to enforce any provisions of these Restrictive Covenants. In the event of any violation or attempted or threatened violation of any provision of these Restrictive Covenants, in addition to all other rights and remedies available at law or in equity,

513-15-2573

the Owners shall be entitled to obtain restraining orders and injunctions prohibiting such violation, attempted or threatened violation, and ordering compliance with the provisions hereof.

ARTICLE VI MISCELLANEOUS

Section 6.1 Notice. Any notice which shall or may be given in accordance with the provisions of these Restrictive Covenants shall be in writing and shall be either personally delivered or sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the appropriate Owner at the last address for such Owner according to the records of the party giving such notice. Any Owner shall have the right to change its address for purposes of notice.

Section 6.2 Status Reports. Recognizing that Owners may find it necessary from time to time to establish to banks, mortgagees, purchasers and major tenants, the then-current status of performance hereunder, each Owner shall, upon no less than twenty (20) days written notice from another Owner, but no more often than once per calendar year as to a request from any one Owner, furnish a written statement, to the knowledge of such Owner, on the status of any matters relating to these Restrictive Covenants.

Section 6.3 Binding Effect. These Restrictive Covenants shall be binding upon and benefit Trustee, and his heirs, successors and assigns, and each Owner from time to time of a Tract and shall be covenants running with the Land. Whenever reference is made in these Restrictive Covenants to Trustee having certain rights of approval or being able to impose certain restrictions or other matters in the Applicable Deed, such right and power may only be transferable by Trustee if specific mention is made thereof.

Section 6.4 Severability. If any provision of these Restrictive Covenants shall be unenforceable to any extent, the remainder thereof and the application of such provisions to other circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 6.5 Governing Law. These Restrictive Covenants shall be governed by the laws of the State of Texas.

Section 6.6 Attorney's Fees. If a lawsuit is filed to enforce or interpret any portion of these Restrictive Covenants, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs.

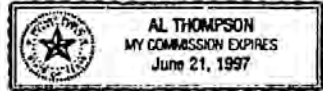
DATED as of the 22nd day of May, 1997.



JAY KAPLAN, TRUSTEE
112

513-15-2374

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 19th day of May, 1997, by **JAY KAPLAN, TRUSTEE.**





Notary Public in and for the State of Texas

EXHIBIT "A"

513-15-2375

DESCRIPTION OF A 2.717 ACRE TRACT OF LAND
OUT OF RESTRICTED RESERVE "K", BLOCK 1
TIM MILES SUBDIVISION
HARRIS COUNTY, TEXAS

Being a 2.717 acre tract of land out of Restricted Reserve "K", Block 1 in the Blas Herrera Survey, Abstract No. 321, as shown on the plat of Tim Miles Subdivision recorded in Volume 334, Page 99, Harris County Map Records, said 2.717 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found in the west right-of-way line of State Highway 6, 160 feet wide, (formerly Addicks Howell Road) Volume 5032, Page 32, H.C.D.R., marking the southeast corner of said Restricted Reserve "K" and the northeast corner of Restricted Reserve "J", Block 1;

THENCE, in a westerly direction along the common line of said Restricted Reserves "J" and "K", S 89° 40' 46" W, 790.93 feet to a 5/8 inch iron rod found marking the southwest corner of said Restricted Reserve "K" and the northwest corner of Restricted Reserve "J", Block 1;

THENCE, along the westerly line of said Restricted Reserve "K", N 32° 07' 05" E, 379.16 feet to a 1 inch iron pipe set marking the northwest corner of the herein described tract;

THENCE, N 89° 40' 46" E, 235.19 feet to a 5/8 inch iron rod found marking the most northerly northeast corner of the herein described tract;

THENCE, S 00° 19' 14" E, 290.00 feet to a 5/8 inch iron rod found for corner;

THENCE, N 89° 40' 46" E, along a line parallel to and 30.00 feet north of (and perpendicular to) the southerly line of said Restricted Reserve "K", a distance of 350.00 feet to a 5/8 inch iron rod found in the west right-of-way line of State Highway 6;

THENCE, S 04° 49' 43" E, along the westerly right-of-way line of State Highway 6, a distance of 30.09 feet to the POINT OF BEGINNING and containing 2.717 acres of land.

EXHIBIT "A-1"

513-15-2376

DESCRIPTION OF A 10,554 SQ. FT. TRACT OF LAND
OUT OF RESTRICTED RESERVE "K", BLOCK 1
TIM MILES SUBDIVISION
HARRIS COUNTY, TEXAS

Being a 10,554 sq. ft. (0.242 Ac.) tract of land out of Restricted Reserve "K", Block 1 in the Blas Herrera Survey, Abstract No. 321, as shown on the plat of Tim Miles Subdivision recorded in Volume 334, Page 99, Harris County Map Records, said 10,554 sq. ft. tract being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found in the west right-of-way line of State Highway 6, 160 feet wide, (formerly Addicks Howell Road) Volume 5032, Page 32, H.C.D.R., marking the southeast corner of said Restricted Reserve "K" and the northeast corner of Restricted Reserve "J", Block 1;

THENCE, in a westerly direction along the common line of said Restricted Reserves "J" and "K", S 89° 40' 46" W, 352.37 feet to a point marking the southwest corner of the herein described tract;

THENCE, N 00° 19' 14" W, 30.00 feet to a 5/8 inch iron rod found marking the northwest corner of the herein described tract;

THENCE, N 89° 40' 46" E, along a line parallel to and 30.00 feet north of (perpendicular to) the southerly line of said Restricted Reserve "K", a distance of 350.00 feet to a 5/8 inch iron rod found in the west right-of-way line of State Highway 6;

THENCE, S 04° 49' 43" E, along the westerly right-of-way line of State Highway 6, a distance of 30.09 feet to the POINT OF BEGINNING and containing 10,554 sq. ft. (0.242 Ac) of land.

EXHIBIT "B"

513-15-2377

DESCRIPTION OF A 2.256 ACRE TRACT OF LAND
RESTRICTED RESERVE "K", BLOCK 1
TIM MILES SUBDIVISION
CITY OF HOUSTON, HARRIS COUNTY, TEXAS

BEING a 2.256 acre tract of land in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas, and being out of Restricted Reserve "K", Block 1 as shown on the plat of Tim Miles Subdivision recorded in Volume 334, Page 99 of the Harris County Map Records and being out of a 10.5043 acre tract described under Harris County Clerk's File Number S015191, said 2.256 acre tract being more particularly described as metes and bounds as follows:

COMMENCING at a 5/8" iron rod found in the west right-of-way line of State Highway No. 6 as described under H.C.C.F. No. B647227 (Vol. 5032, Pg. 132 H.C.D.R.) and being at the southeast corner of said Restricted Reserve "K" and at the northeast corner of Restricted Reserve "J", Block

THENCE N 04° 50' 30" W, 30.09 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" to a 5/8" set at the POINT OF BEGINNING of the herein described tract;

THENCE S 89° 40' 53" W, 350.00 feet to a set 5/8" iron rod for the southwest corner of the herein described tract;

THENCE N 00° 19' 07" W, 290.00 feet to a 5/8" iron rod set for the northeast corner of the herein described tract;

THENCE N 89° 40' 53" E, 329.48 feet to a 5/8" iron rod set in the east line of said Restricted Reserve "K" and being in the said west right-of-way line of State Highway No. 6;

THENCE in a southerly direction, 138.85 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" and following the arc of said curve the left having a radius of 3003.80 feet, a central angle of 01° 58' 31" and a chord which bears S 05° 50' 44" E, 138.84 feet to a 1/2" iron rod found and from said 1/2" iron rod, a found concrete monument bears S 18° 55' E, 0.66 feet and a found 1" iron rod bears S 77° 40' W, 0.18

THENCE S 04° 50' 30" E, 151.90 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" to the POINT OF BEGINNING and containing 2.256 acres of land.

ANY PROVIDER HEREIN WHICH REFLECTS THE SALE PRICE, OR ONE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR FACE IS VOID AND UNENFORCEABLE UNDER FEDERAL LAW THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was DAY RECORDED, in the Official Public Records of Real Property of Harris County, Texas.

MAY 23 1997



Beverly B. Hoffman
COUNTY CLERK
HARRIS COUNTY TEXAS

RECORDER'S MEMORANDUM

AT THE TIME OF RECORDATION THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC.

FILED
97 MAY 23 PM 3:57
Beverly B. Hoffman
COUNTY CLERK
HARRIS COUNTY TEXAS

2511
HIT

Return To:
LandAmerica Lawyers Title
2511 N. Loop 1604 W., #101
San Antonio, Texas 78258
GF # 1211005074

When recorded mail to:
LandAmerica Financial Group, Inc.
Attn: Allen Brown
1850 N. Central Ave., #300
Phoenix, AZ 85004
Escrow No. 07-52828

AFTER RECORDING:
HOLD FOR
CHARTER TITLE COMPANY
GF 1017001347
Closer LAVERY

20070454010
07/25/2007 RP1 \$112.00

PREPARED BY ~~AND TO BE RETURNED TO:~~

Kutak Rock LLP
1801 California Street, Suite 3100
Denver, Colorado 80202
Attn: Peggy A. Richter, Esq.

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

**DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES,
SECURITY AGREEMENT AND FIXTURE FILING**

THIS DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FILING (this "Deed of Trust") is made as of the 29th day of June, 2007, by SPIRIT MASTER FUNDING, LLC, a Delaware limited liability company (sometimes referred to herein as "Borrower" or "Grantor"), whose address is 14631 N. Scottsdale Road, Suite 200, Scottsdale, Arizona 85254-2711, to William Z. Fairbanks, Esq., 7557 Rambler Road, Suite 1200, Dallas TX 75231 ("Trustee") for the benefit of CITIBANK, N.A., whose address is 388 Greenwich Street, Floor 14, New York, NY 10013, in its capacity as collateral agent (referred to herein as the "Collateral Agent") for the Noteholders (as defined below) (any such Noteholders and its respective successors and assigns shall be referred to herein as the "Lender").

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PRELIMINARY STATEMENT:

The capitalized terms used in this Deed of Trust, if not elsewhere defined in the first paragraph above or in Article I of this Deed of Trust shall have the meaning given such terms in the Collateral Agency Agreement. Grantor holds the fee simple interest in the Trust Estate, subject to the Permitted Exceptions. Grantor is executing this Deed of Trust for the purpose of granting all of the interest of Grantor in and to the Trust Estate (as defined in the Granting Clauses below) as security for the payment of the Obligations including, without limitation, repayment of all amounts due under the Note (as such Note, together with any amendments thereto, may be extended, restated or otherwise modified as provided therein). The Trust Estate shall be and remain subject to the lien of this Deed of Trust and shall constitute security for the Obligations so long as the Obligations shall remain outstanding.

THIS DOCUMENT IS ALSO A FINANCING STATEMENT FILED AS A FIXTURE FILING AND SHOULD BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF THE GRANTOR AS DEBTOR, AND THE COLLATERAL AGENT, AS SECURED PARTY.

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Spirit - Joe's Crab Shack
DOT-Texas
2120 S. Hwy 6, Houston, TX 77077
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County Clerk
HARRIS COUNTY, TEXAS
Barbara A. Kaufman

1008-99-260-44

GRANTING CLAUSES:

Grantor, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by these presents does hereby create a security interest in, mortgage, grant, bargain, sell, assign, pledge, give, transfer, set over and convey unto the Trustee and to its successors and assigns WITH POWER OF SALE AND RIGHT OF ENTRY, for the benefit and security of the Collateral Agent as agent for the Lender, and its successors and assigns, all of Grantor's estate, right, title and interest in, to and under the Land (hereinafter defined), the Improvements (hereinafter defined) and any and all of the following property (together with the Land and the Improvements, collectively the "Trust Estate"), whether now owned or hereafter acquired, subject only to the Permitted Exceptions:

Trust Estate, Rents and Derivative Interests

All rents, issues, profits, royalties, income and other benefits derived by Grantor from the property comprising the Trust Estate and the Personal Property (as defined below) or any portion thereof and any and all lump-sum payments made in connection with the early termination of any Lease (collectively, the "Rents"); all leases or subleases covering the Trust Estate and the Personal Property or any portion thereof now or hereafter existing or entered into (collectively, "Leases" and individually, a "Lease"), including, without limitation, all cash or security deposits, advance rentals and deposits or payments of similar nature and all guaranties relating to the Leases; all options to purchase or lease the Trust Estate and the Personal Property or any portion thereof or interest therein, and any greater estate in the Trust Estate; all interests, estate or other claims, both in law and in equity, with respect to the Trust Estate and the Personal Property or any portion thereof; all easements, rights-of-way and rights used in connection therewith or as a means of access thereto, and all tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; all land lying within the right-of-way of any street, open or proposed, adjoining the Trust Estate and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the Trust Estate;

Personal Property

All tangible personal property owned by the Grantor and now or at any time hereafter located on or at the Trust Estate or used in connection therewith, including, without limitation, all machinery, appliances, furniture, equipment and inventory (the "Personal Property"), but excluding any Personal Property owned by the Lessee under any Lease other than as pledged as security under such Lease;

Intangibles

All existing and future accounts, contract rights, including, without limitation, with respect to equipment leases, general intangibles, files, books of account, agreements, franchise, license and/or area development agreements, distributor agreements, indemnity agreements, permits, licenses and certificates necessary or desirable in connection with the acquisition, ownership, leasing, construction, operation, servicing or management of the property comprising the Trust Estate or any portion thereof, whether now existing or entered into or obtained after the date hereof, all existing and future names under or by which the property comprising the Trust Estate and the Personal Property or any portion thereof may at any time be operated or known, all rights to carry on business under any such names or any variant thereof, and all existing and future telephone numbers and listings, advertising and marketing materials, trademarks and good will in any way relating to the property comprising the Trust Estate or any portion thereof; and

Claims and Awards

All the claims or demands with respect to the Trust Estate or any portion thereof, including, without limitation, claims or demands with respect to the proceeds of insurance in effect with respect thereto, claims under any indemnity agreement, including, without limitation, any indemnity agreement executed for the benefit of the Trust Estate or any portion thereof with respect to Hazardous Materials or USTs, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the Trust

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Estate and the Personal Property, including, without limitation, any awards resulting from a change of grade of streets and awards for severance damages.

The Trust Estate shall include all products and proceeds of the foregoing property.

TO HAVE AND TO HOLD the Trust Estate hereby granted or mortgaged or intended to be granted or mortgaged, unto Collateral Agent as agent for the Lender and its successors and assigns; upon the terms, provisions and conditions set forth herein.

THIS MORTGAGE SHALL SECURE THE FOLLOWING INDEBTEDNESS AND OBLIGATIONS (the "Obligations"):

- (i) Payment of indebtedness evidenced by the Primary Note together with all extensions, renewals, amendments and modifications thereof;
- (ii) Payment of all other indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations and covenants contained in the Loan Documents, together with any other instrument given to evidence or further secure the payment and performance of any obligation secured hereby or thereby; and
- (iii) Payment of all indebtedness and other sums, with interest thereon, which may be owed under, and performance of all other obligations under any Loan Agreement and any other Note in addition to the Primary Note contemplated in (i) above, including, without limitation all Loans and Notes issued under an Indenture from time to time.

It is the intention of the parties hereto that the Trust Estate shall secure all of the Obligations presently or hereafter owed, and that the priority of the security interest created by this Deed of Trust for all such Obligations shall be first priority and controlled by the time of proper recording of this Deed of Trust and shall perfect all additional amounts funded under any Loan Agreement as a future obligatory advance. In addition, this Deed of Trust shall also secure unpaid balances of advances made (1) under any Indenture or other Loan Agreement for payment of any fees and expenses of the Indenture Trustee or Lender otherwise in connection with the obligations of the Grantor's obligations under the Indenture or other Loan Agreement, (2) with respect to the Trust Estate for the payment of taxes, assessments, insurance premiums, costs or any other advances incurred for the protection of the Trust Estate, together with interest thereon until paid at the Default Rate, all as contemplated in this Deed of Trust, (3) under the terms of the Collateral Agency Agreement, all of which shall constitute a part of the Obligations secured hereby. **This paragraph shall serve as notice to all persons who may seek or obtain a lien on the Trust Estate subsequent to the date of recording of this Deed of Trust, that until this Deed of Trust is released, any debt owed to the Lender by Grantor, including advances and re-advances made under a Loan Agreement subsequent to the recording of this Deed of Trust, shall be secured with the priority afforded this Deed of Trust as recorded.**

The Loan may not be prepaid in whole or in part except as provided under the terms of the applicable Note and/or Loan Agreement. This Deed of Trust secures the amount of the Primary Note, however, the value of the Trust Estate covered by this Deed of Trust for title insurance purposes as of the date hereof is limited to \$3,450,000.00.

IT IS HEREBY COVENANTED, DECLARED AND AGREED that the Note and the other Loan Documents are to be executed, delivered and secured and that the Trust Estate is to be held and disposed of by the Collateral Agent, upon and subject to the provisions of this Deed of Trust and the Collateral Agency Agreement.

ARTICLE I

DEFINED TERMS

Section 1.01. *Incorporation of Other Definitions.* Capitalized terms used in this Deed of Trust, if not elsewhere parenthetically defined in the preamble hereto or Section 1.02 of this Deed of Trust, shall have the meaning given such terms in the Collateral Agency Agreement or, if no meaning is given to such terms in the Collateral Agency Agreement, in the Loan Agreement.

Section 1.02. *Definitions.* Unless the context otherwise specifies or requires, the following terms shall have the meanings specified (such definitions to be applicable equally to singular and plural nouns and verbs of any tense):

“*Collateral Agency Agreement*” means the Collateral Agency Agreement, dated as of March 29, 2007, among the Collateral Agent, Spirit Finance Corporation and certain other parties, as the same may be amended, assigned or restated from time to time.

“*Event of Default*” has the meaning set forth in Section 6.01.

“*Improvements*” means all buildings, fixtures and other improvements now or hereafter located on the Land (whether or not affixed to the Land).

“*Indemnified Parties*” means the Lender (and any agent of the Lender and Collateral Agent) (and after the date of any Notice of Assignment (as defined in the Collateral Agency Agreement) delivered pursuant to the Collateral Agency Agreement, the Indenture Trustee, if any, and any person or entity who is or will have been involved in the origination of the Loan, any person or entity who is or will have been involved in the servicing of the Loan, any person or entity in whose name the encumbrance created by this Deed of Trust is or will have been recorded, persons and entities who may hold or acquire or will have held a full or partial interest in the Loan, as well as custodians, trustees and other fiduciaries who hold or have held a full or partial interest in the Loan for the benefit of third parties), as well as the respective directors, officers, shareholders, partners, members, employees, lenders, agents, servants, representatives, contractors, subcontractors, affiliates, subsidiaries, participants, successors and assigns of any and all of the foregoing (including but not limited to any other person or entity who holds or acquires or will have held a participation or other full or partial interest in the Loan or the Trust Estate, whether during the term of the Loan or as a part of or following a foreclosure of the Loan and including, but not limited to, any successors by merger, consolidation or acquisition of all or a substantial portion of Collateral Agent’s or the Lender’s assets and business).

“*Indenture*” means, collectively, one or more base indentures between Grantor and an Indenture Trustee, and including any supplemental indentures thereto, evidencing a Loan for the benefit of the Lender.

“*Indenture Trustee*” means an indenture trustee serving in such capacity under the terms of an Indenture.

“*Land*” means the parcel or parcels of real estate legally described in Exhibit A attached hereto, and all rights, privileges and appurtenances therewith.

“*Lease*” and “*Leases*” have the meaning set forth in the Granting Clause.

“*Loan*” means, collectively, the loans evidenced by the Primary Note and together with the loans made from time to time by a Lender to Grantor under the terms of a Loan Agreement and which are evidenced by a Note and secured by this Deed of Trust under the terms of any cross-collateralization provisions in such Loan Agreement.

“*Loan Agreement*” means, the Master Loan Agreement, dated March 2, 2007, between Grantor and Spirit SPE Warehouse Funding, LLC, as amended and/or restated from time to time and, after the date of any Notice of Assignment delivered pursuant to the Collateral Agency Agreement, and any and all Indentures between the Grantor

and an Indenture Trustee for the benefit of the Lender, pursuant to which Indenture the Lender has agreed to make loans and/or loan advances to Grantor for the financing by Grantor of the Trust Estate and other commercial real estate owned by Grantor identified in any Loan Agreement secured hereby, including, without limitation, after the date of such Notice of Assignment (i) certain loans and loan agreements entered into from time to time by and between the Grantor, as borrower, and an affiliate of Grantor (or such affiliate's predecessor holder of such loans), as Lender, and (ii) certain loan notes and loan advances made from time to time and issued by Grantor under one or more Indentures.

"*Loan Documents*" means the Loan Agreement, Primary Note, this Deed of Trust and any other document or instrument evidencing or securing the Loan.

"*Losses*" has the meaning set forth in Section 7.09.

"*Net Award*" has the meaning set forth in Section 4.01(b)(v).

"*Net Insurance Proceeds*" has the meaning set forth in Section 4.01(a)(iii).

"*Note*" means, collectively, the Primary Note and all other promissory notes issued from time to time and delivered by Grantor to or for the benefit of the Lender or its designee pursuant to a Loan Agreement and evidencing the Obligations secured by this Deed of Trust, and any amendments, extensions or modifications thereof.

"*Noteholder*" has the meaning set forth in the Collateral Agency Agreement.

"*Notices*" has the meaning set forth in Section 7.04.

"*Obligations*" has the meaning set forth in the Granting Clauses.

"*Outstanding Obligations*" means the sum of the outstanding principal balance of the Note and any other amounts due under the Obligations secured under this Deed of Trust, all accrued but unpaid interest on the Note, all other sums due under any Note, Loan Agreement and Indenture, all sums advanced by Collateral Agent under this Deed of Trust and all other sums due and payable under this Deed of Trust and the other Loan Documents corresponding to the Trust Estate.

"*Partial Taking*" has the meaning set forth in Section 4.01(b)(ii).

"*Personal Property*" has the meaning set forth in the Granting Clause.

"*Primary Note*" means the Master Note as defined in the Loan Agreement, as the same may be amended, assigned, restated, consolidated, extended or otherwise modified from time to time.

"*Prohibited Transaction*" has the meaning set forth in Section 3.08.

"*Recordable Documents*" has the meaning set forth in Section 3.01.

"*Rents*" has the meaning set forth in the Granting Clause.

"*Restoration*" means the restoration, replacement or rebuilding of the Trust Estate, or any part thereof, as nearly as possible to its value, condition and character immediately prior to any damage, destruction or Taking.

"*State*" means the State in which the Land is located.

"*Taking*" has the meaning set forth in Section 4.01(b)(i).

"*Total Taking*" has the meaning set forth in Section 4.01(b)(ii).

"Trust Estate" has the meaning set forth in the Granting Clause.

"UCC" has the meaning set forth in Section 6.02(iii).

ARTICLE II

INCORPORATION OF REPRESENTATIONS, WARRANTIES AND COVENANTS OF GRANTOR

The representations, warranties and covenants of Grantor set forth in any Note, Loan Agreement and Indenture are incorporated by reference into this Deed of Trust as if stated in full in this Deed of Trust. All representations and warranties as incorporated herein shall be deemed to have been made as of the date of this Deed of Trust and all representations, warranties and covenants incorporated herein shall survive the execution and delivery of this Deed of Trust.

ARTICLE III

COVENANTS OF GRANTOR

In addition to any covenants of Grantor set forth in any Note, Loan Agreement, Indenture or any other Loan Document, Grantor hereby covenants to Collateral Agent and agrees as follows until the Obligations are satisfied in full:

Section 3.01. **Recording.** Grantor shall, upon the execution and delivery hereof and thereafter from time to time, take such actions as Collateral Agent may request to cause this Deed of Trust, each supplement and amendment to such instrument and financing statements with respect thereto and each instrument of further assurance (collectively, the "Recordable Documents") to be filed, registered and recorded as may be required by law to publish notice and maintain the first lien or security interest, as applicable, hereof upon the Trust Estate and to publish notice of and protect the validity of the Recordable Documents. Grantor shall, from time to time, perform or cause to be performed any other act and shall execute or cause to be executed any and all further instruments (including financing statements, continuation statements and similar statements with respect to any of said documents) requested by Collateral Agent for carrying out the intention of, or facilitating the performance of, this Deed of Trust. Collateral Agent shall be and is hereby irrevocably appointed the agent and attorney-in-fact of Grantor to comply therewith (including the execution, delivery and filing of such financing statements and other instruments), which appointment is coupled with an interest; provided, however, Collateral Agent shall not exercise such power of attorney unless Grantor has first failed to comply with this Section, and provided, further, that this sentence shall not prevent any default in the observance of this Section from constituting an Event of Default. To the extent permitted by law, Grantor shall pay or cause to be paid recording taxes and fees incident thereto and all expenses, taxes and other governmental charges incident to or in connection with the preparation, execution, delivery or acknowledgment of the Recordable Documents, any instruments of further assurance and the Note.

Section 3.02. **Use; Maintenance and Repair; Leases.** The Trust Estate shall be used solely as contemplated in the Lease. Grantor shall not, and shall not permit any lessee under any Lease, to convert the Trust Estate to an alternative use while this Deed of Trust is in effect without Collateral Agent's consent, which consent shall not be unreasonably withheld. Collateral Agent may consider any or all of the following in determining whether to grant its consent, without being deemed to be unreasonable: (i) whether the converted use will be consistent with the highest and best use of the Trust Estate, and (ii) whether the converted use will increase Collateral Agent's risks or decrease the value of the Trust Estate. Grantor shall comply with the Loan Documents in connection with any Lease and, if prohibited by the Loan Documents, shall not (i) enter into any Leases without Collateral Agent's prior written consent; (ii) modify or amend the terms of any Lease without Collateral Agent's prior written consent; (iii) grant any consents under any Lease, including, without limitation, any consent to an assignment of any Lease, a mortgaging of the leasehold estate created by any Lease or a subletting by the lessee under any Lease, without Collateral Agent's prior written consent; (iv) terminate, cancel, surrender, or accept the surrender of, any Lease, or waive or release any person from the observance or performance of any obligation to be performed under the terms of any Lease or liability on account of any warranty given thereunder, without Collateral

Agent's prior written consent; or (v) assign, transfer, mortgage, pledge or hypothecate any Lease or any interest therein to any party other than Collateral Agent, without Collateral Agent's prior written consent. Any lease, modification, amendment, grant, termination, cancellation, surrender, waiver or release in violation of the foregoing provision shall be null and void and of no force and effect. Unless Collateral Agent otherwise consents or elects, Grantor's title to the Trust Estate and the leasehold interest in the Trust Estate created by any Lease shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Grantor, Collateral Agent or any other person by purchase, operation of law, foreclosure of this Deed of Trust, sale of the Trust Estate pursuant to this Deed of Trust or otherwise. Grantor shall (i) fulfill, perform and observe in all respects each and every condition and covenant of Grantor contained in any Lease; (ii) give prompt notice to Collateral Agent of any claim or event of default under any Lease given to or by Grantor, together with a complete copy or statement of any information submitted or referenced in support of such claim or event of default; (iii) at the sole cost and expense of Grantor, enforce the performance and observance of each and every covenant and condition of any Lease to be performed or observed by any other party thereto, unless such enforcement is waived in writing by Collateral Agent; (iv) appear in and defend any action challenging the validity, enforceability or priority of the lien created hereby or the validity or enforceability of any Lease; and (v) hold that portion of the Rents which is sufficient to discharge all current sums due under the Note for use in the payment of such sums.

Section 3.03. **After-Acquired Property.** All right, title and interest of Grantor in and to all improvements, alterations, substitutions, restorations and replacements of, and all additions and appurtenances to, the Trust Estate, hereafter acquired by or released to Grantor, immediately upon such acquisition or release and without any further granting by Grantor, shall become part of the Trust Estate and shall be subject to the lien hereof fully, completely and with the same effect as though now owned by Grantor and specifically described in the Granting Clauses hereof. Grantor shall execute and deliver to Collateral Agent any further assurances, mortgages, grants, conveyances or assignments thereof as the Collateral Agent may reasonably require to subject the same to the lien hereof.

Section 3.04. **Taxes, Assessments, Charges and Other Impositions.** (a) Grantor shall do or cause to be done everything necessary to preserve the lien hereof without expense to Collateral Agent, including, without limitation, enforcing the payment obligations of the lessee under the Lease. Grantor shall pay or cause to be paid prior to delinquency any and all taxes, assessments, water and sewer charges, and other charges now or hereafter assessed against the Trust Estate.

(b) Grantor may, at its own expense, contest or cause to be contested, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity or application, in whole or in part, of any item specified in subsection (a) or lien therefor, provided that (i) Grantor shall provide written notice to Collateral Agent of any contest involving more than \$10,000.00, (ii) such proceeding shall suspend the collection thereof from the Trust Estate or any interest therein, (iii) neither the Trust Estate nor any interest therein would be in any danger of being sold, forfeited or lost by reason of such proceedings, (iv) no Event of Default has occurred and is continuing, and (v) Grantor shall have deposited with Collateral Agent adequate reserves for the payment of the taxes, together with all interest and penalties thereon, unless paid in full under protest, or Grantor shall have furnished the security as may be required in the proceeding or as may be required by Collateral Agent to insure payment of any contested taxes.

Section 3.05. **Insurance.** Grantor shall maintain, with respect to the Trust Estate, at its sole expense, or cause the lessee under the Lease to maintain at such lessee's expense, the types and amounts of insurance required by the Lease.

Section 3.06. **Impound Account.** Upon the occurrence of an Event of Default under this Deed of Trust or any other Loan Document, Collateral Agent may require Grantor to pay to Collateral Agent sums which will provide an impound account (which shall not be deemed a trust fund) for paying up to the next one year of taxes, assessments and/or insurance premiums. Upon such requirement, Collateral Agent will estimate the amounts needed for such purposes and will notify Grantor to pay the same to Collateral Agent in equal monthly installments, as nearly as practicable, in addition to all other sums due under this Deed of Trust. Should additional funds be required at any time, Grantor shall pay the same to Collateral Agent on demand. Grantor shall advise Collateral Agent of all taxes and insurance bills which are due and shall cooperate fully with Collateral Agent in assuring that

the same are paid. Collateral Agent may deposit all impounded funds in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Collateral Agent. Interest or other gains from such funds, if any, shall be the sole property of Collateral Agent. If an Event of Default shall occur subsequent to Collateral Agent requiring the establishment of an impound account pursuant to this Section, Collateral Agent may apply all impounded funds against any sums due from Grantor to Collateral Agent. Collateral Agent shall give to Grantor upon request an annual accounting showing all credits and debits to and from such impounded funds received from Grantor.

Section 3.07. **Advances by the Lender or Collateral Agent.** If the Grantor fails to perform any covenant of the Grantor contained herein, the Lender or Collateral Agent may make advances to perform any of the covenants contained in this Deed of Trust on Grantor's behalf and all sums so advanced (and all sums advanced pursuant to any other provision hereof) by the Lender or Collateral Agent shall be secured hereby. Grantor shall repay on demand all sums so advanced with interest thereon at the Default Rate, if any, provided for in the Loan Agreement, such interest to be computed from and including the date of the making of such advance to and including the date of such repayment, and at Collateral Agent's election, the Lender or Collateral Agent may add the amount of such advance to the principal balance of the Primary Note secured by this Deed of Trust.

Section 3.08. **Negative Covenants.** Without limiting the terms and conditions of Section 5.2 of the Loan Agreement, Grantor agrees that Grantor shall not, without the prior written consent of Collateral Agent (each, a "Prohibited Transaction"), sell, convey, mortgage, grant, bargain, encumber, pledge, assign, or otherwise transfer the Trust Estate or any part thereof or permit the Trust Estate or any part thereof to be sold, conveyed, mortgaged, granted, bargained, encumbered, pledged, assigned, or otherwise transferred, other than sales from inventory in the ordinary course of business and the replacement of obsolete Personal Property. A sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer within the meaning of this Section shall be deemed to include, but not limited to, (a) an installment sales agreement wherein Grantor agrees to sell the Trust Estate or any part thereof for a price to be paid in installments; and (b) an agreement by Grantor leasing all or any part of the Trust Estate (other than the Lease) or a sale, assignment or other transfer of, or the grant of a security interest in, Grantor's right, title and interest in and to any Lease or any Rents.

Collateral Agent's consent to a Prohibited Transaction shall be subject to the satisfaction of such conditions as Collateral Agent shall determine in its sole discretion, including, without limitation, (i) Grantor having executed and delivered such modifications to the terms of this Deed of Trust and the other Loan Documents as Collateral Agent shall request, and (ii) the proposed transferee having assumed the Note, this Deed of Trust and the other Loan Documents (as modified pursuant to clause (i) above). Collateral Agent shall not be required to demonstrate any actual impairment of its security or any increased risk of default hereunder in order to declare the Obligations immediately due and payable upon Grantor's sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Trust Estate without Collateral Agent's consent, as required hereunder. The provisions of this Section shall apply to every sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Trust Estate regardless of whether voluntary or not, or whether or not Collateral Agent has consented to any previous sale, conveyance, mortgage, grant, bargain, encumbrance, pledge, assignment, or transfer of the Trust Estate.

Section 3.09. **Priority of Loan Agreement.** In the event that any Loan Agreement provides for any covenants or requirements that are inconsistent with the provisions of this Article III, the Loan Agreement provisions shall control.

ARTICLE IV

POSSESSION, USE AND RELEASE OF THE MORTGAGED PROPERTY

Section 4.01. **Casualty or Condemnation.** Grantor, immediately upon obtaining knowledge of any casualty to any portion of the Trust Estate or of any proceeding or negotiation for the taking of all or any portion of the Trust Estate in condemnation or other eminent domain proceedings, shall notify Collateral Agent of such casualty, proceeding or negotiation. Unless Grantor is required under the Lease to restore the Trust Estate or pay

any Proceeds (defined below) to the lessee under the Lease, any award, compensation or other payment resulting from such casualty or condemnation or eminent domain proceeding, as applicable, shall be applied as set forth below (the "Proceeds"). If Grantor is required under the terms of the Lease to restore the Trust Estate or pay any Proceeds to the lessee under the Lease, the Proceeds shall be applied as provided in the Lease. Collateral Agent may participate in any condemnation or eminent domain proceeding, and Grantor will deliver or cause to be delivered to Collateral Agent all instruments reasonably requested by Collateral Agent to permit such participation.

(a) *Casualty.* (i) In the event of any material damage to or destruction of the Trust Estate or any part thereof, Grantor will promptly give written notice to Collateral Agent, generally describing the nature and extent of such damage or destruction. No damage to or destruction of the Trust Estate shall relieve Grantor of its obligation to pay any monetary sum due under the Loan Documents at the time and in the manner provided in the Loan Documents.

(ii) In the event of any damage to or destruction of the Trust Estate or any part thereof, Grantor, whether or not the Proceeds, if any, on account of such damage or destruction shall be sufficient for the purpose, at its expense, shall promptly cause the Restoration to be commenced and completed.

(iii) Proceeds received by Collateral Agent and Grantor on account of any occurrence of damage to or destruction of the Trust Estate or any part thereof, less the costs, fees and expenses incurred by Collateral Agent and Grantor in the collection thereof, including, without limitation, adjuster's fees and expenses and attorneys' fees and expenses (the "Net Insurance Proceeds"), shall be paid to (1) Grantor, if the amount of such Net Insurance Proceeds is less than \$50,000 and applied by Grantor toward the cost of the Restoration, and (2) Collateral Agent, if the amount of such Net Insurance Proceeds is \$50,000 or greater. Provided that no Event of Default is continuing, Net Insurance Proceeds paid to Collateral Agent shall be held and disbursed by Collateral Agent, or as Collateral Agent may from time to time direct, as the Restoration progresses, to pay or reimburse Grantor for the cost of the Restoration, upon written request of Grantor accompanied by evidence, reasonably satisfactory to Collateral Agent, that (aa) the Restoration is in full compliance with all Applicable Regulations and all private restrictions and requirements, (bb) the amount requested has been paid or is then due and payable and is properly a part of such cost, (cc) there are no mechanics' or similar liens for labor or materials theretofore supplied in connection with the Restoration, (dd) if the estimated cost of the Restoration exceeds the Net Insurance Proceeds (exclusive of Proceeds received from Grantor's business income insurance), Grantor has deposited into an escrow satisfactory to Collateral Agent such excess amount, which sum will be disbursed pursuant to escrow instructions satisfactory to Collateral Agent, (ee) the balance of such Net Insurance Proceeds, together with the funds deposited into escrow, if any, pursuant to the preceding subsection and (ff), after making the payment requested will be sufficient to pay the balance of the cost of the Restoration. Upon receipt by Collateral Agent of evidence reasonably satisfactory to it that the Restoration has been completed and the cost thereof paid in full, and that there are no mechanics' or similar liens for labor or materials supplied in connection therewith, the balance, if any, of such Net Insurance Proceeds shall be paid to Grantor. If at the time of the damage or destruction to the Trust Estate or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, all Net Insurance Proceeds shall be paid to Collateral Agent, and Collateral Agent may retain and apply the Net Insurance Proceeds toward the Obligations whether or not then due and payable, in such order, priority and proportions as Collateral Agent in its discretion shall deem proper, or to cure such Event of Default, or, in Collateral Agent's discretion, Collateral Agent may pay such Net Insurance Proceeds in whole or in part to Grantor to be applied toward the cost of the Restoration. If Collateral Agent shall receive and retain Net Insurance Proceeds, the lien of this Deed of Trust shall be reduced only by the amount received and retained by Collateral Agent and actually applied by Collateral Agent in reduction of the Obligations.

(b) *Condemnation.* (i) In case of a taking of all or any part of the Trust Estate or the commencement of any proceedings or negotiations which might result in a taking, for any public or quasi-public purpose by any lawful power or authority by exercise of the right of condemnation or eminent domain or by agreement between Collateral Agent, Grantor and those authorized to exercise such right ("Taking"), Grantor will promptly give written notice thereof to Collateral Agent, generally describing the nature and extent of such Taking. Collateral Agent shall file and prosecute on behalf of Collateral Agent and Grantor any and all claims for Proceeds, and all Proceeds on account of a Taking shall be paid to Collateral Agent.

(ii) In case of a Taking of the whole of the Trust Estate, other than for temporary use ("Total Taking"), or in case of a Taking of less than all of the Trust Estate ("Partial Taking"), the Loan Documents shall remain in full force and effect. In the case of a Partial Taking, Grantor, whether or not the Proceeds, if any, on account of such Partial Taking shall be sufficient for the purpose (but provided they are made available by Collateral Agent for such purpose), at its own or Lessee's cost and expense, will promptly commence and complete or cause the commencement and completion of the Restoration. In case of a Partial Taking, other than a temporary use, of such a substantial part of the Trust Estate as shall result in the Trust Estate remaining after such Partial Taking being unsuitable for use, such Taking shall be deemed a Total Taking.

(iii) In case of a temporary use of the whole or any part of the Trust Estate by a Taking, the Loan Documents shall remain in full force and effect without any reduction of any monetary sum payable under the Loan Documents. In any proceeding for such Taking, Collateral Agent shall have the right to intervene and participate; provided that, if such intervention shall not be permitted, Grantor shall consult with Collateral Agent, its attorneys and experts, and make all reasonable efforts to cooperate with Collateral Agent in the prosecution or defense of such proceeding. At the termination of any such use or occupation of the Trust Estate, Grantor will, at its own or Lessee's cost and expense, promptly commence and complete or cause the commencement and completion of the Restoration.

(iv) Proceeds on account of a Taking, less the costs, fees and expenses incurred by Collateral Agent and Grantor in connection with the collection thereof, including, without limitation, attorneys' fees and expenses, shall be applied in the following order:

(x) Proceeds received by Collateral Agent or Grantor on account of a Total Taking shall be allocated as follows:

(aa) There shall be paid to the Collateral Agent an amount up to the Outstanding Obligations, as of the date on which such payment is made, such amount shall be applied first against all sums advanced by Collateral Agent under this Deed of Trust, second against the accrued but unpaid interest on the Note, and third to the remaining unpaid principal amount of the Note and other sums due under this Deed of Trust. If the Proceeds received on account of a Total Taking are not sufficient to satisfy the Outstanding Obligations, Grantor shall pay to Collateral Agent simultaneously with the payment of such Proceeds to Collateral Agent the difference between the amount of such Proceeds and the amount of the Outstanding Obligations.

(bb) Any remaining balance shall be paid to Grantor.

(y) Proceeds received by Collateral Agent or Grantor on account of a Partial Taking shall be held and allocated as follows:

(i) first, toward the cost of the Restoration, such application of net awards and other payments to be made substantially in the manner provided in Section 4.01(a)(iii) of this Deed of Trust; and

(ii) then, all or any portion of the balance of such proceeds shall, in Collateral Agent's sole discretion, either be paid to:

(1) Collateral Agent, as the holder of this Deed of Trust, and applied toward the Outstanding Obligations in such order, priority and proportion, and at such time on or prior to the Maturity Date (as defined in the Loan Agreement or in the Note), as Collateral Agent shall determine; or

(2) Grantor; provided, however, in Collateral Agent's sole discretion, such proceeds shall be pledged to Collateral Agent to secure the Outstanding Obligations pursuant to a security agreement reasonably satisfactory to Collateral Agent, or, with

Collateral Agent's consent, Grantor shall provide Collateral Agent with alternative security satisfactory to Collateral Agent in its sole discretion.

Collateral Agent may deposit any funds held by it in accounts insured by any federal or state agency and may commingle such funds with other funds and accounts of Collateral Agent. Interest or gains from such funds, if any, shall be the sole property of Collateral Agent.

(z) Proceeds received by Collateral Agent or Grantor on account of a Taking for temporary use shall be held by Collateral Agent and applied to the payment of the monthly installments of combined interest and principal becoming due under the Note, until such Taking for temporary use is terminated and the Restoration, if any, has been completed; provided, however, that, if any portion of any such award or payment is made by reason of any damage to or destruction of the Trust Estate, such portion shall be held and applied as provided in Section 4.01(a)(iii) hereof. The balance, if any, of such awards and payments shall be paid to Grantor.

(v) Notwithstanding the foregoing, if at the time of any Taking or at any time thereafter an Event of Default shall have occurred and be continuing under the Loan Documents, Collateral Agent is hereby authorized and empowered, in the name and on behalf of Grantor and otherwise, to file and prosecute Grantor's claim, if any, for an award on account of any Taking and to collect such award and apply the same, after deducting all costs, fees and expenses incident to the collection thereof (the "Net Award"), toward the Obligations whether or not then due and payable, in such order, priority and proportions as Collateral Agent in its discretion shall deem proper, or to cure such Event of Default, or, in Collateral Agent's discretion, Collateral Agent may pay the Net Award in whole or in part to Grantor to be applied toward the cost of the Restoration. If Collateral Agent shall receive and retain the Net Award, the lien of this Deed of Trust shall be reduced only by the amount received and retained by Collateral Agent and actually applied by Collateral Agent in reduction of the Obligations.

Section 4.02. *Conveyance in Anticipation of Condemnation, Granting of Easements, Etc.* If no Event of Default shall have occurred and be continuing, Grantor may, from time to time with respect to its interest in the Trust Estate, and with Collateral Agent's prior written consent, (i) sell, assign, convey or otherwise transfer any interest therein to any person legally empowered to take such interest under the power of eminent domain, (ii) grant easements and other rights in the nature of easements, (iii) release existing easements or other rights in the nature of easements which are for the benefit of the Trust Estate, (iv) dedicate or transfer unimproved portions of the Trust Estate for road, highway or other public purposes, (v) execute petitions to have the Trust Estate annexed to any municipal corporation or utility district, and (vi) execute and deliver to any person any instrument appropriate to confirm or effect such grants, releases, dedications and transfers.

Section 4.03. *Collateral Agent's Power.* At any time, or from time to time, without liability therefor, Collateral Agent, without affecting the personal liability of any person for payment of the Obligations or the effect of this Deed of Trust upon the remainder of said Trust Estate, may from time to time without notice, solely in order to protect the security hereof or to pay or discharge the Obligations in the event Grantor fails to do so, (i) release any part of said Trust Estate, (ii) consent in writing to the making of any map or plat thereof, (iii) join in any extension agreement or any agreement subordinating the lien or charge hereof, (iv) release any person so liable, (v) extend the maturity or alter any of the terms of any Obligations, (vi) grant other indulgences, (vii) take or release any other or additional security for any Obligations, (viii) make compositions or other arrangements with debtors in relation thereto, or (ix) advance additional funds and all amounts so advanced shall be secured hereby and shall be due and payable upon demand by Collateral Agent.

Section 4.04. *Priority of Loan Agreement.* In the event that any Loan Agreement provides for any covenants or requirements that are inconsistent with the provisions of this Article IV, the Loan Agreement provisions shall control.

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ARTICLE V

SECURITY INTEREST

Section 5.01. *Security Agreement.* With respect to the Personal Property or any portion of the Trust Estate which constitutes fixtures or other property governed by the UCC, this Deed of Trust shall constitute a security agreement between Grantor, as the debtor, and Collateral Agent, as the secured party, and Grantor hereby grants to Collateral Agent a security interest in such portion of the Trust Estate. Cumulative of all other rights of Collateral Agent hereunder, Collateral Agent shall have all of the rights conferred upon secured parties by the UCC. Grantor authorizes Collateral Agent to file financing statements with respect to the security interest of Collateral Agent, continuation statements with respect thereto, and any amendments to such financing statements which may be allowed pursuant to the Loan Documents. Furthermore, at any time, and from time to time, Grantor will execute and deliver to Collateral Agent all financing statements that may from time to time be required by Collateral Agent to establish and maintain the validity and priority of the security interest of Collateral Agent, or any modification thereof. Collateral Agent may exercise any or all of the remedies of a secured party available to it under the UCC with respect to such property. If, upon the occurrence and during the continuance of an Event of Default, Collateral Agent proceeds to dispose of such property in accordance with the provisions of the UCC, 10 days' notice by Collateral Agent to Grantor shall be deemed to be reasonable notice under any provision of the UCC requiring such notice; provided, however, that Collateral Agent may at its option dispose of such property in accordance with Collateral Agent's rights and remedies with respect to the real property pursuant to the provisions of this Deed of Trust, in lieu of proceeding under the UCC. Grantor represents that its exact legal name and state of formation or organization are as set forth in the first paragraph of this Deed of Trust. Grantor agrees that, notwithstanding any provision in the UCC to the contrary, Grantor shall not file a termination statement of any financing statement filed by Collateral Agent in connection with any security interest granted under this Deed of Trust if Collateral Agent reasonably objects to the filing of such termination statement.

Section 5.02. *Effective as a Financing Statement and Fixture Filing.* This Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Trust Estate and is to be filed for record in the real estate records of each county where any part of the Trust Estate (including said fixtures) is situated. This Deed of Trust shall also be effective as a financing statement covering any other portion of the Trust Estate and may be filed in any other appropriate filing or recording office. The mailing address of Grantor is the address of Grantor set forth in the introductory paragraph of this Deed of Trust, and the address of the Collateral Agent from which information concerning the security interests hereunder may be obtained is the address of Collateral Agent as set forth in the introductory paragraph of this Deed of Trust. A carbon, photographic or other reproduction of this Deed of Trust or of any financing statement relating to this Deed of Trust shall be sufficient as a financing statement for any of the purposes referred to in this Section.

ARTICLE VI

EVENTS OF DEFAULT AND REMEDIES

Section 6.01. *Events of Default.* Each of the following shall be an event of default under this Deed of Trust (each an "Event of Default"):

- (i) If Grantor fails to pay any principal or interest payment due under the Primary Note within five days after the date such payment is due and payable.
- (ii) Subject to the provisions of Section 3.04(b) of this Deed of Trust, if Grantor fails to pay, prior to delinquency, any taxes, assessments or other charges the failure of which to pay will result in the imposition of a lien against the Trust Estate pursuant to Applicable Regulations.
- (iii) If Grantor shall fail to maintain insurance in accordance with the requirements of Section 3.05 of this Deed of Trust.

(iv) If Grantor materially fails to observe or perform any of the covenants, conditions, or obligations of this Deed of Trust, provided, however, if any such failure does not involve the payment of any principal, interest or other monetary sum due under the Note or any of the Notes made pursuant to any Loan Agreement, is not willful or intentional, does not place any rights or interest in collateral of Collateral Agent in immediate jeopardy, and is within the reasonable power of Grantor to promptly cure after receipt of notice thereof, all as determined by Collateral Agent, the Indenture Trustee or Lender, as applicable, in its reasonable discretion, then such failure shall not constitute an Event of Default hereunder, unless otherwise expressly provided herein, unless and until Collateral Agent shall have given Grantor notice thereof and a period of 30 days shall have elapsed, during which period Grantor may correct or cure such failure, upon failure of which an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required. If such failure cannot reasonably be cured within such 30-day period, as determined by Collateral Agent in its reasonable discretion, and Grantor is diligently pursuing a cure of such failure, then Grantor shall have a reasonable period to cure such failure beyond such 30-day period, which shall in no event exceed 90 days after receiving notice of the failure from Collateral Agent. If Grantor shall fail to correct or cure such failure within such 90-day period, an Event of Default shall be deemed to have occurred hereunder without further notice or demand of any kind being required.

(v) If there is an "Event of Default" under any Loan Agreement and all cure periods, if any, with respect thereto have expired without the Grantor curing such "Event of Default".

Section 6.02. **Remedies.** Upon the occurrence and during the continuance of an Event of Default subject to the limitations set forth in Section 6.01. Collateral Agent may declare all or any part of the Obligations to be due and payable, and the same shall thereupon become due and payable without any presentment, demand, protest or notice (including notice of intent to accelerate and notice of acceleration) of any kind except as otherwise expressly provided herein. Furthermore, upon the occurrence and during the continuance of an Event of Default, Collateral Agent may:

(i) Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, and without regard to the adequacy of its security, enter upon and take possession of the Trust Estate or any part thereof and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Trust Estate, or part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Trust Estate, take any action described herein, sue for or otherwise collect the Rents, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, upon any Obligations, all in such order as the Lender may determine. The entering upon and taking possession of the Trust Estate, the taking of any action described herein, the collection of such Rents, and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of default or invalidate any act done in response to such Event of Default or pursuant to such notice of default and, notwithstanding the continuance in possession of the Trust Estate or the collection, receipt and application of Rents, the Lender shall be entitled to exercise every right provided for in any of the Loan Documents or by law upon any Event of Default;

(ii) Commence an action to foreclose this Deed in a single parcel or in several parcels, appoint a receiver or specifically enforce any of the covenants hereof;

(iii) Exercise any or all of the remedies available to a secured party under the Uniform Commercial Code as adopted in the State ("UCC"), including, without limitation:

(1) Either personally or by means of a court appointed receiver, commissioner or other officer, take possession of all or any of the Personal Property and exclude therefrom Grantor and all others claiming under Grantor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Grantor in respect of the Personal Property or any part thereof. In the

event the Lender demands or attempts to take possession of the Personal Property in the exercise of any rights under any of the Loan Documents, Grantor promises and agrees to promptly turn over and deliver complete possession thereof to the Lender;

(2) Without notice to or demand upon Grantor, make such payments and do such acts as the Lender may deem necessary to protect its security interest in the Personal Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior to or superior to the security interest granted hereunder and, in exercising any such powers or authority, to pay all expenses incurred in connection therewith;

(3) Require Grantor to assemble the Personal Property or any portion thereof, at the Trust Estate, and promptly to deliver such Personal Property to the Lender, or an agent or representative designated by it. The Lender, and its agents and representatives, shall have the right to enter upon any or all of Grantor's premises and property to exercise the Lender's rights hereunder;

(4) Sell, lease or otherwise dispose of the Personal Property at public sale, with or without having the Personal Property at the place of sale, and upon such terms and in such manner as the Lender may determine. The Lender may be a purchaser at any such sale;

(5) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Lender shall give Grantor at least 10 days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof. Such notice may be delivered to Grantor at the address set forth at the beginning of this Deed and shall be deemed to be given as provided herein; and

(6) Any sale made pursuant to the provisions of this subsection shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of all or a portion of the other Trust Estate under power of sale as provided herein upon giving the same notice with respect to the sale of the Personal Property hereunder as is required for such sale of the other Trust Estate under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under the UCC;

(iv) Exercise all of Grantor's rights and remedies under the Indemnity Agreements, including, without limitation, making demands and claims and receiving payments under the Indemnity Agreements. Grantor hereby grants the Lender a power of attorney (which grant shall be deemed irrevocable and coupled with an interest) to exercise such rights and remedies;

(v) Apply any sums then deposited in the impound account described in Section 3.06 toward payment of the taxes, assessment and insurance premiums for the Trust Estate and/or as a credit on the Obligations in such priority and proportion as the Lender may determine in its sole discretion;

(vi) If held by the Lender, surrender the insurance policies maintained pursuant to Section 3.05, collect the unearned insurance premiums and apply such sums as a credit on the Obligations in such priority and proportion as the Lender in its sole discretion shall deem proper, and in connection therewith, Grantor hereby appoints the Lender as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for the Lender to collect such insurance premiums; and

(vii) Sell Grantor's interest in the Trust Estate pursuant to the power of sale herein conferred. If Collateral Agent elects to sell Grantor's interest in the Trust Estate by exercise of such power of sale, Collateral Agent shall notify Trustee to cause such sale to be performed in the manner then required by law.

(aa) Upon receipt of notice from Collateral Agent and at the direction of Collateral Agent, Trustee shall cause to be recorded, published and delivered such notices of default and notices of sale as may then be required by law and by this Deed of Trust. Trustee shall, only at the direction of Collateral Agent and without demand on Grantor, after such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, sell Grantor's interest, in the Trust Estate at the time and place of sale fixed by Collateral Agent, either as a whole, or in separate lots or parcels or items as Collateral Agent shall deem expedient, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States payable at the time of sale, or as otherwise may then be required by law. Trustee shall deliver to such purchaser or purchasers thereof its good and sufficient deed or deeds conveying the property so sold, with general warranty of title by Grantor, as applicable. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including, without limitation, Trustee, Grantor or Collateral Agent, may purchase at such sale. Trustee and Collateral Agent may sell not only the real property but also the Personal Property and other interests which are a part of the Trust Estate, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Trust Estate separately from the remainder of the Trust Estate. Trustee or Collateral Agent shall not be required to take possession of any part of the Trust Estate or to have any of the Personal Property present at any sale of the Trust Estate. Trustee or Collateral Agent may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Trustee or Collateral Agent, including the posting of notices and the conduct of sale, but in the name and on behalf of Collateral Agent. In the event any sale hereunder is not completed or is defective in the opinion of Trustee or Collateral Agent, such sale shall not exhaust the power of sale hereunder, and Trustee or Collateral Agent shall have the right to cause a subsequent sale or sales to be made hereunder until all of the Trust Estate has been lawfully sold.

(bb) As may be permitted by law, Trustee or Collateral Agent shall apply the proceeds of sale (i) first, to payment of all costs, fees and expenses, including attorneys' fees and expenses incurred by the Collateral Agent in exercising the power of sale or foreclosing this Deed of Trust, (ii) second, to the payment of the Obligations (including, without limitation, the principal, accrued interest and other sums due and owing under the Note and the amounts due and owing to Collateral Agent under this Deed of Trust) in such manner and order as Collateral Agent may elect, and (iii) third, the remainder, if any, shall be paid to Grantor, or to Grantor's heirs, devisees, representatives, successors or assigns, or such other persons as may be entitled thereto.

(cc) Trustee may in the manner provided by law postpone sale of all or any portion of the Trust Estate.

Section 6.03. **Appointment of Receiver.** If an Event of Default shall have occurred and be continuing, Collateral Agent, as a matter of right and without notice to Grantor or anyone claiming under Grantor, Grantor hereby waiving any right to a hearing or notice of hearing prior to the appointment of a receiver, and without regard to any showing of insolvency, fraud or mismanagement and without regard to the then sufficiency of the security for the payment of the Obligations and without notice to Grantor and without any showing of insolvency, fraud or mismanagement on the part of the Grantor, and without the necessity of filing any judicial or other proceeding other than the proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Trust Estate or any part thereof, and of the income, rents, issues and profits thereof, and Grantor hereby irrevocably consents to the appointment of a receiver or receivers. Any receivers appointed pursuant to the provisions of this subsection shall have the usual powers and duties of receivers in such matters. To the extent permitted by applicable law, Grantor or the then-owner of the Trust Estate, may seek the appointment of a receiver for the Trust Estate upon *ex parte* application to any court of the competent jurisdiction. Such receiver shall be empowered (a) to take possession of the Trust Estate and any businesses conducted by Grantor thereon and any business assets used in connection therewith, (b) to exclude Grantor and Grantor's agents, servants and employees from the Trust Estate, or, at the option of the receiver, in lieu of such exclusion, to collect a fair market rental from any such persons occupying any part of the Trust Estate, (c) to collect the Rents, (d) to complete any construction that may be in progress, (e) to continue the development, marketing and sale of the Trust Estate, (f) to do such maintenance and make such repairs and alterations as the receiver deems necessary, (g) to use all stores of materials, supplies and maintenance equipment on the Trust Estate and replace such items at the expense of the receivership

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estate, (h) to pay all taxes and assessments against the Trust Estate, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance, (i) to request that Collateral Agent advance such funds as may reasonably be necessary to the effective exercise of the receiver's powers, on such terms as may be agreed upon by the receiver and Collateral Agent, but not in excess of the Default Rate, and (j) generally to do anything that Grantor could legally do if Grantor were in possession of the Trust Estate. All expenses incurred by the receiver or his agents, including obligations to repay funds borrowed by the receiver, shall constitute a part of the Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership, including reasonable attorneys' fees incurred by the receiver and by Collateral Agent, together with interest thereon at the highest rate of interest applicable in the Note from the date incurred until repaid, and the balance shall be applied toward the Obligations or in such other manner as the court may direct.

Section 6.04. **Remedies Not Exclusive.** Collateral Agent shall be entitled to enforce payment and performance of any Obligations and to exercise all rights and powers under this Deed of Trust or under the Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect Collateral Agent's right to realize upon or enforce any other security now or hereafter held by Collateral Agent, it being agreed that Collateral Agent shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by Collateral Agent in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to Collateral Agent is intended to be exclusive of any other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to Collateral Agent, or to which Collateral Agent may be otherwise entitled, may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Collateral Agent. Collateral Agent may pursue inconsistent remedies.

The acceptance by Collateral Agent of any sum after the same is due shall not constitute a waiver of the right either to require prompt payment, when due, of all other sums hereby secured or to declare a subsequent Event of Default as herein provided. The acceptance by Collateral Agent of any sum in an amount less than the sum then due shall be deemed an acceptance on account only and upon condition that it shall not constitute a waiver of the obligation of Grantor to pay the entire sum then due, and failure of Grantor to pay such entire sum then due shall be an Event of Default, notwithstanding such acceptance of such amount on account, as aforesaid. Collateral Agent shall be, at all times thereafter and until the entire sum then due as contemplated by the Loan Documents shall have been paid, and notwithstanding the acceptance by Collateral Agent thereafter of further sums on account, or otherwise, entitled to exercise all rights in this instrument conferred upon them or either of them, and the right to proceed with a sale under any notice of default, or an election to sell, or the right to exercise any other rights or remedies hereunder, shall in no way be impaired, whether any of such amounts are received prior or subsequent to such proceeding, election or exercise. Consent by Collateral Agent to any action or inaction of Grantor which is subject to consent or approval of Collateral Agent hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions or inactions.

Section 6.05. **Possession of Trust Estate.** In the event of a trustee's sale or foreclosure sale hereunder and after the time of such sale, Grantor occupies the portion of the Trust Estate so sold, or any part thereof, Grantor 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 portion of the Trust Estate so occupied, such rental to be due and payable daily to the purchaser. An action of unlawful detainer shall lie if the tenant holds over after a demand in writing for possession of such Trust Estate; and this Deed of Trust and a trustee's or sheriff's deed shall constitute a lease and agreement under which the tenant's possession arose and continued. Nothing contained in this Deed of Trust shall be construed to constitute Collateral Agent as a "mortgagee in possession" in the absence of its taking actual possession of the Trust Estate pursuant to the powers granted herein.

Section 6.06. **Waiver of Rights.** Grantor waives the benefit of all laws now existing or that hereafter may be enacted (i) providing for any appraisal before sale of any portion of the Trust Estate, or (ii) in any way

extending the time for the enforcement of the collection of the Obligations or creating or extending a period of redemption from any sale made in collecting the Obligations. Grantor agrees that Grantor will not at any time insist upon, plea, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, extension, redemption or homestead exemption, and Grantor, for Grantor, Grantor's representatives, successors and assigns, and for any and all persons ever claiming any interest in the Trust Estate, hereby waives and releases all rights of redemption, valuation, appraisal, stay of execution, homestead exemption, notice of election to mature or declare due the whole of the Obligations and marshaling in the event of foreclosure of the liens hereby created. If any law referred to in this Section and now in force, of which Grantor, Grantor's heirs, devisees, representatives, successors and assigns or other person might take advantage despite this Section, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to preclude the application of this Section. Grantor expressly waives and relinquishes any and all rights, remedies and defenses that Grantor may have or be able to assert by reason of the laws of the State pertaining to the rights, remedies and defenses of sureties.

If an Event of Default shall have occurred and be continuing, Grantor hereby irrevocably and unconditionally waives and releases (i) all benefits that might accrue to Grantor by virtue of any present or future law exempting the Trust Estate from attachment, levy or sale on execution or providing for any appraisal, valuation, state of execution, exemption from civil process, redemption, or extension of time for payment; and (ii) any right to a marshaling of assets or a sale in inverse order of alienation.

Section 6.07. **Relief From Stay.** In the event that Grantor commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, subject to court approval, Collateral Agent shall thereupon be entitled and Grantor irrevocably consents to relief from any stay imposed by Section 362 of the Code on or against the exercise of the rights and remedies otherwise available to Collateral Agent as provided in the Loan Documents and Grantor hereby irrevocably waives its rights to object to such relief. In the event Grantor shall commence a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code, Grantor hereby agrees that no injunctive relief against Collateral Agent shall be sought under Section 105 or other provisions of the Code by Grantor or other person or entity claiming through Grantor, nor shall any extension be sought of the stay provided by Section 362 of the Code.

Section 6.08. **Cash Collateral.** Grantor hereby acknowledges and agrees that in the event that Grantor commences a case under the Code or is the subject of an involuntary case that results in an order for relief under the Code: (i) that all of the Rents are, and shall for purposes be deemed to be, "proceeds, product, offspring, rents, or profits" of the Trust Estate covered by the lien of this Deed of Trust, as such quoted terms are used in Section 552(b) of the Code; (ii) that in no event shall Grantor assert, claim or contend that any portion of the Rents are, or should be deemed to be, "accounts" or "accounts receivable" within the meaning of the Code and/or applicable state law; (iii) that the Rents are and shall be deemed to be in any such bankruptcy proceeding "cash collateral" of Collateral Agent as that term is defined in Section 363 of the Code; and (iv) that Collateral Agent has valid, effective, perfected, enforceable and "choate" rights in and to the Rents without any further action required on the part of Collateral Agent to enforce or perfect its rights in and to such cash collateral, including, without limitation, providing notice to Grantor under Section 546(b) of the Code.

Section 6.09. **Assignment of Rents and Leases.** (a) Grantor hereby assigns, transfers, conveys and sets over to Collateral Agent all of Grantor's estate, right, title and interest in, to and under the Leases, whether existing on the date hereof or hereafter entered into, together with any changes, extensions, revisions or modifications thereof and all rights, powers, privileges, options and other benefits of Grantor as the lessor under the Leases regarding the current tenants and any future tenants, and all the Rents from the Leases, including those now due, past due or to become due. Grantor irrevocably appoints Collateral Agent its true and lawful attorney-in-fact, at the option of Collateral Agent, at any time and from time to time upon the occurrence and during the continuance of an Event of Default, to take possession and control of the Trust Estate, pursuant to Grantor's rights under the Leases, to exercise any of Grantor's rights under the Leases, and to demand, receive and enforce payment, to give receipts, releases and satisfaction and to sue, in the name of Grantor or Collateral Agent, for all of the Rents. The power of attorney granted hereby shall be irrevocable and coupled with an interest and shall terminate only upon the payment of all sums due Collateral Agent for all losses, costs, damages, fees and expenses whatsoever associated with the exercise

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of this power of attorney, and Grantor hereby releases Collateral Agent from all liability (other than as a result of the gross negligence or willful misconduct of Collateral Agent) whatsoever for the exercise of the foregoing power of attorney and all actions taken pursuant thereto. The consideration received by Grantor to execute and deliver this assignment and the liens and security interests created herein is legally sufficient and will provide a direct economic benefit to Grantor. It is intended by Grantor and Collateral Agent that the assignment set forth herein constitutes an absolute assignment and not merely an assignment for additional security. Notwithstanding the foregoing, this assignment shall not be construed to bind Collateral Agent to the performance of any of the covenants, conditions or provisions of Grantor contained in the Leases or otherwise to impose any obligation upon Collateral Agent, and, so long as no Event of Default shall have occurred and be continuing, Grantor shall have a license, revocable upon an Event of Default, to possess and control the Trust Estate and collect and receive all Rents. Upon an Event of Default, such license shall be automatically revoked.

(b) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, at any time without notice (except if required by applicable law), either in person, by agent or by a court-appointed receiver, regardless of the adequacy of Collateral Agent's security, and at its sole election (without any obligation to do so), enter upon and take possession and control of the Trust Estate, or any part thereof, to perform all acts necessary and appropriate to operate and maintain the Trust Estate, including, but not limited to, execute, cancel or modify the Leases, make repairs to the Trust Estate, execute or terminate contracts providing for the management or maintenance of the Trust Estate, all on such terms as are deemed best to protect the security of this assignment, and in Collateral Agent's or Grantor's name, sue for or otherwise collect such Rents as specified in this Deed of Trust as the same become due and payable, including, but not limited to, Rents then due and unpaid. Collateral Agent may so sue for or otherwise collect such Rents with or without taking possession of the Trust Estate. Grantor agrees that upon the occurrence and during the continuance of an Event of Default, each tenant of the Trust Estate shall make its rent payable to and pay such rent to Collateral Agent (or Collateral Agent's agents) on Collateral Agent's written demand therefor, delivered to such tenant personally, by mail, or by delivering such demand to each rental unit, without any liability on the part of said tenant to inquire further as to the existence of an Event of Default by Grantor.

(c) Rents collected subsequent to any Event of Default shall be applied at the direction of, and in such order as determined by, Collateral Agent to the costs, if any, of taking possession and control of and managing the Trust Estate and collecting such amounts, including, but not limited to, reasonable attorney's fees, receiver's fees, premiums on receiver's bonds, costs of repairs to the Trust Estate, premiums on insurance policies, taxes, assessments and other charges on the Trust Estate, and the costs of discharging any obligation or liability of Grantor with respect to the Leases and to the sums secured by this Deed of Trust. Collateral Agent or the receiver shall have access to the books and records used in the operation and maintenance of the Trust Estate and shall be liable to account only for those Rents actually received.

(d) Collateral Agent shall not be liable to Grantor, anyone claiming under or through Grantor or anyone having an interest in the Trust Estate by reason of anything done or left undone by Collateral Agent hereunder, except to the extent of Collateral Agent's gross negligence or willful misconduct.

(e) Any entering upon and taking possession and control of the Trust Estate by Collateral Agent or the receiver and any application of Rents as provided herein shall not cure or waive any Event of Default hereunder or invalidate any other right or remedy of Collateral Agent under applicable law or provided therein.

ARTICLE VII

MISCELLANEOUS

Section 7.01. **Satisfaction.** If and when the Obligations shall have become due and payable (whether by lapse of time or by acceleration or by the exercise of the privilege of prepayment), and Grantor shall pay or cause to be paid all Obligations and all other sums payable by the Grantor with respect to the Obligations, then this Deed of Trust shall be void (otherwise it shall remain in full force and effect in law and equity forever) and Collateral Agent

agrees to execute an instrument evidencing the satisfaction of all obligations under this Deed of Trust and releasing this Deed of Trust which shall be prepared and recorded at Grantor's sole expense.

Section 7.02. *Limitation of Rights of Others.* Nothing in this Deed of Trust is intended or shall be construed to give to any person, other than Trustee, Collateral Agent and the Lender, any legal or equitable right, remedy or claim under or in respect of this Deed of Trust or any covenant, condition or provision herein contained.

Section 7.03. *Severability.* In case any one or more of the provisions contained herein or in the Note shall be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Deed of Trust shall be construed as if such provision had never been contained herein or therein.

Section 7.04. *Notices; Amendments; Waiver.* All notices, demands, designations, certificates, requests, offers, consents, approvals, appointments and other instruments given pursuant to this Deed of Trust (collectively called "Notices") shall be in writing and given by (i) hand delivery, (ii) facsimile, (iii) express overnight delivery service or (iv) certified or registered mail, return receipt requested and shall be deemed to have been delivered upon (a) receipt, if hand delivered, (b) machine confirmation, if delivered by facsimile, (c) the next Business Day, if delivered by express overnight delivery service, or (d) the fifth Business Day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to the parties and addresses (or facsimile numbers, as applicable) specified below:

If to Collateral Agent: Citibank, N.A.
388 Greenwich Street, Floor 14
New York, New York 10013
Attention: Agency & Trust, Spirit
Telephone: (212) 816-5693
Telecopy: (212) 816-5527

If to Grantor: SPIRIT MASTER FUNDING, LLC
14631 N. Scottsdale Road
Suite 200
Scottsdale, Arizona 85254-2711
Attention: Catherine Long
Telephone: (480) 606-0820
Telecopy: (480) 606-0826

with a copy to: Kutak Rock LLP
1801 California Street
Suite 3100
Denver, Colorado 80202
Attention: Paul E. Belitz, Esq.
Telephone: (303) 297-2400
Telecopy: (303) 292-2277

or to such other address or such other person as either party may from time to time hereafter specify to the other party in a notice delivered in the manner provided above. Whenever in this Deed of Trust the giving of Notice is required, the giving thereof may be waived in writing at any time by the person or persons entitled to receive such Notice. Except as in this Deed of Trust otherwise expressly provided, (i) this Deed of Trust may not be modified except by an instrument in writing executed by Grantor and Collateral Agent and (ii) no requirement hereof may be waived at any time except by a writing signed by the party against whom such waiver is sought to be enforced, nor shall any waiver be deemed a waiver of any subsequent breach or default.

Section 7.05. *Successors and Assigns; Successor to Collateral Agent.* All of the provisions herein contained shall be binding upon and inure to the benefit of the respective successors and assigns of the parties

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hereto, to the same extent as if each such successor and assign were in each case named as a party to this Deed of Trust. Wherever used, the singular shall include the plural, the plural shall include the singular and the use of any gender shall include all genders. In the event that the Collateral Agent is replaced, substituted or removed under the terms of the Collateral Agency Agreement, the party to whom the Lender transfers such collateral agency obligations (including, without limitation, any successor collateral agent, trustee or agent) shall automatically (and without record notice) be deemed the successor "Collateral Agent" hereunder and no amendment or assignment of this Deed of Trust shall be required. In addition, if the Collateral Agency Agreement is terminated in its entirety and no successor is appointed by Lender, then Lender shall be deemed the "Collateral Agent" and no assignment, notice or recorded document shall be required in connection therewith.

Section 7.06. **Headings.** The headings appearing in this Deed of Trust have been inserted for convenient reference only and shall not modify, define, limit or expand the express provisions of this Deed of Trust.

Section 7.07. **Time of the Essence.** Time is of the essence in the performance of each and every obligation under this Deed of Trust.

Section 7.08. **Forum Selection; Jurisdiction; Venue; Choice of Law.** Grantor acknowledges that this Deed of Trust was substantially negotiated in the State, this Deed of Trust was delivered in the State, all payments under the Loan Documents will be delivered in the State and there are substantial contacts between the parties and the transactions contemplated herein and the State. For purposes of any action or proceeding arising out of this Deed of Trust, the parties hereto expressly submit to the jurisdiction of all federal and state courts located in the State. Grantor consents that it may be served with any process or paper by registered mail or by personal service within or without the State in accordance with applicable law. Furthermore, Grantor waives and agrees not to assert in any such action, suit or proceeding that it is not personally subject to the jurisdiction of such courts, that the action, suit or proceeding is brought in an inconvenient forum or that venue of the action, suit or proceeding is improper. The creation of this Deed of Trust and the rights and remedies of Collateral Agent with respect to the Trust Estate, as provided herein and by the laws of the State, shall be governed by and construed in accordance with the internal laws of the State without regard to its principles of conflicts of law. With respect to other provisions of this Deed of Trust, this Deed of Trust shall be governed by the internal laws of the State, without regard to its principles of conflicts of law. Nothing in this Section shall limit or restrict the right of Collateral Agent to commence any proceeding in the federal or state courts located in the State to the extent Collateral Agent deems such proceeding necessary or advisable to exercise remedies available under the Deed of Trust or the other Loan Documents.

Section 7.09. **Indemnification.** Grantor shall indemnify and hold harmless each of the Indemnified Parties for, from and against any and all claims, suits, liabilities (including, without limitation, strict liabilities), actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement and damages of whatever kind or nature (including, without limitation, attorneys' fees, court costs and other costs of defense) (collectively, "Losses") (excluding Losses suffered by an Indemnified Party arising out of such Indemnified Party's gross negligence or willful misconduct; provided, however, that the term "gross negligence" shall not include gross negligence imputed as a matter of law to any of the Indemnified Parties solely by reason of Grantor's interest in the Trust Estate or Grantor's failure to act in respect of matters which are or were the obligation of Grantor under the Loan Documents) caused by, incurred or resulting from Grantor's operations of, or relating in any manner to, the Trust Estate, whether relating to its original design or construction, latent defects, alteration, maintenance, use by Grantor or any person thereon, supervision or otherwise, or from any breach of, default under or failure to perform any term or provision of this Deed of Trust by Grantor, its officers, employees, agents or other persons. It is expressly understood and agreed that Grantor's obligations under this Section shall survive the expiration or earlier termination of this Deed of Trust for any reason.

Section 7.10. **Waiver of Jury Trial and Punitive, Consequential, Special and Indirect Damages.** COLLATERAL AGENT, BY ACCEPTING THIS MORTGAGE, AND GRANTOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR ITS

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SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE, THE RELATIONSHIP OF COLLATERAL AGENT AND GRANTOR, GRANTOR'S USE OR OCCUPANCY OF THE MORTGAGED PROPERTY, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, GRANTOR AND COLLATERAL AGENT HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHER AND ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS, MANAGERS, MEMBERS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS, MANAGERS, MEMBERS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS MORTGAGE OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY GRANTOR AND COLLATERAL AGENT OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN.

Section 7.11. *Entire Agreement.* THIS DEED AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

Section 7.12. *State Specific Provisions.* State specific provisions, if any, are outlined on Exhibit B, attached hereto and incorporated herein.

ARTICLE VIII

THE TRUSTEE

Section 8.01. *Rights and Obligations of Trustee.* Trustee accepts the trusts hereby created and agrees to perform its duties herein for the benefit of Collateral Agent.

Section 8.02. *Resignation of Trustee.* Trustee may resign and be discharged of the trusts by giving notice thereof to Collateral Agent, the holder of the Note and Grantor (or any subsequent owner of Grantor's interest in the Trust Estate) specifying the date (not less than ninety (90) days after such notice) when such resignation shall take effect. Such resignation shall take effect on the earlier of the date so specified or the appointment and acceptance of a successor trustee pursuant to Section 8.03.

Section 8.03. *Successor Trustee.* Collateral Agent may appoint a substitute Trustee: (a) if Trustee herein named or any substitute Trustee shall die, resign, or fail, refuse or be unable, for any reason, to make any such sale or to perform any of the trusts herein declared; or (b) at the option of Collateral Agent from time to time as often and whenever Collateral Agent prefers and with or without any reason or cause. Each appointment shall be in writing, but without the necessity of recordation, notice to Grantor, or any other action or formality. Each substitute trustee so appointed shall thereupon by such appointment become Trustee and succeed to all the estates, titles, rights, powers, trusts and duties of predecessor Trustee. Any such appointment may be executed by Collateral Agent or any authorized representative of the Lender, and such appointment shall be presumed conclusively to have been executed with due and proper authority. Without limiting the generality of the foregoing, such appointment may be executed in its behalf by any officer of Collateral Agent and shall be presumed conclusively to have been executed with due and proper authority without necessity of proof of any action by the board of directors or any superior officer. Wherever herein the word "Trustee" is used, the same shall mean the duly appointed trustee hereunder at the time in question. As used in this Section 8.03, Grantor shall mean and include any subsequent owner of Grantor's interest in the Trust Estate.

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Section 8.04. *Separate and Co Trustees.* (a) If it deems such to be necessary or prudent, Trustee shall have the power to appoint one or more persons to act as separate trustees or co trustees, jointly with Trustee, of any of the property subject to the lien hereof, and any such person shall be such separate trustee or co trustee, with such powers and duties as shall be specified in such instrument.

(b) Such separate trustee or co trustee, upon acceptance of such trust, shall be vested with the estates or property specified in such instrument, either jointly with Trustee, or separately as may be provided therein, such to all the trusts, conditions and provisions of Deed of Trust; and every such instrument shall be filed with Trustee.

Section 8.05. *Liability of Trustee.* THE TRUSTEE SHALL NOT BE LIABLE FOR ANY ERROR OF JUDGMENT OR ACT DONE BY TRUSTEE IN GOOD FAITH, OR BE OTHERWISE RESPONSIBLE OR ACCOUNTABLE UNDER ANY CIRCUMSTANCES WHATSOEVER (EXPRESSLY INCLUDING FOR TRUSTEE'S NEGLIGENCE), EXCEPT FOR TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE TRUSTEE SHALL HAVE THE RIGHT TO RELY ON ANY INSTRUMENT, DOCUMENT OR SIGNATURE AUTHORIZING OR SUPPORTING ANY ACTION TAKEN OR PROPOSED TO BE TAKEN BY HIM HEREUNDER, BELIEVED BY HIM IN GOOD FAITH TO BE GENUINE. ALL MONEYS RECEIVED BY TRUSTEE SHALL, UNTIL USED OR APPLIED AS HEREIN PROVIDED, BE HELD IN TRUST FOR THE PURPOSES FOR WHICH THEY WERE RECEIVED, BUT NEED NOT BE SEGREGATED IN ANY MANNER FROM ANY OTHER MONEYS (EXCEPT TO THE EXTENT REQUIRED BY LAW), AND TRUSTEE SHALL BE UNDER NO LIABILITY FOR INTEREST ON ANY MONEYS RECEIVED BY HIM HEREUNDER. COLLATERAL AGENT HEREBY RATIFIES AND CONFIRMS ANY AND ALL ACTS WHICH THE HEREIN NAMED TRUSTEE OR HIS SUCCESSOR OR SUCCESSORS, SUBSTITUTE OR SUBSTITUTES, IN THIS TRUST, SHALL DO LAWFULLY BY VIRTUE HEREOF. LENDER FOR BACKING BORROWER WILL REIMBURSE TRUSTEE FOR, AND SAVE HIM HARMLESS AGAINST, ANY AND ALL LIABILITY AND EXPENSES WHICH MAY BE INCURRED BY HIM IN THE PERFORMANCE OF HIS DUTIES. THE FOREGOING INDEMNITY SHALL NOT TERMINATE UPON DISCHARGE OF THE OBLIGATIONS OR FORECLOSURE, OR RELEASE OR OTHER TERMINATION, OF THIS DEED OF TRUST.

Section 8.06. *Payment of Trustee's Compensation.* Grantor shall pay or cause to be paid the compensation to which Trustee is entitled hereunder and all proper disbursements and expenses incurred by Trustee hereunder.

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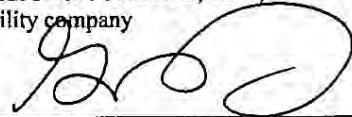
IN WITNESS WHEREOF, Grantor has executed and delivered this Deed of Trust as of the day and year first above written.

GRANTOR:

SPIRIT MASTER FUNDING, LLC, a Delaware limited liability company

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By: _____

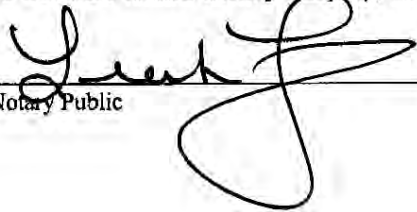


Name: Gregg A. Seibert
Title: Senior Vice President
Tax Identification No. 20-1262089
Organization Identification Number 3817755

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me on June 27, 2007 by Gregg A. Seibert, as Senior Vice President of **SPIRIT MASTER FUNDING, LLC**, a Delaware limited liability company, on behalf of the company.

Notary Public



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6325/02-1001

RR 047-55-0672

EXHIBIT "A"

TRACT 1:

BEING a 2.256 acre tract of land in the Bias Herrera Survey, Abstract No. 321, Harris County, Texas, and being out of Restricted Reserve "K", Block 1, as shown on the plat of TIM MILES SUBDIVISION, recorded in Volume 334, Page 99 of the Harris County Map Records and being out of a 10.5943 acre tract described under Harris County Clerk's File No. S015191, said 2.256 acre tract being more fully described as metes and bounds as follows:

COMMENCING at a 5/8" iron rod found in the west right-of-way line of State Highway No. 6 as described under Harris County Clerk's File No. B647227 (Vol. 5032, Page 132, Harris County Deed Records) and being at the southeast corner of said Restricted Reserve "K" and the northeast corner of Restricted Reserve "J", Block 1;

THENCE N 04 deg. 50 min. 30 sec. W, 30.09 feet along the said west right-of-way of State Highway No. 6 and along the westerly boundary line of said Reserve "K" to a 5/8" iron rod set at the POINT OF BEGINNING of the herein described tract;

THENCE S 89 deg. 40 min. 53 sec. W, 350.00 feet to a set 5/8" iron rod for the southwest corner of the herein described tract;

THENCE N 00 deg. 19 min. 07 sec. W, 290.00 feet to a 5/8" iron rod set for the northwest corner of the herein described tract;

THENCE N 89 deg. 40 min. 53 sec. E, 329.48 feet to a 5/8" iron rod set in the east line of said Restricted Reserve "K" and being in the said west right-of-way line of State Highway No. 6;

THENCE in a southerly direction, 138.85 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" and following the arc of said curve to the left having a radius of 3993.69 feet, a central angle of 01 deg. 59 min. 31 sec. and a chord which bears S 03 deg. 50 min. 44 sec. E, 138.84 feet to a 1/2" iron rod found and from said 1/2" iron rod, a found concrete monument bears S 18 deg. 55 min. E, 0.56 feet and a found 1" iron rod bears S 77 deg. 40 min. W, 0.18 feet;

THENCE S 04 deg. 50 min. 30 sec. E, 151.90 feet along the said west right-of-way line of State Highway No. 6 and along the easterly boundary line of said Reserve "K" to the POINT OF BEGINNING and containing 2.256 acres of land.

TRACT 2:

Rights in and to those certain easement as set out and more fully described in instrument recorded under Harris County Clerk's File No. S464504.

2004-56-24

EXHIBIT B

STATE SPECIFIC PROVISIONS

Remedies. Upon receipt of notice from Collateral Agent and at the direction of Collateral Agent, Trustee shall cause to be recorded, published and delivered such notices of default and notices of sale as may then be required by law and by this Deed of Trust including, without limitation, those required by Section 51.002 of the Texas Property Code, or any successor provisions hereafter enacted. Trustee shall, only at the direction of Collateral Agent and without demand on Grantor, after such time as may then be required by law and after recordation of such notice of default and after notice of sale having been given as required by law, and in accordance with the requirements of Section 51.002 of the Texas Property Code, as amended, or any successor provision hereafter enacted.

Waiver of Deficiency Statute. In the event an interest in any of the Trust Estate is foreclosed upon pursuant to a judicial or nonjudicial foreclosure sale, g agrees as follows. 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, Grantor agrees that the Lender shall be entitled to seek a deficiency judgment from Grantor and any other party obligated on the indebtedness secured hereby equal to the difference between the amount owing on the indebtedness secured hereby and the amount for which the Trust Estate was sold pursuant to judicial or nonjudicial foreclosure sale. Grantor expressly recognizes that this section constitutes a waiver of the above cited provisions of the Texas Property Code which would otherwise permit Grantor and other persons against whom recovery of deficiencies is sought or any guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Trust Estate as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Grantor further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Trust Estate for purposes of calculating deficiencies owed by Grantor, any guarantor, and others against whom recovery of a deficiency is sought.

Alternatively, in the event the waiver provided for above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the finder of fact's determination of the fair market value of the Trust Estate 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): (i) the Trust Estate shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Premises will be repaired or improved in any manner before a resale of the Trust Estate after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Trust Estate for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Trust Estate, including, without limitation, brokerage commissions, title insurance, a survey of the Trust Estate, tax prorations, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Trust Estate shall be further discounted to account for any estimated holding costs associated with maintaining the Trust Estate pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Trust Estate must be given by persons having at least five (5) years experience in appraising property similar to the Trust Estate and who have conducted and prepared a complete written appraisal of the Trust Estate taking into consideration the factors set forth above.

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ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in the 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 Harris County Texas on

JUL 25 2007



Dorely B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

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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 OR YOUR DRIVER'S LICENSE NUMBER.

NOTICE: THIS IS NOT A LIEN.
THIS IS ONLY AN AFFIDAVIT CLAIMING A LIEN.

Affidavit Claiming Mechanic's and Materialman's Lien

Affiant, Dario Ciriaco, Director of VALDERRAMA A/C & REFRIGERATION INC., on oath swears that the following statements are true and are within the personal knowledge of Affiant:

My name is Dario Ciriaco, Director of VALDERRAMA A/C & REFRIGERATION INC. I am the claimant ("Claimant"). This affidavit is made to perfect a mechanic's and materialman's lien against the real property described below:

10R

1. Claimant has an unpaid claim in the amount of \$1,200.00 ("Claim Amount") for labor and materials furnished on the construction of improvements generally known as the Joe's Crab Shack located at 2120 S. Texas 6, Houston, TX 77077. The Claim Amount is, within my personal knowledge, just and true, the same is due and unpaid, and all just and lawful offsets, payments, and credits have been allowed. The Claim Amount is for labor and materials furnished and described below, on which a systematic record has been kept.

2. The name and last known address of the owner or reputed owner ("Owner") of the real property and improvements on which this claim is made are:

SPIRIT MASTER FUNDING LLC
IGNITE RESTAURANT GROUP
10555 RICHMOND AVE
HOUSTON TX 77042

(3)
2ll

3. The Claim Amount represents the unpaid contract price due Claimant, or, in the alternative, is the reasonable value of the unpaid portion of Claimant's labor and materials furnished, which are described below.

4. Claimant's labor and materials furnished for construction of improvements on the real property described below are generally described as air conditioning and refrigeration contractor's material and labor for completely rebuilding kitchen exhaust fan (replaced shafts, ball bearing, motor). Payment of the Claim Amount is requested for work performed or materials furnished during each of the following months: July of 2017.

RP-2017-403300

5. Claimant furnished the above-described labor and materials under a contract with 1st Facility Maintenance, whose last known address is:

1st Facility Maintenance
461 Church St.
St. Louis, MO 63366

6. The name and last known address of the original contractor on the above-referenced project is:

1st Facility Maintenance
461 Church St.
St. Louis, MO 63366

ell

7. The legal description of the real property improved by Claimant's above-described labor and materials is:

The property located at 2120 S. Texas 6, Houston, Texas 77077, otherwise known as:

RES K1 BLK 1
TIN MILES SUNDIVISION HARRIS COUNTY

D

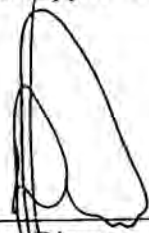
That real property and improvements on it are sought to be charged with Claimant's lien.

8. Claimant claims a mechanic's and materialman's lien on the above-described real property and improvements thereon to secure payment of its Claim Amount in accordance with the Texas Property Code.

9. Claimant's physical address is 1212 Illinois Street, South Houston, Texas 77587. Claimant's mailing address is 1212 Illinois Street, South Houston, Texas 77587.

10. Claimant's notice of mechanic's lien was or will be sent to Owner by United States certified mail, return receipt requested, within 5 days of the date of filing hereof.

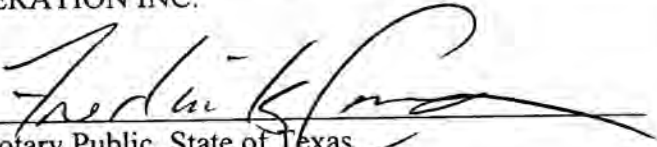
11. In compliance with the Texas Property Code, Claimant is sending one copy of this affidavit to Owner at its last known address and also one copy to the above-referenced original contractor at each of its last known addresses.



Dario Ciriaco, Director
VALDERRAMA A/C & REFRIGERATION INC.

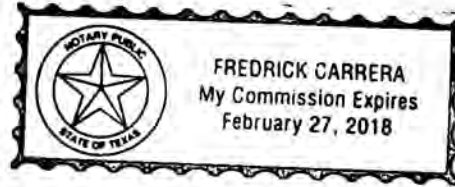
RP-2017-403300

SUBSCRIBED AND SWORN TO before me on September 12, 2017, by Dario Ciriaco,
Director of VALDERRAMA A/C & REFRIGERATION INC.


Notary Public, State of Texas

PREPARED IN THE OFFICE OF:

Anne K. Ritchie, Attorney at Law
4001 N. Shepherd, Suite 200
Houston, Texas 770018
Telephone: (832) 767-0406
Facsimile: (832) 916-2555



AFTER RECORDING RETURN TO:

Anne K. Ritchie, Attorney at Law
4001 N. Shepherd, Suite 200
Houston, Texas 770018
Telephone: (832) 767-0406
Facsimile: (832) 916-2555

RP-2017-403300

FILED FOR RECORD

2:21:09 PM

Tuesday, September 12, 2017

Stan Stewart

COUNTY CLERK, HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.

THE STATE OF TEXAS
COUNTY OF HARRIS

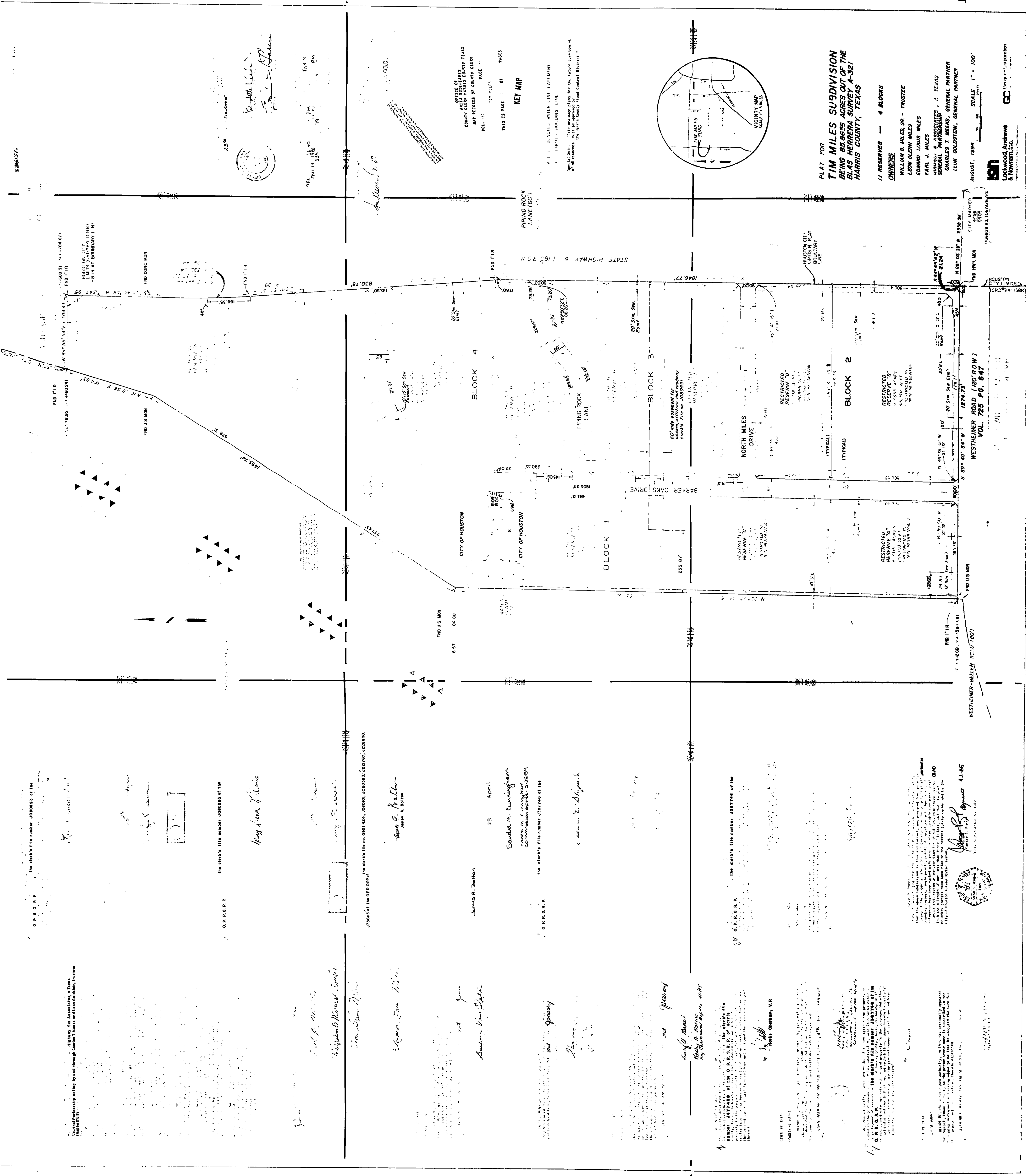
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED; in the Official Public Records of Real Property of Harris County Texas

Tuesday, September 12, 2017



Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

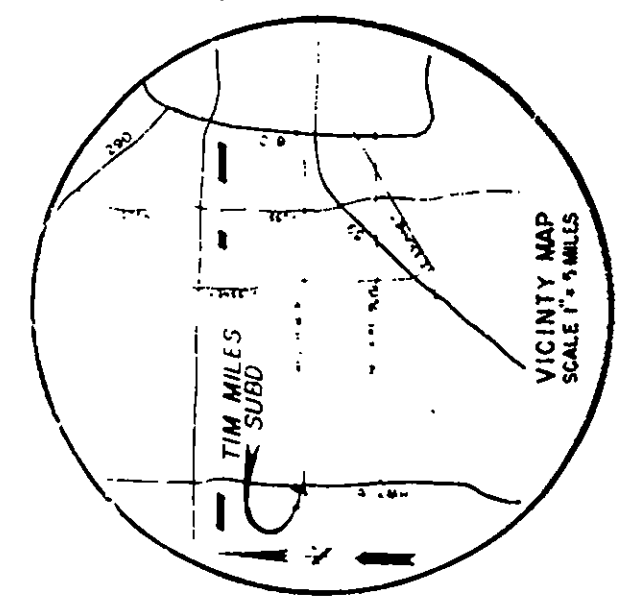
RP-2017-403300



**PLAT FOR
TIM MILES SUBDIVISION
BEING 85.9655 ACRES OUT OF THE
BLAS HERRERA SURVEY A-321
HARRIS COUNTY, TEXAS**

11 RESERVES — 4 BLOCKS
OWNERS
 WILLIAM B. MILES, SR. - TRUSTEE
 LEON GLENN MILES
 EDWARD LOUIS MILES
 EARL J. MILES
 HIRSHL & ASSOCIATES, A TEXAS
 GENERAL PARTNERSHIP, A TEXAS
 CHARLES T. MEERS, GENERAL PARTNER
 LEON GOLDSTEIN, GENERAL PARTNER

AUGUST, 1994 SCALE 1" = 100'
 JOHN WOOD ANDREWS
 Surveyor
 12009 Old Katy Road
 Houston, Texas 77055
 281-461-1111



KEY MAP

OFFICE OF
 COUNTY CLERK
 HARRIS COUNTY TEXAS
 MAP RECORDS OF COUNTY CLERK
 VOL. 152 PAGE 101
 THIS IS PAGE 01 OF 14215

ALL IN THIS WELSH LINE ADJACENT
 TO THE BOUNDARY LINE
 SHOWN HEREON ARE THE
 REMAINS OF THE
 WESTERLY QUARTER CORNER
 OF THE BLAS HERRERA SURVEY
 A-321

O.P.R.O.R. the clerk's file number J080553 of the
 O.P.R.O.R. the clerk's file number J080553 of the

Recorded hereunder by and through Charles T. Meers and Leon Goldstein, Trustees
 of the Trust created by the will of William B. Miles, Sr., dated and filed for
 record in the County of Harris, Texas, on the 14th day of August, 1984, in
 Book 10, Page 101, of the Public Records of Harris County, Texas.

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 Book 10, Page 101, of the Public Records of Harris County, Texas.

STATE OF TEXAS
COUNTY OF HARRIS

We, Earl J. Miles, William B. Miles, Sr., Trustee, Leon Glenn Miles, Mary Lou Miles, Edward Louis Miles; and we, **Highway Six Associates, a Texas General Partnership acting by and through Charles T. Meeks and Leon Goldstein, Trustees** respectively herein referred to as **Owners** of the 85.8636 acre tract described in the above and foregoing map of Tim Miles Subdivision, do hereby make and establish said subdivision and development plan of said property according to all lines, dedications, restrictions and notations on said maps or plat and hereby dedicate to the use of the public forever, all streets (except those streets designated as private streets), alleys, parks, water courses, drains, easements and public places shown thereon for the purposes and considerations therein expressed; and do hereby bind myself (or ourselves), my (or our) heirs, successors and assigns to warrant and forever defend the title to the land so dedicated.

FURTHER, Owners have dedicated and by these presents do dedicate to the use of the public for public utility purposes forever unobstructed aerial easements five feet, six inches (5'-6") in width for perimeter lots, seven feet (7'-0") in width for back-to-back lots from a plane sixteen feet (16') above the ground level upward, located adjacent to all public utility easements that are designated with aerial easements (U.E. & Aerial) shown hereon.

FURTHER, Owners do hereby declare that all parcels of land designated as lots on this plat are originally intended for the construction of residential dwelling units thereon (or the placement of mobile home subdivision) and shall be restricted for same under the terms and conditions of such restrictions filed separately.

FURTHER, Owners do hereby covenant and agree that all of the property within the boundaries of this plat shall be restricted to prevent the drainage of any septic tanks into any public or private street, road or alley or any drainage ditch, either directly or indirectly.

FURTHER, Owners do hereby dedicate to the public a strip of land fifteen (15) feet wide on each side of the center line of any and all bayous, creeks, gullies, ravines, draws, sloughs, or other natural drainage courses located in said plat, as easements for drainage purposes, giving the right to the City of Houston, Harris County or any other governmental agency the right to enter upon said easement at any and all times for the purpose of construction and maintenance of drainage facilities and structures.

FURTHER, Owners do hereby covenant and agree that all of the property within the boundaries of this plat and adjacent to any drainage easement, ditch, gully, creek or natural drainage way shall hereby be restricted to keep such drainage ways and easements clear of fences, buildings, planting and other obstructions to the operations and maintenance of the drainage facility and that such abutting property shall not be permitted to drain directly into this easement except by means of an approved drainage structure.

WITNESS my hand in the City of Houston, Texas, this 4th day of June, 1985.

Earl J. Miles
Earl J. Miles

William B. Miles, Sr.
William B. Miles, Sr., Trustee

Leon Glenn Miles
Leon Glenn Miles

I, Linda Susan Richards, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file number **J080593** of the **O. P. R. P.** of Harris County, Texas, do hereby in all things subordinate my interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and I hereby confirm that I am the present owner of said lien and have not assigned the same nor any part thereof.

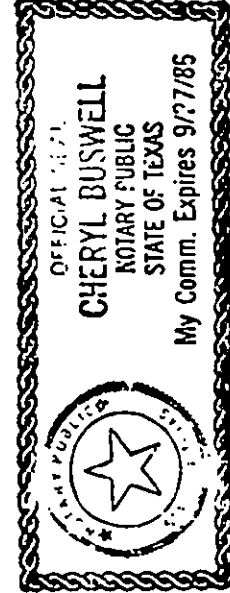
Linda Susan Richards
Linda Susan Richards

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Linda Susan Richards known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 4th day of June, 1985.

Cheryl Buswell
Notary Public in and for the State of TEXAS



OFFICE OF
AWITA RODRIGUEZ
COUNTY CLERK HARRIS COUNTY TEXAS
MAP RECORDS OF COUNTY CLERK

VOL. 334 PAGE 100

TIM MILES

THIS IS PAGE 2 OF 10 PAGES

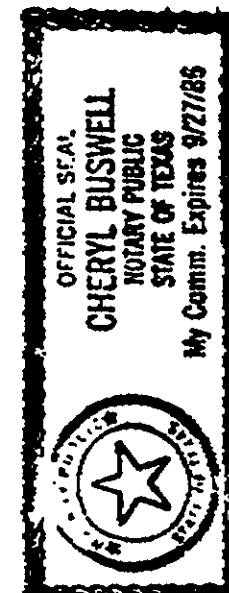
I, Mary Leona Williams, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file number **J080593** of the **O. P. R. P.** of Harris County, Texas, do hereby in all things subordinate my interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and I hereby confirm that I am the present owner of said lien and have not assigned the same nor any part thereof.

Mary Leona Williams
Mary Leona Williams

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Mary Leona Williams known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

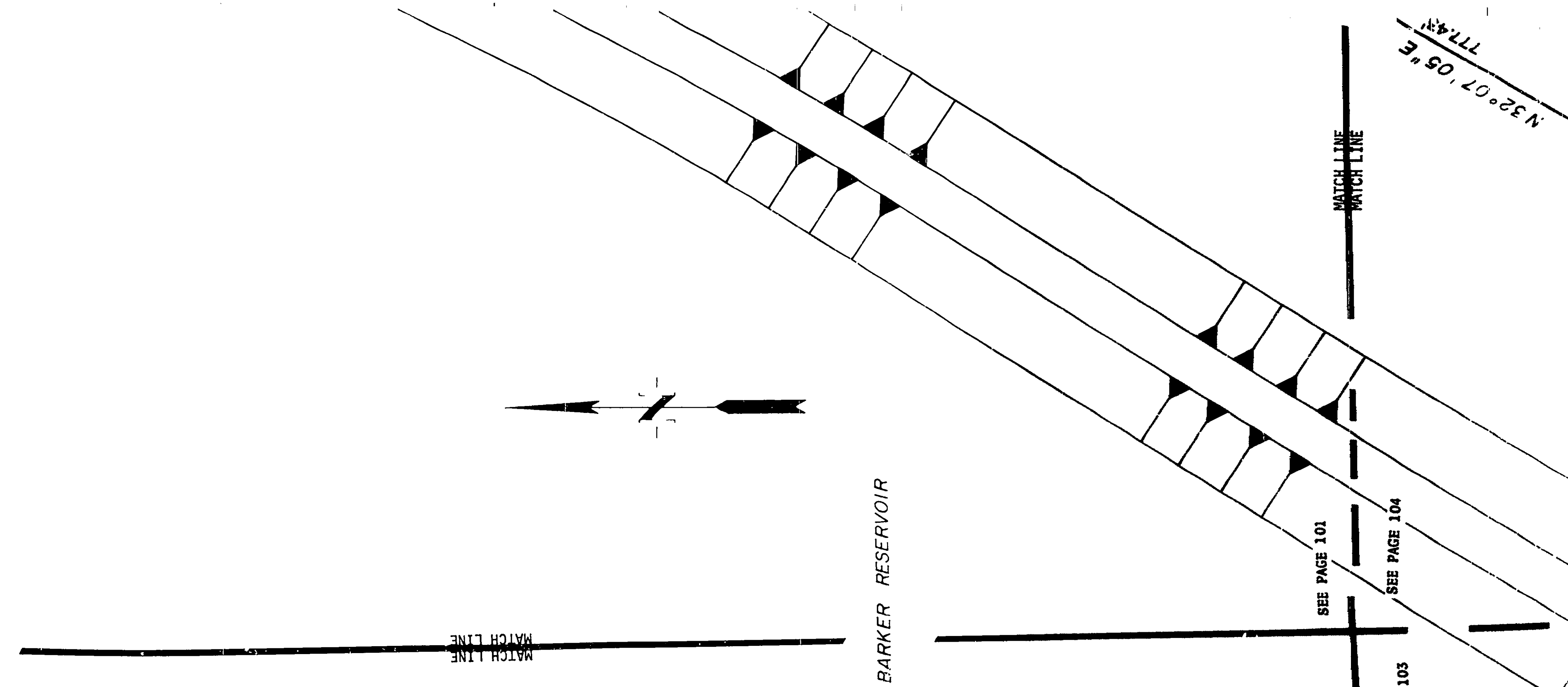
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 4th day of June, 1985.



Cheryl Buswell
Notary Public in and for the State of TEXAS

We, Allied Bank Memorial, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file no. **0921424, J080593, J221767, J228606, J73618** of the **O.P.R.P.** of Harris County, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and I hereby confirm that we are the present owner of said lien and have not assigned the same nor any part thereof.

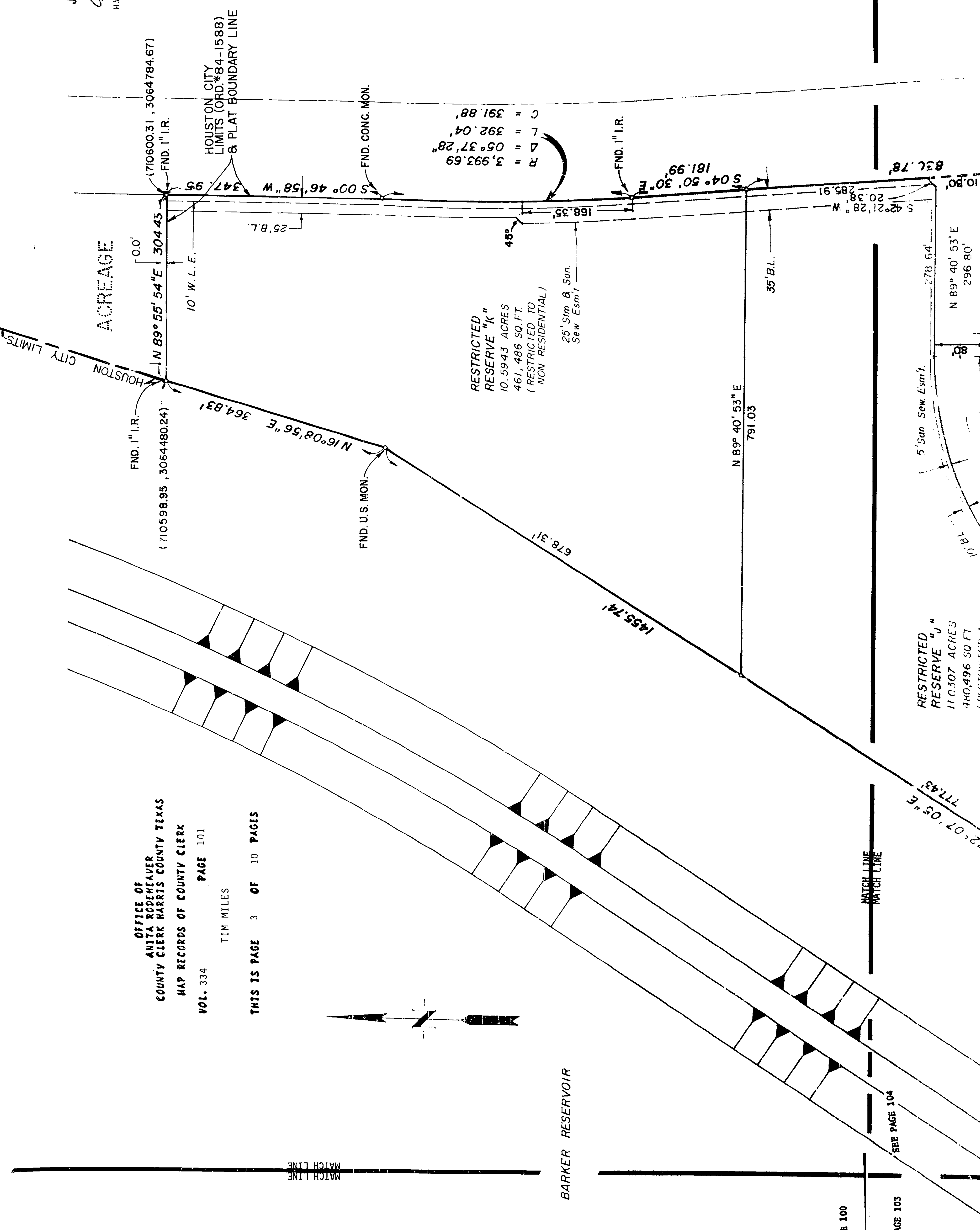
James A. Balth
James A. Balth



N 32° 07' 05" E
T74A

K360377

JAN 3 12 30 PM 1986
Anita Rodheaver
COUNTY CLERK
HARRIS COUNTY TEXAS



ACREAGE

$R = 3,993.69$
 $L = 05^{\circ} 37' 28''$
 $C = 391.88'$

RESTRICTED
 RESERVE "K"
 10.5943 ACRES
 461,486 SQ. FT.
 (RESTRICTED TO
 NON RESIDENTIAL)

RESTRICTED
 RESERVE "J"
 110,307 ACRES
 480,496 SQ. FT.
 (RESTRICTED TO
 NON RESIDENTIAL)

OFFICE OF
 ANITA RODEHAVER
 COUNTY CLERK HARRIS COUNTY TEXAS
 MAP RECORDS OF COUNTY CLERK
 VOL. 334 PAGE 101
 TIM MILES
 THIS IS PAGE 3 OF 10 PAGES

BARKER RESERVOIR



This is to certify that the City
 of Houston, Texas has approved this
 plat in conformance with the laws of the
 City of Houston as shown hereon
 of this plat this 23rd day of

I, Anita Rodheaver, Clerk of the
 County of Harris, Texas, do hereby
 certify that the within instrument
 authentication was filed for registra-
 tion at 12:30 o'clock
 on JAN. 14 1986 Page 99
 and in Volume 334 of the
 records of Harris for said
 County. Witness my hand and seal of office
 above written and signed
 SEE PAGE 102

I certify that SEE PAGE 105 (NO. 105)
 of this plat is correct.
 Anita Rodheaver
 County Engineer

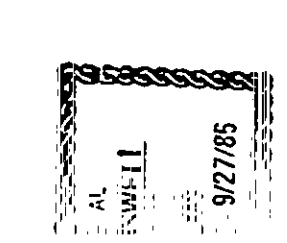
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 lien being evidenced
 in all things subordinate
 said plat and the
 I hereby confirm
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Anita Rodheaver
 County Clerk

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of Anita Rodheaver

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Anita Rodheaver
 County Clerk

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Anita Rodheaver
 County Clerk

SEE PAGE 100

SEE PAGE 103

MATCH LINE

MATCH LINE

MATCH LINE

MATCH LINE

MATCH LINE

MATCH LINE

01/09/86 00129278 K360377 \$ 110.00

K360377

JAN 9 12 30 PM 1986
Anita Rodheaver
CLERK OF THE COUNTY
HARRIS COUNTY TEXAS

OFFICE OF
ANITA RODEHEAVER
COUNTY CLERK HARRIS COUNTY TEXAS
MAP RECORDS OF COUNTY CLERK

VOL. 334

PAGE 102

TIM MILES

THIS IS PAGE 4 OF 10 PAGES

This is to certify that the City Planning Commission of the City of Houston, Texas has approved this plat and subdivision of Tim Miles in conformance with the laws of the State of Texas and the ordinances of the City of Houston as shown hereon and authorized the recording of this plat this 23rd day of December, 1985.



By: *Burdette Leeland*
Burdette Leeland, Chairman

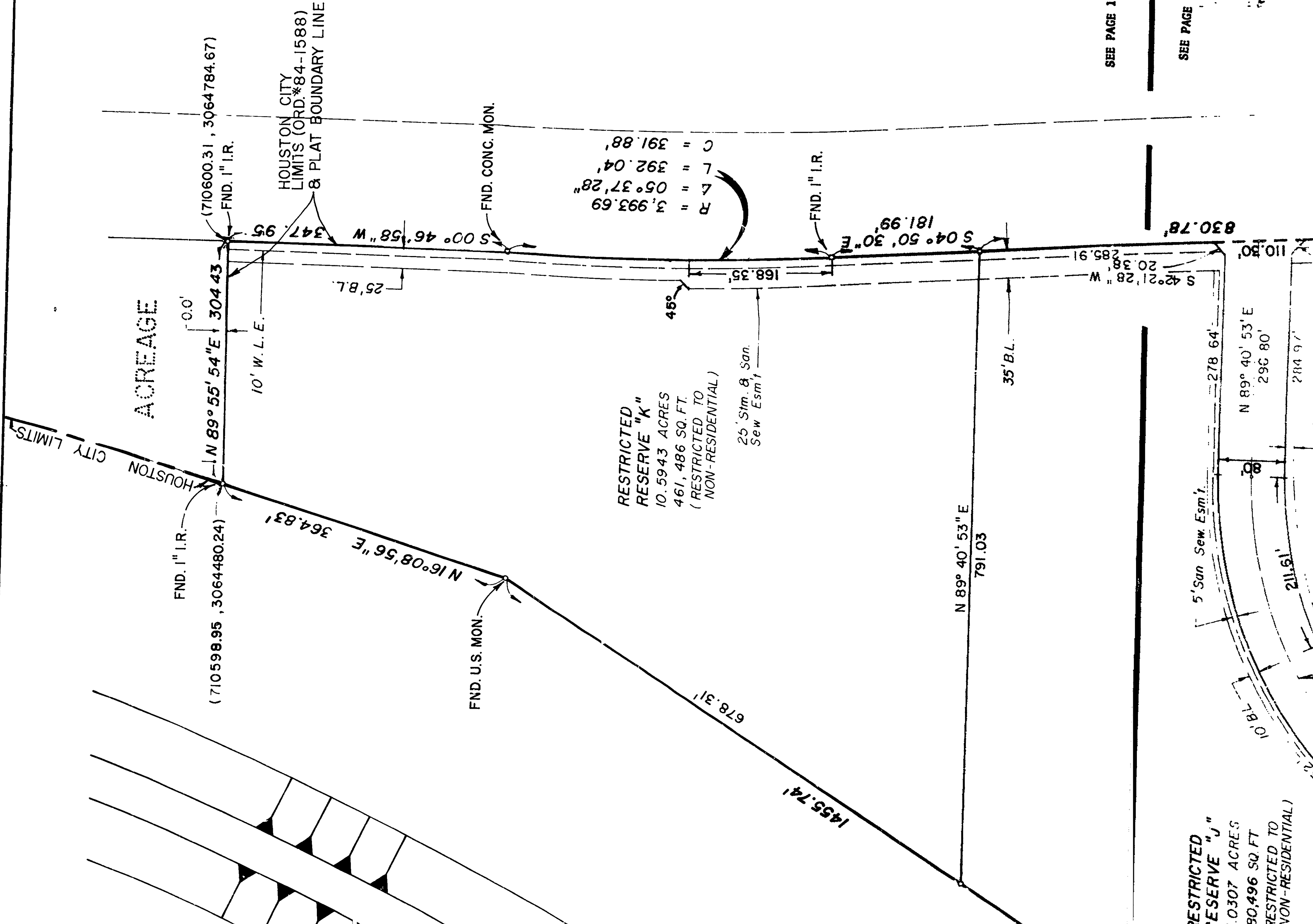
By: *E. Ramon Garcia*
E. Ramon Garcia, Secretary

I, Anita Rodheaver, Clerk of the County, Court of Harris County, do hereby certify that the within instrument with its certificate of authentication was filed for registration in my office on JAN 9 1986 at 12:30 o'clock PM, and duly recorded on JAN 14 1986 at 12:00 o'clock PM of the map records of Harris for said county. Film Code No. _____

Witness my hand and seal of office, at Houston, the day and date last above written.

Anita Rodheaver
Clerk of the County
Court of Harris County, Texas

By: *[Signature]*
Deputy



ACREAGE

RESTRICTED RESERVE "K"
10.5943 ACRES
461,486 SQ. FT.
(RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "J"
1.0307 ACRES
50,496 SQ. FT.
(RESTRICTED TO NON-RESIDENTIAL)

SEE PAGE 101

SEE PAGE 104

MATCH LINE

MATCH LINE

STATE OF TEXAS
COUNTY OF HARRIS

WITNESS my hand in the City of Houston, Texas, this 4th day of January, 1985.

Earl J. Miles
Earl J. Miles

William B. Miles, Sr.
William B. Miles, Sr., Trustee

Leon Glenn Miles
Leon Glenn Miles

Edward Louis Miles
Edward Louis Miles

STATE OF TEXAS
COUNTY OF HARRIS

Before ME, the undersigned authority, on this day personally appeared Earl J. Miles, William B. Miles, Sr., Trustee, Leon Glenn Miles, and Edward Louis Miles known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 4th day of January, 1985.

Sandra Kay Pater
Notary Public in and for the State of TEXAS

IN TESTIMONY WHEREOF, the Highway 6 Associates, a Texas General Partnership has caused these presents to be signed by Charles T. Meeks, General Partner and Leon Goldstein, General Partner, this 3rd day of January, 1985.

HIGHWAY 6 ASSOCIATES

Charles T. Meeks
Charles T. Meeks, General Partner

Leon Goldstein
Leon Goldstein, General Partner

STATE OF TEXAS
COUNTY OF HARRIS

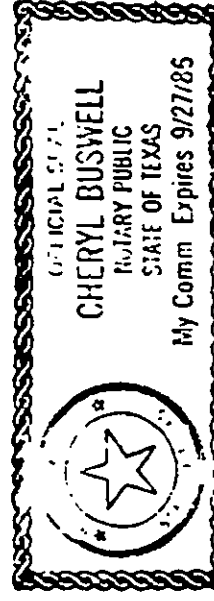
BEFORE ME, the undersigned authority, on this day personally appeared Charles T. Meeks, General Partner and Leon Goldstein, General Partner of Highway 6 Associates, a Texas General Partnership, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and considerations therein expressed and in the capacity therein and herein stated, and as the act and deed of said partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 3rd day of January, 1985.

Kathy A. Karnes
Notary Public in and for the State of TEXAS

Kathy A. Karnes
My Commission Expires: 4/1/85

We, Mainland Savings Associates, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file number J477438 of the O. P. R. O. P. of Harris County, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owner of said lien and have not assigned the same nor any part thereof.



Sandra Kay Pater
Notary Public in and for the State of TEXAS

We, Allied Bank Memorial, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file no. 0921424, J080593, J221767, J228606, J73610 of the O.P.R.O.P. of Harris County, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owner of said lien and have not assigned the same nor any part thereof.

OFFICE OF
ANITA RODEHEAVER
COUNTY CLERK HARRIS COUNTY TEXAS

By: James A. Bolton
James A. Bolton

VOL. 334 PAGE 103

TIM MILES

THIS IS PAGE 5 OF 10 PAGES

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared James A. Bolton known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 23 day of April, 1985.

Sandra M. Cunningham
Notary Public in and for the State of TEXAS
Commission Expires: 3-25-89

I, Clarence U. Shepard, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file number J567746 of the O. P. R. O. P. of Harris County, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and I hereby confirm that I am the present owner of said lien and have not assigned the same nor any part thereof.

By: Clarence U. Shepard
Clarence U. Shepard

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Clarence U. Shepard, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

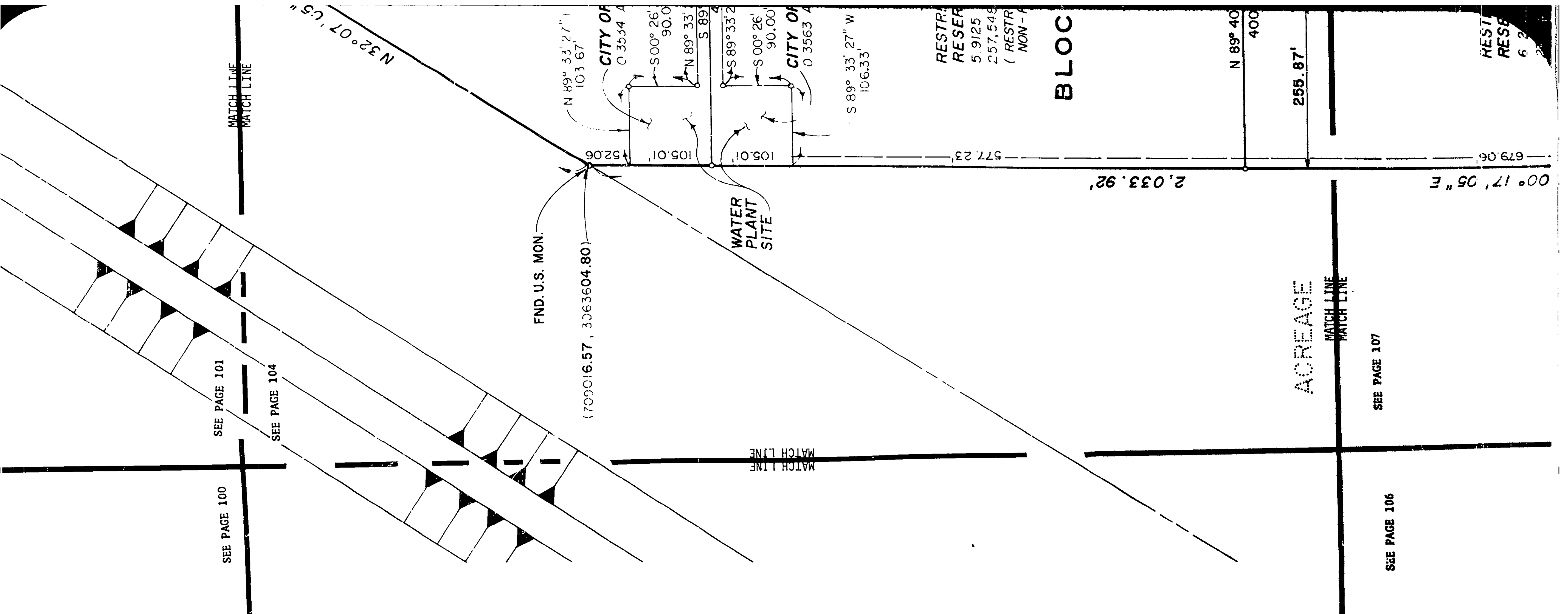
GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 20th day of February, 1985.



Clarence U. Shepard
Notary Public in and for the State of TEXAS

Clarence U. Shepard
My Commission Expires: 9/2/85

I, Eric Campbell Peacock Trust, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file number J367746 of the O. P. R. O. P. of Harris County, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and I hereby confirm that I am the present owner of said lien and have not assigned the same nor any part thereof.



SEE PAGE 100
SEE PAGE 101
SEE PAGE 104

SEE PAGE 106
SEE PAGE 107

BLOC

ACREAGE

RESTRICTIONS

Antia Rodenhaver
 Clerk of
 County Clerk Harris County Texas
 I, Antia Rodenhaver, Clerk of
 Harris County, Texas, do hereby
 certify that the within inst-
 rument was filed for record
 in the Public Records of Harris
 County, Texas, on the 14th day of
 January, 1988, at 12:30 o'clock
 P.M. in Volume 334, Page 9,
 and in Volume 334, Page 9,
 of the map records of Harris for sa-
 id county, Texas.
 Witness my hand and seal of of-
 fice on this 14th day of Janu-
 ary, 1988.
 SEE PAGE 102

James A. Bolton
 James A. Bolton
 Attorney at Law
 1100 West 17th Street
 Houston, Texas 77019
 713-521-1100

John C. Cunningham
 John C. Cunningham
 Attorney at Law
 1100 West 17th Street
 Houston, Texas 77019
 713-521-1100

Shepard
 Shepard
 Attorney at Law
 1100 West 17th Street
 Houston, Texas 77019
 713-521-1100

John C. Cunningham
 John C. Cunningham
 Attorney at Law
 1100 West 17th Street
 Houston, Texas 77019
 713-521-1100

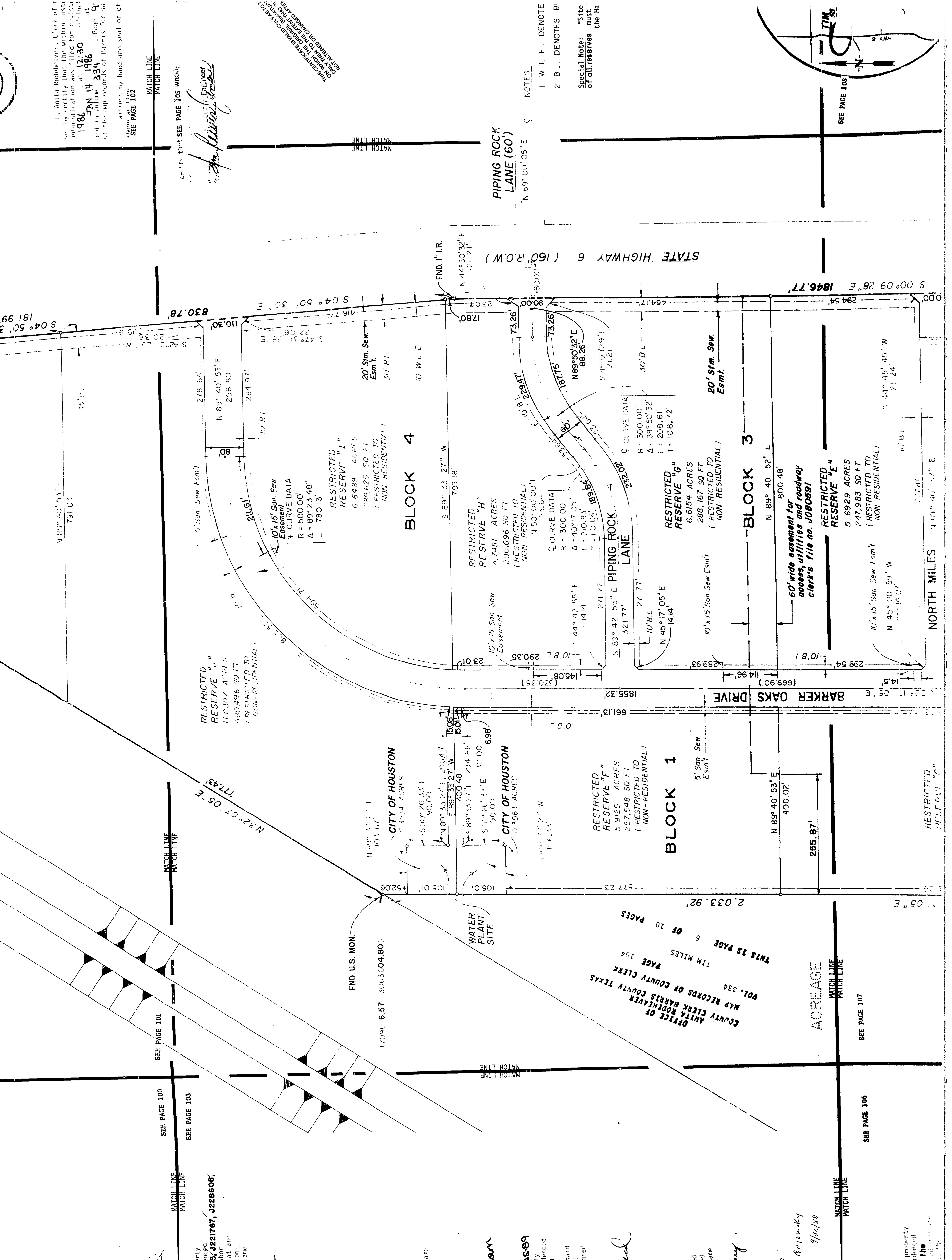
John C. Cunningham
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 Attorney at Law
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 Houston, Texas 77019
 713-521-1100

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 John C. Cunningham
 Attorney at Law
 1100 West 17th Street
 Houston, Texas 77019
 713-521-1100



RESTRICTED RESERVE "J"
 110.307 ACRES
 480,496 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "I"
 6.6489 ACRES
 289,625 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "H"
 4.7451 ACRES
 206,696 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "G"
 6.6154 ACRES
 288,167 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "F"
 5.9125 ACRES
 257,548 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "E"
 5.6929 ACRES
 247,983 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "D"
 110.307 ACRES
 4,804,996 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "C"
 110.307 ACRES
 4,804,996 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "B"
 110.307 ACRES
 4,804,996 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

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 SEE PAGE 101
 SEE PAGE 102
 SEE PAGE 103

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SEE PAGE 112
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SEE PAGE 116
 SEE PAGE 117
 SEE PAGE 118
 SEE PAGE 119
 SEE PAGE 120

THIS IS PAGE 6 OF 10 PAGES
 TIM MILES
 PAGE 104
 MAP RECORDS OF COUNTY CLERK
 COUNTY CLERK HARRIS COUNTY TEXAS
 OFFICE OF ANITA RODENHAVER

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 COUNTY CLERK HARRIS COUNTY TEXAS
 OFFICE OF ANITA RODENHAVER

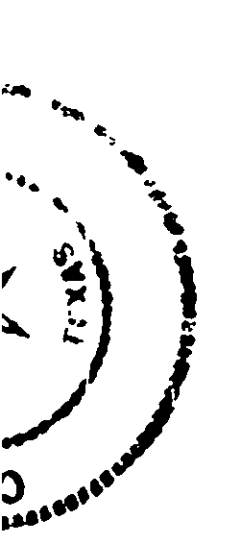
THIS IS PAGE 6 OF 10 PAGES
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 COUNTY CLERK HARRIS COUNTY TEXAS
 OFFICE OF ANITA RODENHAVER

Liens against the property
 and liens being evidenced
 by this instrument are
 hereby acknowledged by
 the undersigned as being
 their own and not those
 of any other person or
 entity.
 1988-01-14
 11:00 AM
 1100 West 17th Street
 Houston, Texas 77019
 713-521-1100



By: *Tim Miles*
 Tim Miles, Secretary

I, Anita Rodheaver, Clerk of the County, Court of Harris County, do hereby certify that the within instrument with its certificate of authentication was filed for registration in my office on **JAN 9 1986** at **12:30** o'clock **PM**, and duly recorded on **JAN 14 1986** at **12:00** o'clock **PM** and is Volume **334**, Page **99**, Film Code No. of the map records of Harris for said county.

Witness my hand and seal of office, at Houston, the day and date last above written.
 SEE PAGE 102

Anita Rodheaver
 Clerk of the County
 Court of Harris County, Texas

BY: *Tim Miles*
 Deputy

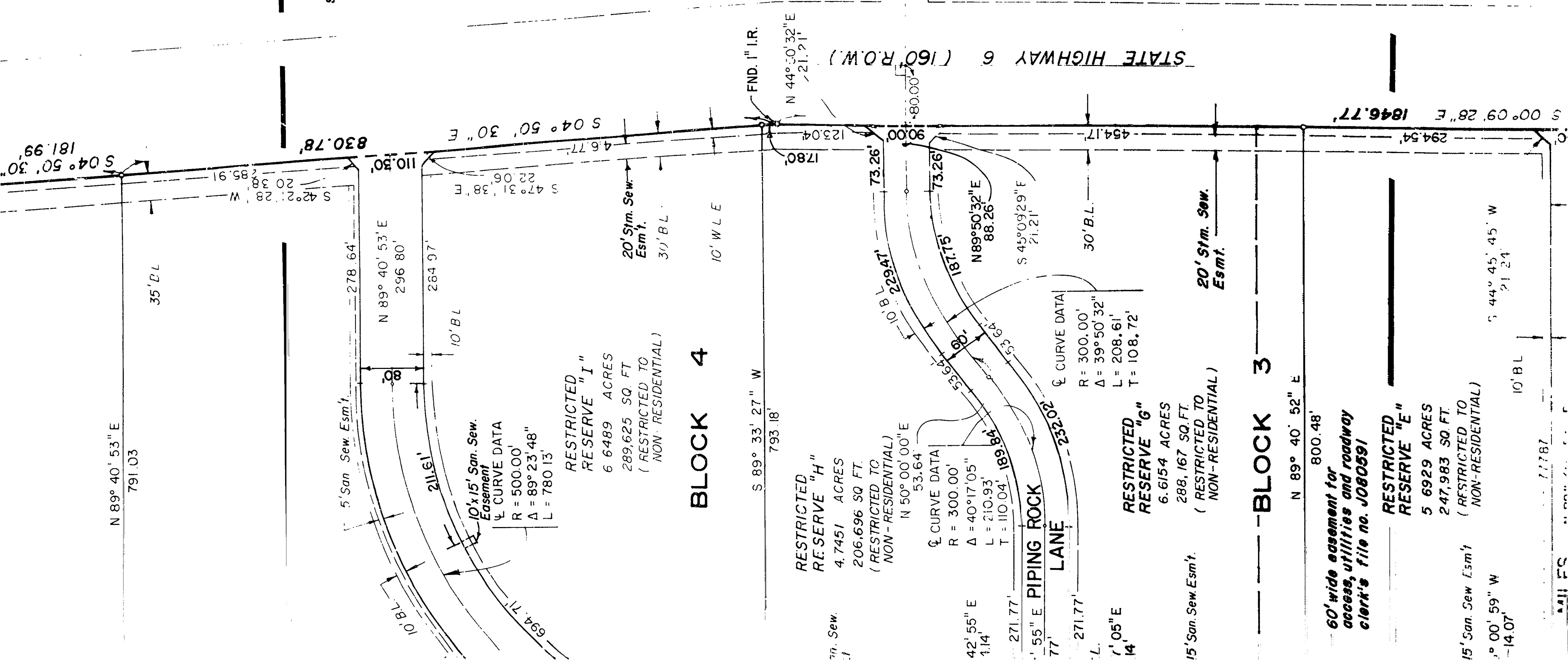
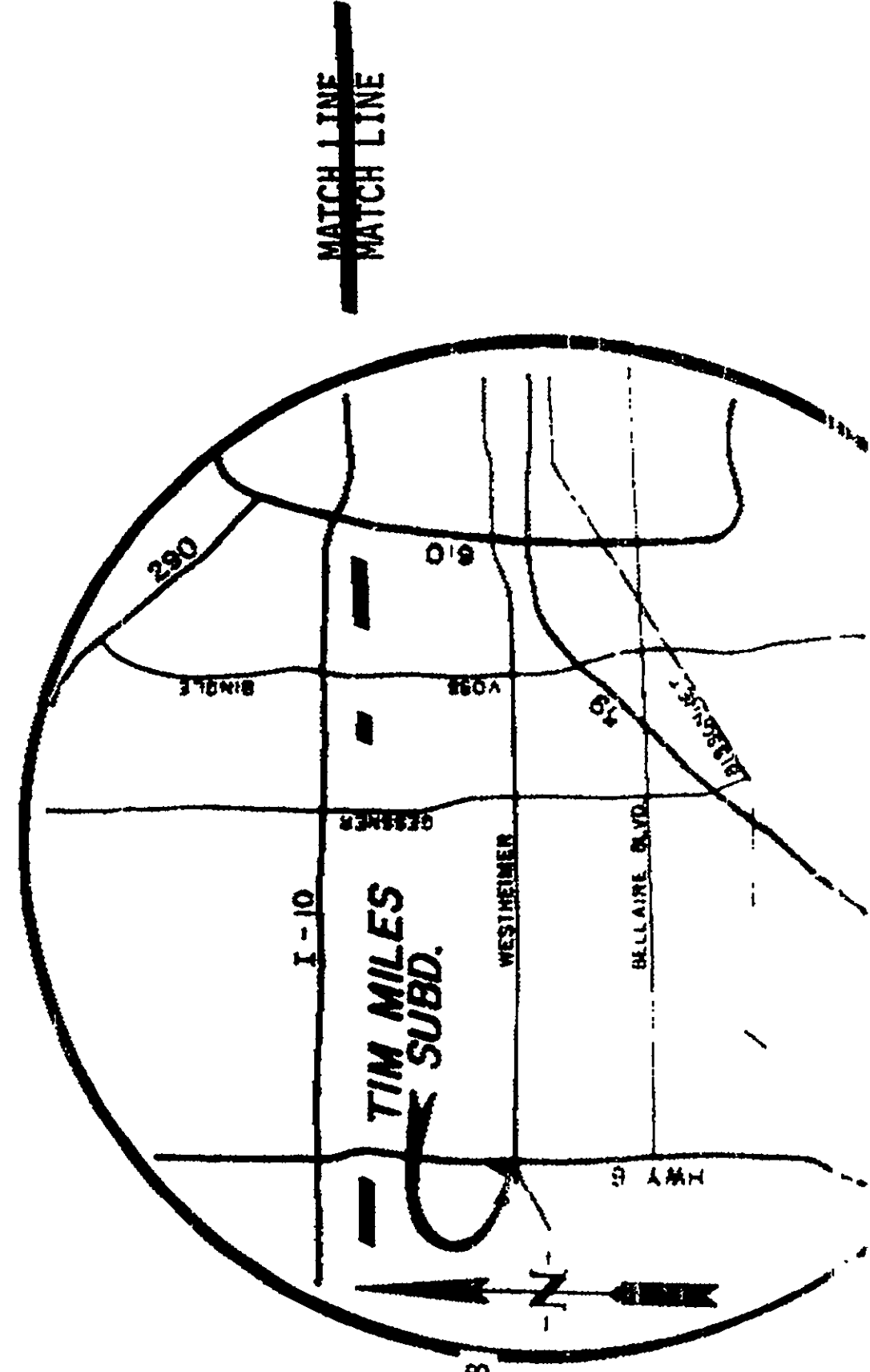
THIS INSTRUMENT IS TO BE RECORDED IN THE PUBLIC RECORDS OF HARRIS COUNTY, TEXAS, AND SHALL BE FILED IN THE PUBLIC RECORDS OF HARRIS COUNTY, TEXAS, IN THE OFFICE OF THE CLERK OF THE COUNTY, AT HOUSTON, TEXAS, ON THE DATE AND AT THE TIME ABOVE WRITTEN.

OFFICE OF
 ANITA RODEHAVER
 COUNTY CLERK HARRIS COUNTY TEXAS
 MAP RECORDS OF COUNTY CLERK
 VOL. 334 PAGE 105
 TIM MILES

THIS IS PAGE 7 OF 10 PAGES

NOTES:
 1. W. L. E. DENOTES WATER LINE EASEMENT.
 2. B. L. DENOTES BUILDING LINE.

Special Note: "Site drainage plans for the future development of all reserves must be approved by the Harris County Flood Control District."



SEE PAGE 101

MATCH LINE

SEE PAGE 104

MATCH LINE

SEE PAGE 107

SEE PAGE 108

MATCH LINE

60' wide easement for access, utilities and roadway clerk's file no. J080591

RESTRICTED RESERVE "E"
 5 6929 ACRES
 247,983 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

15' San Sew Esm't.
 0' 00' 59" W
 -14.07'

10' B.L.

10' B.L.

5 44° 45' 45" W
 21.21'

800.48'

BLOCK 3

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "G"
 6.6154 ACRES
 288,167 SQ. FT.

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "H"
 4.7451 ACRES
 206,696 SQ. FT.

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "I"
 6.6489 ACRES
 289,625 SQ. FT.

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED TO NON-RESIDENTIAL

BLOCK 4

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED TO NON-RESIDENTIAL

RESTRICTED TO NON-RESIDENTIAL

S 00° 09' 28" E 1846.77'

STATE HIGHWAY 6 (160' R.O.W.)

FND. 1st I.R.
 N 44° 30' 32" E
 21.21'

S 04° 50' 30" E 830.78'

S 04° 50' 30" E 181.99'

S 04° 50' 30" E 791.03'

S 04° 50' 30" E 181.99'

10' B.L.

10' B.L.

10' B.L.

10' B.L.

10' B.L.

10' B.L.

10' B.L.

10' B.L.

10' B.L.

10' B.L.

10' B.L.

10' B.L.

10' B.L.

10' B.L.

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10' B.L.

10' B.L.

10' B.L.

10' B.L.

10' B.L.

10' B.L.

Leon Goldstein, General Partner

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Charles T. Meeks, General Partner and Leon Goldstein, General Partner of Highway 6 Associates, a Texas General Partnership, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and considerations therein expressed and in the capacity therein and hereinafter stated, and as the act and deed of said partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 31st day of January, 1985.

Hollis Chatham
Notary Public in and for the State of TEXAS
Kathy A. Kearnes
My Commission Expires: 4/1/85

We, Mainland Savings Associates, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file number J477438 of the O.P.R.P. of Harris County, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owner of said lien and have not assigned the same nor any part thereof.

By: *Hollis Chatham*
Hollis Chatham, V.P.

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared *Hollis Chatham* known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14th day of March, 1985.



William B. Peacock
Notary Public in and for the State of TEXAS
Commission Expires 5/1/86

We, Peacock Realty, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file number J367746 of the O.P.R.P. of Harris County, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owner of said lien and have not assigned the same nor any part thereof.

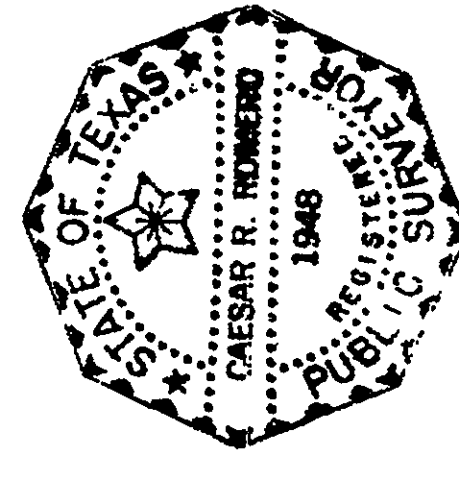
By: *Tom Peacock*
Tom Peacock

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Tom Peacock, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 1st day of 1985.

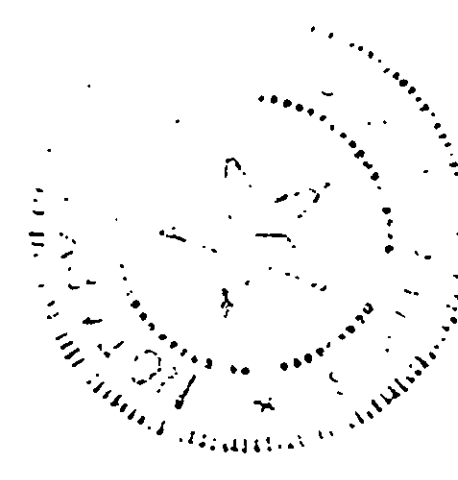
Caesar R. Romero
Notary Public in and for the State of TEXAS
Commission Expires 4-1-85



STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Clarence D. Shepherd, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 20th day of February, 1985.



Notary Public in and for the State of TEXAS
Commission Expires 1/3/85

SEE PAGE 103

SEE PAGE 104

SEE PAGE 107

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Era Cahnel Peacock known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 17th day of 1985.

By: *Era Cahnel Peacock*
Era Cahnel Peacock Trust
Trustee

Caesar R. Romero
Notary Public in and for the State of TEXAS
Commission Expires 4-1-85

OFFICE OF
ANITA RODEHEAVER
COUNTY CLERK HARRIS COUNTY TEXAS
MAP RECORDS OF COUNTY CLERK
VOL. 334 PAGE 106
TIM MILES

THIS IS PAGE 8 OF 10 PAGES

I, Caesar R. Romero, R.P.S., am authorized under the laws of the State of Texas to practice the profession of surveying and hereby certify that the above subdivision is true and correct; was prepared from an actual survey of the property made under my supervision on the ground; that all perimeter boundary corners, angle points, points of curvature and other points of reference have been marked with iron (or other suitable permanent metal) pipes or rods having an outside diameter of not less than three quarter (3/4) inch and a length of not less than three (3) feet; and that the plat boundary corners have been tied to the nearest survey corner and to the City of Houston survey marker system.

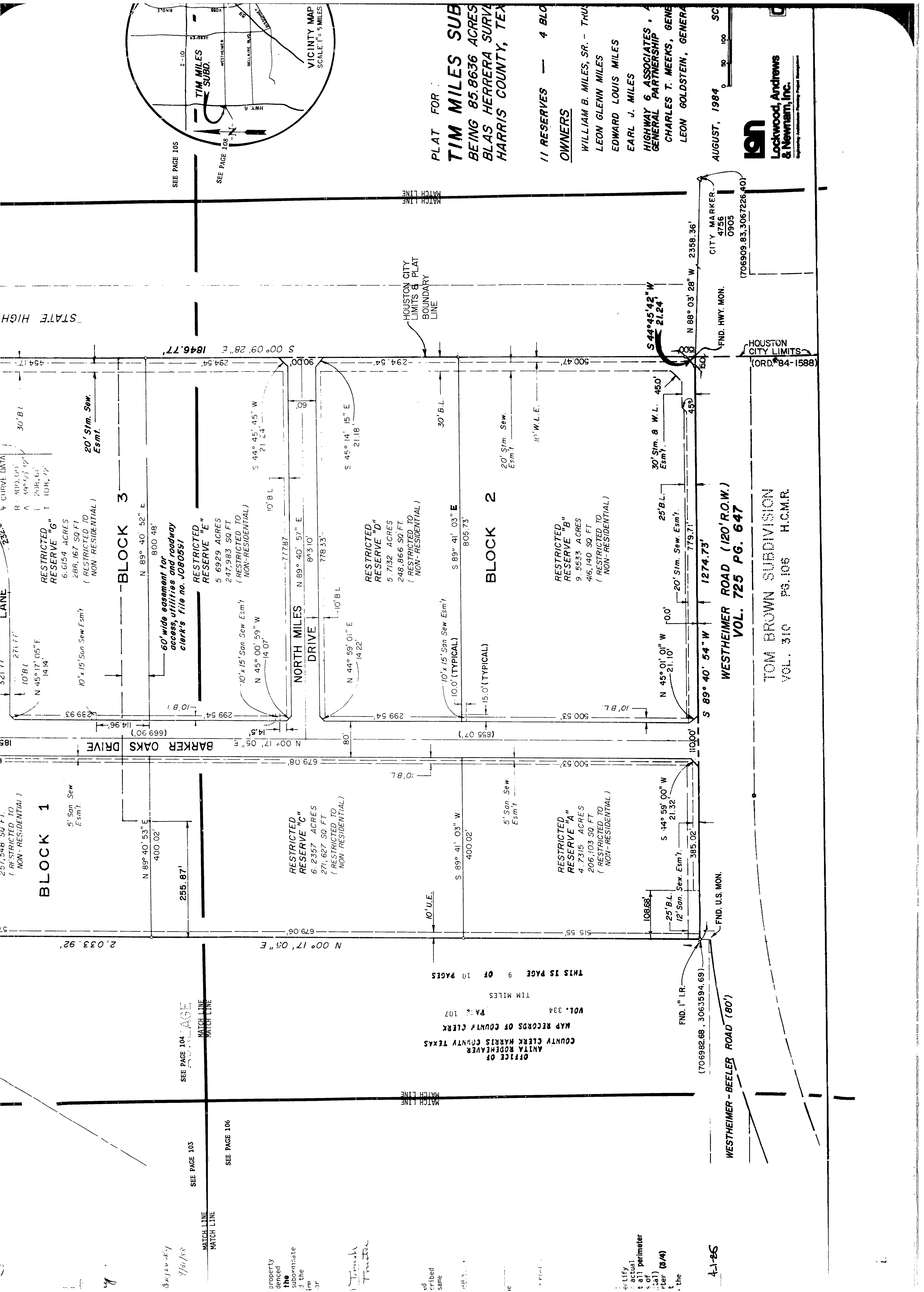
FND. 1" I.R.
(706982.68, 3063594.69)

WESTHEIMER - BEELEER ROAD (80')

N 00° 17' 05" E
679.06

S15.55

2, 033, 92



BLOCK 1

BLOCK 3

BLOCK 2

RESTRICTED RESERVE "A"
4.7315 ACRES
206,103 SQ. FT.
(RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "C"
6.2357 ACRES
271,627 SQ. FT.
(RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "G"
6.6154 ACRES
288,167 SQ. FT.
(RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "E"
5.6929 ACRES
247,983 SQ. FT.
(RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "D"
5.7132 ACRES
248,866 SQ. FT.
(RESTRICTED TO NON-RESIDENTIAL)

RESTRICTED RESERVE "B"
9.5533 ACRES
416,140 SQ. FT.
(RESTRICTED TO NON-RESIDENTIAL)

60' wide easement for access, utilities and roadway clerk's file no. J080551

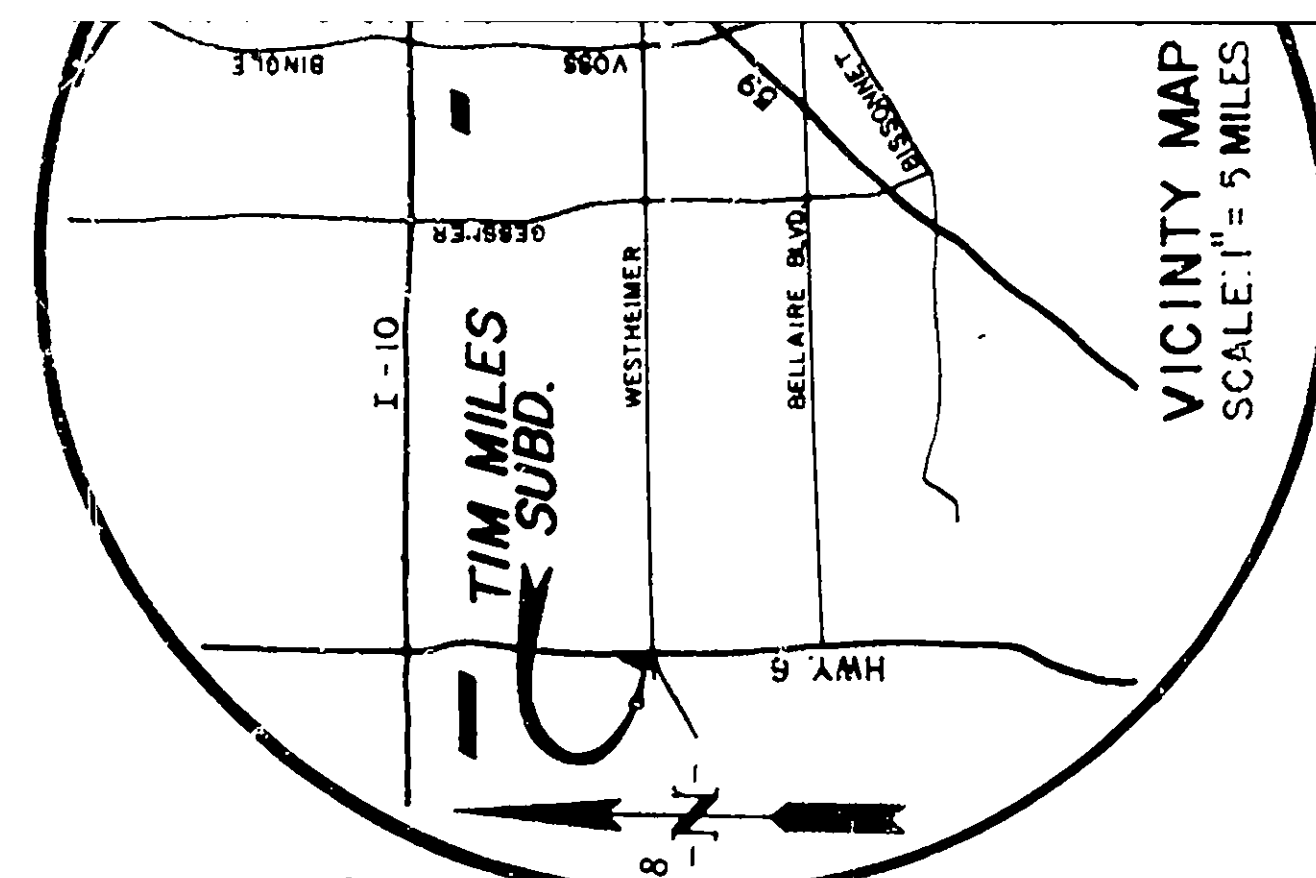
OFFICE OF ANITA RODRIGUEZ COUNTY CLERK HARRIS COUNTY TEXAS
MAP RECORDS OF COUNTY CLERK
VOL. 334 PAGE 107
THIS IS PAGE 9 OF 10 PAGES

PLAT FOR
TIM MILES SUB
BEING 85.8636 ACRES
BLAS HERRERA SURVY
HARRIS COUNTY, TEXAS

11 RESERVES — 4 BLOCKS
OWNERS
WILLIAM B. MILES, SR. — TRUSTEE
LEON GLENN MILES
EDWARD LOUIS MILES
EARL J. MILES
HIGHWAY 6 ASSOCIATES, GENERAL PARTNERSHIP
CHARLES T. MEEKS, GENERAL PARTNER
LEON GOLDSTEIN, GENERAL PARTNER

AUGUST, 1984

Lockwood, Andrews & Newnam, Inc.
Engineering - Architecture - Planning - Project Management



SEE PAGE 105

SEE PAGE 106

SEE PAGE 104

SEE PAGE 106

CITY MARKER
4756
0905
(706909.83, 3067226.40)

FND. HWY. MON.

WESTHEIMER ROAD (120' R.O.W.)
VOL. 725 PG. 647

TOM BROWN SUBDIVISION
VOL. 310 PG. 106 H.C.M.R.

FND. U.S. MON.

FND. I.R.
(706982.68, 3063594.69)

WESTHEIMER - BEELER ROAD (80')

4-1-85

1/4 ROCK LANE

233.032
 R 300.00'
 A 39° 50' 32"
 L 206.61'
 T 108.72'

RESTRICTED RESERVE "G"
 6.6154 ACRES
 288,167 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

20' Strm. Sew. Esm't.

BLOCK 3

N 89° 40' 52" E
 800.48'

esement for utilities and roadway file no. J080591

RESTRICTED RESERVE "E"
 5.6929 ACRES
 247,983 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

S 44° 45' 45" W
 211.24' W

10' B.L.

ES N 89° 40' 57" E
 843.10'
 778.33'

10' B.L.

RESTRICTED RESERVE "D"
 5.7132 ACRES
 248,866 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

S 89° 41' 03" E
 805.73'

BLOCK 2

20' Strm. Sew. Esm't.

11' W.L.E.

RESTRICTED RESERVE "B"
 9.5533 ACRES
 416,140 SQ. FT.
 (RESTRICTED TO NON-RESIDENTIAL)

25' B.L.
 20' Strm. Sew. Esm't.

30' Strm. & W.L. 45.0' Esm't.

1274.73'

TR ROAD (120' R.O.W.)
 P.L. 725 PG. 647

OWN SUBDIVISION
 PG. 106 H.C.M.R.

STATE HIGHWAY

S 00° 09' 28" E 1846.77'

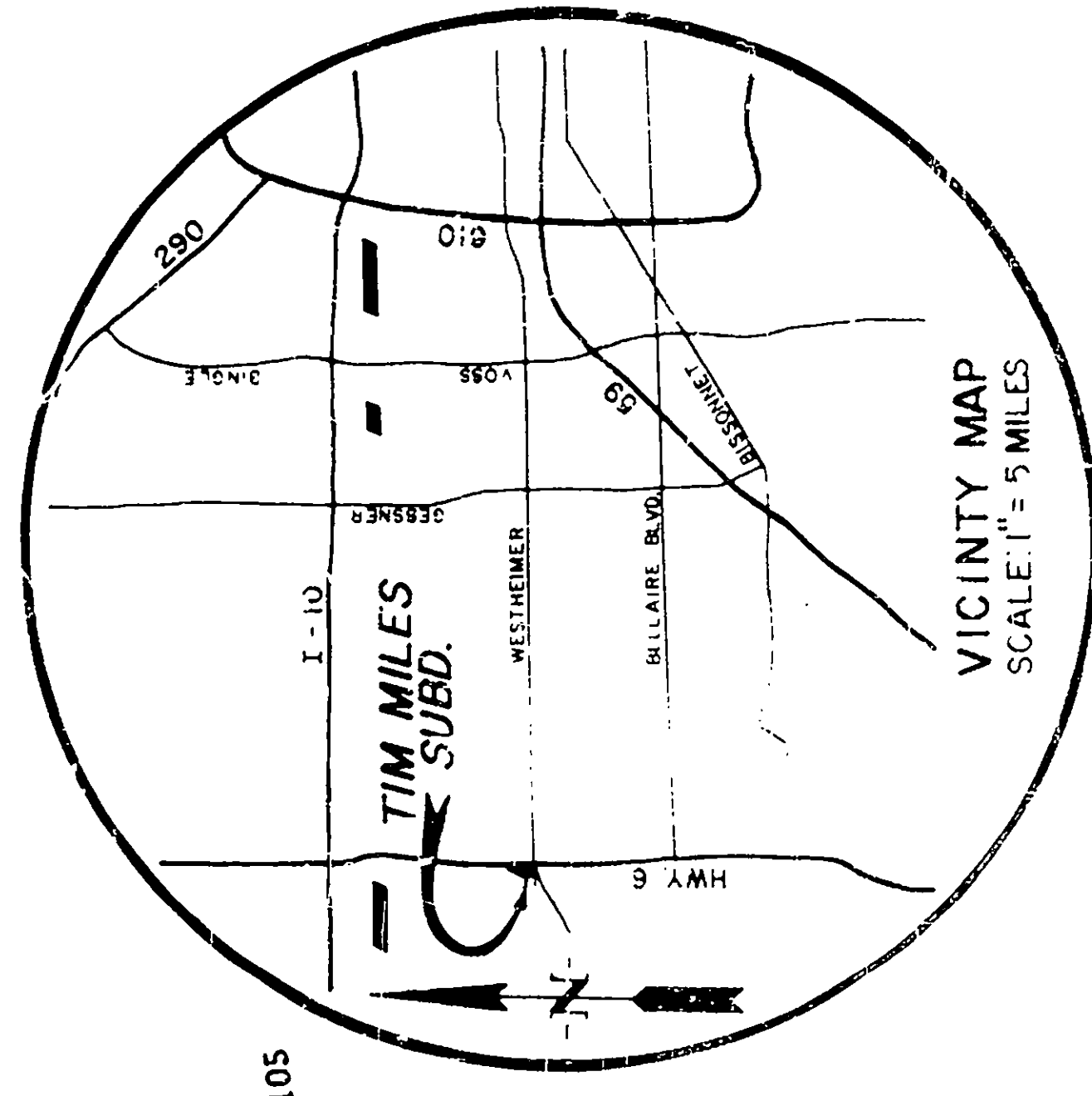
HOUSTON CITY LIMITS & PLAT BOUNDARY LINE

S 44° 45' 42" W
 21.24'

N 88° 03' 28" W 2358.36'

CITY MARKER
 4756
 0905
 (706909.83, 3067226.40)

HOUSTON CITY LIMITS (ORD. 84-88)



PLAT FOR
TIM MILES SUBDIVISION
 BEING 85.8636 ACRES OUT OF THE
 BLAS HERRERA SURVEY A-321
 HARRIS COUNTY, TEXAS

11 RESERVES — 4 BLOCKS

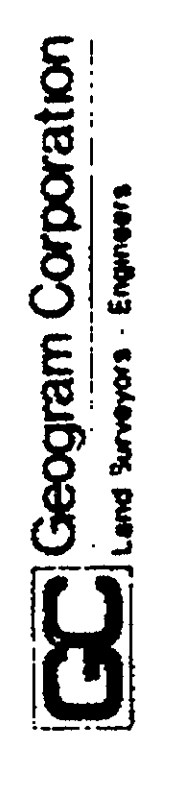
OWNERS

- WILLIAM B. MILES, SR. — TRUSTEE
- LEON GLENN MILES
- EDWARD LOUIS MILES
- EARL J. MILES
- HIGHWAY 6 ASSOCIATES, A TEXAS GENERAL PARTNERSHIP
- CHARLES T. MEEKS, GENERAL PARTNER
- LEON GOLDSTEIN, GENERAL PARTNER

AUGUST, 1984 SCALE: 1" = 100'



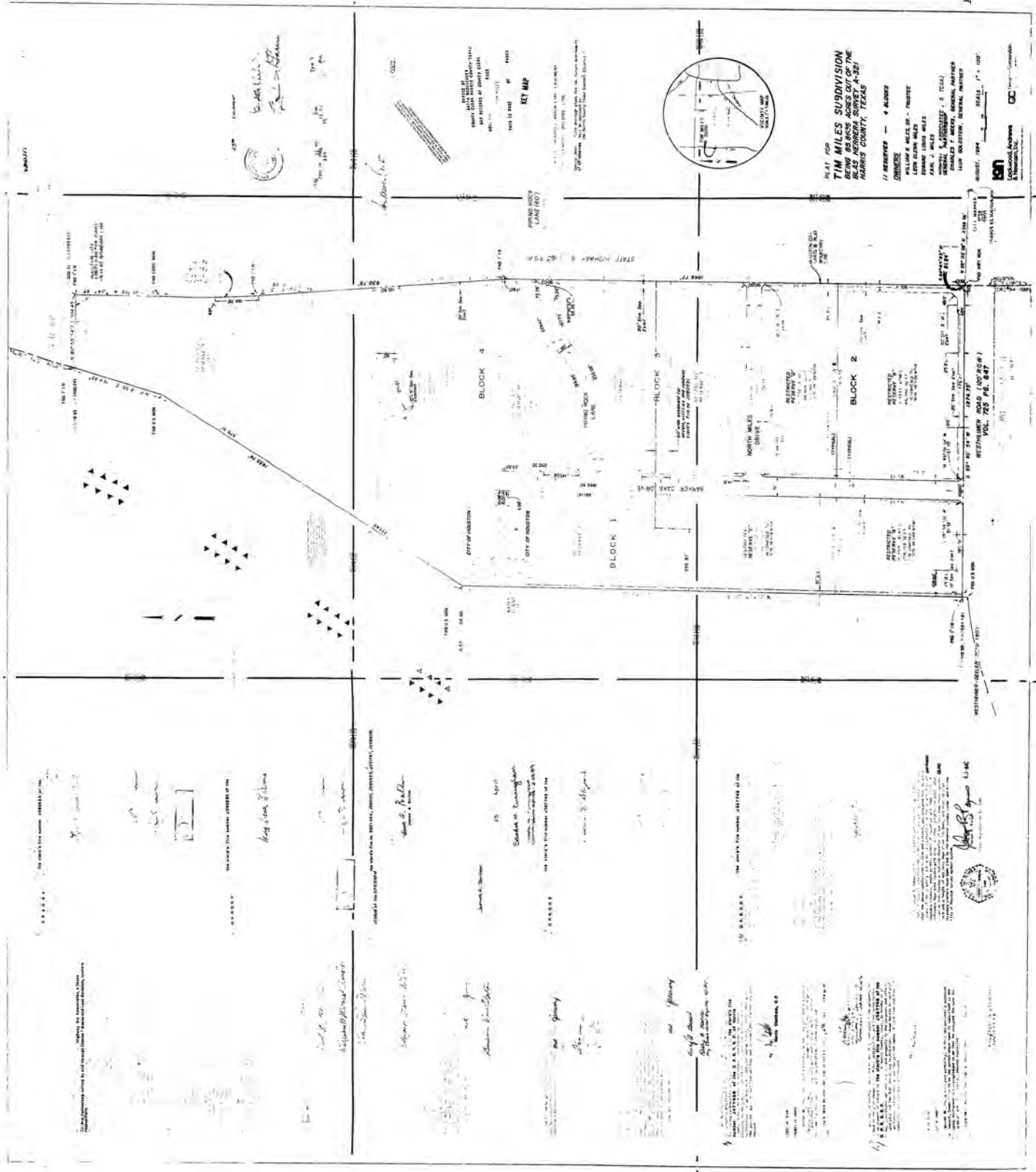
Lockwood, Andrews & Newnam, Inc.
 Engineering, Architecture, Planning, Project Management



Geogram Corporation
 Land Surveyors - Engineers

OFFICE OF ANITA RODEMEAUER
 COUNTY CLERK HARRIS COUNTY TEXAS
 MAP RECORDS OF COUNTY CLERK
 VOL. 334 PAGE 108

TIM MILES
 THIS IS PAGE 10 OF 10 PAGES



PLAT FOR
TIM MILES SUBDIVISION
 BEING A SUBDIVISION OF THE
 BEING A SUBDIVISION OF THE
 BEING A SUBDIVISION OF THE
 MARRIS COUNTY, TEXAS

17 RESERVES — 4 BLANKS
 DIMENSIONS
 WILLIAM MILES SR - PROMISE
 FERNAND LOPEZ MILES
 EARL J. MILES
 GERALD M. MILES
 JOHN M. MILES
 JOHN M. MILES
 JOHN M. MILES



KEY MAP

PLAT NO. 248
 PLAT NO. 249
 PLAT NO. 250
 PLAT NO. 251
 PLAT NO. 252
 PLAT NO. 253
 PLAT NO. 254
 PLAT NO. 255
 PLAT NO. 256
 PLAT NO. 257
 PLAT NO. 258
 PLAT NO. 259
 PLAT NO. 260

RESTON ROAD (EAST SIDE)
 RESTON ROAD (WEST SIDE)
 RESTON ROAD (SOUTH SIDE)
 RESTON ROAD (NORTH SIDE)

RESTON ROAD (EAST SIDE)
 RESTON ROAD (WEST SIDE)
 RESTON ROAD (SOUTH SIDE)
 RESTON ROAD (NORTH SIDE)

RESTON ROAD (EAST SIDE)
 RESTON ROAD (WEST SIDE)
 RESTON ROAD (SOUTH SIDE)
 RESTON ROAD (NORTH SIDE)

RESTON ROAD (EAST SIDE)
 RESTON ROAD (WEST SIDE)
 RESTON ROAD (SOUTH SIDE)
 RESTON ROAD (NORTH SIDE)

RESTON ROAD (EAST SIDE)
 RESTON ROAD (WEST SIDE)
 RESTON ROAD (SOUTH SIDE)
 RESTON ROAD (NORTH SIDE)

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 RESTON ROAD (NORTH SIDE)

RESTON ROAD (EAST SIDE)
 RESTON ROAD (WEST SIDE)
 RESTON ROAD (SOUTH SIDE)
 RESTON ROAD (NORTH SIDE)

N 32° 07' 05" E
T 114 N



MATCH LINE

SEE PAGE 101

SEE PAGE 104

SEE PAGE 103

MATCH LINE

SEE PAGE 102

MATCH LINE

SEE PAGE 105

BARKER RESERVOIR

I, Linda Susan Richards, owner and holder of a lien against the property described in the plat known as The Niles Subdivision, which has been evidenced by Instrument No. **9821-427**, **JO60093**, **JO60093**, or the **JO60093**, filed for record in Harris County, Texas, do hereby, in all things subordinate to the interest in said property to the purposes and effects of said chat amende dedication and restrictions shown herein to said plat and I hereby confirm that I am the present owner of said lien and have not assigned the same nor any part thereof.

Linda Susan Richards
Linda Susan Richards

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Linda Susan Richards, known to me to be the person whose name is subscribed to the foregoing Instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 5th day of April, 1985.

Wanda Burwell
Wanda Burwell
Notary Public in and for the
State of Texas



OFFICE OF
ANITA RICHMEYER
COUNTY CLERK HARRIS COUNTY TEXAS
MAP RECORDS OF COUNTY CLERK

VOL. 334 PAGE 100

TIM MILES

THIS IS PAGE 2 OF 10 PAGES

I, Mary Lema Williams, owner and holder of a lien against the property described in the plat known as The Niles Subdivision, which has been evidenced by Instrument No. **9821-427**, **JO60093**, **JO60093**, or the **JO60093**, filed for record in Harris County, Texas, do hereby, in all things subordinate to the interest in said property to the purposes and effects of said chat amende dedication and restrictions shown herein to said plat and I hereby confirm that I am the present owner of said lien and have not assigned the same nor any part thereof.

Mary Lema Williams
Mary Lema Williams

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Mary Lema Williams known to me to be the person whose name is subscribed to the foregoing Instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 18th day of April, 1985.

Wanda Burwell
Wanda Burwell
Notary Public in and for the
State of Texas



Mr. Allan Bank, Notarial, owner and holder of a lien against the property described in the plat known as The Niles Subdivision, which has been evidenced by Instrument No. **9821-427**, **JO60093**, **JO60093**, or the **JO60093**, filed for record in Harris County, Texas, do hereby, in all things subordinate to the interest in said property to the purposes and effects of said chat amende dedication and restrictions shown herein to said plat and I hereby confirm that I am the present owner of said lien and have not assigned the same nor any part thereof.

Wanda Burwell
Wanda Burwell

III

STATE OF TEXAS
COUNTY OF HARRIS
We, Earl J. Miles, William B. Miles, Sr., Trustees, Leon Glenn Miles, Mary Lou Miles, Edward Louis Miles, and Joseph H. Miles, all of the County of Harris, Texas, do hereby certify that the above and foregoing map of The Niles Subdivision, do hereby make and establish said subdivision and development plan as shown on said map or plat and all lines, dedications, easements, reservations, and restrictions shown thereon are in full force and effect, and we hereby certify that we are the present owners of the land so herein expressed, and do hereby bind ourselves, our heirs, successors and assigns to warrant and forever defend the title to the land so designated.

FURTHER, Owners have dedicated and by these presents do dedicate to the use of the public for public utility purposes, for unobstructed aerial easements, a right-of-way (R/W) in width for perimeter lots, seven feet (7'0") in width for back-to-back lots from a plane sixteen feet (16'0") above the ground level upward, located adjacent to all public utility easements that are designated with aerial easements (i.e. & aerial) shown herein.

FURTHER, Owners do hereby declare that all parcels of land designated as lots on this plat are originally intended for the construction of residential dwelling units thereon for the placement of mobile home subdivisions (MHS) to be restricted for same under the terms and conditions of such restriction filed separately.

FURTHER, Owners do hereby covenant and agree that all of the property within the boundaries of this plat shall be restricted to residential use, and shall be used for any purpose other than residential, and shall be used for any purpose other than residential, either directly or indirectly.

FURTHER, Owners do hereby dedicate to the public a strip of land fifteen (15) feet wide on each side of the centerline of all easements, creeks, gullies, ravines, in said plat, as easements for drainage purposes, giving the City of Houston, Harris County or any other governmental agency the right to enter upon said easement at any and all times for the purpose of construction and maintenance of drainage facilities and structures.

FURTHER, Owners do hereby covenant and agree that all of the property within the boundaries of this plat and adjacent to any drainage easements, gully, creek or natural drainage way shall be restricted to residential use, and shall be used for any purpose other than residential, and shall be used for any purpose other than residential, either directly or indirectly.

Earl J. Miles
Earl J. Miles

William B. Miles, Sr.
William B. Miles, Sr., Trustee

Leon Glenn Miles
Leon Glenn Miles

Mary Lou Miles
Mary Lou Miles

Edward Louis Miles
Edward Louis Miles

Joseph H. Miles
Joseph H. Miles

APPROVED FOR RECORDED

Wanda Burwell
Wanda Burwell
Notary Public in and for the
State of Texas

Earl J. Miles
Earl J. Miles

William B. Miles, Sr.
William B. Miles, Sr., Trustee

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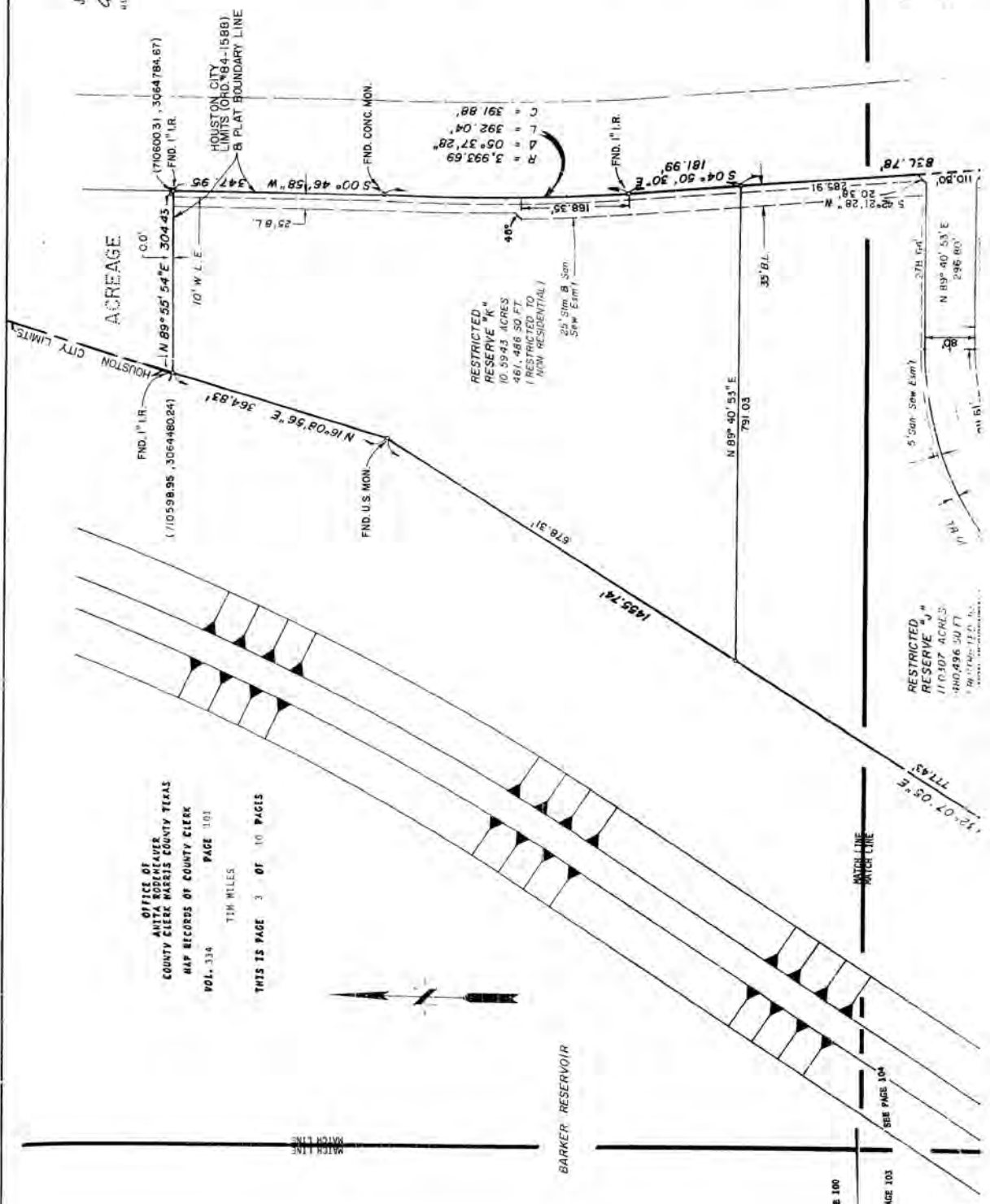
Mary Lou Miles
Mary Lou Miles

Edward Louis Miles
Edward Louis Miles

Joseph H. Miles
Joseph H. Miles

14360377

JAN 31 12 30 PM 1985
City of Houston
14360377



ACREAGE

OFFICE OF
ANTHONY B. DEWEAVER
COUNTY CLERK HARRIS COUNTY TEXAS
MAP RECORDS OF COUNTY CLERK
POL. 334 PAGE 103
TIM MILES

THIS IS PAGE 3 OF 10 PAGES



BARKER RESERVOIR

RESTRICTED RESERVE "K"
10.5943 ACRES
461.486 SQ. FT.
(RESTRICTED TO
NEW RESIDENTIAL)

RESTRICTED RESERVE "J"
110.107 ACRES
480,496 SQ. FT.
(RESTRICTED TO
NEW RESIDENTIAL)

R = 3,993.69
D = 05° 37' 28"
L = 392.04'
C = 391.88'

This is to certify that the City of Houston, Texas has approved this plat and that the same is a true and correct copy of the original plat on file in the office of the City of Houston, Texas, on this day of 22nd day of 1985.



I, Anita Sodebeaver, Clerk of the City of Houston, Texas, do hereby certify that the within instrument has been duly recorded in the office of the City of Houston, Texas, on this day of 22nd day of 1985, at 11:30 o'clock AM, and that the same is a true and correct copy of the map records of Harris County, Texas, as shown on the map records of Harris County, Texas, on this day of 22nd day of 1985.

Witness my hand and seal of office this 22nd day of 1985.

SEE PAGE 102
SEE PAGE 103
SEE PAGE 104
SEE PAGE 105
SEE PAGE 106
SEE PAGE 107
SEE PAGE 108
SEE PAGE 109
SEE PAGE 110

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat on file in the office of the City of Houston, Texas, on this day of 22nd day of 1985.

of [Signature]

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat on file in the office of the City of Houston, Texas, on this day of 22nd day of 1985.

of [Signature]

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat on file in the office of the City of Houston, Texas, on this day of 22nd day of 1985.

of [Signature]

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat on file in the office of the City of Houston, Texas, on this day of 22nd day of 1985.

of [Signature]

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat on file in the office of the City of Houston, Texas, on this day of 22nd day of 1985.

of [Signature]

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat on file in the office of the City of Houston, Texas, on this day of 22nd day of 1985.

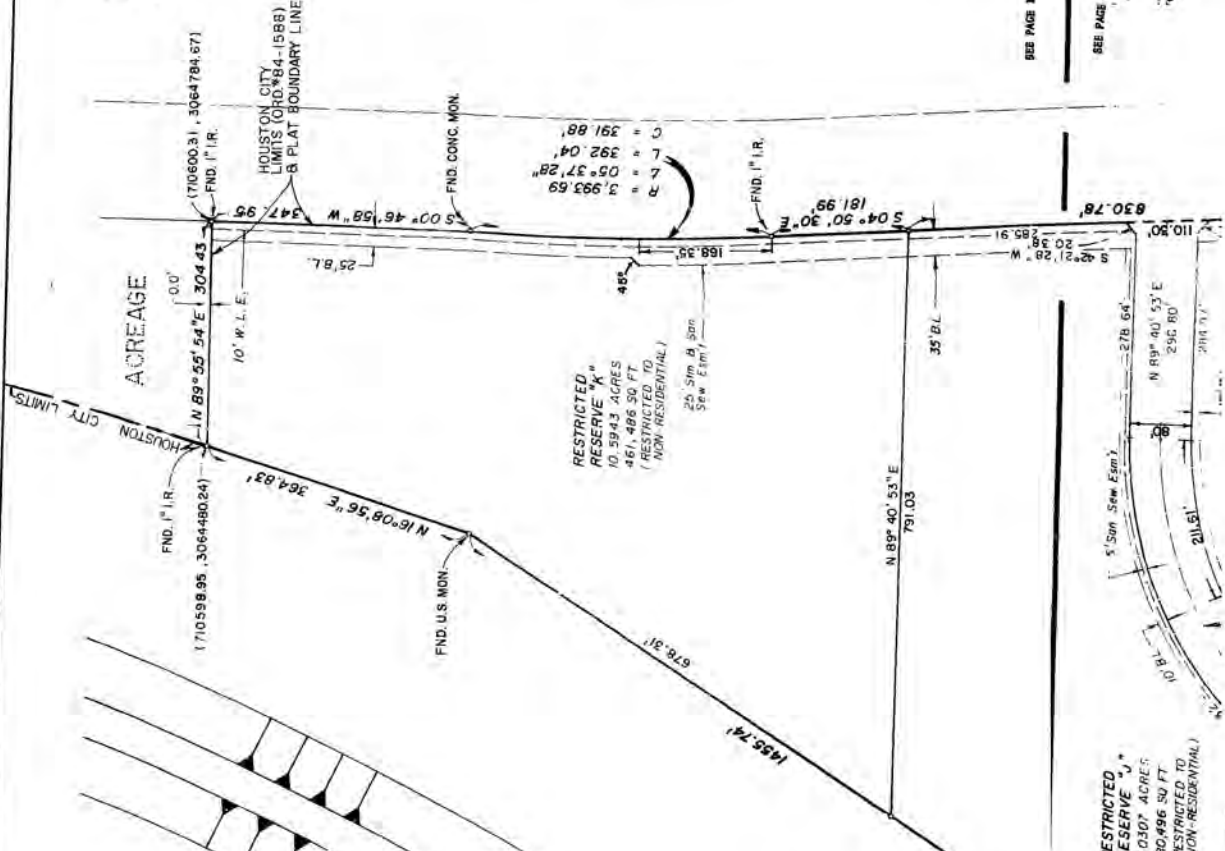
of [Signature]

I, the undersigned, being duly sworn, depose and say that the property described in the within instrument is the same as that described in the original plat and that the same is a true and correct copy of the original plat on file in the office of the City of Houston, Texas, on this day of 22nd day of 1985.

of [Signature]

N 3801577

JAN 3 12 40 PM '84
Antia Robbeaver
 1125 27th St. # 112
 HOUSTON, TEXAS 77058



OFFICE OF
 ANITIA ROBBEAVER
 COUNTY CLERK HARRIS COUNTY TEXAS
 MAP RECORDS OF COUNTY CLERK
 VOL. 334 PAGE 102
 TIM MILES

THIS IS PAGE 4 OF 10 PAGES

This is to certify that the City Planning Commission of the City of Houston, Texas has approved this plat and the boundaries of the City of Houston, Texas shown hereon and authorized the recording of this plat this 23rd day of December, 1983.



By: *Betty Kuhn*
 Betta Kuhn, Chairman
 By: *Patricia Garcia*
 Patricia Garcia, Secretary

I, Anita Robbeaver, Clerk of the County, Court of Harris County, do hereby certify that the within instrument with its certificate of authentication was filed for registration in my office on JAN 9 1984 at 12:30 P.M. and duly recorded on JAN 14 1984 at 12:50 P.M. Book 334 Page 99. File Code No. P.M. Witness my hand and seal of office, at Houston, the day and date last above written.

Anita Robbeaver
 Clerk of the County
 Court of Harris County, Texas

MATCH LINE

SEE PAGE 104

SEE PAGE 101

RESTRICTED RESERVE J
 1.0307 ACRES
 30,496 SQ FT
 RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE K
 10.5943 ACRES
 461,486 SQ FT
 RESTRICTED TO NON-RESIDENTIAL

ACREAGE

By *Edna S. Lamm*
 Public Utilities Secretary

I, Anita Hubbecker, Clerk of the County Court of Harris County, do hereby certify that the within instrument with its exhibits and addendum to it was filed for registration in my office on **JAN 9 1985** at **10:30 AM** and is to be recorded in **Book 334** and in Volume **99 12-00** of the map records of Harris County.

Witness my hand and seal of office at Houston, the day and date last above written.
 SEE PAGE 101

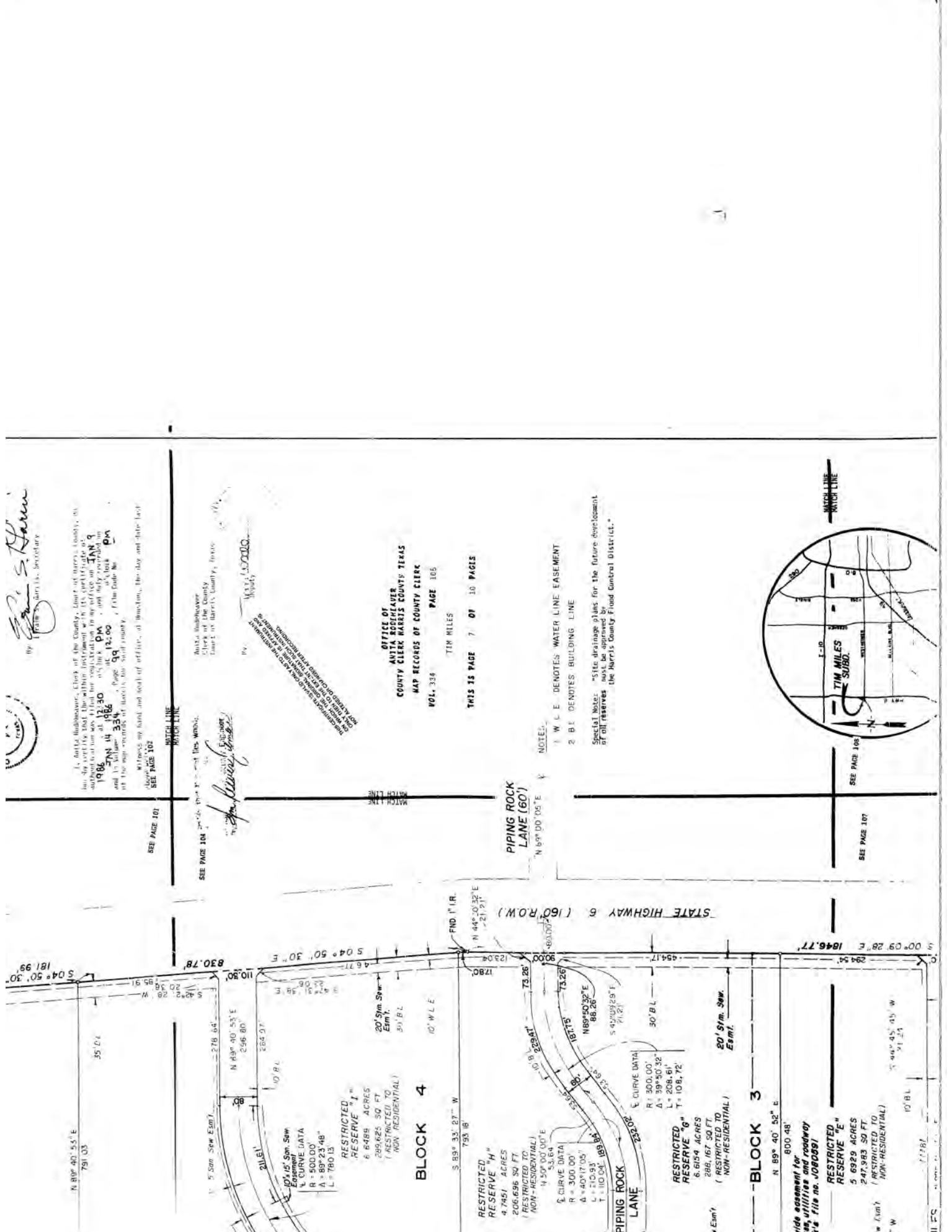
Anita Hubbecker
 Clerk of the County Court of Harris County, Texas

OFFICE OF
 ANITA HUBBECKER
 COUNTY CLERK HARRIS COUNTY TEXAS
 MAP RECORDS OF COUNTY CLERK
 VOL. 334 PAGE 105
 TIM RILES

THIS IS PAGE 7 OF 10 PAGES

NOTE:
 1 W L E DENOTES WATER LINE EASEMENT
 2 B L E DENOTES BUILDING LINE

Special Note: "Site design plans for the future development of all reserves must be approved by the Harris County Flood Control District."



SEE PAGE 101

SEE PAGE 104

SEE PAGE 107

SEE PAGE 108

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Charles T. Hays, General Partner and Co-Administrator of the Highways 6 Associates, a Texas General Partnership, known to me to be the persons whose names are subscribed to the foregoing instrument and acknowledged to me that they executed the same for the purposes and considerations therein expressed and in the capacity therein and here stated, and as the act and deed of said partnership.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 24th day of February, 1985.

Kathy D. Rogers
Notary Public in and for the State of Texas
Bobby B. Keatts
My Commission Expires: 4/1/85

Mr. Maryland Savings Associates, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said County of Harris, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owner of said lien and have not assigned the same nor any part thereof.

By: *Neil H. Chatham*
Neil H. Chatham, V.P.

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned authority, on this day personally appeared [Signature], known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14th day of February, 1985.



Neil H. Chatham
Notary Public in and for the State of Texas
Commission Expires: 2/28/85

Mr. Peacock Realty, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file number J367746 of the County of Harris, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owner of said lien and have not assigned the same nor any part thereof.

By: *Tom Peacock*
Tom Peacock

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared the undersigned authority, on this day personally appeared [Signature], known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 14th day of February, 1985.

Neil H. Chatham
Notary Public in and for the State of Texas
Commission Expires: 2/28/85

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Clarence B. Weaver, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 11th day of February, 1985.



Clarence B. Weaver
Notary Public in and for the State of Texas
Commission Expires: 2/28/85

SEE PAGE 103

SEE PAGE 104

SEE PAGE 107

Mr. Ira Caneth Peacock Trust, owner and holder of a lien against the property described in the plat known as Tim Miles Subdivision, said lien being evidenced by instrument of record in the clerk's file number J367746 of the County of Harris, Texas, do hereby in all things subordinate our interest in said property to the purposes and effects of said plat and the dedications and restrictions shown herein to said plat and we hereby confirm that we are the present owner of said lien and have not assigned the same nor any part thereof.

Ira Caneth Peacock Trust
Ira Caneth Peacock Trust

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared Ira Caneth Peacock Trust known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 11th day of February, 1985.

Ira Caneth Peacock Trust
Notary Public in and for the State of Texas
Commission Expires: 2/28/85

OFFICE OF
ANITA ROSENBAUM
COUNTY CLERK HARRIS COUNTY TEXAS
MAP RECORDS OF COUNTY CLERK
VOL. 334 PAGE 106
TEN MILES

THIS IS PAGE 0 OF 10 PAGES

I, Cesar R. Romero, a P.E., am authorized under the laws of the State of Texas to practice the profession of surveying and hereby certify that the foregoing instrument is a true and correct copy of the original survey of the property made under my supervision on the ground; that all boundary corners, angle points, points of curvature and other points of reference have been marked with iron (or other suitable permanent metal) pins and a length of not less than three (3) feet; and that the boundary corners have been tied to the nearest survey corner and to the City of Houston survey marker system.



Cesar R. Romero
Cesar R. Romero
Texas Registration No. 1348

WESTHEIMER-BEELER ROAD (80')

FND. 1" I.R.
(706982.68, 3053594.69)

2,033.92

N 00° 17' 05" E

15.55



PLAT FOR
TIM MILES SUB
BEING 85.8636 ACRES
BLAS HERRERA SURVA
HARRIS COUNTY, TEXAS

OWNERS
WILLIAM B. MILES, SR. - TRU
LEON GLENN MILES
EDWARD LOUIS MILES
EARL J. MILES
HIGHWAY 6 ASSOCIATES
GENERAL PARTNERSHIP
CHARLES T. MEEKS, GENER
LEON GOLDSTEIN, GENER

SEE PAGE 105
SEE PAGE 106

STATE HIGH
500' 47' 30'' E
294.54' 1848.77' E

HOUSTON CITY LIMITS B PLAT BOUNDARY LINE

CITY MARKER
4756
0905
(706909.83, 3067226.40)

HOUSTON CITY LIMITS (ORD# 84-1588)

BLOCK 1
RESTRICTED RESERVE "A"
47.315 ACRES
206,103.52 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "B"
5.6124 ACRES
284,167.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "C"
5.2457 ACRES
271,437.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "D"
5.7132 ACRES
248,866.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "E"
5.6929 ACRES
247,383.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "F"
5.6929 ACRES
247,383.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "G"
5.6124 ACRES
284,167.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "H"
9.5533 ACRES
446,100.50 FT
RESTRICTED TO NON-RESIDENTIAL

BLOCK 2
RESTRICTED RESERVE "A"
47.315 ACRES
206,103.52 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "B"
5.6124 ACRES
284,167.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "C"
5.2457 ACRES
271,437.50 FT
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RESTRICTED RESERVE "G"
5.6124 ACRES
284,167.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "H"
9.5533 ACRES
446,100.50 FT
RESTRICTED TO NON-RESIDENTIAL

BLOCK 4
RESTRICTED RESERVE "A"
47.315 ACRES
206,103.52 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "B"
5.6124 ACRES
284,167.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "C"
5.2457 ACRES
271,437.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "D"
5.7132 ACRES
248,866.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "E"
5.6929 ACRES
247,383.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "F"
5.6929 ACRES
247,383.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "G"
5.6124 ACRES
284,167.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "H"
9.5533 ACRES
446,100.50 FT
RESTRICTED TO NON-RESIDENTIAL

BLOCK 5
RESTRICTED RESERVE "A"
47.315 ACRES
206,103.52 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "B"
5.6124 ACRES
284,167.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "C"
5.2457 ACRES
271,437.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "D"
5.7132 ACRES
248,866.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "E"
5.6929 ACRES
247,383.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "F"
5.6929 ACRES
247,383.50 FT
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RESTRICTED RESERVE "G"
5.6124 ACRES
284,167.50 FT
RESTRICTED TO NON-RESIDENTIAL
RESTRICTED RESERVE "H"
9.5533 ACRES
446,100.50 FT
RESTRICTED TO NON-RESIDENTIAL

WESTHEIMER - BEELE ROAD (80')
WESTHEIMER ROAD (120' R.O.W.)
VOL. 725 PG. 647
TOM BROWN SUBDIVISION
VOL. 310 PG. 106 H.C.M.R.

SEE PAGE 104
SEE PAGE 105
SEE PAGE 106

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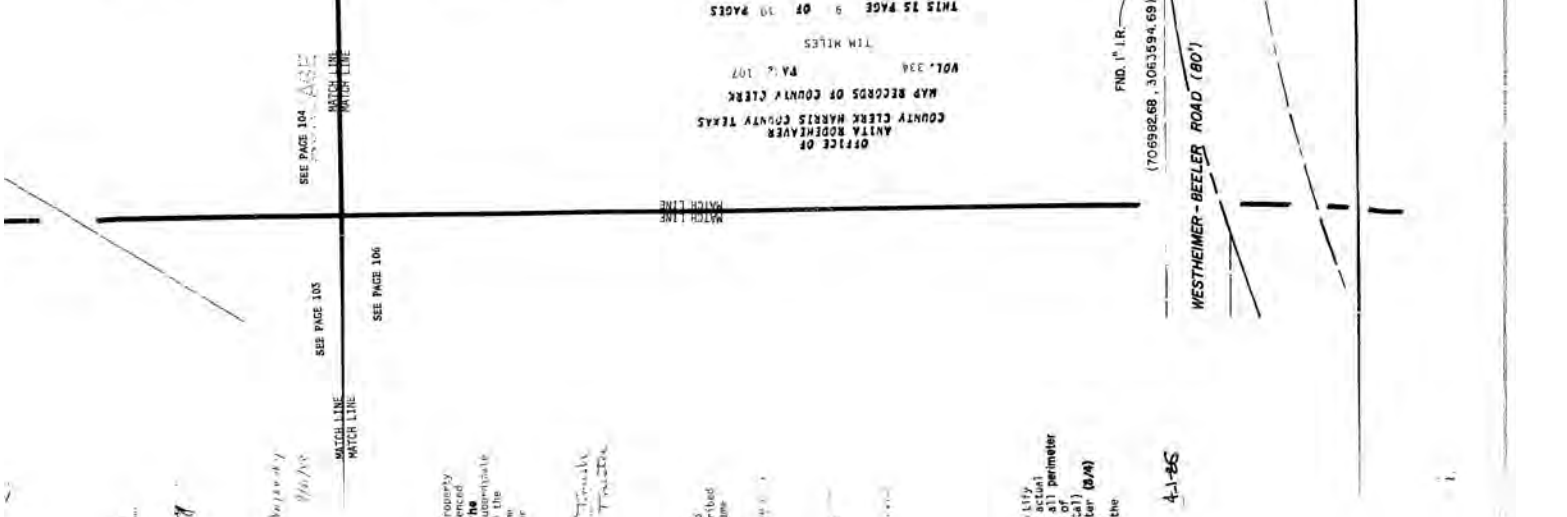
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1/2" = 100'

RESTRICTED RESERVE "G"
6,654 ACRES
288.167 50 FT
RESTRICTED TO NON-RESIDENTIAL

20' 51m. Sew. Esm't

-BLOCK 3
N 89° 40' 52" E
800.48'

Assessment for
utilities and roadway
File no. 0086381

RESTRICTED RESERVE "E"
5,692.9 ACRES
247.983 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "D"
5,732 ACRES
248,866 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "B"
9,553 ACRES
416,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "A"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "C"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "F"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "H"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "I"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "J"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "K"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "L"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "M"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "N"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "O"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "P"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "Q"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "R"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "S"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

RESTRICTED RESERVE "T"
1,100 ACRES
46,140 50 FT
RESTRICTED TO NON-RESIDENTIAL

STATE HIGHWAY

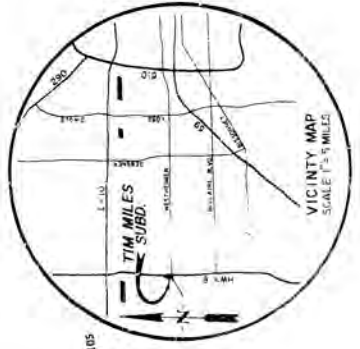
S 00° 09' 28" E 1846.77'

HOUSTON CITY LIMITS OF PLAT BOUNDARY LINE

CITY MARKER
4756
0905
(706909.83,3067226.00)

FND. HWY. MON.
N 88° 03' 28" W 2958.36'

HOUSTON CITY LIMITS
(ORD. 84-1588)



**PLAT FOR
TIM MILES SUBDIVISION
BEING 85.8636 ACRES OUT OF THE
BLAS HERRERA SURVEY A-321
HARRIS COUNTY, TEXAS**

11 RESERVES — 4 BLOCKS

OWNERS

- WILLIAM B. MILES, SR. - TRUSTEE
- LEON GLENN MILES
- EDWARD LOUIS MILES
- EARL J. MILES
- HIGHWAY 6 ASSOCIATES, A TEXAS GENERAL PARTNERSHIP
- CHARLES T. WEEKS, GENERAL PARTNER
- LEON GOLDSTEIN, GENERAL PARTNER

AUGUST, 1984
SCALE: 1" = 100'



Lockwood, Andrews & Newnam, Inc.
Surveying, Consulting, Planning, Mapping



Geogram Corporation
Land Surveyors, Engineers

OFFICE OF
ANITA RODRIGUEZ
COUNTY CLERK HARRIS COUNTY TEXAS
MAP RECORDS OF COUNTY CLERK
101.334 PAGE 108

TIM MILES
THIS IS PAGE 10 OF 10 PAGES

S464504

Return to: ①
James J. Tyler
9 Gateway Plaza, #3010
Houston, TX 77046

RESTRICTIVE COVENANTS

513-15-2568

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

05/23/97 200422091 5464504 \$27.00

RECITALS:

A. JAY KAPLAN, TRUSTEE ("Trustee") owns an approximately 10.5943 acre tract of land (the "Land"), being all of Reserve "K" of the Tim Miles Subdivision, according to the map or plat recorded in Volume 334, Page 99 of the Map Records of Harris County, Texas. *lee*

B. In order to satisfy the requirements of pending purchase and sale agreements to coordinate the uses of the Land for the possible sale of portions thereof, Trustee has agreed and does hereby impose and create certain rights, easements and protective covenants and restrictions on the Land as more fully set forth herein.

ARTICLE I. DEFINITIONS

Section 1.1 Applicable Deed. The term "Applicable Deed" shall mean the deed of a particular Tract from Trustee.

Section 1.2 Exclusive. The term "Exclusive" shall mean the specific use or uses reserved for the sole benefit of a Tract as provided herein.

27
h
Section 1.3 Floor Area. The term "Floor Area" shall mean the total number of square feet of enclosed space in a building or buildings available for the exclusive use of a particular person or entity, whether or not actually occupied. The Floor Area of any building for purposes of these Restrictive Covenants shall be calculated from the exterior of all exterior walls.

Section 1.4 Owner. The term "Owner" shall mean the record owner(s) of fee title from time to time of the Land or any portion thereof, but shall not mean an entity holding only a lien, mineral interest, easement, leasehold estate or other interest burdening such fee title.

Section 1.5 Restrictive Covenants. The term "Restrictive Covenants" shall mean these Restrictive Covenants executed by Trustee.

Section 1.6 Tract. The term "Tract" shall mean the portions of the Land subdivided by the Applicable Deed.

Section 1.7 Other Definitions. Other definitions are contained throughout in these Restrictive Covenants.

ARTICLE II. EASEMENTS

Section 2.1 Utility Easements. Trustee hereby declares and reserves unto himself, his heirs, successors and assigns within the Land a non-exclusive easement on, over, under and across those portions of the Land within ten (10) feet of State Highway 6 for electrical, gas and other utilities, provided such easement does not unreasonably interfere with the use of any Tract. Each Owner agrees to execute and deliver such additional documents as may be requested by utility companies to evidence the grant of this utility easement.

Section 2.2 Access Easement. Trustee currently intends to subdivide a portion of the Land into a Tract for use as a hotel, containing approximately 2.717 acres of land as more particularly depicted on Exhibit "A" attached hereto (the "Hotel Tract"). Trustee declares and reserves a non-exclusive access easement for the sole benefit of the Owner, tenants and invitees of the Tract located immediately in front and to the east of the Hotel Tract (such benefitted tract [the "Restaurant Tract"] being more particularly described on Exhibit "B" attached hereto) over and across the most easterly 150 feet of the north 24 feet (the "Access Easement") of the 30 foot wide strip (the "Hotel Strip") which connects the Hotel Tract to State Highway 6. The Hotel Strip is more particularly described on Exhibit "A-1" attached hereto. The owner of the Hotel Strip may relocate the Access Easement so long as at least a 24-foot wide area is provided within the Hotel Strip connecting to the Restaurant Tract. Entry into the Access Easement by the Owner, tenants and invitees of the Restaurant Tract shall only be through a 30 foot wide entry or curb cut located between 50 feet and 150 feet of State Highway 6, unless the express prior written consent of the Owner of the Hotel Tract is obtained.

Section 2.3 Construction and Maintenance of Access Easement. The Owners of the Hotel Tract and the Restaurant Tract shall coordinate so that construction of the road over the Hotel Strip is consistent with any driveways and parking facilities situated on the Restaurant Tract. The owner of the Restaurant Tract shall have a non-exclusive easement for access across the Hotel Strip to construct and/or maintain the road. No party constructing the road shall be entitled to reimbursement for its construction costs. The road shall be constructed in a good and workmanlike manner (utilizing good faith efforts to coordinate with Trustee or the then owner of the Hotel Tract), and, upon completion, shall thereafter be repaired and maintained at the sole cost and expense of the Owner of the Hotel Tract; except, however, the Owner of the Restaurant Tract shall promptly pay for any damage caused to the road by the Owner of the Restaurant Tract, its tenants and invitees. The owner of the Restaurant Tract may construct a temporary road across the Access Easement in compliance with applicable laws. If the Hotel Tract should ever be reconfigured in the Applicable Deed, Trustee shall have the right to designate which portion thereof shall be responsible for maintaining the road, provided such designation is in writing, filed of record in the Office of the Clerk of Harris County, Texas, and is not done in a manner which would materially diminish the benefits of the road.

Section 2.4 Disclaimer. The use in these Restrictive Covenants of the phrases "Restaurant Tract" and "Hotel Tract" shall not imply or constitute a representation or warranty that a restaurant or hotel shall be constructed thereon or that such Tracts are limited to such uses.

ARTICLE III USE RESTRICTIONS

Section 3.1 Restricted Activities. The following activities are prohibited within the Land:

- (a) any activity which tends to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on a Tract;
- (b) any activity which emits foul or obnoxious odors, fumes, dust, smoke or pollution outside a Tract or which creates noise, unreasonable risk of fire or explosion, or other conditions which tend to disturb the peace or threaten the safety or comfort of occupants and invitees of other Tracts, in all cases beyond levels typical for a municipality;
- (c) any activity which violates applicable governmental laws or regulations;
- (d) outside burning of trash, leaves, debris or other materials;
- (e) unless permitted in the Applicable Deed, outdoor storage, except the outdoor storage of building materials shall be permitted during bona fide construction on a Tract on which such materials are stored;
- (f) any activity which is a public or private nuisance;
- (g) any activity which is, in whole or in part, for the dumping, disposing or commercial warehousing of garbage or refuse; and
- (h) the operation of a gasoline refining and/or twenty-four (24) hour manufacturing operation.

Land:

Section 3.2 Prohibited Uses. The following uses shall be prohibited within the

- (a) junkyards, scrap metal yards and sanitary landfills;
- (b) commercial excavation of building or construction materials, except in the usual course of construction of improvements on a Tract;
- (c) flea markets, and fire and bankruptcy sale operations;
- (d) the sale of indecent or pornographic literature, adult entertainment or any other form of sexually oriented business (except for the sale of books or videos as an incident part [*i.e.*, comprising no more than five percent (5%) of

the total space devoted for sales] of a general purpose bookstore, video store or other bona fide use);

- (e) no Tract may be used in violation of an Exclusive, except for the Tract specifically benefitting from the Exclusive; and
- (f) no Tract may be used in violation of any additional restrictions contained in the Applicable Deed for such Tract.

Section 3.3 Exclusives. The Land shall be subject to the following Exclusives for the sole benefit of the Tract indicated:

- (a) **Extended Stay Lodging Facility:** The Hotel Tract shall be the only Tract within the Land which may be operated as an Extended Stay Lodging Facility (defined as a hotel or motel with full kitchen facilities or which promotes itself for lodging for five (5) days or longer).
- (b) **Seafood Restaurant:** The Restaurant Tract shall have an exclusive as the only Tract within the Land which may be a "seafood restaurant" (defined as a restaurant that has more than forty percent (40%) of its food items containing seafood or which uses the word "seafood" in its proper name).

ARTICLE IV. OPERATIONAL MATTERS

Section 4.1 Trash Containers. All garbage and trash shall be placed and kept in covered trash containers and all such containers shall be placed within at least a solid-faced four-sided enclosure attached to the main building, unless the written consent of Trustee is obtained. Unless fully enclosed, the enclosure shall be constructed not to exceed six feet (6') in height and be fixed permanently to the ground in a manner designed to minimize the view of the interior thereof. The exterior of the trash container building shall be constructed with substantially the same material used on the exterior of the main building on the Tract. Any substantial amount of wet trash generated by a restaurant shall be removed on a daily basis to minimize foul odors.

Section 4.2 Casualty Damage. Any buildings or other improvements that are destroyed partially or totally by fire or other casualty, shall be repaired or demolished within a reasonable period of time or otherwise restored to an orderly and attractive condition.

Section 4.3 Signs. No Tract may have more than one (1) pylon sign and one (1) monument sign, without the prior written consent of Trustee. Any restrictions on the location, size and height of any pylon or monument sign shall be set forth in the Applicable Deed. The restrictions set forth above in this Section 4.3 shall not apply to (a) up to three (3) directional signs per Tract of less than 3 square feet and a height not exceeding five (5) feet from ground level, (b) other signs to the minimum extent necessary to comply with applicable laws, or (c) signs which are attached to a

building containing more than 5,000 square feet of Floor Area, provided such signs do not extend more than two feet (2') in any direction from an exterior wall. No sign may advertise any use except for the business conducted from a Tract, other than one professionally built sign advertising a Tract for sale or lease, provided the total square footage of such sign does not exceed 50 feet.

Section 4.4 Building Setbacks. No building or extension thereof shall be constructed (i) within sixty (60) feet of State Highway 6 for the northernmost 150 feet of the Land, (ii) within 75 feet of State Highway 6 for the next 280 feet of the Land, (iii) within one hundred feet (100') of State Highway 6 for the next two hundred feet (200') to the south, or (iv) within any additional setbacks contained in the Applicable Deed. Signs, parking spaces, driveways and landscaping shall be permitted within any building setback.

Section 4.5 Building Height. No buildings may be constructed within the Land in excess of any height limitation specified in the Applicable Deed.

Section 4.6 Drainage and Water Retention. Each Tract shall be self-sufficient, and provide for its own drainage and water retention, unless the express, prior written consent of another Owner is obtained.

Section 4.7 Landscaping. The Owner of each Tract shall keep all grass mowed, weeds cut and landscaping properly maintained on its Tract.

Section 4.8 Parking. Each Tract shall contain sufficient parking to comply with any parking requirements of the City of Houston, unless an express easement is obtained in writing from another Owner.

Section 4.9 Curb Cuts. Each Tract may only have curb cuts providing access to State Highway 6 at the location(s) set forth in the Applicable Deed.

ARTICLE V. TERM AND ENFORCEMENT

Section 5.1 Term. These Restrictive Covenants and other rights created herein shall constitute covenants running with and binding the land affected, and shall inure to the benefit and run with the land so benefitted, and shall, except as set forth in the next sentence, remain in effect for a period of one hundred (100) years from the date hereof. Any utility easements or access easements shall be perpetual.

Section 5.2 Enforcement. The provisions of these Restrictive Covenants may be enforced by any Owner, without the necessity of the joinder of any other party whatsoever. No tenant, subtenant or occupant of any Tract shall have any rights to enforce any provisions of these Restrictive Covenants. In the event of any violation or attempted or threatened violation of any provision of these Restrictive Covenants, in addition to all other rights and remedies available at law or in equity,

513-15-2573

the Owners shall be entitled to obtain restraining orders and injunctions prohibiting such violation, attempted or threatened violation, and ordering compliance with the provisions hereof.

ARTICLE VI MISCELLANEOUS

Section 6.1 Notice. Any notice which shall or may be given in accordance with the provisions of these Restrictive Covenants shall be in writing and shall be either personally delivered or sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the appropriate Owner at the last address for such Owner according to the records of the party giving such notice. Any Owner shall have the right to change its address for purposes of notice.

Section 6.2 Status Reports. Recognizing that Owners may find it necessary from time to time to establish to banks, mortgagees, purchasers and major tenants, the then-current status of performance hereunder, each Owner shall, upon no less than twenty (20) days written notice from another Owner, but no more often than once per calendar year as to a request from any one Owner, furnish a written statement, to the knowledge of such Owner, on the status of any matters relating to these Restrictive Covenants.

Section 6.3 Binding Effect. These Restrictive Covenants shall be binding upon and benefit Trustee, and his heirs, successors and assigns, and each Owner from time to time of a Tract and shall be covenants running with the Land. Whenever reference is made in these Restrictive Covenants to Trustee having certain rights of approval or being able to impose certain restrictions or other matters in the Applicable Deed, such right and power may only be transferable by Trustee if specific mention is made thereof.

Section 6.4 Severability. If any provision of these Restrictive Covenants shall be unenforceable to any extent, the remainder thereof and the application of such provisions to other circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Section 6.5 Governing Law. These Restrictive Covenants shall be governed by the laws of the State of Texas.

Section 6.6 Attorney's Fees. If a lawsuit is filed to enforce or interpret any portion of these Restrictive Covenants, the prevailing party shall be entitled to recover its reasonable attorney's fees and court costs.

DATED as of the 22ND day of May, 1997.

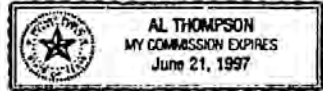



JAY KAPLAN, TRUSTEE
112

513-15-2374

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 19th day of May, 1997, by **JAY KAPLAN, TRUSTEE.**





Notary Public in and for the State of Texas

EXHIBIT "A"

513-15-2375

DESCRIPTION OF A 2.717 ACRE TRACT OF LAND
OUT OF RESTRICTED RESERVE "K", BLOCK 1
TIM MILES SUBDIVISION
HARRIS COUNTY, TEXAS

Being a 2.717 acre tract of land out of Restricted Reserve "K", Block 1 in the Blas Herrera Survey, Abstract No. 321, as shown on the plat of Tim Miles Subdivision recorded in Volume 334, Page 99, Harris County Map Records, said 2.717 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found in the west right-of-way line of State Highway 6, 160 feet wide, (formerly Addicks Howell Road) Volume 5032, Page 32, H.C.D.R., marking the southeast corner of said Restricted Reserve "K" and the northeast corner of Restricted Reserve "J", Block 1;

THENCE, in a westerly direction along the common line of said Restricted Reserves "J" and "K", S 89° 40' 46" W, 790.93 feet to a 5/8 inch iron rod found marking the southwest corner of said Restricted Reserve "K" and the northwest corner of Restricted Reserve "J", Block 1;

THENCE, along the westerly line of said Restricted Reserve "K", N 32° 07' 05" E, 379.16 feet to a 1 inch iron pipe set marking the northwest corner of the herein described tract;

THENCE, N 89° 40' 46" E, 235.19 feet to a 5/8 inch iron rod found marking the most northerly northeast corner of the herein described tract;

THENCE, S 00° 19' 14" E, 290.00 feet to a 5/8 inch iron rod found for corner;

THENCE, N 89° 40' 46" E, along a line parallel to and 30.00 feet north of (and perpendicular to) the southerly line of said Restricted Reserve "K", a distance of 350.00 feet to a 5/8 inch iron rod found in the west right-of-way line of State Highway 6;

THENCE, S 04° 49' 43" E, along the westerly right-of-way line of State Highway 6, a distance of 30.09 feet to the POINT OF BEGINNING and containing 2.717 acres of land.

EXHIBIT "A-1"

513-15-2376

DESCRIPTION OF A 10,554 SQ. FT. TRACT OF LAND
OUT OF RESTRICTED RESERVE "K", BLOCK 1
TIM MILES SUBDIVISION
HARRIS COUNTY, TEXAS

Being a 10,554 sq. ft. (0.242 Ac.) tract of land out of Restricted Reserve "K", Block 1 in the Blas Herrera Survey, Abstract No. 321, as shown on the plat of Tim Miles Subdivision recorded in Volume 334, Page 99, Harris County Map Records, said 10,554 sq. ft. tract being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found in the west right-of-way line of State Highway 6, 160 feet wide, (formerly Addicks Howell Road) Volume 5032, Page 32, H.C.D.R., marking the southeast corner of said Restricted Reserve "K" and the northeast corner of Restricted Reserve "J", Block 1;

THENCE, in a westerly direction along the common line of said Restricted Reserves "J" and "K", S 89° 40' 46" W, 352.37 feet to a point marking the southwest corner of the herein described tract;

THENCE, N 00° 19' 14" W, 30.00 feet to a 5/8 inch iron rod found marking the northwest corner of the herein described tract;

THENCE, N 89° 40' 46" E, along a line parallel to and 30.00 feet north of (perpendicular to) the southerly line of said Restricted Reserve "K", a distance of 350.00 feet to a 5/8 inch iron rod found in the west right-of-way line of State Highway 6;

THENCE, S 04° 49' 43" E, along the westerly right-of-way line of State Highway 6, a distance of 30.09 feet to the POINT OF BEGINNING and containing 10,554 sq. ft. (0.242 Ac) of land.

EXHIBIT "B"

513-15-2377

DESCRIPTION OF A 2.256 ACRE TRACT OF LAND
RESTRICTED RESERVE "K", BLOCK 1
TIM MILES SUBDIVISION
CITY OF HOUSTON, HARRIS COUNTY, TEXAS

BEING a 2.256 acre tract of land in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas, and being out of Restricted Reserve "K", Block 1 as shown on the plat of Tim Miles Subdivision recorded in Volume 334, Page 99 of the Harris County Map Records and being out of a 10.5043 acre tract described under Harris County Clerk's File Number S015191, said 2.256 acre tract being more particularly described as metes and bounds as follows:

COMMENCING at a 5/8" iron rod found in the west right-of-way line of State Highway No. 6 as described under H.C.C.F. No. B647227 (Vol. 5032, Pg. 132 H.C.D.R.) and being at the southeast corner of said Restricted Reserve "K" and at the northeast corner of Restricted Reserve "J", Block

THENCE N 04° 50' 30" W, 30.09 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" to a 5/8" set at the POINT OF BEGINNING of the herein described tract;

THENCE S 89° 40' 53" W, 350.00 feet to a set 5/8" iron rod for the southwest corner of the herein described tract;

THENCE N 00° 19' 07" W, 290.00 feet to a 5/8" iron rod set for the northeast corner of the herein described tract;

THENCE N 89° 40' 53" E, 329.48 feet to a 5/8" iron rod set in the east line of said Restricted Reserve "K" and being in the said west right-of-way line of State Highway No. 6;

THENCE in a southerly direction, 138.85 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" and following the arc of said curve the left having a radius of 3003.80 feet, a central angle of 01° 58' 31" and a chord which bears S 05° 50' 44" E, 138.84 feet to a 1/2" iron rod found and from said 1/2" iron rod, a found concrete monument bears S 18° 55' E, 0.66 feet and a found 1" iron rod bears S 77° 40' W, 0.18

THENCE S 04° 50' 30" E, 151.90 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" to the POINT OF BEGINNING and containing 2.256 acres of land.

ANY PROVIDER HEREIN WHICH REFLECTS THE SALE PRICE, OR ONE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR FACE IS VOID AND UNENFORCEABLE UNDER FEDERAL LAW THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was DAY RECORDED, in the Official Public Records of Real Property of Harris County, Texas.

MAY 23 1997



Beverly B. Hoffman
COUNTY CLERK
HARRIS COUNTY TEXAS

RECORDER'S MEMORANDUM

AT THE TIME OF RECORDATION THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC.

FILED
97 MAY 23 PM 3:57
Beverly B. Hoffman
COUNTY CLERK
HARRIS COUNTY TEXAS

S464505

Return to:
James J. Tyler
9 Greenway Plaza, Suite 3010
Houston, Tx 77046-0904
515-15-2378

(2)

WD

SPECIAL WARRANTY DEED

05/23/97 200422092 S464505 \$19.00

STATE OF TEXAS §
COUNTY OF HARRIS § KNOW ALL PERSONS BY THESE PRESENTS:
§

That, JAY KAPLAN, TRUSTEE ("Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has GRANTED and CONVEYED, and by these presents does GRANT and CONVEY unto LANDRY'S CRAB SHACK, INC., a Texas corporation ("Grantee"), with an address of 1400 Post Oak Boulevard, Suite 1010, Houston, Texas 77056, that certain tract or parcel of land containing 2.256 acres in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas, being out of Restrictive Reserve "A", Block One (1) as shown on the plat of Tim Miles Subdivision, recorded in Volume 344, Page 99 of the Harris County Map Records, and being more particularly described on Exhibit "A" attached hereto (the "Land").

TO HAVE AND TO HOLD the Land, unto Grantee, its successors and assigns forever, and Grantor hereby warrants and agrees to forever defend title to the Land, against all persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor but not otherwise, subject in all events to (a) the matters set forth in this Deed and on Exhibit "B" attached hereto to the extent same are valid, subsisting and affect the Land, and (b) the "Additional Restrictions" set forth on Exhibit "C" attached hereto.

For the same consideration, Grantor does hereby grant and convey to Grantee, without warranty, whether express or implied, all right, title and interest of Grantor in and to all public roads and street bounding the Land, and rights of public ingress and egress thereto.

EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN THE EARNEST MONEY CONTRACT BETWEEN GRANTOR AND GRANTEE, AND THE LIMITED WARRANTY OF TITLE CONTAINED IN THIS DEED, GRANTEE ACKNOWLEDGES THAT (A) THE CONVEYANCE OF THE LAND IS MADE "AS-IS" AND "WHERE-IS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY, AND (B) GRANTEE HAS RELIED SOLELY ON ITS OWN INVESTIGATION OF THE LAND.

Grantor covenants and agrees that the tract of land located immediately to the north of the Land and owned by Grantor shall have a building setback of twenty feet (20') from the Land. Signs, parking spaces, driveways and landscaping shall be permitted within this setback. This setback restriction shall be binding upon Grantor and his heirs, successors and assigns, and shall be a covenant running with said land.

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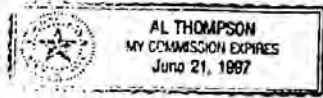
515-15-2379

Executed on the date of acknowledgment but effective May 22, 1997.

Jay Kaplan Trustee
JAY KAPLAN, TRUSTEE
JK

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on the 19th day of May, 1997, by JAY KAPLAN, TRUSTEE.



Al Thompson
Notary Public in and for the State of Texas

EXHIBIT "A"

513-15-2580

DESCRIPTION OF A 2.256 ACRE TRACT OF LAND
RESTRICTED RESERVE "K", BLOCK 1
TIM MILES SUBDIVISION
CITY OF HOUSTON, HARRIS COUNTY, TEXAS

BEING a 2.256 acre tract of land in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas, and being out of Restricted Reserve "K", Block 1 as shown on the plat of Tim Miles Subdivision recorded in Volume 334, Page 99 of the Harris County Map Records and being out of a 10.5943 acre tract described under Harris County Clerk's File Number SD15191, said 2.256 acre tract being more particularly described as metes and bounds as follows:

COMMENCING at a 5/8" iron rod found in the west right-of-way line of State Highway No. 6 as described under H.C.C.F. No. 8847227 (Vol. 5032, Pg. 132 H.C.D.R.) and being at the southeast corner of said Restricted Reserve "K" and at the northeast corner of Restricted Reserve "J", Block:

THENCE N 04° 50' 30" W, 30.09 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" to a 5/8" set at the POINT OF BEGINNING of the herein described tract;

THENCE S 89° 40' 53" W, 350.00 feet to a set 5/8" iron rod for the southwest corner of the herein described tract;

THENCE N 00° 19' 07" W, 290.00 feet to a 3/8" iron rod set for the northwest corner of the herein described tract;

THENCE N 89° 40' 53" E, 329.48 feet to a 5/8" iron rod set in the east line of said Restricted Reserve "K" and being in the said west right-of-way line of State Highway No. 6;

THENCE in a southerly direction, 138.85 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" and following the arc of said curve the left having a radius of 3693.69 feet, a central angle of 01° 56' 31" and a chord which bears S 03° 50' 44" E, 138.84 feet to a 1/2" iron rod found and from said 1/2" iron rod, a found concrete monument bears S 18° 55' E, 0.66 feet and a found 1" iron rod bears S 77° 40' W, 0.18

THENCE S 04° 50' 30" E, 151.90 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" to the POINT OF BEGINNING and containing 2.256 acres of land.

513-15-2381

EXHIBIT "B"
PERMITTED EXCEPTIONS

1. Restrictive covenants depicted in the instrument recorded in Volume 334, Page 99 of the Map Records of Harris County, Texas.
2. Restrictive covenants, easements, setback lines and other matters, set forth in those certain Restrictive Covenants executed by Jay Kaplan, Trustee, of even date herewith, filed under Harris County Clerk's File No. 5464504
3. Water line easement ten feet (10') in width along the east property line as reflected by the plat recorded in Volume 334, Page 99 of the Map Records of Harris County, Texas.
4. Storm sewer easement twenty-five feet (25') in width along the east property line as reflected by the plat recorded in Volume 334, Page 99 of the Map Records of Harris County, Texas.
5. Sanitary sewer easement twenty-five feet (25') in width along the east property line as reflected by the plat recorded in Volume 334, Page 99 of the Map Records of Harris County, Texas.
6. Aerial easement adjacent to all public utilities as set out on the plat recorded in Volume 334, Page 99 of the Map Records of Harris County, Texas.
7. Drainage easement fifteen feet (15') width on each side of the center line of all natural drainage courses as shown by the plat recorded in Volume 334, Page 99 of the Map Records of Harris County, Texas.
8. Building setback line of thirty-five feet (35') decreasing to twenty-five feet (25') in width along the east property line as shown on plat recorded in Volume 334, Page 99 of the Map Records of Harris County, Texas.
9. All oil, gas and other minerals as set forth by instruments filed for record under Harris County Clerk's File Nos. E999075, E999077, and E997684.
10. Instrument relating to waiver of surface rights filed for record under Harris County Clerk's File No. F570806.
11. The terms, conditions and stipulations of that certain Mineral Lease dated January 2, 1955, recorded in Volume 843, Page 490 of the Contract Records of Harris County, Texas.
12. Instrument relating to waiver of surface rights filed for record under Harris County Clerk's File No. E283509.

513-15-2382

13. Taxes for the year 1997 which have been prorated to the effective date of the attached Deed.

0AWFDOCS11092410001SPWTD02.BEP#051697171&02

EXHIBIT "C"
ADDITIONAL RESTRICTIONS

513-15-2383

As contemplated by the Restrictive Covenants set forth in Item 2 on Exhibit "B", Grantor hereby imposes the following additional restrictions on the Land:

1. **Building Setbacks.** No building or extension thereof shall be constructed on the Land closer to seventy-five feet (75') from State Highway 6, nor closer than forty-five feet (45') to any rear or side property line. Overheads and extensions of building cannot encroach into these setbacks.
2. **Building Height.** No building may be constructed on the Land in excess of twenty-six feet (26') in height (measures at parking lot grade at the base of the foundation), exclusive of heating, ventilating and air conditioning equipment, satellite dishes, and antennae.
3. **Signs.** Only one (1) pylon sign may be constructed on the Land, and it must be situated on the northern one-third (1/3) of the Land within seventy-five feet (75') of State Highway 6 and in compliance with all applicable laws. No monument sign may be situated on the Land.
4. **Curb Cut.** The Land may have only one (1) curb cut for entry onto State Highway 6 and it must be situated on the northern one-third (1/3) of the Land.

FILED

97 MAY 23 PM 3:57

Barbara C. Hoffman

COUNTY CLERK
HARRIS COUNTY, TEXAS

NO PERSON HEREIN SHALL INFRINGE THE SALE, RENTAL, OR USE OF THE RECORDING MEDIA PROPERTY BECAUSE OF COLOR OR THAT IT SHOULD AND UNREASONABLE MEDIA PREFERENCES FOR THE STATE OF TEXAS
COUNTY OF HARRIS
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 Harris County, Texas on

MAY 23 1997



Barbara C. Hoffman
COUNTY CLERK
HARRIS COUNTY TEXAS

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RECORDER'S MEMORANDUM

AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC.

5484(6-85)

514-49-2069

Job WA72418
Map 4756A
S/C SUGARLAND
DCM/s 07/17/97

2. An Easement ten (10) feet wide, the location of which is shown as a double-crosshatched area on said attached Sketch No. 97-247.
3. An easement ten (10) feet wide, the location of the centerline of which is shown by the dot-dash symbol on said attached Sketch No. 97-247.
4. An easement thirteen (13) feet wide and 16.0 feet long for Grantee's padmounted transformer station, the location of which is shown by the dotted area on said attached Sketch No. 97-247.

Grantee shall also have rights of ingress and egress to and from said easement, together with reasonable working space, for the purposes of erecting, installing, operating, maintaining, replacing, inspecting, and removing said electric distribution facilities, together with the additional right to remove from said easement and land adjoining thereto, all bushes, trees and parts thereof, or other structures which, in the opinion of Grantee, endanger or may interfere with the efficiency, safe and proper operation, and maintenance of said electric distribution facilities.

TO HAVE AND TO HOLD the above described easement, together with all and singular the rights and appurtenances thereto in anywise belonging, unto Grantee, its successors or assigns, forever, and Grantor does hereby bind itself and its successors, heirs, assigns, and legal representatives, to warrant and forever defend all and singular the above described easement and rights unto said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

FILED FOR RECORD
8:00 AM

AUG 26 1997

Bevelly B. Hoffman
County Clerk, Harris County, Texas

5484(6-85)

514-49-2070
Job WA72418
Map 4756A
S/C SUGARLAND
DCM/s 07/17/97

EXECUTED this 1st day of AUGUST, 1997.

ATTEST:

LANDRY'S CRAB SHACK, INC. 165

BY [Signature]
Secretary

BY [Signature]

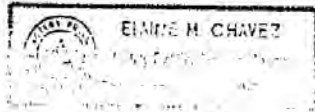
Steven L. Schriethal
(Name typed or printed)

ANDREW J. SLAVIN
(Name typed or printed)

STATE OF TEXAS }

COUNTY OF }

This instrument was acknowledged before me on August 8, 1997, by ANDREW J. SLAVIN, Director of Real Estate Dept of Landry's Crab Shack, Inc., a Texas corporation, on behalf of said corporation.



[Signature]
Notary's Signature

Elaine M. Chavez
(Name typed or printed)

Commission Expires: 10-28-98

514-49-2072

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, REUSE, OR USE OF THE FOREGOING REAL
PROPERTY BECAUSE OF COLOR OR RACE IS VOID AND UNENFORCEABLE UNDER FEDERAL LAW
THE STATE OF TEXAS }
COUNTY OF HARRIS }

I hereby certify that this instrument was FILED in File Number
Sequence on the date and at the time specified herein by me, and was
Duly RECORDED, in the Official Public Records of Real Property of
Harris County, Texas on

AUG 26 1997



Beverly A. Hoffman
COUNTY CLERK
HARRIS COUNTY TEXAS

V055897

Agent
5/19/01

RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT (this "Agreement") is made and entered as of the 19th day of April, 2001, by and among JAY KAPLAN, TRUSTEE ("Kaplan"), MB DEVELOPMENT COMPANY, a Texas corporation ("MBD") and FFCA ACQUISITION CORPORATION, a Delaware corporation ("FFCA").

05/16/01 300543617 V055897 \$57.75

RECITALS:

A. Kaplan is the owner of that certain tract of land containing approximately 3.3893 acres located in the City of Houston, Harris County, Texas. Such tract shall hereinafter be referred to as the "Kaplan Parcel" and is more particularly described on Exhibit "A" attached hereto.

B. MBD is the owner of that certain tract of land containing approximately 1.118 acres located in the City of Houston, Harris County, Texas. Such tract shall be referred to as the "MBD Parcel" and is more particularly described on Exhibit "B" attached hereto.

C. The MBD Parcel is presently improved with, and operated as, a James Coney Island Restaurant and related parking and site facilities.

D. FFCA is the owner of that certain tract of land containing approximately 1.1195 acres located in the City of Houston, Harris County, Texas. Such tract shall hereinafter be referred to as the "FFCA Parcel" and is more particularly described on Exhibit "C" attached hereto.

E. The FFCA Parcel is presently improved with, and operated as, a Tortuga's Cantina Restaurant and related parking and site facilities.

F. Kaplan contemplates ultimately selling the Kaplan Parcel and for Kaplan or the purchaser to construct thereon improvements and related parking and site facilities.

G. The Kaplan Parcel, the MBD Parcel and the FFCA Parcel (collectively sometimes referred to herein as the "Parcels" and individually as a "Parcel") are situated from north-to-south adjacent to each other. To coordinate the use and operation of traffic in and around the Parcels, the Parties desire to grant to each other certain reciprocal easements in, to, over and across certain portions of the Parcels.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the parties hereby agree as follows:

1. Definitions. Each reference in this Agreement to any of the following terms shall mean:

1.1 Common Area. The driveways, service drives and curb cuts constructed and to be constructed from time to time on the Parcels and intended for the non-exclusive use of a Party and its Occupants and Users, but expressly excluding buildings, building canopies, building truck docks and wells, trash and compactor areas and parking areas. Except for the Access Drive, no rights are given by this Agreement to use any of the Common Area.

548-89-1288

548-89-1289

1.2 Occupant. Each Party and any Person from time to time entitled to the use and occupancy of any portion of any building at any time located upon either Parcel, under this Agreement or any lease, license or concession agreement or other instrument or arrangement under which the Occupant acquires its right to such use and occupancy. Occupant shall include the officers, directors, employees and agents of such Persons.

1.3 Parcels. The Kaplan Parcel, the MBD Parcel, and the FFCA Parcel.

1.4 Party. Each Person executing this Agreement, or its respective successor-in-interest as a Party with respect to its Parcel, as shown in the Official Public Records of Real Property of Harris County, Texas. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the Parcel owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any Parcel (or portion thereof) transferred until a notice of transfer setting forth the name and address of the new Party is given to the other Party, at which time the transferring Party's personal liability for obligations hereunder shall terminate.

1.5 Person. Individuals, partnerships, firms, associations, corporations, trusts or any other form of business or legal entity.

1.6 Access Drive. The driveway located or to be constructed on the eastern portion of each Parcel running parallel with, and west of, State Highway 6, as shown on the site plans attached hereto as Exhibit "D". The portion of the Access Drive situated on the Kaplan Parcel is more particularly described on Exhibit "E" attached hereto.

1.7 Users. All Occupants, Parties and their respective employees, licensees, invitees, customers, owners, contractors, agents, lessees, sublessees, tenants and concessionaires, who are granted permission to utilize the Access Drive on a Parcel.

1.8 Owner. The fee simple owner of the relevant Parcel.

1.9 Other Terms. Certain other terms shall have the meaning set forth for each such term in this Agreement.

2. Grant of Reciprocal Easements.

2.1 Grant of Easements by Parties. Each Party grants to the other Parties a non-exclusive easement over, across, in and through the Access Drive on its Parcel for the benefit of the other Parcels, for the uses and purposes set forth in Section 2.2. Each easement granted herein shall in each instance be (i) appurtenant to and for the benefit of the Parcel owned by the grantee of each such easement and (ii) non-exclusive for use in common with the grantor of each such easement and all Users and Occupants. Kaplan shall construct, or cause to be constructed, the portion of the Access Drive on the Kaplan Parcel as soon as reasonably possible after the date of this Agreement, and in any event by no later than September 30, 2001. Such construction shall be in substantial conformity with the plans and specifications prepared by KRE&S Engineers, dated

548-89-1298

June 4, 1999. In addition, Kaplan shall construct, or cause to be constructed a traffic signal within the State Highway 6 right-of-way opposite the entrance to the Kaplan Parcel in substantial conformity with the plans prepared by Traffic Engineers Incorporated, dated July 22, 1999, using his best efforts to complete the signal by September 30, 2001. In consideration for the cost of construction of the Access Drive and traffic signal (including engineering fees already incurred and paid by Kaplan), FFCA is contemporaneously herewith paying Kaplan the sum of \$26,088.50, and MBD is contemporaneously herewith paying Kaplan the sum of \$23,131.83. If the actual cost of constructing the Access Drive and installing the signal plus related engineering expenses incurred by Kaplan exceeds the sum of \$104,554.00, FFCA shall pay to Kaplan 24.95217% of such excess, and MBD shall pay to Kaplan 22.12426% of such excess. An invoice documenting the construction costs, including the construction contract, change orders and paid invoices, shall be delivered by Kaplan to FFCA and MBD, together with an invoice for FFCA's and MBD's share of such excess costs. Within thirty (30) days following delivery of such documentation, FFCA and MBD shall pay to Kaplan the amount shown to be due by such invoice.

2.2 Use of Access Drive. The Access Drive on each Parcel shall be used only for the following purposes related to the businesses and activities conducted on the Parcels:

(a) Ingress and Egress. Ingress and egress by any Users and any motor vehicles of such Users to and from any portion of the Common Area and the public streets and private driveways adjacent to or on the Common Area. Each Party reserves the right to close off its portion of the Common Area for such reasonable period of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Party shall give written notice to the other Parties of its intention to do so, and shall attempt to coordinate such closing with the other Parties so that no unreasonable interference in the passage of pedestrians or vehicles shall occur. Further, each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a permitted User under Section 1.7 hereof from using its portion of the Access Drive. This Agreement shall not give rise to any prescriptive rights by the Parties, and each Party shall use reasonable efforts to prevent such rights from being acquired by the public or any third party.

(b) Pedestrian Traffic. Pedestrian traffic by Users between business establishments on the Parcels and between such business establishments and the adjoining streets.

(c) Repairs, Maintenance and Replacement of Common Area. Ingress, egress and access to the Common Area located over, along and under each Party's Parcel for the purpose of effectuating any necessary repairs, maintenance and replacement of the Common Area located on each Parcel as provided herein; provided, however, such uses shall not unreasonably prevent or impair the use of the Access Drive for the purposes granted in Section 2.1.

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(d) Utility Easements. Such utility easements as may be granted by the Owner of the Parcel; provided however, such uses shall not unreasonably prevent or impair the use of the Access Drive for the purposes granted in Section 2.1.

(e) Construction, Repairs and Maintenance of Buildings. Ingress, egress, access, use as a temporary staging area for construction, repairs, maintenance and use of any buildings or other improvements situated on a parcel by the Owner, Occupant or Users of such Parcel, and such other uses by the Parcel which do not unreasonably interfere with any of the other purposes described in this Section 2.2; provided, however, none of the aforesaid uses shall unreasonably prevent or impair the use of the Access Drive for the purposes granted in Section 2.1.

2.3 Compliance with Law. All construction work undertaken by any Party pursuant to this Agreement shall comply with the requirements of all applicable governmental authorities having jurisdiction and all applicable laws, ordinances, rules and regulations of such authorities, including, without limitation, building codes. Each Party shall also secure all licenses and permits from governmental agencies and other entities (such as public utilities) necessary for any construction undertaken by it. No Party shall cause or permit to exist on another Party's Parcel any lien arising out of construction work undertaken by a Party pursuant to this Agreement. The Party causing such lien to be filed shall, within thirty (30) days after the filing thereof, cause such lien to be released or bonded or otherwise insured around.

2.4 Indemnification by Parties. Each Party shall indemnify, defend and hold the other Parties harmless of and from any and all loss, cost, damage, injury or expense (including, without limitation, reasonable attorneys' fees) arising by reason of injury to or death of Persons, damage to property or claims of lien for work or labor performed, materials or supplies furnished arising out of or in connection with use by the indemnifying Party of the easements granted hereunder or the exercise by such Party of any other rights granted to it in this Agreement. Any Party may contest any lien or claim of lien asserted against such Party or the Parcel affected by such Party's use of any of the easements granted hereunder; provided, however, that such Party shall pay and fully discharge any such claim of lien within twenty (20) days after entry of final judgment adverse to such Party in any action to enforce or foreclose the same.

3. Use, Management and Maintenance.

3.1 Use, Generally. Except as expressly set forth in this Agreement, nothing herein contained shall limit, affect or diminish the right of each Party to own, manage and operate its Parcel in the manner deemed necessary or appropriate by such Party, and it is specifically agreed that each Party may modify its Parcel, relocate or reconfigure the parking areas thereon and construct and reconstruct from time to time additional improvements thereon, all without the consent or joinder of the other Party; however, in no event shall the Access Drive or access points be modified, closed or relocated without the consent of the other Parties, such consent not to be unreasonably withheld or delayed.

3.2 No Walls, Fences or Barriers. No walls, fences or barriers of any kind shall be

constructed, erected or maintained on the Access Drive, or any portion thereof, by any Party which shall prevent or impair the use or exercise of any of the easements granted herein or the free access and movement of Occupants and Users, including, without limitation, pedestrians and vehicular traffic, between the Parcels; provided, however, reasonable traffic control signs and devices, directional barriers and parking stops, as may be necessary to guide and control the orderly flow of traffic, may be installed so long as the Access Drive and curb cuts on a Parcel are not closed or blocked.

4. Additional Common Area Provisions.

4.1 Construction of Parking. The parking spaces on any portion of the Kaplan Parcel necessary or required for a building constructed thereon shall be constructed no later than the date the business conducted in such building is opened to the public.

4.2 Parking. Nothing contained in this Agreement shall be construed to grant to a Party the right to use or permit the use by others of any parking areas located from time to time on the other Party's Parcel. Each Party agrees to construct and thereafter maintain a sufficient number of automobile parking spaces in order to comply with the requirements of any governmental authority having jurisdiction over the Parcels.

4.3 Changes in Common Area. Each Party shall have the right to make such changes in the Common Area on its Parcel as it deems necessary or appropriate to serve the best interests of its business, provided no change shall adversely affect or impair the free and uninterrupted use of the Access Drive.

4.4 Operation and Maintenance. Each Party shall repave, resurface, patch and replace markings on the surface of the Access Drive on its Parcel from time to time as and when necessary.

4.5 Liability Insurance. Each Party shall maintain or cause to be maintained public liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the Common Areas owned by such Party or caused by such Party or caused by those Persons for whose acts or omissions such Party is legally liable. Each Party shall cause the policies evidencing such liability insurance to name the other Parties as an additional insured. Such insurance shall be written by an insurance company or companies with a Best's Insurance Guide rating of not less than A- and qualified to do business in the State of Texas; and said policy or policies of insurance shall have limits for loss of life or bodily injury in the amounts of not less than One Million and No/100 Dollars (\$1,000,000.00) for each Person and Three Million and No/100 Dollars (\$3,000,000.00) for each occurrence and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for property damage for each occurrence. Such insurance may be carried under a "blanket" policy covering other properties of the owner of the relevant Parcel. Each Party shall, upon written request from another Party, furnish to the requesting Party one or more certificates of insurance evidencing the existence of the insurance required to be carried under this Section 4.5. All such insurance policies shall include provisions (to the extent obtainable in policies prescribed or approved by the State Board of Insurance of Texas) denying to the insurer subrogation rights against the Party causing the

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548-89-129

loss of life or bodily injury or property damage to the extent such rights have been waived by the insured prior to the occurrence of such bodily injury, loss of life or property damage. To the extent that a Party is compensated by insurance for bodily injury, loss of life or property damage, such Party hereby waives any rights of recovery and rights of subrogation against the other Party causing such bodily injury, loss of life or property damage as well as against such other Party's directors, officers, employees, agents and others for whose acts and/or omissions such other Party may be legally liable. In the event that a Party required to maintain liability insurance under the provisions of this Section 4.5 fails to do so, such Party hereby waives any rights of recovery against the other Parties as well as such other Parties' directors, officers, employees, agents and others for whose acts or omissions such other Party is legally liable to the same extent as if such Party were required to carry a policy of liability insurance under the provisions of this Section 4.5 and complied with such provisions and waived rights of recovery and subrogation under the provisions hereof.

5. Construction of Buildings. Subject to the provisions contained elsewhere in this Agreement, each Party may from time to time (i) develop and construct on its Parcel buildings and improvements, and (ii) remodel and renovate existing buildings and improvements located on its Parcel

6. Condemnation. In the event the whole or any part of a Party's Parcel shall be taken by right of eminent domain or any similar authority of law (the "Taking") or in the event that any Party conveys all or any portion of its Parcel under threat of eminent domain, any such conveyance also being a "Taking" as used herein, the entire award or compensation paid shall belong to the owner of the Parcel constituting the subject matter of such Taking (whether such award or compensation so paid is for the property taken or as severance damages with respect to such owner's property not taken) and no other Party shall have a right to claim any portion of such award or compensation paid.

7. Rights Upon Default.

7.1 Right to Cure. In the event a Party defaults in the performance of the obligations of such Party under this Agreement, the non-defaulting Party or Parties shall have the right, but not the obligation, following twenty (20) days written notice, to cure such default for the account of and at the expense of the defaulting Party; provided, however, that in the event of emergency conditions constituting default, the non-defaulting Party acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. Any notice hereunder shall specify with particularity the nature of the default claimed. To effectuate any such cure, the non-defaulting Party shall have the right to enter upon the Parcel of the defaulting Party to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Party. Prior to a non-defaulting Party exercising its rights under this Section 7.1, it shall first confer with any other non-defaulting Party to coordinate, if the other non-defaulting Party wishes to exercise its rights, the action taken pursuant to this Section 7.1.

7.2 Costs of Cure and Lien Rights. All costs and expenses reasonably incurred by a Party to cure a default of a defaulting Party under the provisions of Section 7.1 hereof, together with

interest thereon at the rate of twelve percent (12%) per annum, shall be paid by the defaulting Party. In the event MBD or FFCA is liable for the excess costs of construction described in Section 2.1, such costs shall be treated in the same manner as provided in the preceding sentence. The payment of all such costs and expenses shall be secured by a lien on the Parcel and improvements thereon owned by the defaulting Party, which lien shall be created by the recording of a notice thereof (executed by the non-defaulting Party) in the Official Public Records of Real Property of Harris County, Texas. Such lien shall be subordinate to any previously recorded mortgage or deed of trust ("**Prior Mortgage**") now or hereafter affecting the Parcel owned by the defaulting Party which arose and was recorded prior to recordation of such notice. Such lien may be enforced in any manner allowed by law including, without limitation, a suit in the nature of a suit to foreclose a deed of trust under the applicable provisions of the laws of the State of Texas.

7.3 Legal and Equitable Relief. Each Party shall have the right to prosecute any proceeding at law or in equity against the other Party hereto, or any other Person, violating or attempting to violate or defaulting in any of the provisions contained in this Agreement, in order to prevent the violating or defaulting Party or any such Person from violating or attempting to violate or defaulting under the provisions of this Agreement and to recover damages for any such violation or default. The remedies available hereunder shall include, by way of illustration but not limitation, applications for temporary restraining orders, temporary injunctions and permanent injunctions enjoining any such default or attempted violation or default, and actions for specific performance of this Agreement.

7.4 Non-Waiver. No delay or omission of any Party in the exercise of any right accruing upon any default of the other Party shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Party of a breach of, or default in, any of the terms and conditions of this Agreement by the other Party shall not be construed to be a waiver of any subsequent breach of or default in the same or other provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive but each shall be cumulative with all other remedies provided in this Agreement and all remedies at law or in equity shall be available.

7.5 Non-Terminable Agreement. No breach of the provisions of this Agreement shall entitle either Party to cancel, rescind or otherwise terminate this Agreement, but such limitations shall not affect, in any manner, any other rights or remedies which either Party may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value covering either Parcel and any improvements thereon.

7.6 Force Majeure. In the event any Party shall be delayed or hindered in or prevented from the performance of any act required to be performed by such Party by reason of acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of the other Parties, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such Party's reasonable control and with respect to which, in each of the aforesaid

548-89-1235

circumstances, the Party is diligently and in good faith seeking to abate and remove the circumstances causing the delay, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform or financial losses or hardship resulting from performance or imprudent management or negligence shall not be deemed to be a cause beyond the reasonable control of such Party.

8. Term. This Agreement and the easements, rights, restrictions, obligations and liabilities created hereby shall be and remain in full force and effect for the period commencing on the date of this Agreement and terminating on December 31, 2030; Upon termination of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Agreement, except as otherwise expressly provided herein, shall terminate and have no further force or effect; provided, however, that the termination of this Agreement shall not limit or affect any remedy of either Party against the other Party with respect to any liability or obligation arising prior to the date of such termination.

9. Effect of Instrument and Transfers.

9.1 Transfer of Entire Interest. In the event of the transfer, conveyance or termination of the entire interest of either Party in its Parcel without retaining any beneficial interest therein other than as beneficiary under the terms of a deed of trust or without simultaneously acquiring a new interest by way of leasehold or other similar interests, then the rights and powers conferred upon and the obligations under this Agreement of the transferring Party shall be transferred and assigned with its interest, or termination thereof.

9.2 Mortgage Subordination. Any mortgage or deed of trust affecting any portion of a Parcel shall, at all times, be subject and subordinate to the terms of this Agreement; and any Person foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure shall acquire title subject to all of the terms and provisions of this Agreement. Any Person holding any such mortgage or deed of trust on the date hereof shall join in the execution of this Agreement for the purpose of subordinating such mortgage or deed of trust to this Agreement.

9.3 Binding Effect. Every agreement, covenant, promise, undertaking, condition, easement, right, privilege, option and restriction made, granted or assumed, as the case may be, by each Party to this Agreement is made by such Party for the benefit of the other Parties. Any transferee of any part of a Parcel shall automatically be deemed, by acceptance of title thereto, to have assumed all obligations of this Agreement relating thereto to the extent of its interest in such Parcel.

9.4 Non-Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of a Parcel to the general public or for any public use or purpose whatsoever, it being the intention of the Parties and their successors and assigns that nothing in this Agreement, expressed or implied, shall confer upon any Person, other than the Parties and their successors and assigns, any rights or remedies under or by reason of this Agreement.

9.5 Liability. Notwithstanding anything to the contrary contained in this Agreement, each Party shall be liable and responsible for the obligations, covenants, agreements and responsibilities created by this Agreement and for any judgment rendered hereon only to the extent of its respective interest in its Parcel.

9.6 Release Upon Sale of Interest. Upon the sale and conveyance by a Party of its entire right, title and interest in its Parcel, such Party shall be released from its obligations under this Agreement arising subsequent to the effective date of such sale and conveyance other than those obligations arising from any default by such Party in the performance of any provision of this Agreement prior to such sale and conveyance. The subdivision by a Party of its Parcel shall be treated in the same fashion as a sale once the subdivided portion is sold or conveyed; however, each subdivided portion of such Parcel shall continue to be subject to the provisions hereof following such sale and conveyance.

10. Covenants and Recordation. All of the provisions, agreements, covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns and all other persons acquiring any Parcel, or any portion thereof, or any interest therein, whether by operation of law or in any other manner whatsoever. All of the provisions of this Agreement shall be covenants running with the land pursuant to applicable law. It is expressly acknowledged that each covenant to do or refrain from doing some act on each Parcel hereunder (i) is for the benefit of the other Parcel, (ii) runs with each Parcel and (iii) shall benefit or be binding upon each successive owner during its ownership of each Parcel, or any portion thereof. This Agreement shall become effective and binding upon the Parties in accordance with the provisions of this Article 10 upon recordation of this Agreement in the Official Public Records of Real Property of Harris County, Texas.

11. Notices. Any notice, report or demand required, permitted or desired to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is hand delivered or is mailed by registered or certified mail, return receipt requested or delivered by guaranteed overnight delivery service. The respective mailing addresses of the Parties hereto are, until changed as hereinafter provided, as follows:

Kaplan;	P. O. Box 56783 Houston, Texas 77256-6783
MBD	c/o United Equities Incorporated 6909 Ashcroft, Suite 200 Houston, Texas 77081 Attention: Edwin Freedman
FFCA:	FFCA Acquisition Corporation 17207 North Perimeter Drive Scottsdale, Arizona 85255

Any Party may change its mailing address or add one (1) additional Person to receive notice at any time by giving written notice of such change to the other Parties in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given on the date personal delivery is effected or, if mailed or sent by guaranteed overnight delivery service, on the delivery date.

12. Miscellaneous.

12.1 Termination and Amendment. This Agreement may be terminated, modified or amended in whole or in part only by written and recorded instrument executed by each of the Parties hereto or by all of the Owners and mortgagees of each Parcel in the event that any of such Owners and mortgagees are not then Parties hereto.

12.2 Severability. Invalidation of any of the provisions contained in this Agreement, or the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person, and the same shall remain in full force and effect.

12.3 Entire Agreement. This Agreement and the exhibits hereto contain all of the representations and agreements between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement.

12.4 Captions. The captions preceding the text of each article and section hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

12.5 Litigation Expenses. If any Party shall bring an action or proceeding against the other Party hereto by reason of the breach or alleged violation of any covenant, agreement or obligation herein contained or for the enforcement of any provision hereof, or to interpret this Agreement, the prevailing Party in such action or proceeding shall be entitled to recover its costs and expenses of suit, including, but not limited to, reasonable attorneys' fees actually incurred and court costs.

12.6 Governing Law. This Agreement and all rights and obligations created hereby shall be governed by and construed under the laws of the State of Texas. This Agreement is performable in Harris County, Texas.

12.7 Estoppel Certificate. Each Party agrees that upon written request of any other Party, it will issue to such Party, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge as of such date (i) whether it knows of any default under this Agreement by the requesting Party, and if there are known defaults, specifying the nature thereof; (ii) whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof and furnishing a copy thereof; and (iii) whether this Agreement is in full force and effect.

548-89-1298

12.8 Condition Precedent. Each Party acknowledges that Kaplan's ability to construct the driveway and traffic signal described in Section 2.1 hereof is subject to his receiving a satisfactory building permit from the City of Houston. Promptly after the complete execution of this Agreement, Kaplan agrees to submit plans for construction of the driveway and traffic signal to the City of Houston and to diligently pursue receipt of a building permit. If notwithstanding such efforts, Kaplan is unable by June 1, 2001, to receive a building permit reasonably acceptable to Kaplan for construction of the driveway and traffic signal described in Section 2.1, this Agreement shall terminate and the Parties and their mortgagees shall execute an appropriate release of this Agreement in exchange for a full refund by Kaplan of any payments made to Kaplan pursuant to this Agreement.

The Parties hereto have executed this Agreement as of the day and year first above written.

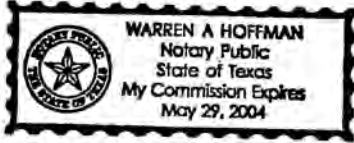
J. Kaplan, Trustee (4)(4)
JAY KAPLAN, TRUSTEE 10/1/01

MB DEVELOPMENT COMPANY 10/1/01
By: Edwin Freedman, President
Edwin Freedman, President

FFCA ACQUISITION CORPORATION 10/1/01
By: Howard J. Powers II
Name: Howard J. Powers II
Title: Associate General Counsel

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 4th day of MAY, 2001, by JAY KAPLAN, TRUSTEE.



Warren A Hoffman
Notary Public, State of Texas

Printed Name of Notary

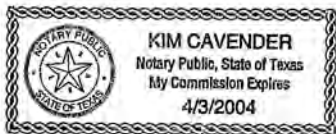
My Commission Expires: _____

548-89-1299

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

2001 MAY 16 PM 3:51
FILED
Warren A Hoffman
COUNTY CLERK
HARRIS COUNTY TEXAS

This instrument was acknowledged before me on this 25th day of April, 2001, by EDWIN FREEDMAN, President of MB DEVELOPMENT COMPANY, a Texas corporation, on behalf of said corporation.



Kim Cavender
Notary Public, State of Texas

Kim Cavender
Printed Name of Notary

My Commission Expires: 4/3/2004

THE STATE OF ARIZONA
COUNTY OF MARICOPA

This instrument was acknowledged before me on this 19th day of April, 2001, by Howard J. Powers-H, Assoc. General Counsel of FPCA ACQUISITION CORPORATION, a Delaware corporation, on behalf of said corporation.



Cindy Krauh
Notary Public, State of Arizona

Cindy Krauh
Printed Name of Notary

My Commission Expires: 8/5/01

O:\109\109241\0013\REA3P03.DOC

548-85-1388

LIENHOLDER SUBORDINATION

United Equities Incorporated, the Mortgagee of the MBD Parcel, joins in the execution of this Reciprocal Easement Agreement ("REA") solely to consent to the creation of the REA and to agree that the liens held by it will be subject and subordinate to the terms and conditions of the REA. Subject to the foregoing sentence, no term, provision, requirement or restriction contained in any of the undersigned's lien instruments is changed, waived or otherwise affected by the REA.

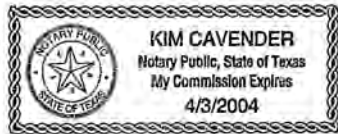
UNITED EQUITIES INCORPORATED *10/1/01*

By: *Edwin Freedman, Pres*
Edwin Freedman, President

548-189-1384

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 25th day of April, 2001, by EDWIN FREEDMAN, President of UNITED EQUITIES INCORPORATED, a Texas corporation, on behalf of said corporation.



Kim Cavender
Notary Public, State of Texas

Kim Cavender
Printed Name of Notary

My Commission Expires: 4/3/2004

EXHIBIT "A"
KAPLAN PARCEL
[TO BE ATTACHED]

1545-09-1302

KAPLAN PARCEL

147,639 square feet (3.3893 acres) of land located in the Blas Herrera Survey, Abstract No.321, Harris County, Texas, being out of Restricted Reserve "K", Block 1 of the Tim Miles Subdivision, the plat of which is filed for record in Volume 334, Page 99 of the Harris County Map Records, and being a portion of a 10.5943 acre tract of land conveyed to Jay Kaplan, Trustee, in deed filed of record under Harris County Clerk's File No.S199642 and being more particularly as follows:

BEGINNING at a 5/8 inch Iron rod found at the southeast corner of a 1.1118 acre tract conveyed to MB Development Company by deed filed of record under Harris County Clerk's File No.T479134, being in the west right-of-way line of State Highway Six, having a right-of-way width of 160.00 feet;

THENCE S.0°46'58"W. 64.95 feet along the west right-of-way line of said State Highway Six to a point of curvature;

THENCE 253.19 feet in a southerly direction, following said west right-of-way line of State Highway Six, along a curve to the left, said curve having a radius of 3993.69 feet, a central angle of 3°37'57" and a long chord which bears S.1°01'59"E. 253.15 feet to the northeast corner of a 2.256 acre tract of land conveyed to Landry's Crab Shack, Inc. in deed filed of record under Harris County Clerk's File No.S464505;

THENCE S.89°40'53"W. 564.77 feet along the north line of said 2.256 acre tract to a point for the northwest corner thereof, same being in the west line of said Restricted Reserve "K" and being the east line of a 490.1 acre tract conveyed to the United States of America in deed filed for record in Volume 1346, Page 199 of the Harris County Deed Records;

THENCE N.32°07'05"E. 299.16 feet along the west line of said Restricted Reserve "K" and the east line of said 490.1 acre tract to an angle point therein;

THENCE N.16°08'56"E. 70.14 feet continuing along the west line of said Restricted Reserve "K" and the east line of said 490.1 acre tract to the southwest corner of said 1.1118 acre tract;

THENCE N.89°55'54"E. 382.53 feet along the south line of said 1.1118 acre tract to the PLACE OF BEGINNING of the herein described tract of land.

147-639-334-99

EXHIBIT "B"
MBD PARCEL
[TO BE ATTACHED]

548-85-1384

MBD PARCEL

Being a tract or parcel of land containing 1.1118 acres, more or less, located in the Blas Herrera Survey, A-321, Harris County, Texas, being a northerly portion of that call 10.5943 acre Restricted Reserve "K", Block 1, of the Tim Miles Subdivision, a subdivision of record in Volume 334, Page 99, of the Harris County Map Records (HCMR), and also being a northerly portion of that same call 10.5943 acres conveyed to Jay Kaplan, Trustee, as recorded in File No. S-199642, of the Harris County Official Public Records of Real Property (HCOPRRP), said 1.1118 acres being more particularly described by metes and bounds as follows:

COMMENCING at a 1-inch iron rod found marking the northeast corner of the aforesaid Restricted Reserve "K", Block 1, Tim Miles Subdivision and said 10.5943 acre Kaplan, Trustee tract, said rod being on the west right-of-way (ROW) line of State Highway (SH) No. 6 (formerly known as Addicks-Howell Road), 160 feet wide, said rod also being the southeast corner of that certain call 1.9999 acre tract conveyed to Farouk Alattar, et al, as recorded in File No. N-752602, HCOPRRP, said rod being also the northeast corner of a call 1.1195 acre tract conveyed to Monterey Acquisition, Corp., as recorded in File No. T-029823, HCOPRRP;

THENCE S 00°46'58" W, along the west ROW line of said State Highway No. 6, same being the east line of the aforesaid Reserve "K", said 10.5943 acre Kaplan, Trustee tract, and said 1.1195 acre Monterey Acquisition tract, 150.00 feet to a 5/8-inch iron rod found for northeast corner of the herein described tract, said rod being the southeast corner of the aforesaid Monterey Acquisition tract, and the POINT OF BEGINNING;

THENCE S 00°46'58" W, continuing along said west ROW line, same being the east line of said Restricted Reserve "K", and said 10.5943 acre Kaplan, Trustee tract, 133.00 feet to a 5/8-inch iron rod set for southeast corner of the herein described tract, from which a 5/8-inch iron rod found on said west ROW line bears S 00°46'58" W, 64.95 feet;

THENCE S 89°55'54" W, leaving said west ROW line, 382.53 feet to a 5/8-inch iron rod set for southwest corner of the herein described tract, said rod being on a west line of said Restricted Reserve "K", same being a west line of said 10.5943 acre Kaplan, Trustee tract, said rod also being on the east line of a call 490.1 acre (Tract BR-49) conveyed to the United States of America (USA) as recorded in Volume 1346, Page 199, of the Harris County Deed Records (HCDR), from which a USA brass disk found in concrete bears S 16°08'56" W, 70.13 feet;

THENCE N 16°08'56" E, along a west line of said Restricted Reserve "K", same being a west line of said call 10.5943 acre Kaplan, Trustee tract, same also being a east line of said call 490.1 acre USA tract, a distance of 138.50 feet to a 5/8-inch iron rod found for northwest corner of the herein described tract, said rod being the southwest corner of the aforesaid 1.1195 acre Monterey Acquisition tract;

THENCE N 89°55'54" E, leaving the west line of said Reserve "K" and said 10.5943 acre Kaplan tract, and along the south line of said call 1.1195 acre Monterey Acquisition tract, a distance of 345.83 feet to the POINT OF BEGINNING and containing 1.1118 acres (48,430 square feet) of land, more or less.

548-88-1385

FFCA PARCEL

Being a tract or parcel of land containing 1.1195 acres, more or less, located in the Blas Herrera Survey, A-321, Harris County, Texas, being a northerly portion of that call 10.5943 acre Restricted Reserve "K", Block 1, of the Tim Miles Subdivision, a subdivision of record in Volume 334, Page 99, of the Harris County Map Records (HCMR), and also being a northerly portion of that same call 10.5943 acres conveyed to Jay Kaplan, Trustee, as recorded in File No. S-199642, of the Harris County Official Public Records of Real Property (HCOPRRP), said 1.1195 acres being more particularly described by metes and bounds as follows:

BEGINNING at a 1-inch iron rod found marking the northeast corner of the aforesaid Restricted Reserve "K", Block 1, in Tim Miles Subdivision, said rod being on the west right-of-way (ROW) line of State Highway No. 6 (formerly Addicks-Howell Road), 160 feet wide, said rod also being the southeast corner of that certain call 1.9999 acre tract conveyed to Farouk Alattar, et al, as recorded in File No. N-752602, HCOPRRP, said rod being also the southeast corner of a prior called 10.000 acre tract conveyed to Ralph Fisher, Trustee and Wilmer Davis, Trustee, as recorded in File No. F-592529, HCOPRRP;

THENCE S 00°46'58" W, along the west ROW line of said State Highway No. 6, same being the east line of the aforesaid Restricted Reserve "K", Block 1, and said call 10.5943 acre Kaplan tract, 150.00 feet to a 5/8-inch iron rod set for southeast corner of the herein described tract, from which a found 5/8-inch iron rod on said west ROW line bears S 00°46'58" W, 197.95 feet;

THENCE S 89°55'54" W, leaving said west ROW line, 345.83 feet to a 5/8-inch iron rod set for southwest corner, said rod being on a west line of said Restricted Reserve "K", same being a west line of said call 10.5943 acre Kaplan tract, said rod also being on the east line of a call 490.1 acre (Tract BR-49) conveyed to the United States of America (USA) and recorded in Volume 1346, Page 199, of the Harris County Deed Records (HCLR), from which a USA brass disk found in concrete bears S 16°08'56" W, 208.63 feet;

THENCE N 16°08'56" E, along a west line of said Restricted Reserve "K", same being a west line of said call 10.5943 acre Kaplan tract, same also being a east line of said call 490.1 acre USA tract, a distance of 156.20 feet to a 5/8-inch iron rod found for northwest corner of the herein described tract and said call 10.5943 acre Restricted Reserve "K", said rod being the southwest corner of the aforesaid call 1.9999 acre Farouk Alattar, et al, tract, said rod also being the southwest corner of said prior call 10.000 acre Fisher and Davis, Trustee tract;

THENCE N 89°55'54" E, along the north line of said Restricted Reserve "K", same being the south line of said call 1.9999 acre and prior call 10.000 acre tracts, a distance of 304.43 feet to the POINT OF BEGINNING and containing 1.1195 acres (48,764 square feet) of land, more or less.

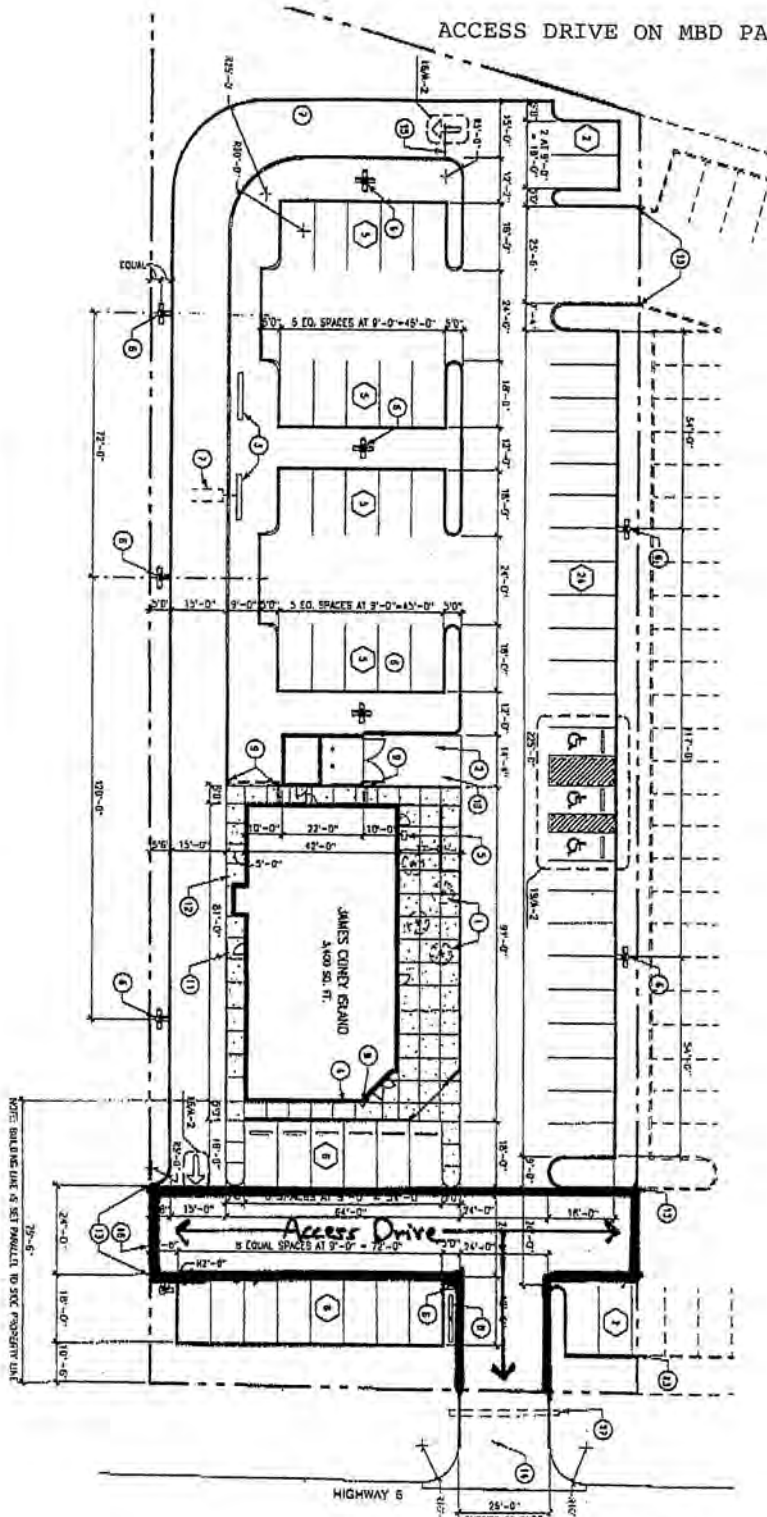
EXHIBIT "D"

SITE PLAN

(TO BE ATTACHED)

00000000000000000000000000000000

ACCESS DRIVE ON MBD PARCEL



DRAWING: SITE PLAN
 UNIT NO.: 37
 2020 S. HWY 6
 PLOT DATE: 12-1-99
 SCALE: 1" = 40'-0"

SECRET - 5010

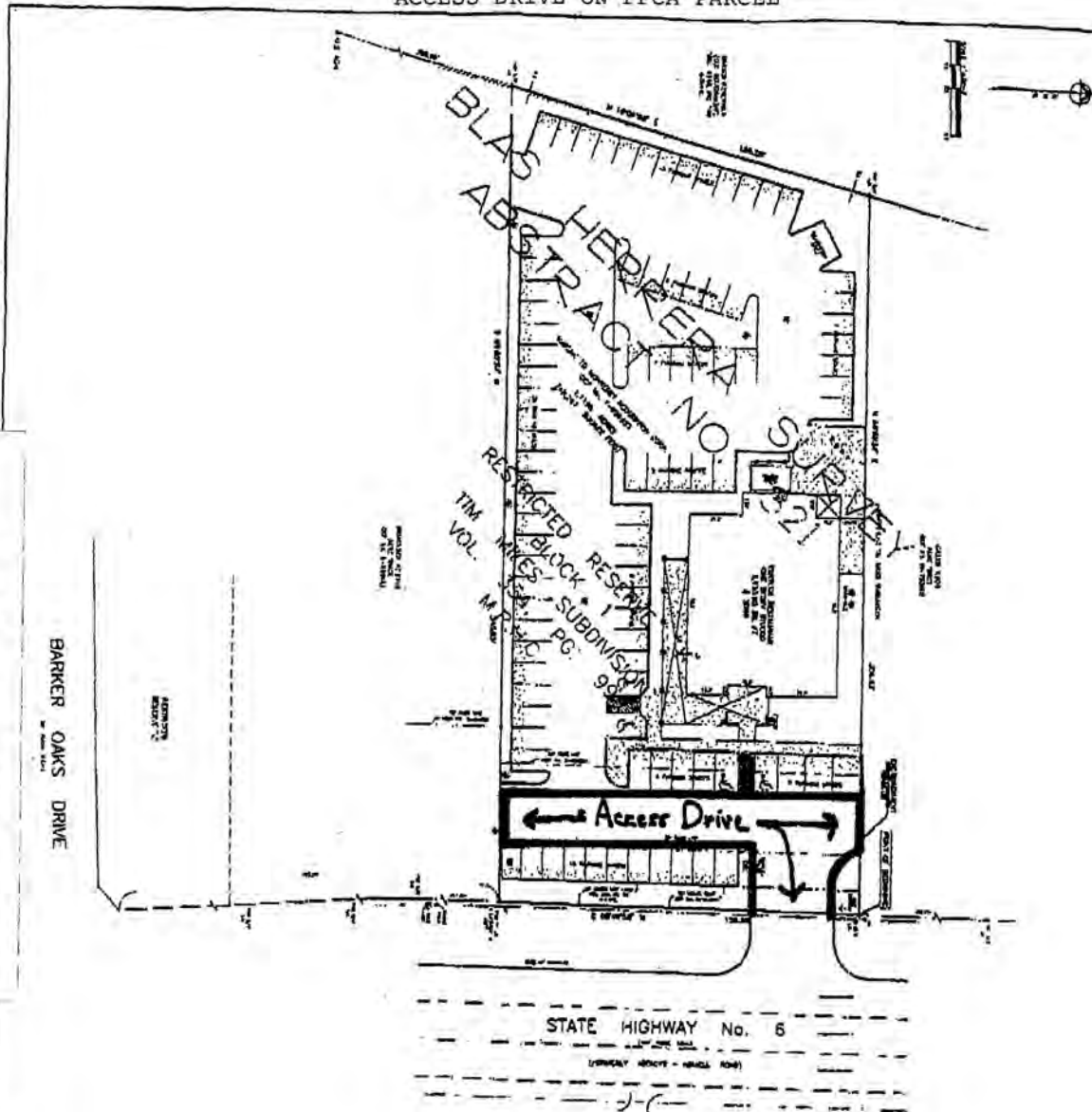


NOTE: BUILDING LINE IS SET PARALLEL TO SITE PROPERTY LINE

ACCESS DRIVE ON FFCA PARCEL

540-89-1310

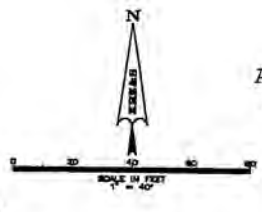
BARKER OAKS DRIVE



BLAS HERRERA SURVEY
A-#321

ACCESS DRIVE ON
KAPLAN PARCEL

1.1118 ACRES
MB DEVELOPMENT COMPANY
H.C.C.F.No.T479134



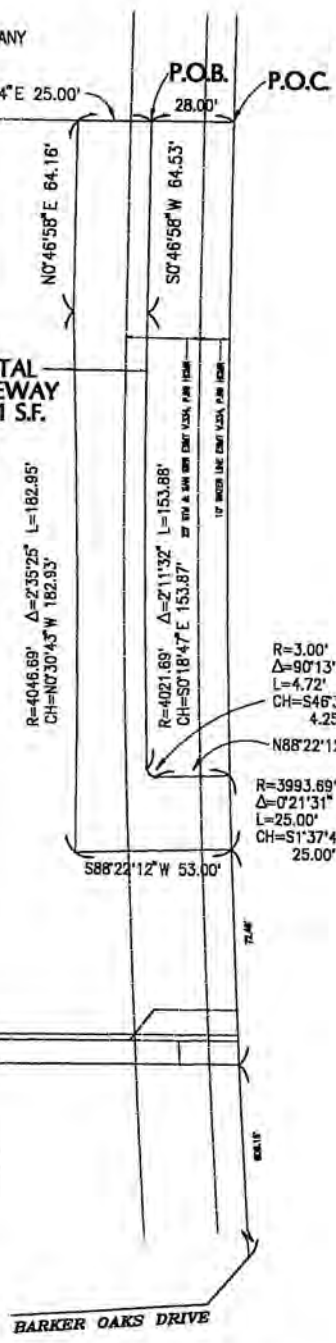
S-48-09-1311

TIM MILES SUBDIVISION
RESTRICTED RESERVE 'K', BLOCK 3
VOLUME 384, PAGE 98 H.C.M.R.

**TOTAL
DRIVEWAY
6,871 S.F.**



2.256 ACRES
LANDRY'S CRAB SHACK, INC.
H.C.C.F.No.S464505



STATE HIGHWAY 6
168' R.O.W.

EXHIBIT "E"

ACCESS DRIVE ON KAPLAN PARCEL

6,871 square feet of land located in the Blas Herrera Survey, Abstract No.321, Harris County, Texas, being out of Restricted Reserve "K", Block 1 of the Tim Miles Subdivision, the plat of which is filed for record in Volume 334, Page 99 of the Harris County Map Records, and being a portion of a 10.5943 acre tract of land conveyed to Jay Kaplan, Trustee, in deed filed of record under Harris County Clerk's File No.S199642 and being more particularly as follows:

COMMENCING at a 5/8 inch iron rod found at the southeast corner of a 1.1118 acre tract conveyed to MB Development Company by deed filed of record under Harris County Clerk's File No.T479134;

THENCE S.89°55'54"W. 28.00 feet along the south line of said 1.1118 acre tract to the PLACE OF BEGINNING of the herein described tract of land;

THENCE S.0°46'58"W. 64.53 feet to a point of curvature;

THENCE 153.88 feet in a southerly direction along a curve to the left, said curve having a radius of 4021.69 feet, a central angle of 2°11'32" and a long chord which bears S.0°18'47"E. 153.87 feet to a point of compound curvature;

THENCE 4.72 feet in a southeasterly direction along a curve to the left, said curve having a radius of 3.00 feet, a central angle of 90°13'16" and a long chord which bears S.46°31'11"E. 4.25 feet to a point of tangency;

THENCE N.88°22'12"E. 25.00 feet to a point in the west right-of-way line of State Highway Six, having a right-of-way width of 160.00 feet;

THENCE 25.00 feet in a southerly direction, following said west right-of-way line of State Highway Six, along a curve to the left, said curve having a radius of 3993.69 feet, a central angle of 0°21'31" and a long chord which bears S.1°37'48"E. 25.00 feet to the end of said curve;

THENCE S.88°22'12"W. 53.00 feet to a point on a curve;

THENCE 182.95 feet in a northerly direction along a curve to the right, said curve having a radius of 4046.69 feet, a central angle of 2°35'25" and a long chord which bears N.0°30'43"W. 182.93 feet to a point of tangency;

THENCE N.0°46'58"E. 64.16 feet to a point in the south line of said 1.1118 acre tract;

THENCE N.89°55'54"E. 25.00 feet along the south line of said 1.1118 acre tract to the PLACE OF BEGINNING of the herein described tract of land.

548-89-1312

AFTER RECORDING: des679-4
PLEASE RETURN TO:
BARRY E. PUTTERMAN
DOW, COGBURN & FRIEDMAN, P.C.
NINE GREENWAY PLAZA
SUITE 2300
HOUSTON, TEXAS 77046

RECORDERS MEMORANDUM
AT THE TIME OF RECORDATION, THIS
INSTRUMENT WAS FOUND TO BE INADEQUATE
FOR THE BEST PHOTOGRAPHIC REPRODUCTION
BECAUSE OF ILLEGIBILITY, CARBON OR
PHOTO COPY, DISCOLORED PAPER, ETC.



KAREN ROSE ENGINEERING & SURVEYING

540-09-1313

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL
PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW
THE STATE OF TEXAS
COUNTY OF HARRIS

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 Harris
County, Texas on

MAY 16 2001



Dorely B. Hayden

COUNTY CLERK
HARRIS COUNTY, TEXAS

21
B

V105170

FIRST AMENDMENT TO RECIPROCAL EASEMENT AGREEMENT

This First Amendment to Reciprocal Easement Agreement ("First Amendment") is made and entered into as of the 1st day of June, 2001, by and among JAY KAPLAN, TRUSTEE ("Kaplan"), MB DEVELOPMENT COMPANY, a Texas corporation ("MBD"), and FFCA ACQUISITION CORPORATION, a Delaware corporation ("FFCA").

RECITALS:

- A. Kaplan, MBD and FFCA entered into that certain Reciprocal Easement Agreement ("Agreement") dated as of April 19, 2001.
- B. The Agreement was filed under Clerk's File No. V055897, and recorded under Film Code Reference No. 540-09-1288 in the Official Public Records of Real Property of Harris County, Texas.
- C. Section 12.8 of the Agreement contained a condition precedent for the benefit of Kaplan, providing that the Agreement would terminate if Kaplan did not receive a building permit reasonably acceptable to him (the "Condition Precedent"). Rather than terminate the Agreement, each Party desires to give Kaplan additional time to obtain the building permit to satisfy the Condition Precedent.

NOW, THEREFORE, in consideration of Five Dollars (\$5.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party hereby agrees as follows:

- 1. Each Party hereby ratifies and confirms the above facts. All capitalized terms not defined in this First Amendment shall have the same meanings given them in the Agreement.
- 2. The reference in Section 12.8 to June 1, 2001, is hereby replaced with the date of June 30, 2001.
- 3. Except as modified by this First Amendment, the Parties acknowledge and confirm that the Agreement is in full force and effect in accordance with its original terms.
- 4. This First Amendment may be executed in multiple counterparts where the signatures and acknowledgments of the Parties may not appear on the same page. By signing below, each Party authorizes Kaplan's attorney to affix counterpart signature and/or

548-09-045

acknowledgment pages to a single, integrated counterpart of this First Amendment, with the full force and effect of an original.

Jay Kaplan Trustee (3)
JAY KAPLAN, TRUSTEE (3) / 02

MB DEVELOPMENT COMPANY

By: _____
Edwin Freedman, President

FFCA ACQUISITION CORPORATION

By: _____
Howard J. Powers II,
Associate General Counsel

548-98-8796

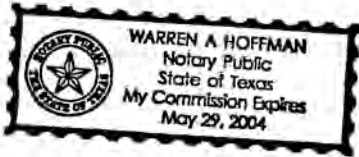
THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 7th day of JUNE, 2001, by JAY KAPLAN, TRUSTEE.

Warren Hoffman
Notary Public, State of Texas

Printed Name of Notary _____

My Commission Expires: _____



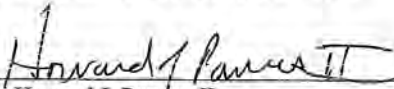
acknowledgment pages to a single, integrated counterpart of this First Amendment, with the full force and effect of an original.

JAY KAPLAN, TRUSTEE

MB DEVELOPMENT COMPANY

By: _____
Edwin Freedman, President

FFCA ACQUISITION CORPORATION

By:  _____
Howard J. Powers II,
Associate General Counsel

543-93-0797

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this _____ day of _____
2001, by JAY KAPLAN, TRUSTEE.

Notary Public, State of Texas

Printed Name of Notary

My Commission Expires: _____

acknowledgment pages to a single, integrated counterpart of this First Amendment, with the full force and effect of an original.

JAY KAPLAN, TRUSTEE

MB DEVELOPMENT COMPANY

By: Edwin Freedman, Presid ^{for}
Edwin Freedman, President

FFCA ACQUISITION CORPORATION

By: _____
Howard J. Powers II,
Associate General Counsel

11-11-01-01-01-01

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this _____ day of _____, 2001, by JAY KAPLAN, TRUSTEE.

Notary Public, State of Texas

Printed Name of Notary

My Commission Expires: _____

540-96-8799

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this _____ day of _____, 2001, by EDWIN FREEDMAN, President of MB DEVELOPMENT COMPANY, a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

Printed Name of Notary

My Commission Expires: _____

THE STATE OF ARIZONA §
 §
COUNTY OF MARICOPA §

This instrument was acknowledged before me on this 30th day of May, 2001, by HOWARD J. POWERS, II, Associate General Counsel of FPCA ACQUISITION CORPORATION, a Delaware corporation, on behalf of said corporation.



Cindy Kruh

Notary Public, State of Arizona

Cindy Kruh

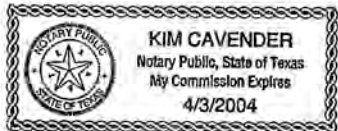
Printed Name of Notary

My Commission Expires: 8/5/01

540-90-0000

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 1st day of June, 2001, by EDWIN FREEDMAN, President of MB DEVELOPMENT COMPANY, a Texas corporation, on behalf of said corporation.



Kim Cavender
Notary Public, State of Texas

Kim Cavender
Printed Name of Notary

My Commission Expires: 4/3/2004

THE STATE OF ARIZONA §
 §
COUNTY OF MARICOPA §

This instrument was acknowledged before me on this _____ day of _____, 2001, by HOWARD J. POWERS, II, Associate General Counsel of FFCA ACQUISITION CORPORATION, a Delaware corporation, on behalf of said corporation.

Notary Public, State of Arizona

Printed Name of Notary

My Commission Expires: _____

LIENHOLDER SUBORDINATION

United Equities Incorporated, the Mortgagee of the MBD Parcel, joins in the execution of this First Amendment to Reciprocal Easement Agreement ("First Amendment") solely to consent to the creation of the First Amendment and to agree that the liens held by it will be subject and subordinate to the terms and conditions of the First Amendment. Subject to the foregoing sentence, no term, provision, requirement or restriction contained in any of the undersigned's lien instruments is changed, waived or otherwise affected by the First Amendment.

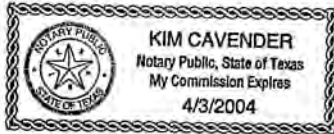
UNITED EQUITIES INCORPORATED

By: Edwin Freedman, President
Edwin Freedman, President

540-90-0001

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 1st day of June, 2001, by EDWIN FREEDMAN, President of UNITED EQUITIES INCORPORATED, a Texas corporation, on behalf of said corporation.



Kim Cavender
Notary Public, State of Texas

Kim Cavender
Printed Name of Notary

My Commission Expires: 4/3/04

O:\109\10924\10013\1stAMEND1.DOC

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of said Property of Harris County, Texas on:

JUN - 8 2001



Bonaly B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

PLEASE RETURN TO:
BARRY E. PUTTERMAN
DOW, COGBURN & FRIEDMAN, P.C.
NINE GREENWAY PLAZA
SUITE 2300
HOUSTON, TEXAS 77046

Bonaly B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

JUN 8 2001 4:28 PM

FILED

Amend V269078
21
g

SECOND AMENDMENT TO RECIPROCAL EASEMENT AGREEMENT

05/29/01 091643676 V269078 \$21.00

This Second Amendment to Reciprocal Easement Agreement ("Second Amendment") is made and entered into as of the 30th day of June, 2001, by and among **JAY KAPLAN, TRUSTEE** ("Kaplan"), **MB DEVELOPMENT COMPANY**, a Texas corporation ("MBD"), and **GE CAPITAL FRANCHISE FINANCE CORPORATION**, a Delaware corporation (successor by merger to FFCA Acquisition Corporation, a Delaware corporation)("FFCA").

RECITALS:

A. Kaplan, MBD and FFCA (collectively, the "Parties") entered into that certain Reciprocal Easement Agreement ("Agreement") dated as of April 19, 2001, filed under Clerk's File No. V055897, and recorded under Film Code Reference No. 540-09-1288 in the Official Public Records of Real Property of Harris County, Texas.

B. Section 12.8 of the Agreement contained a condition precedent for the benefit of Kaplan, providing that the Agreement would terminate if Kaplan did not receive by the date specified therein a building permit reasonably acceptable to him (the "Condition Precedent").

C. Rather than terminate the Agreement, each Party gave Kaplan additional time to obtain the building permit to satisfy the Condition Precedent, as evidenced by that certain First Amendment to Reciprocal Easement Agreement ("First Amendment") dated as of June 1, 2001, filed under Clerk's File No. V105170, and recorded under Film Code Reference No. 540-90-0795 in the Official Public Records of Real Property of Harris County, Texas.

D. Additional time is necessary for the Condition Precedent to be satisfied and the Parties desire to allow for such additional time.

NOW, THEREFORE, in consideration of Five Dollars (\$5.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party hereby agrees as follows:

1. Each Party hereby ratifies and confirms the above facts. All capitalized terms not defined in this Second Amendment shall have the same meanings given them in the Agreement.
2. The reference in Section 12.8 to June 30, 2001, is hereby replaced with the date of July 31, 2001.
3. Except as modified by this Second Amendment and the First Amendment, the Parties acknowledge and confirm that the Agreement is in full force and effect in accordance with its original terms.

543-62-1899

4. This Second Amendment may be executed in multiple counterparts where the signatures and acknowledgments of the Parties may not appear on the same page. Each Party authorizes Kaplan's attorney to affix counterpart signature and/or acknowledgment pages to a single, integrated counterpart of this Second Amendment, with the full force and effect of an original.

J. Kaplan, Trustee (5)
JAY KAPLAN, TRUSTEE (5) | *ll*

MB DEVELOPMENT COMPANY

By: _____
Edwin Freedman, President

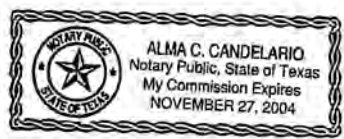
GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation (successor by merger to FFCA Acquisition Corporation, a Delaware corporation)

By: _____
Harold W. Vinson,
Senior Vice President

543-62-1985

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 23 day of August, 2001, by JAY KAPLAN, TRUSTEE.



Alma C. Candelario
Notary Public, State of Texas

Alma C. Candelario
Printed Name of Notary

My Commission Expires: 11-27-04

4. This Second Amendment may be executed in multiple counterparts where the signatures and acknowledgments of the Parties may not appear on the same page. Each Party authorizes Kaplan's attorney to affix counterpart signature and/or acknowledgment pages to a single, integrated counterpart of this Second Amendment, with the full force and effect of an original.

JAY KAPLAN, TRUSTEE

MB DEVELOPMENT COMPANY

100
100

By: Edwin Freedman, President
Edwin Freedman, President

GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation (successor by merger to FFCA Acquisition Corporation, a Delaware corporation)

By: _____
Harold W. Vinson,
Senior Vice President

543-52-1901

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this _____ day of _____, 2001, by JAY KAPLAN, TRUSTEE.

Notary Public, State of Texas

Printed Name of Notary

My Commission Expires: _____

543-52-1902

4. This Second Amendment may be executed in multiple counterparts where the signatures and acknowledgments of the Parties may not appear on the same page. Each Party authorizes Kaplan's attorney to affix counterpart signature and/or acknowledgment pages to a single, integrated counterpart of this Second Amendment, with the full force and effect of an original.

JAY KAPLAN, TRUSTEE

MB DEVELOPMENT COMPANY

By: _____
Edwin Freedman, President

GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation (successor by merger to FFCA Acquisition Corporation, a Delaware corporation) *HW*
HW

By: _____
Harold W. Vinson,
Senior Vice President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this _____ day of _____, 2001, by JAY KAPLAN, TRUSTEE.

Notary Public, State of Texas

Printed Name of Notary

My Commission Expires: _____

543-62-1983

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this _____ day of _____, 2001, by EDWIN FREEDMAN, President of MB DEVELOPMENT COMPANY, a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

Printed Name of Notary

My Commission Expires: _____

THE STATE OF ARIZONA §
 §
COUNTY OF MARICOPA §

This instrument was acknowledged before me on this 8th day of August, 2001, by HAROLD W. VINSON, Senior Vice President of GE CAPITAL FRANCHISE FINANCE CORPORATION, (successor by merger to FFCA Acquisition Corporation, a Delaware corporation), on behalf of said corporation.

Susan M. Goldberg
Notary Public, State of Arizona

Susan M. Goldberg
Printed Name of Notary

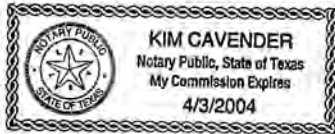
My Commission Expires: July 17, 2002



543-52-1904

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 17th day of August, 2001, by EDWIN FREEDMAN, President of MB DEVELOPMENT COMPANY, a Texas corporation, on behalf of said corporation.



Kim Cavender
Notary Public, State of Texas

Kim Cavender
Printed Name of Notary

My Commission Expires: 4/3/04

THE STATE OF ARIZONA §
 §
COUNTY OF MARICOPA §

This instrument was acknowledged before me on this _____ day of _____, 2001, by HAROLD W. VINSON, Senior Vice President of GE CAPITAL FRANCHISE FINANCE CORPORATION, (successor by merger to FFCA Acquisition Corporation, a Delaware corporation), on behalf of said corporation.

Notary Public, State of Arizona

Printed Name of Notary

My Commission Expires: _____

LIENHOLDER SUBORDINATION

United Equities Incorporated, the Mortgagee of the MBD Parcel, joins in the execution of this Second Amendment to Reciprocal Easement Agreement ("Second Amendment") solely to consent to the creation of the Second Amendment and to agree that the liens held by it will be subject and subordinate to the terms and conditions of the Second Amendment. Subject to the foregoing sentence, no term, provision, requirement or restriction contained in any of the undersigned's lien instruments is changed, waived or otherwise affected by the Second Amendment.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
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 Harris County, Texas on

AUG 29 2001

UNITED EQUITIES INCORPORATED

100
100

By: Edwin Freedman, President
Edwin Freedman, President

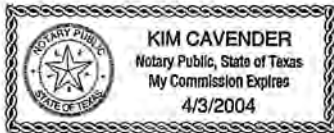


Barry E. Putterman
COUNTY CLERK
HARRIS COUNTY, TEXAS

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

543-62-1986

This instrument was acknowledged before me on this 17th day of August, 2001, by EDWIN FREEDMAN, President of UNITED EQUITIES INCORPORATED, a Texas corporation, on behalf of said corporation.



Kim Cavender
Notary Public, State of Texas

Kim Cavender
Printed Name of Notary

My Commission Expires: 4/3/04

O:\109\109241\0013\2ndAMEND1.DOC

Return To:
Barry E. Putterman
Winstead Sechrest & Minick P.C.
2400 Bank One Center
910 Travis Street
Houston, TX 77002

**FILE FOR RECORD
8:00 AM**

AUG 29 2001

Barry E. Putterman
County Clerk, Harris County, Texas

V443017
Amended
19.75
✓

THIRD AMENDMENT TO RECIPROCAL EASEMENT AGREEMENT

11/28/01 201650259 V443017 \$19.75

This Third Amendment to Reciprocal Easement Agreement ("Third Amendment") is made and entered into as of the 25th day of October, 2001, by and among **JAY KAPLAN, TRUSTEE** ("Kaplan"), **MB DEVELOPMENT COMPANY**, a Texas corporation ("MBD"), and **GE CAPITAL FRANCHISE FINANCE CORPORATION**, a Delaware corporation (successor by merger to FFCA Acquisition Corporation, a Delaware corporation)("FFCA").

RECITALS:

A. Kaplan, MBD and FFCA (collectively, the "Parties") entered into that certain Reciprocal Easement Agreement ("Agreement") dated as of April 19, 2001, filed under Clerk's File No. V055897, and recorded under Film Code Reference No. 540-09-1288 in the Official Public Records of Real Property of Harris County, Texas.

B. The Agreement was modified by (i) that certain First Amendment to Reciprocal Easement Agreement ("First Amendment") dated as of June 1, 2001, filed under Clerk's File No. V105170, and recorded under Film Code Reference Number 540-90-0795 in the Official Public Records of Real Property of Harris County, Texas, and (ii) that certain Second Amendment to Reciprocal Easement Agreement ("Second Amendment") dated as of June 30, 2001, filed under Clerk's File No. V269078, and recorded under Film Code Reference Number 543-52-1899 in the Official Public Records of Real Property of Harris County, Texas.

C. Reference is made to the fact that situated immediately to the south of the Kaplan Parcel is a 2.256 acre tract of land (the "Landry's Parcel") owned by Landry's Crab Shack, Inc., a Texas corporation ("Landry's"). Landry's has requested that Kaplan grant it a non-exclusive easement of access over and across a portion of the Kaplan Parcel, including a portion that would include the Access Drive. Under Section 2.2(a) of the Agreement, the use of the Access Drive is limited to Users. Rather than grant Landry's a license to use the portion of the Access Drive situated on the Kaplan Parcel, Kaplan and Landry's would prefer that Landry's rights be established by the grant of a non-exclusive easement (the "Landry's Easement") for the benefit of the Landry's Parcel, subject to the provisions of this Agreement (the "Landry's Easement").

D. The Parties are willing to amend the Agreement to permit Kaplan to execute the Landry's Easement.

NOW, THEREFORE, in consideration of Five Dollars (\$5.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party hereby agrees as follows:

1. Each Party hereby ratifies and confirms the above facts. All capitalized terms not defined in this Third Amendment shall have the same meanings given them in the Agreement.

2. The Parties hereby modify the Agreement to permit Kaplan to create the Landry's Easement, provided that the Landry's Easement is subject to the provisions of the Agreement. Sections 2.2(a) and (b) are hereby modified to include within the definition of "Users" the

546-23-0028

546-23-0021


Persons entitled to use the Access Drive (or portions thereof) in accordance with the Landry's Easement.

3. The Parties acknowledge that as of the Effective Date of this Third Amendment, Kaplan has completed construction of the Access Drive and the traffic signal described in Section 2.1 of the Agreement. As a result of cost savings to Kaplan due to the participation of Landry's in a portion of the cost of construction of the Access Drive and the traffic signal, the sums paid or due from FFCA and MBD under Section 2.1 have been adjusted. Within thirty (30) days of the effective date of this Third Amendment, Kaplan shall refund to FFCA the amount of \$5,419.03, and shall refund to MBD the amount of \$4,804.90. No additional sums shall be due and owing by the Parties with respect to the construction obligation set forth in Section 2.1 of the Agreement.

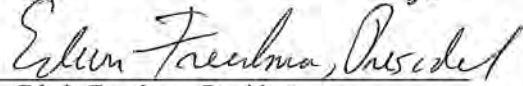
4. Nothing contained in this Third Amendment shall give Landry's or any Person claiming by, through or under Landry's the right to use any portion of the Access Drive located on other than the Kaplan Parcel, nor any portion of the MBD Parcel or the FFCA Parcel.

5. Except as modified by this Third Amendment, the Second Amendment and the First Amendment, the Parties acknowledge and confirm that the Agreement is in full force and effect in accordance with its original terms.

6. This Third Amendment may be executed in multiple counterparts where the signatures and acknowledgments of the Parties may not appear on the same page. Each Party authorizes Kaplan's attorney to affix counterpart signature and/or acknowledgment pages to a single, integrated counterpart of this Third Amendment, with the full force and effect of an original.


JAY KAPLAN, TRUSTEE

MB DEVELOPMENT COMPANY

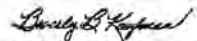
By: 
Edwin Freedman, President

GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation (successor by merger to FFCA Acquisition Corporation, a Delaware corporation)

By: _____
Harold W. Vinson,
Senior Vice President

FILE FOR RECORD
8:00 AM

NOV 28 2001


County Clerk, Harris County, Texas

546-23-0022

Persons entitled to use the Access Drive (or portions thereof) in accordance with the Landry's Easement.

3. The Parties acknowledge that as of the Effective Date of this Third Amendment, Kaplan has completed construction of the Access Drive and the traffic signal described in Section 2.1 of the Agreement. As a result of cost savings to Kaplan due to the participation of Landry's in a portion of the cost of construction of the Access Drive and the traffic signal, the sums paid or due from FFCA and MBD under Section 2.1 have been adjusted. Within thirty (30) days of the effective date of this Third Amendment, Kaplan shall refund to FFCA the amount of \$5,419.03, and shall refund to MBD the amount of \$4,804.90. No additional sums shall be due and owing by the Parties with respect to the construction obligation set forth in Section 2.1 of the Agreement.

4. Nothing contained in this Third Amendment shall give Landry's or any Person claiming by, through or under Landry's the right to use any portion of the Access Drive located on other than the Kaplan Parcel, nor any portion of the MBD Parcel or the FFCA Parcel.

5. Except as modified by this Third Amendment, the Second Amendment and the First Amendment, the Parties acknowledge and confirm that the Agreement is in full force and effect in accordance with its original terms.

6. This Third Amendment may be executed in multiple counterparts where the signatures and acknowledgments of the Parties may not appear on the same page. Each Party authorizes Kaplan's attorney to affix counterpart signature and/or acknowledgment pages to a single, integrated counterpart of this Third Amendment, with the full force and effect of an original.




JAY KAPLAN, TRUSTEE

MB DEVELOPMENT COMPANY

By: _____
Edwin Freedman, President

GE CAPITAL FRANCHISE FINANCE CORPORATION, a Delaware corporation (successor by merger to FFCA Acquisition Corporation, a Delaware corporation)



By: 

Harold W. Vinson,
Senior Vice President

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 8th day of November, 2001, by JAY KAPLAN, TRUSTEE.

Sandra H. Bownardel
Notary Public, State of Texas

SANDRA H. BOWNARDEL
Printed Name of Notary

My Commission Expires: 1/19/03

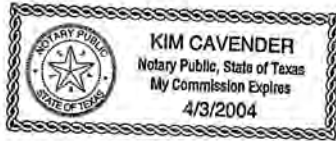
THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 25th day of October, 2001, by EDWIN FREEDMAN, President of MB DEVELOPMENT COMPANY, a Texas corporation, on behalf of said corporation.

Kim Cavender
Notary Public, State of Texas

Kim Cavender
Printed Name of Notary

My Commission Expires: 4/3/04



546-23-0023

THE STATE OF ARIZONA §
§
COUNTY OF MARICOPA §

This instrument was acknowledged before me on this _____ day of _____, 2001, by HAROLD W. VINSON, Senior Vice President of GE CAPITAL FRANCHISE FINANCE CORPORATION, (successor by merger to FFCA Acquisition Corporation, a Delaware corporation), on behalf of said corporation.

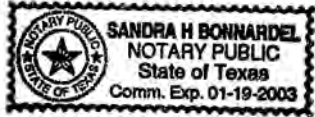
Notary Public, State of Arizona

Printed Name of Notary

My Commission Expires: _____

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 8th day of NOVEMBER, 2001, by JAY KAPLAN, TRUSTEE.



Sandra H. Bonnardel
Notary Public, State of Texas

SANDRA H. BONNARDEL
Printed Name of Notary

My Commission Expires: 11/19/03

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this _____ day of _____, 2001, by EDWIN FREEDMAN, President of MB DEVELOPMENT COMPANY, a Texas corporation, on behalf of said corporation.

Notary Public, State of Texas

Printed Name of Notary

My Commission Expires: _____

THE STATE OF ARIZONA §
 §
COUNTY OF MARICOPA §

This instrument was acknowledged before me on this 26th day of October, 2001, by HAROLD W. VINSON, Senior Vice President of GE CAPITAL FRANCHISE FINANCE CORPORATION, (successor by merger to FFCA Acquisition Corporation, a Delaware corporation), on behalf of said corporation.



Laura L. Carley
Notary Public, State of Arizona

Laura L. Carley
Printed Name of Notary

My Commission Expires: August 26, 2005

546-23-8824

LIENHOLDER SUBORDINATION

United Equities Incorporated, the Mortgagee of the MBD Parcel, joins in the execution of this Third Amendment to Reciprocal Easement Agreement ("Third Amendment") solely to consent to the creation of the Third Amendment and to agree that the liens held by it will be subject and subordinate to the terms and conditions of the Third Amendment. Subject to the foregoing sentence, no term, provision, requirement or restriction contained in any of the undersigned's lien instruments is changed, waived or otherwise affected by the Third Amendment.

UNITED EQUITIES INCORPORATED

By: Edwin Freedman, President
Edwin Freedman, President

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

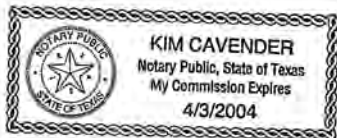
546-23-0025

This instrument was acknowledged before me on this 25th day of October, 2001, by EDWIN FREEDMAN, President of UNITED EQUITIES INCORPORATED, a Texas corporation, on behalf of said corporation.

Kim Cavender
Notary Public, State of Texas

Kim Cavender
Printed Name of Notary

My Commission Expires: 4/3/04



HOUSTON_1\515871\6
10/24/2001 - 29889-13

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas on

NOV 28 2001



Barbara B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

[Signature]
BARRY E. PUTTERMAN
Winstead Sechrest & Minick P.C.
2400 Bank One Building
910 Travis Street
Houston, Texas 77002-5895

Easmt
35
V

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (this "Agreement") is made and entered into as of the day of November, 2001, by and between JAY KAPLAN, TRUSTEE ("Kaplan"), and LANDRY'S CRAB SHACK, INC., a Texas corporation ("Landry's").

RECITALS: 12/12/01 201669318 V474090 \$35.00

546-77-2534

A. Kaplan is the owner of that certain tract of land containing approximately 3.3893 acres located in the City of Houston, Harris County, Texas. Such tract shall hereinafter be referred, to as the "Kaplan Parcel" and is more particularly described on Exhibit "A" attached hereto.

B. Landry's is the owner of that certain tract of land containing approximately 2.256 acres located in the City of Houston, Harris County, Texas. Such tract shall hereinafter be referred to as the "Landry's Parcel" and is more particularly described on Exhibit "B" attached hereto.

C. The Landry's Parcel is presently improved with, and operated as, a Joe's Crab Shack Restaurant and related parking and site facilities.

D. Kaplan ultimately contemplates selling the Kaplan Parcel and for Kaplan or the purchaser to construct thereon improvements and related parking and site facilities.

E. The Kaplan Parcel and the Landry's Parcel (collectively sometimes referred to herein as the "Parcels" and individually as a "Parcel") are contiguous and adjacent. To effectuate the traffic flow on the Landry's Parcel, Landry's has requested from Kaplan and Kaplan has agreed to grant a non-exclusive access easement across a portion of the Kaplan Parcel.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other valuable consideration, the parties hereby agree as follows:

1. Definitions. Each reference in this Agreement to any of the following terms shall mean:

1.1 Occupant. Each Party and any Person from time to time entitled to the use and occupancy of any portion of any building at any time located upon either Parcel, under this Agreement or any lease, license or concession agreement or other instrument or arrangement under which the Occupant acquires its right to such use and occupancy. Occupant shall include the officers, directors, employees and agents of such Persons.

1.2 Party. Each Person executing this Agreement, or its respective successor-in-interest as a Party with respect to its Parcel, as shown in the Official Public Records of Real Property of Harris County, Texas. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the Parcel owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any Parcel transferred until a notice of transfer setting forth the name and address of the new Party is given to the other

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Party, at which time the transferring Party's personal liability for obligations hereunder shall terminate.

1.3 Person. Individuals, partnerships, firms, associations, corporations, trusts or any other form of business or legal entity.

1.4 Access Drive. The driveway currently located or to be constructed as hereinafter provided on the eastern portion of the Kaplan Parcel running parallel with, and west of, State Highway 6, described on Exhibit "C" attached hereto.

1.5 Users. All Persons granted permission by Kaplan to utilize the Access Drive (or portions thereof), including, without limitation, Occupants, Parties and their respective employees, licensees, invitees, customers, owners, contractors, agents, lessees, sublessees, tenants and concessionaires, and the Persons under the Prior Easement entitled to use portions of the Access Drive.

1.6 Prior Easement. That certain Reciprocal Easement Agreement entered into as of April 19, 2001, by and among Jay Kaplan, Trustee, MB Development Company, and FFCA Acquisition Corporation, filed under Clerk's File No. V055897, and recorded under Film Code Reference Number 540-09-1288 in the Official Public Records of Real Property of Harris County, Texas, as modified by (i) that First Amendment to Reciprocal Easement Agreement filed under Clerk's File No. V105170, and recorded under Film Code Reference Number 540-90-0795 in the Official Public Records of Real Property of Harris County, Texas, (ii) that certain Second Amendment to Reciprocal Easement Agreement filed under Clerk's File No. V269078, and recorded under Film Code Reference Number 543-52-1899 in the Official Public Records of Real Property of Harris County, Texas, and (iii) that certain Third Amendment to Reciprocal Easement Agreement filed under Clerk's File No. V443017.

1.7 Other Terms. Certain other terms shall have the meaning set forth for each such term in this Agreement.

2. Grant of Easement.

2.1 Grant of Easements by Kaplan. Kaplan hereby grants to Landry's a non-exclusive easement over, across, in, upon, and through the Access Drive for the benefit of Landry's, for the uses and purposes set forth in Section 2.2. The easement granted herein shall be (i) appurtenant to and for the benefit of the Landry's Parcel, (ii) non-exclusive for use in common with the grantor of such easement and all Users and Occupants, and (iii) subject to the applicable terms of the Prior Easement. Kaplan shall construct, or cause to be constructed, the Access Drive as soon as reasonably possible after the date of this Agreement, and in any event by no later than October 10, 2001. Such construction shall be in substantial conformity with the plans and specifications prepared by KRE&S Engineers, dated June 4, 1999. In addition, Kaplan shall use its best efforts to construct, or cause to be constructed, by no later than October 31, 2001, a traffic signal within the State Highway 6 right-of-way opposite the entrance to the Kaplan Parcel in substantial conformity with the plans prepared by Traffic Engineers Incorporated, dated July 22, 1999. In consideration for

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the cost of construction of the Access Drive and traffic signal, Landry's is contemporaneously herewith paying Kaplan the sum of \$51,216.08.

2.2 Use of Easement. The Access Drive shall be used by Landry's only for ingress and egress by any Users and any motor vehicles of such Users to and from any portion of the Landry's Parcel and the public streets adjacent to the Access Drive. Notwithstanding anything in this Agreement to the contrary, no portion of the Access Drive may be utilized by vehicles involved in the construction, remodeling or repair of improvements situated on the Landry's Parcel, including, without limitation, heavy equipment and tractor trailers. No portion of the Kaplan Parcel other than the Access Drive and no land owned by the other parties to the Prior Easement may be used by Landry's or any persons claiming by, through or under Landry's. Kaplan reserves the right to close off the Access Drive for such reasonable period of time as may be legally necessary, in the reasonable opinion of Kaplan's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Access Drive, as herein provided, Kaplan shall give written notice to Landry's of its intention to do so, and shall attempt to coordinate such closing with Landry's so that no unreasonable interference in the passage of pedestrians or vehicles shall occur. Further, Kaplan reserves the right at any time and from time to time to exclude and restrain any Person whom is not a permitted User under Section 1.5 hereof from using the Access Drive. This Agreement shall not give rise to any prescriptive rights by the Parties, and each Party shall use reasonable efforts to prevent such rights from being acquired by the public or any third party.

2.3 Compliance with Law. All construction work undertaken by Kaplan pursuant to this Agreement shall comply with the requirements of all applicable governmental authorities having jurisdiction and all applicable laws, ordinances, rules and regulations of such authorities, including, without limitation, building codes. Kaplan shall also secure all licenses and permits from governmental agencies and other entities (such as public utilities) necessary for any construction undertaken by it.

3. Use, Management and Maintenance.

3.1 Use, Generally. Except as expressly set forth in this Agreement, nothing herein contained shall limit, affect or diminish the right of each Party to own, manage and operate its Parcel in the manner deemed necessary or appropriate by such Party, and it is specifically agreed that each Party may modify its Parcel, relocate or reconfigure the parking areas thereon and construct and reconstruct from time to time additional improvements thereon, all without the consent or joinder of the other Party; however, other than for temporary periods of construction on its Parcel, in no event shall (a) the Access Drive be modified, closed or relocated without the consent of the other Party, such consent not to be unreasonably withheld or delayed, or (b) the Landry's Parcel have fewer than two (2) other curb cut access points to State Highway 6, each with a width of least twenty-four (24) feet.

3.2 No Walls, Fences or Barriers. No walls, fences or barriers of any kind shall be constructed, erected or maintained on either Parcel, or any portion thereof, by either Party which

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shall prevent or impair the use or exercise of any of the easement granted herein or the free access and movement of Occupants and Users, including, without limitation, pedestrians and vehicular traffic, between the Kaplan Parcel and the Landry's Parcel; provided, however, reasonable traffic control signs and devices, directional barriers and parking stops, as may be necessary to guide and control the orderly flow of traffic, may be installed so long as the curb cuts on a Parcel are not closed or blocked.

4. Additional Provisions.

4.1 Parking. Nothing contained in this Agreement shall be construed to grant to either Party the right to use or permit the use by others of any parking areas located from time to time on the other Party's Parcel. Each Party agrees to construct and thereafter maintain a sufficient number of automobile parking spaces in order to comply with the requirements of any governmental authority having jurisdiction over the Parcels.

4.2 Operation and Maintenance. Upon the initial completion of improvements on the Kaplan Parcel, Kaplan shall, at its sole cost and expense, repave, resurface, patch and replace markings on the surface of the Access Drive from time to time as and when necessary.

4.3 Cost of Operation and Maintenance of Access Drive. Landry's shall pay to Kaplan an annual maintenance charge of Five Hundred Dollars (\$500.00) as a contribution to the costs incurred by Kaplan to operate and maintain the Access Drive (the "Maintenance Charge"). The Maintenance Charge shall be payable by Landry's within thirty (30) days of an invoice therefor. In the event the Kaplan Parcel is ever subdivided, the Maintenance Charge shall be payable to the owner of the portion of the Kaplan Parcel closest to the Landry's Parcel, unless the conveyance deed from Kaplan specifies a different allocation. Notwithstanding anything in this Agreement to the contrary, the Maintenance Charge shall constitute the entirety of Landry's obligation to contribute to the operation and maintenance of the Access Drive, including, without limitation, real estate taxes, common area maintenance charges, landscaping, and paving, resurfacing and repatching the surface of the Access Drive. The Maintenance Charge shall be subject to adjustment as of January 1 of each fifth calendar year, commencing January 1, 2005, based on the product of (a) \$500.00, and (b) one hundred percent (100%) plus the percentage change in the "CPI" (defined below) during the period from January 1, 2002 and ending on January 1 of each fifth year during the term of this Agreement. As used herein, "CPI" is defined as the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index-All Items, All Urban Consumers (CPI-U) 1982-1984 = 100, for U.S. City Average (or similar governmental successor Index).

4.4 Liability Insurance. Each Party shall maintain or cause to be maintained public liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the Access Drive or caused by each Party or caused by those Persons for whose acts or omissions each Party is legally liable. Each Party shall cause the policies evidencing such liability insurance to name the other Party as an additional insured. Such insurance shall be written by an insurance company or companies with a Best's Insurance Guide rating of not less than A- and qualified to do business in

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the State of Texas; and said policy or policies of insurance shall have limits for loss of life or bodily injury in the amounts of not less than One Million and No/100 Dollars (\$1,000,000.00) for each Person and Three Million and No/100 Dollars (\$3,000,000.00) for each occurrence and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for property damage for each occurrence. Such insurance may be carried under a "blanket" policy covering other properties of the Owner of the Parcel. Each Party shall, upon written request from the other Party, furnish to the other Party one or more certificates of insurance evidencing the existence of the insurance required to be carried under this Section 4.4. All such insurance policies shall include provisions (to the extent obtainable in policies prescribed or approved by the State Board of Insurance of Texas) denying to the insurer subrogation rights against the Party causing the loss of life or bodily injury or property damage to the extent such rights have been waived by the insured prior to the occurrence of such bodily injury, loss of life or property damage. Each Party hereby waives any rights of subrogation against the other Party.

5. Construction of Buildings. Subject to the provisions contained elsewhere in this Agreement, Kaplan may (i) develop and construct on its Parcel buildings and improvements and (ii) remodel and renovate existing buildings and improvements located on its Parcel. Each Party agrees that its construction activities shall not unreasonably interfere with construction work or business being performed or conducted on the other Party's Parcel.

6. Condemnation. In the event the whole or any part of the Access Drive shall be taken by right of eminent domain or any similar authority of law (the "**Taking**") or in the event that Kaplan conveys all or any portion of the Access Drive under threat of eminent domain, any such conveyance also being a "Taking" as used herein, the entire award or compensation paid for loss of fee or loss of the easement shall belong to the owner of the Kaplan Parcel constituting the subject matter of such Taking (whether such award or compensation so paid is for the property taken or as severance damages with respect to such owner's property not taken) and Landry's shall have no right to claim any portion of such award or compensation paid; provided, however, if a separate award is made for the improvements on the Access Drive (i.e., the asphalt, concrete or similar materials), Landry's shall be entitled to 34.74% of the award allocable to such improvements.

7. Rights Upon Default.

7.1 Right to Cure. In the event either Party defaults in the performance of the obligations of such Party under this Agreement, the non-defaulting Party shall have the right, but not the obligation, following twenty (20) days written notice, to cure such default for the account of and at the expense of the defaulting Party; provided, however, that in the event of emergency conditions constituting default, the non-defaulting Party acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. Any notice hereunder shall specify with particularity the nature of the default claimed. Following the expiration of the notice period provided for herein, to effectuate any such cure, the non-defaulting Party shall have the right to enter upon the Parcel of the defaulting Party to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting Party.

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7.2 Costs of Cure and Lien Rights. All costs and expenses reasonably incurred by a Party to cure a default of a defaulting Party under the provisions of Section 7.1 hereof and the annual Maintenance Charge owed by Landry's shall bear interest thereon at the rate of twelve percent (12%) per annum (if, in the case of the Maintenance Charge, it is not paid within the time set forth in Section 4.3). The payment of all such costs, expenses and charges shall be secured by a lien on the applicable Parcel and improvements thereon owned by the defaulting Party, which lien shall be created by the recording of a notice thereof (executed by the non-defaulting Party) in the Official Public Records of Real Property of Harris County, Texas. Such lien shall be subordinate to any previously recorded mortgage or deed of trust ("*Prior Mortgage*") now or hereafter affecting the Parcel owned by the defaulting Party which arose and was recorded prior to recordation of such notice. Such lien may be enforced in any manner allowed by law including, without limitation, a suit in the nature of a suit to foreclose a deed of trust under the applicable provisions of the laws of the State of Texas.

7.3 Legal and Equitable Relief. Each Party shall have the right to prosecute any proceeding at law or in equity against the other Party hereto, or any other Person, violating or attempting to violate or defaulting in any of the provisions contained in this Agreement, in order to prevent the violating or defaulting Party or any such Person from violating or attempting to violate or defaulting under the provisions of this Agreement and to recover damages for any such violation or default. The remedies available hereunder shall include, by way of illustration but not limitation, applications for temporary restraining orders, temporary injunctions and permanent injunctions enjoining any such default or attempted violation or default, and actions for specific performance of this Agreement.

7.4 Non-Waiver. No delay or omission of any Party in the exercise of any right accruing upon any default of the other Party shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Party of a breach of, or default in, any of the terms and conditions of this Agreement by the other Party shall not be construed to be a waiver of any subsequent breach of or default in the same or other provision of this Agreement. Except as otherwise specifically provided in this Agreement, no remedy provided in this Agreement shall be exclusive but each shall be cumulative with all other remedies provided in this Agreement and all remedies at law or in equity shall be available.

7.5 Force Majeure. In the event either Party shall be delayed or hindered in or prevented from the performance of any act required to be performed by such Party by reason of acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of the other Party, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such Party's reasonable control and with respect to which, in each of the aforesaid circumstances, the Party is diligently and in good faith seeking to abate and remove the circumstances causing the delay, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform or financial or economic losses or hardship resulting from performance or imprudent management or negligence shall not be deemed to be a cause beyond the reasonable control of such Party.

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8. Term. This Agreement and the easements, rights, restrictions, obligations and liabilities created hereby shall be and remain in full force and effect for the period commencing on the date of this Agreement and terminating on December 31, 2050; provided, however, the term of this Agreement shall be automatically extended on an annual basis for so long as the Owner of the Kaplan Parcel uses substantially all of the Access Drive and the traffic signal described in Section 2.1 remains in place. Upon termination of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Agreement, except as otherwise expressly provided herein, shall terminate and have no further force or effect; provided, however, that the termination of this Agreement shall not limit or affect any remedy of either Party against the other Party with respect to any liability or obligation arising prior to the date of such termination.

9. Effect of Instrument and Transfers.

9.1 Transfer of Entire Interest. In the event of the transfer, conveyance or termination of the entire interest of either Party in its Parcel without retaining any beneficial interest therein other than as beneficiary under the terms of a deed of trust or without simultaneously acquiring a new interest by way of leasehold or other similar interests, then the rights and powers conferred upon and the obligations under this Agreement of the transferring Party shall be transferred and assigned with its interest, or termination thereof.

9.2 Mortgage Subordination. Any mortgage or deed of trust affecting any portion of a Parcel shall, at all times, be subject and subordinate to the terms of this Agreement; and any Person foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure shall acquire title subject to all of the terms and provisions of this Agreement. Any Person holding any such mortgage or deed of trust on the date hereof shall join in the execution of this Agreement for the purpose of subordinating such mortgage or deed of trust to this Agreement.

9.3 Binding Effect. Every agreement, covenant, promise, undertaking, condition, easement, right, privilege, option and restriction made, granted or assumed, as the case may be, by either Party to this Agreement is made by such Party for the benefit of the other Party hereto. Any transferee of any part of a Parcel shall automatically be deemed, by acceptance of title thereto, to have assumed all obligations of this Agreement relating thereto to the extent of its interest in such Parcel.

9.4 Non-Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of a Parcel to the general public or for any public use or purpose whatsoever, it being the intention of the Parties and their successors and assigns that nothing in this Agreement, expressed or implied, shall confer upon any Person, other than the Parties and their successors and assigns, any rights or remedies under or by reason of this Agreement.

9.5 Liability. Notwithstanding anything to the contrary contained in this Agreement, each Party shall be liable and responsible for the obligations, covenants, agreements and responsibilities created by this Agreement and for any judgment rendered hereon only to the extent of its respective interest in its Parcel, and there shall be no personal liability on the part of any Party,

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or any partner, shareholder, director, trustee or agent of any Party, for their performance of any obligations hereunder.

9.6 Release Upon Sale of Interest. Upon the sale and conveyance by a Party of its entire right, title and interest in its Parcel, such Party shall be released from its obligations under this Agreement arising subsequent to the effective date of such sale and conveyance other than those obligations arising from any default by such Party in the performance of any provision of this Agreement prior to such sale and conveyance. The subdivision by a Party of its Parcel shall be treated in the same fashion as a sale once the subdivided portion is sold or conveyed; however, each subdivided portion of such Parcel shall continue to be subject to the provisions hereof following such sale and conveyance.

10. Covenants and Recordation. All of the provisions, agreements, covenants, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns and all other persons acquiring any Parcel, or any portion thereof, or any interest therein, whether by operation of law or in any other manner whatsoever. All of the provisions of this Agreement shall be covenants running with the land pursuant to applicable law. It is expressly acknowledged that each covenant to do or refrain from doing some act on each Parcel hereunder (i) is for the benefit of the other Parcel, (ii) runs with each Parcel and (iii) shall benefit or be binding upon each successive owner during its ownership of each Parcel, or any portion thereof. This Agreement shall become effective and binding upon the Parties in accordance with the provisions of this Article 10 upon recordation of this Agreement in the Official Public Records of Real Property of Harris County, Texas.

11. Notices. Any notice, report or demand required, permitted or desired to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is hand delivered or is mailed by registered or certified mail, return receipt requested or delivered by guaranteed overnight delivery service. The respective mailing addresses of the Parties hereto are, until changed as hereinafter provided, as follows:

Kaplan:	P.O. Box 56783 Houston, Texas 77256-6783
Landry's:	<i>1510 West Loop South</i> 1400 Post Oak Boulevard, Suite 1010 Houston, Texas 77056 <i>77027</i>
	Attn: General Counsel

Either Party may change its mailing address or add one (1) additional Person to receive notice at any time by giving written notice of such change to the other Party in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given on the date personal delivery is effected or, if mailed or sent by guaranteed overnight delivery service, on the delivery date.

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12. Miscellaneous.

12.1 Termination and Amendment. This Agreement may be terminated, modified or amended in whole or in part only by written and recorded instrument executed by the Parties hereto or by all of the record owners and mortgagees of each Parcel in the event that any of such record owners are not then Parties hereto.

12.2 Severability. Invalidation of any of the provisions contained in this Agreement, or the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person, and the same shall remain in full force and effect.

12.3 Entire Agreement. This Agreement and the exhibits hereto contain all of the representations and agreements between the Parties with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Agreement.

12.4 Captions. The captions preceding the text of each article and section hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

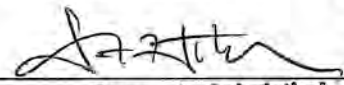
12.5 Litigation Expenses. If any Party shall bring an action or proceeding against the other Party hereto by reason of the breach or alleged violation of any covenant, agreement or obligation herein contained or for the enforcement of any provision hereof, or to interpret this Agreement, the prevailing Party in such action or proceeding shall be entitled to recover its costs and expenses of suit, including, but not limited to, reasonable attorneys' fees actually incurred and court costs.

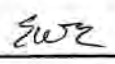
12.6 Governing Law. This Agreement and all rights and obligations created hereby shall be governed by and construed under the laws of the State of Texas. This Agreement is performable in Harris County, Texas.

12.7 Estoppel Certificate. Each Party agrees that upon written request of any other Party, it will issue to such Party, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge as of such date (i) whether it knows of any default under this Agreement by the requesting Party, and if there are known defaults, specifying the nature thereof; (ii) whether this Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof and furnishing a copy thereof; and (iii) whether this Agreement is in full force and effect.

LANDRY'S CRAB SHACK, INC.

(2) 10/10/12

By: 
Name: Steven L. Scheinthal
Title: Vice President

Legal: 

Jay Kaplan, Trustee
JAY KAPLAN, TRUSTEE

10/25/01

546-77-2543

FILE FOR RECORD
8:00 AM

DEC 12 2001

Dorothy L. Kayman
County Clerk, Harris County, Texas

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 6 day of November, 2001
by Steven L. Scheinthal, **Vice President** of LANDRY'S CRAB SHACK, INC.,
a Texas corporation, on behalf of said corporation.



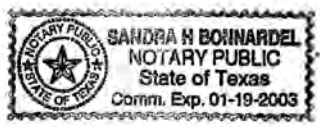
Roxanne Pattillo
Notary Public, State of Texas

ROXANNE PATTILLO
Printed Name of Notary

My Commission Expires: 10-7-02

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This instrument was acknowledged before me on this 8th day of November, 2001
by JAY KAPLAN, TRUSTEE.



Sandra H. Bonnardel
Notary Public, State of Texas

SANDRA H. BONNARDEL
Printed Name of Notary

My Commission Expires: 1/19/03

546-77-2544

EXHIBIT "A"

KAPLAN PARCEL

147,639 square feet (3.3893 acres) of land located in the Blas Herrera Survey, Abstract No.321, Harris County, Texas, being out of Restricted Reserve "K", Block 1 of the Tim Miles Subdivision, the plat of which is filed for record in Volume 334, Page 99 of the Harris County Map Records, and being a portion of a 10.5943 acre tract of land conveyed to Jay Kaplan, Trustee, in deed filed of record under Harris County Clerk's File No.S199642 and being more particularly as follows: D

BEGINNING at a 5/8 Inch Iron rod found at the southeast corner of a 1.1118 acre tract conveyed to MB Development Company by deed filed of record under Harris County Clerk's File No.T479134, being in the west right-of-way line of State Highway Six, having a right-of-way width of 160.00 feet;

THENCE S.0°46'58"W. 64.95 feet along the west right-of-way line of said State Highway Six to a point of curvature;

THENCE 253.19 feet in a southerly direction, following said west right-of-way line of State Highway Six, along a curve to the left, said curve having a radius of 3993.69 feet, a central angle of 3°37'57" and a long chord which bears S.1°01'59"E. 253.15 feet to the northeast corner of a 2.256 acre tract of land conveyed to Landry's Crab Shack, Inc. in deed filed of record under Harris County Clerk's File No.S464505;

THENCE S.89°40'53"W. 564.77 feet along the north line of said 2.256 acre tract to a point for the northwest corner thereof, same being in the west line of said Restricted Reserve "K" and being the east line of a 490.1 acre tract conveyed to the United States of America in deed filed for record in Volume 1346, Page 199 of the Harris County Deed Records;

THENCE N.32°07'05"E. 299.16 feet along the west line of said Restricted Reserve "K" and the east line of said 490.1 acre tract to an angle point therein;

THENCE N.16°08'56"E. 70.14 feet continuing along the west line of said Restricted Reserve "K" and the east line of said 490.1 acre tract to the southwest corner of said 1.1118 acre tract;

THENCE N.89°55'54"E. 382.53 feet along the south line of said 1.1118 acre tract to the PLACE OF BEGINNING of the herein described tract of land.

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EXHIBIT "B"

LANDRY'S PARCEL

DESCRIPTION OF A 2.256 ACRE TRACT OF LAND
RESTRICTED RESERVE "K", BLOCK 1
TIM MILES SUBDIVISION
CITY OF HOUSTON, HARRIS COUNTY, TEXAS

BEING a 2.256 acre tract of land in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas, and being out of Restricted Reserve "K", Block 1 as shown on the plat of Tim Miles Subdivision recorded in Volume 334, Page 99 of the Harris County Map Records and being out of a 10.5943 acre tract described under Harris County Clerk's File Number S015191, said 2.256 acre tract being more particularly described as metes and bounds as follows:

COMMENCING at a 5/8" iron rod found in the west right-of-way line of State Highway No. 6 as described under H.C.C.F. No. B647227 (Vol. 5032, Pg. 132 H.C.D.R.) and being at the southeast corner of said Restricted Reserve "K" and at the northeast corner of Restricted Reserve "J", Block

THENCE N 04° 50' 30" W, 30.09 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" to a 5/8" set at the POINT OF BEGINNING of the herein described tract;

THENCE S 89° 40' 53" W, 350.00 feet to a set 5/8" iron rod for the southwest corner of the herein described tract;

THENCE N 00° 19' 07" W, 290.00 feet to a 5/8" iron rod set for the northwest corner of the herein described tract;

THENCE N 89° 40' 53" E, 329.48 feet to a 5/8" iron rod set in the east line of said Restricted Reserve "K" and being in the said west right-of-way line of State Highway No. 6;

THENCE in a southerly direction, 138.85 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" and following the arc of said curve the left having a radius of 3993.69 feet, a central angle of 01° 59' 31" and a chord which bears S 03° 50' 44" E, 138.84 feet to a 1/2" iron rod found and from said 1/2" iron rod, a found concrete monument bears S 18° 55' E, 0.66 feet and a found 1" iron rod bears S 77° 40' W, 0.18

THENCE S 04° 50' 30" E, 151.90 feet along the said west right-of-way line of State Highway No. 6 and along the westerly boundary line of said Reserve "K" to the POINT OF BEGINNING and containing 2.256 acres of land.

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3,115 square feet of land located in the Blas Herrera Survey, Abstract No.321, Harris County, Texas, being out of Restricted Reserve "K", Block 1 of the Tim Miles Subdivision, the plat of which is filed for record in Volume 334, Page 99 of the Harris County Map Records, and being a portion of a 10.5943 acre tract of land conveyed to Jay Kaplan, Trustee, in deed filed of record under Harris County Clerk's File No.S199642 and being more particularly as follows:

COMMENCING at a 5/8 inch iron rod found at the northeast corner of a 2.256 acre tract conveyed to Landry's Crab Shack, Inc. by deed filed of record under Harris County Clerk's File No.S464505;

THENCE S.89°40'53"W. 31.13 feet along the north line of said 2.256 acre tract to the PLACE OF BEGINNING of the herein described tract of land;

THENCE S.89°40'53"W. 25.00 feet continuing along the north line of said 2.256 acre tract;

THENCE N.0°14'12"E. 68.63 feet to a point of curvature;

THENCE 27.60 feet in a northerly direction along a curve to the right, said curve having a radius of 4046.69 feet, a central angle of 0°23'27" and a long chord which bears N.1°38'55"W. 27.60 feet;

THENCE N.88°22'12"E. 53.00 feet to a point in the west right-of-way line of State Highway Six, having a right-of-way width of 160.00 feet;

THENCE 25.00 feet in a southerly direction, following said west right-of-way line of State Highway Six, along a curve to the left, said curve having a radius of 3993.69 feet, a central angle of 0°21'31" and a long chord which bears S.1°37'48"E. 25.00 feet to the end of said curve;

THENCE S.88°22'12"W. 25.00 feet to a point of curvature;

THENCE 4.61 feet in a southwesterly direction along a curve to the left, said curve having a radius of 3.00 feet, a central angle of 88°07'59" and a long chord which bears S.44°18'12"W. 4.17 feet to a point of tangency;

THENCE S.0°14'12"W. 68.90 feet to the PLACE OF BEGINNING of the herein described tract of land.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
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 Harris County, Texas on

DEC 12 2001



Beverly L. Kayman
COUNTY CLERK
HARRIS COUNTY, TEXAS

RECORDER'S MEMORANDUM

AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC.

Barry E. Putterman
Winstead Sechrest & Minick P.C.
2400 Bank One Building
910 Travis Street
Houston, Texas 77002-5895

S46-77-2547

899075

DEED OF GIFT

156-02-0612

THE STATE OF TEXAS |
COUNTY OF HARRIS |

KNOW ALL MEN BY THESE PRESENTS:

80-30-76 680103 E 999075 LST A P3 250

That we, Leon Lucas Miles and wife, Mary Lou Miles, for and in consideration of the love and affection which we have and bear unto our four children hereinafter named, do hereby Give, Grant and Convey unto the said children as a part and parcel of their respective separate property and estate, an undivided one-third (1/3) interest in all the oil, gas and other minerals in, on and under and that may be produced and saved from the following described tract of land in Harris County, Texas, to-wit:

All of Lot No. Eleven (11) and all of Lot No. Six (6), both out of and a part of the David Middleton Survey, Abstract No. 535, and the Blas Herrera Survey, Abstract No. 321, Harris County, Texas, and those portions of Lot No. 12, No. 5 and No. 4 owned by Donors, said tracts being out of and a part of the Blas Herrera Survey, Abstract No. 321 and containing a total of 596.12 acres of land, more or less, being the same land more fully described in a deed from J. H. Arnold and wife, to Tim Miles, dated April 18, 1929, recorded in Book 797, Page 292, under File No. 402463 of the Deed Records of Harris County, Texas, reference to which is hereby made for all purposes.

The donees to whom this deed of gift is executed and delivered are our children, whose names are as follows; Leon Glenn Miles, Mary Leona Williams, Edward Louis Miles, Linda Susan Richards, and each of said children are hereby given an undivided one-fourth (1/4) interest in the property hereby conveyed.

This conveyance is expressly made subject to an oil, gas and mineral lease to the extent that the same is now valid and enforceable, which lease is dated January 2, 1955, from Tim Miles and wife, Mary Miles, as Lessors, to Petroleum Leaseholds, Inc., as Lessee, which lease is recorded in Volume 843, Page 490 of the Contract Records of Harris County, Texas, it being intended that each of the Donees shall receive one-twelfth (1/12) (one-fourth of Donors' one-third) of the proceeds of all production of oil, gas or other minerals which may be produced and saved under the terms of said lease.

Donor Leon Lucas Miles owns one-third (1/3) of the minerals in and under the 596.12 acres hereinabove more fully described and it is intended by this conveyance to transfer and assign to the aforementioned children all of said undivided one-third (1/3) of the minerals so that from and after the

Miles
250

D

Jan

execution and delivery of this deed said one-third (1/3) of the minerals will be owned as follows:

Leon Glenn Miles	one-fourth (1/4) of Donors' one-third (1/3);
Mary Leona Williams	one-fourth (1/4) of Donors' one-third (1/3);
Edward Louis Miles	one-fourth (1/4) of Donors' one-third (1/3);
Linda Susan Richards	one-fourth (1/4) of Donors' one-third (1/3)

156-02-0613

TO HAVE AND TO HOLD the above described property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Donees as a part and parcel of their respective separate property and estates, their heirs and assigns forever, and Donors do hereby bind themselves, their heirs, personal representatives, executors and administrators to Warrant and Forever Defend all and singular the said premises unto the said Donees, their heirs, successors, and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof, subject, however, as aforesaid.

This conveyance is irrevocable and unconditional.

EXECUTED at Houston, Texas, this the 23rd day of December, 1976, effective as to production from and after 7:00 o'clock A.M., January 1, 1977.

Leon Lucas Miles
Leon Lucas Miles

Mary Lou Miles
Mary Lou Miles

NOTARIES PUBLIC'S MISDEMEANOR (ART. 11)
This instrument is not enforceable in any court until the notary public has been duly sworn and qualified in the State of Texas. The notary public shall retain a true and correct copy of this instrument and the fee thereon.

THE STATE OF TEXAS |
COUNTY OF HARRIS |

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared LEON LUCAS MILES and wife, MARY LOU MILES, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 23rd day of December, 1976.

Dula B. Wynn
Notary Public in and for Harris County,
TEXAS

1999077

DEED OF GIFT

156-02-0621

THE STATE OF TEXAS
COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS:

JUL-30-76 680105 E 999077 LST A F3

That we, Earl John Miles and wife, Peggy Louise Miles, for and in consideration of the love and affection which we have and bear unto our four children hereinafter named, do hereby Give, Grant and Convey unto the said children as a part and parcel of their respective separate property and estate, an undivided one-third (1/3) interest in all the oil, gas and other minerals in, on and under and that may be produced and saved from the following described tract of land in Harris County, Texas, to-wit:

All of Lot No. Eleven (11) and all of Lot No. Six (6), both out of and a part of the David Middleton Survey, Abstract No. 535, and the Blas Herrera Survey, Abstract No. 321, Harris County, Texas, and those portions of Lot No. 12, No. 5 and No. 4 owned by Donors, said tracts being out of and a part of the Blas Herrera Survey, Abstract No. 321 and containing a total of 596.12 acres of land, more or less, being the same land more fully described in a deed from J. H. Arnold and wife to Tom Miles, dated April 18, 1929, recorded in Book 797, Page 292, under File No. 402463 of the Deed Records of Harris County, Texas, reference to which is hereby made for all purposes.

The donees to whom this deed of gift is executed and delivered are our children, whose names are as follows; Timothy Thomas Miles, Michael Earl Miles, Patrick Carl Miles, Sandra Ann Morgan, and each of said children are hereby given an undivided one-fourth (1/4) interest in the property hereby conveyed.

This conveyance is expressly made subject to an oil, gas and mineral lease to the extent that the same is now valid and enforceable, which lease is dated January 5, 1965, from Tom Miles and wife, Mary Miles, as Lessors, to Petroleum Leaseholds, Inc., as Lessee, which lease is recorded in Volume 843, Page 490 of the Contract Records of Harris County, Texas, it being intended that each of the Donees shall receive one-twelfth (1/12) (one-fourth of Donors' one-third) of the proceeds of all production of oil, gas or other minerals which may be produced and saved under the terms of said lease.

Donor Earl John Miles owns one-third (1/3) of the minerals in and under the 596.12 acres hereinabove more fully described and it is intended by this conveyance to transfer and assign to the aforementioned children all of said undivided one-third (1/3) of the minerals so that from and after the execution and delivery of this deed said one-third (1/3) of the minerals

Handwritten notes and initials on the left margin, including "156" and "N".

Handwritten mark resembling "1)" on the right side of the deed description.

Handwritten signature or initials on the right side of the donees list.

will be owned as follows:

- Timothy Thomas Miles - one-fourth (1/4) of Donors' one-third (1/3);
- Michael Earl Miles - one-fourth (1/4) of Donors' one-third (1/3);
- Patrick Carl Miles - one-fourth (1/4) of Donors' one-third (1/3);
- Sandra Ann Morgan - one-fourth (1/4) of Donors' one-third (1/3);

156-02-0622

TO HAVE AND TO HOLD the above described property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Donees as a part and parcel of their respective separate property and estates, their heirs and assigns forever, and Donors do hereby bind themselves, their heirs, personal representatives, executors and administrators to Warrant and Forever Defend all and singular the said premises unto the said Donees, their heirs, successors, and assigns, against every person whomsoever lawfully claiming, or to claim the same, on any part thereof, subject, however, as aforesaid.

This conveyance is irrevocable and unconditional.

EXECUTED at Houston, Texas, this the 30th day of December, 1976, effective as to production from and after 7:00 o'clock A.M., January 1, 1977.

Earl John Miles
Earl John Miles

Peggy Louise Miles
Peggy Louise Miles

THE STATE OF TEXAS |
COUNTY OF HARRIS |

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared EARL JOHN MILES and WIFE, PEGGY LOUISE MILES, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 30th day of December, 1976.

Lula B. Warr
Notary Public in and for Harris County,
TEXAS

E997684

75
07

DEED OF GIFT

550

THE STATE OF TEXAS Y
COUNTY OF HARRIS X

KNOW ALL MEN BY THESE PRESENTS:

155-20-0800

That we, William B. Miles and wife, Sarah Ann Miles (hereinafter called "Donors"), for and in consideration of the love and affection which we have for our six children hereinafter named (sometimes hereinafter referred to as "Donees"), do hereby Give, Grant and Convey unto the said children as a part and parcel of their respective separate property and estate, an undivided one-third (1/3) interest in all the oil, gas and other minerals in, on and under and that may be produced and saved from the following described tract of land in Harris County, Texas, to-wit:

All of Lot No. Eleven (11) and all of Lot No. Six (6), both out of and a part of the David Middleton Survey, Abstract No. 535, and the Blas Herrera Survey, Abstract No. 321, Harris County, Texas, and those portions of Lot No. 12, No. 5 and No. 4 owned by Donors, said tracts being out of and a part of the Blas Herrera Survey, Abstract No. 321 and containing a total of 596.12 acres of land, more or less, being the same land more fully described in a deed from J. H. Arnold and wife to Tim Miles, dated April 18, 1929, recorded in Book 797, Page 292, under File No. 402463 of the Deed Records of Harris County, Texas, reference to which is hereby made for all purposes.

The Donees to whom this deed of gift is executed and delivered are our children, whose names are as follows:

- W. B. Miles, Jr.
- John T. Miles
- Charles T. Miles
- David L. Miles
- Elizabeth Williams
- Marilyn Sue Smith,

and each of said children are hereby given an undivided one-sixth (1/6) interest in the property hereby conveyed.

155-2C-0801

This conveyance is subject to an oil, gas and mineral lease to the extent that the same is now valid and enforceable, which lease is dated January 2, 1955, from Tim Miles and wife, Mary Miles, as Lessors, to Petroleum Leaseholds, Inc., as Lessee, which lease is recorded in Volume 843, Page 490 of the Contract Records of Harris County, Texas, it being intended that each of the Donees shall receive one-eighteenth (1/18) (one-sixth of Donors' one-third) of the proceeds of all production of oil, gas or other minerals which may be produced and saved under the terms of said lease.

Donor William B. Miles owns one-third (1/3) of the minerals in and under the 596.12 acres hereinabove more fully described and it is intended by this conveyance, to transfer and assign to the Donees all of said undivided one-third (1/3) of the minerals so that from and after the execution and delivery of this deed said one-third (1/3) of the minerals will be owned as follows:

- W. B. Miles, Jr. - one-sixth (1/6) of Donors' one-third (1/3);
- John T. Miles - one-sixth (1/6) of Donors' one-third (1/3);
- Charles T. Miles - one-sixth (1/6) of Donors' one-third (1/3);
- David L. Miles - one-sixth (1/6) of Donors' one-third (1/3);
- Elizabeth Williams - one-sixth (1/6) of Donors' one-third (1/3);
- Marilyn Sue Smith - one-sixth (1/6) of Donors' one-third (1/3).

TO HAVE AND TO HOLD the above described property, together with all and singular the rights and appurtenances thereto in anywise belonging unto the said Donees as a part and

155-2C-0802

parcel of their respective separate property and estates, their heirs and assigns forever, and Donors do hereby bind themselves, their heirs, executors and administrators to Warrant and Forever Defend all and singular the said premises unto the said Donees, their heirs and assigns, against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

By way of enlargement and not by way of limitation, Donors intend by this conveyance to Give, Grant and Convey to Donees in equal proportions all of their undivided interest in the property hereinabove described and Donees by their acceptance hereof agree that the property herein conveyed to them shall hereafter be owned by them in equal proportions.

This conveyance is irrevocable.

EXECUTED at Houston, Texas, this the 22nd day of December, 1976, effective as to production from and after 7:00 o'clock A.M., January 1, 1977.

William B. Miles
William B. Miles

Sarah Ann Miles
Sarah Ann Miles

THE STATE OF TEXAS |
COUNTY OF HARRIS |

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared WILLIAM B. MILES and wife, SARAH ANN MILES, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 22nd day of December, 1976.

Jean Wickes
NOTARY PUBLIC IN AND FOR HARRIS COUNTY,
TEXAS

JEAN WICKES
Notary Public in and for Harris County, Texas
My Commission Expires July 16 1978

155-20-0803



570806

APR-25-78 808606 -F 570806 LS D 13 10.00

RELEASE

193-07-1394

THE STATE OF TEXAS §
COUNTY OF HARRIS § KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned, being the owners of the entire mineral interest and estate of the following described tract of land in Harris County, Texas, to wit:

All that certain tract or parcel of land in Harris County, Texas, out of the DAVID MIDDLETON SURVEY A-535 and BLAS HERRERA SURVEY A-321, being a portion of Lots 4, 5, and 6 of MEADOWBROOK FARMS, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 1 at Page 16-A of the Map Records of Harris County, Texas, and containing 95,8294 acres, D

for and in consideration Ten Dollars (\$10.00) and other good and valuable consideration in hand paid, receipt and sufficiency of which is hereby acknowledged, do hereby RELEASE, WAIVE and OBLIVION to William B. Miles, Leon L. Miles and Earl J. Miles, J.L. their heirs, successors and assigns, all of the right title and interest in any surface rights, including rights of ingress and egress, which the undersigned possess and hold incidental to their ownership of the mineral estate in the above described tract.

It is the intention of the undersigned that this release operate solely to relinquish complete surface control of the above described tract to the owners of the surface estate and not operate in any other way to affect or diminish the mineral estate in the above described tract reserved to the undersigned. Executed this the 22nd day of April, 1978.

Timothy T. Miles
Timothy T. Miles

Patrick C. Miles
Patrick C. Miles

Michael E. Miles
Michael E. Miles

Sandra A. Morgan
Sandra A. Morgan

B. Miles
ite 4 Bar 354
Houston, Texas

Leon Glenn Miles

Leon Glenn Miles

Edward Louis Miles

Edward Louis Miles

William B. Miles, Jr.

William B. Miles, Jr.

Charles T. Miles

Charles T. Miles

David L. Miles

David L. Miles

Mary Leona Williams

Mary Leona Williams

Linda S. Richards

Linda S. Richards

John T. Miles

John T. Miles

Elizabeth Ann Williams

Elizabeth Ann Williams

Marilyn S. Smith

Marilyn S. Smith

193-07-1395

THE STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared TIMOTHY T. MILES, PATRICK C. MILES, MICHAEL E. MILES, and SANDRA A. MORGAN, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 23rd day of April, 1978.

193-07-1306

Lula B. Swan
Notary Public in and for Harris County,
TEXAS
My Commission Expires June 1, 1979

THE STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared LEON GLENN MILES, MARY LEONA WILLIAMS, EDWARD LOUIS MILES, and LINDA S. RICHARDS, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 23rd day of April, 1978.

Lula B. Swan
Notary Public in and for Harris County,
TEXAS
My Commission Expires June 1, 1979

THE STATE OF TEXAS §
COUNTY OF HARRIS §

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared WILLIAM B. MILES, JR., JOHN T. MILES, DAVID L. MILES, ELIZABETH ANN WILLIAMS, CHARLES T. MILES, and MARILYN S. SMITH, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration therein expressed.
GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 23rd day of April, 1978.

Lula B. Swan
Notary Public in and for Harris County,
TEXAS
My Commission Expires July 3, 1979

283509

OCT-18-74 300621 E 283509 - A M

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RELEASE

111-11-2290

STATE OF TEXAS)
COUNTY OF HARRIS)

WHEREAS, on the 2nd day of January, 1955, Tim Miles and wife, Mary Miles, of the State of Texas, County of Harris, as lessors, did execute that certain Oil, Gas and Mineral Lease to Petroleum Leaseholds, Inc., a Delaware Corporation, as lessee, which said lease is recorded in Volume 843, page 490, of the Contract Records of Harris County, Texas, covering the following described land in Harris County, Texas, to-wit:

All of Lot No. Eleven (11) and all of Lot No. 6, both out of and a part of the David Middleton Survey, Abstract No. 535, and the Blas Herrera Survey, Abstract No. 321, Harris County, Texas, and those portions of Lot No. 12, No. 5 and No. 4 owned by Lessor, said tracts being out of and a part of the Blas Herrera Survey, Abstract No. 321 and containing a total of 596.12 acres of land, more or less. The hereinabove described land is the same land described in deed from J. H. Arnold and wife to Tim Miles, dated April 18, 1929, and recorded in Book 797, Page 292, under File No. 402463 of the Deed Records of Harris County, Texas, to which deed and the record thereof reference is hereby made for all purposes,

and,

WHEREAS, the undersigned have succeeded to the interest of the original lessee in such lease; and

WHEREAS, the original lessors, Tim and Mary Miles are deceased, and William Benjamin Miles, Leon L. Miles and Earl John Miles have succeeded to the interest of such original lessors; and

WHEREAS, by virtue of said oil and gas lease, the undersigned have certain rights existing in and pertaining to the surface of the tract of land covered by such lease; and

FILED FOR RECORD
9:00 A. M.

OCT 18 1974

Petermontano

County Clerk, Harris County, Texas

LEE & BABCOCK
890 Houston Natural Gas Bldg.
Houston, Texas 77002

111-11-2291

WHEREAS, it is the desire of the undersigned and William Benjamin Miles, Leon L. Miles and Earl John Miles that such surface rights be in all things released as to the tract hereinafter described, except as hereinafter expressly stated,

NOW, THEREFORE, know all men by these presents that the undersigned, for and in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration to it in hand paid by William Benjamin Miles, Leon L. Miles and Earl John Miles, receipt and sufficiency of which is hereby acknowledged, do hereby RELEASE and QUITCLAIM to the said William Benjamin Miles, Leon L. Miles, and Earl John Miles all of its right, title and interest in the surface and the surface rights only in and to the following tract or parcel of land, in the Blas Herrera Survey, Abstract 321, and the David Middleton Survey, Abstract 535, both in Harris County, Texas, and more particularly described as follows:

BEGINNING at a 4" x 4" concrete monument at the northwest corner of the intersection of Westheimer Road and Addicks-Howell Road for the point of beginning, and being the southeast corner of the tract herein described;

THENCE S 89° 23' 33" West 1289.49 feet along the north edge of Westheimer Road and along a barbwire fence to a 5/8" iron rod for the southwest corner of this tract;

THENCE N 00° 03' 33" E 2037.05 feet along a barbwire fence to a 5/8" iron rod for corner;

THENCE N 31° 49' 20" E 1452.38 feet along a barbwire fence to a U.S. Engineers' boundary marker, T-BR 49-5;

THENCE N 15° 52' 27" E 1177.90 feet along a barbwire fence to U.S. Engineers' boundary marker, T-BR 49-4;

THENCE N 00° 07' 47" W 2812.27 feet along a barbwire fence to a 5/8" iron rod set in the south edge of Noble Road, for the Northwest corner of this tract;

111-11-2292

THENCE N 89° 53' 30" E with the south edge of such road 105.66 feet to a 5/8" iron rod in the west edge of the Addicks-Howell Road;

THENCE S 00° 00' 21" E 1582.60 feet along the west edge of said Addicks-Howell Road, and along a barbwire fence to a 4" x 4" concrete right of way monument;

THENCE S 00° 29' 41" W 2359.90 feet along such road and along such barbwire fence to a 4" x 4" concrete right of way monument for a point of curvature;

THENCE along the west edge of Addicks-Howell Road and along such barbwire fence along a curve, the radius of which is 3899.8 feet a distance of 392.50 feet to a 4" x 4" concrete right of way monument for the point of tangent;

THENCE S 05° 06' 13" E 1013.10 feet along the west edge of such road and along such barbwire fence to a 4" x 4" concrete right of way monument;

THENCE S 00° 25' 35" E 1859.28 feet along the west edge of such road and along such barbwire fence to a 4" x 4" concrete right of way monument, for the place of beginning.

It is distinctly understood and agreed that it is the overriding intention of this instrument that this release covers the surface of all land belonging to the lessors lying east of the most westerly boundary of the tract hereinabove described and west of the Addicks-Howell Road. It is the further intention of this release to release all of the surface and surface rights only in all of the lands covered by the said Oil and Gas Lease described in the first paragraph hereof not conveyed to the United States of America by decree of the District Court of the United States of America for the Southern District of Texas, Houston Division, in case styled United States of America vs. Andrea Georgi, et al, Civil Action No. 687 (Tract No. BR 49). Said decree being recorded in Volume 1346 at page 199 of Deed Records of Harris County, Texas. It is further distinctly understood and agreed, notwith-

standing anything to the contrary in this instrument, that the undersigned reserve full right of ingress and egress over Noble Road as long as the above described Oil, Gas and Mineral Lease shall remain in force and effect.

EXECUTED this 17th day of September, 1974.

PETRO-LEWIS CORPORATION

ATTEST:

Robert B. Hartman
Assistant Secretary

D. B. Cahley
Vice-President



TESORO PETROLEUM CORPORATION

Donald A. Skelly
Asst. Secretary

Robert L. ...
President

J. S. ABERCROMBIE MINERAL COMPANY, INC.

File
9/16/74

Robert L. ...
Secretary

Joseph ...
Vice President

Joseph ...
J. S. ABERCROMBIE MINERAL COMPANY, INC.

ACKNOWLEDGMENT

THE STATE OF COLORADO
COUNTY OF DENVER

SS

RECORDER'S MEMORANDUM:
The changes made on this instrument were present at the time instrument was filed and recorded.

RECORDER'S MEMORANDUM:
The additions on this instrument were present at the time instrument was filed and recorded.

BEFORE ME, the undersigned authority, on this day personally appeared D. B. Cahley President of Petro-Lewis Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations

111-11-2294

therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this the 6th day of October, 1974.



Beverly Applegate
Notary Public in and for
Denver County, Colorado

My Commission expires Jan. 16, 1977

ACKNOWLEDGMENT

THE STATE OF Texas
COUNTY OF Texas SS

BEFORE ME, the undersigned authority, on this day personally appeared Richard D. Papp President of Tesoro Petroleum Corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this the 14th day of September, 1974.



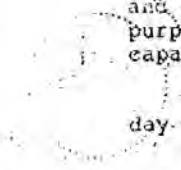
Patricia Hudson
Notary Public in and for
PATRICIA HUDSON
NOTARY PUBLIC, BEXAR COUNTY, TEXAS
COMMISSION EXPIRES: JUNE 1, 1975

ACKNOWLEDGMENT

THE STATE OF
COUNTY OF SS

BEFORE ME, the undersigned authority, on this day personally appeared J. S. Abercrombie President of J. S. Abercrombie Minerals, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this the 1st day of October, 1974.



Gwen Lorentz
Notary Public in and for
GWEN LORENTZ
Notary Public in and for Harris County, Texas

111-11-2295

ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this day personally appeared WILLIAM A. BRYAN, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and considerations therein expressed and in the capacity therein stated.

GIVEN under my hand and seal of office this the 1st day of October, 1974.



[Signature]
Notary Public in and for



Y936419

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07/15/02 300793696 Y936419

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OIL, GAS AND MINERAL LEASE

THIS AGREEMENT made this 23 day of May, 2002, between

Clydene Miles

Lessor (whether one or more), whose address is: PO Box 116 New Ulm, TX. 78950
and Contract Oil & Gas Service Company

Lessee, WITNESSETH:

1. Lessor, in consideration of \$ 333,333 Dollars, receipt of which is hereby acknowledged, and of the covenants and agreements of lessee hereinafter contained, does hereby grant, lease and let unto lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on said land, lay pipe lines, establish and utilize facilities for surface or subsurface disposal of salt water, construct roads and bridges, dig canals, build tanks, power stations, telephone lines, employee houses and other structures on said land, necessary or useful in lessee's operations in exploring, drilling for, producing, treating, storing and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land", is located in the County of Harris, State of Texas, and is described as follows:

40 Acres of land in the form of a square around the Tim Miles #1 well in the Blas Herrera survey abstract 321 Harris County, Texas API#42-201-04126

(Paragraphs 12-18 Attached Hereto As Exhibit "A")

554-83-2525

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HARRIS COUNTY TEXAS

This lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by lessor by limitation, prescription, possession, reversion or unrecorded instrument or (b) as to which lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by lessee for a more complete or accurate description of said land. For the purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 40 acres, whether actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus as lump sum consideration for this lease and all rights and options hereunder.

2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of 10 years from the date hereof, hereinafter called "primary term", and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.

3. As royalty, lessee covenants and agrees: (a) To deliver to the credit of lessor, in the pipe line to which lessee may connect its wells, the equal one-eighth part of all oil produced and saved by lessee from said land, or from time to time, at the option of lessee, to pay lessor the average posted market price of such one-eighth part of such oil at the wells as of the day it is run to the pipe line or storage tanks, lessor's interest, in either case, to bear one-eighth of the cost of treating oil to render it marketable pipe line oil; (b) To pay lessor on gas and casinghead gas produced from said land (1) when sold by lessee, one-eighth of the amount realized by lessee, computed at the mouth of the well, or (2) when used by lessee off said land or in the manufacture of gasoline or other products, the market value, as the mouth of the well, of one-eighth of such gas and casinghead gas; (c) To pay lessor on all other minerals mined and marketed or utilized by lessee from said land, one-tenth either in kind or value at the well or mine at lessee's election, except that on sulphur mined and marketed the royalty shall be one dollar (\$1.00) per long ton. If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing oil or gas, and all such wells are shut-in, this lease shall, nevertheless, continue in force as though operations were being conducted on said land for so long as said wells are shut-in, and thereafter this lease may be continued in force as if no shut-in had occurred. Lessee covenants and agrees to use reasonable diligence to produce, utilize, or market the minerals capable of being produced from said wells, but in the exercise of such diligence, lessee shall not be obligated to install or furnish facilities other than well facilities and ordinary lease facilities of flow lines, separator, and lease tank, and shall not be required to settle labor trouble or to market gas upon terms unacceptable to lessee. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety day period, lessee shall pay or tender, by check or draft of lessee, as royalty, a sum equal to one dollar (\$1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each such payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in the

Bank

at _____, or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that lessee pays or tenders shut-in royalty, two or more parties are, or claim to be, entitled to receive same, lessee may, in lieu of any other method of payment herein provided, pay or tender such shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereof, as lessee may elect. Any payment hereunder may be made by check or draft of lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair lessee's right to release as provided in paragraph 5 hereof. In the event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to acreage owned by each.

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease with any other land covered by this lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, so as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance; provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons, so as to contain not more than 640 surface acres plus 10% acreage tolerance, if limited to one or more of the following: (1) gas, other than casinghead gas, (2) liquid hydrocarbons (condensate) which are not liquids in the subsurface reservoir, (3) minerals produced from wells classified as gas wells by the conservation agency having jurisdiction. If larger units than any of those herein permitted, either at the time established, or after enlargement, are required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilling, or already drilled, any such unit may be established or enlarged to conform to the size required by such governmental order or rule. Lessee shall exercise said option as to each desired unit by executing an instrument identifying such unit and filing it for record in the public office in which this lease is recorded. Each of said options may be exercised by lessee at any time and from time to time while this lease is in force, and whether before or after production has been established either on said land, or on the portion of said land included in the unit, or on other land unitized therewith. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty, or leasehold interests in lands within the unit which are not effectively pooled or unitized. Any operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon said land under this lease. There shall be allocated to the land covered by this lease within each such unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) that proportion of the total production of unitized minerals from the unit, after deducting any unit in lease or unit operations, which the number of surface acres in such land (or in each such separate tract) covered by this lease within the unit bears to the total number of surface acres in the unit, and the production so allocated shall be considered for all purposes, including payment or delivery of royalty, overriding royalty and any other payments out of production, to be the entire production of unitized minerals from the land to which allocated in the same manner as though produced therefrom under the terms of this lease. The owner of the reversionary estate of any term royalty or mineral estate agrees that the accrual of royalties pursuant to this paragraph or of shut-in royalties from a well on the unit shall satisfy any limitation of term requiring production of oil or gas. The formation of any unit hereunder which includes land not covered by this lease shall not have the effect of exchanging or transferring any interest under this lease (including, without limitation, any shut-in royalty which may become payable under this lease) between parties owning interests in land covered by this lease and parties owning interests in land not covered by this lease. Neither shall it impair the right of lessee to release as provided in paragraph 5 hereof, except that lessee may not so release as to lands within a unit while there are operations thereon for unitized minerals unless all pooled leases are released as to lands within the unit. At any time while this lease is in force lessee may dissolve any unit established hereunder by filing for record in the public office where this lease is recorded a declaration to that effect, if at that time no operations are being conducted thereon for unitized minerals. Subject to the provisions of this paragraph 4, a unit once established hereunder shall remain in force so long as any lease subject thereto shall remain in force. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this lease but lessee shall nevertheless have the right to pool or unitize as provided in this paragraph 4 with consequent allocation of production as herein provided. As used in this paragraph 4, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.

5. Lessee may at any time and from time to time execute and deliver to lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations, as to the released acreage or interest.

6. Whenever used in this lease the word "operations" shall mean operations for and any of the following: drilling, testing, completing, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or other minerals, excavating a mine, production of oil, gas, sulphur or other mineral, whether or not in paying quantities.

7. Lessee shall have the use, free from royalty, of water, other than from lessor's water wells, and of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 200 feet to the house or barn now on said land without the consent of the lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.

8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations, and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns, and successive assigns. No change or division in the ownership of said land, royalties, or other moneys, or any part thereof, howsoever effected, shall increase the obligations or diminish the rights of lessee, including, but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof of or to lessee, its successors or assigns, no change or division in the ownership of said land or of the royalties, or other moneys, or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this lease until thirty (30) days after there has been furnished to such record owner at his or its principal place of business by lessor or lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts, or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, lessee may, nevertheless pay or tender such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.

9. In the event lessor considers that lessee has not complied with all its obligations hereunder, both express and implied, lessor shall notify lessee in writing, setting out specifically in what respects lessee has breached this contract. Lessee shall then have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by lessor. The service of said notice shall be precedent to the bringing of any action by lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after service of such notice on lessee. Neither the service of said notice nor the doing of any acts by lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that lessee has failed to perform all its obligations hereunder. If this lease is cancelled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less than forty acres), such acreage to be designated by lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing spacing rules require; and (2) any part of said land included in a pooled unit on which there are operations. Lessee shall also have such easements on said land as are necessary to operations on the acreage so retained.

10. Lessor hereby warrants and agrees to defend title to said land against the claims of all persons whomsoever. Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes or other liens, or interest and other charges on said land, but lessor agrees that lessee shall have the right at any time to pay or reduce same for lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to lessor and/or assigns under this lease. If this lease covers a less interest in the oil, gas, sulphur, or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether lessor's interest is herein specified or not), or no interest therein, then the royalties and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. All royalty interest covered by this lease (whether or not owned by lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as lessor.

11. If, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring ninety (90) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.

IN WITNESS WHEREOF, this instrument is executed on the date first above written;

554-83-2526

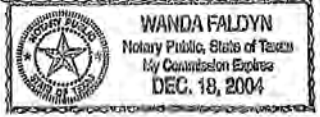
Clydene Miles 44-51-72-6714
LESSOR SS. OR TAX I.D. NO.

LESSOR SS. OR TAX I.D. NO.

Clydene Miles
STATE OF Texas
COUNTY OF Austin

ACKNOWLEDGEMENT 1012

This instrument was acknowledged before me on the 10th day of June, 2002,
by Clydene Miles



Wanda Faldyn
Notary Public, State of Texas
Notary's name (printed):
Notary's commission expires:

ACKNOWLEDGEMENT

STATE OF
COUNTY OF

This instrument was acknowledged before me on the _____ day of _____,
by _____

Notary Public, State of Texas
Notary's name (printed):
Notary's commission expires:

CORPORATE ACKNOWLEDGEMENT

STATE OF
COUNTY OF

This instrument was acknowledged before me on the _____ day of _____,
by _____
a _____ corporation, on behalf of said corporation.

Notary Public, State of Texas
Notary's name (printed):
Notary's commission expires:

Exhibit "A"

Attached to and made part of that certain oil, mineral lease dated May 23, 2002 by and between Clydene Miles as Lessor and Contract Oil and Gas Service Company as Lessee.

OTHER TERMS AND CONDITIONS

Notwithstanding anything contained in this lease to the contrary, and insofar as mineral owner is the owner of the surface estate, the following provisions shall prevail over any other, insofar as the mineral owner has the unencumbered right to enforce such provisions.

12. **Oil and Gas Only:** Notwithstanding anything hereinabove to the contrary, and there is excepted herefrom and reserved to the Lessor herein, all coal, lignite, uranium, fissionable materials, and all bentonite, fullers earth and other clay-like substances, it is specifically understood and agreed upon that this lease covers only oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, but this lease does not cover or include any other minerals, with all other minerals, being reserved to the Lessor herein. Accordingly, the words "oil, gas" when used herein shall mean oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, and the words "all other minerals" whenever used herein, shall be stricken from the lease, so that such "all other minerals", as defined herein, are reserved to the Lessor.

13. **Pugh and retained Acre Clauses:** (a) At the expiration of the primary term, in the event a portion or portions of the leased premises are pooled or utilized with other land, lease or leases pursuant to paragraph 4 hereof so as far to form a pooled unit or units, operations for drilling or reworking operations on such unit or units, or production of oil and gas from such unit or units, shall maintain this lease in effect only as to the portion or portions of the leases premises which are included in such unit or units. Any portion or portions of the leases premises which do not underlie the area within the surface boundaries of a pooled unit or units may be maintained in effect in any manner elsewhere provided in this lease, including, but not limited to: operations upon or production from such portions of the leased premises, or by payment of shut-in gas well royalties.

(b) In addition, if at the end of the primary term there is a producing well or wells on leased acreage or any portion thereof which well or wells have not been pooled with other land according to the terms of paragraph 4 of this lease, such well or wells will maintain this lease in force beyond the primary term only as to enough contiguous acreage surrounding such well or wells necessary to create a 40-acre, if oil, or 640-acre, plus 10% tolerance, if gas, area surrounding said well or wells or such larger area as may be prescribed or permitted by governmental authority having jurisdiction, as provided in paragraph 4 hereof. This lease shall then automatically expire as to all other acreage not so held, or not within any pooled area as provided in paragraph 13 (a) of this lease. Lessee shall designate such retained area to be as near as practicable in the form of a square with the well in the center thereof, and file a notice describing such retained acreage in the real property records of the county where said land is located. If Lessee fails to file such notice within thirty days after the expiration of the primary term, Lessor may designate such retained acreage and file such notice on behalf of Lessee.

(c) As to any portions of the leased premises which remains in effect at the end of the primary term pursuant to paragraphs 13 (a) and (b), this lease shall nevertheless at the end of the primary term, or at the cessation of continuous drilling operations, if Lessee is engaged in actual drilling operations at the end of the primary term, expire as to all of the mineral estate lying below 100 feet below the deepest depth drilled in which Lessee has completed a well on the leased premises or on lands or leases pooled with the leased premises as a commercial producer of oil and/or gas or shut-in gas well, but in no event shall be less than the deepest depth drilled in the Tim Miles #1, which depth shall be not less than 8500 feet below the surface of the earth.

(d) Lessee, within 30 days after the expiration of the primary term of this lease, or the completion or plugging of a well so commenced at the expiration of the primary term, shall execute and deliver to Lessor a proper recordable instrument releasing such portions and depths of the leased premises covered hereby as to which lease has so expired. The expiration of this lease as to such portions and depths, however, shall occur automatically upon the conditions provided herein, regardless of whether Lessee executes and delivers the required release.

(e) Lessor, his or her heirs and assigns may at any time and from time to time go upon any lands then remaining subject to this lease and prospect and drill for hydrocarbons and produce hydrocarbons from any lands and depths as to which this lease shall have terminated. Such operations shall not unreasonably interfere with any operations, which Lessee is conducting on said lands pursuant to this lease.

554-83-2527

554-03-2528

- 14. **Surface Damages:** It is agreed that Lessee will backfill all pits used in drilling operations after they have dried out completely and as nearly as practical, return the surface to the same condition as it was prior to said drilling operations. Further, insofar as mineral owner is the owner of the surface estate, Lessee agrees to pay Lessor for damages to all timber, grasses, crops, fences, livestock, water wells and water ponds as a result of drilling operations and those damages shall be based on reasonable market value at the time of such damage. Lessee shall not have the use of any ponds, lakes, or streams on the leased premises without the express written consent of the Lessor and shall protect the same from pollution and damage as result of drilling operations.
- 15. **Royalty:** (a) Wherever the word and fraction "one-eighth (1/8th)" appears in the lease, and specifically in paragraph 3 above, such words are deemed deleted and substituted with the words and fraction "one-fifth (1/5th)".
 (b) Lessor's royalty provided for herein shall not be charged directly or indirectly with or reduced by any of the expenses of production, operating, gathering, dehydration, compression, transportation, manufacturing, processing, treating or marketing of gas, oil, or any liquefiable hydrocarbons extracted therefrom and covered by this lease with the exception of any and all taxes and/or regulatory fees.
- 16. **Disposal Wells:** Lessee agrees that there will be no disposal or injection wells of any kind located or utilized on the leased premises without prior written consent of the Lessor, which consent shall not be unreasonably withheld, if for the purpose of producing oil or gas from said Lease.
- 17. **Shut-In Limitation:** (a) Lessee may not maintain this lease by payment of shut-in royalty for any one shut-in period greater than two (2) years, or for more than three (3) years in the aggregate, and it is understood that the provisions of this lease for the perpetuation of this lease by shut-in payments shall apply only to well designated as a gas well by the railroad Commission of Texas.
 (b) It is hereby agreed and understood between Lessor and Lessee that if at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to five dollars (\$5.00) for each acre of land then covered hereby.
- 18. **Hunting and fishing:** Hunting and fishing by Lessee, its employees, agents, or contractors are specifically forbidden.

Signed for Identification:

Clydene Miles
Clydene Miles

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS VOID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
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 Harris County, Texas on

JUL 15 2002



Dorothy L. Kayman
COUNTY CLERK
HARRIS COUNTY, TEXAS

Return to: Contract Oil + Gas
9307 Hufsmith Rd
Tomball Tx 77375

RECORDERS MEMORANDUM
AT THE TIME OF RECORDATION, THIS INSTRUMENT WAS FOUND TO BE INADEQUATE FOR THE BEST PHOTOGRAPHIC REPRODUCTION BECAUSE OF ILLEGIBILITY, CARBON OR PHOTO COPY, DISCOLORED PAPER, ETC.

Amended

AMENDMENT OF OIL, GAS AND MINERAL LEASE

20

STATE OF TEXAS

COUNTY OF HARRIS

Z253621
04/26/06 300823706

\$20.00

X

He

KNOW ALL MEN BY THESE PRESENTS: That, heretofore, under date of May 23, 2002, CLYDENE MILES, as Lessor, did execute and deliver to CONTRACT OIL & GAS SERVICE COMPANY, as Lessee, an Oil, Gas and Mineral Lease recorded as File No. V936419 of the Official Records of Harris County, Texas, covering land located in Harris County, Texas, being more specifically described as follows, to-wit:

40 acres of land in the form of a square around the Time Miles #1 Well in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas. API # 42-201-04126

which mineral lease is called "the Lease" and

WHEREAS, the Lease and all rights and privileges thereunder are now owned and held by CONTRACT OIL & GAS SERVICE COMPANY, with offices located at 9307 Hufsmith Road, Tomball, Texas 77375, hereinafter called "COG"; and

WHEREAS, it is the desire of both Lessor and Lessee to amend said Lease so as to amend and correct the description of the land intended to be included in said Lease;

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, (whether one or more) as Lessor, hereby agrees with Lessee that said Lease shall be, and the same hereby reformed and amended so that the land covered and to be covered thereby is described as follows:

596.12 acres of land, more or less, out of and a part of the David Middleton Survey, A-535 and the Blas Herrera Survey, A-321, Harris County, Texas and being described in that certain Deed dated April 18, 1929 from J.H. Arnold and wife to Tim Miles, recorded in Volume 797, Page 292 under File No. 402463 of the Deed Records of Harris County, Texas.

D

EXCEPT AS AMENDED HEREBY, the Lease shall remain unchanged and the undersigned do hereby adopt, ratify, and confirm the Lease and all of the terms and provisions thereof, as changed, altered and amended hereby; and the undersigned do hereby LEASE, GRANT and LET the above described property covered by the Lease unto COG, subject to and in accordance with all of the terms and provisions of the Lease as amended hereby and the undersigned do further agree and declare that the Lease is a valid and subsisting oil, gas and mineral lease and is binding on the undersigned in all of its terms and provisions.

PP 020-93-3171

This Amendment shall extend to and bind the undersigned and COG and its respective heirs, successors, assigns, administrators, executors and legal representatives. The filing of this instrument for record by COG or its successors and assigns, shall constitute an acceptance thereof by COG or its successors and assigns.

EXECUTED this 29th day January, 2003, but effective for all purposes as of May 23, 2002.

LESSOR:

Clydene Miles
Clydene Miles

10R

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW. THE STATE OF TEXAS COUNTY OF HARRIS I hereby certify that this instrument was FILED in the number Sequence on the date and at time stamped herein by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County Texas on

APR 26 2006



Beverly B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

RET. Robert M. Curtis
11211 Katy Freeway #300
Houston, TX 77079

✓

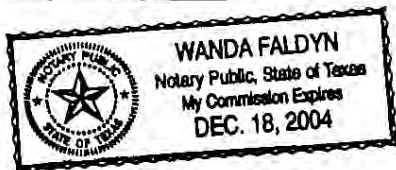
THE STATE OF TEXAS

COUNTY OF Austin

This instrument was acknowledged before me on the 29th day of January, 2003 by Clydene Miles.

Wanda Faldyn
Notary Public in and for the State of Texas

My commission expires:
12-18-04



Beverly B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

2006 APR 26 PM 12:14

FILED

HP 020-93-3172

W175518

Producers 88(7/69)—Paid Up
With 640 Acres Pooling Provision

OIL GAS AND MINERAL LEASE

THIS AGREEMENT made this 23rd day of May, 2002, EDWARD LOUIS MILES and wife, MAUREEN M. MILES, as Lessor, whose address is: 1903 Wildwood Lane, Richmond, TX 77469 and CONTRACT OIL & GAS SERVICE COMPANY, as Lessee, whose address is: 9307 (Hufsmith) Road, Tomball, TX 77375, WITNESSETH:

10/25/02 201914070 W175518 \$15.00

1. Lessor, in consideration of Ten Dollars and Other Valuable Considerations (\$10.00 and O.V.C.), receipt of which is hereby acknowledged, and of the covenants and agreements of Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on the said land, lay pipe lines, establish and utilize facilities for surface or subsurface disposal of salt water, construct roads and bridges, dig canals, build tanks, power stations, power lines, telephone lines, employee houses, and other structures on said land, necessary or useful in Lessee's operations in exploring, drilling for, producing, treating, storing, and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land", is located in the County of Harris, State of Texas, and is described as follows:

40 acres of land in the form of a square around the Tim Miles #1 Well in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas. API # 42-201-04126

This lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and owned or claimed by the Lessor by limitation, prescription, possession, reversion or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land. For this purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 40 acres, whereby actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus and agrees to accept the delay rental as lump sum considerations for this lease and all rights and options hereunder.

2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of one (1) year from the date hereof, hereinafter called "primary term", and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.

3. As royalty, Lessee covenants and agrees: (a) To deliver to the credit of Lessor, in the pipe line to which Lessee may connect its wells, the equal to one-eighth (1/8th) part of all oil produced and saved by Lessee from said land, or from time to time, at the option of Lessee, to pay Lessor the average posted market price of such one-eighth (1/8th) part of such oil at the wells as of the day it is run to the pipe line or storage tanks, Lessor's interest, in either case, to bear one-eighth (1/8th) of the cost of treating oil to render it marketable pipe line oil; (b) To pay Lessor on gas and casinghead gas produced from said land (1) when sold by Lessee, one-eighth (1/8th) of the amount realized by the Lessee, computed at the mouth of the well, or (2) when used by Lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of one-eighth (1/8th) of such gas and casinghead gas; (c) To pay Lessor on all other minerals mined and marketed or utilized by Lessee from said land, one-tenth either in kind or in value at the well or mine at the Lessee's election, except that on sulphur mined and marketed the royalty shall be Two and 50/100 dollar (\$2.50) per long ton. If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing gas or any other mineral covered hereby, and all such wells are shut-in, this lease shall, nevertheless, continue in force as though operations were being conducted on said land for so long as wells are shut-in, and thereafter this lease may be continued in force as if no shut-in had occurred. Lessee covenants and agrees to use reasonable diligence to produce, utilize or market the minerals capable of being produced from said wells, but in the exercise of such diligence, Lessee shall not be obligated to install or furnish facilities other than well facilities and ordinary lease facilities of flow lines, separator, and lease tank, and shall not be required to settle labor trouble or to market gas upon terms unacceptable to Lessee. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to one dollar (\$1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period, if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in the PAY LESSOR DIRECT AT THE ABOVE ADDRESS, or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that Lessee pays or tenders shut-in royalty, two or more parties are, or claim to be entitled to receive same, Lessee may, in lieu of any other method of payment herein provided, pay or tender such shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereon, as Lessee may elect. Any payment hereunder may be made by check or draft of Lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair Lessee's right to release as provided in paragraph 5 hereof. In event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to the acreage owned by each.

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease with any other land covered by this lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance, provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons, as to contain not more than the 640 surface acres plus 10% acreage tolerance, if limited to one or more of the following: (1) gas other than casinghead gas, (2) liquid hydrocarbons (condensate) which are not liquids in the subsurface reservoir, (3) minerals produced from wells classified as gas wells by the conservation agency having jurisdiction. If larger units than any of these herein permitted, either at the time established, or after enlargement, are required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilling, or already drilled, any such unit may be established as enlarged to conform to the size required by such governmental order or rule. Lessee shall exercise said option as to each desired unit by executing an instrument identifying such unit and filing it for record in the public office in which this lease is recorded. Each of said options may be exercised by Lessee at any time and from time to time while this lease is in force, and whether before or after production has been established either on said land, or on the portion of said land included in the unit, or on other land unitized therewith. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty, or leasehold interests in lands within the unit which are not effectively pooled or unitized. Any operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon said land under this lease. There shall be allocated to the land covered by this lease within each such unit (as to each separate tract within the unit if this lease covers separate tracts within the unit) that proportion of the total production of unitized minerals from the unit after deducting any used in lease or unit operations, which the number of surface acres in such land (or in each such separate tract) covered by this lease within the unit bears to the total number of surface acres in the unit, and the production so allocated shall be considered for all purposes, including payment or delivery of royalty, overriding royalty and any other payments out of production, to be the entire production of unitized minerals from the land to which allocated in the same manner as though produced therefrom under the terms of this lease. The owner of the reversionary estate of any term royalty or mineral estate agrees that the accrual of royalties pursuant to this paragraph or of shut-in royalties from a well on the unit shall satisfy any limitation of term requiring production of oil or gas. The formation of any unit hereunder which includes land not covered by this lease shall not have the effect of exchanging or transferring any interest under this lease (including, without limitation, any shut-in royalty which may become payable under this lease) between parties owning interests in land covered by this lease and parties owning interests in land not covered by this lease. Neither shall it impair the right of Lessee to release as provided in paragraph 5 hereof, except that Lessee may not so release as to lands within a unit while there are operations thereon for unitized minerals unless all pooled leases are released as to lands within the unit. At any time while this lease is in force Lessee may dissolve any unit established hereunder by filing for record in the public office where this lease is recorded a declaration to that effect, if at that time no operations are being conducted thereon for unitized minerals. Subject to the provisions of this paragraph 4, a unit once established hereunder shall remain in force so long as any lease subject thereto shall remain in force. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to pool or unitize as provided in this paragraph 4 with consequent allocation of production as herein provided. As used in this paragraph 4, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.

5. Lessee may at any time and from time to time execute and deliver to Lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations as to the released acreage or interest.

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6. Whenever used in this lease the word "operations" shall mean all operations for and any of the following: drilling, testing, completing, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or any other minerals, excavating a mine, production of oil, gas, sulphur or other mineral, whether or not in paying quantities.

7. Lessee shall have the use, free from royalty, of water, other than Lessor's wells, and of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 200 feet in the house or barn now on said land without the consent of the Lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.

8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns and successive assigns. No change or division of ownership of said land, royalties, delay rental, or other moneys, or any part thereof, however effected, shall increase the obligations or diminish the rights of the Lessee, including, but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof of or to Lessee, its successors or assigns, no change or division in the ownership of said land or of the royalties, or other moneys or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this lease until thirty (30) days after there has been furnished to such record owner at his or its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, Lessee may, nevertheless, pay or tender such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.

9. In the event Lessor considers that Lessee has not complied with all the obligations hereunder, both express and implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this contract. Lessee shall have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after the service of such notice on Lessee. Neither the service of said notice nor the doing of acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all of its obligations hereunder. Should it be asserted in any notice given to the Lessee under the provisions of this paragraph that Lessee has failed to comply with any implied obligation or covenant hereof, this lease shall not be subject to cancellation for any such cause except after final judicial ascertainment that such failure exists and Lessee has then been afforded a reasonable time to prevent cancellation by complying with and discharging its obligations as to which Lessee has been judicially determined to be in default. If this lease is canceled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less than forty (40) acres), such acreage to be designated by Lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing spacing rules require; and (2) any part of said land included in a pooled unit on which there are operations. Lessee shall also have such easements on said land as are necessary to operations on the acreage so retained.

10. Lessor hereby warrants and agrees to defend title to said land against the claims of all persons whomsoever. Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes, or other liens, or interest and other charges on said land, but Lessor agrees that Lessee shall have the right at any time to pay or reduce same for Lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this lease. Lessee is hereby given the right to acquire for its own benefit, deeds, leases, or assignments covering any interest or claim in said land which Lessee or any other party contends is outstanding and not covered hereby and even though such outstanding interest or claim be invalid or adverse to the Lessor. If this lease covers a less interest in the oil, gas, sulphur or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties, delay rental, and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.

11. If, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and Lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of Lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring ninety (90) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.
SEE ADDITIONAL ADDENDUMS ATTACHED HERETO AND MADE A PART HEREOF.

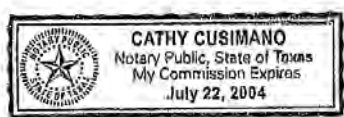
Edward Louis Miles
EDWARD LOUIS MILES

Maureen M. Miles *Jow*
MAUREEN M. MILES

STATE OF TEXAS
COUNTY OF FORT BEND

This instrument was acknowledged before me on this 15th day of October, 2002 by Edward Louis Miles and Maureen M. Miles.

Cathy Cusimano
Notary Public in and for the State of Texas.



FILED
2002 OCT 25 PM 12:27
COUNTY CLERK
FORT BEND COUNTY TEXAS

Exhibit "A"

Attached to and made part of that certain oil, mineral lease dated May 23, 2002 by and between Edward Louis Miles and wife, Maureen M. Miles, as Lessor and Contract Oil and Gas Service Company as Lessee.

OTHER TERMS AND CONDITIONS

Notwithstanding anything contained in this lease to the contrary, and insofar as mineral owner is the owner of the surface estate, the following provisions shall prevail over any other, insofar as the mineral owner has the unencumbered right to enforce such provisions.

12. **Oil and Gas Only:** Notwithstanding anything hereinabove to the contrary, and there is excepted herefrom and reserved to the Lessor herein, all coal, lignite, uranium, fissionable materials, and all bentonite, fullers earth and other clay-like substances, it is specifically understood and agreed upon that this lease covers only oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, but this lease does not cover or include any other minerals, with all other minerals, being reserved to the Lessor herein. Accordingly, the words "oil, gas" when used herein shall mean oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, and the words "all other minerals" whenever used herein, shall be stricken from the lease, so that such "all other minerals", as defined herein, are reserved to the Lessor.

13. **~~Pugh and Retained Acre Clauses:~~**

~~(a) At the expiration of the primary term, in the event a portion or portions of the leased premises are pooled or utilized with other land, lease or leases pursuant to paragraph 4 hereof so as far to form a pooled unit or units, operations for drilling or reworking operations on such unit or units, or production of oil and gas from such unit or units, shall maintain this lease in effect only as to the portion or portions of the leased premises which are included in such unit or units. Any portion or portions of the leased premises which do not underlie the area within the surface boundaries of a pooled unit or units may be maintained in effect in any manner elsewhere provided in this lease, including, but not limited to, operations upon or production from such portions of the leased premises, or by payment of shut-in gas well royalties.~~

~~(b) In addition, if at the end of the primary term there is a producing well or wells on leased acreage or any portion thereof which well or wells have not been pooled with other land according to the terms of paragraph 4 of this lease, such well or wells will maintain this lease in force beyond the primary term only as to enough contiguous acreage surrounding such well or wells necessary to create a 40-acre, if oil, or 640-acre, plus 10% tolerance, if gas, area surrounding said well or wells or such larger area as may be prescribed or permitted by governmental authority having jurisdiction, as provided in paragraph 4 hereof. This lease shall then automatically expire as to all other acreage not so held, or not within any pooled area as provided in paragraph 13 (a) of this lease. Lessee shall designate such retained area to be as near as practicable in the form of a square with the well in the center thereof, and file a notice describing such retained acreage in the real property records of the county where said land is located. If Lessee fails to file such notice within thirty days after the expiration of the primary term, Lessor may designate such retained acreage and file such notice on behalf of Lessee.~~

~~(c) As to any portions of the leased premises which remains in effect at the end of the primary term pursuant to paragraphs 13 (a) and (b), this lease shall nevertheless at the end of the primary term, or at the cessation of continuous drilling operations, if Lessee is engaged in actual drilling operations at the end of the primary term, expire as to all of the mineral estate lying below 100 feet below the deepest depth drilled in which Lessee has completed a well on the leased premises or on lands or leases pooled with the leased premises as a commercial producer of oil and/or gas or shut-in gas well, but in no event shall be less than the deepest depth drilled in the Tim Miles #1, which depth shall be not less than 8500 feet below the surface of the earth.~~

~~(d) Lessee, within 30 days after the expiration of the primary term of this lease, or the completion or plugging of a well so commenced at the expiration of the primary term, shall execute and deliver to Lessor a proper recordable instrument releasing such portions and depths of the leased premises covered hereby as to which lease has so expired. The expiration of this lease as to such portions and depths, however, shall occur automatically upon the conditions provided herein, regardless of whether Lessee executes and delivers the required release.~~

~~(e) Lessor, his or her heirs and assigns may at any time and from time to time go upon any lands then remaining subject to this lease and prospect and drill for hydrocarbons and produce hydrocarbons from any lands and depths as to which this lease shall have terminated. Such operations shall not unreasonably interfere with any operations, which Lessee is conducting on said lands pursuant to this lease.~~

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14. **Surface Damages:** It is agreed that Lessee will backfill all pits used in drilling operations after they have dried out completely and as nearly as practical, return the surface to the same condition as it was prior to said drilling operations. Further, insofar as mineral owner is the owner of the surface estate, Lessee agrees to pay Lessor for damages to all timber, grasses, crops, fences, livestock, water wells and water ponds as a result of drilling operations and those damages shall be based on reasonable market value at the time of such damage. Lessee shall not have the use of any ponds, lakes, or streams on the leased premises without the express written consent of the Lessor and shall protect the same from pollution and damage as result of drilling operations.

15. **Royalty:**
(a) Wherever the word and fraction "one-eighth (1/8th)" appears in the lease, and specifically in paragraph 3 above, such words are deemed deleted and substituted with the words "twenty-two and one-half percent (22.50%)".

(b) Lessor's royalty provided for herein shall not be charged directly or indirectly with or reduced by any of the expenses of production, operating, gathering, dehydration, compression, transportation, manufacturing, processing, treating or marketing of gas, oil, or any liquefiable hydrocarbons extracted therefrom and covered by this lease with the exception of any and all taxes and/or regulatory fees.

16. **Disposal Wells:** Lessee agrees that there will be no disposal or injection wells of any kind located or utilized on the leased premises without prior written consent of the Lessor, ~~which consent shall not be unreasonably withheld, if for the purpose of producing oil or gas from said lease.~~

17. **Shut-In Limitation:**
(a) Lessee may not maintain this lease by payment of shut-in royalty for any one shut-in period greater than two (2) years, or for more than three (3) years in the aggregate, and it is understood that the provisions of this lease for the perpetuation of this lease by shut-in payments shall apply only to well designated as a gas well by the railroad Commission of Texas.

(b) It is hereby agreed and understood between Lessor and Lessee that if at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to twenty-five dollars (\$25.00) for each acre of land then covered hereby.

18. **Hunting and fishing:** Hunting and fishing by Lessee, its employees, agents, or contractors are specifically forbidden.

19. **Indemnification:** Lessee, for itself, its successors and assigns, hereby agrees to indemnify and hold harmless Lessor, their heirs, successors and assigns, from and against any and all claims, demands and causes of action for injury (including death), or damage to persons or property arising out of, incidental to, or resulting from the operations of or for Lessee, its servants, agents, employees, invitees, independent contractors, successors and/or assigns, and from and against all costs and expenses incurred by Lessor by reason of any such claim or claims, including attorneys' fees, and each Assignee of this lease or interest therein, agrees to indemnify and hold harmless Lessor in the same manner provided above. Such indemnity shall apply to any claim arising out of operations conducted or pursuant to this lease, howsoever caused, including, but not by way of limitation, any negligent act or omission of Lessor, Lessor's representatives, agents or employees.

RECORDERS MEMORANDUM
ALL BLACKOUTS, ADDITIONS AND CHANGES
WERE PRESENT AT THE TIME THE INSTRUMENT
WAS FILED AND RECORDED.

Signed for Identification:

Edward Louis Miles
Edward Louis Miles

Maureen M. Miles
Maureen M. Miles

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
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 said Property of Harris County, Texas on

OCT 25 2002

RETURN TO: CUALY OIL INC
11211 KATY FRWY
STE 300
HOUSTON TX 77079



Dorothy L. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

OIL GAS AND MINERAL LEASE

10/25/02 201914071 W175519

\$15.00

J. J. J.

THIS AGREEMENT made this 23rd day of May, 2002, LINDA RICHARDS, as Lessor, whose address is: 11403 Cold Springs Dr., Houston, TX 77043 and CONTRACT OIL & GAS SERVICE COMPANY, as Lessee, whose address is: 9307 Hufsmith Road, Tomball, TX 77375, WITNESSETH:

1. Lessor, in consideration of Ten Dollars and Other Valuable Considerations (\$10.00 and O.V.C.), receipt of which is hereby acknowledged, and of the covenants and agreements of Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on the said land, lay pipe lines, establish and utilize facilities for surface or subsurface disposal of salt water, construct roads and bridges, dig canals, build tanks, power stations, power lines, telephone lines, employee houses, and other structures on said land, necessary or useful in Lessee's operations in exploring, drilling for, producing, treating, storing, and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land", is located in the County of Harris, State of Texas, and is described as follows:

40 acres of land in the form of a square around the Tim Miles #1 Well in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas. API # 42-201-04126

This lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by the Lessor by limitation, prescription, possession, reversion or unrecorded instrument or (b) as to which Lessee has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land. For this purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 40 acres, whereby actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus and agrees to accept the delay rental as lump sum considerations for this lease and all rights and options hereunder.

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2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of one (1) year from the date hereof, hereinafter called "primary term", and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.

3. As royalty, Lessee covenants and agrees: (a) To deliver to the credit of Lessor, in the pipe line to which Lessee may connect its wells, the equal to one-eighth (1/8th) part of all oil produced and saved by Lessee from said land, or from time to time, at the option of Lessee, to pay Lessor the average posted market price of such one-eighth (1/8th) part of such oil at the wells as of the day it is run to the pipe line or storage tanks, Lessor's interest, in either case, to bear one-eighth (1/8th) of the cost of treating oil to render it marketable pipe line oil; (b) To pay Lessor on gas and casinghead gas produced from said land (1) when sold by Lessee, one-eighth (1/8th) of the amount realized by the Lessee, computed at the mouth of the well, or (2) when used by Lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of one-eighth (1/8th) of such gas and casinghead gas; (c) To pay Lessor on all other minerals mined and marketed or utilized by Lessee from said land, one-tenth either in kind or in value at the well or mine at the Lessee's election, except that on sulphur mined and marketed the royalty shall be Two and 50/100 dollar (\$2.50) per long ton. If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing gas or any other mineral covered hereby, and all such wells are shut-in, this lease shall, nevertheless, continue in force as though operations were being conducted on said land for so long as wells are shut-in, and thereafter this lease may be continued in force as if no shut-in had occurred. Lessee covenants and agrees to use reasonable diligence to produce, utilize or market the minerals capable of being produced from said wells, but in the exercise of such diligence, Lessee shall not be obligated to install or furnish facilities other than well facilities and ordinary lease facilities of flow lines, separator, and lease tank, and shall not be required to settle labor trouble or to market gas upon terms unacceptable to Lessee. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to one dollar (\$1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period, if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in the PAY LESSOR DIRECT AT THE ABOVE ADDRESS, or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that Lessee pays or tenders shut-in royalty, two or more parties are, or claim to be entitled to receive same, Lessee may, in lieu of any other method of payment herein provided, pay or tender such shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereon, as Lessee may elect. Any payment hereunder may be made by check or draft of Lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair Lessee's right to release as provided in paragraph 5 hereof. In event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to the acreage owned by each.

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease with any other land covered by this lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance, provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons, so as to contain not more than 640 surface acres plus 10% acreage tolerance, if limited to one or more of the following: (1) gas other than casinghead gas, (2) liquid hydrocarbons (condensate) which are not liquids in the subsurface reservoir, (3) minerals produced from wells classified as gas wells by the conservation agency having jurisdiction, if larger units than any of those herein permitted, either at the time established, or after enlargement, are required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilled, or already drilled, any such unit may be established or enlarged to conform to the size required by such governmental order or rule. Lessee shall exercise said option as to each desired unit by executing an instrument identifying such unit and filing it for record in the public office in which this lease is recorded. Each of said options may be exercised by Lessee at any time and from time to time while this lease is in force, and whether before or after production has been established either on said land, or on the portion of said land included in the unit, or on other land unitized therewith. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty, or leasehold interests in lands within the unit which are not effectively pooled or unitized. Any operations conducted on any part of each unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon said land under this lease. There shall be allocated to the land covered by this lease within each such unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) that proportion of the total production of unitized minerals from the unit after deducting any used in lease or unit operations, which the number of surface acres in such land (or in each such separate tract) covered by this lease within the unit bears to the total number of surface acres in the unit, and the production so allocated shall be considered for all purposes, including payment or delivery of royalty, overriding royalty, and any other payments out of production, to be the entire production of unitized minerals from the land to which allocated in the same manner as though produced therefrom under the terms of this lease. The owner of the reversionary estate of any form royalty or mineral estate agrees that the amount of royalties pursuant to this paragraph or of shut-in royalties from a well on the unit shall satisfy any limitation of term requiring production of oil or gas. The formation of any unit hereunder which includes land not covered by this lease shall not have the effect of exchanging or transferring any interest under this lease (including, without limitation, any shut-in royalty which may become payable under this lease) between parties owning interests in land covered by this lease and parties owning interests in land not covered by this lease. Neither shall it impair the right of Lessee to release as provided in paragraph 5 hereof, except that Lessee may not so release as to lands within a unit while there are operations thereon for unitized minerals unless all pooled leases are released as to lands within the unit. At any time while this lease is in force Lessee may dissolve any unit established hereunder by filing for record in the public office where this lease is recorded a declaration to that effect, if at that time no operations are being conducted thereon for unitized minerals. Subject to the provisions of this paragraph 4, a unit once established hereunder shall remain in force so long as any lease subject thereto shall remain in force. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to pool or unitize as provided in this paragraph 4 with consequent allocation of production as herein provided. As used in this paragraph 4, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.

5. Lessee may at any time and from time to time execute and deliver to Lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations as to the released acreage or interest.

558-26-3229

6. Whenever used in this lease the word "operations" shall mean all operations for and any of the following: drilling, testing, completing, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or any other minerals, excavating a mine, production of oil, gas, sulphur or other mineral, whether or not in paying quantities.

7. Lessee shall have the use, free from royalty, of water, other than Lessor's wells, and of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 200 feet in the house or barn now on said land without the consent of the Lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.

8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns and successive assigns. No change or division of ownership of said land, royalties, delay rental, or other moneys, or any part thereof, however effected, shall increase the obligations or diminish the rights of the Lessee, including, but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof of or to Lessee, its successors or assigns, no change or division in the ownership of said land or of the royalties, or other moneys or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this lease until thirty (30) days after there has been furnished to such record owner at his or its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, Lessee may, nevertheless, pay or tender such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.

9. In the event Lessor considers that Lessee has not complied with all the obligations hereunder, both express and implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this contract. Lessee shall have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after the service of such notice on Lessee. Neither the service of said notice nor the doing of acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all of its obligations hereunder. Should it be asserted in any notice given to the Lessee under the provisions of this paragraph that Lessee has failed to comply with any implied obligation or covenant hereof, this lease shall not be subject to cancellation for any such cause except after final judicial ascertainment that such failure exists and Lessee has then been afforded a reasonable time to prevent cancellation by complying with and discharging its obligations as to which Lessee has been judicially determined to be in default. If this lease is canceled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less than forty (40) acres), such acreage to be designated by Lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing spacing rules require; and (2) any part of said land included in a pooled unit on which there are operations. Lessee shall also have such easements on said land as are necessary to operations on the acreage so retained.

10. ~~Lessor hereby warrants and agrees to defend title to said land against the claims of all persons whomsoever.~~ Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes, or other liens, or interest and other charges on said land, but Lessor agrees that Lessee shall have the right at any time to pay or reduce same for Lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this lease. Lessee is hereby given the right to acquire for its own benefit, deeds, leases, or assignments covering any interest or claim in said land which Lessee or any other party contends is outstanding and not covered hereby and even though such outstanding interest or claim be invalid or adverse to the Lessor. If this lease covers a less interest in the oil, gas, sulphur or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties, delay rental, and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.

11. If, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and Lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of Lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring ninety (90) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.
SEE ADDITIONAL ADDENDUMS ATTACHED HERETO AND MADE A PART HEREOF.

Linda Richards
LINDA RICHARDS
SS# 450-90-4777 *LR*

STATE OF TEXAS
COUNTY OF Harris

This instrument was acknowledged before me on this 17th day of October, 2002 by Linda Richards.

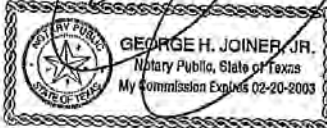
George H. Joiner, Jr.
Notary Public in and for the State of Texas


Exhibit "A"

Attached to and made part of that certain oil, mineral lease dated May 23, 2002 by and between Linda Richards, as Lessor and Contract Oil and Gas Service Company as Lessee.

OTHER TERMS AND CONDITIONS

Notwithstanding anything contained in this lease to the contrary, and insofar as mineral owner is the owner of the surface estate, the following provisions shall prevail over any other, insofar as the mineral owner has the unencumbered right to enforce such provisions.

12. **Oil and Gas Only:** Notwithstanding anything hereinabove to the contrary, and there is excepted herefrom and reserved to the Lessor herein, all coal, lignite, uranium, fissionable materials, and all bentonite, fullers earth and other clay-like substances, it is specifically understood and agreed upon that this lease covers only oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, but this lease does not cover or include any other minerals, with all other minerals, being reserved to the Lessor herein. Accordingly, the words "oil, gas" when used herein shall mean oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, and the words "all other minerals" whenever used herein, shall be stricken from the lease, so that such "all other minerals", as defined herein, are reserved to the Lessor.

13. **Pugh and Retained Acre Clauses:**

(a) ~~At the expiration of the primary term, in the event a portion or portions of the leased premises are pooled or utilized with other land, lease or leases pursuant to paragraph 4 hereof so as far to form a pooled unit or units, operations for drilling or reworking operations on such unit or units, or production of oil and gas from such unit or units, shall maintain this lease in effect only as to the portion or portions of the leases premises which are included in such unit or units. Any portion or portions of the leases premises which do not underlie the area within the surface boundaries of a pooled unit or units may be maintained in effect in any manner elsewhere provided in this lease, including but not limited to operations upon or production from such portions of the leased premises, or by payment of shut-in gas well royalties.~~

(b) ~~In addition, if at the end of the primary term there is a producing well or wells on leased acreage or any portion thereof which well or wells have not been pooled with other land according to the terms of paragraph 4 of this lease, such well or wells will maintain this lease in force beyond the primary term only as to enough contiguous acreage surrounding such well or wells necessary to create a 40-acre, if oil, or 640-acre, plus 10% tolerance, if gas, area surrounding said well or wells or such larger area as may be prescribed or permitted by governmental authority having jurisdiction, as provided in paragraph 4 hereof. This lease shall then automatically expire as to all other acreage not so held, or not within any pooled area as provided in paragraph 13 (a) of this lease. Lessee shall designate such retained area to be as near as practicable in the form of a square with the well in the center thereof, and file a notice describing such retained acreage in the real property records of the county where said land is located. If Lessee fails to file such notice within thirty days after the expiration of the primary term, Lessor may designate such retained acreage and file such notice on behalf of Lessee.~~

(c) ~~As to any portions of the leased premises which remains in effect at the end of the primary term pursuant to paragraphs 13 (a) and (b), this lease shall nevertheless at the end of the primary term, or at the cessation of continuous drilling operations, if Lessee is engaged in actual drilling operations at the end of the primary term, expire as to all of the mineral estate lying below 100 feet below the deepest depth drilled in which Lessee has completed a well on the leased premises or on lands or leases pooled with the leased premises as a commercial producer of oil and/or gas or shut-in gas well, but in no event shall be less than the deepest depth drilled in the Tim Miles #1, which depth shall be not less than 8500 feet below the surface of the earth.~~

(d) ~~Lessee, within 30 days after the expiration of the primary term of this lease, or the completion or plugging of a well so commenced at the expiration of the primary term, shall execute and deliver to Lessor a proper recordable instrument releasing such portions and depths of the leased premises covered hereby as to which lease has so expired. The expiration of this lease as to such portions and depths, however, shall occur automatically upon the conditions provided herein, regardless of whether Lessee executes and delivers the required release.~~

(e) ~~Lessor, his or her heirs and assigns may at any time and from time to time go upon any lands then remaining subject to this lease and prospect and drill for hydrocarbons and produce hydrocarbons from any lands and depths as to which this lease shall have terminated. Such operations shall not unreasonably interfere with any operations which Lessee is conducting on said lands pursuant to this lease.~~

159-92-888

14. **Surface Damages:** It is agreed that Lessee will backfill all pits used in drilling operations after they have dried out completely and as nearly as practical, return the surface to the same condition as it was prior to said drilling operations. Further, insofar as mineral owner is the owner of the surface estate, Lessee agrees to pay Lessor for damages to all timber, grasses, crops, fences, livestock, water wells and water ponds as a result of drilling operations and those damages shall be based on reasonable market value at the time of such damage. Lessee shall not have the use of any ponds, lakes, or streams on the leased premises without the express written consent of the Lessor and shall protect the same from pollution and damage as result of drilling operations.

15. **Royalty:**
(a) Wherever the word and fraction "one-eighth (1/8th)" appears in the lease, and specifically in paragraph 3 above, such words are deemed deleted and substituted with the words "twenty-two and one-half percent (22.50%)".

(b) Lessor's royalty provided for herein shall not be charged directly or indirectly with or reduced by any of the expenses of production, operating, gathering, dehydration, compression, transportation, manufacturing, processing, treating or marketing of gas, oil, or any liquefiable hydrocarbons extracted therefrom and covered by this lease with the exception of any and all taxes and/or regulatory fees.

16. **Disposal Wells:** Lessee agrees that there will be no disposal or injection wells of any kind located or utilized on the leased premises without prior written consent of the Lessor, ~~which consent shall not be unreasonably withheld, if for the purpose of producing oil or gas from said lease.~~

17. **Shut-In Limitation:**
(a) Lessee may not maintain this lease by payment of shut-in royalty for any one shut-in period greater than two (2) years, or for more than three (3) years in the aggregate, and it is understood that the provisions of this lease for the perpetuation of this lease by shut-in payments shall apply only to well designated as a gas well by the railroad Commission of Texas.

(b) It is hereby agreed and understood between Lessor and Lessee that if at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to twenty-five dollars (\$25.00) for each acre of land then covered hereby.

18. **Hunting and fishing:** Hunting and fishing by Lessee, its employees, agents, or contractors are specifically forbidden.

19. **Indemnification:** Lessee, for itself, its successors and assigns, hereby agrees to indemnify and hold harmless Lessor, their heirs, successors and assigns, from and against any and all claims, demands and causes of action for injury (including death), or damage to persons or property arising out of, incidental to, or resulting from the operations of or for Lessee, its servants, agents, employees, invitees, independent contractors, successors and/or assigns, and from and against all costs and expenses incurred by Lessor by reason of any such claim or claims, including attorneys' fees, and each Assignee of this lease or interest therein, agrees to indemnify and hold harmless Lessor in the same manner provided above. Such indemnity shall apply to any claim arising out of operations conducted or pursuant to this lease, howsoever caused, including, but not by way of limitation, any negligent act or omission of Lessor, Lessor's representatives, agents or employees.

Signed for Identification:

Linda Richards
Linda Richards
SS.# 450-90-4777

RECORDERS MEMORANDUM
ALL BLACKOUTS, ADDITIONS AND CHANGES
WERE PRESENT AT THE TIME THE INSTRUMENT
WAS FILED AND RECORDED.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

Barbara A. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

2002 OCT 25 PM 12:27

FILED

OCT 25 2002



Barbara A. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

RETURN TO: CURLY OIL INC.
11211 KATY FLY
STE 300
HOUSTON, TX 77079

OIL GAS AND MINERAL LEASE

10/25/02 20191407E W175520 \$15.00

THIS AGREEMENT made this 23rd day of May, 2002, MARY L. WILLIAMS, as Lessor, whose address is: 5103 Berry Creek, Houston, TX 77017 and CONTRACT OIL & GAS SERVICE COMPANY, as Lessee, whose address is: 9307 Hufsmith Road, Tomball, TX 77375, WITNESSETH:

Handwritten signature/initials

Handwritten initials

1. Lessor, in consideration of Ten Dollars and Other Valuable Considerations (\$10.00 and O.V.C.), receipt of which is hereby acknowledged, and of the covenants and agreements of Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on the said land, lay pipe lines, establish and utilize facilities for surface or subsurface disposal of salt water, construct roads and bridges, dig canals, build tanks, power stations, power lines, telephone lines, employee houses, and other structures on said land, necessary or useful in Lessee's operations in exploring, drilling for, producing, treating, storing, and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land", is located in the County of Harris, State of Texas, and is described as follows:

40 acres of land in the form of a square around the Tim Miles #1 Well in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas. API # 42-201-04126

Handwritten letter 'D'

This lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by the Lessee by limitation, prescription, possession, reversion or in recorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land. For this purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 40 acres, whereby actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus and agrees to accept the delay rental as lump sum considerations for this lease and all rights and options hereunder.

558-26-8855

2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of one (1) year from the date hereof, hereinafter called "primary term", and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.

3. As royalty, Lessee covenants and agrees: (a) To deliver to the credit of Lessor, in the pipe line to which Lessee may connect its wells, the equal to one-eighth (1/8th) part of all oil produced and saved by Lessee from said land, or from time to time, at the option of Lessee, to pay Lessor the average posted market price of such one-eighth (1/8th) part of such oil at the wells as of the day it is run to the pipe line or storage tanks, Lessor's interest, in either case, to bear one-eighth (1/8th) of the cost of treating oil to render it marketable pipe line oil; (b) To pay Lessor on gas and casinghead gas produced from said land (1) when sold by Lessee, one-eighth (1/8th) of the amount realized by the Lessee, computed at the mouth of the well, or (2) when used by Lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of one-eighth (1/8th) of such gas and casinghead gas; (c) To pay Lessor on all other minerals mined and marketed or utilized by Lessee from said land, one-tenth either in kind or in value at the well or mine at the Lessee's election, except that on sulphur mined and marketed the royalty shall be Two and 50/100 dollar (\$2.50) per long ton. If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing gas or any other mineral covered hereby, and all such wells are shut-in, this lease shall, nevertheless, continue in force as though operations were being conducted on said land for so long as wells are shut-in, and thereafter this lease may be continued in force as if no shut-in had occurred. Lessee covenants and agrees to use reasonable diligence to produce, utilize or market the minerals capable of being produced from said wells, but in the exercise of such diligence, Lessee shall not be required to install or furnish facilities other than well facilities and ordinary lease facilities of flow lines, separator, and lease tank, and shall not be required to settle labor trouble or to market gas upon terms unacceptable to Lessee. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to one dollar (\$1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period, if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in the PAY LESSOR DIRECT AT THE ABOVE ADDRESS, or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that Lessee pays or tenders shut-in royalty, two or more parties are, or claim to be entitled to receive same, Lessee may, in lieu of any other method of payment herein provided, pay or tender such shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereon, as Lessee may elect. Any payment hereunder may be made by check or draft of Lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair Lessee's right to release as provided in paragraph 5 hereof. In event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to the acreage owned by each.

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease with any other land covered by this lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, so as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance, provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons, so as to contain not more than 640 surface acres plus 10% acreage tolerance, if limited to one or more of the following: (1) gas, other than casinghead gas; (2) liquid hydrocarbons (condensate) which are not liquids in the subsurface reservoir; (3) minerals produced from wells classified as gas wells by the conservation agency having jurisdiction. If larger units than any of those herein permitted, either at the time established, or after enlargement, are required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilling, or already drilled, any such unit may be established or enlarged to conform to the size required by such governmental order or rule. Lessee shall exercise said option as to each desired unit by executing an instrument identifying such unit and filing it for record in the public office in which this lease is recorded. Each of said options may be exercised by Lessee at any time and from time to time while this lease is in force, and whether before or after production has been established either on said land, or on the portion of said land included in the unit, or on other land unitized therewith. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty, or leasehold interests in lands within the unit which are not effectively pooled or unitized. Any operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon said land under this lease. There shall be allocated to the land covered by this lease within each such unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) that proportion of the total production of unitized minerals from the unit, after deducting any used in lease or unit operations, which the number of surface acres in such land (or in each such separate tract) covered by this lease within the unit bears to the total number of surface acres in the unit, and the production so allocated shall be considered for all purposes, including payment or delivery of royalty, overriding royalty and any other payments out of production, to be the entire production of unitized minerals from the land to which allocated in the same manner as though produced therefrom under the terms of this lease. The owner of the reversionary estate of any term royalty or mineral estate agrees that the receipt of royalties pursuant to this paragraph or of shut-in royalties from a well on the unit shall satisfy any limitation of term requiring production of oil or gas. The formation of any unit hereunder which includes land not covered by this lease shall not have the effect of exchanging or transferring any interest under this lease (including, without limitation, any shut-in royalty which may become payable under this lease) between parties owning interests in land covered by this lease and parties owning interests in land not covered by this lease. Neither shall it impair the right of Lessee to release as provided in paragraph 5 hereof, except that Lessee may not so release as to lands within a unit while there are operations thereon for unitized minerals unless all pooled leases are released as to lands within the unit. At any time while this lease is in force Lessee may dissolve any unit established hereunder by filing for record in the public office where this lease is recorded a declaration to that effect, if at that time no operations are being conducted thereon for unitized minerals. Subject to the provisions of this paragraph 4, a unit once established hereunder shall remain in force so long as any lease subject thereto shall remain in force. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to pool or unitize as provided in this paragraph 4 with consequent allocation of production as herein provided. As used in this paragraph 4, the words "separate tract" mean any tract with royalty ownership differing, new or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.

5. Lessee may at any time and from time to time execute and deliver to Lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations as to the released acreage or interest.

6. Whenever used in this lease the word "operations" shall mean all operations for and any of the following: drilling, testing, completing, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or any other minerals, excavating a mine, production of oil, gas, sulphur or other mineral, whether or not in paying quantities.

7. Lessee shall have the use, free from royalty, of water, other than Lessor's wells, and of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 200 feet in the house or barn now on said land without the consent of the Lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.

8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns and successive assigns. No change or division of ownership of said land, royalties, delay rental, or other moneys, or any part thereof, however effected, shall increase the obligations or diminish the rights of the Lessee, including, but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof of or to Lessee, its successors or assigns, no change or division in the ownership of said land or of the royalties, or other moneys or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this lease until thirty (30) days after there has been furnished to such record owner at his or its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, Lessee may, nevertheless, pay or tender such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.

9. In the event Lessor considers that Lessee has not complied with all the obligations hereunder, both express and implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this contract. Lessee shall have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after the service of such notice on Lessee. Neither the service of said notice nor the doing of acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all of its obligations hereunder. Should it be asserted in any notice given to the Lessee under the provisions of this paragraph that Lessee has failed to comply with any implied obligation or covenant hereof, this lease shall not be subject to cancellation for any such cause except after final judicial ascertainment that such failure exists and Lessee has then been afforded a reasonable time to prevent cancellation by complying with and discharging its obligations as to which Lessee has been judicially determined to be in default. If this lease is canceled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less than forty (40) acres), such acreage to be designated by Lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing spacing rules require; and (2) any part of said land included in a pooled unit on which there are operations. Lessee shall also have such easements on said land as are necessary to operations on the acreage so retained.

10. ~~Lessor hereby warrants and agrees to defend title to said land against the claims of all persons whomsoever.~~ Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes, or other liens, or interest and other charges on said land, but Lessor agrees that Lessee shall have the right at any time to pay or reduce same for Lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this lease. Lessee is hereby given the right to acquire for its own benefit, deeds, leases, or assignments covering any interest or claim in said land which Lessee or any other party contends is outstanding and not covered hereby and even though such outstanding interest or claim be invalid or adverse to the Lessor. If this lease covers a less interest in the oil, gas, sulphur or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties, delay rental, and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.

11. If, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and Lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of Lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring ninety (90) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.
SEE ADDITIONAL ADDENDUMS ATTACHED HERETO AND MADE A PART HEREOF.

550-26-0203

Mary L. Williams
MARY L. WILLIAMS
SS 463-64-0097

STATE OF TEXAS
COUNTY OF Harris

This instrument was acknowledged before me on this 16th day of October, 2002 by Mary L. Williams.

Christine Durlam
Notary Public in and for the State of Texas.



Exhibit "A"

Attached to and made part of that certain oil, mineral lease dated May 23, 2002 by and between Mary L. Williams, as Lessor and Contract Oil and Gas Service Company as Lessee.

OTHER TERMS AND CONDITIONS

Notwithstanding anything contained in this lease to the contrary, and insofar as mineral owner is the owner of the surface estate, the following provisions shall prevail over any other, insofar as the mineral owner has the unencumbered right to enforce such provisions.

- 558-26-3294
12. **Oil and Gas Only:** Notwithstanding anything hereinabove to the contrary, and there is excepted herefrom and reserved to the Lessor herein, all coal, lignite, uranium, fissionable materials, and all bentonite, fullers earth and other clay-like substances, it is specifically understood and agreed upon that this lease covers only oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, but this lease does not cover or include any other minerals, with all other minerals, being reserved to the Lessor herein. Accordingly, the words "oil, gas" when used herein shall mean oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, and the words "all other minerals" whenever used herein, shall be stricken from the lease, so that such "all other minerals", as defined herein, are reserved to the Lessor.
13. **Plug and Retained Acre Clauses:**
- (a) ~~At the expiration of the primary term, in the event a portion or portions of the leased prisms are pooled or utilized with other land, lease or leases pursuant to paragraph 4 hereof so as far to form a pooled unit or units, operations for drilling or reworking operations on such unit or units, or production of oil and gas from such unit or units, shall maintain this lease in effect only as to the portion or portions of the leased premises which are included in such unit or units. Any portion or portions of the leased premises which do not underlie the area within the surface boundaries of a pooled unit or units may be maintained in effect in any manner elsewhere provided in this lease, including, but not limited to, operations upon or production from such portions of the leased premises, or by payment of shut-in gas well royalties.~~
- (b) ~~In addition, if at the end of the primary term there is a producing well or wells on leased acreage or any portion thereof which well or wells have not been pooled with other land according to the terms of paragraph 4 of this lease, such well or wells will maintain this lease in force beyond the primary term only as to enough contiguous acreage surrounding such well or wells necessary to create a 40-acre, if oil, or 640-acre, plus 10% tolerance, if gas, area surrounding said well or wells or such larger area as may be prescribed or permitted by governmental authority having jurisdiction, as provided in paragraph 4 hereof. This lease shall then automatically expire as to all other acreage not so held, or not within any pooled area as provided in paragraph 13 (a) of this lease. Lessee shall designate such retained area to be as near as practicable in the form of a square with the well in the center thereof, and file a notice describing such retained acreage in the real property records of the county where said land is located. If Lessee fails to file such notice within thirty days after the expiration of the primary term, Lessor may designate such retained acreage and file such notice on behalf of Lessee.~~
- (c) ~~As to any portions of the leased premises which remains in effect at the end of the primary term pursuant to paragraphs 13 (a) and (b), this lease shall nevertheless at the end of the primary term, or at the cessation of continuous drilling operations, if Lessee is engaged in actual drilling operations at the end of the primary term, expire as to all of the mineral estate lying below 100 feet below the deepest depth drilled in which Lessee has completed a well on the leased premises or on lands or leases pooled with the leased premises as a commercial producer of oil and/or gas or shut-in gas well, but in no event shall be less than the deepest depth drilled in the Tim Miles #1, which depth shall be not less than 8500 feet below the surface of the earth.~~
- (d) ~~Lessee, within 30 days after the expiration of the primary term of this lease, or the completion or plugging of a well so commenced at the expiration of the primary term, shall execute and deliver to Lessor a proper recordable instrument releasing such portions and depths of the leased premises covered hereby as to which lease has so expired. The expiration of this lease as to such portions and depths, however, shall occur automatically upon the conditions provided herein, regardless of whether Lessee executes and delivers the required release.~~
- (e) ~~Lessor, his or her heirs and assigns may at any time and from time to time go upon any lands then remaining subject to this lease and prospect and drill for hydrocarbons and produce hydrocarbons from any lands and depths as to which this lease shall have terminated. Such operations shall not unreasonably interfere with any operations, which Lessee is conducting on said lands pursuant to this lease.~~

55232-92-2235

14. **Surface Damages:** It is agreed that Lessee will backfill all pits used in drilling operations after they have dried out completely and as nearly as practical, return the surface to the same condition as it was prior to said drilling operations. Further, insofar as mineral owner is the owner of the surface estate, Lessee agrees to pay Lessor for damages to all timber, grasses, crops, fences, livestock, water wells and water ponds as a result of drilling operations and those damages shall be based on reasonable market value at the time of such damage. Lessee shall not have the use of any ponds, lakes, or streams on the leased premises without the express written consent of the Lessor and shall protect the same from pollution and damage as result of drilling operations.

15. **Royalty:**
(a) Wherever the word and fraction "one-eighth (1/8th)" appears in the lease, and specifically in paragraph 3 above, such words are deemed deleted and substituted with the words "twenty-two and one-half percent (22.50%)".

(b) Lessor's royalty provided for herein shall not be charged directly or indirectly with or reduced by any of the expenses of production, operating, gathering, dehydration, compression, transportation, manufacturing, processing, treating or marketing of gas, oil, or any liquefiable hydrocarbons extracted therefrom and covered by this lease with the exception of any and all taxes and/or regulatory fees.

16. **Disposal Wells:** Lessee agrees that there will be no disposal or injection wells of any kind located or utilized on the leased premises without prior written consent of the Lessor, ~~which consent shall not be unreasonably withheld, if for the purpose of producing oil or gas from said lease.~~

17. **Shut-In Limitation:**
(a) Lessee may not maintain this lease by payment of shut-in royalty for any one shut-in period greater than two (2) years, or for more than three (3) years in the aggregate, and it is understood that the provisions of this lease for the perpetuation of this lease by shut-in payments shall apply only to well designated as a gas well by the railroad Commission of Texas.

(b) It is hereby agreed and understood between Lessor and Lessee that if at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to twenty-five dollars (\$25.00) for each acre of land then covered hereby.

18. **Hunting and fishing:** Hunting and fishing by Lessee, its employees, agents, or contractors are specifically forbidden.

19. **Indemnification:** Lessee, for itself, its successors and assigns, hereby agrees to indemnify and hold harmless Lessor, their heirs, successors and assigns, from and against any and all claims, demands and causes of action for injury (including death), or damage to persons or property arising out of, incidental to, or resulting from the operations of or for Lessee, its servants, agents, employees, invitees, independent contractors, successors and/or assigns, and from and against all costs and expenses incurred by Lessor by reason of any such claim or claims, including attorneys' fees, and each Assignee of this lease or interest therein, agrees to indemnify and hold harmless Lessor in the same manner provided above. Such indemnity shall apply to any claim arising out of operations conducted or pursuant to this lease, howsoever caused, including, but not by way of limitation, any negligent act or omission of Lessor, Lessor's representatives, agents or employees.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in the Number Sequence on the date and at the time stamped hereon by me, and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

Signed for Identification:

Mary L. Williams
Mary L. Williams

OCT 25 2002

463-64-0097



Dorothy B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

RECORDERS MEMORANDUM
ALL BLACKOUTS, ADDITIONS AND CHANGES
WERE PRESENT AT THE TIME THE INSTRUMENT
WAS FILED AND RECORDED.

Dorothy B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

2002 OCT 25 PM 12:27

FILED

RETURN TO: CURLY OIL INC.
11211 KATY FLOYD
STE 300
HOUSTON, TX 77079

AMEND

AMENDMENT OF OIL, GAS AND MINERAL LEASE

20

STATE OF TEXAS

Z253622
04/26/06 300823707

\$20.00

COUNTY OF HARRIS

KNOW ALL MEN BY THESE PRESENTS: That, heretofore, under date of May 23, 2002, MARY L. WILLIAMS, as Lessor, did execute and deliver to CONTRACT OIL & GAS SERVICE COMPANY, as Lessee, an Oil, Gas and Mineral Lease recorded as File No. W175520 of the Official Records of Harris County, Texas, covering land located in Harris County, Texas, being more specifically described as follows, to-wit:

Lee

40 acres of land in the form of a square around the Time Miles #1 Well in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas. API # 42-201-04126

which mineral lease is called "the Lease" and

WHEREAS, the Lease and all rights and privileges thereunder are now owned and held by CONTRACT OIL & GAS SERVICE COMPANY, with offices located at 9307 Hufsmith Road, Tomball, Texas 77375, hereinafter called "COG"; and

WHEREAS, it is the desire of both Lessor and Lessee to amend said Lease so as to amend and correct the description of the land intended to be included in said Lease;

NOW, THEREFORE, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, (whether one or more) as Lessor, hereby agrees with Lessee that said Lease shall be, and the same hereby reformed and amended so that the land covered and to be covered thereby is described as follows:

596.12 acres of land, more or less, out of and a part of the David Middleton Survey, A-535 and the Blas Herrera Survey, A-321, Harris County, Texas and being described in that certain Deed dated April 18, 1929 from J.H. Arnold and wife to Tim Miles, recorded in Volume 797, Page 292 under File No. 402463 of the Deed Records of Harris County, Texas.

D

EXCEPT AS AMENDED HEREBY, the Lease shall remain unchanged and the undersigned do hereby adopt, ratify, and confirm the Lease and all of the terms and provisions thereof, as changed, altered and amended hereby; and the undersigned do hereby LEASE, GRANT and LET the above described property covered by the Lease unto COG, subject to and in accordance with all of the terms and provisions of the Lease as amended hereby and the undersigned do further agree and declare that the Lease is a valid and subsisting oil, gas and mineral lease and is binding on the undersigned in all of its terms and provisions.

This Amendment shall extend to and bind the undersigned and COG and its respective heirs, successors, assigns, administrators, executors and legal representatives. The filing of this

RR 020-99-9179

instrument for record by COG or its successors and assigns, shall constitute an acceptance thereof by COG or its successors and assigns.

EXECUTED this 30~~th~~ day January, 2003, but effective for all purposes as of May 23, 2002.

LESSOR:

Mary L. Williams
Mary L. Williams

10R

✓

RET

Robert M. Curtis
11211 Katy Freeway #300
Houston, TX 77079

THE STATE OF TEXAS

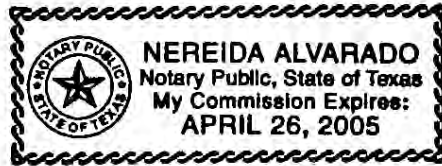
COUNTY OF Harris

This instrument was acknowledged before me on the 30 day of January, 2003 by Mary L. Williams.

Nereida Alvarado
Notary Public in and for the State of Texas

My commission expires:

4-26-2005



Beverly B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

2006 APR 26 PM 12:14

FILED

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW, THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in the number Sequence on the date and at the aforesaid location by me, and was duly RECORDED, in the Official Public Records of Real Property of Harris County Texas on

APR 26 2006



Beverly B. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

RP 020-93-3174

W175521

Producers 88(7/69)--Paid Up
With 640 Acres Pooling Provision

OIL GAS AND MINERAL LEASE

4935 Havemann Rd

THIS AGREEMENT made this 23rd day of May, 2002. TIMOTHY MILES and wife, BRENDA MILES, as Lessor, whose address is: Rt 2, Box 163, Burton, TX 77835 and CONTRACT OIL & GAS SERVICE COMPANY, as Lessee, whose address is: 9307 Hufsmith Road, Tomball, TX 77375, WITNESSETH: 10/25/02 201914073 W175521 \$15.00

Leave
K
B

1. Lessor, in consideration of Ten Dollars and Other Valuable Considerations (\$10.00 and O.V.C.), receipt of which is hereby acknowledged, and of the covenants and agreements of Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on the said land, lay pipe lines, establish and utilize facilities for surface or subsurface disposal of salt water, construct roads and bridges, dig canals, build tanks, power stations, power lines, telephone lines, employee houses, and other structures on said land, necessary or useful in Lessee's operations in exploring, drilling for, producing, treating, storing, and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land", is located in the County of Harris, State of Texas, and is described as follows:

40 acres of land in the form of a square around the Tim Miles #1 Well in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas. API # 42-201-04126

This lease also covers and includes, in addition to the above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by the Lessor by limitation, prescription, possession, reversion or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land. For this purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 40 acres, whereby actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus and agrees to accept the delay rental as lump sum considerations for this lease and all rights and options hereunder.

558-26-3238

2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of one (1) year from the date hereof, hereinafter called "primary term", and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.

3. As royalty, Lessee covenants and agrees: (a) To deliver to the credit of Lessor, in the pipe line to which Lessee may connect its wells, the equal to one-fifth (1/5th) part of all oil produced and saved by Lessee from said land, or from time to time, at the option of Lessee, to pay Lessor the average posted market price of such one-fifth (1/5th) part of such oil at the wells as of the day it is run to the pipe line or storage tanks, Lessor's interest, in either case, to hear one-fifth (1/5th) of the cost of treating oil to render it marketable pipe line oil; (b) To pay Lessor on gas and casinghead gas produced from said land (1) when sold by Lessee, one-fifth (1/5th) of the amount realized by the Lessee, computed at the mouth of the well, or (2) when used by Lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of one-fifth (1/5th) of such gas and casinghead gas; (c) To pay Lessor on all other minerals mined and marketed or utilized by Lessee from said land, one-tenth either in kind or in value at the well or mine at the Lessee's election, except that on sulphur mined and marketed the royalty shall be Two and 50/100 dollar (\$2.50) per long ton. If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing gas or any other mineral covered hereby, and all such wells are shut-in, this lease shall, nevertheless, continue in force as though operations were being conducted on said land for so long as wells are shut-in, and thereafter this lease may be continued in force as if no shut-in had occurred. Lessee covenants and agrees to use reasonable diligence to produce, utilize or market the minerals capable of being produced from said wells, but in the exercise of such diligence, Lessee shall not be obligated to install or furnish facilities other than well facilities and ordinary lease facilities of flow lines, separator, and lease tank, and shall not be required to settle labor trouble or to market gas upon terms unacceptable to Lessee. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to one dollar (\$1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period, if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in the PAY LESSOR DIRECT AT THE ABOVE ADDRESS, or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that Lessee pays or tenders shut-in royalty, two or more parties are, or claim to be entitled to receive same, Lessee may, in lieu of any other method of payment herein provided, pay or tender such shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereon, as Lessee may elect. Any payment hereunder may be made by check or draft of Lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair Lessee's right to release as provided in paragraph 5 hereof. In event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to the acreage owned by each.

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease with any other land covered by this lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, so as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons, so as to contain not more than 640 surface acres, plus 10% acreage tolerance, if limited to one or more of the following: (1) gas, other than casinghead gas; (2) liquid hydrocarbons (condensate) which are not liquids in the subsurface reservoir; (3) minerals produced from wells classified as gas wells by the conservation agency having jurisdiction. If larger units than any of those herein permitted, either at the time established, or after enlargement are required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilling or already drilled, any such unit may be established or enlarged to conform to the size required by such governmental order as rule. Lessee shall exercise said option as to each desired unit by executing an instrument identifying such unit and filing it for record in the public office in which this lease is recorded. Each of said options may be exercised by Lessee at any time and from time to time while this lease is in force, and whether before or after production has been established either on said land, or on the portion of said land included in the unit, or on other land unitized therewith. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty, or leasehold interests in lands within the unit which are not effectively pooled or unitized. Any operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon said land under this lease. There shall be allocated to the land covered by this lease within each such unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) that proportion of the total production of unitized minerals from the unit, after deducting any used in lease or unit operations, which the number of surface acres in such land (or in each such separate tract) covered by this lease within the unit bears to the total number of surface acres in the unit, and the production so allocated shall be considered, for all purposes, including payment or delivery of royalty, overriding royalty and any other payments out of production, to be the entire production of unitized minerals from the land to which allocated in the same manner as though produced therefrom under the terms of this lease. The owner of the reversionary estate of any term royalty or mineral estate agrees that the receipt of royalties pursuant to this paragraph or of shut-in royalties from a well on the unit shall satisfy any limitation of term requiring production of oil or gas. The formation of any unit hereunder which includes land not covered by this lease shall not have the effect of extinguishing or transferring any interest under this lease (including, without limitation, any shut-in royalty which may become payable under this lease) between parties owning interests in land covered by this lease and parties owning interests in land not covered by this lease. Neither shall it impair the right of Lessee to release as provided in paragraph 5 hereof, except that Lessee may not so release as to lands within a unit while there are operations thereon for unitized minerals unless all pooled leases are released as to lands within the unit. At any time while this lease is in force Lessee may dissolve any unit established hereunder by filing for record in the public office where this lease is recorded a declaration to that effect, if at that time no operations are being conducted thereon for unitized minerals. Subject to the provisions of this paragraph, a unit once established hereunder shall remain in force as long as any lease subject thereto shall remain in force. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts intended or shall be implied or result merely from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to pool or unitize as provided in this paragraph with consequent allocation of production as herein provided. As used in this paragraph 4, the words "separate tract" mean any tract with royalty ownership differing now or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.

5. Lessee may at any time and from time to time execute and deliver to Lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations as to the released acreage or interest.

6. Whenever used in this lease the word "operations" shall mean all operations for and any of the following: drilling, testing, completing, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or any other minerals, excavating a mine, production of oil, gas, sulphur or other mineral, whether or not in paying quantities.

7. Lessee shall have the use, free from royalty, of water, other than Lessor's wells, and of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 200 feet in the house or barn now on said land without the consent of the Lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.

8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns and successive assigns. No change or division of ownership of said land, royalties, delay rental, or other moneys, or any part thereof, however effected, shall increase the obligations or diminish the rights of the Lessee, including, but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof or to Lessee, its successors or assigns, no change or division in the ownership of said land or of the royalties, or other moneys or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this lease until thirty (30) days after there has been furnished to such record owner at his or its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, Lessee may, nevertheless, pay or tender such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.

9. In the event Lessor considers that Lessee has not complied with all the obligations hereunder, both express and implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this contract. Lessee shall have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after the service of such notice on Lessee. Neither the service of said notice nor the doing of acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all of its obligations hereunder. Should it be asserted in any notice given to the Lessee under the provisions of this paragraph that Lessee has failed to comply with any implied obligation or covenant hereof, this lease shall not be subject to cancellation for any such cause except after final judicial ascertainment that such failure exists and Lessee has then been afforded a reasonable time to prevent cancellation by complying with and discharging its obligations as to which Lessee has been judicially determined to be in default. If this lease is canceled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less than forty (40) acres), such acreage to be designated by Lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing spacing rules require; and (2) any part of said land included in a pooled unit on which there are operations. Lessee shall also have such easements on said land as are necessary to operations on the acreage so retained.

10. ~~Lessor hereby warrants and agrees to defend title to said land against the claims of all persons whomsoever.~~ Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes, or other liens, or interest and other charges on said land, but Lessor agrees that Lessee shall have the right at any time to pay or reduce same for Lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this lease. Lessee is hereby given the right to acquire for its own benefit, deeds, leases, or assignments covering any interest or claim in said land which Lessee or any other party contends is outstanding and not covered hereby and even though such outstanding interest or claim be invalid or adverse to the Lessor. If this lease covers a less interest in the oil, gas, sulphur or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties, delay rental, and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.

11. If, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and Lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of Lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring ninety (90) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

SEE ADDITIONAL ADDENDUMS ATTACHED HERETO AND MADE A PART HEREOF.

2002-10-10-10

Tim Miles
TIMOTHY MILES

Brenda Miles Jon
BRENDA MILES

STATE OF TEXAS

COUNTY OF Fayette

This instrument was acknowledged before me on this 10th day of October, 2002 by Timothy Miles and Brenda Miles.



Mary Jane Oltmann
Notary Public in and for the State of Texas.

Exhibit "A"

Attached to and made part of that certain oil, mineral lease dated May 23, 2002 by and between **Timothy Miles and wife, Brenda Miles**, as Lessor and **Contract Oil and Gas Service Company** as Lessee.

OTHER TERMS AND CONDITIONS

Notwithstanding anything contained in this lease to the contrary, and insofar as mineral owner is the owner of the surface estate, the following provisions shall prevail over any other, insofar as the mineral owner has the unencumbered right to enforce such provisions.

12. **Oil and Gas Only:** Notwithstanding anything hereinabove to the contrary, and there is excepted herefrom and reserved to the Lessor herein, all coal, lignite, uranium, fissionable materials, and all bentonite, fullers earth and other clay-like substances, it is specifically understood and agreed upon that this lease covers only oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, but this lease does not cover or include any other minerals, with all other minerals, being reserved to the Lessor herein. Accordingly, the words "oil,gas" when used herein shall mean oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, and the words "all other minerals" whenever used herein, shall be stricken from the lease, so that such "all other minerals", as defined herein, are reserved to the Lessor.

13. **~~Pugh and Retained Acre Clauses:~~**

~~(a) At the expiration of the primary term, in the event a portion or portions of the leased prises are pooled or utilized with other land, lease or leases pursuant to paragraph 4 hereof so as far to form a pooled unit or units, operations for drilling or reworking operations on such unit or units, or production of oil and gas from such unit or units, shall maintain this lease in effect only as to the portion or portions of the leases premises which are included in such unit or units. Any portion or portions of the leases premises which do not underlie the area within the surface boundaries of a pooled unit or units may be maintained in effect in any manner elsewhere provided in this lease, including, but not limited to operations upon or production from such portions of the leased premises, or by payment of shut-in gas well royalties.~~

~~(b) In addition, if at the end of the primary term there is a producing well or wells on leased acreage or any portion thereof which well or wells have not been pooled with other land according to the terms of paragraph 4 of this lease, such well or wells will maintain this lease in force beyond the primary term only as to enough contiguous acreage surrounding such well or wells necessary to create a 40 acre, if oil, or 640 acre, plus 10% tolerance, if gas, area surrounding said well or wells or such larger area as may be prescribed or permitted by governmental authority having jurisdiction, as provided in paragraph 4 hereof. This lease shall then automatically expire as to all other acreage not so held, or not within any pooled area as provided in paragraph 13 (a) of this lease. Lessee shall designate such retained area to be as near as practicable in the form of a square with the well in the center thereof, and file a notice describing such retained acreage in the real property records of the county where said land is located. If Lessee fails to file such notice within thirty days after the expiration of the primary term, Lessor may designate such retained acreage and file such notice on behalf of Lessee.~~

~~(c) As to any portions of the leased premises which remains in effect at the end of the primary term pursuant to paragraphs 13 (a) and (b), this lease shall nevertheless at the end of the primary term, or at the cessation of continuous drilling operations, if Lessee is engaged in actual drilling operations at the end of the primary term, expire as to all of the mineral estate lying below 100 feet below the deepest depth drilled in which Lessee has completed a well on the leased premises or on lands or leases pooled with the leased premises as a commercial producer of oil and/or gas or shut-in gas well, but in no event shall be less than the deepest depth drilled in the Tim Miles #1, which depth shall be not less than 8500 feet below the surface of the earth.~~

~~(d) Lessee, within 30 days after the expiration of the primary term of this lease, or the completion or plugging of a well so commenced at the expiration of the primary term, shall execute and deliver to Lessor a proper recordable instrument releasing such portions and depths of the leased premises covered hereby as to which lease has so expired. The expiration of this lease as to such portions and depths, however, shall occur automatically upon the conditions provided herein, regardless of whether Lessee executes and delivers the required release.~~

~~(e) Lessor, his or her heirs and assigns may at any time and from time to time go upon any lands then remaining subject to this lease and prospect and drill for hydrocarbons and produce hydrocarbons from any lands and depths as to which this lease shall have terminated. Such operations shall not unreasonably interfere with any operations, which Lessee is conducting on said lands pursuant to this lease.~~

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559-92-3235

14. **Surface Damages:** It is agreed that Lessee will backfill all pits used in drilling operations after they have dried out completely and as nearly as practical, return the surface to the same condition as it was prior to said drilling operations. Further, insofar as mineral owner is the owner of the surface estate, Lessee agrees to pay Lessor for damages to all timber, grasses, crops, fences, livestock, water wells and water ponds as a result of drilling operations and those damages shall be based on reasonable market value at the time of such damage. Lessee shall not have the use of any ponds, lakes, or streams on the leased premises without the express written consent of the Lessor and shall protect the same from pollution and damage as result of drilling operations.

15. **Royalty:**
(a) Wherever the word and fraction "one-eighth (1/8th)" appears in the lease, and specifically in paragraph 3 above, such words are deemed deleted and substituted with the words "twenty-two and one-half percent (22.50%)".

(b) Lessor's royalty provided for herein shall not be charged directly or indirectly with or reduced by any of the expenses of production, operating, gathering, dehydration, compression, transportation, manufacturing, processing, treating or marketing of gas, oil, or any liquefiable hydrocarbons extracted therefrom and covered by this lease with the exception of any and all taxes and/or regulatory fees.

16. **Disposal Wells:** Lessee agrees that there will be no disposal or injection wells of any kind located or utilized on the leased premises without prior written consent of the Lessor, which consent shall not be unreasonably withheld, if for the purpose of producing oil or gas from said lease.

17. **Shut-In Limitation:**
(a) Lessee may not maintain this lease by payment of shut-in royalty for any one shut-in period greater than two (2) years, or for more than three (3) years in the aggregate, and it is understood that the provisions of this lease for the perpetuation of this lease by shut-in payments shall apply only to well designated as a gas well by the railroad Commission of Texas.

(b) It is hereby agreed and understood between Lessor and Lessee that if at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to twenty-five dollars (\$25.00) for each acre of land then covered hereby.

18. **Hunting and fishing:** Hunting and fishing by Lessee, its employees, agents, or contractors are specifically forbidden.

19. **Indemnification:** Lessee, for itself, its successors and assigns, hereby agrees to indemnify and hold harmless Lessor, their heirs, successors and assigns, from and against any and all claims, demands and causes of action for injury (including death), or damage to persons or property arising out of, incidental to, or resulting from the operations of or for Lessee, its servants, agents, employees, invitees, independent contractors, successors and/or assigns, and from and against all costs and expenses incurred by Lessor by reason of any such claim or claims, including attorneys' fees, and each Assignee of this lease or interest therein, agrees to indemnify and hold harmless Lessor in the same manner provided above. Such indemnity shall apply to any claim arising out of operations conducted or pursuant to this lease, howsoever caused, including, but not by way of limitation, any negligent act or omission of Lessor, Lessor's representatives, agents or employees.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
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 Final Property of Harris County, Texas on

RECORDERS MEMORANDUM
ALL BLACKOUTS, ADDITIONS AND CHANGES
WERE PRESENT AT THE TIME THE INSTRUMENT
WAS FILED AND RECORDED.

OCT 25 2002

Timothy Miles
Timothy Miles

Brenda Miles
Brenda Miles



Dorely B. Kayman
COUNTY CLERK
HARRIS COUNTY, TEXAS

RETURN TO: CURLY OIL INC.
11211 KATY FLYWY
STE 300
HOUSTON, TX 77079

Brenda B. Kayman
COUNTY CLERK
HARRIS COUNTY, TEXAS

2002 OCT 25 PM 12:27

FILED

Producers 88(7/69)—Paid Up
With 640 Acres Pooling Provision

OIL GAS AND MINERAL LEASE

THIS AGREEMENT made this 23rd day of May, 2002, W.B. MILES, JR., dealing in his separate property, as Lessor, whose address is: 6410 Katy Hockley Cut-Off, Katy, Texas 77493 and CONTRACT OIL & GAS SERVICE COMPANY, as Lessee, whose address is: 9307 Hufsmith Road, Tomball, TX 77375, WITNESSETH:

10/25/02 201914074 W175522 \$15.00

1. Lessor, in consideration of Ten Dollars and Other Valuable Considerations (\$10.00 and O.V.C.), receipt of which is hereby acknowledged, and of the covenants and agreements of Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on the said land, lay pipe lines, establish and utilize facilities for surface or subsurface disposal of salt water, construct roads and bridges, dig canals, build tanks, power stations, power lines, telephone lines, employee houses, and other structures on said land, necessary or useful in Lessee's operations in exploring, drilling for, producing, treating, storing, and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land", is located in the County of Harris, State of Texas, and is described as follows:

40 acres of land in the form of a square around the Tim Miles #1 Well in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas. API # 42-201-04126

This lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by the Lessor by limitation, prescription, possession, reversion or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land. For this purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 40 acres, whereby actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus and agrees to accept the delay rental as lump sum considerations for this lease and all rights and options hereunder.

2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of one (1) year from the date hereof, hereinafter called "primary term", and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.

3. As royalty, Lessee covenants and agrees: (a) To deliver to the credit of Lessor, in the pipe line to which Lessee may connect its wells, the equal to one-fifth (1/5th) part of all oil produced and saved by Lessee from said land, or from time to time, at the option of Lessee, to pay Lessor the average posted market price of such one-fifth (1/5th) part of such oil at the wells as of the day it is run to the pipe line or storage tanks, Lessor's interest, in either case, to bear one-fifth (1/5th) of the cost of treating oil to render it marketable pipe line oil; (b) To pay Lessor on gas and casinghead gas produced from said land (1) when sold by Lessee, one-fifth (1/5th) of the amount realized by the Lessee, computed at the mouth of the well, or (2) when used by Lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of one-fifth (1/5th) of such gas and casinghead gas; (c) To pay Lessor on all other minerals mined and marketed or utilized by Lessee from said land, one-tenth either in kind or in value at the well or mine at the Lessee's election, except that on sulphur mined and marketed the royalty shall be Two and 50/100 dollar (\$2.50) per long ton. If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing gas or any other mineral covered hereby, and all such wells are shut-in, this lease shall, nevertheless, continue in force as though operations were being conducted on said land for so long as wells are shut-in, and thereafter this lease may be continued in force as if no shut-in had occurred. Lessee covenants and agrees to use reasonable diligence to produce, utilize or market the minerals capable of being produced from said wells, but in the exercise of such diligence, Lessee shall not be obligated to install or furnish facilities other than well facilities and ordinary lease facilities of flow lines, separator, and lease tank, and shall not be required to settle labor trouble or to market gas upon terms unacceptable to Lessee. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to one dollar (\$1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period, if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in the PAY LESSOR DIRECT AT THE ABOVE ADDRESS, or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that Lessee pays or tenders shut-in royalty, two or more parties are, or claim to be entitled to receive same, Lessee may, in lieu of any other method of payment herein provided, pay or tender such shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereon, as Lessee may elect. Any payment hereunder may be made by check or draft of Lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair Lessee's right to release as provided in paragraph 5 hereof. In event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to the acreage owned by each.

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease with any other land covered by this lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, so as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance; provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons, so as to contain not more than the 640 surface acres plus 10% acreage tolerance, if limited to one or more of the following: (1) gas, other than casinghead gas, (2) liquid hydrocarbons (condensate) which are not liquids in the subsurface reservoir, (3) minerals produced from wells classified as gas wells by the conservation agency having jurisdiction. If larger units than any of those herein permitted, either at the time established, or after enlargement, are required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilling, or already drilled, any such unit may be established or enlarged to conform to the size required by such governmental order or rule. Lessee shall exercise said option as to each desired unit by executing an instrument identifying such unit and filing it for record in the public office in which this lease is recorded. Each of said options may be exercised by Lessee at any time and from time to time while this lease is in force, and whether before or after production has been established either on said land, or on the portion of said land included in the unit, or on other land unitized therewith. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty, or leasehold interests in lands within the unit which are not effectively pooled or unitized. Any operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon said land under this lease. There shall be allocated to the land covered by this lease within each such unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) that proportion of the total production of unitized minerals from the unit, after deducting any used in lease or unit operations, which the number of surface acres in such land (or in each such separate tract) covered by this lease within the unit bears to the total number of surface acres in the unit, and the production so allocated shall be considered for all purposes, including payment or delivery of royalty, overriding royalty and any other payments out of production, to be the entire production of unitized minerals from the land to which allocated in the same manner as though produced therefrom under the terms of this lease. The owner of the reversionary estate of any term royalty or mineral estate agrees that the accrual of royalties pursuant to this paragraph or of shut-in royalties from a well on the unit shall satisfy any limitation of term requiring production of oil or gas. The formation of any unit hereunder which includes land not covered by this lease shall not have the effect of exchanging or transferring any interest under this lease (including, without limitation, any shut-in royalty which may become payable under this lease) between parties owning interests in land covered by this lease and parties owning interests in land not covered by this lease. Neither shall it impair the right of Lessee to release as provided in paragraph 5 hereof, except that Lessee may not so release as to lands within a unit while there are operations thereon for unitized minerals unless all pooled leases are released as to lands within the unit. At any time while this lease is in force Lessee may dissolve any unit established hereunder by filing for record in the public office where this lease is recorded a declaration to that effect, if at that time no operations are being conducted thereon for unitized minerals. Subject to the provisions of this paragraph 4, a unit once established hereunder shall remain in force so long as any lease subject thereto shall remain in force. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to pool or unitize as provided in this paragraph 4 with consequent allocation of production as herein provided. As used in this paragraph 4, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.

5. Lessee may at any time and from time to time execute and deliver to Lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations as to the released acreage or interest.

6. Whenever used in this lease the word "operations" shall mean all operations for and any of the following: drilling, testing, completing, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or any other minerals, excavating a mine, production of oil, gas, sulphur or other mineral, whether or not in paying quantities.

7. Lessee shall have the use, free from royalty, of water, other than Lessor's wells, and of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 200 feet in the house or barn now on said land without the consent of the Lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.

8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns and successive assigns. No change or division of ownership of said land, royalties, delay rental, or other moneys, or any part thereof, however effected, shall increase the obligations or diminish the rights of the Lessee, including, but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof of or to Lessee, its successors or assigns, no change or division in the ownership of said land or of the royalties, or other moneys or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this lease until thirty (30) days after there has been furnished to such record owner at his or its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, Lessee may, nevertheless, pay or tender such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.

9. In the event Lessor considers that Lessee has not complied with all the obligations hereunder, both express and implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this contract. Lessee shall have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after the service of such notice on Lessee. Neither the service of said notice nor the doing of acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all of its obligations hereunder. Should it be asserted in any notice given to the Lessee under the provisions of this paragraph that Lessee has failed to comply with any implied obligation or covenant hereof, this lease shall not be subject to cancellation for any such cause except after final judicial ascertainment that such failure exists and Lessee has then been afforded a reasonable time to prevent cancellation by complying with and discharging its obligations as to which Lessee has been judicially determined to be in default. If this lease is canceled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less than forty (40) acres), such acreage to be designated by Lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing spacing rules require; and (2) any part of said land included in a pooled unit on which there are operations. Lessee shall also have such easements on said land as are necessary to operations on the acreage so retained.

10. Lessor hereby warrants and agrees to defend title to said land against the claims of all persons whomsoever. Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes, or other liens, or interest and other charges on said land, but Lessor agrees that Lessee shall have the right at any time to pay or reduce same for Lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this lease. Lessee is hereby given the right to acquire for its own benefit, deeds, leases, or assignments covering any interest or claim in said land which Lessee or any other party contends is outstanding and not covered hereby and even though such outstanding interest or claim be invalid or adverse to the Lessor. If this lease covers a less interest in the oil, gas, sulphur or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties, delay rental, and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.

11. If, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and Lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of Lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring ninety (90) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

SEE ADDITIONAL ADDENDUMS ATTACHED HERETO AND MADE A PART HEREOF.

W.B. Miles Jr.
W.B. MILES, JR. *WBM*

STATE OF TEXAS

COUNTY OF WALLER

This instrument was acknowledged before me on this 18th day of September 2002 by W.B. Miles, Jr.

Robert M. Curtis
Notary Public in and for the State of Texas.

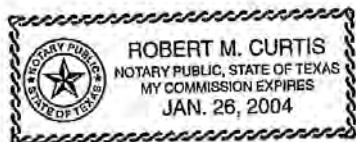


Exhibit "A"

Attached to and made part of that certain oil, mineral lease dated May 23, 2002 by and between W.B. Miles, Jr., as Lessor and Contract Oil and Gas Service Company as Lessee.

OTHER TERMS AND CONDITIONS

Notwithstanding anything contained in this lease to the contrary, and insofar as mineral owner is the owner of the surface estate, the following provisions shall prevail over any other, insofar as the mineral owner has the unencumbered right to enforce such provisions.

- 558-26-3242
12. **Oil and Gas Only:** Notwithstanding anything hereinabove to the contrary, and there is excepted herefrom and reserved to the Lessor herein, all coal, lignite, uranium, fissionable materials, and all bentonite, fullers earth and other clay-like substances, it is specifically understood and agreed upon that this lease covers only oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, but this lease does not cover or include any other minerals, with all other minerals, being reserved to the Lessor herein. Accordingly, the words "oil,gas" when used herein shall mean oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, and the words "all other minerals" whenever used herein, shall be stricken from the lease, so that such "all other minerals", as defined herein, are reserved to the Lessor.
13. **Pugh and Retained Acre Clauses:**
- (a) At the expiration of the primary term, in the event a portion or portions of the leased prises are pooled or utilized with other land, lease or leases pursuant to paragraph 4 hereof so as far to form a pooled unit or units, operations for drilling or reworking operations on such unit or units, or production of oil and gas from such unit or units, shall maintain this lease in effect only as to the portion or portions of the leases premises which are included in such unit or units. Any portion or portions of the leases premises which do not underlie the area within the surface boundaries of a pooled unit or units may be maintained in effect in any manner elsewhere provided in this lease, including, but not limited to: operations upon or production from such portions of the leased premised, or by payment of shut-in gas well royalties.
- (b) In addition, if at the end of the primary term there is a producing well or wells on leased-acreage or any portion thereof which well or wells have not been pooled with other land according to the terms of paragraph 4 of this lease, such well or wells will maintain this lease in force beyond the primary term only as to enough contiguous acreage surrounding such well or wells necessary to create a 40-acre, if oil, or 640-acre, plus 10% tolerance, if gas, area surrounding said well or wells or such larger area as may be prescribed or permitted by governmental authority having jurisdiction, as provided in paragraph 4 hereof. This lease shall then automatically expire as to all other acreage not so held, or not within any pooled area as provided in paragraph 13 (a) of this lease. Lessee shall designate such retained area to be as near as practicable in the form of a square with the well in the center thereof, and file a notice describing such retained acreage in the real property records of the county where said land is located. If Lessee fails to file such notice within thirty days after the expiration of the primary term, Lessor may designate such retained acreage and file such notice on behalf of Lessee.
- (c) As to any portions of the leased premises which remains in effect at the end of the primary term pursuant to paragraphs 13 (a) and (b), this lease shall nevertheless at the end of the primary term, or at the cessation of continuous drilling operations, if Lessee is engaged in actual drilling operations at the end of the primary term, expire as to all of the mineral estate lying below 100 feet below the deepest depth drilled in which Lessee has completed a well on the leased premises or on lands or leases pooled with the leased premises as a commercial producer of oil and/or gas or shut-in gas well, but in no event shall be less than the deepest depth drilled in the Tim Miles #1, which depth shall be not. less than 8500 feet below the surface of the earth.
- (d) Lessee, within 30 days after the expiration of the primary term of this lease, or the completion or plugging of a well so commenced at the expiration of the primary term, shall execute and deliver to Lessor a proper recordable instrument releasing such portions and depths of the leased premises covered hereby as to which lease has so expired. The expiration of this lease as to such portions and depths, however, shall occur automatically upon the conditions provided herein, regardless of whether Lessee executes and delivers the required release.
- (e) Lessor, his or her heirs and assigns may at any time and from time to time go upon any lands then remaining subject to this lease and prospect and drill for hydrocarbons and produce hydrocarbons from any lands and depths as to which this lease shall have terminated. Such operations shall not unreasonably interfere with any operations, which Lessee is conducting on said lands pursuant to this lease.

558-26-3243

- 14. **Surface Damages:** It is agreed that Lessee will backfill all pits used in drilling operations after they have dried out completely and as nearly as practical, return the surface to the same condition as it was prior to said drilling operations. Further, insofar as mineral owner is the owner of the surface estate, Lessee agrees to pay Lessor for damages to all timber, grasses, crops, fences, livestock, water wells and water ponds as a result of drilling operations and those damages shall be based on reasonable market value at the time of such damage. Lessee shall not have the use of any ponds, lakes, or streams on the leased premises without the express written consent of the Lessor and shall protect the same from pollution and damage as result of drilling operations.
- 15. **Royalty:**
 - (a) Wherever the word and fraction "one-eighth (1/8'th)" appears in the lease, and specifically in paragraph 3 above, such words are deemed deleted and substituted with the words and fraction "one-fifth (1/5th)".
 - (b) Lessor's royalty provided for herein shall not be charged directly or indirectly with or reduced by any of the expenses of production, operating, gathering, dehydration, compression, transportation, manufacturing, processing, treating or marketing of gas, oil, or any liquefiable hydrocarbons extracted therefrom and covered by this lease with the exception of any and all taxes and/or regulatory fees.
- 16. **Disposal Wells:** Lessee agrees that there will be no disposal or injection wells of any kind located or utilized on the leased premises without prior written consent of the Lessor, which consent shall not be unreasonably withheld, if for the purpose of producing oil or gas from said Lease.
- 17. **Shut-In Limitation:**
 - (a) Lessee may not maintain this lease by payment of shut-in royalty for any one shut-in period greater than two (2) years, or for more than three (3) years in the aggregate, and it is understood that the provisions of this lease for the perpetuation of this lease by shut-in payments shall apply only to well designated as a gas well by the railroad Commission of Texas.
 - (b) It is hereby agreed and understood between Lessor and Lessee that if at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to five dollars (\$5.00) for each acre of land then covered hereby.
- 18. **Hunting and fishing:** Hunting and fishing by Lessee, its employees, agents, or contractors are specifically forbidden.

Signed for Identification:

W.B. Miles, Jr.
 W.B. Miles, Jr.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
 THE STATE OF TEXAS
 COUNTY OF HARRIS
 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 Harris County, Texas on

OCT 25 2002



Dorely B. Kaufman
 COUNTY CLERK
 HARRIS COUNTY, TEXAS

Beaugh...
 COUNTY CLERK
 HARRIS COUNTY, TEXAS
 2002 OCT 25 PM 12: 27
 FILED

RETURN TO: CURLY OIL INC
 11211 KATY FRLWY
 STE 300
 HOUSTON, TX 77079

Producers 88(7/69)--Paid Up
With 640 Acres Pooling Provision

OIL GAS AND MINERAL LEASE

THIS AGREEMENT made this 23rd day of May, 2002, JOHN T. MILES, dealing in his separate property, as Lessor, whose address is: P.O. Box 623, Katy, Texas 77492 and CONTRACT OIL & GAS SERVICE COMPANY, as Lessee, whose address is: 9307 Hufsmith Road, Tomball, TX 77375, 10/25/02 201914075 W175523 \$15.00

John T. Miles
JT

1. Lessor, in consideration of Ten Dollars and Other Valuable Considerations (\$10.00 and O.V.C.), receipt of which is hereby acknowledged, and of the covenants and agreements of Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on the said land, lay pipe lines, establish and utilize facilities for surface or subsurface disposal of salt water, construct roads and bridges, dig canals, build tanks, power stations, power lines, telephone lines, employee houses, and other structures on said land, necessary or useful in Lessee's operations in exploring, drilling for, producing, treating, storing, and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land", is located in the County of Harris, State of Texas, and is described as follows:

40 acres of land in the form of a square around the Tim Miles #1 Well in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas. API # 42-201-04126

This lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by the Lessor by limitation, prescription, possession, reversion or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land. For this purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain 40 acres, whereby actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus and agrees to accept the delay rental as lump sum considerations for this lease and all rights and options hereunder.

2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of one (1) year from the date hereof, hereinafter called "primary term", and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.

3. As royalty, Lessee covenants and agrees: (a) To deliver to the credit of Lessor, in the pipe line to which Lessee may connect its wells, the equal to one-fifth (1/5th) part of all oil produced and saved by Lessee from said land, or from time to time, at the option of Lessee, to pay Lessor the average posted market price of such one-fifth (1/5th) part of such oil at the wells as of the day it is run to the pipe line or storage tanks, Lessor's interest, in either case, to bear one-fifth (1/5th) of the cost of treating oil to render it marketable pipe line oil; (b) To pay Lessor on gas and casinghead gas produced from said land (1) when sold by Lessee, one-fifth (1/5th) of the amount realized by the Lessee, computed at the mouth of the well, or (2) when used by Lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of one-fifth (1/5th) of such gas and casinghead gas; (c) To pay Lessor on all other minerals mined and marketed or utilized by Lessee from said land, one-tenth either in kind or in value at the well or mine at the Lessee's election, except that on sulphur mined and marketed the royalty shall be Two and 50/100 dollar (\$2.50) per long ton. If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing gas or any other mineral covered hereby, and all such wells are shut-in, this lease shall, nevertheless, continue in force as though operations were being conducted on said land so long as wells are shut-in, and thereafter this lease may be continued in force as if no shut-in had occurred. Lessee covenants and agrees to use reasonable diligence to produce, utilize or market the minerals capable of being produced from said wells, but in the exercise of such diligence, Lessee shall not be obligated to install or furnish facilities other than well facilities and ordinary lease facilities of flow lines, separator, and lease tank, and shall not be required to settle labor trouble or to market gas upon terms unacceptable to Lessee. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to one dollar (\$1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period, if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in the PAY LESSOR DIRECT AT THE ABOVE ADDRESS, or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that Lessee pays or tenders shut-in royalty, two or more parties are, or claim to be entitled to receive same, Lessee may, in lieu of any other method of payment herein provided, pay or tender such shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereon, as Lessee may elect. Any payment hereunder may be made by check or draft of Lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair Lessee's right to release as provided in paragraph 5 hereof. In event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to the acreage owned by each.

558-26-3244

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease with any other land covered by this lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, so as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance; provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons, so as to contain not more than the 640 surface acres plus 10% acreage tolerance, if limited to one or more of the following: (1) gas, other than casinghead gas, (2) liquid hydrocarbons (condensate) which are not liquids in the subsurface reservoir, (3) minerals produced from wells classified as gas wells by the conservation agency having jurisdiction. If larger units than any of those herein permitted, either at the time established, or after enlargement, are required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilling, or already drilled, any such unit may be established or enlarged to conform to the size required by such governmental order or rule. Lessee shall exercise said option as to each desired unit by executing an instrument identifying such unit and filing it for record in the public office in which this lease is recorded. Each of said options may be exercised by Lessee at any time and from time to time while this lease is in force, and whether before or after production has been established either on said land, or on the portion of said land included in the unit, or on other land unitized therewith. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty, or leasehold interests in lands within the unit which are not effectively pooled or unitized. Any operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon said land under this lease. There shall be allocated to the land covered by this lease within each such unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) that proportion of the total production of unitized minerals from the unit, after deducting any used in lease or unit operations, which the number of surface acres in such land (or in each such separate tract) covered by this lease within the unit bears to the total number of surface acres in the unit, and the production so allocated shall be considered for all purposes, including payment or delivery of royalty, overriding royalty and any other payments out of production, to be the entire production of unitized minerals from the land to which allocated in the same manner as though produced therefrom under the terms of this lease. The owner of the reversionary estate of any term royalty or mineral estate agrees that the accrual of royalties pursuant to this paragraph or of shut-in royalties from a well on the unit shall satisfy any limitation of term requiring production of oil or gas. The formation of any unit hereunder which includes land not covered by this lease shall not have the effect of exchanging or transferring any interest under this lease (including, without limitation, any shut-in royalty which may become payable under this lease) between parties owning interests in land covered by this lease and parties owning interests in land not covered by this lease. Neither shall it impair the right of Lessee to release as provided in paragraph 5 hereof, except that Lessee may not so release as to lands within a unit while there are operations thereon for unitized minerals unless all pooled leases are released as to lands within the unit. At any time while this lease is in force Lessee may dissolve any unit established hereunder by filing for record in the public office where this lease is recorded a declaration to that effect, if at that time no operations are being conducted thereon for unitized minerals. Subject to the provisions of this paragraph 4, a unit once established hereunder shall remain in force so long as any lease subject thereto shall remain in force. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to pool or unitize as provided in this paragraph 4 with consequent allocation of production as herein provided. As used in this paragraph 4, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.

5. Lessee may at any time and from time to time execute and deliver to Lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations as to the released acreage or interest.

6. Whenever used in this lease the word "operations" shall mean all operations for and any of the following: drilling, testing, completing, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or any other minerals, excavating a mine, production of oil, gas, sulphur or other mineral, whether or not in paying quantities.

7. Lessee shall have the use, free from royalty, of water, other than Lessor's wells, and of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 200 feet in the house or barn now on said land without the consent of the Lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.

8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns and successive assigns. No change or division of ownership of said land, royalties, delay rental, or other moneys, or any part thereof, however effected, shall increase the obligations or diminish the rights of the Lessee, including, but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof or to Lessee, its successors or assigns, no change or division in the ownership of said land or of the royalties, or other moneys or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this lease until thirty (30) days after there has been furnished to such record owner at his or its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, Lessee may, nevertheless, pay or tender such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.


9. In the event Lessor considers that Lessee has not complied with all the obligations hereunder, both express and implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this contract. Lessee shall have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after the service of such notice on Lessee. Neither the service of said notice nor the doing of acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all of its obligations hereunder. Should it be asserted in any notice given to the Lessee under the provisions of this paragraph that Lessee has failed to comply with any implied obligation or covenant hereof, this lease shall not be subject to cancellation for any such cause except after final judicial ascertainment that such failure exists and Lessee has then been afforded a reasonable time to prevent cancellation by complying with and discharging its obligations as to which Lessee has been judicially determined to be in default. If this lease is canceled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less than forty (40) acres), such acreage to be designated by Lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing spacing rules require; and (2) any part of said land included in a pooled unit on which there are operations. Lessee shall also have such easements on said land as are necessary to operations on the acreage so retained.

10. Lessor hereby warrants and agrees to defend title to said land against the claims of all persons whomsoever. Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes, or other liens, or interest and other charges on said land, but Lessor agrees that Lessee shall have the right at any time to pay or reduce same for Lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this lease. Lessee is hereby given the right to acquire for its own benefit, deeds, leases, or assignments covering any interest or claim in said land which Lessee or any other party contends is outstanding and not covered hereby and even though such outstanding interest or claim be invalid or adverse to the Lessor. If this lease covers a less interest in the oil, gas, sulphur or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties, delay rental, and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.

11. If, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and Lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of Lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring ninety (90) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.

SEE ADDITIONAL ADDENDUMS ATTACHED HERETO AND MADE A PART HEREOF.

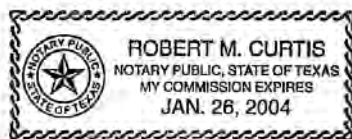

JOHN T. MILES



STATE OF TEXAS

COUNTY OF HARRIS

This instrument was acknowledged before me on this 23rd day of August, 2002 by John T. Miles.




Notary Public in and for the State of Texas.

Exhibit "A"

Attached to and made part of that certain oil, mineral lease dated May 23, 2002 by and between **John T. Miles**, as Lessor and **Contract Oil and Gas Service Company** as Lessee.

OTHER TERMS AND CONDITIONS


Notwithstanding anything contained in this lease to the contrary, and insofar as mineral owner is the owner of the surface estate, the following provisions shall prevail over any other, insofar as the mineral owner has the unencumbered right to enforce such provisions.

- 558-26-3246
12. **Oil and Gas Only:** Notwithstanding anything hereinabove to the contrary, and there is excepted herefrom and reserved to the Lessor herein, all coal, lignite, uranium, fissionable materials, and all bentonite, fullers earth and other clay-like substances, it is specifically understood and agreed upon that this lease covers only oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, but this lease does not cover or include any other minerals, with all other minerals, being reserved to the Lessor herein. Accordingly, the words "oil,gas" when used herein shall mean oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, and the words "all other minerals" whenever used herein, shall be stricken from the lease, so that such "all other minerals", as defined herein, are reserved to the Lessor.
 13. **Pugh and Retained Acre Clauses:**
 - (a) At the expiration of the primary term, in the event a portion or portions of the leased prises are pooled or utilized with other land, lease or leases pursuant to paragraph 4 hereof so as far to form a pooled unit or units, operations for drilling or reworking operations on such unit or units, or production of oil and gas from such unit or units, shall maintain this lease in effect only as to the portion or portions of the leases premises which are included in such unit or units. Any portion or portions of the leases premises which do not underlie the area within the surface boundaries of a pooled unit or units may be maintained in effect in any manner elsewhere provided in this lease, including, but not limited to: operations upon or production from such portions of the leased premises, or by payment of shut-in gas well royalties.
 - (b) In addition, if at the end of the primary term there is a producing well or wells on leased-acreage or any portion thereof which well or wells have not been pooled with other land according to the terms of paragraph 4 of this lease, such well or wells will maintain this lease in force beyond the primary term only as to enough contiguous acreage surrounding such well or wells necessary to create a 40-acre, if oil, or 640-acre, plus 10% tolerance, if gas, area surrounding said well or wells or such larger area as may be prescribed or permitted by governmental authority having jurisdiction, as provided in paragraph 4 hereof. This lease shall then automatically expire as to all other acreage not so held, or not within any pooled area as provided in paragraph 13 (a) of this lease. Lessee shall designate such retained area to be as near as practicable in the form of a square with the well in the center thereof, and file a notice describing such retained acreage in the real property records of the county where said land is located. If Lessee fails to file such notice within thirty days after the expiration of the primary term, Lessor may designate such retained acreage and file such notice on behalf of Lessee.
 - (c) As to any portions of the leased premises which remains in effect at the end of the primary term pursuant to paragraphs 13 (a) and (b), this lease shall nevertheless at the end of the primary term, or at the cessation of continuous drilling operations, if Lessee is engaged in actual drilling operations at the end of the primary term, expire as to all of the mineral estate lying below 100 feet below the deepest depth drilled in which Lessee has completed a well on the leased premises or on lands or leases pooled with the leased premises as a commercial producer of oil and/or gas or shut-in gas well, but in no event shall be less than the deepest depth drilled in the Tim Miles #1, which depth shall be not less than 8500 feet below the surface of the earth.
 - (d) Lessee, within 30 days after the expiration of the primary term of this lease, or the completion or plugging of a well so commenced at the expiration of the primary term, shall execute and deliver to Lessor a proper recordable instrument releasing such portions and depths of the leased premises covered hereby as to which lease has so expired. The expiration of this lease as to such portions and depths, however, shall occur automatically upon the conditions provided herein, regardless of whether Lessee executes and delivers the required release.
 - (e) Lessor, his or her heirs and assigns may at any time and from time to time go upon any lands then remaining subject to this lease and prospect and drill for hydrocarbons and produce hydrocarbons from any lands and depths as to which this lease shall have terminated. Such operations shall not unreasonably interfere with any operations, which Lessee is conducting on said lands pursuant to this lease.

558-26-3247

- 14. **Surface Damages:** It is agreed that Lessee will backfill all pits used in drilling operations after they have dried out completely and as nearly as practical, return the surface to the same condition as it was prior to said drilling operations. Further, insofar as mineral owner is the owner of the surface estate, Lessee agrees to pay Lessor for damages to all timber, grasses, crops, fences, livestock, water wells and water ponds as a result of drilling operations and those damages shall be based on reasonable market value at the time of such damage. Lessee shall not have the use of any ponds, lakes, or streams on the leased premises without the express written consent of the Lessor and shall protect the same from pollution and damage as result of drilling operations.
- 15. **Royalty:**
 - (a) Wherever the word and fraction "one-eighth (1/8'th)" appears in the lease, and specifically in paragraph 3 above, such words are deemed deleted and substituted with the words and fraction "one-fifth (1/5th)".
 - (b) Lessor's royalty provided for herein shall not be charged directly or indirectly with or reduced by any of the expenses of production, operating, gathering, dehydration, compression, transportation, manufacturing, processing, treating or marketing of gas, oil, or any liquefiable hydrocarbons extracted therefrom and covered by this lease with the exception of any and all taxes and/or regulatory fees.
- 16. **Disposal Wells:** Lessee agrees that there will be no disposal or injection wells of any kind located or utilized on the leased premises without prior written consent of the Lessor, which consent shall not be unreasonably withheld, if for the purpose of producing oil or gas from said Lease.
- 17. **Shut-In Limitation:**
 - (a) Lessee may not maintain this lease by payment of shut-in royalty for any one shut-in period greater than two (2) years, or for more than three (3) years in the aggregate, and it is understood that the provisions of this lease for the perpetuation of this lease by shut-in payments shall apply only to well designated as a gas well by the railroad Commission of Texas.
 - (b) It is hereby agreed and understood between Lessor and Lessee that if at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to five dollars (\$5.00) for each acre of land then covered hereby.
- 18. **Hunting and fishing:** Hunting and fishing by Lessee, its employees, agents, or contractors are specifically forbidden.

Signed for Identification:



 John T. Miles

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
 THE STATE OF TEXAS
 COUNTY OF HARRIS
 I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

OCT 25 2002





 BEVERLY B. KAYMAN
 COUNTY CLERK
 HARRIS COUNTY, TEXAS

2002 OCT 25 PM 12: 27
 BEVERLY B. KAYMAN
 COUNTY CLERK
 HARRIS COUNTY, TEXAS

FILED

RETURN TO: CURLY OIL INC
 11211 KATY FLYWY
 STE 300
 HOUSTON, TX 77079

W175524

Producers 88(7/69)--Paid Up
With 640 Acres Pooling Provision

OIL GAS AND MINERAL LEASE

THIS AGREEMENT made this 23rd day of May, 2002, DAVID L. MILES, dealing in his separate property, as Lessor, whose address is: 7827 Dover Lane, Richmond, Texas 77469 and CONTRACT OIL & GAS SERVICE COMPANY, as Lessee, whose address is: 9307 Huffsmith Road, Tomball, TX 77375, WITNESSETH:

10/25/02 201914076 W175524 \$15.00

1. Lessor, in consideration of Ten Dollars and Other Valuable Considerations (\$10.00 and O.V.C.), receipt of which is hereby acknowledged, and of the covenants and agreements of Lessee hereinafter contained, does hereby grant, lease and let unto Lessee the land covered hereby for the purposes and with the exclusive right of exploring, drilling, mining and operating for, producing and owning oil, gas, sulphur and all other minerals (whether or not similar to those mentioned), together with the right to make surveys on the said land, lay pipe lines, establish and utilize facilities for surface or subsurface disposal of salt water, construct roads and bridges, dig canals, build tanks, power stations, power lines, telephone lines, employee houses, and other structures on said land, necessary or useful in Lessee's operations in exploring, drilling for, producing, treating, storing, and transporting minerals produced from the land covered hereby or any other land adjacent thereto. The land covered hereby, herein called "said land", is located in the County of Harris, State of Texas, and is described as follows:

40 acres of land in the form of a square around the Tim Miles #1 Well in the Blas Herrera Survey, Abstract No. 321, Harris County, Texas. API # 42-201-04126

This lease also covers and includes, in addition to that above described, all land, if any, contiguous or adjacent to or adjoining the land above described and (a) owned or claimed by the Lessor by limitation, prescription, possession, reversion or unrecorded instrument or (b) as to which Lessor has a preference right of acquisition. Lessor agrees to execute any supplemental instrument requested by Lessee for a more complete or accurate description of said land. For this purpose of determining the amount of any bonus or other payment hereunder, said land shall be deemed to contain .40 acres, whereby actually containing more or less, and the above recital of acreage in any tract shall be deemed to be the true acreage thereof. Lessor accepts the bonus and agrees to accept the delay rental as lump sum considerations for this lease and all rights and options hereunder.

2. Unless sooner terminated or longer kept in force under other provisions hereof, this lease shall remain in force for a term of one (1) year from the date hereof, hereinafter called "primary term", and as long thereafter as operations, as hereinafter defined, are conducted upon said land with no cessation for more than ninety (90) consecutive days.

3. As royalty, Lessee covenants and agrees: (a) To deliver to the credit of Lessor, in the pipe line to which Lessee may connect its wells, the equal to one-fifth (1/5th) part of all oil produced and saved by Lessee from said land, or from time to time, at the option of Lessee, to pay Lessor the average posted market price of such one-fifth (1/5th) part of such oil at the wells as of the day it is run to the pipe line or storage tanks, Lessor's interest, in either case, to bear one-fifth (1/5th) of the cost of treating oil to render it marketable pipe line oil; (b) To pay Lessor on gas and casinghead gas produced from said land (1) when sold by Lessee, one-fifth (1/5th) of the amount realized by the Lessee, computed at the month of the well, or (2) when used by Lessee off said land or in the manufacture of gasoline or other products, the market value, at the mouth of the well, of one-fifth (1/5th) of such gas and casinghead gas; (c) To pay Lessor on all other minerals mined and marketed or utilized by Lessee from said land, one-tenth either in kind or in value at the well or mine at the Lessee's election, except that on sulphur mined and marketed the royalty shall be Two and 50/100 dollar (\$2.50) per long ton. If, at the expiration of the primary term or at any time or times thereafter, there is any well on said land or on lands with which said land or any portion thereof has been pooled, capable of producing gas or any other mineral covered hereby, and all such wells are shut-in, this lease shall, nevertheless, continue in force as though operations were being conducted on said land for so long as wells are shut-in, and thereafter this lease may be continued in force as if no shut-in had occurred. Lessee covenants and agrees to use reasonable diligence to produce, utilize or market the minerals capable of being produced from said wells, but in the exercise of such diligence, Lessee shall not be obligated to install or furnish facilities other than well facilities and ordinary lease facilities of flow lines, separator, and lease tank, and shall not be required to settle labor trouble or to market gas upon terms unacceptable to Lessee. If, at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to one dollar (\$1.00) for each acre of land then covered hereby. Lessee shall make like payments or tenders at or before the end of each anniversary of the expiration of said ninety day period, if upon such anniversary this lease is being continued in force solely by reason of the provisions of this paragraph. Each payment or tender shall be made to the parties who at the time of payment would be entitled to receive the royalties which would be paid under this lease if the wells were producing, and may be deposited in the PAY LESSOR DIRECT AT THE ABOVE ADDRESS, or its successors, which shall continue as the depositories, regardless of changes in the ownership of shut-in royalty. If at any time that Lessee pays or tenders shut-in royalty, two or more parties are, or claim to be entitled to receive same, Lessee may, in lieu of any other method of payment herein provided, pay or tender such shut-in royalty, in the manner above specified, either jointly to such parties or separately to each in accordance with their respective ownerships thereon, as Lessee may elect. Any payment hereunder may be made by check or draft of Lessee deposited in the mail or delivered to the party entitled to receive payment or to a depository bank provided for above on or before the last date for payment. Nothing herein shall impair Lessee's right to release as provided in paragraph 5 hereof. In event of assignment of this lease in whole or in part, liability for payment hereunder shall rest exclusively on the then owner or owners of this lease, severally as to the acreage owned by each.

4. Lessee is hereby granted the right, at its option, to pool or unitize any land covered by this lease with any other land covered by this lease, and/or with any other land, lease, or leases, as to any or all minerals or horizons, so as to establish units containing not more than 80 surface acres, plus 10% acreage tolerance; provided, however, units may be established as to any one or more horizons, or existing units may be enlarged as to any one or more horizons, so as to contain not more the 640 surface acres plus 10% acreage tolerance, if limited to one or more of the following: (1) gas, other than casinghead gas, (2) liquid hydrocarbons (condensate) which are not liquids in the subsurface reservoir, (3) minerals produced from wells classified as gas wells by the conservation agency having jurisdiction. If larger units than any of those herein permitted, either at the time established, or after enlargement, are required under any governmental rule or order, for the drilling or operation of a well at a regular location, or for obtaining maximum allowable from any well to be drilled, drilling, or already drilled, any such unit may be established or enlarged to conform to the size required by such governmental order or rule. Lessee shall exercise said option as to each desired unit by executing an instrument identifying such unit and filing it for record in the public office in which this lease is recorded. Each of said options may be exercised by Lessee at any time and from time to time while this lease is in force, and whether before or after production has been established either on said land, or on the portion of said land included in the unit, or on other land unitized therewith. A unit established hereunder shall be valid and effective for all purposes of this lease even though there may be mineral, royalty, or leasehold interests in lands within the unit which are not effectively pooled or unitized. Any operations conducted on any part of such unitized land shall be considered, for all purposes, except the payment of royalty, operations conducted upon said land under this lease. There shall be allocated to the land covered by this lease within each such unit (or to each separate tract within the unit if this lease covers separate tracts within the unit) that proportion of the total production of unitized minerals from the unit, after deducting any used in lease or unit operations, which the number of surface acres in such land (or in each such separate tract) covered by this lease within the unit bears to the total number of surface acres in the unit, and the production so allocated shall be considered for all purposes, including payment or delivery of royalty, overriding royalty and any other payments out of production, to be the entire production of unitized minerals from the land to which allocated in the same manner as though produced therefrom under the terms of this lease. The owner of the reversionary estate of any term royalty or mineral estate agrees that the accrual of royalties pursuant to this paragraph or of shut-in royalties from a well on the unit shall satisfy any limitation of term requiring production of oil or gas. The formation of any unit hereunder which includes land not covered by this lease shall not have the effect of exchanging or transferring any interest under this lease (including, without limitation, any shut-in royalty which may become payable under this lease) between parties owning interests in land covered by this lease and parties owning interests in land not covered by this lease. Neither shall it impair the right of Lessee to release as provided in paragraph 5 hereof, except that Lessee may not so release as to lands within a unit while there are operations thereon for unitized minerals unless all pooled leases are released as to lands within the unit. At any time while this lease is in force Lessee may dissolve any unit established hereunder by filing for record in the public office where this lease is recorded a declaration to that effect, if at that time no operations are being conducted thereon for unitized minerals. Subject to the provisions of this paragraph 4, a unit once established hereunder shall remain in force so long as any lease subject thereto shall remain in force. If this lease now or hereafter covers separate tracts, no pooling or unitization of royalty interests as between any such separate tracts is intended or shall be implied or result merely from the inclusion of such separate tracts within this lease but Lessee shall nevertheless have the right to pool or unitize as provided in this paragraph 4 with consequent allocation of production as herein provided. As used in this paragraph 4, the words "separate tract" mean any tract with royalty ownership differing, now or hereafter, either as to parties or amounts, from that as to any other part of the leased premises.

5. Lessee may at any time and from time to time execute and deliver to Lessor or file for record a release or releases of this lease as to any part or all of said land or of any mineral or horizon thereunder, and thereby be relieved of all obligations as to the released acreage or interest.

558-26-3248

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Handwritten initials: "102" and "1".

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558-26-3249

6. Whenever used in this lease the word "operations" shall mean all operations for and any of the following: drilling, testing, completing, reworking, recompleting, deepening, plugging back or repairing of a well in search for or in an endeavor to obtain production of oil, gas, sulphur or any other minerals, excavating a mine, production of oil, gas, sulphur or other mineral, whether or not in paying quantities.

7. Lessee shall have the use, free from royalty, of water, other than Lessor's wells, and of oil and gas produced from said land in all operations hereunder. Lessee shall have the right at any time to remove all machinery and fixtures placed on said land, including the right to draw and remove casing. No well shall be drilled nearer than 200 feet in the house or barn now on said land without the consent of the Lessor. Lessee shall pay for damages caused by its operations to growing crops and timber on said land.

8. The rights and estate of any party hereto may be assigned from time to time in whole or in part and as to any mineral or horizon. All of the covenants, obligations and considerations of this lease shall extend to and be binding upon the parties hereto, their heirs, successors, assigns and successive assigns. No change or division of ownership of said land, royalties, delay rental, or other moneys, or any part thereof, however effected, shall increase the obligations or diminish the rights of the Lessee, including, but not limited to, the location and drilling of wells and the measurement of production. Notwithstanding any other actual or constructive knowledge or notice thereof of or to Lessee, its successors or assigns, no change or division in the ownership of said land or of the royalties, or other moneys or the right to receive the same, howsoever effected, shall be binding upon the then record owner of this lease until thirty (30) days after there has been furnished to such record owner at his or its principal place of business by Lessor or Lessor's heirs, successors, or assigns, notice of such change or division, supported by either originals or duly certified copies of the instruments which have been properly filed for record and which evidence such change or division, and of such court records and proceedings, transcripts or other documents as shall be necessary in the opinion of such record owner to establish the validity of such change or division. If any such change in ownership occurs by reason of the death of the owner, Lessee may, nevertheless, pay or tender such royalties, or other moneys, or part thereof, to the credit of the decedent in a depository bank provided for above.

9. In the event Lessor considers that Lessee has not complied with all the obligations hereunder, both express and implied, Lessor shall notify Lessee in writing, setting out specifically in what respects Lessee has breached this contract. Lessee shall have sixty (60) days after receipt of said notice within which to meet or commence to meet all or any part of the breaches alleged by Lessor. The service of said notice shall be precedent to the bringing of any action by Lessor on said lease for any cause, and no such action shall be brought until the lapse of sixty (60) days after the service of such notice on Lessee. Neither the service of said notice nor the doing of acts by Lessee aimed to meet all or any of the alleged breaches shall be deemed an admission or presumption that Lessee has failed to perform all of its obligations hereunder. Should it be asserted in any notice given to the Lessee under the provisions of this paragraph that Lessee has failed to comply with any implied obligation or covenant hereof, this lease shall not be subject to cancellation for any such cause except after final judicial ascertainment that such failure exists and Lessee has then been afforded a reasonable time to prevent cancellation by complying with and discharging its obligations as to which Lessee has been judicially determined to be in default. If this lease is canceled for any cause, it shall nevertheless remain in force and effect as to (1) sufficient acreage around each well as to which there are operations to constitute a drilling or maximum allowable unit under applicable governmental regulations, (but in no event less than forty (40) acres), such acreage to be designated by Lessee as nearly as practicable in the form of a square centered at the well, or in such shape as then existing spacing rules require; and (2) any part of said land included in a pooled unit on which there are operations. Lessee shall also have such easements on said land as are necessary to operations on the acreage so retained.

10. Lessor hereby warrants and agrees to defend title to said land against the claims of all persons whomsoever. Lessor's rights and interests hereunder shall be charged primarily with any mortgages, taxes, or other liens, or interest and other charges on said land, but Lessor agrees that Lessee shall have the right at any time to pay or reduce same for Lessor, either before or after maturity, and be subrogated to the rights of the holder thereof and to deduct amounts so paid from royalties or other payments payable or which may become payable to Lessor and/or assigns under this lease. Lessee is hereby given the right to acquire for its own benefit, deeds, leases, or assignments covering any interest or claim in said land which Lessee or any other party contends is outstanding and not covered hereby and even though such outstanding interest or claim be invalid or adverse to the Lessor. If this lease covers a less interest in the oil, gas, sulphur or other minerals in all or any part of said land than the entire and undivided fee simple estate (whether Lessor's interest is herein specified or not), or no interest therein, then the royalties, delay rental, and other moneys accruing from any part as to which this lease covers less than such full interest, shall be paid only in the proportion which the interest therein, if any, covered by this lease, bears to the whole and undivided fee simple estate therein. All royalty interest covered by this lease (whether or not owned by Lessor) shall be paid out of the royalty herein provided. This lease shall be binding upon each party who executes it without regard to whether it is executed by all those named herein as Lessor.

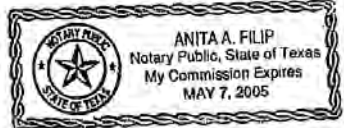
11. If, while this lease is in force, at, or after the expiration of the primary term hereof, it is not being continued in force by reason of the shut-in well provisions of paragraph 3 hereof, and Lessee is not conducting operations on said land by reason of (1) any law, order, rule or regulation, (whether or not subsequently determined to be invalid) or (2) any other cause, whether similar or dissimilar, (except financial) beyond the reasonable control of Lessee, the primary term hereof shall be extended until the first anniversary date hereof occurring ninety (90) or more days following the removal of such delaying cause, and this lease may be extended thereafter by operations as if such delay had not occurred.

IN WITNESS WHEREOF, this instrument is executed on the date first above written.
SEE ADDITIONAL ADDENDUMS ATTACHED HERETO AND MADE A PART HEREOF.

David L. Miles
DAVID L. MILES *DM*

STATE OF TEXAS
COUNTY OF *H. Bess*

This instrument was acknowledged before me on this 04 day of Oct, 2002 by David L. Miles.



Anita Filip
Notary Public in and for the State of Texas.

Exhibit "A"

Attached to and made part of that certain oil, mineral lease dated May 23, 2002 by and between David L. Miles, as Lessor and Contract Oil and Gas Service Company as Lessee.

OTHER TERMS AND CONDITIONS

Notwithstanding anything contained in this lease to the contrary, and insofar as mineral owner is the owner of the surface estate, the following provisions shall prevail over any other, insofar as the mineral owner has the unencumbered right to enforce such provisions.

12. **Oil and Gas Only:** Notwithstanding anything hereinabove to the contrary, and there is excepted herefrom and reserved to the Lessor herein, all coal, lignite, uranium, fissionable materials, and all bentonite, fullers earth and other clay-like substances, it is specifically understood and agreed upon that this lease covers only oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, but this lease does not cover or include any other minerals, with all other minerals, being reserved to the Lessor herein. Accordingly, the words "oil,gas" when used herein shall mean oil, gas, associated sulphur and associated liquid or liquefiable hydrocarbons, and the words "all other minerals" whenever used herein, shall be stricken from the lease, so that such "all other minerals", as defined herein, are reserved to the Lessor.
13. **Pugh and Retained Acre Clauses:**
- (a) At the expiration of the primary term, in the event a portion or portions of the leased prises are pooled or utilized with other land, lease or leases pursuant to paragraph 4 hereof so as far to form a pooled unit or units, operations for drilling or reworking operations on such unit or units, or production of oil and gas from such unit or units, shall maintain this lease in effect only as to the portion or portions of the leases premises which are included in such unit or units. Any portion or portions of the leases premises which do not underlie the area within the surface boundaries of a pooled unit or units may be maintained in effect in any manner elsewhere provided in this lease, including, but not limited to: operations upon or production from such portions of the leased premised, or by payment of shut-in gas well royalties.
- (b) In addition, if at the end of the primary term there is a producing well or wells on leased-acreage or any portion thereof which well or wells have not been pooled with other land according to the terms of paragraph 4 of this lease, such well or wells will maintain this lease in force beyond the primary term only as to enough contiguous acreage surrounding such well or wells necessary to create a 40-acre, if oil, or 640-acre, plus 10% tolerance, if gas, area surrounding said well or wells or such larger area as may be prescribed or permitted by governmental authority having jurisdiction, as provided in paragraph 4 hereof. This lease shall then automatically expire as to all other acreage not so held, or not within any pooled area as provided in paragraph 13 (a) of this lease. Lessee shall designate such retained area to be as near as practicable in the form of a square with the well in the center thereof, and file a notice describing such retained acreage in the real property records of the county where said land is located. If Lessee fails to file such notice within thirty days after the expiration of the primary term, Lessor may designate such retained acreage and file such notice on behalf of Lessee.
- (c) As to any portions of the leased premises which remains in effect at the end of the primary term pursuant to paragraphs 13 (a) and (b), this lease shall nevertheless at the end of the primary term, or at the cossation of continuous drilling operations, if Lessee is engaged in actual drilling operations at the end of the primary term, expire as to all of the mineral estate lying below 100 feet below the deepest depth drilled in which Lessee has completed a well on the leased premises or on lands or leases pooled with the leased premises as a commercial producer of oil and/or gas or shut-in gas well, but in no event shall be less than the deepest depth drilled in the Tim Miles #1, which depth shall be not. less than 8500 feet below the surface of the earth.
- (d) Lessee, within 30 days after the expiration of the primary term of this lease, or the completion or plugging of a well so commenced at the expiration of the primary term, shall execute and deliver to Lessor a proper recordable instrument releasing such portions and depths of the leased premises covered hereby as to which lease has so expired. The expiration of this lease as to such portions and depths, however, shall occur automatically upon the conditions provided herein, regardless of whether Lessee executes and delivers the required release.
- (e) Lessor, his or her heirs and assigns may at any time and from time to time go upon any lands then remaining subject to this lease and prospect and drill for hydrocarbons and produce hydrocarbons from any lands and depths as to which this lease shall have terminated. Such operations shall not unreasonably interfere with any operations, which Lessee is conducting on said lands pursuant to this lease.

553-26-2258

558-1-2-3255

14. **Surface Damages:** It is agreed that Lessee will backfill all pits used in drilling operations after they have dried out completely and as nearly as practical, return the surface to the same condition as it was prior to said drilling operations. Further, insofar as mineral owner is the owner of the surface estate, Lessee agrees to pay Lessor for damages to all timber, grasses, crops, fences, livestock, water wells and water ponds as a result of drilling operations and those damages shall be based on reasonable market value at the time of such damage. Lessee shall not have the use of any ponds, lakes, or streams on the leased premises without the express written consent of the Lessor and shall protect the same from pollution and damage as result of drilling operations.

15. **Royalty:**
(a) Wherever the word and fraction "one-eighth (1/8'th)" appears in the lease, and specifically in paragraph 3 above, such words are deemed deleted and substituted with the words and fraction "one-fifth (1/5th)". *In the event any co-owner in the Miles #1 Well is paid a higher royalty fraction or other additional compensation by Lessee, Lessor shall be entitled to the same higher royalty or other compensation.*
(b) Lessor's royalty provided for herein shall not be charged directly or indirectly with or reduced by any of the expenses of production, operating, gathering, dehydration, compression, transportation, manufacturing, processing, treating or marketing of gas, oil, or any liquefiable hydrocarbons extracted therefrom and covered by this lease with the exception of any and all taxes and/or regulatory fees.

16. **Disposal Wells:** Lessee agrees that there will be no disposal or injection wells of any kind located or utilized on the leased premises without prior written consent of the Lessor, which consent shall not be unreasonably withheld, if for the purpose of producing oil or gas from said Lease.

17. **Shut-In Limitation:**
(a) Lessee may not maintain this lease by payment of shut-in royalty for any one shut-in period greater than two (2) years, or for more than three (3) years in the aggregate, and it is understood that the provisions of this lease for the perpetuation of this lease by shut-in payments shall apply only to well designated as a gas well by the railroad Commission of Texas.

(b) It is hereby agreed and understood between Lessor and Lessee that if at any time or times after the expiration of the primary term, all such wells are shut-in for a period of ninety consecutive days, and during such time there are no operations on said land, then at or before the expiration of said ninety day period, Lessee shall pay or tender, by check or draft of Lessee, as royalty, a sum equal to five dollars (\$5.00) for each acre of land then covered hereby.

18. **Hunting and fishing:** Hunting and fishing by Lessee, its employees, agents, or contractors are specifically forbidden.

Signed for Identification:

David L. Miles
David L. Miles

RECORDERS MEMORANDUM
ALL BLACKOUTS, ADDITIONS AND CHANGES
WERE PRESENT AT THE TIME THE INSTRUMENT
WAS FILED AND RECORDED.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS
I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped hereon by me; and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

OCT 25 2002



Dorothy L. Kaufman
COUNTY CLERK
HARRIS COUNTY, TEXAS

2002 OCT 25 PM 12:27
HARRIS COUNTY CLERK
HARRIS COUNTY, TEXAS
Dorothy L. Kaufman

FILED

RETURN TO: CURLY OIL INC
11211 KATY FLYNN
STE 300
HOUSTON, TX 77079