

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In re Application of)
)
PINE TREE MEDIA, INC.)
)
For Renewal of License of)
Station KARW)
Longview, Texas)

MM Docket No. 93-265
File No. BR-900817UF

To: The Review Board

RECEIVED

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APPEAL

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Praise Media, Inc. ("Praise"), by its counsel and pursuant to Section 1.301(a)(1) of the Commission's Rules, 47 C.F.R. § 1.301(a)(1), hereby submits its Appeal of the Memorandum Opinion and Order ("Order") released by the Honorable John M. Frysiak, Administrative Law Judge ("ALJ"), on February 24, 1994. The Order, *inter alia*, denies Praise's Petition to Accept Late-filed Notice of Appearance in the above-captioned proceeding, dismisses the pending application for renewal of KARW, and terminates the proceeding. As an entity denied party status, Praise may appeal as a matter of right pursuant to Section 1.301(a)(1) of the Commission's Rules. For the reasons set forth below, Praise respectfully requests that the Review Board reverse the Order in its entirety, grant Praise party status in this proceeding and direct the ALJ to continue this proceeding as specified in the Hearing Designation Order.

Background

On October 25, 1993, the Commission released its Hearing Designation Order and Notice of Forfeiture, 8 FCC Rcd 7591 (1993) ("HDO"), whereby this proceeding was initiated.

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The HDO, *inter alia*, seeks resolution of issues surrounding the control of station KARW and seeks to resolve whether grant of the above-referenced application of Pine Tree Media, Inc. ("Pine Tree") would serve the public interest. The HDO was mailed to the station and Pine Tree and its successors or assigns were directed therein to enter an appearance in this proceeding. Praise, a Texas corporation, which as demonstrated below, has purchased station KARW and, therefore, which is the successor and assign of Pine Tree, retained attorney Kenneth Kilgore, an attorney in Mesquite, Texas, to prepare and submit an appearance. The "Notice of Participation and Intervention" prepared by Mr. Kilgore, dated November 12, 1993, was submitted to counsel for the Mass Media Bureau and to the ALJ, but was not filed with the Commission's Secretary as required by the Commission's procedural rules. Undersigned counsel was retained by Praise just prior to the prehearing conference held on January 24, 1994, and participated in that conference as counsel for Praise.

On January 26, 1994, the Mass Media Bureau filed a Motion to Dismiss ("Motion") the above-referenced application of Pine Tree for failure to prosecute. Praise opposed the Motion on February 8, 1994, and submitted a Petition to Accept Late-Filed Notice of Appearance and a Notice of Appearance on that same date. The ALJ granted the Motion in the Order on the grounds that Praise failed to establish that it is a successor or assign of Pine Tree, and on the grounds that no application to assign the station to Praise was filed with the Commission. As demonstrated below, Praise is in fact the successor and assign of Pine Tree, and for good cause shown, its Notice of Appearance should be accepted as late-filed and the proceeding allowed to continue.

**Praise Is A Successor And Assign
Of Pine Tree Media, Inc.**

Two individuals, Herbert B. Wren, III ("Wren") and Earl M. Jones ("Jones") transferred the stock in Pine Tree to Kenneth Tuck ("Tuck"). As noted in the HDO, the promissory note made by Tuck in payment for station KARW and/or for the stock in Pine Tree was transferred to a company known as American Plastic Products, Inc. ("American Plastics"), on May 17, 1990. See "Transfer of Lien" from Wren and Jones to American Plastics, attached as Exhibit 1. American Plastics foreclosed on the assets securing that note on or about July 3, 1990. See, "Notice of Trustee's Sale," attached as Exhibit 2. The assets securing the note included the real and personal property associated with the station and the stock of Pine Tree. See, "Promissory Note" of December 10, 1988, attached as Exhibit 3.

On August 6, 1991, Wren and Jones foreclosed on a note issued to them by American Plastics and thereby reacquired the assets securing that note, including the stock of Pine Tree and the real and personal property associated with the station. See "Security Agreement" dated May 17, 1990, and "Trustee's Deed," attached as Exhibit 4.¹

On February 10, 1992, Eugene Washington and Ray Lee Williams, acting as President and Vice-President, respectively, of Praise, entered into an agreement to purchase station KARW. See, "Memorandum," "Warranty Deed," "Deed of Trust," "Vendor's Lien Note," "Bill of Sale," and "Security Agreement," all executed February 10, 1992, and attached as Exhibit 5. These documents constituted both the agreement between the parties and the consummation of that agreement. See, Affidavit of Janet Washington, attached as Exhibit 6.

¹ Insofar as the Commission records are concerned, there are no applications or reports concerning these foreclosures and repossessions.

The document titled "Memorandum" states that Praise has acquired all right and title to the assets of station KARW to which Wren and Jones had an interest, along with any interest Wren and Jones had in Pine Tree and the license for KARW. As described above, the interest in KARW transferred by Wren and Jones can be traced directly to Pine Tree and Tuck, thus clearly establishing Praise as Pine Tree's successor and assign.

At the time the transfer documents attached as Exhibit 5 were prepared and executed, Praise, which is 100 percent minority owned, was unrepresented by legal counsel. For this reason, these documents may not in all respects reflect Praise's understanding of the agreement between the parties. It appears that Praise and Wren and Jones shared the belief that this transaction could be consummated without prior Commission approval.² See, Affidavit of Janet Washington, Exhibit 6. Regardless of the differences in understanding which may exist between Praise and Wren and Jones with regard to these agreements, it is clear that the parties intended Praise to be the successor and assign of station KARW. In light of these facts, good cause having been shown for accepting Praise's Notice of Appearance as late-filed, its Notice of Appearance should be accepted.

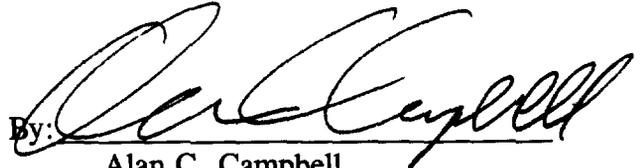
Similarly, the fact that no application was filed with the Commission to request approval of these transfers should not bar Praise from participating as a party. The HDO, recognizing that the facts available to the Commission indicated that transfers of control may have occurred and that no applications to approve these transfers had been filed, demanded an

² Because Praise was not represented by counsel, its understanding of the legal effect of the documents executed on February 10, 1994, may not square with the understanding of Wren and Jones or the expectations of the Commission. Thus, continuation of this proceeding, with or without a hearing, is necessary to make appropriate findings as to the legal effect of these agreements and to allow station KARW, which programs for the minority audience in the Longview market, to continue to serve the public interest.

appearance from Pine Tree or its successors and assigns. The Mass Media Bureau and the ALJ reason that Praise is barred from participating as a party to this proceeding because no FCC application to assign or transfer the KARW license was filed. However, given the fact that no application to assign or transfer KARW was filed, no successor or assign of Pine Tree could possibly participate in this proceeding as a party. Thus, by definition, the HDO's requirement that "successors and assigns" of Pine Tree enter an appearance is frustrated. This cannot be the intention of the Commission. Praise, having demonstrated its ownership of the station by contract law, should be admitted as a party and the proceeding reinstated. Only in this manner will the Commission be able to ascertain satisfactorily what has occurred and make the proper and equitable disposition of this proceeding.

WHEREFORE, the premises considered, Praise respectfully requests that the Review Board reverse the ruling of the Presiding Officer and the dismissal of the KARW renewal application and grant Praise party status in this proceeding.

Respectfully submitted,
PRAISE MEDIA, INC.

By: 

Alan C. Campbell
Michael G. Jones

Its Attorneys

IRWIN CAMPBELL & CROWE
1320 18th Street, N.W.
Suite 400
Washington, D.C. 20036

(202) 728-0400

March 3, 1994

EXHIBIT 1

TRANSFER OF LIEN

Date: May 17, 1990

Holder of Note and Lien: HERBERT B. WREN, III and EARL M. JONES, JR.

Holder's Mailing Address (including county):

804 East 12th Street, Texarkana, Arkansas 75502

Transferee: AMERICAN PLASTIC PRODUCTS, INC.

Transferee's Mailing Address (including county):

P. O. Box 467, New London, Rusk County, Texas 75682

Note

Date: December 10, 1988

Original Amount: \$200,000.00

Maker: Kenneth Tuck

Payee: Herbert B. Wren, III, and Earl M. Jones, Jr.

Unpaid Principal and Interest:

Date of Maturity (optional):

April 10, 1994

Note and Lien Are Described in the Following Documents. Recorded in:

Deed of Trust dated December 10, 1988, from Pine Tree Media, Inc., to Edward Miller, Trustee, recorded in Volume 1986, Page 524, Land Records of Gregg County, Texas.

Property (including any improvements) Subject to Lien:

See Exhibit "A" attached hereto and incorporated herein by reference.

Prior Lien(s) (including recording information):

None.

For value received Holder of the note and lien transfers them to Transferee, warrants that the lien is valid against the property in the priority indicated, and represents that the unpaid principal and interest on the note are correctly stated.

When the context requires, singular nouns and pronouns include the plural.

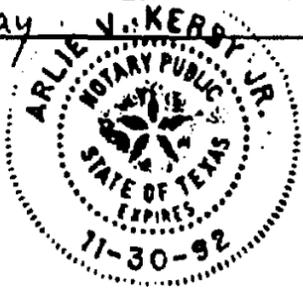
This Transfer of Lien is entered into and subject to the terms of that certain Contract for Assignment of Note and Security Interests ("Contract") dated April 10, 1990, by and between Dr. Herbert Wren and Earl Jones and American Plastic Products, Inc., filed under Clerk's File No. 006764 on April 30, 1990, to be recorded in the Land Records of Gregg County, Texas, which Contract is incorporated herein by reference.

Herbert B. Wren III
HERBERT B. WREN, III

Earl M. Jones Jr
EARL M. JONES, JR.

THE STATE OF TEXAS §
COUNTY OF BOWIE §

This instrument was acknowledged before me on the 17th day of May, 1990, by HERBERT B. WREN, III.



Arlie V. Kerby
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS §
COUNTY OF BOWIE §

This instrument was acknowledged before me on the 17th day of May, 1990, by EARL M. JONES, JR.



Arlie V. Kerby
NOTARY PUBLIC, STATE OF TEXAS

PREPARED IN THE LAW OFFICE OF:

RAMEY LAW FIRM
P. O. Box 629
Tyler, Texas 75710

AFTER RECORDING, RETURN TO:

MICHAEL E. GAZETTE
Ramey Law Firm
P. O. Box 629
Tyler, TX 75710

EXHIBIT 2

NOTICE OF TRUSTEE'S SALE

WHEREAS, by Deed of Trust dated December 10, 1988, ("Deed of Trust") and recorded in Volume 1986, Page 524, Land Records, Gregg County, Texas, PINE TREE MEDIA, INC. ("Debtor"), conveyed to EDWARD MILLER, as Trustee, property situated in Gregg County, Texas, to secure certain indebtedness of Debtor to HERBERT B. WREN, III, and EARL M. JONES; and

WHEREAS, HERBERT B. WREN, III, and EARL M. JONES have transferred and assigned ownership of the Note evidencing the indebtedness and the Deed of Trust securing same to AMERICAN PLASTIC PRODUCTS, INC., by instrument dated May 17, 1990, filed June 12, 1990, under Clerk's File No. 009345 to be recorded in the Land Records of Gregg County, Texas;

WHEREAS, an Appointment of Successor Trustee was filed of record by AMERICAN PLASTIC PRODUCTS, INC., on June 12, 1990, under Clerk's File No. 009347, to be recorded in the Land Records of Gregg County, Texas, appointing VINCENT MCGONAGLE as Successor Trustee; and

WHEREAS, default has occurred under the terms of the indebtedness described in and secured by the Deed of Trust, and the indebtedness due thereunder is now wholly due and the owner and holder of such indebtedness has requested the undersigned to sell the following described property (the "Property"), to-wit:

(See Exhibit "A" attached hereto and incorporated herein by reference.)

NOW, THEREFORE, notice is given, that on Tuesday, July 3, 1990, (that being the first Tuesday of said month), beginning, at the earliest, at 10:00 o'clock a.m., but in no event later than 1:00 p.m., I will sell, for cash, the Property to the highest bidder at the area of the County Courthouse of Gregg County, Texas, designated for foreclosure sales by the Commissioners Court in their Minutes dated October 12, 1987, recorded in Volume 1868, Page 323, Land Records of Gregg County, Texas (such area being "the front door-patio area") in Longview, Texas.

EXECUTED this 12th day of June, 1990.



VINCENT MCGONAGLE, Successor Trustee

EXHIBIT "A"

All that certain tract or parcel of land situated in Gregg County, Texas, part of the A. R. Johnson Survey, being part of the unopened and undeveloped property shown on Plat of Gilmour-Terrace, recorded in Volume 392, Page 35, of Deed Records of Gregg County, Texas, and described as follows, to wit:

BEGINNING at the northeasterly corner of Lot No. 3, Block No. 3;
THENCE easterly with the northerly line of said Lot No. 3, a distance of 600 feet, more or less, to the northeasterly corner of Lot No. 13 of said Block No. 3;

THENCE southerly, with the easterly line of said Lot 13, a distance of 126 feet, to the southeasterly corner of said Lot No. 13, a point in the North line of Lot No. 25 of said Block 3;

THENCE easterly, to the northeasterly corner of said Lot No. 25;

THENCE southerly with the easterly line of said Lot No. 25, 130 ft. to the southeasterly corner of said Lot No. 25;

THENCE southwesterly to the northeasterly corner of Lot No. 2, Block No. 5 of said proposed subdivision;

THENCE southerly with the easterly line of said Lot No. 2, a distance of 125 feet, to the southerly corner of said Lot No. 2;

THENCE westerly with the southerly line of Lots Nos. 2 and 1, to the southwestly corner of said Lot No. 1, Block 5, being a common point with the northwestly corner of Lot 25 in said Block No. 5;

THENCE southerly with the westerly line of said Lot No. 25, a distance of 125 feet, to its southwestly corner;

THENCE westerly 60 feet, to the southeasterly corner of Lot No. 17, Block No. 4, and continuing westerly with the southerly line of said Block No. 4 a distance of 430 feet, to the southwestly corner of Lot No. 23, said Block No. 4;

THENCE northerly with the westerly line of said Lot No. 23, a distance of 125 feet, to the northwestly corner of said Lot No. 23, a common corner with the southeasterly corner of Lot 9, Block No. 4;

THENCE westerly with the southerly line of said Lot 9, a distance of 60 feet, to the southwestly corner of said Lot 9;

THENCE northerly with the westerly line of said Lot 9, a distance of 125 feet, to the northwestly corner thereof;

THENCE northerly to the southwestly corner of Lot 35, Block No. 3;

THENCE northerly with the westerly line of Lots Nos. 35 and 4, Block 3, a distance of 250 feet, to the place of beginning.

EXHIBIT 3

PROMISSORY NOTE

\$200,000.00

December 10, 1988

Texarkana, Texas

FOR VALUE RECEIVED, Kenneth Tuck (hereinafter "the Maker") promises to pay to the order of Dr. Herbert Wren and Earl Jones or their assigns (hereinafter "the Payee"), at 804 East 12th Street, Texarkana, Arkansas 75502, or at such other address as shall be directed in a written notice from the Payee or any other Holder of this Note delivered to Maker at least fifteen (15) days prior to the date of payment, the sum of Two Hundred Thousand Dollars (\$200,000.00), with interest as specified below, lawful money of the United States of America in the manner and at the times following:

Interest

Interest on said principal sum shall accrue from the date hereof at a per annum rate to be adjusted as provided herein. The initial interest rate on this Note shall accrue daily from the date hereof at 11.5% per annum. The interest rate shall be adjusted periodically so that it is equivalent to the prime rate of Chemical Bank of New York plus one percent (1%). This adjustment in interest rate shall occur and be effective as of the first business day of the month in which a payment under this Note is due. Interest on said principal sum shall in no event

accrue at a rate in excess of the maximum amount permitted under applicable law.

Payment Schedule

The principal of this Note shall be paid in eight (8) installments of \$25,000.00 each, the first of such installments being due and payable on August 10, 1989, and a like installment shall be due and payable every eight months thereafter, with the final installment being due on April 10, 1994. The interest upon this Note shall be paid as it accrues on the due date of each installment of principal, and is in addition to such installments of principal.

Security for Note

Payment of this Promissory Note is guaranteed by Pine Tree Media, Inc. ("Guarantor") and is secured by a separate pledge of the capital stock of Guarantor, by a security agreement on certain chattel assets of Guarantor and by a deed of trust on certain real estate of Guarantor, all of which instruments are being executed on the same date as this Note.

Acceleration of Payment

The entire unpaid balance owed on this Note shall become immediately due and payable upon the occurrence of any of the following events:

1. If any installment due under this Note is not made in full (both principal and interest) on or before the due date.

2. If any default, as defined in the Stock Pledge Agreement, Security Agreement or Mortgage, occurs.

3. If Maker, either individually or on behalf of the Guarantor, takes any action that would constitute a default under the Security Agreement dated December 9, 1982, and as extended December 7, 1984, between Guarantor and The Texarkana National Bank.

4. Upon any agreement by the Maker or Guarantor to sell, assign or transfer any part of its interest in the broadcasting license it presently holds for Radio Station KLGW, presently operating on 1280 kHz in Longview, Texas, by whatever call sign it may then be known; provided, however, that payment may be deferred until closing if the agreement of assignment or transfer specifically provides for payment of this Note to the Payee in cash from the proceeds of closing, the Payee receives a copy of the agreement so providing within one week after execution, Maker is not in default under the payment provisions of this Note and remains not in default until closing, and the cash provided in the agreement is actually received by the Payee at closing.

The failure of the Payee to demand full payment of the balance on this Note or promptly to pursue payment through legal

action or otherwise, once an event accelerating payment under this Note has occurred, shall not be deemed a waiver of its right at any subsequent time to demand and receive such full payment.

Prepayment

The Maker shall at any time have the right to prepay the entire principal balance due on this Note and any interest accrued thereon up to the time of prepayment, without fee or penalty.

Right To Cure

If any representation, warranty, covenant or obligation of Maker under this Note is breached and the breach can be cured by payment of money, and the Maker makes such payment within fifteen (15) days after written notice of breach and indemnifies the Payee against all other liability, damage, loss or expense in connection therewith, the Maker shall be deemed to have complied with its obligations hereunder with respect to such representation, warranty, etc., and the breach shall be considered cured.

Collection

The Maker of this Note does hereby expressly waive all exemptions allowed by law and agrees to pay all costs of collecting this Note, including reasonable attorneys' fees, for services rendered in any way in any suit against the Maker or in collecting or attempting to collect or in securing or attempting to secure

this Note; provided that suit or collection is based upon Maker's failure to pay when due. Except as indicated herein, demand, presentment, notice of nonpayment and protest of this Note are waived by the Maker.

Notices

All notices required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when deposited in the U.S. Mail, first class postage prepaid, addressed as follows (or to such different addresses as shall have been furnished by the parties in a written notice referring specifically to this paragraph):

Address of Maker

Kenneth Tuck
Pine Tree Media, Inc.
2929 Signal Hill Road
Longview, TX 75607

Address of Payee:

Herbert Wren
804 East 12th Street
Texarkana, AR 75502

Earl Jones
2318 Jefferson Avenue
Texarkana, AR 75502

Copy to:

Copy to:

Edward Miller, Esq.
Keeney, Anderson, Miller,
James & Tate
1012 Olive Street
P.O. Box 2044
Texarkana, TX 75504

IN WITNESS WHEREOF, we, the Maker and Guarantor, have set our hands on the day and year above written.

Witness:

KENNETH TUCK

Ali V. Kerby

Kenneth Tuck

Maker

PINE TREE MEDIA, INC. hereby guarantees the payment of this Note:

PINE TREE MEDIA, INC.

ATTEST:

Kenneth Tuck

By: Kenneth Tuck
Kenneth Tuck
President

EXHIBIT 4

SECURITY AGREEMENT

Date: May 17, 1990

Debtor: AMERICAN PLASTIC PRODUCTS, INC.

Debtor's Mailing Address (including county):

P.O. Box 467, New London, Rusk County, Texas 75682

Secured Party: HERBERT WREN and EARL JONES

Secured Party's Mailing Address (including county):

804 East 12th Street, Texarkana, Arkansas 75502

Classification of Collateral:

Furniture, fixtures, equipment, personal property, instruments and general intangibles.

Collateral (including all accessions):

1. Furniture, fixtures, equipment and personal property previously owned by Pine Tree Media, Inc., which has been acquired by Debtor.
2. 10,000 shares Pine Tree Media, Inc. common stock.
3. A \$200,000.00 Promissory Note dated December 12, 1988, signed by Kenneth Tuck as Maker, payable to Dr. Herbert Wren and Earl M. Jones.

Obligation
Note

Date: May 17, 1990

Amount: \$112,500.00

Maker: American Plastic Products, Inc.

Payee: Herbert Wren and Earl Jones

Final Maturity Date: July 9, 1992

Terms of Payment (optional):

As therein provided

Other Obligation:

None.

Debtor's Representation Concerning Location of Collateral (optional):

Subject to the terms of this agreement, Debtor grants to Secured Party a security interest in the collateral and all its proceeds to secure payment and performance of Debtor's obligation in this security agreement and all renewals and extensions of any of the obligation.

Debtor's Warranties

1. Financing Statement. Except for that in favor of Secured Party, no financing statement covering the collateral is filed in any public office.
2. Ownership. Debtor owns the collateral and has the authority to grant this security interest. Ownership is free from any setoff, claim, restriction, lien, security interest, or encumbrance except this security interest and liens for taxes not yet due.

ST.BAR #2267.RBC

3. **Fixtures and Accessions.** None of the collateral is affixed to real estate, is an accession to any goods, is commingled with other goods, or will become a fixture, accession, or part of a product or mass with other goods except as expressly provided in this agreement.

4. **Financial Statements.** All information about Debtor's financial condition provided to Secured Party was accurate when submitted, as will be any information subsequently provided.

Debtor's Covenants

1. **Protection of Collateral.** Debtor will defend the collateral against all claims and demands adverse to Secured Party's interest in it and will keep it free from all liens except those for taxes not yet due and from all security interests except this one. The collateral will remain in Debtor's possession or control at all times, except as otherwise provided in this agreement. Debtor will maintain the collateral in good condition and protect it against misuse, abuse, waste, and deterioration except for ordinary wear and tear resulting from its intended use.

2. **Insurance.** Debtor will insure the collateral in accord with Secured Party's reasonable requirements regarding choice of carrier, casualties insured against, and amount of coverage. Policies will be written in favor of Debtor and Secured Party according to their respective interests or according to Secured Party's other requirements. All policies will provide that Secured Party will receive at least ten days' notice before cancellation, and the policies or certificates evidencing them will be provided to Secured Party when issued. Debtor assumes all risk of loss and damage to the collateral to the extent of any deficiency in insurance coverage. Debtor irrevocably appoints Secured Party as attorney-in-fact to collect any return, unearned premiums, and proceeds of any insurance on the collateral and to endorse any draft or check deriving from the policies and made payable to Debtor.

3. **Secured Party's Costs.** Debtor will pay all expenses incurred by Secured Party in obtaining, preserving, perfecting, defending, and enforcing this security interest or the collateral and in collecting or enforcing the note. Expenses for which Debtor is liable include, but are not limited to, taxes, assessments, reasonable attorney's fees, and other legal expenses. These expenses will bear interest from the dates of payments at the highest rate stated in notes that are part of the obligation, and Debtor will pay Secured Party this interest on demand at a time and place reasonably specified by Secured Party. These expenses and interest will be part of the obligation and will be recoverable as such in all respects.

4. **Additional Documents.** Debtor will sign any papers that Secured Party considers necessary to obtain, maintain, and perfect this security interest or to comply with any relevant law.

5. **Notice of Changes.** Debtor will immediately notify Secured Party of any material change in the collateral; change in Debtor's name, address, or location; change in any matter warranted or represented in this agreement; change that may affect this security interest; and any event of default.

6. **Use and Removal of Collateral.** Debtor will use the collateral primarily according to the stated classification unless Secured Party consents otherwise in writing. Debtor will not permit the collateral to be affixed to any real estate, to become an accession to any goods, to be commingled with other goods, or to become a fixture, accession, or part of a product or mass with other goods except as expressly provided in this agreement.

7. **Sale.** Debtor will not sell, transfer, or encumber any of the collateral without the prior written consent of Secured Party; Secured Party consents to the transfer of the collateral to Tuck Communications, Inc., or any other entity owned or controlled by Debtor or any of its shareholders.

Rights and Remedies of Secured Party

1. **Generally.** Secured Party may exercise the following rights and remedies either before or after default:

- a. take control of any proceeds of the collateral;
- b. release any collateral in Secured Party's possession to any debtor, temporarily or otherwise;

- c. take control of any funds generated by the collateral, such as refunds from and proceeds of insurance, and reduce any part of the obligation accordingly or permit Debtor to use such funds to repair or replace damaged or destroyed collateral covered by insurance; and
 - d. demand, collect, convert, redeem, settle, compromise, receipt for, realize on, adjust, sue for, and foreclose on the collateral either in Secured Party's or Debtor's name, as Secured Party desires.
2. Insurance. If Debtor fails to maintain insurance as required by this agreement or otherwise by Secured Party, then Secured Party may purchase single-interest insurance coverage that will protect only Secured Party. If Secured Party purchases this insurance, its premiums will become part of the obligation.

Events of Default

Each of the following conditions is an event of default:

1. if Debtor defaults in timely payment or performance of any obligation, covenant, or liability in any written agreement between Debtor and Secured Party or in any other transaction secured by this agreement;
2. if any warranty, covenant, or representation made to Secured Party by or on behalf of Debtor proves to have been false in any material respect when made;
3. if a receiver is appointed for Debtor or any of the collateral;
4. if the collateral is assigned for the benefit of creditors or, to the extent permitted by law, if bankruptcy or insolvency proceedings commence against or by any of these parties: Debtor, any partnership of which Debtor is a general partner; and any maker, drawer, acceptor, endorser, guarantor, surety, accommodation party, or other person liable on or for any part of the obligation;
5. if any financing statement regarding the collateral but not related to this security interest and not favoring Secured Party is filed;
6. if any lien attaches to any of the collateral;
7. if any of the collateral is lost, stolen, damaged, or destroyed, unless it is promptly replaced with collateral of like quality or restored to its former condition.

Remedies of Secured Party on Default

During the existence of any event of default, Secured Party may declare the unpaid principal and earned interest of the obligation immediately due in whole or part, enforce the obligation, and exercise any rights and remedies granted by the Texas Uniform Commercial Code or by this agreement, including the following:

1. require Debtor to deliver to Secured Party all books and records relating to the collateral;
2. require Debtor to assemble the collateral and make it available to Secured Party at a place reasonably convenient to both parties;
3. take possession of any of the collateral and for this purpose enter any premises where it is located if this can be done without breach of the peace;
4. sell, lease, or otherwise dispose of any of the collateral in accord with the rights, remedies, and duties of a secured party under chapters 2 and 9 of the Texas Uniform Commercial Code after giving notice as required by those chapters; unless the collateral threatens to decline speedily in value, is perishable, or would typically be sold on a recognized market, Secured Party will give Debtor reasonable notice of any public sale of the collateral or of a time after which it may be otherwise disposed of without further notice to Debtor; in this event, notice will be deemed reasonable if it is mailed, postage prepaid, to Debtor at the address specified in this agreement at least ten days before any public sale or ten days before the time when the collateral may be otherwise disposed of without further notice to Debtor;
5. surrender any insurance policies covering the collateral and receive the unearned premium;
6. apply any proceeds from disposition of the collateral after default in the manner specified in chapter 9 of the Texas Uniform Commercial Code, including payment of Secured Party's reasonable attorney's fees and court expenses; and

7. if disposition of the collateral leaves the obligation unsatisfied, collect the deficiency from Debtor.

General Provisions

1. Parties Bound. Secured Party's rights under this agreement shall inure to the benefit of its successors and assigns. Assignment of any part of the obligation and delivery by Secured Party of any part of the collateral will fully discharge Secured Party from responsibility for that part of the collateral. If Debtor is more than one, all their representations, warranties, and agreements are joint and several. Debtor's obligations under this agreement shall bind Debtor's personal representatives, successors, and assigns.

2. Waiver. Neither delay in exercise nor partial exercise of any of Secured Party's remedies or rights shall waive further exercise of those remedies or rights. Secured Party's failure to exercise remedies or rights does not waive subsequent exercise of those remedies or rights. Secured Party's waiver of any default does not waive further default. Secured Party's waiver of any right in this agreement or of any default is binding only if it is in writing. Secured Party may remedy any default without waiving it.

3. Reimbursement. If Debtor fails to perform any of Debtor's obligations, Secured Party may perform those obligations and be reimbursed by Debtor on demand at the place where the note is payable for any sums so paid, including attorney's fees and other legal expenses, plus interest on those sums from the dates of payment at the rate stated in the note for matured, unpaid amount. The sum to be reimbursed shall be secured by this security agreement.

4. Interest Rate. Interest included in the obligation shall not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law; any interest in excess of that maximum amount shall be credited to the principal of the obligation or, if that has been paid, refunded. On any acceleration or required or permitted prepayment of the obligation, any such excess shall be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal amount of the obligation or, if the principal amount has been paid, refunded. This provision overrides other provisions in this and all other instruments concerning the obligation.

5. Modifications. No provision of this agreement shall be modified or limited except by written agreement.

6. Severability. The unenforceability of any provision of this agreement will not affect the enforceability or validity of any other provision.

7. After-Acquired Consumer Goods. This security interest shall attach to after-acquired consumer goods only to the extent permitted by law.

8. Applicable Law. This agreement will be construed according to Texas law.

9. Place of Performance. This agreement is to be performed in the county of Secured Party's mailing address.

10. Financing Statement. A carbon, photographic, or other reproduction of this agreement or any financing statement covering the collateral is sufficient as a financing statement.

11. Presumption of Truth and Validity. If the collateral is sold after default, recitals in the bill of sale or transfer will be prima facie evidence of their truth, and all prerequisites to the sale specified by this agreement and by the Texas Uniform Commercial Code will be presumed satisfied.

12. Singular and Plural. When the context requires, singular nouns and pronouns include the plural.

13. Priority of Security Interest. This security interest shall neither affect nor be affected by any other security for any of the obligation. Neither extensions of any of the obligation nor releases of any of the collateral will affect the priority or validity of this security interest with reference to any third person.

14. Cumulative Remedies. Foreclosure of this security interest by suit does not limit Secured Party's remedies, including the right to sell the collateral under the terms of this agreement. All remedies of Secured Party may be exercised at the same or different times, and no remedy shall be a defense to any other. Secured Party's rights and remedies include all those

granted by law or otherwise, in addition to those specified in this agreement.

15. Agency. Debtor's appointment of Secured Party as Debtor's agent is coupled with an interest and will survive any disability of Debtor.

16. Attachments Incorporated. The addendum indicated below is attached to this agreement and incorporated into it for all purposes:

- (x) addendum relating to accounts, inventory, documents, chattel paper, and general intangibles
- (x) addendum relating to instruments

This Security Agreement and any addendums hereto are being given pursuant and subject to that certain Contract for Assignment of Note and Security Interests ("Contract") dated April 10, 1990, by and between Dr. Herbert Wren and Earl Jones and American Plastic Products, Inc., filed under Clerk's File No. 006764 to be recorded in the Land Records of Gregg County, Texas, which Contract is incorporated herein by reference.

Secured Parties:

Debtor:

AMERICAN PLASTIC PRODUCTS, INC.

Herbert B Wren III
HERBERT WREN

By: Vincent McGonagle
VINCENT MCGONAGLE,
Vice President

Earl Jones
EARL JONES

Prepared by: EDWARD MILLER, Attorney of the law firm of:
KEENEY, ANDERSON, MILLER, JAMES & TATE
P. O. Box 2044 - 1012 Olive Street
Texarkana, Texas 75504

TRUSTEE'S DEED

THE STATE OF TEXAS §
 §
COUNTY OF GREGG §

A. By a certain Deed of Trust executed May 17, 1990, and recorded in Volume 2170, Pages 549-554 of the Land Records of Gregg County, Texas, (hereinafter being referred to as "Deed of Trust"), AMERICAN PLASTIC PRODUCTS, INC., ("Debtor"), conveyed to EDWARD MILLER, as Trustee, certain real property (the "Property"), including, without limitation, that certain real property situated in Gregg County, Texas, and described in Exhibit "A" attached hereto and made a part hereof for all purposes, to secure the payment of the indebtedness (the "Indebtedness") described therein, executed by Debtor and payable to the order of HERBERT WREN and EARL JONES, or their assigns, ("Mortgagee").

B. Default has occurred in the payment of the Indebtedness and such default has continued despite notice to Debtor from or on behalf of Mortgagee and an opportunity for Debtor to cure the default. Accordingly, Mortgagee has, because of such default, duly accelerated the Indebtedness and requested the undersigned Trustee to enforce the trust and sell the Property pursuant to and in accordance with the provisions of the Deed of Trust and the laws of the State of Texas.

C. The undersigned, at the request of Mortgagee, did cause (i) to be posted for at least 21 consecutive days prior to the day of sale at the Courthouse door of said Gregg County, Texas, and (ii) to be filed for at least 21 consecutive days prior to the day of sale with the County Clerk of Gregg County, Texas, written notice that the Property would be sold pursuant to the Deed of Trust, in public vendue to the highest bidder at the area at the Gregg County Courthouse designated by the Commissioner's Court where foreclosure sales are to take place, beginning no earlier than 1:00 P.M. and no later than 4:00 P.M., on August 6, 1991, being the first Tuesday of August, 1991.

D. The undersigned, at the request of Mortgagee, did cause written notice of the proposed sale to be served by certified mail, return receipt requested, on Debtor and by certified mail, return receipt requested, on every other party obligated to pay the Indebtedness according to the records of Mortgagee, at least 21 days preceding the date of sale, such service having been completed by deposit of the notice enclosed in a prepaid wrapper, properly addressed to each such party at the most recent address of such party as shown by the records of Mortgagee in a post office or official depository under the care and custody of the United States Postal Service.

E. Affidavit confirming recitals B., C., and D. is attached, as Exhibit "B" to this Deed.

F. The undersigned on August 6, 1991, at approximately 2:09 o'clock P.M., pursuant to the powers under the Deed of Trust vested in me as Trustee, did cause the Property to be sold at public vendue in the manner required by and as provided in and under the Deed of Trust and by law.

G. The undersigned offered the Property for sale for an all-cash price; and, in response to that offer, the undersigned sold the Property to HERBERT WREN and EARL JONES JR., ("Grantee", whether one or more), the best and highest bidder at the sale for the sum of One Hundred Twenty Nine Thousand Five Hundred Forty Two + 6/100 and NO/100 - (\$129,542.62) - DOLLARS, (the "BID").

NOW, THEREFORE, in consideration of the premises and the payment of the Bid, the receipt of which is hereby acknowledged, I, EDWARD MILLER, Trustee, by virtue of the authority vested in me under the Deed of Trust, have GRANTED, BARGAINED, SOLD, CONVEYED, CONFIRMED and SET OVER and by this Trustee's Deed do hereby GRANT, BARGAIN, SELL, CONVEY, CONFIRM and SET OVER unto Grantee, and the successors and/or heirs and assigns of Grantee, the Property, it being expressly understood that I, EDWARD MILLER, Trustee, have made no independent investigation or inquiry concerning the same and do not hereby make any covenant, representation or warranty concerning the same except as hereinafter provided.