

Meeting No. 819

THE MINUTES OF THE BOARD OF REGENTS
OF
THE UNIVERSITY OF TEXAS SYSTEM

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Austin, Texas

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MEETING NO. 819

MONDAY, AUGUST 4, 1986.--The members of the Board of Regents of The University of Texas System convened at 12:15 p.m. on Monday, August 4, 1986, in Room 1.126 of the Joe C. Thompson Conference Center at The University of Texas at Austin in Austin, Texas, with the following in attendance:

ATTENDANCE.--

<u>Present</u>	<u>Absent</u>
Chairman Hay, presiding	Vice-Chairman Baldwin*
Vice-Chairman Ratliff	Regent (Mrs.) Briscoe**
Regent Blanton	
Regent (Mrs.) Milburn	
Regent Rhodes	
Regent Roden	
Regent Yzaguirre	

Executive Secretary Dilly

Chancellor Mark
Executive Vice Chancellor Mullins
Executive Vice Chancellor Patrick
Executive Vice Chancellor
Duncan

Chairman Hay announced a quorum present and called the special meeting of the Board to order.

RECESS TO EXECUTIVE SESSION.--Chairman Hay announced that the Board would recess to convene in Executive Session pursuant to Vernon's Texas Civil Statutes, Article 6252-17, Section 2(f) to consider an item related to an amendment to the lease agreement for the operation of the commercial vineyard and winery on Permanent University Fund Lands in Pecos County, Texas.

RECONVENE.--At 12:35 p.m., the members of the Board reconvened in open session to consider the item discussed in executive session. In response to Chairman Hay's inquiry regarding the wishes of the Board, the following action was taken:

U. T. System: Approval of Supplemental Agreement to the Accommodation and Subordination Agreement Related to the Lease Agreement for the Operation of the Commercial Vineyard and Winery on Permanent University Fund Lands in Pecos County, Texas, and Authorization for Executive Vice Chancellor for Asset Management to Execute the Agreement.--Regent Milburn moved that the Board approve the Supplemental Agreement to the Accommodation and Subordination Agreement set out on Pages 2 - 7 related to the Lease Agreement for the commercial vineyard and winery located on Permanent University Fund Lands in Pecos County, Texas, and that the Executive Vice Chancellor for Asset Management be authorized to execute the agreement on behalf of the Board.

Vice-Chairman Ratliff and Regent Rhodes seconded the motion which prevailed by unanimous vote.

*Vice-Chairman Baldwin was excused due to illness.

**Regent Briscoe was absent because of a previous commitment.

Supplemental Agreement to the
Accommodation and Subordination Agreement

WHEREAS, The Board of Regents of The University of Texas System ("U.T. System"), S-G-R-C, Inc., and S-G-R-C, Ltd., ("S-G-R-C") entered into a Lease Agreement on June 30, 1983, which has subsequently been amended and modified by the parties, under the terms of which the U.T. System, as Lessor, leased to S-G-R-C, as Lessee, certain lands in Pecos County, Texas, for the purpose of operating a vineyard and winery;

WHEREAS, on October 17, 1984, S-G-R-C and Bank of America National Trust and Savings Association ("BA") and General Foods Credit Corporation ("GFCC") entered into certain agreements ("Collateral Documents") whereby BA and GFCC provided permanent financing to S-G-R-C in order to enable S-G-R-C to fulfill certain of its obligations under the Lease Agreement;

WHEREAS, on October 17, 1984, U.T. System and BA and GFCC entered into an Accommodation and Subordination Agreement ("Accommodation Agreement") which relates to rights and remedies of U.T. System, BA, and GFCC in the event of default by S-G-R-C under the Lease Agreement or the Collateral Documents;

WHEREAS, one of the Collateral Documents, the Winery Credit Agreement, was for the purpose of constructing a winery building, which building is subject to a Deed of Trust on the Lease Agreement;

WHEREAS, the Lease Agreement may be terminated under certain circumstances, which termination would release the security under

that Deed of Trust to the detriment of BA; and

WHEREAS, U.T. System, BA, and GFCC wish to amend and modify the Accommodation Agreement in order to grant and specify the further rights of U.T. System, BA, and GFCC in the event of default by S-G-R-C under the Collateral Documents and Lease Agreement;

NOW, THEREFORE, in consideration of the covenants and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged, U.T. System, BA and GFCC hereby agree as follows:

1. If U.T. System gives written notice to BA by mail, telegram, or telecopier of its intent to terminate or cancel the Lease Agreement, as provided in the last sentence of Section 7.2 of the Accommodation Agreement, BA may inform U.T. System that BA does not object to the exercise of such right to terminate or cancel the Lease Agreement, provided that, notwithstanding such termination or cancellation, BA shall, in addition, have the right to give notice to U.T. System of its election to place into effect the conditions and obligations specified for the Forbearance Period provided for in the Accommodation Agreement.

2. If BA gives written notice to U.T. System by mail, telegram, or telecopier of its intent to terminate the Equipment Lease, as provided in the first sentence of Section 7.2 of the Accommodation Agreement, U.T. System may inform BA that U.T. System does not object to the exercise of such right to terminate the Equipment Lease, provided that, notwithstanding such

termination, U.T. System shall, in addition, have the right to give notice to BA of its election to place into effect the conditions and obligations specified for the Forbearance Period provided for in the Accommodation Agreement.

3. If the Forbearance Period is placed in effect pursuant to Paragraphs 1 or 2 above: (a) the term "leased premises" in Sections 7.3 to 7.8 of the Accommodation Agreement shall be deemed to mean the property subject to the Lease Agreement prior to its termination; and (b) the references in Section 7.3 to 7.8 of the "Lease Agreement" or "Equipment Lease" shall be deemed to mean the Lease Agreement or the Equipment Lease as in effect prior to the termination of such agreement.

4. If the Forbearance Period is in effect pursuant to Paragraphs 1 or 2 above, the terms "Lease Agreement" and "Equipment Lease" as used in Section 8 of the Accommodation Agreement shall be deemed to mean in each case an agreement on substantially the same terms and conditions and covering the same property as the Lease Agreement or the Equipment Lease, as the case may be. U.T. System and BA agree that each will enter into such a lease agreement with an acceptable third party as determined pursuant to Section 8 of the Accommodation Agreement. Each further agrees that if it desires to change any provision of a proposed new lease agreement as compared to such provision in the Lease Agreement or the Equipment Lease, as the case may be, that party shall request the consent of the other to such proposed change, such consent not to be unreasonably withheld. U.T. System agrees that such lease agreement shall be subject to a deed of

trust substantially similar to the Deed of Trust executed by S-G-R-C dated October 17, 1984.

5. If the Forbearance Period shall go into effect pursuant to Paragraphs 1 or 2 above, and if upon the expiration of such Forbearance Period there is no substitute lessee as provided in Section 8 of the Accommodation Agreement (as modified by Paragraph 4 above) and provided BA shall have notified U.T. System at any time not later than 30 days following the expiration of the Forbearance Period that BA desires to perform the acts that would have been necessary to cure the defaults of S-G-R-C under the Lease Agreement pursuant to Section 4.1 of the Accommodation Agreement, and, subject to the prior written approval of U.T. System, which approval shall not be unreasonably withheld, BA intends to appoint a third party operator as provided in that Section, U.T. System agrees to cooperate in the entry and operation of that operator.

6. Thereafter, U.T. System agrees that it will enter into a lease agreement with any substitute lessee presented by BA, subject to the approval of U.T. System, which approval shall not be unreasonably withheld, on substantially the same terms and conditions as the previously terminated Lease Agreement covering the property subject to the Deed of Trust (except any provisions relating only to leased premises not subject to the Deed of Trust), provided either (a) BA shall enter into an agreement with such entity for the payment of such amounts due to BA under the Collateral Documents as shall be satisfactory to it or (b) such entity shall have obtained alternative financing on terms and

conditions reasonably satisfactory to the U.T. System. Any landlord liens or security interests of the U.T. System will be subordinate to any BA financing agreement with such new lessee to the same extent provided for in Paragraph 2.1 of the Accommodation Agreement. Any substitute lease agreement to which U.T. System is a party or any substitute collateral document to which BA is a party shall thereafter be deemed a Lease Agreement or a Collateral Document for all purposes of the Accommodation Agreement.

7. Section 4.1 of the Accommodation Agreement is amended to add at the end the following sentence:

"The right of BA herein to cure as provided in this Section 4.1 means the curing of defaults of S-G-R-C to U.T. System and not defaults specified in Sections 18.1.2, .3, .4, .9, .10, or .13 of the Lease Agreement."

8. U.T. System agrees that the transfer to BA of GFCC's rights and interests in the Equipment Lease and the equipment leased thereunder and any guaranty or security for the Equipment Lease upon a draw by S-G-R-C's obligations under the Equipment Lease shall not constitute a breach or violation of the Accommodation Agreement. Upon such assignment, BA's rights and interests in the Equipment Lease and the equipment leased thereunder shall be subject to all of the requirements of the Accommodation Agreements.

9. Except as amended or supplemented in this Supplemental Agreement, all of the terms, covenants and provisions of the Accommodation Agreement remain in full force and effect.

10. All terms not defined herein shall have the same meaning as in the Accommodation Agreement.

11. This Supplemental Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes.

IN WITNESS WHEREOF, the parties hereto have duly executed this Supplemental Agreement as of _____, 1986.

THE BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM

By _____
Michael E. Patrick
Executive Vice Chancellor
for Asset Management

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

By _____
Title _____

By _____
Title _____

GENERAL FOODS CREDIT CORPORATION
by Bank of America National Trust
and Savings Association, as agent

By _____
Title _____

By _____
Title _____

CERTIFICATE OF APPROVAL

I hereby certify that the foregoing Supplemental Agreement to the Accommodation and Subordination Agreement was approved by the Board of Regents of The University of Texas System on the _____ day of _____, 1986, and that the person whose signature appears above is authorized to execute same on behalf of the Board.

Arthur H. Dilly
Executive Secretary
Board of Regents of
The University of Texas System

In response to Chairman Hay's inquiry, the following action was taken related to the special item on the agenda.

U. T. System: Authorization for the Executive Vice Chancellor for Asset Management to Exercise the Rights and Remedies of the Board Under the Lease Agreement and All Collateral Documents Related to the Operation of the Commercial Vineyard and Winery on Permanent University Fund Lands in Pecos County, Texas.--
Upon motion of Regent Milburn, seconded by Vice-Chairman Ratliff, the Board authorized the Executive Vice Chancellor for Asset Management to take any and all necessary and appropriate action on behalf of the U. T. Board of Regents to exercise the rights and remedies of the U. T. Board of Regents under the Lease Agreement and all Collateral Documents related to the operation of the commercial vineyard and winery located on Permanent University Fund Lands in Pecos County, Texas.

ADJOURNMENT.--There being no further business, the meeting was adjourned at 12:37 p.m.



Arthur H. Dilly
Executive Secretary

August 8, 1986