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BK 746 PG 549

This instrument was prepared by W.F. DAVIS, CH. CLK. UNITED SOUTHERN BANK 601-627-3281 211 EAST SECOND ST. P.O. BOX 1059 CLARKSDALE, MS. 38614 (Name, Address and Telephone No.)

DEED OF TRUST STATE OF MISSISSIPPI

THIS DEED OF TRUST ("Security Instrument") is made on JANUARY 20, 1995. The Grantor is MAGNOLIA SQUARE PARTNERS L.P. ("Borrower"). The trustee is C. WILLIS CONNELL, JR. 211 EAST SECOND ST. P.O. BOX 1059 CLARKSDALE, MS 38614, whose address is (Trustee). The beneficiary is UNITED SOUTHERN BANK which is organized and existing under the laws of THE STATE OF MISSISSIPPI and whose address is 211 EAST SECOND ST. P.O. BOX 1059 CLARKSDALE MS 38614 ("Lender").

CONVEYANCE - Borrower, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt defined below, and the Borrower's performance under this Security Instrument, irrevocably grants, bargains, and sells to Trustee, in trust, with power of sale, the following described property located in DESOTO County: LOTS 2, 5, AND 6, FIRST REVISION, MAGNOLIA SQUARE COMMERCIAL SUBDIVISION, IN SECTIONS 14 AND 15, TOWNSHIP 1 SOUTH RANGE 8 WEST, CITY OF SOUTHAVEN, DESOTO COUNTY, MISSISSIPPI, AS SHOWN BY PLAT APPEARING OF RECORD IN PLAT BOOK 28, PAGE 5, IN THE OFFICE OF THE CHANCERY CLERK OF DESOTO COUNTY, MISSISSIPPI. AND LOT 1, FIRST REVISION, MAGNOLIA SQUARE COMMERCIAL SUBDIVISION, IN SECTIONS 14 AND 15, TOWNSHIP 1 SOUTH, RANGE 8 WEST, IN THE CITY OF SOUTHAVEN, DESOTO COUNTY, MISSISSIPPI, AS SHOWN BY PLAT APPEARING OF RECORD IN PLAT BOOK 28, PAGE 5, IN THE OFFICE OF THE CHANCERY CLERK OF DESOTO COUNTY, MISSISSIPPI.

which has the address of 9105 HWY 51 NORTH (Street) SOUTHAVEN (City) Mississippi 38671 (ZIP Code) ("Property Address").

Together with: (a) all improvements now or hereafter built on the property, all easements, appurtenances, and all fixtures now or hereafter a part of the property, (b) all mineral, oil and gas rights and profits, water rights and stock that are part of the property, (c) all rights that Borrower has in the land which lie in the streets or roads in front of, or next to, the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

WARRANTY OF TITLE - Borrower warrants that Borrower is lawfully seized of the estate here conveyed and has the right to grant, bargain, and sell the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

MAXIMUM OBLIGATION LIMIT - Additional or future loans or advances are contemplated. However, nothing in this Security Instrument shall constitute a commitment to make additional or future loans or advances in any amount. The total unpaid principal balance (exclusive of interest, attorneys' fees, paralegal fees, costs, and other legal expenses) secured by this Security Instrument at any one time shall not exceed a maximum amount of \$150,000.00. This limitation of amount does not apply to either advances made under the terms of this Security Instrument to protect Lender's security or to any future advances made or future obligations incurred under a construction loan instrument to enable completion of contemplated improvements.

SECURED DEBT DEFINED - Borrower's "Secured Debt," which is secured by this Security Instrument, means and includes the following:

A. The promissory note(s), contract(s), guaranty(s) or other evidence of debt executed by Borrower listed below and all extensions, renewals, modifications or substitutions:

NOTE DATE: JANUARY 20, 1995

MATURITY DATE: FEBRUARY 1, 2000

B. All future advances or other future obligations under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Security Instrument. No future advance or future obligation will be secured by

CANCELLED BY AUTHORITY RECORDED IN BOOK 805 PAGE 197 THIS 18 DAY OF JAN 19 96 BY W.F. DAVIS CHANCERY CLERK BY M.T.D.C.

this Security Instrument unless the promissory note, contract, guaranty or other evidence of indebtedness under which such future advance or future obligation is incurred shall state on its face that it is secured by, and identifies by date of execution, this Security Instrument.

C. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument, plus interest at the highest rate in effect from time to time provided for in the promissory note(s), contract(s), guaranty(s), or other evidence of debt.

D. All other obligations Borrower owes to Lender, which now exist or may later arise, to the extent the taking of the Property as security for the obligation is not prohibited by law.

E. Borrower's performance under the terms of any instrument evidencing a debt by Borrower to Lender and any security instrument securing, guarantying, or otherwise relating to the debt.

COVENANTS - Borrower and Lender warrant and agree as follows:

1. Payments. Borrower agrees to make all payments on the secured debt when due. Unless Borrower and Lender agree otherwise, any payment Lender receives from Borrower, or for Borrower's benefit, will be applied as follows: First, to any amounts Borrower owes on the secured debt, exclusive of principal or interest; secondly, to interest due; and thirdly, to principal. If partial prepayment of the debt occurs for any reason, it will not reduce or excuse any scheduled payment until the secured debt is paid in full.

2. Claims Against Title. Borrower will pay all taxes, assessments, liens, encumbrances and other charges attributable to the Property when due. Lender may require Borrower to provide copies of receipts evidencing these payments. Borrower will defend title to the Property against any claims which would impair the security interest created by this Security Instrument. Lender may require Borrower to assign any rights, claims or defenses which Borrower may have against parties who supply labor or materials to improve or maintain the Property.

3. Insurance. Borrower shall keep the Property insured against loss by fire, theft, flood and other risks reasonably associated with the Property due to its type and location. Insurance should be equal to amount of debt outstanding, under terms acceptable to Lender at Borrower's expense and for Lender's benefit. All insurance policies shall include a standard mortgage clause in favor of Lender. Lender will be named as loss payee or as the insured on any such insurance policy. Any insurance proceeds may be applied, within Lender's discretion, to either the restoration or repair of the damaged Property or to the secured debt. Any application of the proceeds to the principal shall not extend or postpone the due date of subsequent payments due, or change the amount of those payments. Borrower will give Lender prompt notice of any loss or damage to the Property. The insurance carrier providing the hazard insurance shall be chosen by Borrower subject to Lender's approval, which shall not be unreasonably withheld.

If Lender requires mortgage insurance, Borrower agrees to maintain such insurance for as long as Lender requires.

4. Property. Borrower will keep the Property in good condition and make all repairs reasonably necessary. Lender may inspect the Property if the Property is vacant or abandoned or the loan is in default. Lender may take reasonable action to protect and preserve such vacant or abandoned Property.

5. Expenses. Borrower agrees to pay all of Lender's expenses, including reasonable attorney's fees, if Borrower breaks any covenants in this Security Instrument or in any obligation secured by this Security Instrument. Borrower will pay these amounts to Lender as provided in Paragraph 9 of this Security Instrument. If there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, for condemnation or to enforce laws or regulations), then Lender may do and pay whatever is necessary to protect the value of the Property, including payment of taxes, hazard insurance and other items mentioned in Paragraph 2.

6. Leaseholds, Condominiums, Planned Unit Developments. Borrower agrees to comply with the provisions of any lease if this Security Instrument is on a leasehold. If Borrower acquires fee title to the Property, the leasehold and fee title shall not be merged unless Lender agrees to the merger in writing. If the Property includes a unit in a condominium, cooperative, or a planned community, Borrower will perform all of Borrower's duties under the covenants, by-laws or regulations of the condominium, cooperative, or planned community.

7. Condemnation. Borrower assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds will be applied as provided in Paragraph 1. This assignment is subject to the terms of any prior security agreement.

8. Assignment of Leases and Rents. Borrower grants, bargains and sells to Trustee, in trust for the benefit of Lender, as additional security for all the right, title and interest in and to any and all existing or future leases, subleases and any other written or verbal agreements for the use and occupancy of any portion of the Property, including any extensions, renewals, modifications or substitutions of such agreements ("Leases"), and rents, issues and profits ("Rents"). Borrower will promptly provide Lender with true and correct copies of all existing and future leases. Borrower may collect, receive, enjoy and use the Rents so long as Borrower is not in default.

Borrower agrees that this assignment is immediately effective between the parties to this Security Instrument and effective as to third parties when Lender or Trustee takes an affirmative action as prescribed by the law in the state where the Property is located. Borrower agrees that Lender or Trustee may take actual possession of the Property without the necessity of commencing legal action and Borrower agrees that actual possession of the property is deemed to occur when Lender or its agents notifies Borrower of Borrower's default and demands that Borrower and any tenants pay all future Rents to Lender. On receiving the notice of default, Borrower will endorse and deliver to Lender any payments of Rents and will receive any Rents in trust for Lender and will not commingle the Rents with any other funds. Any amounts collected shall be applied at Lender's discretion first to costs of managing the Property, including but not limited to, taxes, assessments, insurance premiums, repairs, and commissions to rental agents, court costs, and to all other related expenses. Borrower covenants that no default exists under the Leases or any applicable landlord/tenant law. Borrower also covenants and agrees to maintain, and to require the tenants to comply with, the Leases and any applicable law.

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9. Authority of Lender to Perform for Borrower. If Borrower fails to perform any of Borrower's duties under this Security Instrument, Lender may perform those duties or cause them to be performed. Lender may sign Borrower's name or pay any sums necessary to secure performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect their security interest in the Property, including completion of the construction. Lender's failure to perform for Borrower will not preclude Lender from exercising any of their other rights under the law or this Security Instrument. Although Lender may take action under this covenant, Lender is not obligated to do so. Any amounts paid by Lender to protect Lender's security interest will be secured by this Security Instrument. These sums will be due on demand and will accrue interest at the rate in effect on the secured debt from the date of the payment until paid in full.

10. Default and Acceleration. If Borrower fails to make any payment when due or breaks any covenants under this Security Instrument or any obligation secured by this Security Instrument, Lender may accelerate the maturity of the secured debt and demand immediate payment and may invoke the power of sale and any other remedies permitted by applicable law.

11. Power of Sale. If Lender invokes the power of sale, Trustee shall, at the request of Lender, sell the Property, either whole or any part thereof, to satisfy the indebtedness at public outcry to the highest bidder for cash. Sale of the Property shall be advertised for three consecutive weeks preceding the sale in a newspaper published in the county where the Property is situated, or if none is so published, then in some newspaper having a general circulation therein, and by posting a notice for the same time at the courthouse of the same county. The notice and advertisement shall disclose the name(s) of the original debtor(s) in this Security Instrument. Borrower waives the provisions of Section 89-1-55 of the Mississippi Code of 1972 as amended, if any, as far as this section restricts the right of Trustee to offer at sale more than 160 acres at a time, and Trustee may offer the Property herein conveyed either whole or any part thereof, as Trustee deems best, regardless of how it is described. If the Property is situated in two or more counties, or in two judicial districts of the same county, Trustee shall have full power to select in which county, or judicial district, the sale of the Property is to be made, newspaper advertisement published and notice of sale posted, and Trustee's selection shall be binding upon Borrower and Lender. Lender shall have the same right to purchase the Property at the foreclosure sale as would a purchaser who is not a party to this Security Instrument. Trustee shall apply the proceeds of the sale in the following order: (1) to all reasonable costs of the sale including, but not limited to, reasonable Trustees and Attorney's Fees; (2) to all sums secured by this Security Instrument; and (3) any excess to the person or persons legally entitled to it.

12. No Waiver. If circumstances occur which would permit Lender to require immediate payment in full but Lender does not require such payments, Lender does not waive its rights with respect to subsequent events.

13. Prior Security Interests. Unless Borrower first obtains Lender's written consent, Borrower will not make or permit an increase in the amount of any prior security interests. Borrower will perform all of Borrower's obligations under any prior mortgage, deed of trust or other security agreement, including Borrower's covenants to make payments when due.

14. Inspection. Lender may enter the Property to inspect it if Lender gives Borrower notice beforehand. The notice must state a reasonable purpose for Lender's inspection.

15. Applicable Law; Severability; Interpretation. This Security Instrument is governed by the laws of the jurisdiction in which Lender is located except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Security Instrument is complete and fully integrated. This Security Instrument may not be amended or modified by oral agreement. Any section or clause in this Security Instrument, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Security Instrument cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Security Instrument. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Security Instrument are for convenience only and are not to be used to interpret or define the terms of this Security Instrument. Time is of the essence in this Security Instrument.

16. Notices. Unless otherwise required by law, any notice to Borrower shall be given by delivering it or by mailing the notice by certified mail addressed to Borrower at the property address or any other address that Borrower provides to Lender. Any notice to Lender shall be by mailing the notice by certified mail to Lender's address as designated on page 1 of this Security Instrument or to any other address that Lender provides to Borrower.

Any notice given in the manner stated above shall be deemed to have been given by Borrower or Lender.

17. Transfer of the Property or a Beneficial Interest in the Borrower. If all or any part of the Property or any interest in it is sold or transferred without Lender's prior written consent, Lender may demand immediate payment of the secured debt. Lender may also demand immediate payment if the Borrower is not a natural person and a beneficial interest in the Borrower is sold or transferred. However, Lender may not demand payment in the above situations if it is prohibited by federal law as of the date of this Security Instrument.

18. Release. When Borrower has paid the secured debt and Lender has no further obligation to make advances under the Instruments of Indebtedness secured by this Security Instrument, Lender or Trustee shall, at Borrower's request, acknowledge satisfaction of this Security Instrument in the manner provided by applicable law without cost to Borrower. Borrower agrees to pay all costs to record such satisfaction.

19. Successor Trustee. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee by an instrument recorded in the county in which this Security Instrument is recorded. The successor trustee, without conveyance of the Property, shall succeed to all the title, powers and duties conferred upon the Trustee by this Security Instrument and by applicable law.

20. Severability. Any provision or clause of this Security Instrument or any Instrument of Indebtedness which conflicts with applicable law will not be effective unless that law expressly or impliedly permits variations by agreement. If any provision or clause in this Security Instrument or any such Instrument evidencing the secured debt cannot be

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enforced according to its terms, this fact will not affect the enforceability of the balance of this Security Instrument and such Instrument evidencing the secured debt.

21. **Obligations Defined.** Borrower's "Obligations" which are secured by this Security Instrument are defined as and include the following:

- A. Any promissory note, instrument or agreement executed by Borrower which evidences a loan by Lender to Borrower, and all extensions, renewals, modifications or substitutions (Evidence of Debt) thereof; and whether or not such future advances or future obligations are incurred for any purpose that was related or unrelated to the purpose of this Evidence of Debt.
- B. All additional sums advanced and expenses incurred by Lender for the purpose of insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Security Instrument, plus interest at the same rate provided for in the instrument(s) which evidence the Loan.
- C. All other obligations Borrower owes to Lender which now exist or may later arise, to the extent the taking of the Property as security for the obligation is not prohibited by law.
- D. Borrower's performance under the terms of any instrument which evidence a loan by Lender to Borrower and any security instrument which secures, guaranties or otherwise relates to the loan.

However, this Security Instrument will not secure another debt:

- A. If this Security Instrument is in Borrower's principal dwelling and Lender fails to provide (to all persons entitled) any notice of right of rescission required by law for the other debt;
- B. If Lender fails to make any disclosure of the existence of this Security Instrument required by law or the other debt.

22. **Riders to this Security Instrument.** If one or more riders are executed by Borrower and recorded together with this Security Instrument, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements in this Security Instrument as if the rider(s) were a part of this instrument. [Check applicable box(es)].

- Planned Unit Development Rider
- Condominium Rider
- Other

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

Borrower x See attached Sheet for signatures
MAGNOLIA SQUARE PARTNERS L.P.

STATE OF MISSISSIPPI
COUNTY OF

Personally appeared before me, the undersigned authority in and for the said County and State, on this day of within my jurisdiction, the within named who acknowledged thathe.... executed the above and foregoing instrument.

My commission expires:

DESOTO

Notary Public

JANUARY 1995

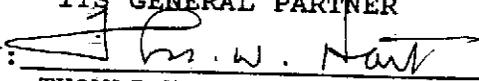
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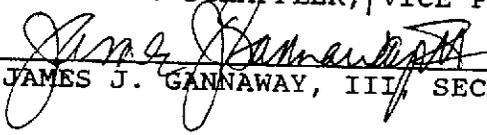
MAGNOLIA SQUARE PARTNERS L.P.

MAGNOLIA SQUARE PARTNERS, L.P., A
TENNESSEE LIMITED PARTNERSHIP

BY: MID-SOUTH RECREATION ASSOCIATES, INC.
ITS GENERAL PARTNER

BY: 
THOMAS W. HART, PRESIDENT

BY: 
THOMAS F. SCHAFFLER, VICE PRESIDENT

BY: 
JAMES J. GANNAWAY, III, SECRETARY-TREASURER

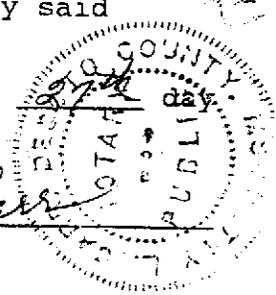
STATE OF MISSISSIPPI

COUNTY OF DESOTO

THIS DAY personally appeared before me, the undersigned authority within and for the State and County aforesaid, the within named Thomas W. Hart, Thomas F. Schaffler, and James J. Gannaway, III, who acknowledged that they are the President, Vice-President, and Secretary/Treasurer, respectively, of Mid-South Recreation Associates, Inc., a Delaware Corporation authorized to do business in the Sate of Mississippi, and that for and on behalf of said corporation and as and for its act and deed, while said corporation was acting in its capacity as General Partner of and for and on behalf of Magnolia Square Partners, L.P., a Tennessee Limited Partnership, and as and for its act and deed, they executed the above and foregoing Land Deed of Trust for the purpose mentioned on the day and year therein mentioned, after first having been duly authorized by said corporation and partnership so to do.

GIVEN under my hand and official seal this, the 27th day of January, 1995.

Stacy L. Carr
Notary Public



My Commission Expires

My Commission Expires March 5, 1995