

NationsBank

NATIONSBANK, N.A.

**Deed of Trust
(Closed-end)**

00000000619910047544

This Instrument prepared by and when recorded mail to:

NATIONSBANK/ REAU
POST CLOSING REVIEW
830 CENTRAL AVENUE

Maximum Principal Indebtedness for Tennessee
Recording Tax Purpose Is \$ 72,367.42

ST PETERSBURG FL 33701

This Deed of Trust is made this 14 day of DECEMBER, 1998, by BOBBY KIRBY AND SARAH J KIRBY, HIS WIFE

whose address is 6566 TIMBER PINE DR SOUTHAVEN MS 38671

(jointly and severally if more than one, "Grantor"), to TIM, INC.,

as trustee(s) ("Trustee," whether one or more), for the benefit of NATIONSBANK, N.A. whose address for notice purposes is P.O. BOX 26039 GREENSBORO, NC 27420 ("NationsBank").

Witnesseth: That Whereas, BOBBY KIRBY AND SARAH J KIRBY

(jointly and severally if more than one, "Borrower") is justly indebted to NationsBank according to the terms of a certain promissory note given by Borrower to NationsBank dated 12/14/1998, in the principal amount of SEVENTY TWO THOUSAND THREE HUNDRED SIXTY SEVEN DOLLARS AND 42 CENTS Dollars (\$ 72,367.42) with final payment being due on 1/01/2014 unless renewed, modified, extended or consolidated (the "Note"); and

Whereas, this Deed of Trust is given to secure to NationsBank (a) the repayment of the debt evidenced by the Note, including but not limited to, principal and interest, and fees and expenses, if any, and all renewals, extensions, modifications, replacements and consolidations of the Note; (b) amounts expended or advanced by NationsBank for the payment of taxes, levies or insurance on the property described herein and for maintenance, repair, protection and preservation of the property and interest on such amounts, if any, (c) the payment of all other sums, with interest, advanced under the terms of this Deed of Trust; and (d) the performance of Grantor's covenants and agreement under this Deed of Trust and any other agreements executed by Grantor at NationsBank's request pertaining to the debt evidenced by the Note (together, the "Loan Documents"). Interest may be deferred, capitalized or accrued. The total indebtedness secured by this Deed of Trust is collectively referred to herein as the "Secured Indebtedness".

Now Therefore, in consideration of the premises and of the sum hereinabove set forth, and the sum of One Dollar (\$1.00) the receipt and adequacy of which are hereby acknowledged, Grantor **Grants and Conveys** to Trustee in trust, with power of sale, the following property (whether now owned or held or hereafter acquired by Grantor and whether now or hereafter existing with all rights, appurtenances, and privileges thereunto belonging) located in the County of X Tennessee, to wit:

LOT 93, SOUTHERN PINES, SITUATED IN SECTION 31, TOWNSHIP 1 SOUTH, RANGE 7 WEST CITY OF SOUTHAVEN, DESOTO COUNTY, MISSISSIPPI, AS PER PLAT THEREOF RECORDED IN PLAT BOOK 21, PAGE 43-46, IN THE OFFICE OF THE CHANCERY CLERK OF DESOTO COUNTY, MISSISSIPPI.

STATE MS.-DESOTO CO.
FILED

Dec 22 2 24 PM '98

which has the address of 6566 TIMBER PINE DR SOUTHAVEN MS 38671-0000 BK 1067 PG 341 W.E. DAVIS CH. CLK. ("Property Address");

Together with all buildings, structures and other improvements now or hereafter located on the property described, or any part and parcel thereof; all rights, title and interest of Grantor in and to the minerals, flowers, shrubs, crops, trees, timber, and other emblems now or hereafter on said property or under or above the same or any part or parcel thereof; all and singular the tenements, hereditaments, easements, licenses, privileges, rights-of-way, water rights, uses and other appurtenances belonging or in any way appertaining, and the reversion or reversions, remainder or remainders, rents, issues and profits thereof; all right, title and interest of Grantor in and to nearby ways, roads, streets, boulevards, avenues or other public thoroughfares and also all the estate, right, title, interest, claim and demand whatsoever of Grantor in and to the same and of, in and to every part and parcel thereof; all machinery, apparatus, equipment, fittings and fixtures, whether actually or constructively attached to said property, now or hereafter located in, upon or under said property or any part thereof; all right and title and interest of Grantor in and to the rents, income, issues, profits, and revenues of all of the foregoing; any and all awards or payments, including interest thereon, and the right to receive the same, as a result of: (a) the exercise of the right of eminent domain; (b) the alteration of the grade of any street; or (c) any other injury to, taking of, or decrease in the value of, said property, to the extent of all amounts that may be secured by this Deed of Trust at the date of receipt of any such award or payment by NationsBank and of the reasonable attorney's fees, costs and disbursements incurred by NationsBank in connection with the collection of such award or payment. All of such property hereby granted and conveyed is collectively referred to herein as the "Property".

To have and to hold the property with all rights, appurtenances, and privileges thereunto belonging to said Trustee, Trustee's heirs, successors and assigns forever, upon the trusts, terms and conditions, and for the uses hereinafter set forth.

This Deed of Trust is given and accepted on the following terms:

Representations and Warranties. Grantor warrants that Grantor has good and marketable fee simple title to the Property, and is lawfully seized and possessed of the Property and every part thereof, and has the right to grant and convey same, that the Property is unencumbered except as NationsBank has been expressly advised by Grantor; and that Grantor will forever warrant and defend generally the title to the Property unto Trustee and NationsBank against the claims of all persons whomsoever.

Covenants. Grantor further covenants and agrees as follows:

1. Compliance with Loan Documents. Grantor shall promptly pay and perform and comply with all obligations, covenants, agreements and conditions imposed upon Grantor by the Loan Documents.

2. Charges; Liens. Grantor shall pay when due all taxes, assessments, charges, fines, levies, fees and impositions attributable to the Property that may attain priority over this Deed of Trust, and leasehold payments or ground rents, if any. If Grantor makes these payments directly, upon NationsBank's request Grantor shall promptly furnish to NationsBank receipts evidencing the payments.

3. Funds for Taxes and Insurance. Upon request by NationsBank, Grantor shall pay to NationsBank on the days payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments that may attain priority over this Deed of Trust as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; and (e) yearly mortgage insurance premiums, if any. These items are called "Escrow Items." NationsBank may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Grantor's escrow account under the Federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, NationsBank may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. NationsBank may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law. Except as may otherwise be provided by applicable law, in no event shall NationsBank be liable for any interest on any amount paid to it as herein required, and the money so received may be held and commingled with its own funds, pending payment or application thereof as herein provided. If requested by NationsBank, Grantor shall furnish to NationsBank, at least thirty (30) calendar days before the date on which the same will become past due, an official statement of the amount of said taxes, assessments, insurance premiums and rents next due, and NationsBank shall pay said charges to the amount of the then unused credit therefor as and when they become severally due and payable. An official receipt therefor shall be conclusive evidence of such payment and of the validity of such charges. NationsBank may, at its option, pay any of these charges when payable, either before or after they become past due, without notice, or make advances therefor in excess of the then amount of credit for said charges. The excess amount advanced shall be immediately due and payable to NationsBank and shall become part of the Secured Indebtedness and bear interest at the rate of interest stated in the Note from date of advancement. NationsBank may apply credits held by it for the above charges, or any part thereof, on account of any delinquent installments of principal or interest or any other payments maturing or due under this instrument, and the amount of credit existing at any time shall be reduced by the amount thereof paid or applied as herein provided. The amount of the existing credit hereunder at the time of any transfer of the Property shall, without assignment thereof, inure to the benefit of the successor-owner of the Property and shall be applied under and subject to all of the provisions hereof. Upon payment in full of the Secured Indebtedness, the amount of any unused credit shall be paid over to the person entitled to receive it.

4. Application of Payments. If any part of the Secured Indebtedness cannot be lawfully secured by this Deed of Trust, or if any part of the Property cannot be lawfully subject to the lien and security interest created by this Deed of Trust to the full extent of such indebtedness, then all payments made shall be applied on the Secured Indebtedness first in discharge of that portion which is not secured by this Deed of Trust.

5. No Other Liens. Grantor will not, without the prior written consent of NationsBank, except as otherwise specified by applicable law, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, any deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, encumbrance, security interest or conditional sale against or covering the Property, or any part thereof, regardless of whether the same are expressly or otherwise subordinate to the lien or security interest created in this Deed of Trust. Should any of the foregoing become attached hereafter or in any manner to any part of the Property without the prior written consent of NationsBank, Grantor will cause the same to be promptly discharged and released.

6. Insurance. Grantor shall keep the improvements, if any, now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which NationsBank requires in an amount equal to the lesser of (a) the current outstanding balance on the Note; (b) one hundred percent (100%) of the maximum insurable value of the Property; or (c) for flood insurance only, one hundred percent (100%) of the maximum amount of insurance required under any federal, state or local flood insurance program (if the Note secured is a TaxSmart loan, then parts (a) or (b) above are not required). If requested by NationsBank, Grantor shall also obtain liability insurance naming NationsBank as an additional insured party in an amount as may be required by NationsBank. Each insurance carrier providing any such insurance shall be chosen by Grantor subject to NationsBank's approval which shall not be unreasonably withheld. If Grantor fails to obtain any insurance required by this paragraph or if Grantor fails to pay the insurance premiums for any period of thirty (30) consecutive

calendar days (forty five (45) calendar days for flood insurance) during the term of this Deed of Trust, NationsBank may obtain the insurance and pay the premiums. If NationsBank does so, then, at NationsBank's sole option, (i) Grantor shall pay to NationsBank within ten (10) calendar days after written notice from NationsBank all monies advanced by NationsBank to obtain insurance and to pay insurance premiums; or (ii) NationsBank may reschedule the payments for the remaining term of the Note to include such amounts; or (iii) NationsBank may add such amounts to the final payment due under the Note. In any event, such amounts shall become part of the Secured Indebtedness, and Grantor agrees to pay interest on such amounts until they are paid in full, at the rate of interest stated in the Note. Grantor agrees that the amount and type of insurance purchased by NationsBank is within NationsBank's sole discretion.

All insurance policies and renewals shall be in form and content satisfactory to NationsBank and all such policies covering loss or damage to the Property shall include a standard non contributory mortgagee clause in favor of NationsBank. NationsBank shall have the right to hold the policies and renewals. Grantor shall promptly give to NationsBank all receipts of paid premiums and renewal notices. In the event of loss, Grantor shall give prompt notice to the insurance carrier and NationsBank. NationsBank may make proof of loss if not made promptly by Grantor, but shall have no duty to do so nor any duty to see that any insurance is in force or is adequate.

If in the sole discretion of NationsBank the restoration or repair is economically feasible and NationsBank's security is not lessened, the insurance proceeds shall be applied to restoration or repair of the Property damaged. If in the sole discretion of NationsBank the restoration or repair is not economically feasible or NationsBank's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, whether or not then due, in such manner and order as NationsBank, in its sole discretion, may elect, with any excess paid to Grantor. If Grantor abandons the Property, or does not answer within thirty (30) calendar days a notice from NationsBank that the insurance carrier has offered to settle a claim, then NationsBank may collect the insurance proceeds. NationsBank may use the proceeds to repair or restore the Property or to pay sums secured by this Deed of Trust, in such manner and order as NationsBank, in its sole discretion, may elect, whether or not then due. The thirty (30) day period will begin when the notice is given.

Unless NationsBank and Grantor otherwise agree in writing, any application of insurance proceeds to principal shall be to the scheduled payments in inverse order of their scheduled due dates and shall not extend or postpone the due date of the scheduled payments or change the amount of the payments to the extent not lessened or discharged by such application. If the Property is acquired by NationsBank, Grantor's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to NationsBank to the extent of the sums secured by this Deed of Trust.

7. Maintenance and Protection of Property; Inspection. Grantor shall maintain the Property in good condition and repair, shall not commit or suffer any waste to the Property, and shall comply with, or cause to be complied with, all statutes, ordinances and requirements of any governmental authority relating to the Property or any part thereof. Grantor shall promptly repair, restore, replace or rebuild any part of the Property, now or hereafter encumbered by this Deed of Trust, which may be affected by any activity of the character referred to in Section 10. No part of the Property, including, but not limited to, any building, structure, parking lot, driveway, landscape scheme, timber or other ground improvement, or other property, now or hereafter conveyed as security by or pursuant to this Deed of Trust, shall be removed, demolished or materially altered without the prior written consent of NationsBank. Grantor shall complete, within a reasonable time, and pay for any building, structure or other improvement at any time in the process of construction on the Property. Grantor shall not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restrictions limiting or defining the uses which may be made of the Property or any part thereof. NationsBank and any person authorized by NationsBank shall have the right to enter and inspect the Property at all reasonable times and access thereto shall be permitted for that purpose.

8. Protection of NationsBank's Rights in the Property. At any time and all times Grantor shall furnish and record, at Grantor's expense, all such further assurances as may be requisite to assure and confirm the estate hereby granted or intended so to be whether now or in the future. If Grantor fails to perform the covenants and agreements contained in this Deed of Trust, or if there is a legal proceeding that may significantly affect NationsBank's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then NationsBank may do and pay for whatever is necessary to protect the value of the Property and NationsBank's rights in the Property. NationsBank's actions may include paying any sums secured by a lien that has priority over this Deed of Trust, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although NationsBank may take actions under this Section 8, NationsBank does not have to do so. No such action will waive any default. In the event NationsBank makes any payments which NationsBank deems necessary to protect the value of the Property and NationsBank's rights in the Property, NationsBank, upon making such payment, shall be subrogated to all of the rights of the person or entity receiving such payment. Any amounts disbursed by NationsBank pursuant to this Deed of Trust shall become part of the Secured Indebtedness. Unless Grantor and NationsBank agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the rate of interest stated in the Note and shall be payable upon demand from NationsBank to Grantor or Borrower.

9. Indemnity. Grantor shall (to the extent permitted by law) protect, defend, and indemnify NationsBank, and hold NationsBank harmless from and against any claims, actions, or proceedings against NationsBank and any loss, cost, damage or expense, including but not limited to reasonable attorney's fees and disbursements incurred by NationsBank, arising out of or in any way related to a breach of the representations, warranties, covenants or agreements of Grantor herein. NationsBank shall have the right, jointly with Grantor, to negotiate and settle any such claims, actions or proceedings.

10. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking, of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned to and shall be paid to NationsBank to be applied to the Secured Indebtedness, with any amounts in excess of the Secured Indebtedness being paid to Grantor. Grantor agrees to execute and deliver such further instruments as may be requested by NationsBank to confirm this assignment and sufficient for the purposes of assigning all proceeds from such awards or payments to NationsBank. NationsBank is authorized, but not obligated as the attorney-in-fact for Grantor, to collect, receive and give receipts for such awards and payments. This power granted NationsBank shall be deemed coupled with an interest and shall be irrevocable.

If the Property is abandoned by Grantor, or if within thirty (30) days after a notice from NationsBank to Grantor that the condemnor offers to make an award or settle a claim for damages, Grantor fails to respond to NationsBank is authorized to collect and apply the proceeds, at its option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due. The thirty (30) calendar day period will begin when notice is given. Unless NationsBank and Grantor otherwise agree in writing, any application of proceeds to principal shall be to the scheduled payments in inverse order of their scheduled due dates and shall not extend or postpone the due date of the payments referred to in the Note or this Deed of Trust or change the amount of such payments to the extent not discharged by such application.

11. Hazardous Substances. Grantor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Grantor shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property.

Grantor shall promptly give NationsBank written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law, as soon as Grantor first has actual knowledge. If Grantor learns, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Grantor shall promptly take all necessary remedial actions in accordance with Environmental Law.

As used in this Section 11, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Section 11, "Environmental Law" means federal laws and laws of the jurisdictions where the Property is located that relate to health, safety, or environmental protection.

Grantor shall indemnify and hold harmless NationsBank from and against, and reimburse NationsBank on demand for, any and all claims, demands, liabilities, losses, damages, causes of action, costs and expenses (including without limitation reasonable fees and expenses of attorneys and other professional consultants and experts) of every kind which may be imposed upon, asserted against or incurred or paid by NationsBank as a result of the presence of any Hazardous Substance on, in, under, above or about the Property, or the migration or release or threatened migration or release of any Hazardous Substance on, to, from or through the Property, at any time during or before Grantor's ownership of the Property, or any act, omission or event existing or occurring in connection with the handling, storage, removal or disposal of any such Hazardous Substance or any violation of any Environmental Law or the filing or imposition of any environmental lien or claim against the Property as a result of any such presence, migration, release, threatened migration or release, act, omission or event.

12. Events of Default. The occurrence of any one of the following shall be a default under this Deed of Trust and under the other Loan Documents ("Default"):

- a. Failure to Pay any Secured Indebtedness.** Any of the Secured Indebtedness is not paid when due, regardless of how such amount may have become due.
- b. Non Performance of Covenants.** Any covenant, agreement or condition herein, in the Note or in any other Loan Document, other than a covenant, agreement or condition which is addressed as a Default elsewhere in this Section 11, is not fully and timely performed, observed or kept.
- c. Breach of Warranty.** Any statement, representation or warranty in any Loan Document or in any financial statement delivered to NationsBank in connection with the Secured Indebtedness is false, misleading or erroneous in any material respect.
- d. Bankruptcy or Insolvency.** Any Bankruptcy or insolvency proceeding is instituted by or against Borrower, Grantor or any person liable, directly or indirectly, for any of the Secured Indebtedness, or if any tax lien, levy or garnishment is levied against any such party.
- e. Default Under Other Lien.** A default or event of default occurs under any lien, security interest or assignment covering the Property or any part thereof (whether or not NationsBank has consented, and without hereby implying NationsBank's consent, to any such lien, security interest or assignment created hereunder), or the holder of any such lien, security interest or assignment declares a default or institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.
- f. Liquidation, Etc.** The liquidation, termination, dissolution, merger, consolidation or failure to maintain good standing in each state that business is conducted (or in the case of an individual, the death or legal incapacity) of Borrower, Grantor or any person liable, directly or indirectly, for any of the Secured Indebtedness.
- g. Enforceability; Priority.** Any Loan Document shall for any reason without NationsBank's specific written consent cease to be in full force and effect, or shall be declared null and void or unenforceable in whole or in part, or the validity or enforceability thereof in whole or in part shall be challenged or denied by any party thereto other than NationsBank, or the liens, estates, or security interests established under this Deed of Trust in any of the Property become unenforceable in whole or in part, or cease to be of the priority herein required, or the validity or enforceability thereof, in whole or in part, shall be challenged or denied by Grantor or any person liable, directly or indirectly, for any of the Secured Indebtedness.
- h. Other Default.** A default or event of default occurs under any other Loan Document, or under any other Section of this Deed of Trust which specifies a condition or event as a Default.

13. Rights and Remedies on Default. Unless prohibited by law, upon the occurrence of any event of Default (and the giving of any notice as required by law) and at any time thereafter, NationsBank, at its option, may exercise any one or more of the following rights and remedies singularly and collectively, in addition to any other rights or remedies provided by law or under any of the Loan Documents:

- a. Accelerate Note.** NationsBank shall have the right at its option without further demand or notice to Grantor to declare the entire unpaid balance of the Note and all of the Secured Indebtedness, together with all accrued unpaid interest, fees, and charges, immediately due and payable.
- b. UCC Remedies.** With respect to all or any part of any personal property, NationsBank shall have all the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the jurisdiction where the Property is located.
- c. Power of Sale.** NationsBank may invoke the power of sale in addition to any other rights or remedies permitted under the Loan Documents or by law.
- d. Tenancy at Sufferance.** If Grantor remains in possession of the property after the property is sold as provided above or NationsBank otherwise becomes entitled to possession of the Property upon Default, Grantor shall become a tenant at sufferance of NationsBank or the purchaser of the property and shall, at NationsBank's option, either (i) pay a reasonable rental for the use of the Property, (ii) vacate the Property immediately upon the demand of NationsBank, or (iii) be subject to removal by writ of possession.

e. Enter and Use the Property. NationsBank may enter upon and take possession of the Property without the appointment of a receiver, or may seek the appointment of a receiver without notice to Grantor, employ a managing agent of the Property and let the same, either in its own name or in the name of Grantor, and receive the rents, incomes, issues and profits of the Property and apply the same, after payment of all necessary charges and expenses, on account of the Secured Indebtedness. Grantor transfers and assigns to NationsBank Grantor's lessor interest in any lease now or hereafter affecting the whole or any part of the Property.

f. Sale of Property. Trustee, or his successor in trust, is hereby authorized and empowered, upon giving twenty (20) days' notice by three publications in any newspaper, daily or weekly, of general circulation, published in the County wherein the Property is located, to sell the Property, or any part thereof, at the front door of the Courthouse in said county to the highest bidder for cash, at public outcry, free from all rights of redemption afforded by statute, equitable rights of redemption, exemptions of homestead, rights by virtue of marriage, and all other exemptions of every kind, all of which are expressly waived. The Trustee or his successor in trust is further authorized and empowered to execute and deliver a deed to the purchaser at such sale. NationsBank may bid at any such sale. The purchaser at such sale shall be entitled to immediate possession of the Property upon the delivery to purchaser by Trustee of a deed for the Property. Prior to such sale, Trustee may enter and take possession of the Property, in which case Trustee shall be accountable only for net rents actually received by Trustee. In the event of sale hereunder, the proceeds will be applied by Trustee as follows:

First - to pay all costs and charges of executing this trust, including attorney's fees and expenses of any litigation which may arise on account of the execution and enforcement of this trust;

Second - to pay the Secured Indebtedness, or any balance thereof then remaining unpaid;

Third - the remainder to be paid to such parties as are legally entitled to it.

In the event of a sale of said Property under and by virtue of this trust, Grantor and all persons holding under Grantor shall be and become tenants at will of the purchaser of the Property from and after the execution and delivery of a deed to the purchaser, and shall pay the purchaser the reasonable rental value of the Property after the sale. Grantor's tenancy shall be terminated at the option of purchaser upon five (5) days' written notice.

If Grantor unsuccessfully challenges the validity of any such sale carried out pursuant to the terms of this Deed of Trust, Grantor shall pay the reasonable attorney's fees

g. Notice of Sale of Personal Property. NationsBank shall give Grantor reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or other intended disposition of any personal property is to be made. Reasonable notice shall mean notice given at least ten (10) calendar days before the time of the sale or disposition.

h. Waiver; Election of Remedies. A waiver by any party of a breach of a provision of this Deed of Trust shall not constitute a waiver of or prejudice the party's rights otherwise to demand strict compliance with that provision or any other provision. No waiver by NationsBank shall be effective unless it is in writing and signed by an authorized officer of NationsBank. No waiver shall operate as a waiver of any other matter or of a similar matter at a future time. Election by NationsBank to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or take action to perform an obligation of Grantor under this Deed of Trust after failure of Grantor to perform shall not affect NationsBank's right to declare a default and exercise its remedies under this Deed of Trust.

i. Attorneys' Fees; Expenses. Whether or not any court action is involved, all reasonable expenses incurred by NationsBank that in NationsBank's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Secured Indebtedness, shall be payable on demand and shall bear interest from the date of expenditure until repaid at the interest rate provided for in the Note. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, NationsBank's reasonable attorneys' fees and NationsBank's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees, and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

j. Receiver. NationsBank, in any action to foreclose this Deed of Trust, or upon any Default, shall be at liberty to apply for the appointment of a receiver of the rents and profits of the Property or both without notice, and shall be entitled to the appointment of such a receiver as a matter of right, without consideration of the value of the Property as security for the Secured Indebtedness, or the solvency of any person or corporation liable for the payment of such amounts.

k. Pay Expenses. Pay any sums in any form or manner deemed expedient by NationsBank to protect the security of this Deed of Trust or to cure Default other than payment of interest or principal on the Note; make any payment hereby authorized to be made according to any bill, statement or estimate furnished or procured from the appropriate public officer of the party claiming payment without inquiry into the accuracy or validity thereof, and the receipt of any such public officer or party in the hands of NationsBank shall be conclusive evidence of the validity and amount of items so paid, in which event the amounts so paid, with interest thereon from the date of such payment at the rate of interest stated in the Note, subrogated to any encumbrance, lien, claim or demand, and to all the rights and securities for the payment thereof, paid or discharged with the principal sum secured hereby or by NationsBank under the provisions hereof, and any such subrogation rights shall be additional and cumulative security to this Deed of Trust.

l. Other Remedies. NationsBank shall have all other rights and remedies provided in this Deed of Trust or the Note or as available at law or in equity.

m. Other Matters Relating to Enforcement of Remedies. In any sale made as contemplated herein the NationsBank may bid for and purchase any of the Property being sold, and shall be entitled upon presentment of the relevant Loan Documents and documents evidencing the same to apply the amount of the Secured Indebtedness held by it against the purchase price for the items of the Property so purchased. The amount so applied shall be credited first against the (to the extent permitted by law) payment of the costs and expenses of so realizing on the Property (including but not limited to reasonable attorneys' fees and disbursements) together with interest thereon then to the portion of the Secured Indebtedness that constitute interest accrued but unpaid; then to the remainder of the Secured Indebtedness then to the holders of any liens and interests on the Property that are junior to the lien and interest under this instrument and the balance, if any, to Grantor, or its heirs, executors, administrators, personal representatives, successors or assigns, or to whosoever else may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

14. Grantor Not Released; Forbearance by NationsBank Not a Waiver. Renewal, modification or extension of the time for payment, modification of amortization of the Secured Indebtedness, transfer of the Property, or any forbearance granted by NationsBank shall not operate to release the liability of the original Grantor or Grantor's successors in interest or any other person. NationsBank shall not be required to commence proceedings against any successor in interest or any other person, or refuse to extend time for payment or refuse to otherwise modify amortization of the Secured Indebtedness by reason of that or any demand made by the original Grantor or Grantor's successors in interest or any other person. Any forbearance by NationsBank in exercising any right or remedy shall not be a waiver of or preclude the exercise of that or any other right or remedy.

Neither failure by NationsBank to exercise nor delay by NationsBank in exercising or discontinuance of the exercise of any power, right or remedy upon or after any Default shall be construed as a waiver of such Default, or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise of any such right, power or remedy shall preclude, waive or otherwise affect any other or further exercise thereof, or the exercise of any other right, power or remedy. Any waiver, permit, consent or approval of any kind by NationsBank, whether of any breach of or Default under this Deed of Trust, the Note or any other Loan Document or otherwise must be in writing and shall be effective only to the extent set forth in such writing.

NationsBank shall have the right from time to time to sue for any sums, whether interest, principal or any installment or either or both, taxes, penalties, or any other sums required to be paid under the terms of this Deed of Trust, as the same become due, without regard to whether or not all of the Secured Indebtedness shall be due on demand, and without prejudice to the right of NationsBank thereafter to enforce any appropriate remedy against Grantor, including an action of foreclosure, or any other action, for a default or defaults by Grantor existing at the time such earlier action was commenced.

15. Amendments. This instrument may not be modified or amended except by writing executed by both Grantor and an authorized officer of NationsBank.

16. Successors and Assigns Bound; Joint and Several Liability. The covenants and agreements of this Deed of Trust shall bind and benefit the successors and assigns of NationsBank and the heirs, representatives, successors, and assigns of Grantor, subject to the provisions of Section 18. Grantor's covenants and agreements shall be joint and several. Any Grantor who signs this Deed of Trust but does not execute the Note: (a) is signing this Deed of Trust only to grant, bargain, sell and convey that Grantor's interest in the Property under the terms of this Deed of Trust; (b) is not by signing this Deed of Trust becoming personally obligated to pay the Note; and (c) agrees that NationsBank and any other Grantor may agree to renew, extend, modify, forbear or make any accommodations with regard to the terms of this Deed of Trust or the Note or any other Loan Document without that Grantor's consent. The foregoing does not limit the liability of Grantor under any guaranty agreement or other agreement by such Grantor whereby such Grantor becomes liable for the Secured Indebtedness in whole or in part.

17. Notices. Every provision for notice and demand or request except as otherwise required by law shall be deemed fulfilled by written notice and demand or request personally served on one or more of the persons who shall at the time hold the record title to the Property, or on their heirs or successors, or mailed by depositing it in any post office station or letter box, enclosed in a postpaid envelope (a) addressed to such person or persons, or their heirs or successors, at his, their or its address last known to NationsBank or (b) addressed to the street address of the Property.

18. Transfer of the Property or a Beneficial Interest in Grantor. If all or any part of the Property or any interest in it is sold, transferred, conveyed, quit-claim deeded, voluntarily or involuntarily, by operation of law, death or otherwise (or if a beneficial interest in Grantor is sold or transferred, voluntarily or involuntarily, by operation of law or otherwise, and if Grantor is not a natural person) without NationsBank's prior written consent, NationsBank may, at its option, require payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by NationsBank if exercise is prohibited by federal or state law as of the date of this Deed of Trust. NationsBank may, in its sole discretion, in any one or more instances waive its option to require payment in full under this Section 18, but it shall have no obligation to do so, and any waiver may be conditioned upon such one or more of the following (if any) which NationsBank may require: (i) the transferee's integrity, reputation, character, creditworthiness and management ability being satisfactory to NationsBank in its sole judgment; (ii) Grantor and transferee executing, prior to such sale or transfer a written assumption agreement containing such terms as NationsBank may require; (iii) a principal pay down on the Note; (iv) an increase in the rate of interest stated in the Note; (v) a transfer fee; and (vi) any modification of the terms of the Note and/or the other Loan Documents which NationsBank may require.

If NationsBank requires payment in full pursuant to this Section 18 NationsBank shall give notice of acceleration. The notice shall provide a period of not less than ten (10) calendar days from the date the notice is delivered or mailed within which all sums secured by this Deed of Trust must be paid. If these sums are not paid prior to the expiration of this period, NationsBank may invoke the power of sale and any other remedies by this Deed of Trust and/or any other Loan Document without further notice or demand on any person, except as otherwise may be required by applicable law.

19. Release. Upon payment of the Secured Indebtedness in full, NationsBank or Trustee shall release this Deed of Trust without charge to Grantor except for any recordation costs.

20. Recitals. Recitals of this Mortgage are hereby incorporated by reference.

21. Subrogation. Any of the proceeds of the Note used to pay any debt secured by any outstanding lien or encumbrance against all or any part of the Property have been advanced by NationsBank at Grantor's request and upon Grantor's representation that such amounts are due and are secured by valid liens against the Property. NationsBank shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by any owner or holder of any such outstanding liens and debts, regardless of whether said liens or debts are acquired by NationsBank by assignment or are released by the owner or holder thereof upon payment, and all of the same are recognized as valid and subsisting and are renewed and continued and merged herein to secure the Secured Indebtedness, but this Deed of Trust shall govern and control the enforcement of the liens to which NationsBank is subrogated hereunder.

22. Fees and Expenses. To the extent not prohibited by applicable law, Grantor will pay, and will reimburse to NationsBank on demand to the extent paid by NationsBank: (a) all appraisal fees, filing and recording fees, taxes, abstract fees, title search or examination fees, title policy and endorsement premiums and fees, Uniform Commercial Code search fees, escrow fees, reasonable attorneys' fees, environmental inspection fees, survey fees and all other out of pocket costs and expenses of any kind incurred by Grantor and/or NationsBank in connection with the preparation of the Loan Documents, closing and funding of the Note, and any and all amendments and supplements to the Loan Documents; and (b) all costs and expenses, including reasonable attorneys' fees and expenses, incurred or expended in connection with the exercise of any right or remedy, or the enforcement of any obligation of Grantor, under this Deed of Trust or under any other Loan Document.

NationsBank may, at its option at any time Grantor is in default under the terms of the Note or the other Loan Documents, obtain an appraisal satisfactory to NationsBank of the Property or any part thereof by a third party appraiser engaged by NationsBank and annual financial statements of Grantor (including disclosure of all contingent liabilities). Grantor hereby agrees to provide to NationsBank such financial statements in form and content satisfactory to NationsBank within ten (10) calendar days of each such request therefor by NationsBank, as well as such other financial statements, if any, as and when required by any other Loan Document. To the extent not prohibited by applicable law, the cost of each appraisal shall be a part of the Secured Indebtedness and shall be paid by Grantor to NationsBank on demand.

23. Effective as Financing Statement. This Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all fixtures included within the Property, and is to be filed for record in the real estate records of each county where the Property (including said fixtures) is situated. This Deed of Trust shall also be effective as a financing statement covering any other Property and may be filed in any other appropriate filing or recording office. 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 23.

24. Waivers. Grantor expressly agrees that the Trustee, or his successor, may execute the power of sale granted herein and the other powers and rights set forth herein without giving bond or taking oath. The Trustee shall not be liable to Grantor for any acts or omissions to act in the execution of his powers hereunder, except for such acts or omissions as constitute gross negligence or willful misconduct. Except in such instances of gross negligence or willful misconduct, neither the Trustee nor NationsBank shall be obligated to provide an accounting of any funds received or disbursed in connection with the payment of the Indebtedness or the administration, enforcement, or foreclosure of this trust. Grantor expressly waives all legal, equitable, and statutory rights of redemption, exemption or homestead, all rights arising by virtue of marriage, and all other similar exemptions and rights arising under or created by an applicable statute or judicial decision.

25. Governing Law; Severability. This Deed of Trust shall be governed by Tennessee law and applicable federal law. If a court of competent jurisdiction finds any provision of this Deed of Trust to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. If feasible, any such offending provision shall be deemed to be modified to be within the limits of enforceability or validity; however, if the offending provision cannot be so modified, it shall be stricken and all other provisions of this Deed of Trust in all other respects shall remain valid and enforceable.

26. Interpretation. Within this Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires. Titles appearing at the beginning of any subdivisions hereof are for convenience only, do not constitute any part of such subdivisions, and shall be disregarded in construing the language contained in such subdivisions. NationsBank has no fiduciary, partnership or other special relationship with Grantor under the Loan Documents or with respect to their subject matter, nor any implied covenants or duties, and any contrary inferences are hereby negated.

27. Trustee Provisions. Trustee shall be protected in acting upon any notice, request, consent, demand, statement, or other document believed by Trustee to be genuine. Trustee shall not be liable for any act or omission unless willful. Trustee may act under this Deed of Trust even though Trustee may be now or in the future, or may have been, NationsBank's attorney. All rights, remedies, powers, and duties of Trustee under this Deed of Trust may be exercised or performed by one or more Trustees acting alone or together. NationsBank, at its option, may from time to time remove or substitute any Trustee, add one or more trustees, or appoint a successor trustee to any Trustee, without the necessity of any formality other than a designation by NationsBank in writing recorded in the county where the Deed of Trust is recorded. Without any further act or conveyance, the substitute, additional, or successor trustee shall become vested with all the title, rights, remedies, powers, and duties conferred upon Trustee herein and by applicable law. Any successor Trustee may be removed and another successor appointed by NationsBank in the same manner. Such appointment shall be made by written instrument executed by NationsBank which shall be recorded among the public records in the county where the Property is located, and shall be conclusive proof of the proper appointment of the successor trustee. A successor Trustee shall not be liable or responsible for any acts or omissions of his predecessors.

28. Headings. The headings of the sections of this instrument are inserted for convenience only and shall not be deemed to constitute a part of this instrument.

29. Construction Mortgage. This Deed of Trust constitutes a "construction mortgage" as defined in Tennessee Commercial Code to the extent that it secures an obligation incurred for the construction of improvements, including the acquisition cost of the land.

30. Special Provisions. [If blank, there are no special provisions].

31. Special Notice to Grantor. Any Grantor who signs this Deed of Trust but does not execute the Note: (a) is signing this Deed of Trust only to grant, bargain, sell and convey that Grantor's interest in the Property under the terms of this Deed of Trust; (b) is not by signing the Deed of Trust becoming personally obligated to pay the Note; and (c) agrees that NationsBank and any other Grantor may agree to renew, extend, modify, forebear or make any accommodations with regard to the terms of this Deed of Trust or the Note or any other Loan Document without that Grantor's consent. The foregoing does not limit the liability of Grantor under any guaranty agreement or other agreement by such Grantor whereby such Grantor becomes liable for the Secured Indebtedness in whole or in part.

Any litigation arising out of or relating to this Deed of Trust or the Account shall be commenced and conducted in the courts of the State of Tennessee for the counties or the Federal Courts for the districts in Tennessee where NATIONSBANK, N.A. maintains offices and conducts banking business.

I hereby waive the right to trial by jury in any action brought on this Deed of Trust or this Note or on any other matter arising in connection with this Deed of Trust or this Note.

In Witness Whereof, this Deed of Trust has been duly executed by Grantor the day and year first above written and Grantor acknowledges receiving a full and completed copy of this Deed of Trust (regardless if Grantor's signature appears on the copy). The word "Grantor" means each Grantor, jointly and severally, if there is more than one Grantor.

Individual Grantor(s):

Bobby Kirby
Grantor Signature
BOBBY KIRBY

Type or Print Name
Sarah J Kirby
Grantor Signature
SARAH J KIRBY, HIS WIFE

Type or Print Name

Grantor Signature

Type or Print Name

Corporate Grantor(s):

Type or Print Grantor Name

By _____
Officer Signature

Type or Print Name

Type or Print Title

Individual Acknowledgment

State of MISSISSIPPI)
) SS
County of DESOTO)

Personally appeared before me, Luan F. Johnson, a Notary Public in and for said State and County, Bobby Kirby and Sarah J. Kirby the within-named bargainor(s), with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that he/she executed the foregoing instrument for the purposes therein contained.

WITNESS my hand and seal at office, on the 14th day of December, 1998.



Luan F. Johnson
Notary Public

Corporate Acknowledgment

State of _____)
) SS
County of _____)

Before me, _____, a Notary Public in and for said State and County aforesaid, personally appeared _____, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged that himself/herself/ themselves to be the _____ of _____ the within-named bargainor, a corporation, and that he/she/they as such _____ being duly authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/ herself/themselves as such _____.

WITNESS my hand and seal at office, on the _____ day of _____, _____.

My Commission Expires: _____

Notary Public