

**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.**

**AMENDED AND RESTATED  
DEED OF TRUST**

THE STATE OF TEXAS  
COUNTY OF MIDLAND

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§  
§

KNOW ALL MEN BY THESE PRESENTS:

THAT GABRIEL A. MERUELO II AND TINA A. MERUELO, each an individual, with a mailing address at P.O. Box 9901, Midland, Texas 79708, referred to herein as "Grantor", has, for the purpose of securing the indebtedness and obligations herein described and in consideration of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor paid by MICHAEL COHODES, TRUSTEE (the "Trustee"), whose address is 3355 West Alabama, Suite 640, Houston, Texas 77098, and in consideration of the debt and trust herein described, the receipt and sufficiency of which consideration are hereby acknowledged and confessed, GRANTED, BARGAINED, SOLD, AND CONVEYED unto the Trustee, and unto the Trustee's successors and substitutes as herein provided, all of Grantor's interest in that certain real property situated in Midland County, Texas, being more particularly described on Exhibit "A" attached hereto (the "Land") along with:

- (a) All rights, title, interests, estates, reversions, and remainders now owned or hereafter acquired by Grantor in and to the Land;
- (b) All improvements now or hereafter situated on the Land (the "Improvements");
- (c) All rights, title, and interests now owned or hereafter acquired by Grantor in and to all easements, streets, and rights-of-way of every kind and nature next to or adjoining the Land and all public or private utility connections thereto and all appurtenances, servitudes, rights, ways, privileges, and prescriptions thereto;
- (d) All goods, equipment, fixtures, and other personal property (the "Personalty") now owned or hereafter acquired by Grantor and now or hereafter affixed to, located on or within, or used in connection with the Land or the Improvements; and
- (e) Without limiting the foregoing, any and all rights, royalties, rents, revenues, benefits, leases, contracts, accounts, money, instruments, insurance proceeds, tenements, hereditaments, and appurtenances now owned or hereafter acquired by Grantor and appertaining to, generated from, arising out of, or belonging to any of the foregoing (all of the foregoing [a] through [e] inclusive, being herein called the "Property").

TO HAVE AND TO HOLD the Property, unto the Trustee, and the Trustee's successors and substitutes, forever; and Grantor hereby binds Grantor, Grantor's successors and assigns to WARRANT AND FOREVER DEFEND the Property unto the Trustee, the Trustee's successors, substitutes, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

ARTICLE I

OBLIGATION

This conveyance is made in trust for the purpose of (a) securing and enforcing the payment of that certain Amended and Restated Wraparound Promissory Note (the "Note") of even date herewith, in the principal sum of Five Hundred Twenty Nine Thousand Six Hundred Seventy Three and 97/100 Dollars (\$529,673.97) executed by Grantor, and payable to the order of Ann Sams, an individual (who, together with all subsequent holders of the Note and/or all other indebtednesses and obligations described or referred to herein, is herein called "Beneficiary"), as therein provided, bearing interest as therein provided, and finally maturing on February 15, 2022 (the "Maturity Date"), containing certain acceleration, maturity, waiver, and attorneys' fees clauses as set forth therein, reference to which Note is here made for all purposes, together with all renewals, rearrangements, modifications, and/or extensions of the Note or any part thereof, and all other sums of money which may hereafter be paid or advanced by or on behalf of Beneficiary under the provisions of this Deed of Trust or the Note, of even date by and among Grantor and Beneficiary or any other instrument, document, or other writing now or hereafter evidencing, securing, or pertaining to the loan transaction evidenced by the Note. In addition, this conveyance is made in trust (a) to secure the performance and discharge of each and every promise, obligation, covenant, and agreement of Grantor or others contained in the Note, this Deed of Trust or any other instrument, document, or other writing heretofore, contemporaneously herewith, or hereafter executed by Grantor, or others, evidencing, securing, or pertaining to any indebtedness or obligation secured hereby and (b) to secure the payment of all other amounts, with interest thereon, becoming due and payable to Beneficiary under the terms of the Note, this Deed of Trust and any other instrument, document, or other writing previously, presently, or hereafter executed by Grantor, or others, evidencing, securing, or pertaining to the Property or any indebtedness or obligation secured hereby, including, without limitation, all monies advanced by Beneficiary to or on behalf of Grantor, any extension, renewal, modification, or re-amortization of the Note. The Note and all other indebtedness and obligations described or referred to in this Section are collectively referred to as the "Indebtedness".

ARTICLE II

REPRESENTATIONS, WARRANTIES, AND COVENANTS OF GRANTOR

Grantor hereby represents and warrants to, and covenants and agrees with, Beneficiary and Trustee, as follows:

2.01 **Payment of Indebtedness.** All Indebtedness secured hereby, together with interest thereon, will be paid when the same becomes due and payable, in accordance with the terms of the Note and any other instrument, document, or other writing evidencing, securing, or pertaining to any Indebtedness or evidencing any renewal, modification, or extension of any Indebtedness and further, Grantor shall punctually and properly perform and discharge all of Grantor's covenants, obligations, duties, undertakings, and agreements under this Deed of Trust and under any other security agreement, mortgage, deed of trust, contract, assignment or any other instrument or agreement of any kind now or hereafter existing as security for, executed in connection with, or related to any Indebtedness.

2.02 **Ownership and Clear Title.** Grantor is lawfully seized of good and marketable title to the Property, and has the right to convey the same, and the Property is free from all liens, claims and encumbrances, except for the encumbrances of record.

2.03 **Payment of Taxes, Assessments and Other Charges.** Grantor shall pay all assessments (including, but not limited to, taxes, dues or assessments owed to Saddle Club Townhouse Homeowners Association) against, affecting, or attributable to the Property, by Grantor making payment to the assessing authority. Grantor shall promptly furnish to Beneficiary all notices of amounts due under this Section 2.03, and receipts evidencing such payments not fewer than fifteen (15) days prior to the delinquency date thereof. Grantor shall be obligated to reimburse Beneficiary for any increase in taxes assessed against the Property after the date of this Deed of Trust due to Grantor's use, occupancy, or improvement of the Property, within ten (10) days after Grantor's receipt of documentation evidencing such increase.

2.04 **Encumbrances and Claims; Subrogation.** Grantor shall promptly discharge when due all claims and obligations associated with the Property, and otherwise shall cause the Property to remain free and clear of all encumbrances, liens, charges, mortgages, and security interests, except for any federal tax liens filed against the Property prior to the date hereof and to the extent any other liens are otherwise created or permitted herein, unless Grantor obtains the prior written consent of Beneficiary, including, without limitation, vendor's, materialmen's, or mechanic's liens heretofore or hereafter created, whether arising by contract or by rights given or imposed by law. In the event any such lien is filed of record, or in any other manner claimed or perfected against the Property, Grantor shall immediately cause such lien to be released of record or otherwise extinguished within fifteen (15) days after the perfection of same. To the extent that any of the proceeds of the Note are expended to extinguish or acquire outstanding liens, charges, encumbrances, mortgages, or security interests against or affecting all or any portion of the Property, which expenditures Grantor hereby authorizes Beneficiary to make without notice to Grantor, such proceeds shall be deemed to have been advanced by Beneficiary at Grantor's request and upon Grantor's representation that such amounts are due and validly secured by perfected and enforceable liens and security interests covering the Property.

2.05 **Preservation and Maintenance of Property.** Grantor (i) shall not permit or commit waste, impairment, or deterioration of the Property, (ii) shall not abandon the Property, (iii) shall promptly restore or repair in a good and workmanlike manner, all or any portion of the Property to the equivalent of its original condition, or such other condition as Beneficiary may approve in writing, in the event of any damage, injury, or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (iv) shall keep the Property, including the Improvements, fixtures, equipment, Personalty, machinery, and appliances thereon in good repair and shall replace fixtures, Personalty, equipment, machinery, and appliances on the Property when necessary to keep such items in good repair, and (v) shall comply with all laws, ordinances, regulations, and requirements of any governmental body applicable to the Property. Without the prior written consent of Beneficiary, neither Grantor nor any tenant or other person or entity shall remove or alter any Improvements or any fixtures, Personalty, equipment, machinery, or appliances in or on the Land or the Improvements except in the ordinary course of Grantor's business. Any seizure or sale, pursuant to provisions of this Deed of Trust, with or without legal process, of all or any portion of the Property shall not exhaust any power, or affect the power to thereafter seize and sell the remainder of the Property, or any portion thereof.

2.06 **Inspection and Repairs.** Beneficiary and any person authorized by Beneficiary shall have the right of ingress and egress to enter upon and inspect the Property at all reasonable times, and access thereto shall be permitted for that purpose and for the purpose of making any repairs or completing construction of the Improvements; provided, however, Beneficiary shall not be under any duty to make any inspections or repairs whatsoever or to complete construction of the Improvements.

2.07 **Insurance.**

(a) At Grantor's sole expense, Grantor shall keep all Improvements on the Property and insured by insurance carriers satisfactory to Beneficiary against loss by fire or other hazards included within the term "extended coverage", builder's risk and hazard insurance on the Property during any development and construction thereof, Worker's Compensation insurance in amounts as specified by Beneficiary, Comprehensive General Liability insurance in amounts as specified by Beneficiary, and insurance against such other hazards, casualties, claims, and liabilities for injury or damage to persons or property, or other contingencies, as Beneficiary shall require and in such amounts and for such periods as Beneficiary shall require. All policies and renewals thereof are to be payable to Beneficiary (by means of standard mortgagee's clauses approved by Beneficiary designating Beneficiary as first mortgagee without contribution) as the interest of the Beneficiary may appear, in form and amount acceptable to Beneficiary. All policies shall provide that the same shall not be modified or cancelled without thirty (30) days prior written notice to Beneficiary.

(b) Beneficiary shall have the right to hold the policies and renewals thereof, and Grantor shall promptly furnish to Beneficiary all renewal notices and all receipts for premiums paid. At least fifteen (15) days prior to the expiration date of the policies, Grantor shall deliver to Beneficiary renewal policies in form satisfactory to Beneficiary. In no event, whether or not default hereunder has occurred, shall Beneficiary, by the act of approving, accepting, or obtaining such insurance, incur any liability for the amount of such insurance, the form or legal sufficiency of insurance contracts, solvency of insurers, or payment of losses by insurers, and Grantor hereby assumes full responsibility therefor and liability, if any, thereunder.

(c) In the event of loss, Grantor shall give immediate written notice to the insurance carrier and Beneficiary. Grantor hereby authorizes and empowers Beneficiary, at Beneficiary's option and in Beneficiary's sole discretion, on behalf of Beneficiary and/or as attorney-in-fact for Grantor, to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's reasonable expenses incurred in the collection of such proceeds; provided however, that nothing contained in this section shall require Beneficiary to incur any expense or take any action hereunder. Grantor further authorizes Beneficiary to hold the balance of such proceeds to be used to reimburse Grantor for the costs of reconstruction or repair of the Property. If the insurance proceeds are held by Beneficiary to be used to reimburse Grantor for the costs of restoration and repair of the Property, the Property shall be restored to the equivalent of its original condition, as improved by Beneficiary from time to time after the date hereof (to the extent of proceeds received under Grantor's insurance policy), and further, in such event, at Beneficiary's option, Beneficiary may condition disbursement of said proceeds on Beneficiary's approval of plans and specifications therefor.

(d) If, under Section 3.03 hereof, the Property is sold or the Property is acquired by Beneficiary, all rights, title, and interests of Grantor in and to any insurance policies and unearned premiums thereon and in and to the proceeds thereof resulting from damage to the Property prior to such sale or acquisition shall pass to Beneficiary.

2.08 **Application of Payments.** Unless applicable law provides otherwise, all payments received by Beneficiary under the Note or any provisions of this Deed of Trust shall be applied by Beneficiary to any one or more of any Indebtedness then secured hereby, in any amount, order, or preference which Beneficiary may determine, in Beneficiary's sole discretion and, at Beneficiary's

option, Beneficiary may apply any payments received by Beneficiary on any Indebtedness secured hereby against any sums payable pursuant to Sections 2.12 and 2.13 hereof. Unless Beneficiary designates otherwise, and except as set forth in the Note, all payments received by Beneficiary and applied to any Indebtedness secured hereby shall be applied first to reimburse Beneficiary for any expenses related to the performance of Grantor's covenants or Beneficiary's rights under this Deed of Trust, second to interest then due and payable on the Indebtedness, third to principal then due and payable on such Indebtedness, and fourth to the last maturing installments of principal on the Indebtedness.

2.09 **Waiver of Appraisal and Redemption.** Grantor hereby waives the benefit of all laws now existing or that may hereafter be enacted providing for an appraisal before sale of any of the Property, and also the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement of the collection of any Indebtedness or creating or extending a period of redemption with respect to any sale hereunder.

2.10 **Use of Property.** Unless required by applicable law or unless Beneficiary has otherwise agreed in writing, Grantor shall not allow changes in the nature of the occupancy or use for which the Property was intended at the time this Deed of Trust was executed. Grantor shall not initiate or acquiesce in any change in the zoning classification of the Property or any amendment or modification to easements, restrictive covenants, plats, or dedications affecting the Property without Beneficiary's prior written consent.

2.11 **Defense of Actions.** Grantor shall give written notice to Beneficiary of, and, unless otherwise directed in writing by Beneficiary, shall appear in and take all necessary and proper steps to defend against any action or proceeding affecting, directly or indirectly, the Property, the title or interest of Grantor or the Trustee thereto, the interest of Beneficiary therein, or the rights and powers of Beneficiary hereunder, and shall file and prosecute all necessary claims and actions to prevent or recover for any damage to, destruction of, or diminution in the value of the Property, or any portion thereof.

2.12 **Protection of Property by Beneficiary; Reimbursement by Grantor.** Without obligation to do so, without notice to or demand upon Grantor, without liability for anything done or omitted while performing the same, and without releasing Grantor from any obligation hereunder or waiving any rights or powers of Beneficiary or the Trustee hereunder, in Beneficiary's sole discretion, Beneficiary may perform any act agreed to be performed by Grantor herein, or in any other instrument, document, or other writing executed in connection herewith, which Grantor fails to perform in full or which Beneficiary, in good faith, believes Grantor cannot or will not fully perform. Upon demand, Grantor shall repay to Beneficiary all sums expended in performing or attempting to perform any of such acts, in defending this Deed of Trust, or in exercising any right, remedy, or power available to or conferred upon Beneficiary hereunder, including, without limitation, the cost of surveys, evidences of title, appraisals, court costs, and reasonable attorney's fees. Grantor shall further repay to Beneficiary all sums expended by Beneficiary in connection with the enforcement or attempted enforcement by any person, entity, or governmental authority of any and all provisions of any state or federal law, legislation, act, order, or decree, and any and all rules and regulations promulgated by any federal or state court or governmental agency, as they pertain to this Deed of Trust and/or any Indebtedness. All sums expended by Beneficiary pursuant to this Section 2.12, together with interest thereon at the maximum non-usurious rate of interest.

2.13 **Grantor and Lien Not Released.** Without affecting the obligation of Grantor to pay the sums secured by this Deed of Trust and to observe the covenants of Grantor contained herein, from time to time, without notice to or consent of Grantor, and notwithstanding Grantor's breach of any covenant or agreement of Grantor in this Deed of Trust, Beneficiary may extend the time for payments of any

Indebtedness or any part thereof, reduce the payments thereon, release any person or entity liable on any Indebtedness, accept a renewal note or notes therefor, modify the terms and time of payment of any Indebtedness, release from this Deed of Trust any portion of the Property, take or release other or additional security, reconvey any portion of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Grantor or any other person or entity now or hereafter liable on or for any indebtedness or any person or entity now or hereafter claiming any interest in the Property, or any portion thereof, to modify the rate of interest, the period of amortization, or any other terms and provisions of any indebtedness.

2.14 **Full Force and Effect; Release.** This Deed of Trust shall remain in full force and effect until the full, final, and complete payment of all Indebtedness. Any other mortgage, lien, or security of any character, now or hereafter had or taken by Beneficiary, either on the Property or on any other property, real or personal, as well as any endorsements, guaranties, or the like, shall be supplemental to and cumulative of this Deed of Trust, and the taking of any such additional security, of any character, now or hereafter, shall not be construed in any manner to waive the liens and security interests of this Deed of Trust or any right or remedy conferred hereunder. If all Indebtedness is paid as aforesaid and if the covenants and agreements contained herein are kept and performed by Grantor, then this conveyance shall become null and void and shall be released at the expense of Grantor.

2.15 **Time of the Essence; No Waiver.** Time is of the essence with respect to each covenant, agreement, obligation, and undertaking of Grantor herein. It is agreed that the acceptance of any late payment does not constitute a waiver of, or estoppel against Beneficiary exercising, any options, rights, remedies, or privileges given to Beneficiary herein; and acceptance of said late payment does not in any way bind or obligate Beneficiary to accept late payments in the future.

2.16 **Estoppel Certificate.** At any time and from time to time, upon ten (10) days notice from Beneficiary, Grantor shall promptly furnish a written statement, in such form as may reasonably be required by Beneficiary, stating such information concerning the Note, the Property and the security for the Note as Beneficiary shall require, including, without limitation, the unpaid balance of the Note, and that there are no offsets or defenses against full payment of the Note or performance of the terms hereof, or if there are any such offsets and defenses, specifying them.

2.17 **Transfers of Interest.** Without Beneficiary's prior written consent, Grantor shall not, voluntarily or involuntarily, sell, convey, mortgage, lease, hypothecate, or transfer, or permit, consent to, acknowledge, approve, or register any sale, conveyance, mortgage, lease, hypothecation, or transfer of, all or any interest in the Property, provided, notwithstanding the foregoing, Grantor shall be permitted to enter into a contract for the sale of the Property without Beneficiary's consent so long as the closing of such sale pursuant to such contract does not occur until after the Maturity Date, as such date may be extended pursuant to the terms of the Note, and the Note is paid in full prior to the sale of the Property. Grantor shall pay to Beneficiary any and all of Beneficiary's fees, costs, and expenses related to any request for Beneficiary to consent to such transfer and the review thereof, including, without limitation, Beneficiary's attorneys' fees, in all events, whether such transfer is approved or not.

2.18 **Attorney's Fees.** Grantor shall reimburse Beneficiary for all attorney's fees incurred by Beneficiary in connection with preparation of this Deed of Trust and the Note, and all other attorney's fees incurred by Beneficiary in connection with the transaction contemplated hereby within ten (10) days after receipt of written documentation evidencing such fees.

ARTICLE III

DEFAULT OF GRANTOR AND REMEDIES OF BENEFICIARY

3.01 **Default.** The occurrence or existence now or hereafter of any one (1) or more of the following events or conditions shall constitute an event of default by Grantor hereunder:

(a) Payment of any Indebtedness is not made at the time or in the manner agreed or any failure to perform or comply with any of the other terms, conditions, covenants, obligations, agreements, or undertakings contained in this Deed of Trust or in any other instrument, document, or other writing now or hereafter evidencing, securing, or relating to any Indebtedness; or

(b) Any financial information received by Beneficiary concerning the Property or Grantor, is false or misleading in any material respect, or any statement, representation, or warranty of Grantor herein contained, or contained in any instrument executed or delivered as a condition to the making of any loan secured hereby is false, misleading, or erroneous in any material respect; or

(c) The assertion of any claim of priority to the liens and security interests of this Deed of Trust by title, lien, or otherwise, in any legal or equitable proceeding which is not dismissed within thirty (30) days after its institution; or

(d) The breach of any of the representations or warranties contained herein or in any instrument, document, or other writing evidencing, securing, or pertaining to any Indebtedness; or

(e) Any default in the payment or performance of any obligations under any indebtedness or any instrument securing the same, which may be secured by a prior or subordinate lien or security interest covering the Property, or any portion thereof; or

(f) Any default in the payment of any debt or the performance of any obligations arising under or pursuant to any other debt now or hereafter owing to Beneficiary by Grantor or any guarantor of any Indebtedness; or

(g) Any person or entity other than Grantor acquires the legal or equitable title to all or any portion of the Property (by purchase, succession, gift or otherwise, whether voluntary or involuntary) without the prior written consent of Beneficiary, provided, in the event of the Death of Grantor, it shall not be an event of default hereunder if the estate of Grantor ratifies the obligations of Grantor hereunder within ninety (90) days after the date of Grantor's death; or

(h) Any person or entity (other than Beneficiary) is hereafter granted or otherwise acquires any security interest, lien, or claim of lien of whatsoever nature in or on any of the Property without the prior written consent of Beneficiary; or

3.02 **Remedies.** Upon the happening of any one or more of such events of default, after written notice delivered from Beneficiary to Grantor and (i) ten (10) days to cure a monetary default, or (ii) thirty (30) days to cure a non-monetary default, at any time thereafter, Beneficiary or the Trustee, or the Trustee's successors or substitutes as hereafter provided, or both, cumulative of and in addition to any and all rights, remedies, and powers available to Beneficiary and/or the Trustee, the Trustee's successors or assigns, without demand, notice of default, notice of intent to accelerate maturity, notice of

acceleration of maturity or presentment for payment, except as required by applicable law, may do any or all of the following:

(a) Declare all or any part of any Indebtedness (less unearned finance charges, if any) or any obligations secured hereby immediately due, payable, and performable;

(b) Take possession the Property and any personal property thereon without liability or obligation on the part of Beneficiary or the Trustee, and do all such acts affecting the Property as Beneficiary or the Trustee may deem necessary or advisable to protect Beneficiary's security;

(c) To the extent not prohibited by law, bring an action to enforce the payment of any Indebtedness or the performance of any obligation secured hereby without the necessity of exercising any remedy hereunder and without thereby waiving any other right or remedy, hereunder, at law, or in equity;

(d) Bring an action in any court of competent jurisdiction to foreclose the liens and security interests of this Deed of Trust; and

(e) Sell the Property or any portion thereof pursuant to the power of sale contained herein.

3.03 Foreclosures.

(a) In case of an election by Beneficiary to sell the Property, or any portion thereof pursuant to the power of sale contained herein, it shall thereupon be the duty of the Trustee, as herein provided, on the request of Beneficiary (which request shall be presumed) to enforce this trust, after advertising the time, place, and terms of the sale of all or any portion of the Property for at least twenty-one (21) days before the day of sale, by posting (or causing to be posted) written or printed notice of such sale at the courthouse door of each county where the Land is situated and by filing a copy of such notice in the Office of the County Clerk of each county where the Land is situated, which notices may be posted and filed by the Trustee or by any other person; to sell the Property in accordance with such notice, at a public sale at auction, at such location at the county courthouse in the county where the Property or any portion of the Land is situated as is described in such notice, on the first Tuesday in any month, between the hours of 10:00 a.m. and 4:00 p.m. to the highest bidder for cash, selling the Property in its entirety or in parcels, as the Trustee acting may elect; and to convey to the purchaser(s) by deed(s) binding Grantor, and Grantor's successors and assigns, to warrant and forever defend the same unto such purchaser(s), purchaser(s)' heirs, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof. Beneficiary shall have the right to purchase at any sale of the Property, being the highest bidder, and to have the amount for which the Property is sold credited on any Indebtedness then owing.

(b) Upon such sale, after receipt of the amount bid therefor in verified good funds, the Trustee shall deliver to the purchaser(s) such deed(s), as aforesaid, conveying the Property sold as is, where is, with all faults, and without any representations or warranties whatsoever, express, implied, or arising by operation of law, on the part of the Trustee or Beneficiary, as to title, possession, encumbrances, or the condition of the Property sold. The Trustee shall apply the proceeds of the sale in the following order to the payment of: (i) expenses of sale, including costs, fees, charges, and expenses of the Trustee and of this Trust, including appraisal fees, fees for title searches, and reasonable attorneys' fees; (iii) costs of evidence of title and the Trustee's fees in

connection with such sale; (v) all sums expended under the terms hereof by the Trustee or Beneficiary not then repaid, with accrued interest thereon at the rate as specified in the Note for past due amounts; (vi) accrued interest on the Note; (vii) the unpaid principal of the Note; (viii) all other indebtedness and obligations of Grantor to Beneficiary; and (ix) all other indebtedness and obligations then secured by the Property sold, whether or not then due and irrespective of to whom any such indebtedness or obligation is owed; and any remainder shall be paid to the person or persons legally entitled thereto upon proof of such right, and said sale shall be a perpetual bar against Grantor, and Grantor's successors and assigns; and Grantor shall remain liable for any deficiency.

(c) It is further agreed that if default is made in the payment of any installment of the Note, any other Indebtedness, or any advancements made under the terms of this Deed of Trust, the holder thereof shall have the option to proceed with foreclosure to satisfy the payment of such items, either through the courts, or by directing the Trustee or the Trustee's successor(s) or substitute(s) in trust to proceed as above authorized for a foreclosure by Trustee's sale, conducting the sale as herein provided, and without declaring the whole Indebtedness due, and if said sale is made because of such a default, such sale may be made subject to the unmatured part of any Indebtedness and any other obligations secured by this Deed of Trust. Grantor agrees that any such sale, if so made (and recital in the notice of sale or the Trustee's deed given pursuant thereto shall be prima facie evidence that same was so made) shall not in any manner affect the unmatured part of any Indebtedness. And, as to such unmatured part of said Indebtedness, this Deed of Trust shall thereafter remain in full force and effect, just as though no sale had been made as authorized by the provisions of this Section.

(d) It is further agreed that in the event a foreclosure hereunder is commenced by the Trustee or the Trustee's substitute(s) or successor(s), at any time before the sale of the Property, at the sole option of Beneficiary, Beneficiary may direct the Trustee to abandon the sale, and then institute suit for the collection of any Indebtedness, and for the foreclosure of the liens and security interests created herein; and it is further agreed that if Beneficiary institutes a suit for the collection of any Indebtedness, and for foreclosure of the liens and security interests created herein, that at any time before the entry of a final judgment in said suit, at the sole option of Beneficiary, Beneficiary may dismiss the same, and require the Trustee, the Trustee's substitute(s) or successor(s), to sell the Property in accordance with the power of sale granted in this Deed of Trust.

3.04 **Notice to Debtor and/or Grantor.** In case of an election by Beneficiary to sell the Property pursuant to the power of sale granted in this Deed of Trust, it shall be the duty of Beneficiary, at least twenty-one (21) days preceding the date of sale, to serve or to cause to be served written notice of the proposed sale, by certified mail on each debtor who, according to the records of the holder of such Indebtedness, is obligated to pay such Indebtedness; service of such notice shall be complete upon deposit of such notice in the United States mail, postage prepaid, certified mail, return receipt requested addressed to such debtor at the debtor's last known address as shown by the records of the holder of such Indebtedness.

ARTICLE IV

CONDEMNATION

Grantor shall promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking, direct or indirect, of the Property, or any portion thereof, and Grantor shall

appear and prosecute or defend against any such action or proceeding unless otherwise directed by Beneficiary in writing. Beneficiary shall be entitled to receive any and all sums which may become payable to Grantor for the condemnation of the Property, or any portion thereof, for public or quasi-public use, or by virtue of private sale in lieu thereof, and any sums which may be awarded or become payable to Grantor for damages caused by public works or construction on or near the Property. All such sums are hereby assigned to Beneficiary, who may, after deducting therefrom all expenses actually incurred, including reasonable attorneys' fees, apply same to restoration or repair of the Property, release same to Grantor, or apply the same to the reduction of any Indebtedness whether then matured or to mature in the future, in such manner as Beneficiary may elect. In no event or circumstance whatsoever shall Beneficiary be liable or responsible for failure to collect, or exercise diligence in the collection of, any such sums.

**ARTICLE V**

**FURTHER ASSURANCES**

Grantor shall execute, swear to, acknowledge, and deliver (and pay the costs of preparation and recordation thereof) to Beneficiary from time to time, upon demand, any further instruments, documents, or other writings, including, without limitation, deeds of trust, mortgages, security agreements, financing statements, assignments, and renewal and substitution notes, so as to reaffirm, to correct, and to perfect the evidence of the Indebtedness and obligations hereby secured and the right of Beneficiary to all or any portion of the Property intended to be hereby conveyed, whether now conveyed, later substituted for, or acquired subsequent to the date of this Deed of Trust and all extensions and modifications thereof.

**ARTICLE VI**

**PROVISIONS RELATING TO TRUSTEE**

In case of the death, inability, refusal, or incapacity of the Trustee named herein to act, or at the option of Beneficiary at any time and without cause or notice, one (1) or more successor or substitute Trustee(s) may be named, constituted, and appointed, without procuring the resignation of the former Trustee and without other formality than the execution by Beneficiary of a written instrument, whereupon such successor or substitute Trustee(s) shall become vested with and succeed to all of the rights, titles, privileges, powers, and duties of the Trustee named herein.

**ARTICLE VII**

**MISCELLANEOUS PROVISIONS**

7.01 **Partial Invalidity.** If the liens and security interests created by this Deed of Trust are invalid or unenforceable as to any part of any Indebtedness, the unsecured portion of any Indebtedness shall be completely paid and liquidated prior to the payment and liquidation of the remaining and secured portion of any Indebtedness, and all payments made on any Indebtedness shall be considered to have been first paid on and applied to the complete payment and liquidation of that portion of any Indebtedness which is not secured by the liens and security interests of this Deed of Trust.

7.02 **Security Cumulative.** This Deed of Trust is given as additional security and to afford additional remedies. This Deed of Trust is cumulative of all other security for the payment of all Indebtedness, no security therefor being exclusive of any other.

7.03 **Notice.** Any notice permitted or provided for in this Deed of Trust, in the Note, or in any other instrument, document, or other writing evidencing, securing, or pertaining to any Indebtedness shall be given by mailing such notice by postage prepaid certified mail, return receipt requested, or by hand delivery, addressed to the person or entity to receive such notice at the address therefor stated below, or at such other address as any such person or entity may designate by notice as provided herein.

Address of Beneficiary: 125 Bridgewater Circle  
Midland, TX 79707

Address of Grantor: P.O. Box 9901  
Midland, Texas 79708

7.04 **Provisions Binding.** All provisions of this Deed of Trust shall be binding on and inure to the benefit of Grantor and Beneficiary, and their respective successors and assigns.

7.05 **Laws of Texas Control.** This Deed of Trust and the Note have been executed and delivered in the State of Texas and are to be construed and enforced in accordance with the laws of the State of Texas (without reference to the choice of laws principles thereof). If any terms or provisions contained herein conflict with the laws of the State of Texas or would operate to invalidate this Deed of Trust, such terms and provisions shall be removed, and the remaining terms and provisions shall continue in full force and effect. Nothing in this Deed of Trust or in any instrument, document, or other writing now or hereafter securing any Indebtedness shall entitle the holder of any Indebtedness to contract for, charge, receive, take, or reserve interest on any Indebtedness in excess of the maximum amount of interest allowed by applicable law. Grantor further agrees that, notwithstanding any other provision of this Deed of Trust or any Indebtedness, in no event shall the aggregate of (i) all interest which has accrued on any Indebtedness from the date thereof through the date of such calculation, and (ii) the sum of all other amounts accrued or paid which, under applicable laws, are considered interest from the date thereof through the date of such calculation, ever exceed maximum amount of interest allowed by applicable law. In this connection, it is agreed that in the execution, delivery, and acceptance of this Deed of Trust, Grantor and Beneficiary intend to contract in strict compliance with the state and federal usury laws from time to time in effect.

7.06 **Definitions and Designations.** The term "Grantor" includes all endorsers, sureties, guarantors, and other persons now or hereafter becoming liable for any Indebtedness or obligations secured by this Deed of Trust, or any part thereof. The term "Beneficiary" includes not only Beneficiary herein named, but any person(s) and/or entity(ies) who may hereafter acquire any Indebtedness, or any part thereof. As used herein, the use of any gender includes all genders; the singular and plural number shall include the other, unless otherwise expressly provided; and the terms "Grantor", "Beneficiary", "Trustee", "person" and "entity", whether singular or plural, shall also include the vendees, successors and assigns thereof, whether natural or artificial.

7.07 **Remedies Cumulative.** All remedies provided in this Deed of Trust are distinct and cumulative of all other rights and remedies under this Deed of Trust, or afforded by law or equity, and may be exercised concurrently, independently, or successively.

7.08 **Captions.** The captions and headings of the Articles and Sections of this Deed of Trust are for convenience only and are not to be used to amplify, modify, limit, or interpret the provisions thereof.

7.09 **Conflict.** In the event any provision of this Deed of Trust conflicts with any provision of the Note, the provision of the Note shall govern and control the conflicting provision in this Deed of Trust.

7.10 **Reconveyance Notice.** Notwithstanding anything herein to the contrary, Grantor shall be permitted, upon at least sixty (60) days prior written notice to Beneficiary (the "Reconveyance Notice"), to reconvey the Property to Beneficiary by delivering to Beneficiary a deed in lieu of foreclosure. In the event Grantor delivers the Reconveyance Notice, it shall be obligated to deliver a deed in lieu of foreclosure to Beneficiary, conveying the Property to Beneficiary, no earlier than sixty (60) days after delivery of the Reconveyance Notice, and no later than the Maturity Date (the "Reconveyance Period"). Notwithstanding anything herein to the contrary, Grantor shall continue to be obligated under this Deed of Trust, the Note, and all other documents related to this transaction for the entire Reconveyance Period, and, for purposes of clarity, will be obligated to make monthly payments pursuant to the terms and conditions of the Note for the entire Reconveyance Period. Grantor shall not be permitted to withdraw the Reconveyance Notice without the prior written consent of Beneficiary. Grantor shall have no further obligations under this Deed of Trust, the Note, or any other documents related to this transaction after Grantor delivers to Grantee the deed in lieu of foreclosure, provided, Grantor shall be obligated to indemnify, hold harmless and defend Beneficiary from all costs, losses, claims and expenses incurred by Beneficiary or Beneficiary's heirs, administrators, personal representatives or successors which arise after reconveyance of the Property to Beneficiary and which are caused by Grantor's use or operation of the Property prior to such reconveyance.

7.11 **Prior Lien.** The lien created by this Deed of Trust is subordinate the lien securing payment of the unpaid balance of a prior promissory note in the original principal amount of \$185,331 ("First Note") which is described and secured by a Texas Home Equity Security Instrument dated November 20, 2000 and recorded on November 30, 2000 in Volume 1824, Page 426 Document #19642 of the Real Property Records of Midland County, Texas ("First Deed of Trust"), as amended by that certain Texas Home Equity Loan Modification, Loan #45490-9020316 dated October 16, 2016 between Ann Sams and Community National Bank. Grantor in this Deed of Trust has not assumed the payment of the First Note, but the Beneficiary is obligated to pay such First Note according to its terms. In the event of default in the payment of the First Note, Grantor shall have the right to cure any such default as long as Grantor is not in default in the payment of the Note secured in part by this Deed of Trust or is in default in the performance of any covenants or obligations under this Deed of Trust. If Grantor cures a default in the payment of the First Note, Grantor may receive credit on the Note secured in part by this Deed of Trust for all amounts paid as of the date of payment and in the manner that Grantor so directs.

7.12 **Prior Deed of Trust.** As of the date hereof, this Deed of Trust amends, restates, renews, extends and replaces that certain Deed of Trust dated October 18, 2018 executed by Grantor to Michael Cohodes, Trustee, for the benefit of Payee, as Beneficiary.

[Signature Page to Follow]



EXHIBIT "A"

LOT TWENTY TWO (22) TOWNHOUSE AREA "A" SADDLE CLUB NORTH, an addition to the City of Midland, Midland County, Texas, according to the map or plat thereof, recorded in Cabinet A, Page 7, Plat Records, Midland County, Texas.

Midland County Clerk Unofficial Copy

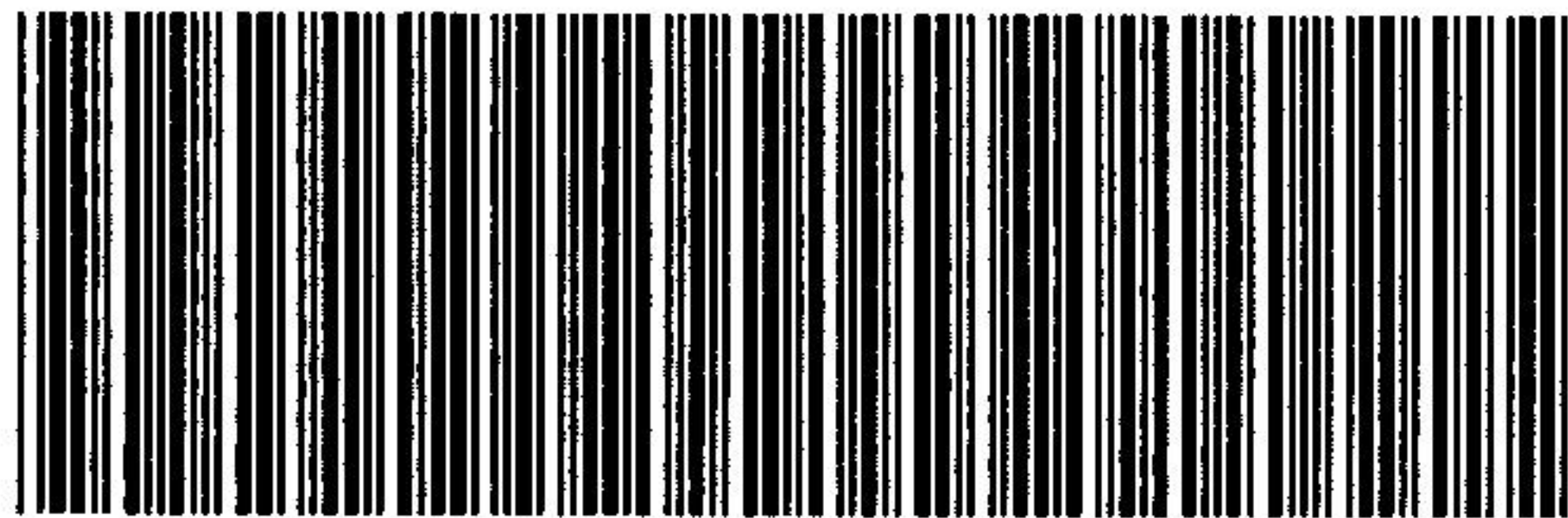
Midland County Clerk Unofficial Copy

Midland County Clerk Unofficial Copy

Midland County Clerk Unofficial Copy

Midland County Clerk Unofficial Copy

Midland County Clerk Unofficial Copy



\*VG-41-2020-26574\*

Midland County  
Alison Haley  
Midland County Clerk

Midland County Clerk Unofficial Copy

Midland County Clerk Unofficial Copy

Instrument Number: 26574

Real Property Recordings

Recorded On: September 08, 2020 01:33 PM

Number of Pages: 15

" Examined and Charged as Follows: "

Total Recording: \$78.00

Midland County Clerk Unofficial Copy

Midland County Clerk Unofficial Copy

\*\*\*\*\* THIS PAGE IS PART OF THE INSTRUMENT \*\*\*\*\*

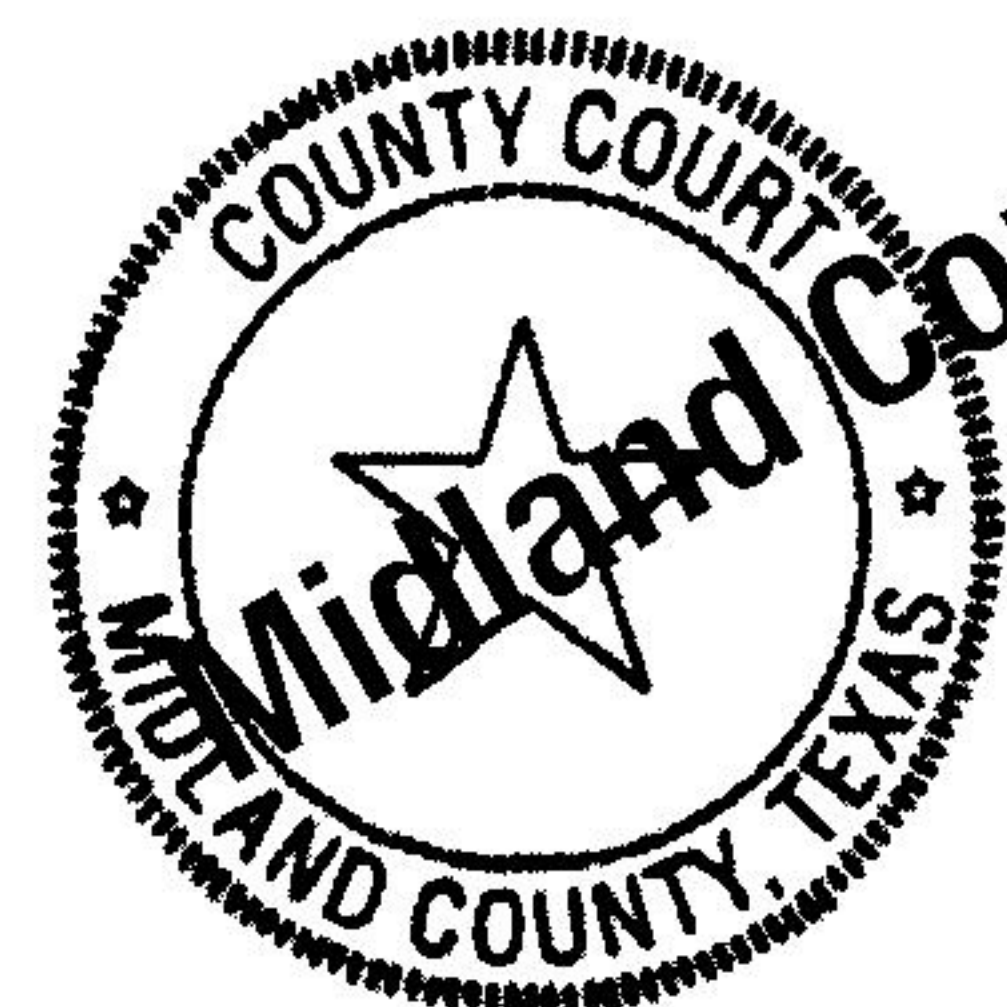
Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document Number: 26574  
Receipt Number: 20200831000192  
Recorded Date/Time: September 08, 2020 01:33 PM  
User: Cristella G  
Station: cc10287

**Record and Return To:**

GABRIEL A MERUELO II  
811 CANONERO ST  
MIDLAND TX 79705



STATE OF TEXAS  
Midland County

I hereby certify that this Instrument was filed in the File Number sequence on the date/time printed hereon, and was duly recorded in the Official Records of Midland County, Texas

Alison Haley  
Midland County Clerk  
Midland County, TX

Midland County Clerk Unofficial Copy