

GF 180769

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Vol. 1096 PAGE 928

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WARRANTY DEED

DEEDS

THE STATE OF TEXAS
COUNTY OF MONTGOMERY

KNOW ALL MEN BY THESE PRESENTS:

That JAMES C. SHINDLER, ED CUMMINS, AL LUM, FRED MILLER and BARRY SMITH, hereinafter called "Grantors", for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) cash and other good and valuable consideration to Grantors in hand paid by FRANK M. WAGGONER and wife, LYNETTE W. WAGGONER, hereinafter called "Grantees", the receipt and sufficiency of which are hereby acknowledged and confessed, and the further consideration of the execution and delivery by Grantees of one certain Promissory Note described as follows:

A Note of even date herewith in the principal sum of TWENTY-TWO THOUSAND, TWO HUNDRED, SIXTY-SEVEN AND 17/100 DOLLARS (\$22,267.17) (hereinafter referred to as "Note") executed by Grantees herein, payable to the order of ALLIED SPRING BANK, bearing interest from the date until maturity at the rate of TEN PERCENT (10%) per annum, said Note being due and payable as follows: accrued interest shall be due and payable six (6) months from date hereof, with the entire principal balance and unpaid accrued interest due and payable on or before one year from the date hereof. This Note shall become in default if any such payment is not received by the holder hereof within ten (10) days after it is due. Maker may pay all or part of the principal balance hereof with accrued interest thereon at any time prior to maturity without penalty.

which Note is secured by the vendor's lien herein reserved and is additionally secured by a Deed of Trust of even date herewith, executed by the Grantees herein to MICHAEL W. POPE, Trustee, reference to which is here made for all purposes, and in consideration of the payment of the sum above mentioned by the Beneficiary above mentioned, Grantors hereby transfer, set over, assign, and convey unto said Beneficiary and assigns, the vendor's lien and superior title herein retained and reserved against the property and premises herein conveyed, in the same manner and to the same extent as if said Note had been executed in Grantors' favor and by said Grantors assigned to the Beneficiary without recourse;

HAVE GRANTED, SOLD AND CONVEYED and by these presents do GRANT, SELL AND CONVEY unto said Grantees, the property and all improvements thereon, hereinafter called "Property", described in Exhibit "A", attached hereto and made a part hereof for all purposes.

This conveyance is made, executed and delivered by Grantors, and accepted by Grantees, subject to all restrictions, covenants, easements, rights-of-way, reservations or ordinances which are valid and enforceable against said Property and which are of record in the Office of the County Clerk of Montgomery County, Texas.

RECORDED BY TRANSAMERICA

TO HAVE AND TO HOLD the Property and premises, together with all and singular the rights and appurtenances thereto in anywise belonging unto Grantees, Grantees' heirs, legal representatives and assigns forever; and Grantors, subject to the matters hereinabove set forth, do hereby bind Grantors, Grantors' heirs, legal representatives and assigns, to warrant and forever defend the Property hereof, and the title thereto, unto Grantees, Grantees' heirs, legal representatives and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

It is expressly agreed and stipulated that a vendor's lien and superior title in, to, upon and against all of the Property and premises herein conveyed is hereby retained by Grantors against the Property, premises and improvements until the above described Note and all interest thereon is fully and finally paid according to its face, tenor, effect and reading thereof, when this Deed shall become absolute. Payment of said Note is further secured by the lien of a Deed of Trust of even date herewith from the Grantees herein to MICHAEL W. POPE, Trustee, for the owner and holder of the Note, and it is agreed and stipulated that a foreclosure of the lien of said Deed of Trust by exercise of the power of sale contained therein, or otherwise, shall operate also as a foreclosure of the vendor's lien assigned herein to said Note holder.

All taxes levied and assessed against the Property for the year 1978 have been prorated as of the date of this conveyance, and the payment of such taxes for such year shall be made by Grantees; and Grantors shall have no liability with respect to the taxes for such year under the terms of the warranty considered herein.

EXECUTED this 18th day of October, 1978.

GRANTORS:

[Signature]
JAMES C. SHINDLER
[Signature]
ED CUMMINS
[Signature]
FRER MILLER
[Signature]
BARRY SMITH

RECORDED BY
TRANSAMERICA

EXHIBIT A

Tract No. 30, KINKAID FARMS, being 10.194 acres of land in the Raleigh Rogers Survey, A-33, Montgomery County, Texas, and a part of a 125.38 acre tract described as Tract 2, Volume 305, Page 539, Deed of Trust Records, more fully described as follows:

Commencing at a 2" iron pipe for the upper Northwest corner of the 125.38 acre tract, and Northeast corner of the McCants et al tract;

THENCE: S 89°54' E, 2513.7 ft. along the North line of 125.38 acre tract to a point for corner;

THENCE: South, 60.0 ft. to an iron rod for corner in the South line of a 60 ft. road easement, and the PLACE OF BEGINNING;

THENCE: S 89°54' E, 350.0 ft. along the South line of road to an iron rod for corner;

THENCE: South, 1313.4 ft. to a point in the centerline of a branch from which an iron rod bears North, 21.0 ft.;

THENCE: Along the centerline of branch as follows: (1) N 82°00' W, 118.9 ft., (2) N 14°02' W, 84.5 ft., (3) S 80°25' W, 90.1 ft., and (4) S 58°10' W, 146.0 ft., to a point for corner from which an iron rod bears North, 15.0 ft.;

THENCE: North, 1307.8 ft. to the place of beginning and containing 10.194 acres of land.

ORIGINAL DIM

RECORDED BY
TRANSAMERICA

ORIGINAL DIM

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared JAMES O. SHINDLER, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office, this the 16th day of October, 1978.

Betty Shroyer
Notary Public in and for Harris County, Texas

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared ED CUMMINS, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office, this the 16th day of October, 1978.

Betty Shroyer
Notary Public in and for Harris County, Texas

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared AL DUNN, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office, this the 19th day of October, 1978.

Betty Shroyer
Notary Public in and for Harris County, Texas

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared FRED MILLER, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office, this the 16th day of October, 1978.

Betty Shroyer
Notary Public in and for Harris County, Texas

THE STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared BARRY SMITH, known to me to be the person who executed the foregoing instrument and acknowledged to me that he executed same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL of office, this the 17th day of October, 1978.

Retiree to:
Transamerica Title Co.
27638 Interstate 45
Conroe, Texas 77302

Debra Ann Duncan
Notary Public in and for Harris County, Texas

RECORDED BY
TRANSAMERICA

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

KINKAID FARMS

- SEC. "B" -

WHEREAS, JAMES C. SHINDLER, ED CUMMINS, AL LUM, FRED E. MILLER and BARRY SMITH, all of Houston, Harris County, Texas, herein after called "Owners", are the owners of the following described lots, tracts, and parcels of land in Montgomery County, Texas, to-wit:

Tracts(22) through (33), both inclusive, in KINKAID FARMS, SECTION "B", a subdivision in Montgomery County, Texas, as per the Map or Plat thereof .

WHEREAS, it is the desire of the said Owners to establish and adopt a general and uniform plan for the improvement, development, sale and use of all of the lots in said KINKAID FARMS, SECTION "B", for the benefit and protection of the present and future owners of lots therein;

NOW THEREFORE, JAMES C. SHINDLER, ED CUMMINS, AL LUM, FRED MILLER and BARRY SMITH, being the owners of all of the above described property, do hereby impose the following restrictions upon said property, which said restrictions shall constitute covenants running with the land and shall inure to the benefit of JAMES C. SHINDLER, ED CUMMINS, AL LUM, FRED MILLER and BARRY SMITH, their heirs and assigns, and to each and every purchaser of a lot or lots in said subdivision, and their assigns; and any one of said beneficiaries shall have the right to enforce said restrictions, using whatever legal method is deemed advisable.

ARTICLE I

RESTRICTIONS

Section 1. STREETS: The foregoing plat dedicates for public use as such the streets and roads shown thereon.

ORIGINAL DIM.
RECORDED BY
TRANSAMERICA

Section 2. UTILITIES: Owners reserve the utility easements and rights-of-way shown on the aforesaid map or plat for the use and benefit of any public utility operating in Montgomery County, Texas, as well as for the benefit of Owners and their assigns in the subdivision, to allow for the constructing, maintenance and operation of a system of electric light and power, telephone lines, gas, water, sanitary sewers, or any other utility or service which Owners may find necessary for the proper service of lots in the subdivision.

Section 3. ADDITIONAL RESERVATIONS: Owners reserve the right to impose further restrictions and to dedicate additional easements and rights-of-way for roads, streets and utilities on any unsold tracts in said subdivision, such restrictions to be imposed and such easements and rights-of-way to be dedicated either by instrument in writing duly recorded in the office of the County Clerk of Montgomery County, Texas, or incorporated in any deed from Owners conveying the site or sites affected thereby.

Section 4. LIABILITY: Neither Owners nor any utility company using such streets and easements shall be liable for any damages done by them or their agents, employees, servants, or assigns, to shrubbery, trees, flowers, or other property belonging to any lot owner of the property across which easements are reserved.

Section 5. CONVEYANCE: All the rights, titles, easements and reservations stated herein shall be referred to, made a part of, and construed as being adopted in each and every contract, deed, or conveyance executed or to be executed by and on behalf of James C. Shindler, Ed Cummins, Al Lum, Fred Miller and Barry Smith conveying the aforesaid property or any part thereof and are hereby expressly reserved unto Owners, their heirs and assigns.

ARTICLE II

GENERAL PROVISIONS

Section 1. TERM: These covenants, restrictions and/or provisions are to run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty-five (25) years from date; after which time said covenants, restrictions and provisions shall be automatically extended for successive ten (10) year periods, unless an instrument signed and acknowledged by a majority of the then owners of the lots has been recorded, agreeing to change said covenants in whole or in part at the expiration of any such ten (10) year period.

Section 2. SEVERABILITY: Restrictive covenants, and each part of any covenant, shall be held severable, in that the invalidation of any covenant or part thereof by Court Judgment shall not run to any other provision or restrictive covenants, and said other provisions shall remain in full force and effect.

Section 3. ENFORCEMENT: Enforcement of restrictive covenants shall be by proceedings at law or in equity against any person or parties violating or attempting to violate any restrictions, covenants or terms, and legal remedy shall lie in restraint of violation or in recovery of said damages.

The right of legal action in enforcement shall accrue to any owner of property in this subdivision or any claimant thereunder, and to any political unit or government authority having jurisdiction in the matter in question.

Section 4. LIENS: Liens upon any tract or building site in this subdivision given to secure payment of notes for purchase money advanced, or for improvements made or to be made, or for the extension or renewal of such indebtedness or notes, or any part thereof, shall not be invalidated or affected in any way by any violation of these covenants on the part of any person or party acquiring any such tract or building site; such liens shall remain in full force and priority in the case of any court judgment against such owner of such tract or building site; said premises shall remain subject to such liens; and no release of any restrictive covenants, or any part thereof, shall be construed as against the original purchaser, his heirs, executors, administrators, assigns, or successors, as the case may be; and sale under a foreclosure of such liens as hereinabove recited shall pass title to such premises subject to the restrictive covenants then in force and effect.

Section 5. EASEMENTS: Easements as shown and called for on the official plat of said Subdivision have been dedicated for the installation, operation and maintenance therein of utilities servicing the needs of residents in this subdivision. All ground easements are drawn and marked on the official plat. All facilities will be installed upon streets rights-of-way and easements as dedicated on the official plat. Title to all utility systems and to all parts thereof shall remain vested in the person, firm, corporation, political unit having due and legal authority to install, own and operate such systems, and no right of ownership therein, or of any part thereof, shall pass to any owner of real property in this Subdivision by virtue of such ownership. The owners of utility systems shall have the rights of ingress and egress for the purposes of installation, operation and maintenance, and for like purposes shall have prior rights in the use of land under easement as against the owner of such land.

ARTICLE III

USE RESTRICTIONS

Section 1. LAND USE: No tract or building site shall be used except for residential purposes. No business of any type, kind or character, or apartment house, nor any occupation or business for commercial gain or profit shall be done or carried on in said residential area. All parts of said Subdivision are hereby designated as a residential area unless written approval is given by the Architectural Control Committee.

Section 2. BUILDING SITES: A building site consists of one tract, or one or more tracts, or parts of tracts. Building sites made up of fractional parts of tracts or parts of adjacent tracts shall be no smaller in area than one half ($\frac{1}{2}$) acre unless approved by the Architectural Control Committee.

Section 3. BUILDING TYPES AND SIZE: No residence shall be constructed with less than nine hundred (900) square feet of covered floor space, exclusive of garage or carport without specific approval of the Architectural Control Committee. All framing material of outside walls shall be new materials. All structure foundations must have a concrete slab at twelve (12) inches above grade level. No residence shall be constructed of corrugated metal materials including roofing material. Any and all buildings shall have at least two coats of good grade exterior paint on all exterior walls.

C No such building of any type or character shall ever be moved onto any lot within said subdivision without the approval of the Architectural Control Committee.

Whenever a residence is established on any tract, it shall provide an inside toilet and shall be connected with a septic tank and drain approved by Montgomery County Health Department until such time as sanitary sewers may be available for use in connection with such tract. No cesspool shall ever be dug, used or maintained on any parcel of land in the subdivision and drainage of septic tanks or sewerage into roads, lakes, streets, alleys, ditches, ravines, or upon the open ground shall be prohibited and enforceable as any other violation of these restrictions by any resident in the subdivision or by public body. The purchaser of a parcel of land in the subdivision shall upon constructing any residence upon his tract, or any person making use of his tract of land, place a culvert of sufficient size to permit the free flow of water at a point between the roadway and his property, and shall fill in sufficient dirt over and around same to construct a driveway to the premises. The inside bottom of said culvert must be even with or below the level of the ditch. Outside toilets are strictly prohibited. Septic tank approval is required on each of the tracts by the Montgomery County Health Department.

Section 4. TEMPORARY STRUCTURES: No structure of a temporary character, trailer, basements, tent, shack, garage, barn, mobile home, or other structure shall be used on any lot at any time as a residence, either temporarily or permanently; nor shall any out building appurtenant to the main building situated thereon be used as a residence, either temporarily or permanently.

Section 5. SIGNS AND BILLBOARDS: No signs, billboards, posters or advertising devices of any character shall be erected on any lot or plot except one sign of not more than ten (10) square feet advertising the property for sale or rent or signs used by a builder to advertise the property during the construction and sales period. The right is reserved by James C. Shindler, Ed Cummins, Al Lum, Fred Miller and Barry Smith to construct and maintain such signs, billboards or advertising devices as is customary in connection with the general sale of property in this subdivision.

Section 6. OIL AND MINING OPERATIONS: No oil drilling or development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any lot nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any lot.

Section 7. GARBAGE AND REFUSE DISPOSALS: No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers.

Section 8. LIVESTOCK & POULTRY: Dogs, Cats, and other household pets may be kept provided they are not kept, bred, or maintained for any commercial purpose. Horses and cattle may be kept, but written approval must be given by the Architectural Control Committee to place, keep, or board more than two (2) horses or two (2) cattle per tract. All barns, stables, sheds, etc., must be approved by the Architectural Control Committee, and consist of new materials on the outside and be maintained in good condition and repair.

Section 9. FENCES: All fences must be kept in good condition and repair. No fence or wall shall be constructed upon the aforesaid lots or tracts unless it be of either wood, masonry, or chain-link construction, be not more than six (6) feet in height, or have been approved by the Architectural Control Committee.

Section 10. FIREARMS: The use or discharge of pistols, rifles, shot guns or other firearms is expressly prohibited on any part of said Subdivision Property.

Section 11. GARBAGE AND TRASH DISPOSAL: Garbage and trash or other refuse accumulated in this Subdivision shall not be permitted to be dumped at any place upon adjoining land where a nuisance to any resident of this Subdivision is or may be created. No tract shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

Section 12. VEHICLES: No dune buggies, go carts, motorcycles, motor bikes, trail bikes, or any two or three wheel vehicles powered by internal combustion engines shall be driven on the streets of the subdivision, except for egress and ingress to the subdivision from the public road,

All motor homes, campers, boats, or recreation vehicles and equipment of any type shall be stored or parked in a neat and attractive manner.

No damaged, disabled or inoperable vehicle of any type, or any vehicle without current license and registration, shall be parked or stored on any lot except while parked in a closed garage, nor parked on any residential street in the subdivision.

ARTICLE IV

ARCHITECTURAL CONTROL COMMITTEE.

Section 1. MEMBERSHIP: The Architectural Control Committee shall be composed of J. C. Shindler, Fred Miller and W. A. Mulcock and any two members of the Committee may act on behalf of the Committee. The foregoing members shall serve until successors are duly appointed.

In the event of the death or resignation of any member of the Committee, the remaining members of the Committee shall have full authority to designate a successor. Neither the members of the Committee nor their designated representatives shall be entitled to any compensation for services performed pursuant to this covenant. At any time after the expiration of five (5) years from date of these restrictions, the then record owners of a majority of the lots in this subdivision shall have the power through a written instrument executed by the then owners of a majority of such lots and duly recorded in the Deed Records of Montgomery County, Texas, to change the membership of the Committee and to restore to the Committee any of its original powers and duties.

Section 2. WRITTEN APPROVAL: The Committee's approval, as required in these covenants, shall be in writing. Failure to give such written approval within thirty (30) day shall be deemed to be a disapproval.

Section 3. TRANSFER OF AUTHORITY: At any time after ten (10) years from the date hereof the then record owners of a majority of the lots in this subdivision may elect to transfer all of the rights, powers, duties, purposes and functions of the Committee to any non-profit civic club or similar association or organization representing them; and upon such transfer this Committee shall cease to exist, and said civic club or similar association or organization shall succeed to all of the rights, powers, duties, purposes, and functions of this Committee.

Section 4. AUTHORITY: Specifically, but not by way of limitation, the Committee shall have the following rights, duties, privileges, functions, and purposes, to-wit:

- A. The right to approve or disapprove any of the building plans and specifications and plot plans submitted to it in accordance with the requirements of these restrictions;
- B. The right, but not the obligation, to enforce these restrictions and/or to prevent violations thereof; and,
- C. The right to adopt rules for the conduct of its business which shall not be inconsistent with anything herein contained.

ARTICLE V

IN TESTIMONY OF WHICH, the undersigned have executed or caused these presents to be executed by and through their respective officers, this the 17 day of July, 1978

OWNERS:

James C. Shindler
James C. Shindler

Ed Cummins
Ed Cummins

Fred E. Miller
Fred E. Miller

Barry Smith
Barry Smith

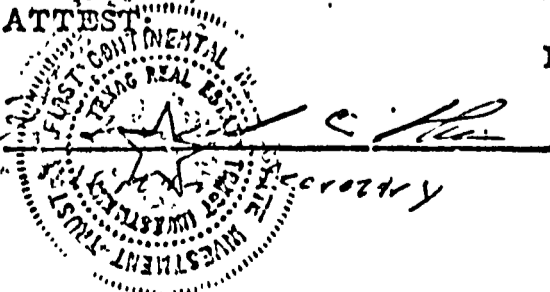
Al Lum
Al Lum

LIEN HOLDER

3582153

FIRST CONTINENTAL REAL ESTATE INVESTMENT TRUST

By: Joe French
TRUSTEE



RETURN TO:
Transamerica Title Co.
27638 Interstate 45
Conroe, Texas 77302

Filed for Record at 2:10 o'clock P.M. 10-21-78 BOY HARRIS
Clerk County Court, Montgomery Co., Texas By Arthur J. White Deputy