This instrument prepared by:
DAVIS H. CARR, Attorney
21st Floor-First American
Center, Nashville, Tennessee
37238

DEED OF CONVEYANCE

BOOK 4964 PAGE 130

Address new owner(s) as follows:	Send Tax Bills To:	Map-Parcel Numbers
Confederate American Associates	Same	
211 North First Street		
Nashville, Tennessee 37213		19W 10100

WHEREAS: 1. Title to the real property hereinafter conveyed (the "PREMISES") is vested in THOMAS M. McCOMB, JR., (the "Nominee") not individually but as nominee of the Trustees of COUSINS MORTGAGE AND EQUITY INVESTMENTS, an unincorporated business trust of the State of Georgia (the "Trust"), by Warranty Deed dated August 2, 1971, of record in Book 4525, page 576, Register's Office for Davidson County, Tennessee;

2. The PREMISES were leased by the Nominee as Lessor to ROGER MILLER'S KING OF THE ROAD ENTERPRISES, INCORPORATED, a Tennessee corporation, (the "Lessee"), by Lease Agreement (the "Lease") dated August 2, 1971 of record in Book 4540, page 270, Register's Office for Davidson County, Tennessee.

3. The leasehold interest of the Lessee under the Lease was, by Deed of Trust (the "Deed of Trust") dated August 2, 1971 of record in Book 4525, page 381, Register's Office for Davidson County, Tennessee, conveyed to THOMAS E. WATTS, as Trustee, to secure the repayment of a certain First Mortgage Real Estate Note of Lessee made to the order of Nominee.

4. The Lessee, by charter amendment dated May 4, 1973, of record in the office of the Secretary of State of the State of Tennessee, changed its name to KING OF THE ROAD ENTERPRISES, INCORPORATED.

5. The Lease was amended by Amendment to Lease Agreement dated July 18, 1973, of record in Book 4729, page 352, Register's Office for Davidson County, Tennessee, between the Nominee and Lessee.

6. The Deed of Trust was amended by Amendment to Deed of Trust dated July 18, 1973 of record in Book 4729, page 345, Register's Office for Davidson County, Tennessee, between the Nominee and Lessee.

7. The Nominee, pursuant to the terms of the Deed of Trust as amended, by Appointment of Successor Trustee dated May 24, 1974 of record in Book 4819, page 543, Register's Office for Davidson County, Tennessee appointed JAMES I. VANCE BERRY as Successor Trustee to succeed THOMAS E. WATTS who resigned as Trustee.

8. The Lessee filed a petition for relief under Chapter XI of the Bankruptcy Act of the United States, and the Bankruptcy Court of the United States District Court for the Middle District of Tennessee, Nashville Division, entered an order staying all creditors from proceeding against the assets of Lessee.

9. The Trust, in due course, filed in the Bankruptcy Court a Complaint seeking to reclaim its collateral and to terminate the Lease as amended.

10. After a full hearing, a Memorandum and Order, a certified copy of which is exhibited hereto as Exhibit "A", was entered by the Court granting the Complaint of the Trust and specifically terminating the Lease as amended; and

WHEREAS, by virtue of the termination of the Lease as amended, the leasehold estate held by the Successor Trustee was extinguished, terminating the trust created by the Deed of Trust as amended for lack of corpus, and releasing the Successor Trustee; and

WHEREAS, the Trust, by Appointment of Successor Nominee, dated 1975, of record in Book 4964, page 127, Register's Office for Davidson County, Tennessee, has appointed CHARLES D. TULLER, JR. as its Nominee, to succeed the Nominee; and

WHEREAS, the Trust has this day bargained and sold to CONFEDERATE AMERICAN ASSOCIATES, a Tennessee Limited Partnership with FIRST HOSPITALITY CORPORATION OF AMERICA, a New Jersey corporation, as sole General Partner (herein called "Confederate American"), the real property hereinafter conveyed;

NOW, THEREFORE, WITNESSETH THAT:

FOR AND IN CONSIDERATION OF THE SUM OF Ten and no/100

DOLLARS ($ 10.00) cash in hand paid, the receipt of which is hereby acknowledged, and other good and valuable consideration, CHARLES D. TULLER, JR. not individually but as nominee of the Trustees of COUSINS MORTGAGE AND EQUITY INVESTMENTS, an unincorporated business trust of the State of Georgia, successor to THOMAS M. McCOMB, JR., former nominee, hereinafter referred to as "GRANTOR", has, this date, bargained and sold, and by these presents does transfer and convey unto CONFEDERATE AMERICAN, its successors and assigns, a certain tract or parcel of land in Davidson County, Tennessee, more fully described in Exhibit "B" attached hereto and made a part hereof, which improved property is known as 211 North First Street, Nashville, Tennessee, 37213 on which is situated a nine (9) story motor hotel containing 182 guest rooms.

TO HAVE AND TO HOLD the said tract or parcel of land with the appurtenances, estate, title and interest thereto belonging to the said CONFEDERATE AMERICAN, its successors and assigns forever.

And GRANTOR does covenant with the said CONFEDERATE AMERICAN, its successors and assigns, that the premises conveyed are free from material and mechanics liens. However, this conveyance is made expressly subject to all exceptions of record and current property taxes not yet payable.

And GRANTOR does further covenant and bind himself and his successors to warrant and forever defend the title to said land to the said CONFEDERATE AMERICAN, its successors and assigns, against all lawful claims arising by, through or under him.

COUSINS MORTGAGE AND EQUITY INVESTMENTS is the trade name of the Trustees, acting only as Trustees, of a business trust organized under Chapter 108-6 of the Georgia Code of 1933, as amended, by Declaration of Trust, dated May 18, 1970, a copy of which, with all amendments,

is available in the Office of the Secretary of State of Georgia. The Declaration and Georgia law provide that only the trust estate shall be bound by or liable for the contracts and other acts and obligations of the trust and its Trustees. No shareholder (beneficiary), Trustee, officer or agent of the trust shall have any personal liability for, nor shall resort be had to private property of such persons for the satisfaction of any obligations or claim arising out of the affairs of the trust.

CHARLES D. TULLER, JR. executes this Conveyance solely in his capacity as Nominee of the Trustees of the trust, and not personally, individually, or otherwise.

DATED THIS 21st DAY OF OCTOBER, 1975.

Charles D. Tuller Jr.
CHARLES D. TULLER, JR., not individually
but as Nominee of the Trustees of
COUSINS MORTGAGE AND EQUITY INVESTMENTS

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

The actual consideration or value, whichever is greater, for this conveyance is $2,645,000.00.

John L. Cundiff
Affiant

Subscribed and sworn to before me, this 22nd day of October, 1975.

Susan G. Paynter
Notary Public

My Commission Expires: 9-16-78

BOOK 4964 PAGE 134

STATE OF GEORGIA

COUNTY OF FULTON

Before me, Constance N. Colmer, a Notary Public of the State and County aforesaid, personally appeared CHARLES D. TULLER, JR., with whom I am personally acquainted and who upon oath acknowledged himself to be the nominee of the Trustees of COUSINS MORTGAGE AND EQUITY INVESTMENTS, an unincorporated business trust organized under the laws of the State of Georgia, and that he as such nominee, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of COUSINS MORTGAGE AND EQUITY INVESTMENTS by himself as nominee.

WITNESS my hand and seal, at office in Atlanta, Georgia, this 21st day of October, 1975.

Constance N. Colmer
Notary Public

My Commission Expires: Notary Public, Georgia State at Large
My Commission Expires Sept. 24, 1978

NOTARY PUBLIC

D 211186

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IDENTIFICATION REFERENCE

OCT 22 3 58 PM '75

FEE [illegible] REGISTER
DAVIDSON COUNTY, TENN.

OCT22 75 CONV * 2,645,000.00
OCT22 75 S'TAX A* 6,877.00
OCT22 75 PR'FEE A* .50
OCT22 75 W'DEED A* 26.00 * 6,903.50

EXHIBIT "A"

BOOK 4964 PAGE 136

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Attest:
A True Copy:
Certified This 10-10-75
Paul E. Jennings
Ruth M. Kinnard
Referees in Bankruptcy
By Brown Bridges
Clerk

IN THE MATTER OF:

KING OF THE ROAD ENTERPRISES, INC. IN BANKRUPTCY NO. BK 75-105
Debtor

COUSINS MORTGAGE AND EQUITY INVESTMENTS
Plaintiff

vs

KING OF THE ROAD ENTERPRISES, INC.
Defendant

MEMORANDUM AND ORDER

This is before the court upon the complaint of Cousins Mortgage and Equity Investments, [hereinafter Cousins] filed herein on February 7, 1975. Cousins asks that it be permitted to reclaim its collateral now in the possession of the debtor consisting of certain real property, located at 211 North First Street, Nashville, Tennessee, and all furnishings, fixtures, and equipment affixed to or located at the North First Street building, all of which is more specifically described in the complaint as filed; and to terminate its lease with the debtor.

The following are Findings of Fact and Conclusions of Law pursuant to Rule 752, Federal Rules of Bankruptcy.

The proof of claim, accompanied by proper supportive documents is conclusive that Cousins has perfected it security interest in both the real property, the furnishings, equipment and other collateral as described in the complaint. The lease agreement is a valid one.

As of February 7, 1975, the debtor owed to Cousins the approximate amount of TWO MILLION AND TWO HUNDRED THOUSAND DOLLARS ($2,200,000.00).

On January 22, 1975, the debtor herein filed a Proceeding under Chapter XI of the Bankruptcy Act, and on January 27, 1975, this court entered an order authorizing the debtor to remain in possession and to continue in business subject to certain conditions as set forth in the order.

The debtor-in-possession was ORDERED, inter alia, to "pay in cash when due and without accruing or default, all necessary current expenses of the debtor in operating, managing and preserving the assets and in conducting its business.....; and shall pay all rent for premises monthly without default." Emphasis added.

In accordance with the contract entered into between Cousins and the debtor, on August 1, 1971 and as thereafter amended on July 18, 1973, the debtor had agreed to make certain monthly payments to Cousins consisting of principal, interest, land rent and "override." The debtor also assumed certain other obligations such as payment of property taxes on the real property accruing at the rate of approximately FIVE THOUSAND DOLLARS ($5,000.00) per month.

The lease agreement, executed between the debtor and Cousins on August 2, 1971, contains the following provision in ARTICLE XIV DEFAULT:

> "The occurrence of any of the following shall be an Event of Default hereunder.....(IV)should lessee file a voluntary petition in bankruptcy or be adjudicated a bankrupt or file any petition or answer seeking any reorganization, arrangement, composition....."

At a hearing had before me on April 7, 1975, the debtor tendered to Cousins several checks which purported to cover the following:

Interest payment through February, 1975
Land Rental payment for one month
"Override" payment for one month

At the April 7, 1975 hearing, Cousins, without relinquishing any rights it had as of that date, agreed to continue the hearing on its complaint to reclaim and to terminate the lease until June 9, 1975, thereby giving the debtor approximately sixty days within which time to operate the business, assess its financial condition and to report to the court whether a reasonable plan of arrangement could be presented to its unsecured creditors.

On June 4, 1975, the debtor filed a motion to convert the within Chapter XI proceeding to a Chapter X corporate reorganization.[1]

In a Chapter XI proceeding, the plan of arrangement provides only for creditors who hold unsecured debts, demands or claims of whatever nature. Sec. 307, Bankruptcy Act; 11 U.S.C. Sec. 707. See generally COLLIER ON BANKRUPTCY, 14th Ed. Vol. 9 ¶7.05.

But Rule 11-44(a), Federal Rules of Bankruptcy, provides that the filing of a Chapter XI petition operates as an automatic stay not only of court proceedings against the debtor, but also of the commencement or continuation of any court proceeding to enforce any lien against the property of the debtor. Advisory Committee Comments, Rule 11-44.

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[1] Pursuant to Rule 11-15, Federal Rules of Bankruptcy Notice will be given by publication on June 11 and June 12, 1975 to all creditors, stockholders, the Securities and Exhange Commission, and all other parties in interest setting June 20, 1975 as the answer date for controverting allegations set forth in the motion and setting June 30, 1975 at 10:00 AM as the date for a hearing on the motion.

The rule provides for relief from the atuomatic stay, however, by commencement of an adversary proceeding, as Cousins has done herein, by the filing of its complaint on February 7, 1975.

The most recent cases concerning the right of a secured creditor to enforce the termination clause in a lease is In re Dhore Co. & D. H. Overmeyer Co. Inc., decided July 23, 1974, in the Southern District of New York, by the Hon. Roy Babitt, Bankruptcy Judge.

Judge Babitt said:

> "Termination clauses in the lease back arrangements are enforceable against the debtors. The mandate of 70(b) of the Act rendering enforceable in bankruptcy express covenants that the bankruptcy of a party to a lease shall terminate the lease require recognition in Chapter cases..."

Judge Babitt's order terminating the leases of certain property by the Chapter XI debtors was affirmed by the United States District Court for the Southern District of New York, 383 F. Supp. 21; and by the Court of Appeals for the Second Circuit, Decided February 5, 1975 before Smith, Hays, and Mansfield, Circuit Judges.

This court, because of compelling equitable and policy considerations for all parties in interest, delayed the enforcement of Cousins' right to terminate the lease agreement and reenter its property for almost two months. See In re Fleetwood 335 F2d. 857 (3 Cir. 1964).[2]

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[2] The debtor owes the approximate sum of $250,000.00 in unsecured debts. There are approximately 4500 Stockholders in the debtor corporation.

At the June 9th hearing, from the testimony of G. Edward Wilson, Senior Vice President of HOLIDAY INNS INC., HOLIDAY INNS INC. may wish to make a firm offer to purchase the KING OF THE ROAD MOTOR INN, an asset of the debtor located on North First Street, Nashville, Tennessee, and being the same property which is the subject of Cousins' complaint.

It would appear that since an offer to buy this asset seems to be a real possibility on or before June 30, 1975, this court could continue to find equitable considerations to stay Cousins from enforcement of its termination clause.

But in light of the testimony given at the June 9th hearing by Ronald L. Kirkpatrick, Managing Director of the debtor, the court can no longer restrain Cousins from its right to terminate the lease agreement and to reclaim its property.

As has been stated supra, Cousins has received only one rental payment since the date the within petition was filed; although the debtor-in-possession was Ordered by the court, on January 27, 1975, to pay the monthly rent as it became due.

The accountant's report for the period ending May 31, 1975 shows an excess of cash receipts over disbursements in the sum of TWENTY-ONE THOUSAND NINE HUNDRED THIRTY-FOUR DOLLARS ($21,934.00).

When questioned about the failure of the debtor to pay the rent in question, Mr. Kirkpatrick informed the court that although the checks had been "cut", the Board of Directors had voted not to transmit the checks to Cousins.[3]

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[3] The court reserves the question as to whether the Board of Directors of the debtor corporation should be held in contempt of court for failure to obey a lawful order of the court.

In light of the bad faith conduct of the Board of Directors of the debtor, the court can no longer restrain Cousins from enforcing its right to terminate the lease agreement with the debtor-in-possession and to reclaim its property.

IT IS SO ORDERED.

Entered this 10th day of June, 1975.

Ruth M. Kinnard

RUTH M. KINNARD
Bankruptcy Judge

jmt

COPIES TO:
Charles Hampton White, Esq.
Davis Carr, Esq.
James W. Lincoln III, Esq.
Carmack Cochran, Esq.

EXHIBIT "B"

Land in Davidson County, Tennessee, being that portion of that property designated Disposition Survey Parcel 158-1A, East Nashville Urban Renewal Area Project Tennessee R-13, and being part of Lots 7 thru 11 of Putman's Addition, as of record in Plat Book 21, page 20, Register's Office for said County, and part of Lots A thru M of C. M. & A. B. Benedict's Subdivision, as of record in Plat Book 57, page 151, said Register's Office, and also an alley closed by Ordinance No. 62-280 of the Ordinances of Metropolitan Government Nashville and Davidson County, Tennessee, lying between First Street and Putnam Street, on the Plan of C. M. & A. B. Benedict's Subdivision of record in Book 57, page 151, said Register's Office and described according to a survey made by Barge, Waggoner, Sumner & Cannon, Engineers (File No. 3435-02) dated July 16, 1971, as follows:

BEGINNING at an iron pin in the easterly margin of North First Street, bearing North 9° 33' west 29.83 feet from the original southwest corner of Lot No. A, of the Benedict Subdivision as of record in Book 57, page 151, Register's Office for said County; thence with said margin of North First Street, North 9° 33' west 606.52 feet to an iron pin at the southwest corner of Disposition Survey Parcel 158A-1A; thence north 80° 27' east 170.0 feet to an iron pin; thence south 13° 54' 30" east 154.80 feet to a concrete monument; thence south 44° 24' 30" East 152.35 feet to a concrete monument; thence south 72° 6' 30" east 0.94 feet to an iron pin;

thence south 9° 17' east 413.78 feet to an iron pin in the northerly margin of Oldham Street; thence with the north margin of Oldham Street, north 83° 18' west 269.89 feet to an iron pin at the beginning of a curve to the right having a radius of 12.00 feet; thence around said curve, northwestwardly 15.45 feet to the point of beginning.

BEING the same property conveyed to Tennessee Automotive Supply Corp. by deed from the Nashville Housing Authority of record in Book 3969, page 94, RODC, Tennessee, and (following the execution and recordation of Certificate of Compliance from Nashville Housing Authority as of record in Book 4412, page 243, RODC, Tennessee) conveyed to Roger Miller's King of the Road Enterprises, Incorporated by warranty deed from said Tennessee Automotive Supply Corp. as the same appears of record in Book 4412, page 251, Register's Office for Davidson County, Tennessee.