

FRACTIONAL INTEREST AGREEMENT

February _____, 20__

PARTIES:

Seller: _____ Buyer: _____

1. DESCRIPTION

Seller is the owner and holder of the secured obligation described as follows:

Security Instrument:

Dated:

Lien Position:

Recording No:

County and State:

2. DEFINITIONS

As used herein, these terms have the following meanings:

(A) **ADDITIONAL EXPENSES:** Any and all of the expenses incurred by Buyer in connection with this Assignment, including without limitation, advances on superior liens and encumbrances, costs, disbursements, title and appraisal fees, attorney fees, taxes, insurance premiums, repairs, maintenance expenses and real estate commissions together with interest thereon at the rate specified in the/ security Instrument from the date said expense incurred.

(B) **MAKER or PAYOR:** The person(s) originally obligated to pay the Note and Security Instrument or the buyer under a Land Sales Contract, together with any and all persons paying, assuming and/or guaranteeing that obligation with the exception of the Seller as named herein.

(C) **PAYEE:** The person(s) originally entitled to receive payments under the Note and Security Instrument or the original Seller under a Land Sales Contract, together with any and all successors and assigns thereof.

(D) **SECURITY INSTRUMENT:** The Promissory Note and Trust Deed, Promissory Note and Mortgage, Land Sales Contract or other evidence of indebtedness described above, together with all instruments, agreements and documents which secure such indebtedness.

(E) **DEFAULT:** Failure of the Maker/Payor to perform pursuant to the terms and conditions of the Security Instrument. Default also includes failure by the Maker/Payor to perform, after there has been a waiver by the Payee, if the Maker/Payor has been properly notified of such default pursuant to the terms of the Security Instrument.

(F) AMOUNT PURCHASED: The right to receive the net sum of \$ _____ together with interest at the rate set forth in the Security Instrument described above.

(G) NET SUM (NET PROCEEDS): The amount(s) received by BUYER and retained by Buyer.

3. ASSIGNMENT:

In consideration of the amount paid by Buyer, Seller does hereby assign, transfer, set over and convey to the Buyer the following:

(A) The net sum as specified in 2(F) plus any additional expenses as specified in paragraph 2(A) incurred by Buyer subsequent to the execution of this Agreement; and

(B) All of Seller's right, title and interest in and to the above-described Security Instrument together with all of Seller's rights, claims and causes of action which Seller has or may have against the Maker and /or Payor of the Security Instrument and all of Seller's right, title and interest in and to the real property which is described in the Security Instrument to be reassigned as provided for herein.

Seller shall deliver to Buyer any and all promissory notes, which are subject to this agreement and endorse the same without recourse to the order of Buyer. Seller shall execute any and all documents requested of Seller by Buyer to evidence this agreement including, but not limited to, a recordable short form of the assignment of the Security Instrument.

4. DISBURSEMENT OF PROCEEDS:

Only after the buyer has received the amount purchased and any other additional expenses which Buyer is entitled to receive together with any additional funds which Buyer may be entitled to receive pursuant to paragraph 8 shall Seller be entitled to receive the remaining proceeds, if any, due the Payee pursuant to the Security Agreement.

5. PREPAYMENT:

In the event of a total prepayment of the Security Instrument, Buyer shall be entitled to receive the amount purchased and any and all additional expenses to which buyer is entitled to receive pursuant to this agreement. The remainder, if any shall be paid to the Seller. Payment amounts to be used for computation shall be the net sum received by Buyer.

6. PARTIAL PREPAYMENTS:

Escrow agent/Buyer shall accept any partial prepayments to Buyer, who shall apply them to Buyer's right to payment as specified in paragraphs 2(A) and 2(F).

7. NO DEFAULT: SELLER'S OPTION TO REPURCHASE:

Should the Maker/ Payor not be in default the Seller may purchase Buyer's interest in the Security Instrument by paying the amount due Buyer pursuant to paragraph 2(F) together with all other additional expenses to which Buyer is entitled to receive pursuant to the terms of this agreement.

8. DEFAULT: SELLER'S OPTION TO REPURCHASE:

- (A) In the event of a default by Maker/Payor under the terms of the Security Instrument for a period of thirty (30) days, Seller, upon written notice of such default, shall have the opportunity to protect its residual interest in the Security Instrument by purchasing Buyer's interest in the Security Instrument within fifteen (15) days by paying to Buyer the amount due Buyer pursuant to 2(F) together with any and all other additional expense for which Buyer is entitled to be reimbursed. Should the Seller fail to exercise Seller's option to purchase Buyer's interest in the Security Instrument within said fifteen (15) days, Buyer may proceed to foreclose on the Security Instrument, accept a Deed in Lieu of Foreclosure or initiate legal proceeding against the Maker/Payor to collect the amounts owing pursuant to the Security Instrument. Should the Seller wish to purchase the Security Instrument after said fifteen (15) day period and prior to a repossession of the property, Seller may only do so by paying to Buyer the amount due Buyer pursuant to paragraphs 2(F) and 2(A) plus 10% of said amount.
- B) OPTION TO REPURCHASE AFTER REPOSSESSION: In the event that the Buyer completes a foreclosure or otherwise obtains title to the property described in the Security Instrument, Buyer agrees to give Seller written notice that the property has been repossessed. Seller shall have the option to purchase the property from Buyer within sixty (60) days of said notice by paying to Buyer the amount due Buyer pursuant to paragraphs 2(F) and 2(A) plus 10% of said amount. If seller fails to exercise seller's option to purchase the property within sixty (60) days of the notice that the property has been repossessed such failure shall terminate any and all of Seller's right to any money and/or settlement whatsoever relating to the original Security Instrument, this agreement, the repossession of the property, a subsequent resale of the property by buyer and any new Security Instrument which might subsequently be held by buyer in conjunction with a resale of the real property.
- (C) EXCLUSIVE REMEDIES OF SELLER: Seller acknowledges that the remedies provided for in paragraphs 8(A) and 8(B) are the exclusive remedies available to Seller in the event of a default by the Maker or Payor on the Security Instrument. Seller specifically acknowledges that the Seller has no right to assume the installment payments of the Security Instrument transferred pursuant to this Agreement. Seller agrees that Buyer's acceptance of any monthly installments from the Seller will be at Buyer's sole option and for the sole purpose of accommodating Seller's need for time to arrange financing of Seller's repurchase of Buyer's interest in the Security Instrument. Buyer

reserves the right to refuse to accept any installment tendered by Seller without notice to Seller prior to such tender whether or not Buyer has previously accepted one or more installments from Seller.

9. TERMINATION OF ASSIGNMENT:

This assignment shall terminate at such time as Buyer has received the amounts due Buyer pursuant to paragraph 2(F), together with all other additional expenses for which Buyer is entitled to receive pursuant to paragraph 2(A) or at any prior time as the Buyer, in its discretion, may determine. Upon such termination, Buyer shall reassign to Seller all Buyer's then remaining right, title and interest in the Security Instrument and shall execute such documents and instruments as may be necessary to effect such reassignment and terminate Buyer's interest as a matter of record. Upon reassignment any and all liability of the Buyer in regard to the Security Instrument or in regard to obligations, if any owned the Seller shall cease.

Notwithstanding any other term or provision in this agreement, the buyer may terminate any residual interest the seller may have in the Security Instrument at any time sixty (60) days after a default has occurred on the Security Instrument by paying to seller the amount owed on the Security Instrument less the unpaid balance due buyer pursuant to paragraphs 2(F) and 2(A).

10. RIGHT OF FIRST REFUSAL:

Seller hereby grants to Buyer a right of first refusal to purchase all or any portion of the retained or reserved right, title and interest in and to the Security Instrument should Seller elect to sell all or any portion of the retained or reserved portion of said Security Instrument. To implement this right of first right of refusal, Seller shall submit to Buyer written notice of the amount of money and terms upon which Seller has received an offer to purchase the remaining portion or any percentage of the reserved portion of the Security Instrument. If Buyer does not accept such offer to purchase within fifteen (15) days of Buyer's receipt of Seller's written notice, Seller shall be free to sell the same percentage offered to the Buyer on the same terms and conditions; provided, however, the Seller may not sell a different portion of the interest reserved nor sell on terms and conditions different than those offered to buyer.

12. MERGER:

This Agreement and the Option Agreement between the parties hereto with relation to the transaction hereby embody the entire Agreement between the parties and there have been no covenants, agreements, representations, warranties or restrictions between the parties hereto with regard to this transaction other than those set forth herein or the Option Agreement.

13. NOTICES:

All notices which may be required under this Agreement shall be delivered personally, or mailed, to the last address given, in writing, by one party to the other, and shall be deemed given when deposited in the United States mail, postage prepaid.

14. MISCELLANEOUS:

- (A) Seller acknowledges that Seller has had an adequate time to read and understand this Agreement and has done so; and that, there have been no other oral or written representations or agreements made by the Buyer except those set forth herein.
- (B) Seller further acknowledges and agrees that Buyer is purchasing an interest as defined in this agreement and specifically acknowledges that this is not a finance transaction. Seller shall indemnify and hold harmless Buyer from any liability, loss, damage or additional expense which Buyer may suffer as a result of any claim that this is other than a sale contemplated by the parties.
- (C) Seller has been requested by Buyer to seek the advice and council of an attorney and an accountant of his own choice and at his own expense should Seller have any questions concerning any aspect of this transaction.
- (D) This Agreement shall inure to the benefit of and be binding upon the heirs, successors, and representatives and assigned of the parties hereto.
- (E) This Agreement shall not be modified except in writing, signed by all of the parties.
- (F) In the event any term or provision of this Agreement is found to be unenforceable or unlawful for any reason, the remainder shall be carried into effect as though the unenforceable portion was stricken herefrom.

All matters pertaining to this AGREEMENT shall be governed by, construed and enforced with the laws of the State of Texas.

IN WITNESS WHEREOF, this agreement has been executed effective the day and year first above written.

SELLER:

BUYER:

By: _____