



TICOR TITLE AGENCY
OF ARIZONA, INC.

March 8, 2008

PRANKSTERS TOO
Attn: PERRY BOLSTER
7919 E. THOMAS RD.
SCOTTSDALE, AZ 85251

RE: Request No. 00412472-
Buyer/Borrowers: TO BE DETERMINED
Property purported to be: 7901 E. THOMAS RD., SCOTTSDALE, AZ 85251

ENCLOSED YOU WILL FIND THE FOLLOWING ITEMS IN CONNECTION WITH THE ABOVE REFERENCED TRANSACTION:

COMMITMENT FOR TITLE INSURANCE
PLAT
RESTRICTIONS
TAX INFORMATION

PLEASE FEEL FREE TO CONTACT US IF WE MAY BE OF FURTHER ASSISTANCE TO YOU IN THIS OR ANY OTHER MATTER.

SINCERELY,

Escrow Officer

Tel: **(602) 216-3857**

Encl.

5-ZN-2008
03/13/2008



COMMITMENT FOR TITLE INSURANCE

BY

Ticor Title Insurance Company

Ticor Title Insurance Company, a California corporation ("Company"), for a valuable consideration, commits to issue its policy or policies of title insurance, as identified in Schedule A, in favor of the Proposed Insured named in Schedule A, as owner or mortgagee of the estate or interest in the land described or referred to in Schedule A, upon payment of the premiums and charges and compliance with the Requirements; all subject to the provisions of Schedule A and B and to the Conditions of this Commitment.

This Commitment shall be effective only when the identity of the Proposed Insured and the amount of the policy or policies committed for have been inserted in Schedule A by the Company.

All liability and obligation under this Commitment shall cease and terminate 6 months after the Effective Date or when the policy or policies committed for shall issue, whichever first occurs, provided that the failure to issue the policy or policies is not the fault of the Company.

The Company will provide a sample of the policy form upon request.

IN WITNESS WHEREOF, Ticor Title Insurance Company has caused its corporate name and seal to be affixed by its duly authorized officers on the date shown in Schedule A.

Ticor Title Insurance Company

By

President

Attest

Secretary

Countersigned

Authorized Signature



**Commitment
For
Title
Insurance**

Ticor Title Insurance Company

COMMITMENT FOR TITLE INSURANCE

SCHEDULE A

Order No. 00412472

Escrow Officer:

Phone: (602) 216-3857

☒ Amount: STO COME (Standard Owner's Form)

Proposed Insured:

City of Scottsdale

1. The fee estate herein described is currently vested in:

Indian River Plaza, L.L.C., an Arizona limited liability company

2. The Loan and Assignments, if any, to be insured are described as:

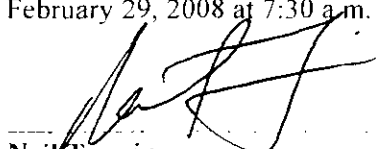
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

3. The land referred to in this Commitment is located in Maricopa County, Arizona and is described as:

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

Search made to February 29, 2008 at 7:30 a.m.

Title Officer:


Neil Turpin

TICOR Title Agency of Arizona, Inc., an Arizona corporation, issuing agent for Tigor Title Insurance Company, a California Corporation. This report incorporated herein the same conditions and stipulations that appear on the aforementioned policy. (All recording data refer to records in the Office of the County Recorder of the County in which the land is situated.)

SCHEDULE B

EXCEPTIONS

PART I

Said Policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

GENERAL EXCEPTIONS:

1. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching to the subsequent effective date hereof but prior to the date the proposed Insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

PART II

In addition to Exclusions from Coverage contained within said Policy, the following specific Exceptions:

1. **Second installment of 2007 taxes.**
2. **Taxes for the year 2008, a lien but not yet due and payable.**
3. **Reservations or exceptions in the Patent to said land.**
4. **Water rights, claims or title to water, whether or not shown by the public records.**
5. **The liabilities and obligations imposed upon said land by reason of: (a) inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District; (b) membership of the owner thereof in the Salt River Valley Water Users' Association, an Arizona corporation; and (c) the terms of any Water Right Application made under the reclamation laws of the United States for the purpose of obtaining water rights for said land.**

EXCEPTIONS - CONTINUED

6. All matters as shown on Flood Control District of Maricopa County Map recorded in 13 of Road Maps, Page 79.
7. A plat recorded in Book 13 of Road Maps, Page 95 purporting to show a county roadway.
8. An Easement for underground public utilities and rights incident thereto as set forth in instrument recorded in Docket 12690, Page 1224.
9. An Easement for water line and fire hydrants and rights incident thereto as set forth in instrument recorded in Docket 13058, Page 672.
10. An Easement for public utilities and rights incident thereto as set forth in instrument recorded in Docket 13139, Page 48.
11. An Easement for down guy and rights incident thereto as set forth in instrument recorded in Docket 13624, Page 111.
12. An Easement for underground power and rights incident thereto as set forth in instrument recorded in Docket 14120, Page 833 and 835.
13. The terms and conditions as set forth in Indemnity Agreement recorded November 28, 1983 in Document No. 83-474374.
14. An Easement for underground power and rights incident thereto as set forth in instrument recorded in Document No. 93-0356818.
15. Covenants, conditions and restrictions but "but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law" as set forth in instrument recorded in Document No. 96-0204312.
16. Any action that might be taken by the Flood Control District of Maricopa County for the acquisition of land for flood control as set forth in Document No. 98-08424.
17. An unrecorded Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor; to Office Depot, Inc., a Delaware Corporation, Lessee, dated September 18, 1998, as disclosed by Memorandum of Lease recorded February 18, 1999 in Document No. 99-0155390.

The lien of said lease was subordinated to the lien of deed of trust recorded in Document No. 99-018026, by instrument recorded in Document No. 20010229159;

The lien of said Lease subordinated to the lien of deed of trust recorded in Document No. 2002063504, by instrument recorded in Document No. 2002063507; the lessee's interest was assigned to 99 Cent Only Stores, a California Corporation as disclosed by instrument recorded in Document No. 2002063507.
18. An unrecorded Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor, to Hamel 1997, :C dba Margie's Cards and Gifts, Lessee, dated December 20, 1989, as disclosed by Subordination, Non-Disturbance and Attornment Agreement recorded March 23, 2001 in Document No. 20010229155.

EXCEPTIONS - CONTINUED .

The lien of said lease was subordinated to the lien of deed of trust recorded in Document No. 20020063504, by instrument recorded in Document No. 20020132271.

19. An unrecorded Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor, to Nature's Alternative, Inc., Lessee, dated March 22, 2001, as disclosed by Subordination, Non-Disturbance and Attornment Agreement recorded March 23, 2001 in Document No. 20010229157.

The lien of said lease was subordinated to the lien of deed of trust recorded in Document No. 20020063504, by instrument recorded in Document No. 20020132273.

20. An unrecorded Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor, to Tuesday Morning, Inc., a Texas corporation Lessee, dated March 22, 2001, as disclosed by Subordination, Non-Disturbance and Attornment Agreement recorded March 23, 2001 in Document No. 20010229158.

The lien of said lease was subordinated to the lien of deed of trust recorded in Document No. 20020063504, by instrument recorded in Document No. 20020132272.

The lien of said lease was subordinated to the lien of deed of trust recorded in Document No. 2003-1372240, by instrument recorded in Document No. 2003-134488.

21. An unrecorded Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor, to Osco Drug of Texas, Inc. a Delaware corporation, Lessee, dated May 4, 2000, as disclosed by Memorandum of Lease recorded March 29, 2001 in Document No. 2001-0250210.

The lien of said lease was subordinated to the lien of deed of trust recorded in Document No. 2003-1372240, by instrument recorded in Document No. 2003-1065017.

22. All matters as set forth in City of Scottsdale Lot Split Approval recorded in Document No. 2001-0923037.
23. The terms and conditions as set forth in Covenant and Agreement to Hold Property as One Parcel recorded in Document No. 2001-0923038.
24. Covenants, conditions and restrictions but "but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law" as set forth in instrument recorded in Document No. 20020063503.
25. A Deed of Trust given to secure an indebtedness in the original principal amount of \$7,350,000.00, dated January 18, 2002, recorded January 22, 2002 in Document No. 20020063504.

Trustor: Indian River Plaza, L.L.C., an Arizona limited liability company

Trustee: Chicago Title Insurance Company

Beneficiary: Canadian Imperial Bank of Commerce, New York Agency

26. Assignment of Lessor's Interest in Leases and Rents as additional security from Indian River Plaza, L.L.C., an Arizona limited liability company, Assignor, to Canadian Imperial Bank of Commerce, New York Agency, Assignee, dated January 18, 2002, recorded January 22, 2002 in Document No. 20020063505.

EXCEPTIONS - CONTINUED

27. Arizona Uniform Commercial Code Financing Statement (Form UCC-1) executed by Indian River Plaza, L.L.C., Debtor, to Canadian Imperial Bank of Commerce, New York Agency, Secured Party, recorded January 22, 2002 in Document No. 20020063506.

28. The terms and conditions as set forth in City of Scottsdale Drainage and Flood Control Easement and Provision for Maintenance recorded in Document No. 2002-836507.

29. A Deed of Trust given to secure an indebtedness in the original principal amount of \$7,500,000.00, dated December 19, 2002, recorded December 19, 2002 in Document No. 20021372240.

Trustor: Indian River Plaza, L.L.C., an Arizona limited liability company

Trustee: Fidelity National Title Insurance Company

Beneficiary: Woodmen of the World Life Insurance Society and/or Omaha Woodmen Life Insurance Society, a Nebraska corporation

30. Arizona Uniform Commercial Code Financing Statement (Form UCC-1) executed by Indian River Plaza, L.L.C., Debtor, to Woodmen of the World Life Insurance Society, Secured Party, recorded December 19, 2002, in Document No. 20021372241.

Thereafter continuation recorded December 4, 2007 in Document No. 2007-1275676.

31. All matters as set forth in Addendum to City of Scottsdale Covenant and Agreement to Hold Property as One Parcel recorded in Document No. 2002-1404900.

32. An unrecorded Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor, to 99 cents Only Stores, a California corporation, Lessee, dated October 7, 2002, as disclosed by Lease Subordination, Non-Disturbance and Attornment Agreement recorded February 4, 2003 in Document No. 2003-134486.

33. An unrecorded Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor, to America's Health Systems, Inc., dba Stooze's, Lessee, dated October 7, 2002, as disclosed by Lease Subordination, Non-Disturbance and Attornment Agreement recorded February 4, 2003 in Document No. 2003-134487.

34. The rights of parties in possession by reason of any unrecorded lease or leases or month to month tenancies affecting any portion of the herein described property.

END OF EXCEPTIONS

REQUIREMENTS

PURSUANT TO A.R.S. 6-843

Parties are made aware that required funds at close of escrow shall comply with "GOOD FUNDS" Law.

PURSUANT TO A.R.S. 33-2003

Parties attention is directed to Purchaser Dwelling Action. Purchasers attention to the provisions of this section and sections 12-1361 and 12-1362.

PURSUANT TO A.R.S. 11-480:

Only an instrument which upon presentation to a county recorder for recordation fails to meet any of the following conditions may be rejected for recordation at the time of presentation for recordation:

Effective January 1, 1991, each instrument shall be no larger than eight and one-half inches in width and no longer than fourteen inches and shall have a print size no smaller than ten point type.

Effective January 1, 1991, each instrument shall have at least one-half inch margin across the bottom and the left and right sides from the top to the bottom. The first page shall have a top margin of at least two inches of vertical space from left to right and shall be reserved for recordation and return address information.

NOTE: There are NO conveyances affecting said land, recorded within twenty-four (24) months of the date of this report.

NOTE: The Property Address is purportedly known as:

7901 East Thomas Road, Scottsdale, AZ 85251.

***NOTE:** Notwithstanding anything to the contrary in this Commitment, if the policy to be issued is other than an ALTA Owner's Policy (6/17/06) or ALTA Loan Policy (6/17/06), the policy may not contain an arbitration clause, or the terms of the arbitration clause may be different from those set forth in this Commitment. If the policy does contain an arbitration clause, and the Amount of Insurance is less than the amount, if any, set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.*

TAX NOTE:

Tax Parcel Number 131-24-002M

1st installment: \$68,727.91

2nd installment \$68,727.91

NOTE: Verify all tax information with the Maricopa County Treasurer prior to close of escrow.

NOTE: Verify all assessment information with the appropriate agency prior to close of escrow.

NOTE: If **TICOR Title Agency of Arizona, Inc.**, is to be the Trustee in this transaction, the correct name and address is:

Order No. 00412472

REQUIREMENTS - CONTINUED

TICOR Title Agency of Arizona, Inc., an Arizona corporation
3131 East Camelback Road, Suite 220
Phoenix, AZ 85016

EXHIBIT "B"

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof; and

EXCEPT the North 55 feet; and

EXCEPT the East 65 feet;

EXCEPT that part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 35;

thence North 89 degrees 59 minutes 52 seconds West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

thence South 00 degrees 08 minutes 06 seconds East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 204.06 feet to the Point of Beginning;

thence continuing South 00 degrees 08 minutes 06 seconds East, a distance of 3.88 feet;

thence South 89 degrees 59 minutes 52 seconds East, parallel with said North line, a distance of 152.94 feet to a point on the West right of way line of Hayden Road, said point being 65.00 feet West of said East line;

thence South 00 degrees 08 minutes 06 seconds East, along the West right of way line and parallel with said East line, a distance of 200.10 feet;

thence departing said West right of way line, South 89 degrees 51 minutes 55 seconds West, a distance of 194.22 feet;

thence North 00 degrees 21 minutes 44 seconds East, a distance of 204.39 feet;

thence North 89 degrees 54 minutes 48 seconds East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

PRIVACY STATEMENT

We recognize and respect the privacy expectations of today's consumers and the requirements of applicable federal and state privacy laws. We believe that making you aware of how we use your non-public personal information ("Personal Information"), and to whom it is disclosed, will form the basis for a relationship of trust between us and the public that we serve. This Privacy Statement provides that explanation. We reserve the right to change this Privacy Statement from time to time consistent with applicable privacy laws.

In the course of our business, we may collect Personal Information about you from the following sources:

From applications or other forms we receive from you or your authorized representative;
From your transactions with, or from the services being performed by, us, our affiliates, or others;
From our internet web sites;
From the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others; and
From consumer or other reporting agencies.

Our Policies Regarding the Protection of the Confidentiality and Security of Your Personal Information:

We maintain physical, electronic and procedural safeguards to protect your Personal Information from unauthorized access or intrusion. We limit access to the Personal Information only to those employees who need such access in connection with providing products or services to you or for other legitimate business purposes.

Our Policies and Practices Regarding the Sharing of Your Personal Information:

We may share your Personal Information with our affiliates, such as insurance companies, agents, and other real estate settlement service providers. We also may disclose your Personal Information

to agents, brokers or representatives to provide you with services you have requested;
to third-party contractors or service providers who provide services or perform marketing or other functions on our behalf; and
to others with whom we enter into joint marketing agreements for products or services that we believe you may find of interest.

In addition, we will disclose your Personal Information when you direct or give us permission, when we are required by law to do so, or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

One of the important responsibilities of some of our affiliated companies is to record documents in the public domain. Such documents may contain your Personal Information

The Right to Access Your Personal Information and Ability To Correct Errors Or Request Changes Or Deletion:

Certain states afford you the right to access your Personal Information and, under certain circumstances, to find out to whom your Personal Information has been disclosed. Also, certain states afford you the right to request correction, amendment or deletion of your Personal Information. We reserve the right, where permitted by law, to charge a reasonable fee to cover the costs incurred in responding to such requests.

All requests must be made in writing to the following address: **Privacy Compliance Officer
TICOR Title Agency of California, Inc.
1455 Frazee Road Suite 408
San Diego, CA 92108**

Multiple Products or Services

If we provide you with more than one financial product or service, you may receive more than one privacy notice from us. We apologize for any inconvenience this may cause you.

ARIZONA'S NEW "GOOD FUNDS" LAW

Effective August 11, 2003

House Bill 2074 requires that escrow agents not disburse money from an escrow account until funds related to the transaction have been deposited and are available.

TICOR TITLE'S GUIDELINES CONCERNING THE AVAILABILITY OF FUNDS

All availability dates are based on funds deposited in our bank. The following information outlines the "availability" of most common types of deposited funds.

Type of Deposit	Same Day*	Next Day* (1 st Business Day)	2 nd Day*	5 th Day*
Bank Wire, Electronic Payment or Transfer	X			
Cashier's, Certified and Teller's Checks	X			
Official Checks – Drawn on Local** FDIC Institution	X			
Official Checks – Drawn on <i>Non-Local and/or Non-FDIC</i>	X			
US Treasury Checks, US Postal Money Orders		X		
All other Money Orders (Non-US Postal)				X
Local Affiliate of a State or Federally Regulated Deposit Institution	X			
Federal Reserve, Federal Credit Union & Federal Home Loan Bank Checks	X			
Local** State, County, Municipal Gov't Checks (Must be In-State and Local**)		X		
Non-Local State, County, Municipal Gov't Checks (5 th Day)				X
Local** Checks including: Personal, Corporate, Credit Union, Money Market & Traveler's Checks			X	
Non-Local Checks including: Personal, Corporate, Credit Union, Money Market & Traveler's Checks				X
On-Us Checks ***		X		
Third Party Checks: It is our company policy not to accept third party checks. Exceptions must be approved by Escrow Administration.				
Drafts: No disbursement until funds received				

* **Business Day:** Funds are potentially available on the *Business Day indicated above. A Business day is defined as a calendar day other than Saturday and Sunday, and excluding most major holidays. If January 1st, July 4th, November 11th or December 25th fall on a Sunday, the next Monday is excluded from the definition of a business day. Note that individual banks may require additional "hold" periods longer than shown above.

** **Local:** A check is considered "local" when it is drawn against a bank located in the same processing region as the depository bank. The check-processing region for the State of Arizona is the Los Angeles Region. Any check with a four-digit ABA Number beginning with "12" or "32" is "local".

*** **On-Us Checks:** Next day availability is dependent on the check being drawn against the same bank or branch as the depository bank and in the same check-processing region, meaning the ABA numbers must begin with "12" or "32".

TITLEPOINT

Printed: 3/8/2008 10:37:22 AM UMST
Searched: 3/8/2008 9:06:00 AM

Tax Search
Maricopa, Arizona
Assessor's Parcel 131-24-002M5
Tax Year: 2007-2008
Payment as of: 02/23/2008

Order: 412472
Co: Tigor Title
Dept: Phoenix CRN: 0001100060
TO: 01
Created By: Palermo, Tracy

Printed By: tpalermi

APN:		131-24-002M5							
Plat Book	Page	Block	Lot(s)	Subdivision	Section	Township	Range	QQ	Acres
					35	2N	4E	NENE	
Described As:		TH E 710F OF N 710F OF NE4 NE4 SEC 35 EX N 207.94F OF E 217.94F TH/OF & EX N 55F & E 65F RDS & EX TH PT TH/OF DAF COM NE COR SD SEC TH W 217.94F TH S 204.06F TO POB TH CONT S 3.88F TH E 152.94F TO A PT TH S 200.10F TH W 194.22F TH N 204.39F TH E 39.51F TO POB							
Address:		7901 E THOMAS RD SCOTTSDALE 85251							
City:									
Billing Address:		6621 N SCOTTSDALE RD SCOTTSDALE, AZ 85250							
Assessed Owner(s):		INDIAN, RIVER PLAZA L L C							
Search As:		APN Arb 131-24 Parcel 2M NE of NE Sec 35 T 2N R 4E							

Use Code:	1410	Primary	Secondary	Conveyance Date:	10/16/2001
NEIGHBORHOOD SHOPPING CENTER	Land AV:	1,652,220.00	942,120.00	Conveying Instrument:	010958820
	Imp. AV:		942,562.00		
	Land FCV:	6,884,249.00	3,925,500.00		
	Imp. FCV:		3,927,340.00		
Region Code:				Square Footage	
Flood Zone:				Land:	358585
Zoning Code:				Improvements:	
School Districts				Tax Defaulted:	
Elem:	SCOTTSDALE #48			Total Tax:	137,455.82
High:	UNIFIED				
		Tax Rate:	5.9297 %		
			2.4969 %		
		Tax Rate Area:	481400		

Installment	Amount	Penalty	Due Date	Status	Payment Date	Balance
1st	68,727.91	0.00	11/01/2007	PAID	10/30/2007	0.00
2nd	68,727.91	0.00	05/01/2008	UNPAID		68,727.91
						68,727.91

Due Thru 4/2008
\$68,727.91

Due Thru 5/2008
\$69,644.28

Due Thru 6/2008
\$70,560.65

Imp Dist	Back Taxes
0	0

Account	Special District Description
30001	EAST VALLEY INSTITUTE OF TECHNOLOGY

THIS INFORMATION IS PROVIDED FOR CUSTOMER SERVICE PURPOSES ONLY. PROPERTY INSIGHT DOES NOT WARRANT, NOR GUARANTEE THE ACCURACY NOR COMPLETENESS OF THE INFORMATION SHOWN ON THIS REPORT

*** END OF REPORT ***

MAP ID • 845 - 35 - 01 - 01

[illegible]

LOCATION: C.

SECTION

1/4 SECTION

113 26 .

ASSESSOR BOOKS & MAPS WITHIN THIS AREA
BOOK 131 MAP 24

SUBDIVISIONS

SCALE: 100



Maricopa County
Assessor G. I. S.

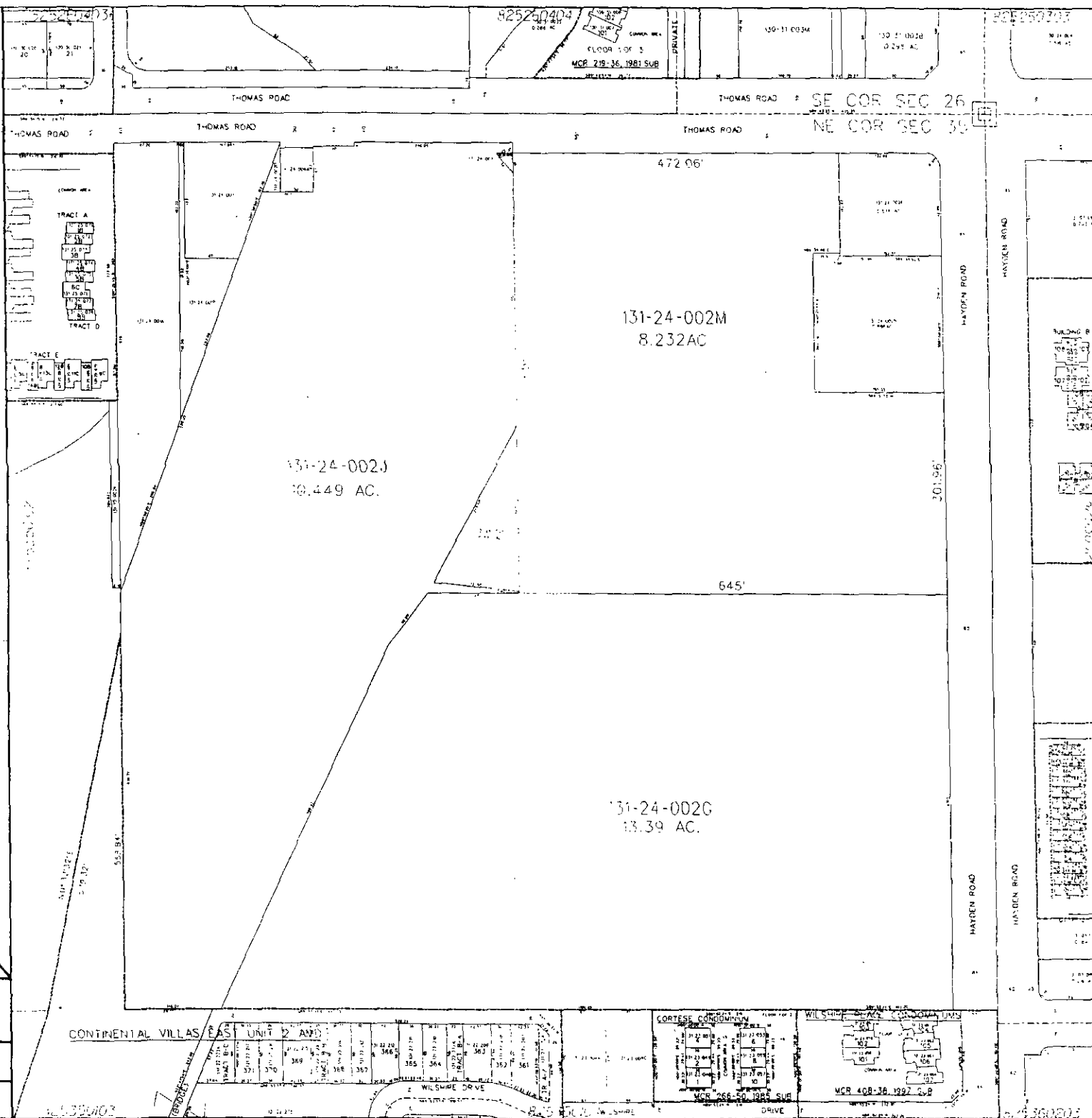
MARICOPA COUNTY ASSESSOR'S OFFICE
301 W. JEFFERSON ST.
PHOENIX, AZ 85003
www.maricopa.gov/assessor

LEGEND:

NAME	DATE	DESCRIPTION	AMOUNT
John Doe	12/15/2023	Payment received	100.00
Jane Smith	12/16/2023	Payment received	250.00
Bob Johnson	12/17/2023	Payment received	75.00
Alice Brown	12/18/2023	Payment received	150.00
Charlie Davis	12/19/2023	Payment received	300.00
Diana Evans	12/20/2023	Payment received	125.00
Frank Green	12/21/2023	Payment received	50.00
Grace Hill	12/22/2023	Payment received	200.00
Henry King	12/23/2023	Payment received	175.00
Ivy Lee	12/24/2023	Payment received	90.00
Jack Miller	12/25/2023	Payment received	350.00
Karen Wilson	12/26/2023	Payment received	110.00
Leo White	12/27/2023	Payment received	60.00
Mia Young	12/28/2023	Payment received	220.00
Noah Adams	12/29/2023	Payment received	140.00
Olivia Baker	12/30/2023	Payment received	80.00
Peter Clark	12/31/2023	Payment received	280.00
Quinn Hall	12/31/2023	Payment received	160.00
Samuel King	12/31/2023	Payment received	95.00
Tina Lewis	12/31/2023	Payment received	320.00
Uma Miller	12/31/2023	Payment received	130.00
Victor Nelson	12/31/2023	Payment received	70.00
Wendy Parker	12/31/2023	Payment received	210.00
Xavier Reed	12/31/2023	Payment received	180.00
Yara Scott	12/31/2023	Payment received	105.00
Zoe Taylor	12/31/2023	Payment received	380.00
TOTAL			4500.00

Disc order and indemnification

The Approver's Office reviews the reliability of quotations as to the accuracy or reliability of any of the information gathered and should not be liable for errors or omissions that may result from the use of the information. Sources used for information are provided by law and County policy, and as such, the County will not be held responsible for any errors or omissions that may result from the use of the information.



COMMITMENT FOR TITLE INSURANCE

SCHEDULE A

Order No. 00412472

**Escrow Officer:
Phone: (602) 216-3857**

☒ Amount: STO COME (Standard Owner's Form)

Proposed Insured:

City of Scottsdale

1. The fee estate herein described is currently vested in:

Indian River Plaza, L.L.C., an Arizona limited liability company

2. The Loan and Assignments, if any, to be insured are described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

3. The land referred to in this Commitment is located in Maricopa County, Arizona and is described as:

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

Search made to February 29, 2008 at 7:30 a.m.

Title Officer:


Neil Turpin

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SCHEDULE B

EXCEPTIONS

PART 1

Said Policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

GENERAL EXCEPTIONS:

1. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching to the subsequent effective date hereof but prior to the date the proposed Insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

PART II

In addition to Exclusions from Coverage contained within said Policy, the following specific Exceptions:

1. **Second installment of 2007 taxes.**
2. **Taxes for the year 2008, a lien but not yet due and payable.**
3. **Reservations or exceptions in the Patent to said land.**
4. **Water rights, claims or title to water, whether or not shown by the public records.**
5. **The liabilities and obligations imposed upon said land by reason of: (a) inclusion thereof within the boundaries of the Salt River Project Agricultural Improvement and Power District; (b) membership of the owner thereof in the Salt River Valley Water Users' Association, an Arizona corporation; and (c) the terms of any Water Right Application made under the reclamation laws of the United States for the purpose of obtaining water rights for said land.**

EXCEPTIONS - CONTINUED

6. All matters as shown on Flood Control District of Maricopa County Map recorded in 13 of Road Maps, Page 79.
7. A plat recorded in Book 13 of Road Maps, Page 95 purporting to show a county roadway.
8. An Easement for underground public utilities and rights incident thereto as set forth in instrument recorded in Docket 12690, Page 1224.
9. An Easement for water line and fire hydrants and rights incident thereto as set forth in instrument recorded in Docket 13058, Page 672.
10. An Easement for public utilities and rights incident thereto as set forth in instrument recorded in Docket 13139, Page 48.
11. An Easement for down guy and rights incident thereto as set forth in instrument recorded in Docket 13624, Page 111.
12. An Easement for underground power and rights incident thereto as set forth in instrument recorded in Docket 14120, Page 833 and 835.
13. The terms and conditions as set forth in Indemnity Agreement recorded November 28, 1983 in Document No. 83-474374.
14. An Easement for underground power and rights incident thereto as set forth in instrument recorded in Document No. 93-0356818.
15. Covenants, conditions and restrictions but "but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law" as set forth in instrument recorded in Document No. 96-0204312.
16. Any action that might be taken by the Flood Control District of Maricopa County for the acquisition of land for flood control as set forth in Document No. 98-08424.
17. An unrecorded Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor, to Office Depot, Inc., a Delaware Corporation, Lessee, dated September 18, 1998, as disclosed by Memorandum of Lease recorded February 18, 1999 in Document No. 99-0155390.

The lien of said lease was subordinated to the lien of deed of trust recorded in Document No. 99-018026, by instrument recorded in Document No. 20010229159;

The lien of said Lease subordinated to the lien of deed of trust recorded in Document No. 2002063504, by instrument recorded in Document No. 2002063507; the lessee's interest was assigned to 99 Cent Only Stores, a California Corporation as disclosed by instrument recorded in Document No. 2002063507.
18. An unrecorded Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor, to Hamel 1997, ::C dba Margie's Cards and Gifts, Lessee, dated December 20, 1989, as disclosed by Subordination, Non-Disturbance and Attornment Agreement recorded March 23, 2001 in Document No. 20010229155.

Order No. 00412472
EXCEPTIONS - CONTINUED

The lien of said lease was subordinated to the lien of deed of trust recorded in Document No. 20020063504, by instrument recorded in Document No. 20020132271.

19. An unrecorded Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor, to Nature's Alternative, Inc., Lessee, dated March 22, 2001, as disclosed by Subordination, Non-Disturbance and Attornment Agreement recorded March 23, 2001 in Document No. 20010229157.

The lien of said lease was subordinated to the lien of deed of trust recorded in Document No. 20020063504, by instrument recorded in Document No. 20020132273.

20. An unrecorded Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor, to Tuesday Morning, Inc., a Texas corporation Lessee, dated March 22, 2001, as disclosed by Subordination, Non-Disturbance and Attornment Agreement recorded March 23, 2001 in Document No. 20010229158.

The lien of said lease was subordinated to the lien of deed of trust recorded in Document No. 20020063504, by instrument recorded in Document No. 20020132272.

The lien of said lease was subordinated to the lien of deed of trust recorded in Document No. 2003-1372240, by instrument recorded in Document No. 2003-134488.

21. An unrecorded Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor, to Osco Drug of Texas, Inc. a Delaware corporation, Lessee, dated May 4, 2000, as disclosed by Memorandum of Lease recorded March 29, 2001 in Document No. 2001-0250210.

The lien of said lease was subordinated to the lien of deed of trust recorded in Document No. 2003-1372240, by instrument recorded in Document No. 2003-1065017.

22. All matters as set forth In City of Scottsdale Lot Split Approval recorded in Document No. 2001-0923037.

23. The terms and conditions as set forth in Covenant and Agreement to Hold Property as One Parcel recorded in Document No. 2001-0923038.

24. Covenants, conditions and restrictions but "but omitting any covenants or restrictions, if any, including, but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law" as set forth in instrument recorded in Document No. 20020063503.

25. A Deed of Trust given to secure an indebtedness in the original principal amount of \$7,350,000.00, dated January 18, 2002, recorded January 22, 2002 in Document No. 20020063504.

Trustor: Indian River Plaza, L.L.C., an Arizona limited liability company

Trustee: Chicago Title Insurance Company

Beneficiary: Canadian Imperial Bank of Commerce, New York Agency

26. Assignment of Lessor's Interest in Leases and Rents as additional security from Indian River Plaza, L.L.C., an Arizona limited liability company, Assignor, to Canadian Imperial Bank of Commerce, New York Agency, Assignee, dated January 18, 2002, recorded January 22, 2002 in Document No. 20020063505.

Order No. 00412472

EXCEPTIONS - CONTINUED

27. Arizona Uniform Commercial Code Financing Statement (Form UCC-1) executed by Indian River Plaza, L.L.C., Debtor, to Canadian Imperial Bank of Commerce, New York Agency, Secured Party, recorded January 22, 2002 in Document No. 20020063506.

28. The terms and conditions as set forth in City of Scottsdale Drainage and Flood Control Easement and Provision for Maintenance recorded in Document No. 2002-836507.

29. A Deed of Trust given to secure an indebtedness in the original principal amount of \$7,500,000.00, dated December 19, 2002, recorded December 19, 2002 in Document No. 20021372240.

Trustor: Indian River Plaza, L.L.C., an Arizona limited liability company

Trustee: Fidelity National Title Insurance Company

Beneficiary: Woodmen of the World Life Insurance Society and/or Omaha Woodmen Life Insurance Society, a Nebraska corporation

30. Arizona Uniform Commercial Code Financing Statement (Form UCC-1) executed by Indian River Plaza, L.L.C., Debtor, to Woodmen of the World Life Insurance Society, Secured Party, recorded December 19, 2002, in Document No. 20021372241.

Thereafter continuation recorded December 4, 2007 in Document No. 2007-1275676.

31. All matters as set forth in Addendum to City of Scottsdale Covenant and Agreement to Hold Property as One Parcel recorded in Document No. 2002-1404900.

32. An *unrecorded* Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor, to 99 cents Only Stores, a California corporation, Lessee, dated October 7, 2002, as disclosed by Lease Subordination, Non-Disturbance and Attornment Agreement recorded February 4, 2003 in Document No. 2003-134486.

33. An *unrecorded* Lease executed by Indian River Plaza, L.L.C., an Arizona limited liability company, Lessor, to America's Health Systems, Inc., dba Stooze's, Lessee, dated October 7, 2002, as disclosed by Lease Subordination, Non-Disturbance and Attornment Agreement recorded February 4, 2003 in Document No. 2003-134487.

34. The rights of parties in possession by reason of any *unrecorded* lease or leases or month to month tenancies affecting any portion of the herein described property.

END OF EXCEPTIONS

REQUIREMENTS

PURSUANT TO A.R.S. 6-843

Parties are made aware that required funds at close of escrow shall comply with "GOOD FUNDS" Law.

PURSUANT TO A.R.S. 33-2003

Parties attention is directed to Purchaser Dwelling Action. Purchasers attention to the provisions of this section and sections 12-1361 and 12-1362.

PURSUANT TO A.R.S. 11-480:

Only an instrument which upon presentation to a county recorder for recordation fails to meet any of the following conditions may be rejected for recordation at the time of presentation for recordation:

Effective January 1, 1991, each instrument shall be no larger than eight and one-half inches in width and no longer than fourteen inches and shall have a print size no smaller than ten point type.

Effective January 1, 1991, each instrument shall have at least one-half inch margin across the bottom and the left and right sides from the top to the bottom. The first page shall have a top margin of at least two inches of vertical space from left to right and shall be reserved for recordation and return address information.

NOTE: There are NO conveyances affecting said land, recorded within twenty-four (24) months of the date of this report.

NOTE: The Property Address is purportedly known as:

7901 East Thomas Road, Scottsdale, AZ 85251.

***NOTE:** Notwithstanding anything to the contrary in this Commitment, if the policy to be issued is other than an ALTA Owner's Policy (6/17/06) or ALTA Loan Policy (6/17/06), the policy may not contain an arbitration clause, or the terms of the arbitration clause may be different from those set forth in this Commitment. If the policy does contain an arbitration clause, and the Amount of Insurance is less than the amount, if any, set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.*

TAX NOTE:

Tax Parcel Number 131-24-002M

1st installment: \$68,727.91

2nd installment \$68,727.91

NOTE: Verify all tax information with the Maricopa County Treasurer prior to close of escrow.

NOTE: Verify all assessment information with the appropriate agency prior to close of escrow.

NOTE: If **TICOR Title Agency of Arizona, Inc.** is to be the Trustee in this transaction, the correct name and address is:

Order No. 00412472
REQUIREMENTS - CONTINUED

TICOR Title Agency of Arizona, Inc., an Arizona corporation
3131 East Camelback Road, Suite 220
Phoenix, AZ 85016

TICOR Title Agency of Arizona, Inc.,
Commitment for Title Insurance
tpa:3/8/08:00412472

EXHIBIT "B"

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof; and

EXCEPT the North 55 feet; and

EXCEPT the East 65 feet;

EXCEPT that part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 35;

thence North 89 degrees 59 minutes 52 seconds West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

thence South 00 degrees 08 minutes 06 seconds East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 204.06 feet to the Point of Beginning;

thence continuing South 00 degrees 08 minutes 06 seconds East, a distance of 3.88 feet ;

thence South 89 degrees 59 minutes 52 seconds East, parallel with said North line, a distance of 152.94 feet to a point on the West right of way line of Hayden Road, said point being 65.00 feet West of said East line;

thence South 00 degrees 08 minutes 06 seconds East, along the West right of way line and parallel with said East line, a distance of 200.10 feet;

thence departing said West right of way line, South 89 degrees 51 minutes 55 seconds West, a distance of 194.22 feet;

thence North 00 degrees 21 minutes 44 seconds East, a distance of 204.39 feet;

thence North 89 degrees 54 minutes 48 seconds East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

PRIVACY STATEMENT

We recognize and respect the privacy expectations of today's consumers and the requirements of applicable federal and state privacy laws. We believe that making you aware of how we use your non-public personal information ("Personal Information"), and to whom it is disclosed, will form the basis for a relationship of trust between us and the public that we serve. This Privacy Statement provides that explanation. We reserve the right to change this Privacy Statement from time to time consistent with applicable privacy laws.

In the course of our business, we may collect Personal Information about you from the following sources:

From applications or other forms we receive from you or your authorized representative;

From your transactions with, or from the services being performed by, us, our affiliates, or others;

From our internet web sites;

From the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others; and

From consumer or other reporting agencies.

Our Policies Regarding the Protection of the Confidentiality and Security of Your Personal Information:

We maintain physical, electronic and procedural safeguards to protect your Personal Information from unauthorized access or intrusion. We limit access to the Personal Information only to those employees who need such access in connection with providing products or services to you or for other legitimate business purposes.

Our Policies and Practices Regarding the Sharing of Your Personal Information:

We may share your Personal Information with our affiliates, such as insurance companies, agents, and other real estate settlement service providers. We also may disclose your Personal Information:

to agents, brokers or representatives to provide you with services you have requested;

to third-party contractors or service providers who provide services or perform marketing or other functions on our behalf; and

to others with whom we enter into joint marketing agreements for products or services that we believe you may find of interest.

In addition, we will disclose your Personal Information when you direct or give us permission, when we are required by law to do so, or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

One of the important responsibilities of some of our affiliated companies is to record documents in the public domain. Such documents may contain your Personal Information.

The Right to Access Your Personal Information and Ability To Correct Errors Or Request Changes Or Deletion:

Certain states afford you the right to access your Personal Information and, under certain circumstances, to find out to whom your Personal Information has been disclosed. Also, certain states afford you the right to request correction, amendment or deletion of your Personal Information. We reserve the right, where permitted by law, to charge a reasonable fee to cover the costs incurred in responding to such requests.

All requests must be made *in writing* to the following address: **Privacy Compliance Officer
TICOR Title Agency of California, Inc.
1455 Frazee Road Suite 408
San Diego, CA 92108**

Multiple Products or Services

If we provide you with more than one financial product or service, you may receive more than one privacy notice from us. We apologize for any inconvenience this may cause you.

ARIZONA'S NEW "GOOD FUNDS" LAW

Effective August 11, 2003

House Bill 2074 requires that escrow agents not disburse money from an escrow account until funds related to the transaction have been deposited and are available.

TICOR TITLE'S GUIDELINES CONCERNING THE AVAILABILITY OF FUNDS

All availability dates are based on funds deposited in our bank. The following information outlines the "availability" of most common types of deposited funds.

Type of Deposit	Same Day*	Next Day* (1 st Business Day)	2 nd Day*	5 th Day*
Bank Wire, Electronic Payment or Transfer	X			
Cashier's, Certified and Teller's Checks	X			
Official Checks – Drawn on Local** FDIC Institution	X			
Official Checks – Drawn on <i>Non-Local and/or Non-FDIC</i>	X			
US Treasury Checks, US Postal Money Orders		X		
All other Money Orders (Non-US Postal)				X
Local Affiliate of a State or Federally Regulated Deposit Institution	X			
Federal Reserve, Federal Credit Union & Federal Home Loan Bank Checks	X			
Local** State, County, Municipal Gov't Checks (Must be In-State and Local**)		X		
Non-Local State, County, Municipal Gov't Checks (5 th Day)				X
Local** Checks including: Personal, Corporate, Credit Union, Money Market & Traveler's Checks			X	
Non-Local Checks including: Personal, Corporate, Credit Union, Money Market & Traveler's Checks				X
On-Us Checks ***		X		
Third Party Checks: It is our company policy not to accept third party checks. Exceptions must be approved by Escrow Administration.				
Drafts: No disbursement until funds received				

* **Business Day:** Funds are potentially available on the *Business Day indicated above. A Business day is defined as a calendar day other than Saturday and Sunday, and excluding most major holidays. If January 1st, July 4th, November 11th or December 25th fall on a Sunday, the next Monday is excluded from the definition of a business day. Note that individual banks may require additional "hold" periods longer than shown above.

** **Local:** A check is considered "local" when it is drawn against a bank located in the same processing region as the depository bank. The check-processing region for the State of Arizona is the Los Angeles Region. Any check with a four-digit ABA Number beginning with "12" or "32" is "local".

*** **On-Us Checks:** Next day availability is dependent on the check being drawn against the same bank or branch as the depository bank and in the same check-processing region, meaning the ABA numbers must begin with "12" or "32".

TITLEPOINT

Printed: 3/8/2008 10:37:22 AM UMST
Searched: 3/8/2008 9:06:00 AM

Tax Search
Maricopa, Arizona
Assessor's Parcel 131-24-002M5
Tax Year: 2007-2008
Payment as of: 02/23/2008

Order: 412472
Co: Titor Title
Dept: Phoenix CRN: 0001100060
TO: 01
Created By: Palermino, Tracy

Printed By: tpalermi

APN:	131-24-002M5								
Plat Book	Page	Block	Lot(s)	Subdivision	Section	Township	Range	QQ	Acres
					35	2N	4E	NENE	
Described As:	TH E 710F OF N 710F OF NE4 NE4 SEC 35 EX N 207.94F OF E 217.94F TH/OF & EX N 55F & E 65F RDS & EX TH PT TH/OF DAF COM NE COR SD SEC TH W 217.94F TH S 204.06F TO POB TH CONT S 3.88F TH E 152.94F TO A PT TH S 200.10F TH W 194.22F TH N 204.39F TH E 39.51F TO POB								
Address:	7901 E THOMAS RD SCOTTSDALE 85251								
City:									
Billing Address:	6621 N SCOTTSDALE RD SCOTTSDALE, AZ 85250								
Assessed Owner(s):	INDIAN, RIVER PLAZA L L C								
Search As:	APN Arb 131-24 Parcel 2M								
	NE of NE Sec 35 T 2N R 4E								

Use Code:	1410	Primary	Secondary	Conveyance Date:	10/16/2001
NEIGHBORHOOD SHOPPING CENTER	Land AV:	1,652,220.00	942,120.00	Conveying Instrument:	010958820
	Imp. AV:		942,562.00		
	Land FCV:	6,884,249.00	3,925,500.00		
	Imp. FCV:		3,927,340.00		
Region Code:		Exemptions:		Square Footage	
Flood Zone:		Tax Rate:	5.9297 % 2.4969 %	Land:	358585
Zoning Code:				Improvements:	
School Districts		Tax Rate Area:	481400	Tax Defaulted:	
Elem:	SCOTTSDALE #48			Total Tax:	137,455.82
High:	UNIFIED				

Installment	Amount	Penalty	Due Date	Status	Payment Date	Balance
1st	68,727.91	0.00	11/01/2007	PAID	10/30/2007	0.00
2nd	68,727.91	0.00	05/01/2008	UNPAID		68,727.91
						68,727.91

Due Thru 4/2008	Due Thru 5/2008	Due Thru 6/2008
\$68,727.91	\$69,644.28	\$70,560.65

Imp Dist	Back Taxes
0	0

Account	Special District Description
30001	EAST VALLEY INSTITUTE OF TECHNOLOGY

THIS INFORMATION IS PROVIDED FOR CUSTOMER SERVICE PURPOSES ONLY. PROPERTY INSIGHT DOES NOT WARRANT, NOR GUARANTEE THE ACCURACY NOR COMPLETENESS OF THE INFORMATION SHOWN ON THIS REPORT

*** END OF REPORT ***

MAP 10 - 825 - 35 - 01 - 01

[illegible]

SECTION

06	05	04	03	02	01
07	08	09	10	11	12
13	14	15	16	17	18
19	20	21	22	23	24
25	26	27	28	29	30
31	32	33	34	35	36

1/4 SECTION

	N	
W	02	01
	03	04
	S	

1/4 SECTION

	N	
W	01	02
	03	04
	S	

ASSESSOR BOOKS & MAPS WITHIN THIS AREA
BOOK 131 MAP 24

SUBDIVISIONS



MAP GENERATION 24% - 24.2%

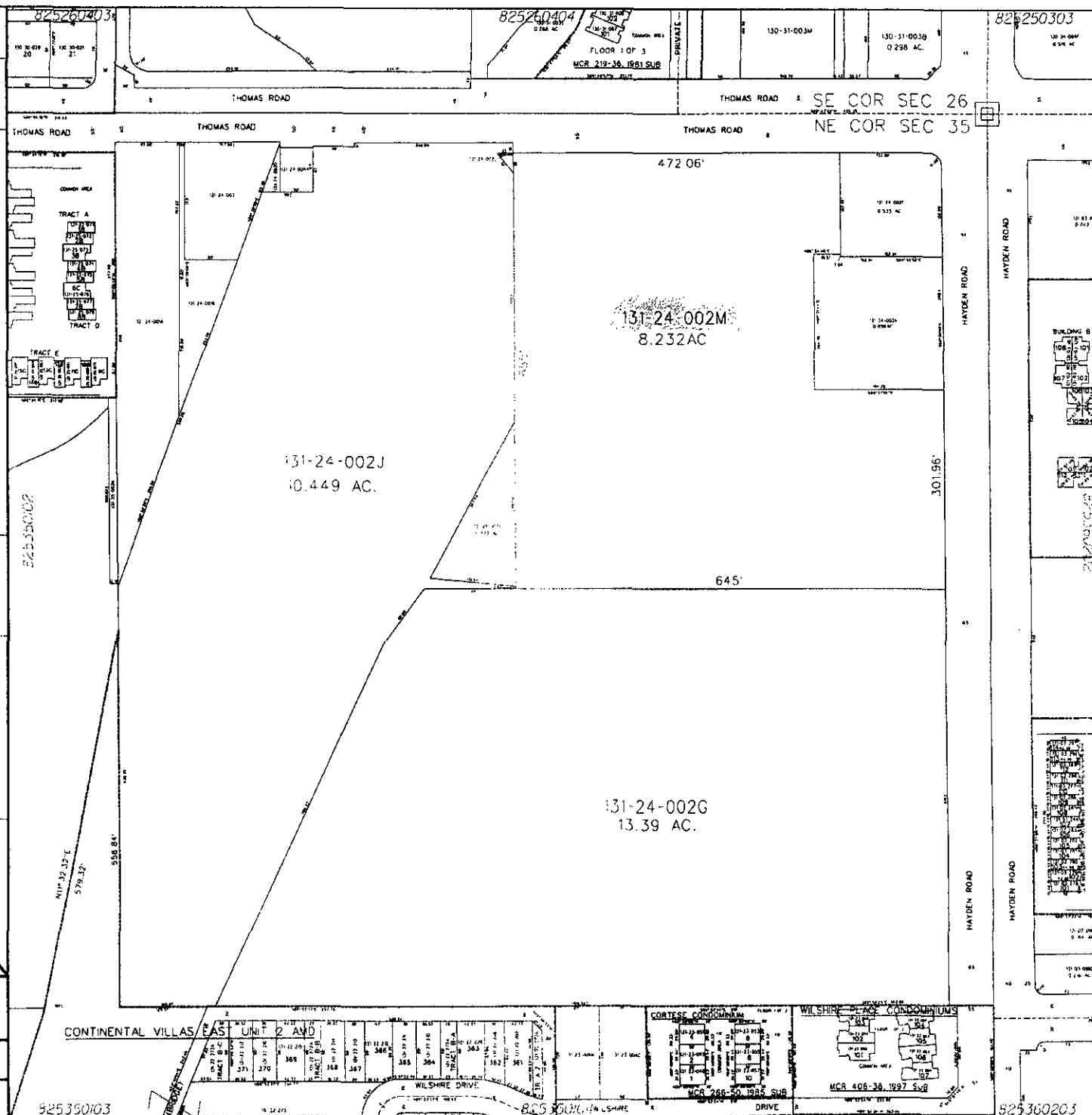
MARICOPA COUNTY ASSESSOR'S OFFICE
301 W. JEFFERSON ST.
PHOENIX, AZ 85003
www.maricopa.gov/assessor

LEGEND:

- LEGEND:**
- | | |
|----------------------------|---|
| 1 Suburban Boundary Line | 2 Indication change in origin of boundary |
| 3 Suburban Boundary Corner | 4 Parcel Boundary Line |
| 5 Street Centerline | 6 Parcel Split Line |
| 7 Street Centerline Marker | 8 Parcel Number |
| 9 Section Corner Marker | 10 Parcel Boundary File # |
- REVISION INFORMATION IS LOCATED ON A SEPARATE DOCUMENT

Disclaimer and indemnification

"The Receiver's Office makes no warranty or guarantee as to the accuracy or reliability of any of the information contained herein and does not by any means assume any liability for any damages that may result from the use of the information. Certain uses of the information are prohibited by law and County policy. Users of this page should rely on their own legal counsel or consultants when assessing the accuracy or reliability of this information."



Recorded at the Request of:
Chicago Title Insurance Company
When Recorded, mail to:

INDIAN RIVER PLAZA, L.L.C.

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20010958820 10/16/2001 10:59
ELECTRONIC RECORDING

16906-2-2-1--
lucero

Order No: 2116906 41

Warranty Deed

For the consideration of Ten Dollars, and other valuable consideration, I or we,
INDIAN RIVER PLAZA, L.L.C., an Arizona limited liability company

do hereby convey to

INDIAN RIVER PLAZA, L.L.C., an Arizona limited liability company

the following real property located in Maricopa County, Arizona:
Legal Description - Continued

EXEMPT FROM AFFIDAVIT AND FEE PURSUANT TO ARS 11-1134, B11

Subject to current taxes and other assessments, reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, the Grantor warrants the title against all persons whomsoever.

Dated: September 28, 2001

INDIAN RIVER PLAZA L.L.C., an Arizona
limited liability company
BY: MBS PARTNERS, L.L.C., an Arizona
limited liability company, its sole
member

MARK C. BURNS, MANAGER

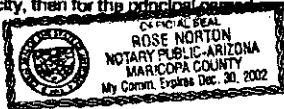
BY: BRUCE SHAPIRO, MANAGER

State of ARIZONA
County of MARICOPA } ss.

Date of Acknowledgement Oct. 15, 2001

Acknowledgement of MARK C. BURNS AND BRUCE SHAPIRO

This instrument was acknowledged before me this date by the persons above-subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.



My commission expires: 12-30-2002 Notary Public

State of ARIZONA
County of MARICOPA } ss.

Date of Acknowledgement

Acknowledgement of

This instrument was acknowledged before me this date by the persons above-subscribed and if subscribed in a representative capacity, then for the principal named and in the capacity indicated.

My commission expires: Notary Public

NOTE: The parties are cautioned that by completing and executing this document, legal rights, duties and obligations are created. By signing, the parties acknowledge that they have been advised to seek and obtain independent legal counsel as to all matters contained in the within document prior to signing same and that said parties have obtained advice or choose to proceed without same.

WD1000 7/24/01 1481

LEGAL DESCRIPTION

Order No: 2116906 41

PARCEL NO. 1:

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 foot thereof; and

EXCEPT the North 55 feet; and

Except the East 65 feet

Except that part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 35;

thence North 89 degrees 59 minutes 52 seconds West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

thence South 00 degrees 08 minutes 06 seconds East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 204.06 feet to the Point of Beginning;

thence continuing South 00 degrees 08 minutes 06 seconds East, a distance of 3.88 feet;

thence South 89 degrees 59 minutes 52 seconds East, parallel with said North line, a distance of 152.94 feet to a point on the West right of way line of Hayden Road, said point being 65.00 feet West of said East line;

thence South 00 degrees 08 minutes 06 seconds East, along the West right of way line and parallel with said East line, a distance of 200.10 feet;

thence departing said West right of way line, South 89 degrees 51 minutes 55 seconds West, a distance of 194.22 feet;

thence North 00 degrees 21 minutes 44 seconds East, a distance of 204.39 feet;

thence North 89 degrees 54 minutes 48 seconds East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

PARCEL NO. 2:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 35;

thence West along the North line of said Section 35, 710 feet;

thence South 00 degrees 08 minutes 06 seconds East, 55 feet to the POINT OF BEGINNING;

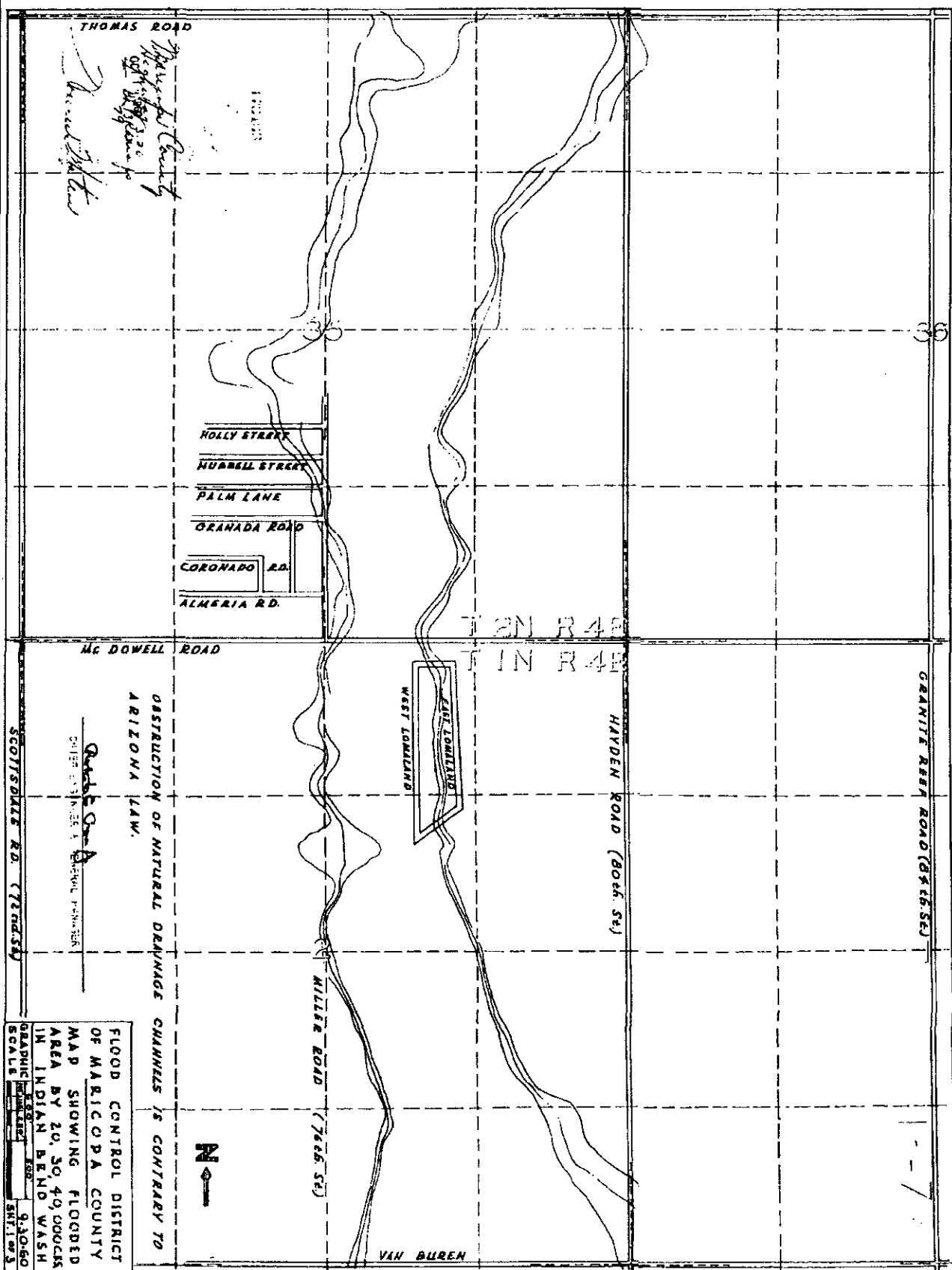
thence continuing South 00 degrees 08 minutes 06 seconds East, 30 feet;

thence Northwesterly, 39 feet, more or less, to a point on a line lying 55 feet South of, and parallel to, the North line of said Section 35, said point lying 25 feet West of the POINT OF BEGINNING of this description;

thence East, along said line, 25 feet to the POINT OF BEGINNING.

PARCEL NO. 3:

LEGALC7/1/00-MAR



DESIGNATED COUNTY ROAD A PLAT

13-95

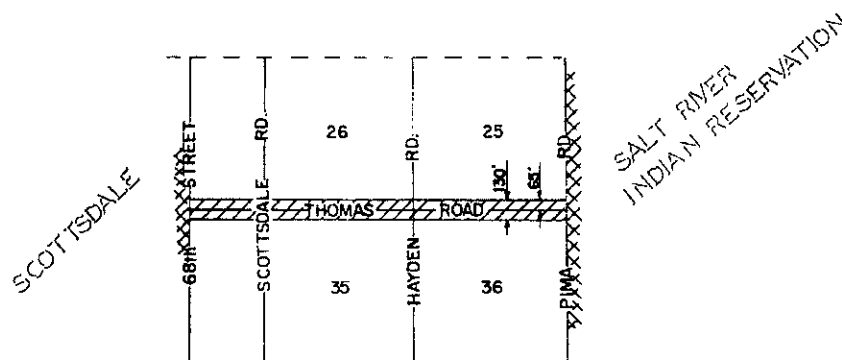
(R.F. 1433)

Showing designation as a County Highway
the following described lines, to wit:

A roadway 130 feet in width being
65 feet on either side of the
following described centerline:
Beginning at the North One-quarter
corner of Section 34, T2N, R4E of
the 68SR088M; thence Easterly along
the Section line common to Section
34 and 27, 35 and 26, 36 and 25, to
the Northeast corner of said Section
36, T2N, R4E. More commonly known
as Thomas Road from 68th Street
(Scottsdale City Limits) to Pima Rd.

Officially designated November 7, 1960
by the Board of Supervisors of Maricopa
County, Arizona.

Samuel F. Lanford
Samuel F. Lanford,
Acting County Engineer



00641

STATE OF ARIZONA }
County of Maricopa } ss
I hereby certify that the within
instrument was filed and recorded
at request of
JAN 3 1961
by *Chas. R. Ranges*
County Engineer
by *John A. Moore*
County Recorder

T 2N R 4E SEC 25 26 27 34 35 36

ROAD FILE NO 1433

Courtesy of:
FIDELITY NATIONAL UTILITIES INSURANCE COMPANY

MI 12690/1224

NON-INSURED
When recorded return to:
City of Scottsdale
Right-of-Way Section
3939 Civic Center Plaza
Scottsdale, Arizona 85251

UUT-1

34396

EASEMENT (ES)

CITY OF SCOTTSDALE
UNDERGROUND UTILITY EASEMENT

PROJECT 61-DR-77
PARCEL

L & H Land Company

Grantor(s), for valuable consideration, does (do) hereby
grant to the CITY OF SCOTTSDALE, a municipal corporation,
Grantee, its successors and assigns, a perpetual easement
to construct, operate, and maintain underground public
utilities under and across the following described real
estate situated in the City of Scottsdale, State of Arizona
and described as follows:

Exhibit "A"

Attached hereto and made a part hereof

And the Grantor(s) hereby covenant that they are lawfully
seized and possessed of this aforementioned tract or parcel
of land; that they have a good and lawful right to sell and
convey it; and that they will warrant the title and quiet
possession thereto against the lawful claim of all persons.

DATED this 27th day of January, 1978.

For L. & H. Land Company

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss

This instrument was acknowledged before me this 27th day of
January, 1978, by L. & H. BROUGH

In witness whereof I hereunto set my hand and official seal.

Diana Axley
Notary Public

My Commission Expires July 26, 1981



CNI 12690/1225

EXHIBIT "A"

WATERLINE AND FIRE HYDRANT EASEMENT

An easement for Waterlines and Fire Hydrants in part of the northeast quarter of Section 35, T2N, R4E, G&SRB&M, Maricopa County, Arizona and more particularly described as follows:

Commencing at the northeast corner of said Section 35, thence; south 0 degrees 07 minutes 10 seconds east, along the east line of said Section 35, a distance of 670.00 feet; thence; west, along a line 670.00 feet south of and parallel to the north line of said Section 35, a distance of 65.00 feet to the TRUE POINT OF BEGINNING, thence; continuing West, along aforementioned line a distance of 363.00 feet, thence; south 11.00 feet, thence; west 6.00 feet, thence; north 11.00 feet, thence; west, a distance of 236.00 feet to a point on a line 670.00 feet west of and parallel to the east line of said Section 35, thence; north 0 degrees 07 minutes 10 seconds west, along aforementioned line, a distance of 219.50 feet, thence; south 89 degrees 52 minutes 50 seconds west, a distance of 6.00 feet, thence; north 0 degrees 07 minutes 10 seconds west, a distance of 6.00 feet, thence; north 89 degrees 52 minutes 50 seconds east, a distance of 6.00 feet, thence; north 0 degrees 07 minutes 10 seconds west, a distance of 339.50 feet to a point on a line 50.00 feet south of and parallel to the north line of said Section 35, thence; east along aforementioned line, a distance of 83.50 feet, thence; north, 10.00 feet, thence; east, 6.00 feet, thence; south, 10.00 feet, thence; east a distance of 266.00 feet to a point on a line 314.50 feet west of and parallel to the east line of said Section 35, thence; south 0 degrees 07 minutes 10 seconds east, along aforementioned line, a distance of 163.23 feet, thence; east, a distance of 249.50 feet to a point on a line 65.00 feet west of and parallel to the east line of said Section 35, thence; South 0 degrees 07 minutes 10 seconds east, along aforementioned line, a distance of 16.00 feet, thence; west, a distance of 222.00 feet, thence; South, 34.00 feet thence; west, 6.00 feet, thence; north 34.00 feet, thence; west, a distance of 37.50 feet to a point on a line 330.50 feet west of and parallel to the east line of said Section 35, thence; North 0 degrees 07 minutes 10 seconds West, along aforementioned line, a distance of 163.23 feet to a point on a line 121.00 feet south of and parallel to the north line of said Section 35, thence; West, along aforementioned line a distance of 323.50 feet to a point on a line 654.00 feet West of and parallel to the east line of said Section 35, thence; South 0 degrees 07 minutes 10 seconds east, along aforementioned line, a distance of 533.00 feet to a point on a line 654.00 feet south of and parallel to the north line of said Section 35, thence; east along aforementioned line a distance of 589.00 feet to a point on a line 65.00 feet west of and parallel to the east line of said Section 35, thence; South 0 degrees 07 minutes 10 seconds east, along aforementioned line a distance of 16.00 feet to the TRUE POINT OF BEGINNING.

STATE OF ARIZONA }
County of Maricopa } ss

I hereby certify that the within instrument was filed and recorded at request of
PIONEER NATIONAL TITLE INS. CO.

FEB 1 - 1978 - 800

in Docket 12690

on page 1224-1225

Witness my hand and official seal the day and year aforesaid.

Tom Francisco

By R. B. [Signature] County Recorder
Deputy Recorder

200

V 13058 672

264116

EASEMENT (ES)

UOE-1

When recorded return to:
 City of Scottsdale
 Right-of-Way Section PDE
 3939 Civic Center Plaza
 Scottsdale, Arizona 85251

CITY OF SCOTTSDALE
 UNDERGROUND UTILITY EASEMENT

PROJECT 61-DR-77
 PARCEL 14-46

Century Properties Fund XII, a California limited partnership

Grantor(s), for valuable consideration, does (do) hereby grant to the CITY OF SCOTTSDALE, a municipal corporation, Grantee, its successors and assigns, a perpetual easement to construct, operate, and maintain underground public utilities under and across the following described real estate situated in the City of Scottsdale, State of Arizona and described as follows:

See Attached Description

And the Grantor(s) hereby covenant that they are lawfully seized and possessed of this aforementioned tract or parcel of land; that they have a good and lawful right to sell and convey it; and that they will warrant the title and quiet possession thereto against the lawful claim of all persons.

DATED this 30th day of June, 1978.

CENTURY PROPERTIES FUND XII, a
 California limited partnership

By: Fox and Carskadon Financial Corporation,
 a general partner

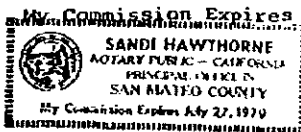
California
 STATE OF ARIZONA)
 COUNTY OF MARICOPA) ss
 San Mateo

By: Paul J. Mars
 Paul J. Mars
 Vice President

This instrument was acknowledged before me this 30th day of
June, 1978, by Sandi Hawthorne

In witness whereof I hereunto set my hand and official seal.

Sandi Hawthorne
 Notary Public



WATERLINE AND FIRE HYDRANT EASEMENT

DKT 13058 673

An easement for waterlines and fire hydrants in part of the northeast quarter of Section 35, T2N, R4E, C&SRB&M, Maricopa County, Arizona and more particularly described as follows:

Commencing at the northeast corner of said northeast quarter; thence S 0°07'10"E along the East line of said Northeast quarter a distance of 670.00 feet; thence West along a line parallel to and 670.00 feet South of the North line of said Northeast quarter a distance of 65.00 feet to the TRUE POINT OF BEGINNING; thence continuing West along the aforementioned line a distance of 379.50 feet; thence South a distance of 11.00 feet; thence West a distance of 12.00 feet; thence North a distance of 11.00 feet; thence West a distance of 213.50 feet to a point on a line parallel to and 670.00 feet West of the East line of said Northeast quarter; thence N 0°07'10"W along the aforementioned line a distance of 171.00 feet; thence S 89°52'50"W a distance of 19.00 feet; thence N 0°07'10"W a distance of 12.00 feet; thence N 89°52'50"E a distance of 19.00 feet; thence N 0°07'10"W a distance of 382.00 feet; thence East a distance of 132.00 feet; thence North a distance of 12.00 feet; thence East a distance of 12.00 feet; thence South a distance of 12.00 feet; thence East a distance of 150.75 feet to a point on a line parallel to and 375.25 feet West of the East line of said Northeast quarter; thence S 0°07'10"E along the aforementioned line a distance of 178.83 feet to a point on a line parallel to and 283.83 feet South of the North line of said Northeast quarter; thence East along the aforementioned line a distance of 310.25 feet to a point on a line parallel to and 65.00 feet West of the East line of said Northeast quarter; thence S 0°07'10"E along the aforementioned line a distance of 16.00 feet to a point on a line parallel to and 299.83 feet South of the North line of said Northeast quarter; thence West along the aforementioned line a distance of 284.00 feet; thence South a distance of 38.17 feet; thence West a distance of 12.00 feet; thence North a distance of 38.17 feet; thence West a distance of 30.25 feet to a point on a line parallel to and 391.25 feet West of the East line of said Northeast quarter; thence N 0°07'10"W along the aforementioned line a distance of 178.83 feet; thence West a distance of 262.75 feet to a point on a line parallel to and 654.00 feet West of the East line of said Northeast quarter; thence S 0°07'10"E along the aforementioned line a distance of 533.00 feet to a point on a line parallel to and 654.00 feet South of the North line of said Northeast quarter; thence East along the aforementioned line a distance of 589.00 feet to a point on a line parallel to and 65.00 feet West of the East line of said Northeast quarter; thence S 0°07'10"E along the aforementioned line a distance of 16.00 feet to the point of beginning.

STATE OF ARIZONA }
County of Maricopa } ss

I hereby certify that the within instrument was filed and recorded at request of

CITY OF SCOTTSDALE

JUL 31 1978 -H 45

in Docket: 13058
on page 672-673

Witness my hand and official seal the day and year aforesaid.

Bill Henry

County Recorder
By *[Signature]*
Deputy Recorder

2, 00

ORDINANCE (GO)
A RESOLUTION OF THE COUNCIL OF THE CITY OF
SCOTTSDALE, MARICOPA COUNTY, ARIZONA, VACATING
AND ABANDONING A PORTION OF THE PUBLIC RIGHT-
OF-WAY, APPLICATION NO. 15-A-74, PURSUANT TO THE
PROVISIONS OF THE ARIZONA REVISED STATUTES,
ARTICLE 1, CHAPTER 14, TITLE 28.

WHEREAS, application has been made to the Council
of the City of Scottsdale, Arizona, for abandonment of portions of
public right-of-way, and

WHEREAS, A.R.S. §28-1902 provides that a city may
dispose of a roadway or portion thereof when said property or portion
thereof is no longer necessary for public use, and

WHEREAS, after notice to the public, hearings have
been held before the Planning Commission and Council of the City
of Scottsdale on the proposed abandonment of portions of public
right-of-way, having Application No. 15-A-74, within the City of
Scottsdale, and

WHEREAS, it is the opinion of the Council that the
portions of public right-of-way, said right-of-way being more parti-
cularly described hereinbelow, is no longer necessary for public use
as roadway,

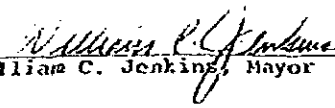
NOW, THEREFORE BE IT RESOLVED by the Council of
the City of Scottsdale, Arizona, as follows:

That the real property contained in Application
15-A-74 is situated within the City of Scottsdale, Maricopa County,
Arizona, and described as follows:

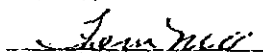
The West 20 feet of the East 710 feet of the North
710 feet of the Northeast quarter of the Northeast
quarter of Section 35, Township 2 North, Range 4
East of the G&SR&M, Maricopa County, Arizona,
EXCEPT the North 55 feet thereof for Thomas Road
right-of-way.

be and the same is hereby vacated and abandoned subject to the
reservation of all existing public utility easements pursuant to
the provisions of A.R.S. §28-1903. Attached hereto is a map marked
Exhibit "A" of 15-A-74 disclosing the areas abandoned and by this
reference, made a part hereof.

PASSED AND ADOPTED by the Council of the City of Scottsdale,
this 5th day of September, 1978.


William C. Jenkins, Mayor

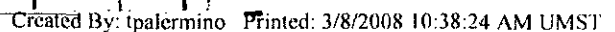
ATTEST:


Fern Anderson Nell, City Clerk

I hereby certify that the within instrument was filed and recorded at request of
CITY OF SCOTTSDALE

SEP 7 - 1978 - 4115
in Docket 13139
on page 48-49
Witness my hand and official
seal the day and year aforesaid.
Bill Henry County Recorder

By J. J. J. J. J. County Recorder
Deputy Recorder



NE, 35 2N 4E
51-7341
M.C.

UTILITY EASEMENT EASEMENT (ES)

165329

In consideration of One Dollar (\$1.00), the receipt of which is hereby acknowledged,
CENTURY PROPERTIES FUND XII, a California Limited Partnership

Hereinafter called "Grantor") do hereby grant and convey to ARIZONA PUBLIC SERVICE COMPANY (hereinafter called "Company"), its successors and assigns, an easement four (4) feet in width, to construct, operate and maintain power lines and appurtenant facilities upon, across, over, and under the surface of the premises hereinafter described.

The premises through and across which this easement is granted are situated in MARICOPA County, Arizona, and are described as follows:

DKT 13624 M0111

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

Said easement to be four (4) feet in width, lying two (2) feet on each side of the following described centerline:

COMMENCING at the Northeast corner of said Section 35; thence South along the East line of said Section 35 for a distance of 380.5 feet; thence West for a distance of 65 feet to the TRUE POINT OF BEGINNING of the easement herein described; thence continuing West 30 feet to a point.

ALSO, commencing at the Northeast corner of said Section 35; thence South along the East line of said Section 35 for a distance of 602.5 feet; thence West 65 feet to the TRUE POINT OF BEGINNING of the easement herein described; thence continuing West 30 feet to a point.

MAY 10 1979 -915

STATE OF ARIZONA }
County of Maricopa }
I hereby certify that the within instrument was filed and recorded at request of Arizona Public Service Co

In Document 13624
on page 111
Witness my hand and official seal the day and year aforesaid.

Bill Sherry, County Recorder
By [Signature] Deputy Recorder

MAIL TO:
MARY AGNES KNITTEL
ARIZONA PUBLIC SERVICE CO.
P.O. BOX 21666, STA. 3172
PHOENIX, ARIZONA 85036

Together with the right to operate, repair, replace, maintain, and remove said lines and appurtenant facilities from said premises; to add to or alter said lines and/or facilities at any reasonable time, and to trim or remove any trees or shrubs that in the judgment of the Company may interfere with the construction or endanger the operation of said lines and/or facilities, with access to said easement and egress therefrom to permit normal operations of the Company in connection with said lines and/or facilities, and to permit the installation of the wires, fixtures, conduits, or cables of any other company within the boundaries of this easement.

Grantor shall not erect or construct or permit to be erected or constructed any building or other structure or drill any well within the limits of said easement; nor shall Grantor plant or permit to be planted any trees within the limits of said easement without the prior written consent of the Company; provided, however, Grantor shall have the right to construct and erect fences within the limits of said easement in a manner which will not unreasonably interfere with the Company's right of access to its lines and/or facilities.

By accepting this easement, the Company agrees to exercise reasonable care to avoid damage to said premises and all property that may at any time be thereon.

Dated: 4/25/79

WITNESS:

[Signature]
CENTURY PROPERTIES FUND XII

BY: T. PATRICK POTENZA

TITLE: Portfolio Manager

STATE OF California }
County of San Mateo }

This instrument was acknowledged before me this 25th day of April, 1979.

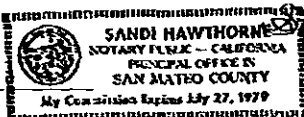
by T. Patrick Potenza

(Name)

IN WITNESS WHEREOF I hereunto set my hand and official seal.

My Commission Expires:

7/27/79



[Signature]
Notary Public

OK! 141207 833

When recorded return to:
Right of Way Division
Salt River Project
P. O. Box 1920
Phoenix, Arizona 85001

LESSEE'S CONSENT TO
EASEMENT

Underground Power

R/W # 164 AGT. CR
COUNTY MARICOPA
PARCEL # 131-24-2E

EASEMENT (ES) 176627

ALPHA BETA COMPANY

for or. In consideration of the sum of One Dollar, and other valuable consideration, receipt of which is hereby acknowledged, do hereby grant to the SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, a political subdivision of the State of Arizona, its successors and assigns, the right, easement and privilege to construct, operate and maintain underground electrical conduits, together with its manholes, transformers pads and vaults and other appurtenances through, over, under and across the following described property:

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet, thereof.

The Centerline of said easement being delineated on Exhibit "A" (S.R.P. Map No. B-675-407.133) attached hereto and made a part hereof.

Said easement not to exceed 7.5 feet in width.

DEC 27 1979-4 00

STATE OF ARIZONA } ss
County of Maricopa }

I hereby certify that the within instance has been and is recorded at record.

SAI L. RIVER. BRO. ROAD. IMP. & P. INST.

in District 14120
on page 833-834
Witness my hand and official
seal the day and year above.
Bill Henry

By Pauline Deputy, not for

CAUTION: The above described easement contains high voltage electrical equipment and notice is hereby given that the location of underground electrical conduits may vary from the locations indicated in the above description, therefore all persons who may excavate in the area must accordingly proceed with caution.

The GRANTEE shall at all times have the right of full and free ingress and egress to said easement for the purpose heretofore specified, and the right to permit other utility companies to use the right of way jointly with the Grantee for their utility purposes.

In the event the rights, privilege and easement herein granted shall be abandoned and permanently cease to be used for the purpose herein granted, all rights herein granted shall cease and revert to the grantors, their heirs or assigns.

The covenants and agreements herein set forth shall extend and inure in favor and to the benefit of and shall be binding on the heirs, successors in ownership and estate, assigns and lessees of the respective portion hereto.

Dated this 3rd day of Oct. 1979

Dated this 3rd day of Oct., 1972. ALMA GITA CAMPBELL

E. K. Markov VICE PRESIDENT (Seal) Paul H. Thomas Carbonate Secretary

(Seal) _____ (Seal)

_____ (Seal) _____ (Seal)

STATE OF California } This instrument was acknowledged before me this 3rd day of
Orange } ss. October 79

OFFICIAL SEAL
FIFTY-THIRD CONGRESS

NOTARY PUBLIC - CALIFORNIA
ORANGE COUNTY

My Commission Expires Oct. 15, 1982

My commission will expire

Elizabeth Durnell

Notary Public

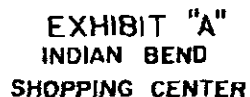
10-15-82 Elizabeth R. Burdick Society Public

12472 Doc# MP-14120-0833 Page 1 of 2 Created By: male

12472 Doc, MI 14720-0055 Page 1 of 2 Created By: tpaul

[illegible]

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CENTERLINE OF THIS 7 FOOT
WIDE EASEMENT FOR UNDER-
GROUND ELECTRIC POWER
FACILITIES.

"CAUTION"

NOTICE IS HEREBY GIVEN THAT THE LOCATION OF UNDERGROUND ELECTRIC POWER LINES MAY VARY FROM THE EXISTING LOCATION SHOWN ON THIS MAP. ALL PERSONS WHO MAY ENTER THE AREA MUST THEREFORE PROCEED WITH CAUTION.

SALT RIVER P. A. I. POWER DISTRICT
PHOENIX, ARIZONA

UNDERGROUND ELECTRIC POWER
LINE RIGHT-OF-WAY IN A PORTION
OF THE NE 1/4 SEC. 35, T2N R4E OF THE
G.B.S.R.B.M. MARICOPA COUNTY, AZ.

DESIGNED <u>C.A.</u>	DRAWN <u>H.L.C.</u>	DATE <u>AUG. 1979</u>	SCALE <u>NONE</u>
DESIGNED <u>C.A.</u> DRAWN <u>H.L.C.</u>		DRCHE <u>106</u> RECOMMENDED _____ APPROVED _____	
NO. <u>NX2-19</u>		BAY NO. <u>B-675-407.133</u>	

B-675-407.133

When recorded return to:
Right of Way Division
Salt River Project
P. O. Box 1980
Phoenix, Arizona 85001

EASEMENT

Underground Power

SCOTTSDALE

R/W # 461 AGT. CR
COUNTY MARICOPA
PARCEL # 131-24-2E

EASEMENT (ES)

476628

CENTURY PROPERTIES FUND III, A California Limited Partnership

for and in consideration of the sum of One Dollar, and other valuable consideration, receipt of which is hereby acknowledged, do hereby grant to the SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, a political subdivision of the State of Arizona, its successors and assigns, the right, easement and privilege to construct, operate and maintain underground electrical conduits, together with its manholes, transformer pads and vaults and other appurtenances through, over, under and across the following described property:

14120 835

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet, thereof.

The Centerline of said easement being delineated on Exhibit "A" (S.R.P. Map No. B-675-407.133) attached hereto and made a part hereof.

Said easement not to exceed 7.5 feet in width.

DEC 27 1979-4 00

STATE OF ARIZONA }
County of Maricopa } ss

I hereby certify that the within instrument was read and recorded at request of

SALT RIVER PROJ. AGRIC. IMP. & P. DIST.

in Document 14120
on page 835-836
Witness my hand and official seal this day and year above written.

Bill Henry
By Patricia
Notary Public

CAUTION: The above described easement contains high voltage electrical equipment and notice is hereby given that the location of underground electrical conduits may vary from the locations indicated in the above description, therefore all persons who may excavate in the area must accordingly proceed with caution.

The GRANTEE shall at all times have the right of full and free ingress and egress to said easement for the purpose heretofore specified, and the right to permit other utility companies to use the right of way jointly with the Grantee for their utility purposes.

In the event the right, privilege and easement herein granted shall be abandoned and permanently cease to be used for the purpose herein granted, all rights herein granted shall cease and revert to the grantors, their heirs or assigns.

The covenants and agreements herein set forth shall extend and inure in favor and to the benefit of and shall be binding on the heirs, successors in ownership and estate, assigns and lessees of the respective parties hereto.

Dated this 4th day of December, 1979.

(Seal) James P. Brown (Seal)

(Seal) _____ (Seal)

(Seal) _____ (Seal)

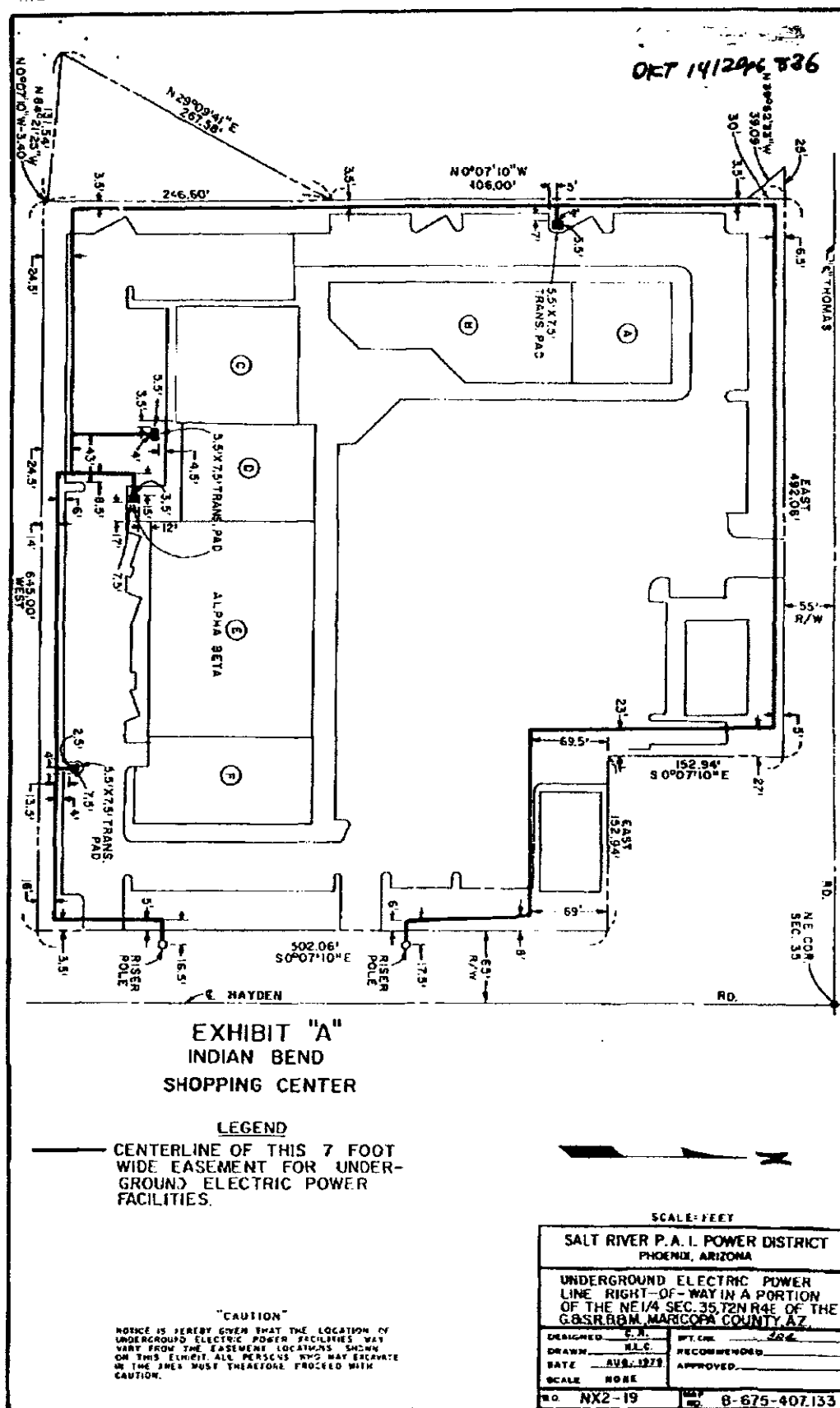
STATE OF California
County of San Mateo

This instrument was acknowledged before me this 4th day ofDecember, 1979, by

T. PATRICK POTENZA

Nancy J. Lick
Notary Public





When recorded, call to:
City Clerk
City of Scottsdale
3938 Civic Center Plaza
Scottsdale, Arizona 85251



12535 Encroachment
Permit No. 7683
AGREEMENT Building
Permit No.

INDEMNITY AGREEMENT

83 474374 14/46

In consideration of the City of Scottsdale, hereinafter referred to as City,
permitting Fox & Carlsbad to encroach upon its right-of-way, the
(Name of Applicant)
undersigned does hereby agree as follows:

- To remove from the right-of-way or easement any item encroaching 2
Signs on R/W (see reverse side for location) within
(Describe encroachment)
10 days, upon written notification to the undersigned by the City.

a. The legal description of the property is as follows:

Indian River Plaza AKA 7901 E Thomas

Records of Maricopa County, Arizona

- Hereby grants to the City an irrevocable authorization to enter upon the above described property and remove the item of encroachment if deemed necessary by the City to repair, maintain or remove City operative services ~~without notice~~ after five days written notice.
- Hereby indemnifies and agrees to hold the City harmless from any and all liabilities and obligations whatsoever in connection with the item of encroachment.
- If required, hereby agrees to provide liability and property damage insurance in accordance with the provisions set forth on the reverse side of this agreement.
- ☒ REQUIRED ☐ NOT REQUIRED
- This agreement shall run with the land and be binding upon all heirs successors and assigns of the undersigned.

Dated this 11th day of November, 1983

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

X Century Properties Fund XII, A California
Limited Partnership, Fox & Carlsbad Finan-
cial Corporation, General Partner
By: Jeffrey M. Port
Assistant Vice President
Portfolio Operations

X This instrument was acknowledged before me this _____ day of _____, 19____
by _____

NOTARY PUBLIC

My commission expires _____

ACCEPTED AND APPROVED, City of Scottsdale, a Municipal Corporation

By: [Signature]

Mayor

Attest: [Signature]

City Clerk

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

This instrument was acknowledged before me this 23rd day of November, 1983
by HERBERT R. DRINKWATER as Mayor, and
BETTY WARREN as City Clerk of the City of Scottsdale, a municipal corporation,
on behalf thereof.

[Signature]
NOTARY PUBLIC

My commission expires April 6, 1984

GP2-1092 (10/79)

83 474374

INSURANCE

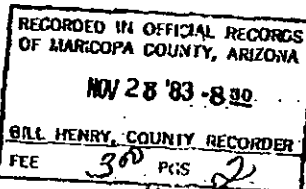
It is further agreed by and between the parties hereto that the Covenantor shall maintain public liability and property damage insurance in an amount of not less than \$300,000.00 single limit liability or \$300,000/\$500,000 limit liability policy for all claims for bodily injury, death, or property damage arising out of the installation of the structures permitted under Right-of-Way Encroachment Permit No. _____ in a company authorized to do business in the State of Arizona. Covenantor agrees to include Covenantee as a named insured in all of the aforesaid insurance policies and to furnish Covenantee with written evidence of the same. The certificate of insurance shall be forwarded to the City in care of the Risk Management Director for approval. Covenantor agrees to give the Covenantee's City Clerk Thirty (30) days advance written notice of any renewal or cancellation of insurance.

STATE OF CALIFORNIA)

COUNTY OF SAN MATEO)

ON this the 11th day of November, 1983, before me, the undersigned Notary Public in and for said State, personally appeared Susan E. Thorpe, personally known to me or proved to be on the basis of satisfactory evidence to be the person who executed the within instrument as the Assistant Vice President of the corporation that executed the within instrument on behalf of Century Properties Fund III, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal,

Signature Susan E. Thorpe

SITE PLAN FOR ENCROACHMENT

RUNNER PICK UP:**RECORDING INFORMATION****SALT RIVER PROJECT**

Land Department
P. O. Box 52025
Phoenix, Arizona 85072-2025

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

93-0356818

06/07/93 00:10

PAGE 1 OF 1

UNDERGROUND POWER EASEMENT

Maricopa County
Parcel #131-24-2E

R/W #464 AGT. DWM
Work Order #KR9-124
W W C EFS

**CENTURY PROPERTIES FUND XII,
a California limited partnership,**

herein called Grantor, for and in consideration of the sum of one Dollar, and other valuable consideration, receipt of which is hereby acknowledged, does hereby grant and convey to **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**, a political subdivision of the State of Arizona, herein called Grantee, and to its successors and assigns, the right, easement and privilege to construct, reconstruct, replace, repair, operate and maintain underground electrical conductors, together with its related conduits, pipes, cables, transformers and other equipment, enclosures, pads, vaults and manholes, and all other appliances, appurtenances, and fixtures for use in connection therewith, for the transmission and distribution of electricity and for all other purposes connected therewith at locations and elevations, in, upon, over and under, through and across the following described property:

A portion of the East 710.0 feet of the North 710.0 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;
EXCEPT the North 217.94 feet of the East 217.94 feet, thereof.

Said easement being 4.0 feet in width, 2.0 feet on each side of the following described centerline:

COMMENCING at the Northeast corner of said Section 35; thence South 00°22'11" East (base of bearing) a distance of 275.46 feet; thence South 90°00'00" West a distance of 65.29 feet to the West right of way line of Hayden Road and the TRUE POINT OF BEGINNING of the easement herein described; thence South 49°32'26" West, a distance of 34.88 feet; thence South 89°53'32" West a distance of 373.86 feet; thence North 00°27'03" East, a distance of 151.90 feet; thence North 36°21'20" West, a distance of 8.71 feet; thence North 49°02'33" East, a distance of 7.10 feet; thence North 00°20'38" East, a distance of 29.0 feet; thence South 89°22'27" West a distance of 226.14 feet; thence North 40°55'59" West, a distance of 5.62 feet; thence North 87°14'56" West, a distance of 4.09 feet; thence South 71°24'23" West, a distance of 12.45 feet, more or less, to a terminus point on the West property line of the East 710.0 feet of Section 35 described above.

CAUTION: The above described easement contains high voltage electrical equipment. Notice is hereby given that the location of underground electrical conductors or facilities must be verified as required by Arizona Revised Statutes, Section 40-360.21, et. seq., Arizona Blue Stake Law, prior to any excavation.

Grantor shall maintain a clear area, immediately in front of all transformer and other equipment openings, that extends 8.0 feet outward from the edge of all transformer and equipment pads and that no obstructions, trees, shrubs, fixtures or permanent structures shall be placed within said area.

The Grantee shall at all times have the right of full and free ingress and egress to and along said easement for the purposes heretofore specified, and the right to permit other utility companies to use the right of way jointly with the Grantee for their utility purposes.

If the right, privilege and easement herein granted shall be abandoned and permanently cease to be used for the purpose herein granted, all rights so granted shall cease and revert to the Grantor, its heirs or assigns.

The covenants and agreements herein set forth shall extend and inure in favor and to the benefit of and shall be binding on the heirs, administrators, executors, successors in ownership and estate, assigns and lessees of the respective parties hereto.

IN WITNESS WHEREOF, CENTURY PROPERTIES FUND XII, a California limited partnership, has caused its name to be executed by the partners duly authorized, this 25th day of May, 1993.

CENTURY PROPERTIES FUND XII,
a California limited partnership

By Stephen E. Fowler
Partner Portfolio Manager

By _____
Partner

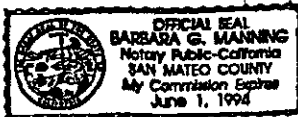
STATE OF (California)
COUNTY OF (San Mateo) ss.

On this 25th day of May, 1993, before me, the undersigned, personally appeared Stephen E. Fowler and the Portfolio Manager, partners of CENTURY PROPERTIES FUND XII, a California limited partnership, and acknowledged that this document was executed on behalf of the partnership for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:
6-1-94

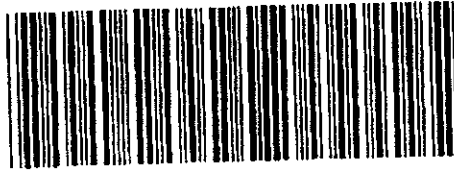
D22R12.dwn
use 1 Rev. 6/91



Hold for Pick up

When recorded, mail to:

Arizona Department of Environmental Quality
Remedial Projects Section
3033 North Central Avenue
Phoenix, Arizona 85012
Attn: Ed Pond



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

96-0204312 03/27/96 11:44

CHRISTINA 1 OF 1

NOTICE OF VOLUNTARY ENVIRONMENTAL MITIGATION USE RESTRICTION BY OWNER(S)

Pursuant to A.R.S. § 49-152(B), the owner(s) Century Properties Fund XII
of the following described property: (Please Print)

INDIAN RIVER SHOPPING CENTER
(aka INDIAN RIVER PLAZA)

Parcel No. 131 24 002E 5

PARCEL NO. 1: The East 710 feet of the North 710 feet of the Northeast quarter, Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona:

EXCEPT the North 207.94 feet of the East 217.94 feet, thereof.

PARCEL NO. 2: THAT PART of the Northeast quarter of the Northeast quarter, Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona: thence West along the North line of said Section 35, a distance of 710 feet; thence South 0 degrees 08 minutes 06 seconds East, a distance of 55 feet to the True Point of Beginning; thence continuing South 0 degrees 08 minutes 06 seconds East, a distance of 30 feet; thence Northwesterly, a distance of 39 feet, more or less, to a point on a line lying 55 feet South of and Parallel to the North line of Section 35, said point lying 25 feet West of the True Point of Beginning of this description; thence East along said line, a distance of 25 feet to the True Point of Beginning.

PARCEL NO. 3: THAT PART of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35 and running thence North 0 degrees 08 minutes 06 seconds West along the West line of the North 710 feet of the East 710 feet 3.40 feet to the True Point of Beginning; thence continuing North 0 degrees 08 minutes 06 seconds West along the said West line, hereinbefore described, 246.60 feet to a point, thence South 29 degrees 08 minutes 45 seconds West 267.58 feet; thence South 84 degrees 22 minutes 21 seconds East 131.54 feet, more or less, to the True Point of Beginning.

has (have) remediated a portion of the above-described property, which remediated portion is described as follows:

Soils underlying the foundation of the Affordable Cleaners site (aka \$1.40 Dry Cleaners), which occupies Suite 107 of the Indian River Shopping Center, have been contaminated with tetrachloroethylene (aka perchloroethylene, tetrachloroethene, perchloroethene, PCE) at concentrations ranging from 0.37 to 66 milligrams per kilogram (mg/kg). Contamination approximately extends to a depth of ten feet. The source of the contamination is believed to be due to an approximate 16 gallon (100 kilogram) spill of tetrachloroethylene (dry cleaning fluid) within the Affordable Cleaners building on November 9, 1988. No contaminated soil has been removed from beneath the

foundation. The levels of tetrachloroethylene contamination in the soil exceed the residential oral Arizona Human-Health Based Guideline (HBGL) for soil ingestion set at 27 mg/kg. The levels of tetrachloroethylene are below the non-residential oral HBGL for soil ingestion set at 113 mg/kg.

The date when the remediation was completed is: March 6, 1996

The undersigned owner voluntarily agrees to limit and restrict the use of the remediated portion of the property to non-residential uses as defined in A.R.S. §49-151(A).

Approved:

Ethel DeMarr
Ethel DeMarr, Director
Waste Programs Division
Arizona Department of Environmental Quality

Century Properties Fund XII

By: Exeter Capital Corporation,
Authorized Representative

By: [Signature]
Signature of owner(s)

STATE OF ARIZONA

County of Maricopa

This instrument was acknowledged before me this
22 day of March, 96
by Ethel DeMarr

[Signature]
Notary Public

My commission expires: Aug. 12, 1997

STATE OF ARIZONA NY

County of MASSA

This instrument was acknowledged before me this
26 day of MARCH, 96
by Peter Burmann - VP

[Signature]
Notary Public

My commission expires:
WILLIAM W. POST
Notary Public, State of New York
No. 02P05039304
Qualified in Westchester County
Commission Expires February 13, 1997

Please make no marks below this line

Resolution FCD 97-14
C 69. 98. 034. 6

SCOTTSDALE, TEMPE, PHOENIX (STP) DRAINAGE PROJECT

WHEREAS, the *County-wide Comprehensive Plan – Goals, Policies and Standards* (adopted May 17, 1993) promotes efforts to protect and preserve water resources and minimize damage from flooding; and,

WHEREAS, the Flood Control Advisory Board, through implementation of the Fiscal Year 1995-96 *Procedure for Identifying and Prioritizing Potential 5-year CIP Projects*, has recommended that the District complete planning and preliminary design efforts for the Scottsdale, Tempe, Phoenix (STP) Regional Flood Control Project, prior to final consideration of design and construction funding through the Capital Improvements Program; and,

WHEREAS, the Flood Control Board of Directors approved Resolution 95-10 in November 1995 that directs the Chief Engineer and General Manager to award the Pre-Design contract for the STP Study; and,

WHEREAS, the Pre-Design Study Recommended Plan (see attached map) proposes to implement:

- 1) A storm drain along Oak Street from 58th Street to Indian Bend Wash, with laterals at 64th Street and 66th Street, and
- 2) A storm drain along Osborn Road starting from Thomas Road and 60th Street to Indian Bend Wash; and,

WHEREAS, the construction of these two storm drains will mitigate flooding and drainage problems for the study area and also, will remove 160 homes out of the existing Zone A floodplain designated by the Federal Emergency Management Agency (FEMA); and,

WHEREAS, the Flood Control District would be the lead agency for design, right-of-way acquisition, and construction of the STP Study Recommended Plan with cost share participation anticipated from City of Scottsdale, City of Phoenix and City of Tempe who will be benefiting from the project; and,

WHEREAS, the Flood Control District desires to enter into an IGA with City of Scottsdale to construct part of the STP Project features with the City's 64th Street Roadway Improvement Project scheduled to begin construction in January 1998.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Flood Control District Of Maricopa County authorizes and directs the Chief Engineer and General Manager to negotiate and prepare Intergovernmental Agreements with other agencies for cost-sharing and coordination of design, right-of-way acquisition, construction and operation and maintenance of drainage features identified in the STP Study Recommended Plan; subject to the ratification and approval of this Board; and,

Page 1 of 2

Resolution FCD 97-14

49

BE IT FURTHER RESOLVED, that the Chief Engineer and General Manager is hereby authorized and directed to negotiate IGA FCD-97007 with City of Scottsdale to cost share and coordinate design, construction and construction management of the STP Study Recommended Plan components constructed as part of the City of Scottsdale's 64th Street Roadway Improvement Project scheduled to begin construction in January 1998; and,

BE IT FURTHER RESOLVED, that the Chief Engineer and General Manager is hereby authorized and directed to negotiate with the landowners and /or appropriate agencies to obtain the necessary rights-of-entry, property and/or easements, and all other necessary land rights required for the project within Sections 26, 27, 28, 33, 34, 35 T2N, R4E of the Gila and Salt River Base and Meridian, Maricopa County, Arizona; and,

BE IT FURTHER RESOLVED, that the Chief Engineer and General Manager is hereby authorized and directed to hire, retain or otherwise utilize the services of the County Attorney's office or private counsel to initiate and prosecute action and proceedings in the manner required by law to condemn any and all rights-of-entry, easements, or real property required for the STP Study Recommended Plan projects through negotiation with the property owners within Section 26, 27, 28, 33, 34, and 35 T2N, R4E of the Gila and Salt River Base and Meridian, Maricopa County, Arizona which cannot be obtained by donation or purchase; and,

BE IT FURTHER RESOLVED, that the Chief Engineer and General Manager is authorized and directed to contract for the services of a consulting engineer to design and prepare construction plans and specifications for the construction of the STP Study Recommended Plan; subject to the ratification and approval of the Board.

Dated this 5TH day of November, 1997

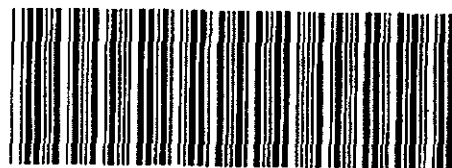

Chairman, Board of Directors

ATTEST:


Clerk of the Board

Hold for
FILE

Record and return to:
OFFICE DEPOT, INC.
2200 Old Germantown Road
Delray Beach, FL 33445
Attention: Lease Administration Dept.



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

99-0155390 02/18/99 04:33

BECKY 1 OF 1

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("Memorandum") made as of the 18th day of September, 1998, by and between OFFICE DEPOT, INC., a Delaware corporation ("Tenant"), and INDIAN RIVER PARTNERS, LTD., a Texas limited partnership ("Landlord").

WITNESSETH:

1. Premises. Landlord and Tenant have entered into a lease ("Lease") of even date herewith for that certain real property lying, being and situate in the County of Maricopa, City of Scottsdale, State of Arizona, together with the building containing approximately twenty-nine thousand eighteen (29,018) square feet erected thereon ("Premises").

The Premises are part of a shopping center known as "Indian River Plaza", which shopping center is located to be erected by Landlord on that certain real property lying, being and situate in the County of Maricopa, City of Scottsdale, State of Arizona, more particularly described on EXHIBIT A attached hereto and made a part hereof ("Shopping Center").

The boundaries and location of the Premises are shown on the diagram of the Shopping Center attached hereto and made a part hereof as EXHIBIT B ("Site Plan").

2. Term and Renewal Options. The Lease has an initial term of ten (10) years, subject to extension (at Tenant's option) as provided therein for two (2) successive additional periods of five (5) years each.

3. Certain Restrictions: The Lease contains the following provisions:

A. Landlord shall not permit any occupant of the Shopping Center, other than Tenant, to: (i) use more than one thousand (1,000) square feet of floor area for the sale, leasing, distribution or display of office supplies, including office furniture; office fixtures; office machines and equipment; computers; computer hardware, software and accessories; cellular telephones and telecommunications equipment and devices; art supplies; architectural supplies; engineering supplies; photocopying services; facsimile services; or instant print shop services; or (ii) be primarily engaged in the sale, leasing, distribution or display of the items set forth in (i) above. No space in or portion of any real property adjacent to or within five hundred feet (500') of the Shopping Center which is now or may subsequently be acquired by Landlord (or a related entity or affiliate of Landlord), shall be leased or occupied by or conveyed to any other party for a competing use in violation of the Tenant's exclusive use set forth in this paragraph.

QBPHX\710199.30027\231171.1

B. No portion of the Shopping Center shall be used or occupied for any of the following purposes: theater; auditorium, meeting hall or other place of assembly; automobile sales or repairs; bowling alley, pool hall or skating rink; bar serving alcoholic beverages (except as an incident to a full kitchen restaurant operation); funeral parlor; massage parlor; hotel or lodging facilities; gun range; off track betting establishment (except incidental sales of state lottery tickets); a so-called "flea market" or other operation selling used goods; any business or use which emits offensive odors, fumes, dust or vapor, or constitutes a public or private nuisance, or emits loud noise or sounds which are objectionable, or which create a fire, explosive or other hazard; manufacturing facility; warehouse (except incidental to a retail operation); adult book store or similar store selling or exhibiting pornographic materials as a substantial part of its business; night club, discotheque or dance hall.

C. The following shall be prohibited at any location in the Shopping Center within four hundred feet (400') of the Premises: any sports or entertainment facility (including, without limitation, a karate or other martial arts facility, gymnasium, health club or physical fitness facility) (except that such uses shall not be prohibited upon Suites 15 and 16 on the Site Plan; provided that Landlord shall endeavor to cause the occupants under such uses on Suites 15 and 16, and their agents, customers and invitees to use the parking to the west and south of such Suites); or car wash.

D. The following shall be prohibited at any location in the Shopping Center within two hundred feet (200') of the Premises: restaurant (except that restaurant uses shall not be prohibited upon Suites 15, 16 and 21-26 on the Site Plan; provided that any restaurant in Suite 21 must have a public door fronting Hayden Road, and further provided that Landlord shall endeavor to cause the occupants under such uses on Suites 15 and 16, and their agents, customers and invitees to use the parking to the west and south of such Suites); amusement or game room; or school (including, without limitation, trade school or class sessions, but excepting incidental customer training in the use of computer hardware or software sold by Tenant or by any other Occupant of the Shopping Center permitted to engage in such sales) (except that school uses shall not be prohibited upon Suites 15 and 16 on the Site Plan; provided that Landlord shall endeavor to cause the occupants under such uses on Suites 15 and 16, and their agents, customers and invitees to use the parking to the west and south of such Suites).

E. Landlord shall not sell, lease, rent or permit any other premises in the Shopping Center to be used or occupied for other than service and retail uses customarily found in similar shopping centers in the state and county where the Shopping Center is located.

F. Landlord covenants and agrees that no portion of the Shopping Center shall be used for offices, excepting (i) offices incidental to retail uses, and (ii) offices providing services to the general public and customarily found in similar shopping centers (e.g., banking for finance services, real estate or securities brokerage services, financial or tax planning services, accounting, insurance or legal services, optical, medical or dental services or travel agencies).

G. The Prohibited Uses set forth above shall be subject to the rights of Occupants under leases in effect as of the Effective Date of this Lease for as long as such

lease(s) remains in effect, provided such leases do not require the corresponding tenants to be bound by such Prohibited Uses. If any such existing lease permits the tenant thereunder to use its premises for a use which is a Prohibited Use provided that Landlord consents thereto, Landlord hereby covenants that Landlord shall not grant such consent.

4. Incorporation of Lease. This Memorandum is for informational purposes only and nothing contained herein shall be deemed to in any way modify or otherwise affect any of the terms and conditions of the Lease, the terms of which are incorporated herein by reference. This instrument is merely a memorandum of the Lease and is subject to all of the terms, provisions and conditions of the Lease. In the event of any inconsistency between the terms of the Lease and this instrument, the terms of the Lease shall prevail.

5. Binding Effect. The rights and obligations set forth herein shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD:

INDIAN RIVER PARTNERS, LTD.,
a Texas limited partnership

By: Kickoff, Inc., a Texas corporation

By: Steven F. Skellenberger
Print Name: Steven F. Skellenberger
Print Title: VP
Date: September 22, 1998

TENANT:

OFFICE DEPOT, INC.,
a Delaware corporation

By: Victor L. Bosch
Print Name: Victor L. Bosch
Print Title: Chief Real Estate Counsel
Date: February 5, 1999

STATE OF TEXAS)
) SS:
COUNTY OF Dallas)

I HEREBY CERTIFY that on this day before me, a Notary Public duly authorized in the State and County named above to take acknowledgments, personally appeared Steven F. Shellenbarger to me known to be the person described as the Vice President of Kickoff, Inc., the General Partner of INDIAN RIVER PARTNERS, LTD., a Texas limited partnership, who signed the foregoing instrument in such capacity, and acknowledged the execution thereof to be his free act and deed as such person in such capacity for the uses and purposes therein mentioned, and that the said instrument is the act and deed of said limited partnership.

WITNESS my hand and official seal this 23 day of September, 1998



Holly Faulkner
Notary Public
State of Texas
My Commission expires: 5/6/2001

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the state and county named above to take acknowledgments, personally appeared Pilar L. Bosch as Chief Real Estate Officer of OFFICE DEPOT, INC., a Delaware corporation, to me known to be the person who signed the foregoing instrument as such officer and he/she acknowledged that the execution thereof was his/her free act and deed as such officer for the use and purposes therein expressed and that the instrument is the act and deed of said corporation.

WITNESS my hand and official seal this 5 day of February, 1999

Pamela H. Gorski
Notary Public
State of Florida
My Commission expires:



EXHIBIT A

SHOPPING CENTER LEGAL DESCRIPTION

The legal description for the Shopping Center is on the following pages of this Exhibit A. Landlord hereby represents and warrants that the above legal description conforms to the Shopping Center as depicted on the Site Plan.

A-1

EXHIBIT A

Order Number: 225876.

LEGAL DESCRIPTION

PARCEL NO. 1:

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof;

PARCEL NO. 2:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

THENCE West along the North line of said Section 35, a distance of 710 feet;

THENCE South $00^{\circ} 08' 06''$ East, a distance of 55 feet to the TRUE POINT OF BEGINNING;

THENCE continuing South $00^{\circ} 08' 06''$ East, a distance of 30 feet;

THENCE Northwesterly, a distance of 39 feet, more or less, to a point on a line lying 55 feet South of and parallel to the North line of Section 35, said point lying 25 feet West of the TRUE POINT OF BEGINNING of this description;

THENCE East along said line, a distance of 25 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 3:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East line thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

THENCE North $00^{\circ} 08' 06''$ West along the said West line of the North 710 feet of the East 710 feet, 3.40 feet to the TRUE POINT OF BEGINNING;

THENCE continuing North $00^{\circ} 08' 06''$ West along the said West line, hereinbefore described, 246.60 feet to a point;

THENCE South $29^{\circ} 08' 45''$ West 267.58 feet;

THENCE South $84^{\circ} 22' 21''$ East 131.54 feet, more or less, to the TRUE POINT OF BEGINNING.

EXHIBIT B

SITE PLAN

The Site Plan is attached as the following pages of this Exhibit B. Landlord represents and warrants that the Site Plan accurately indicates the following: the location and square footage of all buildings (including out parcels) to be constructed within the Shopping Center, location of all anchor tenant (ten thousand [10,000] or more square feet) buildings, the total Leasable Area, the location of all parking spaces, the location of all aisles, drives and truck drives, the total number of parking spaces, the location of the pylon sign(s), all adjacent roads, turn lanes, median cuts and traffic signals, and all points of ingress and egress from the Shopping Center to adjacent roads. Tenant to delineate on Site Plan the location of Office Depot's building, with loading area, truck well and compactor shown.

B-1

EXHIBIT "B"

INDIAN RIVER PLAZA

SWC Hayden & Thomas Roads

Scottsdale, Arizona

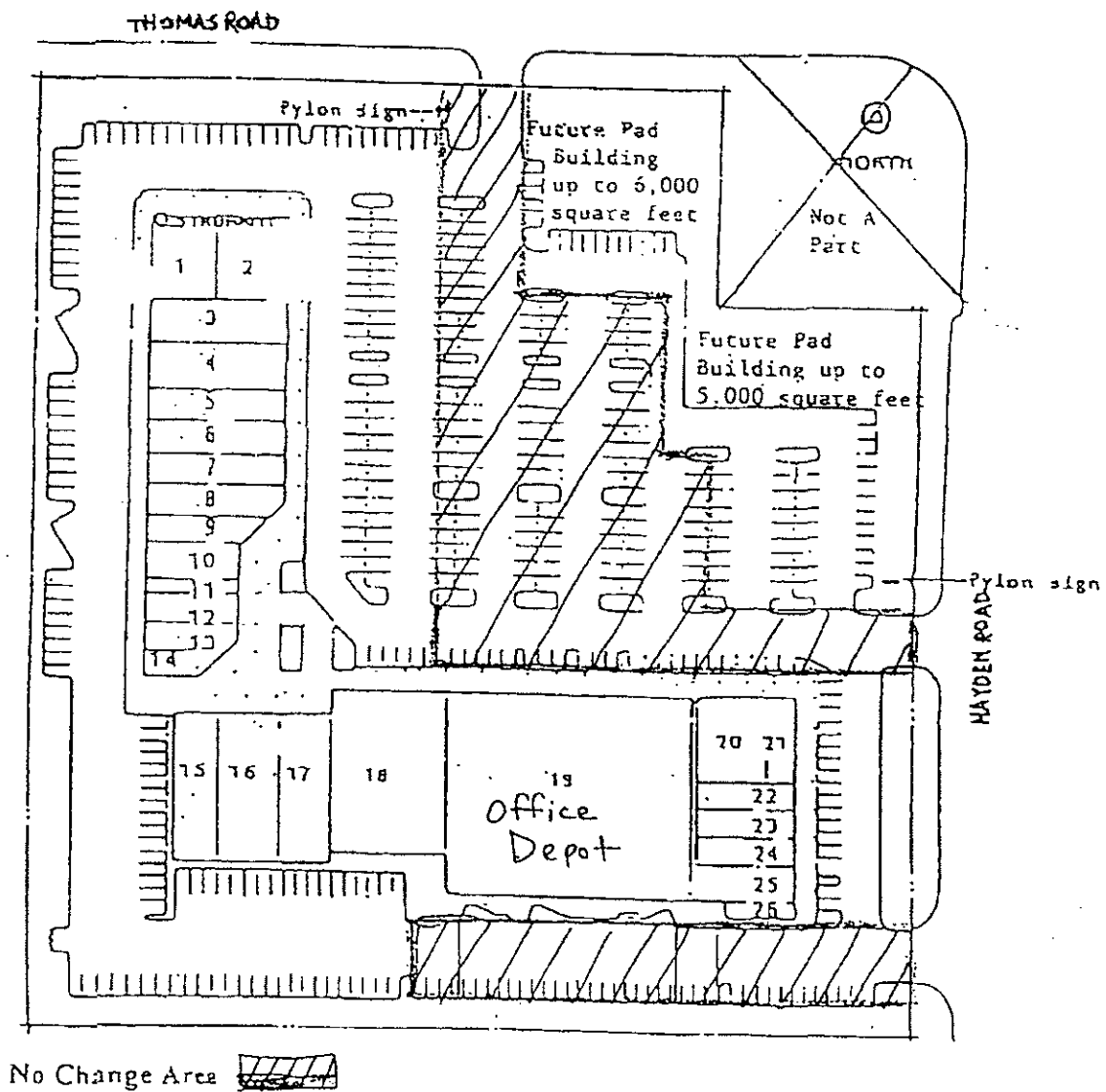


EXHIBIT "B-1"

<u>TENANT</u>	<u>SUITE #</u>	<u>SO. FT.</u>
Stooges/Annies Restaurant	1-3	8,112
Second Time Around	4	2,760
Natures Alternative	5	2,208
Time for You (Beauty Salon)	6	1,452
An's Chinese Restaurant	7	1,830
Overland Management	8	1,780
Planned Parenthood	9	1,431
British Gourmet	10	1,260
Excel Nails	11	635
Beauty Emporium	12	1,210
Swiftly Print	13	1,202
AVAILABLE	14	918
AVAILABLE	15	3,360
AVAILABLE	16	4,400
AVAILABLE	17	4,480
AVAILABLE	18	10,200
Office Depot	19	28,500
Margie's Hallmark	20	2,880
Tom's Chicago Style BBQ	21	1,590
Fast Signs	22	1,480
Little Ceasar's Pizza	23	1,480
Affordable Cleaners	24-26	4,276
TOTAL SHOPPING CENTER SQUARE FEET		87,444

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20010229159 03/23/2001 16:22
ELECTRONIC RECORDING

When recorded mail to:

9918211-7-7-6--
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CHICAGO TITLE INSURANCE COMPANY

This space reserved for recording information

Order No. 009918211 -4/ 8/8

CAPTION HEADING: SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

EX118K4-4/4/00-JEH

CD#506

SUBORDINATION, NON-DISTURBANCE AND ATTORNEYMENT AGREEMENT

THIS AGREEMENT, made this 2nd day of March, 2000, among INLAND MORTGAGE CORPORATION, an Illinois corporation (hereinafter referred to as "Lender"), OFFICE DEPOT, INC., a Delaware corporation (hereinafter referred to as "Tenant"), and INDIAN RIVER PLAZA, L.L.C., an Arizona limited liability company (hereinafter referred to as "Landlord").

STATEMENT OF BACKGROUND

Landlord's predecessor-in-interest and Tenant have entered into a certain lease (hereinafter referred to as the "Lease") dated September 18, 1998, relating to the premises described in EXHIBIT A attached hereto and by this reference made a part hereof (hereinafter referred to as the "Premises"). Lender has made or has committed to make a loan to Landlord in the approximate principal amount of Seven Million Nine Hundred and Sixty Dollars Dollars (\$7,900,000.00), secured by a mortgage or security deed (hereinafter referred to as the "Mortgage") and an assignment of leases and rents from Landlord to Lender covering certain property described therein (the "Property") including the Premises. Tenant has agreed that the Lease shall be subject and subordinate to the Mortgage held by Lender; provided Tenant is assured of continued occupancy of the Premises under the terms of the Lease.

STATEMENT OF AGREEMENT

For and in consideration of the mutual covenants herein contained, the sum of Ten Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. Subject to the terms of this Agreement, Lender, Tenant and Landlord do hereby covenant and agree that the Lease with all rights, options (including options to acquire or lease all or any part of the Premises), liens and charges created thereby, is and shall continue to be subject and subordinate in all respects to the Mortgage and to any renewals, modifications, consolidations, replacements and extensions thereof and to all advancements made thereunder.
2. Lender does hereby agree with Tenant that, in the event Lender becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, so long as Tenant complies with and performs its obligations under the Lease (a) the Lease shall continue in full force and effect as a direct Lease between the succeeding owner of the Property and Tenant, upon and subject to all of the terms, covenants and conditions of the Lease, for the balance of the Lease, and Lender will not disturb the possession of Tenant, and (b) the Premises shall be subject to the Lease and Lender shall recognize Tenant as the tenant of the Premises for the remainder of the term of the Lease in accordance with the provisions thereof; provided, however, in the event Lender shall succeed to the interest of Landlord under the Lease, Lender shall be bound to Tenant under all of the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lender's succession to the interest of Landlord under the Lease, have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Lender had not succeeded to the interest of Landlord; provided further, however, that Lender shall not

Scottsdale - 1

be:

- (a) liable for any warranty, act or omission of any prior landlord (including Landlord), except those of a continuing nature; or
- (b) subject to any offsets or defense which Tenant might have against any prior landlord (including Landlord), except (i) offsets specifically provided for in the Lease, or (ii) those which arose out of such Landlord's default under the Lease and accrued after Tenant has notified Lender and given Lender an opportunity to cure as provided in the Lease; or
- (c) bound by any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or
- (d) bound by any amendment or modification of the Lease or any collateral agreement made without Lender's consent.

Nothing contained herein shall prevent Lender from naming Tenant in any foreclosure or other action proceeding initiated by Lender pursuant to the Mortgage to the extent necessary under applicable law in order for Lender to avail itself of and complete the foreclosure or other remedy.

3. So long as the Mortgage on the Premises remains outstanding and unsatisfied, Tenant will deliver to Mortgagee a copy of all notices of default given to Landlord by Tenant. At any time before the rights of Landlord shall have been forfeited or adversely affected because of any default under the Lease as therein provided, Mortgagee shall have the right (but not the obligation) to cure such default within the same period of time as is allowed Landlord under the Lease.

4. Tenant does hereby agree with lender that, in the event Lender becomes the owner of the Premises by foreclosure, conveyance in lieu of foreclosure or otherwise, then Tenant shall attorn to and recognize Lender as the Landlord under the Lease for the remainder of the term thereof, and Tenant shall perform and observe its obligations thereunder, subject only to the terms and conditions of the Lease. Tenant further covenants and agrees to execute and deliver upon request of Lender an appropriate agreement of attornment to Lender and any subsequent titleholder of the Premises.

5. In the event that Lender shall acquire title to the Premises or the Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then interest (including land, improvements, rentals and other interests) in the Shopping Center, and Tenant shall look exclusively to such interest of Lender, if any, in the Premises for the payment and discharge of any obligations or liability imposed upon Lender hereunder, under the Lease or any new lease of the Premises.

6. If any portion or portions of this Agreement shall be held invalid or inoperative, then all of the remaining portions shall remain in full force and effect, and so far as is reasonable and possible, effect shall be given to the intent manifested by the portion or portions held to be inoperative or invalid.

7. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

8. Lender shall not, either by virtue of the Mortgage, the Assignment of Leases or this

Scottsdale - 2

Agreement, be or become a lender in possession or be or become subject to any liability or obligation under the Lease or otherwise until Lender shall have acquired the interest of Landlord in the Premises, by foreclosure or otherwise, and then such liability or obligation of Lender under the Lease shall extend only to those liabilities or obligations accruing subsequent to the date that Lender has acquired the interest of Landlord in the Premises.

9. Any and all notices, elections, approvals, consents, demands, requests and responses thereto ("Communications") permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been properly given and shall be effective upon the earlier of receipt thereof or deposit thereof in the United States mail, postage prepaid, certified with return receipt requested, to the other party at the address of such other party set forth hereinbelow or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance herewith; provided, however, that the time period in which a response to any Communication must be given shall commence on the date of receipt thereof; and provided further that no change of address shall be effective with respect to Communications sent prior to the time of receipt thereof. Any notice, if given to Lender, must be addressed as follows, subject to change as provided hereinabove:

Inland Mortgage Corporation
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Mr. Robert H. Baum, General Counsel

and, if given to Tenant, must be addressed as follows, subject to changes as provided hereinabove:

Office Depot, Inc.
2200 Old Germantown Road
Legal Department
Delray Beach, Florida 33445

and, if given to Landlord, must be addressed as follows, subject to changes as provided hereinabove:

Indian River Plaza, L.L.C.
3200 North Central Avenue, Suite 2450
Phoenix, Arizona 85012

10. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors-in-title and assigns. When used herein, the term "landlord" refers to Landlord and to any successor to the interest of Landlord under the Lease.

11. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's quiet possession of the Premises pursuant to the terms of the Lease, and Tenant's rights and entitlements under the Lease, shall not be affected, diminished or otherwise interfered with in any manner whatsoever by Lender in the exercise of any of its rights or remedies under the Mortgage or any renewals, modifications, consolidations, replacements or extensions thereof.

Scottsdale - 3

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

LENDER:

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Unofficial Witness

INLAND MORTGAGE CORPORATION, An Illinois
corporation

By: [Signature]

Name: Leslie Luehn

Title: SVP
(Corporate Seal)

TENANT:

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Unofficial Witness

OFFICE DEPOT, INC., a Delaware
corporation

By: [Signature]

Name: PILAR L. BOSCH

Title: Vice President Real Estate - Pega

LANDLORD:

Signed, sealed and delivered
in the presence of:

Unofficial Witness

Unofficial Witness

INDIAN RIVER PLAZA, L.L.C., an Arizona limited liability
company

By: [Signature]

Name: Bruce Shapiro

Title: Managing Member

(Corporate Seal)

Scottsdale - 4

STATE OF Illinois SS.
COUNTY OF DePue

BEFORE ME, A Notary Public in and for said County and State, personally appeared Ledie Larkin, as General Vice President of Inland Mortgage Corporation, an Illinois corporation, LENDER in the foregoing, and he acknowledged that he did sign said Agreement for and on behalf of said corporation, as the voluntary act and deed of said corporation, for all the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on this 22 day of March, 2000.

Gail P. Gress
Notary Public
Commission Expiration Date:



STATE OF FLORIDA SS.
COUNTY OF PALM BEACH

BEFORE ME, A Notary Public in and for said County and State, personally appeared Pilar L. Bosch, Vice President Real Estate-Legal of Office Depot, Inc., a Delaware corporation, TENANT in the foregoing, and he acknowledged that he did sign said Agreement for and on behalf of said corporation, as the voluntary act and deed of said corporation, for all the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on this 1 day of September, 2000.

Beatrice T. Williams
Notary Public
Commission Expiration Date:



Scottsdale - 5

STATE OF Arizona
SS.
COUNTY OF Maricopa

BEFORE ME, A Notary Public in and for said County and State, personally appeared Bruce Shapiro, Manager of Indian River Plaza, L.L.C., an Arizona limited liability company, LANDLORD in the foregoing, and he acknowledged that he did sign said Agreement for and on behalf of said corporation, as the voluntary act and deed of said corporation, for all the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on this 10th day of November, 2000.



Sandra Roach
Notary Public
Commission Expiration Date:

Scottsdale - 6

CHICAGO TITLE INSURANCE COMPANY

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20020063507 01/22/2002 11:09
ELECTRONIC RECORDING

Recorded at the Request of

2116906-12-5-5--
Alanize

When Recorded Mail to:

5/5 2116906-41

CAPTION HEADING Subordination

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

99% ONLY STORES,

Tenant

AND

**CANADIAN IMPERIAL BANK OF COMMERCE,
New York Agency,
Lender**

**Premises: Indian River Plaza
Scottsdale, Arizona**

Dated: as of January __, 2002

Record and return by mail to:

**WINSTON & STRAWN
200 Park Avenue
New York, New York 10166
Attention: William C. Seligman, Esq.**

NY:649938.1

CS

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS AGREEMENT made as of this ___ day of January, 2002, between CANADIAN IMPERIAL BANK OF COMMERCE, New York Agency, having an office at Attn: Real Estate Finance Group, 200 West Madison, Suite 2610, Chicago, Illinois 60606 (hereinafter called "Lender"), and 99¢ ONLY STORES, a California corporation, having an office at 4000 Union Pacific Avenue, City of Commerce, California 90023, Attention: Real Estate Department (hereinafter called "Tenant").

WITNESSETH:

WHEREAS, pursuant to that certain Assignment and Assumption of Lease dated for reference purposes as of December 26, 2001 by and between Office Depot, Inc., as assignor ("Assignor") and Tenant, as assignee (the "Assumption Agreement"), Tenant has assumed the lessee's interest in that certain lease (the "Original Lease") dated September 18, 1998 between Indian River Partners, Ltd., predecessor-in-interest to INDIAN RIVER PLAZA L.L.C., an Arizona limited liability company (hereinafter called "Landlord"), as landlord, and Office Depot, as tenant (the Original Lease, as assumed by Tenant pursuant to the Assumption Agreement, is hereinafter referred to as the "Lease"), a memorandum of which Lease was dated September 18, 1998 and was recorded in Maricopa County, Arizona as Instrument No. 99-0155390 on February 18, 1999, Landlord leased to Tenant certain premises known as 7919 E. Thomas Road, Scottsdale, Arizona (the "Leased Premises") on the real property described in Exhibit A annexed hereto and made a part hereof (the "Property"); and

WHEREAS, Lender is about to make a loan to Landlord, which loan shall be secured by, among other things, a mortgage or deed of trust (which mortgage or deed of trust, and all amendments, renewals, increases, modifications, replacements, substitutions, extensions, spreaders and consolidations thereof and all re-advances thereunder and additions thereto, is referred to as the "Security Instrument") encumbering the Property; and

WHEREAS, Lender and Tenant desire to confirm their understanding and agreement with respect to the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. Subject to Lender's compliance with the non-disturbance provisions set forth in Section 2 hereof, the Lease, and all of the terms, covenants, provisions and conditions thereof (including, without limitation, any right of first refusal, right of first offer, option or any similar right with respect to the sale or purchase of the Property, or any portion thereof), is, shall be and shall at all times remain and continue to be subject and subordinate in all respects to the lien, terms, covenants, provisions and conditions of the Security Instrument and to all advances and re-advances made thereunder and all sums secured thereby. This provision shall be self-operative but Tenant shall execute and deliver any additional instruments which Lender may reasonably require to effect such subordination.

2. So long as (i) Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions of the Lease on Tenant's part to be performed or observed, (ii) Tenant is not in default under this Agreement and (iii) the Lease is in full force and effect: (a) Tenant's possession of the Leased Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Leased Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Lender under the Security Instrument which would cut-off, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease. Notwithstanding the foregoing provisions of this paragraph, if it would be procedurally disadvantageous for Lender not to name or join Tenant as a party in a foreclosure

NY:60938.1

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CANADIAN IMPERIAL BANK OF COMMERCE,
New York Agency,

By: 

Name: Brian Jay Nailinger
Title: As Agent

99% ONLY STORES, a California corporation

By: 

Name: Jeff Gold
Title: Senior Vice President

AGREED AND CONSENTED TO:

INDIAN RIVER PLAZA L.L.C., an
Arizona limited liability company

By: MBS Partners, L.L.C., its sole member

By: 

Name: BRUCE I. SHAPIRO
Title: MANAGER

NY:649938.1

ALL-PURPOSE NOTARY ACKNOWLEDGMENT

State of California

County of Los Angeles

On this 9 day of January 2002, before

me

Armida J. Dominguez Notary Public

personally appeared JEFF GOLD

*** OPTIONAL SECTION ***

CAPACITY CLAIMED BY SIGNER
CORPORATE OFFICER (SENIOR VICE
PRESIDENT)

SIGNER IS REPRESENTING:

NAME OF PERSON(S) OR ENTITY(IES)

99¢ ONLY STORES

☒ personally known to me - OR - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Armida J. Dominguez
Notary Public

SIGNATURE OF NOTARY

LandlordSTATE OF Arizona)COUNTY OF Maricopa) ss

On the 14th day of January in the year 2002, before me, Sandra Trevino
Notary Public in and for said State, personally appeared Bruce J. Shapiro personally known to
me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to
the within instrument and acknowledged that he executed the same in his authorized capacity, and that by
his signature on the instrument the person, or the entity upon behalf of which the person acted, executed
the instrument.

WITNESS my hand and official seal.

Signature

Sandra Trevino

Notary Public State of Arizona
Maricopa County
Sandra Trevino
Expires October 21, 2006

STATE OF NEW YORK

COUNTY OF NEW YORK

On the 17 day of Jan. in the year 2002 before me, the undersigned, personally appeared Brian J. Hedinger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

WILLIAM C. BELJAMIN
Notary Public, State of New York
No. 020150000
Qualified in New York County
Commission Expires May 28, 2002


Notary Public

My commission expires: _____

WILLIAM C. BELJAMIN
Notary Public, State of New York
No. 020150000
Qualified in New York County
Commission Expires May 28, 2002

NY-649938.1

EXHIBIT A

Legal Description of Property

NY:649938.1

OS

EXHIBIT A

Legal Description of Shopping Center

INDIAN RIVER SHOPPING CENTER
Scottsdale, ArizonaPARCEL NO. 1:

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona:

EXCEPT the North 207.94 feet of the East 217.94 feet, thereof.

PARCEL NO. 2:

THAT PART of the Northeast quarter of the Northeast quarter, Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona: thence West along the North line of said Section 35, a distance of 710 feet; thence South 0 degrees 08 minutes 06 seconds East, a distance of 55 feet to the True Point of Beginning; thence continuing South 0 degrees 08 minutes 06 seconds East, a distance of 30 feet; thence Northwesterly, a distance of 39 feet, more or less, to a point on a line lying 55 feet South of and Parallel to the North line of Section 35, said point lying 25 feet West of the True Point of Beginning of this description; thence East along said line, a distance of 25 feet to the True Point of Beginning.

PARCEL NO. 3:

THAT PART of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35 and running thence North 0 degrees 08 minutes 06 seconds West along the said West line of the North 710 feet of the East 710 feet 3.40 feet to the True Point of Beginning; thence continuing North 0 degrees 08 minutes 06 seconds West along the said West line, hereinbefore described, 246.60 feet to a point, thence South 29 degrees 08 minutes 45 seconds West 267.58 feet; thence South 84 degrees 22 minutes 21 seconds East 131.54 feet, more or less to the True Point of Beginning.

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20010229155 03/23/2001 16:22
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When recorded mail to:

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CHICAGO TITLE INSURANCE COMPANY

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Order No. 009918211 *41 2/8*

**CAPTION HEADING: SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

EX11BK4-4/4/00-JCH

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT ("Agreement") made as of this 2nd day of March, 2000 by and among Hamel 1997, LLC dba Margie's Cards & Gifts ("Tenant") and INLAND MORTGAGE CORPORATION, an Illinois corporation ("Lender"), 2901 Butterfield Road, Oak Brook, Illinois 60523.

RECITALS:

1.1 Tenant is the tenant under a certain Lease dated December 20, 1989, between Indian River Plaza, L.L.C. ("Landlord") and Tenant, pertaining to and covering a portion of that certain real estate which is legally described on Exhibit A attached hereto and the buildings and improvements located thereon (the "Property").

1.2 Lender has made a loan (the "Loan") to Landlord secured by the Property. Accordingly, this Agreement is entered into by the parties hereto with the intention of having Lender rely thereon in disbursing the Loan.

AGREEMENTS

NOW THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency whereof are acknowledged, Tenant and Lender covenant and agree as follows:

1. Consent to Assignment: Tenant hereby consents to the assignment by Landlord to Lender, pursuant to the assignment, of the Lease and all rents, issues, profits, royalties, contract rights, or otherwise in connection therewith.

2. Subordination: Said Lease, all extensions, modifications, replacements and renewals thereof (the "Lease"), and all of Tenant's rights and interests thereunder, shall be, are hereby made and shall remain completely subject and subordinate to that certain First Mortgage and Security Agreement dated 2/9/99 recorded with the office of The Recorder of Deeds of Maricopa County as Document No. 99-0178026, and all extensions, modifications, replacements and renewals thereof (the "Mortgage"), and all other documents, including an Assignment of Leases and Rents (the "Assignment"), and all extensions, modifications, replacements and renewals thereof, now or hereafter securing the Loan (the Mortgage, Assignment and other documents being together referred to herein as the "Loan Documents"), to the same extent as if the Loan Documents had been executed, delivered and recorded prior to execution of the Lease.

3. Attornment: If Lender obtains title to the Premises through foreclosure, exercise of the power of sale or deed in lieu of foreclosure under the Mortgage, or by any other method, and Lender succeeds to the interest of Landlord under the Lease, or Lender takes possession of the Premises in accordance with the assignment; then Tenant agrees to continue occupancy of the Premises under the same terms of the Lease for the balance of the Lease term, including all extensions and renewals, to the same extent and with the same force as if Lender were the Landlord under the Lease. Lender shall be entitled to, but not obligated, to exercise the claims, rights, powers, privileges, options, and remedies of the Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all covenants to be performed by Tenant under the Lease as though Lender were named therein as the Landlord. Lender shall not, by virtue of the Assignment or this Agreement, be or become subject to any liability or obligation to Tenant under the Lease or otherwise, until Lender shall have obtained title to the Premises. Tenant agrees to recognize the rights of the Lender under the Assignment and agrees that it will not modify any terms of the Lease or terminate the Lease without Lender's consent. Lender shall not be bound by any amendment or modification of the Lease made without such consent, that requires its consent as described herein.

4. **Payment or Rent:** Tenant shall not pay an installment of rent or any part thereof more than thirty (30) days prior to the due date of such installment. Lender shall be entitled to recover from Tenant as rent under the Lease any payment of rent or additional rent made by Tenant to Landlord more than one month in advance. After Lender notifies Tenant that the Lease rental should be paid to Lender, Tenant shall pay to Lender, or in accordance with the directions of Lender, all rentals and other monies due and to become due to the Landlord under the Lease. Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of such payments. Landlord agrees that any rental payments Tenant makes to Lender pursuant to Lender's notice and demands shall be applied towards Tenant's obligations under the Lease regardless of whether or not Lender is or was entitled to demand (and/or receive) such rental payments. Furthermore, in connection elsewhere herein, Landlord and its successors and assigns hereby agree to indemnify and hold harmless Tenant against any expenses, claims, losses or damages incurred by Tenant resulting from or arising out of claims by Landlord, its successors and assigns that such rental payments should not have been, or cannot be made to the Lender, or the like.

5. **Interpretation:** This Agreement shall inure to the benefit of and shall be binding upon Tenant and Lender, and their respective heirs, personal representatives, successors and assigns. If any one or more of the provisions of the Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Lender, not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been included. This Agreement shall be governed by and construed according to the laws of Illinois.

6. **Representations:** Tenant hereby represents and warrants to Lender.

(a) All duties of an inducement nature required to the Landlord by the Lease have been fulfilled.

(b) The Lease is in full force and effect. There is no existing default on the part of the Landlord or Tenant in the Lease terms, nor does there exist any fact or condition which, with the giving of notice or passage of time, or both, would constitute a default under the Lease. The Lease constitutes the entire rental agreement between Landlord and tenant for the Leased Premises and has not been amended, modified, supplemented or superseded.

(c) To the best of its knowledge, Tenant does not now have or hold any claim against Landlord which might be set off or credited against future accruing rents.

(d) Tenant has received no notice of a prior sale, transfer, assignment, hypothecation or pledge by Landlord of the Lease or of the rents secured therein except the Assignment.

7. **Notices of Default and Right to Cure:** In the event the Tenant sends written notice to Landlord of a default by Landlord under the Lease and Landlord fails to cure the default within the time specified in the notice, then, following expiration of the applicable cure period, Tenant shall send written notice of such uncured default by registered or certified mail, return receipt requested, by personal delivery or by nationally recognized overnight courier service to Lender at the address set forth below. Following receipt of such notice, Lender shall have the right, but not obligation, to remedy such default within thirty (30) days; provided, however, if the uncured default is such that possession and control of the Property is necessary to effectuate the cure, then Lender shall have such additional time to cure such default as may be necessary to either (a) obtain possession and control of the Property and thereafter cure the default or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default. Lender's notice address is as follows:

Inland Mortgage Corporation
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Mr. Robert H. Baum, General Counsel

8. **Non-Disturbance.** Lender agrees that in the event of a default by Landlord under the terms of the Note, the Assignment, the Mortgage or any of the other Loan Documents, and the exercise by Lender of any or all its remedies set forth therein, the Lease shall continue in full force and effect in accordance with the covenants, agreements, terms, conditions, and warranties thereof and Lender shall not disturb the rights and interests of the Tenant thereunder so long as the Tenant shall not be in default beyond any applicable notice and cure period under any of the covenants, agreements, terms, conditions, and warranties set forth in the Lease. In consideration of the agreements of Tenant contained herein, Lender agrees that in the event of foreclosure or other right asserted under the Mortgage by the holder thereof, provided Tenant is not in default under the terms of the Lease beyond any applicable notice and cure period, said Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated or disturbed, except in accordance with the provisions of the Lease and the holder of such Mortgage or any person claiming thereunder shall be bound to Tenant under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof, which may be effected in accordance with any option therefore in the Lease with the same force and effect as if the holder of such Mortgage or any person claiming thereunder were the Landlord under the Lease.

IN WITNESS WHEREOF, the parties who have caused this Agreement to be duly executed the day and year first above written.

Gifts

TENANT: Hamel 1997, LLC dba Margie's Cards &

a(n)

By:

Name:

Its:

ATTEST:

By:

Name:

Its:

LENDER:

INLAND MORTGAGE CORPORATION, an
Illinois corporation

By:

Name:

Its:

ATTEST:

By:

Name:

Its:

LANDLORD: Indian River Plaza, LLC
MBS Partners, LLC

Sole Member

s(n) Arizona Limited Liability Co.

By: [Signature]

Name: Bruce Shapiro

Its: Managing Member

ATTEST

By: [Signature]

Name: [Signature]

Its: [Signature]

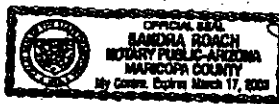
STATE OF ARIZONA

SS.

COUNTY OF MARICOPA

I, Sandra Roach, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Bruce Shapiro of said company, both personally known to me to be the same persons whose names are subscribed to the foregoing Agreement, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said Subordination, Non-Disturbance and Attornment Agreement on behalf of said company for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 10th day of November, 2000.



Sandra Roach
Notary Public

STATE OF ARIZONA

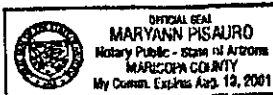
SS.

COUNTY OF MARICOPA

I, Maryann Pissaro, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that ODETTE Hamel of said company, both personally known to me to be the same persons whose names are subscribed to the foregoing Agreement, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said Subordination, Non-Disturbance and Attornment Agreement on behalf of said company for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 12 day of September, 2000.

Maryann Pissaro
Notary Public



STATE OF ILLINOIS }
 } SS.
COUNTY OF COOK }

I, Gail P. Gress, a notary public in and for said County, in the State
aforesaid, DO HEREBY CERTIFY that Leslie Lunden of INLAND
MORTGAGE CORPORATION and _____ of said company, both
personally known to me to be the same persons whose names are subscribed to the foregoing Agreement, appeared
before me this day in person and acknowledged that they signed, sealed and delivered the said Subordination, Non-
Disturbance and Assignment Agreement on behalf of said company for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 24 day of March, 2001.

Gail P. Gress
Notary Public



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20020132271 02/07/2002 11:12
ELECTRONIC RECORDING

116906-11-3-1--
Alanize

CHICAGO TITLE INSURANCE COMPANY

Record and return by mail to:

WINSTON & STRAWN
200 Park Avenue
New York, New York 10166
Attention: William C. Seligman, Esq.

2116906-41
1 of 3

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

HAMEL 1997, L.L.C.,

TENANT

AND

CANADIAN IMPERIAL BANK OF COMMERCE,
New York Agency,
Lender

Section: 35
County: Maricopa
State: Arizona

Premises: Indian River Plaza
7919 E. Thomas, Suite 112B
Scottsdale, Arizona 85251

Dated: as of January 18, 2002

NY:654688.1

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS AGREEMENT made as of this 18th day of January, 2002, between CANADIAN IMPERIAL BANK OF COMMERCE, New York Agency, having an office at Attn: Real Estate Finance Group, 622 Third Avenue, 10th Floor, New York, New York 10017 (hereinafter called "Lender"), and HAMEL 1997, LLC, having an office at 7919 East Thomas, Suite 112B, Scottsdale, Arizona 85251 (hereinafter called "Tenant").

WITNESSETH:

WHEREAS, by a lease (the "Original Lease") dated December 20, 1989 between Indian River Plaza, an Arizona limited liability company (hereinafter called "Landlord"), as landlord, and Tenant, as tenant, as amended by lease amendments dated May 6, 1994 and September 24, 1997 (the Original Lease, as so amended, hereinafter the "Lease"), Landlord leased to Tenant certain premises known as Indian River Plaza, 7919 East Thomas Road, Suite 112B, Scottsdale, Arizona 85251 (the "Leased Premises") on the real property described in Exhibit A annexed hereto and made a part hereof (the "Property"); and

WHEREAS, Lender is about to make a loan to Landlord, which loan shall be secured by, among other things, a mortgage or deed of trust (which mortgage or deed of trust, and all amendments, renewals, increases, modifications, replacements, substitutions, extensions, spreaders and consolidations thereof and all re-advances thereunder and additions thereto, is referred to as the "Security Instrument") encumbering the Property; and

WHEREAS, Lender and Tenant desire to confirm their understanding and agreement with respect to the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

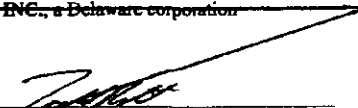
1. The Lease, and all of the terms, covenants, provisions and conditions thereof (including, without limitation, any right of first refusal, right of first offer, option or any similar right with respect to the sale or purchase of the Property, or any portion thereof), is, shall be and shall at all times remain and continue to be subject and subordinate in all respects to the lien, terms, covenants, provisions and conditions of the Security Instrument and to all advances and re-advances made thereunder and all sums secured thereby. This provision shall be self-operative but Tenant shall execute and deliver any additional instruments which Lender may reasonably require to effect such subordination.

2. So long as (i) Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions of the Lease on Tenant's part to be performed or observed, (ii) Tenant is not in default under this Agreement and (iii) the Lease is in full force and effect: (a) Tenant's possession of the Leased Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Leased Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Lender under the Security Instrument which would cut-off, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease (except to the extent required so that Tenant's right to receive or set-off any monies or obligations owed or to be performed by any of Lender's predecessors-in-interest shall not be enforceable thereafter against Lender or any of Lender's successors-in-interest). Notwithstanding the foregoing provisions of this paragraph, if it would be procedurally disadvantageous for Lender not to name or join Tenant as a party in a foreclosure proceeding with respect to the Security Instrument, Lender may so name or join Tenant without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement.

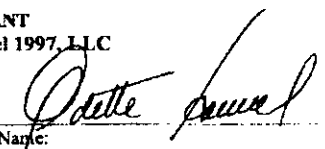
NY:65468.1

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

LENDER ~~SEE ATTACHED~~
~~CIBC INC., a Delaware corporation~~

By: 
Name: Todd Roth
Title: As Agent

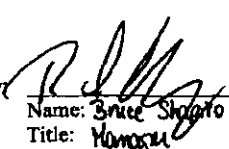
TENANT
Hamel 1997, LLC

By: 
Name:
Title:

AGREED AND CONSENTED TO:

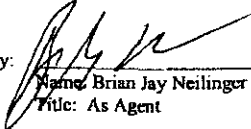
LANDLORD

Indian River Plaza L.L.C., an Arizona limited liability company

By: 
Name: Bruce Shogato
Title: Manager

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CANADIAN IMPERIAL BANK OF COMMERCE,
New York Agency,

By: 
Name: Brian Jay Neilinger
Title: As Agent

HAMEL 1997, LLC

By: _____
Name:
Title:

AGREED AND CONSENTED TO:

INDIAN RIVER PLAZA L.L.C.,
an Arizona limited liability company

By: MBS Partners LLC,
an Arizona limited liability company,
its Sole Member

By: _____
Name: Marko Collins Burns
Title: Manager

By: _____
Name: Bruce Shapiro
Title: Manager

NY:654688.1

LandlordSTATE OF Arizona)COUNTY OF Maricopa) ss

On the 18th day of January in the year 2002, before me, Sandra Trevino Notary Public in and for said State, personally appeared Bruce J. Shapiro personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public State of Arizona
Maricopa County
Sandra Trevino
Expires October 21 2006

Signature

Sandra TrevinoTenantSTATE OF Arizona)COUNTY OF Maricopa) ss

On October 10, 2001, before me, Sonia Currum, a Notary Public in and for said State, personally appeared Odette Hamel, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Sonia Currum

DOCSNY1433839.1

STATE OF NEW YORK)
)SS.
COUNTY OF NEW YORK)

On the 6th day of February, in the year 2002 before me, the undersigned, personally appeared Brian J. Neilinger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Ahmad Khan
NOTARY PUBLIC

My commission expires: 12/15/05

AHMAD S. KHAN
Notary Public, State of New York
No. 01KH000284
Qualified in New York County
Commission Expires Dec. 15, 05

NY654688.1

EXHIBIT ALegal Description of PropertyPARCEL NO. 1:

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof; and

EXCEPT the North 55 feet; and

EXCEPT the East 65 feet

EXCEPT that part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 35;

thence North 89 degrees 59 minutes 52 seconds West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

thence South 00 degrees 08 minutes 06 seconds East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 240.06 feet to the Point of Beginning;

thence continuing South 00 degrees 08 minutes 06 seconds East, a distance of 3.88 feet;

thence South 89 degrees 59 minutes 52 seconds East, parallel with said North line, a distance of 152.94 feet to a point on the West right of way line of Hayden Road, said point being 65.00 feet West of said East line;

thence South 00 degrees 08 minutes 06 seconds East, along the West right of way line and parallel with said East line, a distance of 200.10 feet;

thence departing said West right of way line, South 89 degrees 51 minutes 55 seconds West, a distance of 194.22 feet;

thence North 00 degrees 21 minutes 44 seconds East, a distance of 204.39 feet;

thence North 89 degrees 54 minutes 48 seconds East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

PARCEL NO. 2:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 35;

thence West along the North line of said Section 35, 710 feet;

thence South 00 degrees 08 minutes 06 seconds East, 55 feet to the POINT OF BEGINNING;

thence continuing South 00 degrees 08 minutes 06 seconds East, 30 feet;

thence Northwesterly, 39 feet, more or less, to a point on a line lying 55 feet South of, and parallel to, the North line of said Section 35, said point lying 25 feet West of the POINT OF BEGINNING of this description;

thence East, along said line, 25 feet to the POINT OF BEGINNING.

NY:654688.1

PARCEL NO. 3:

That part of the Northeast quarter of the Northeast of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

thence North 00 degrees 08 minutes 06 seconds West, along the said West line of the North 710 feet of the East 710 feet, 3.40 feet to the POINT OF BEGINNING;

thence continuing North 00 degrees 08 minutes 06 seconds West, along the said West line, herein before described, 246.60 feet;

thence South 29 degrees 08 minutes 45 seconds West, 267.58 feet;

thence South 84 degrees 22 minutes 21 seconds East, 131.54 feet, more or less, to the POINT OF BEGINNING.

DOCSNY1:433439.1

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NY:654688.1

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20010229157 03/23/2001 16:22
ELECTRONIC RECORDING

When recorded mail to:

9918211-6-7-4--
calderj

CHICAGO TITLE INSURANCE COMPANY

This space reserved for recording information

Order No. 009918211 -41

417 CAPTION HEADING: SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

EM11904-2/4/05-JEH

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT ("Agreement") made as of this 22nd day of March, 2004 by and among Nature's Alternative, Inc. ("Tenant") and INLAND MORTGAGE CORPORATION, an Illinois corporation ("Lender"), 2901 Butterfield Road, Oak Brook, Illinois 60521.

RECITALS:

1.1 Tenant is the tenant under a certain Lease dated September 28, 1988, between Indian River Plaza, L.L.C. ("Landlord") and Tenant, pertaining to and covering a portion of that certain real estate which is legally described on Exhibit A attached hereto and the buildings and improvements located thereon (the "Property").

1.2 Lender has made a loan (the "Loan") to Landlord secured by the Property. Accordingly, this Agreement is entered into by the parties hereto with the intention of having Lender rely thereon in disbursing the Loan.

AGREEMENTS

NOW THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency whereof are acknowledged, Tenant and Lender covenant and agree as follows:

1. Consent to Assignment: Tenant hereby consents to the assignment by Landlord to Lender, pursuant to the assignment, of the Lease and all rents, issues, profits, royalties, contract rights, or otherwise in connection therewith.

2. Subordination: Said Lease, all extensions, modifications, replacements and renewals thereof (the "Lease"), and all of Tenant's rights and interests thereunder, shall be, are hereby made and shall remain completely subject and subordinate to that certain First Mortgage and Security Agreement dated 03 of 2/19/01 recorded with the office of The Recorder of Deeds of Maricopa County as Document No. 99-0178026, and all extensions, modifications, replacements and renewals thereof (the "Mortgage"), and all other documents, including an Assignment of Leases and Rents (the "Assignment"), and all extensions, modifications, replacements and renewals thereof, now or hereafter securing the Loan (the Mortgage, Assignment and other documents being together referred to herein as the "Loan Documents"), to the same extent as if the Loan Documents had been executed, delivered and recorded prior to execution of the Lease.

3. Attornment: If Lender obtains title to the Premises through foreclosure, exercise of the power of sale or deed in lieu of foreclosure under the Mortgage, or by any other method, and Lender succeeds to the interest of Landlord under the Lease, or Lender takes possession of the Premises in accordance with the assignment; then Tenant agrees to continue occupancy of the Premises under the same terms of the Lease for the balance of the Lease term, including all extensions and renewals, to the same extent and with the same force as if Lender were the Landlord under the Lease. Lender shall be entitled to, but not obligated, to exercise the claims, rights, powers, privileges, options, and remedies of the Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all covenants to be performed by Tenant under the Lease as though Lender were named therein as the Landlord. Lender shall not, by virtue of the Assignment or this Agreement, be or become subject to any liability or obligation to Tenant under the Lease or otherwise, until Lender shall have obtained title to the Premises. Tenant agrees to recognize the rights of the Lender under the Assignment and agrees that it will not modify any terms of the Lease or terminate the Lease without Lender's consent. Lender shall not be bound by any amendment or modification of the Lease made without such consent, that requires its consent as described herein.

4. **Payment or Rent:** Tenant shall not pay an installment of rent or any part thereof more than thirty (30) days prior to the due date of such installment. Lender shall be entitled to recover from Tenant as rent under the Lease any payment of rent or additional rent made by Tenant to Landlord more than one month in advance. After Lender notifies Tenant that the Lease rental should be paid to Lender, Tenant shall pay to Lender, or in accordance with the directions of Lender, all rentals and other monies due and to become due to the Landlord under the Lease. Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of such payments. Landlord agrees that any rental payments Tenant makes to Lender pursuant to Lender's notice and demands shall be applied towards Tenant's obligations under the Lease regardless of whether or not Lender is or was entitled to demand (and/or receive) such rental payments. Furthermore, in connection elsewhere herein, Landlord and its successors and assigns hereby agree to indemnify and hold harmless Tenant against any expenses, claims, losses or damages incurred by Tenant resulting from or arising out of claims by Landlord, its successors and assigns that such rental payments should not have been, or cannot be made to the Lender, or the like.

5. **Interpretation:** This Agreement shall inure to the benefit of and shall be binding upon Tenant and Lender, and their respective heirs, personal representatives, successors and assigns. If any one or more of the provisions of the Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Lender, not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been included. This Agreement shall be governed by and construed according to the laws of Illinois.

6. **Representations:** Tenant hereby represents and warrants to Lender.

(a) All duties of an inducement nature required to the Landlord by the Lease have been fulfilled.

(b) The Lease is in full force and effect. There is no existing default on the part of the Landlord or Tenant in the Lease terms, nor does there exist any fact or condition which, with the giving of notice or passage of time, or both, would constitute a default under the Lease. The Lease constitutes the entire rental agreement between Landlord and tenant for the Leased Premises and has not been amended, modified, supplemented or superseded.

(c) To the best of its knowledge, Tenant does not now have or hold any claim against Landlord which might be set off or credited against future accruing rents.

(d) Tenant has received no notice of a prior sale, transfer, assignment, hypothecation or pledge by Landlord of the Lease or of the rents secured therein except the Assignment.

7. **Notices of Default and Right to Cure:** In the event the Tenant sends written notice to Landlord of a default by Landlord under the Lease and Landlord fails to cure the default within the time specified in the notice, then, following expiration of the applicable cure period, Tenant shall send written notice of such uncured default by registered or certified mail, return receipt requested, by personal delivery or by nationally recognized overnight courier service to Lender at the address set forth below. Following receipt of such notice, Lender shall have the right, but not obligation, to remedy such default within thirty (30) days; provided, however, if the uncured default is such that possession and control of the Property is necessary to effectuate the cure, then Lender shall have such additional time to cure such default as may be necessary to either (a) obtain possession and control of the Property and thereafter cure the default or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default. Lender's notice address is as follows:

Inland Mortgage Corporation
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Mr. Robert H. Baum, General Counsel

8. **Non-Disturbance.** Lender agrees that in the event of a default by Landlord under the terms of the Note, the Assignment, the Mortgage or any of the other Loan Documents, and the exercise by Lender of any or all its remedies set forth therein, the Lease shall continue in full force and effect in accordance with the covenants, agreements, terms, conditions, and warranties thereof and Lender shall not disturb the rights and interests of the Tenant thereunder so long as the Tenant shall not be in default beyond any applicable notice and cure period under any of the covenants, agreements, terms, conditions, and warranties set forth in the Lease. In consideration of the agreements of Tenant contained herein, Lender agrees that in the event of foreclosure or other right asserted under the Mortgage by the holder thereof, provided Tenant is not in default under the terms of the Lease beyond any applicable notice and cure period, said Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated or disturbed, except in accordance with the provisions of the Lease and the holder of such Mortgage or any person claiming thereunder shall be bound to Tenant under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof, which may be effected in accordance with any option therefor in the Lease with the same force and effect as if the holder of such Mortgage or any person claiming thereunder were the Landlord under the Lease.

IN WITNESS WHEREOF, the parties who have caused this Agreement to be duly executed the day and year first above written.

TENANT: Nature's Alternative, Inc.

Nature's Alternative, Inc.
a(n) Corporation

By: Rick Smith
Name: Rick Smith
Its: President

ATTEST:

By: _____
Name: _____
Its: _____

LENDER:

INLAND MORTGAGE CORPORATION, an
Illinois corporation

By: LSB
Name: Leslie S. B...
Its: SVP

ATTEST:

By: _____
Name: _____
Its: _____

LANDLORD: Indian River Plaza, LLC
 MBS Partners, LLC
 Sole Member

a(n) Arizona Limited Liability Co

By: [Signature]

Name: Bruce Shapiro

Its: Maryann Pisauru

ATTEN: [Signature]

By: [Signature]

Name: [Signature]

Its: [Signature]

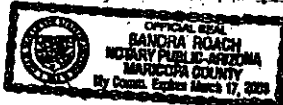
STATE OF ARIZONA

SS.

COUNTY OF MARICOPA

I, Sandra Roach, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Bruce Shapiro of said company, both personally known to me to be the same persons whose names are subscribed to the foregoing Agreement, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said Subordination, Non-Disturbance and Attornment Agreement on behalf of said company for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 10th day of November, 2000.



Sandra Roach
 Notary Public

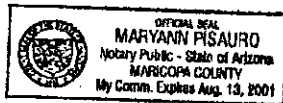
STATE OF ARIZONA

SS.

COUNTY OF MARICOPA

I, Maryann Pisauru, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Bruce Shapiro of said company, both personally known to me to be the same persons whose names are subscribed to the foregoing Agreement, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said Subordination, Non-Disturbance and Attornment Agreement on behalf of said company for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 31 day of August, 2000.



Maryann Pisauru
 Notary Public

STATE OF ILLINOIS }
 } SS.
COUNTY OF COOK }

I, Gail P. Gress, a notary public in and for said County, in the State
aforesaid, DO HEREBY CERTIFY that Leslie Lundin of INLAND
MORTGAGE CORPORATION and _____ of said company, both
personally known to me to be the same persons whose names are subscribed to the foregoing Agreement, appeared
before me this day in person and acknowledged that they signed, sealed and delivered the said Subordination, Non-
Disturbance and Attornment Agreement on behalf of said company for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 21 day of March, 2001.

Gail P. Gress
Notary Public



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20020132273 02/07/2002 11:12
ELECTRONIC RECORDING

116906-11-3-3--
Alanize

CHICAGO TITLE INSURANCE COMPANY

Record and return by mail to:

WINSTON & STRAWN
200 Park Avenue
New York, New York 10166
Attention: William C. Seligman, Esq.

2116906-41

30/3

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

NATURE'S ALTERNATIVE INC.,

TENANT

AND

CANADIAN IMPERIAL BANK OF COMMERCE,
New York Agency,
Lender

Section: 35
County: Maricopa
State: Arizona

Premises: Indian River Plaza
7901 E. Thomas, Suite 109-110B
Scottsdale, Arizona 85251

Dated: as of January 18, 2002

NY:654691.1

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS AGREEMENT made as of this 18th day of January, 2002, between CANADIAN IMPERIAL BANK OF COMMERCE, New York Agency, having an office at Attn: Real Estate Finance Group, 622 Third Avenue, 10th Floor, New York, New York 10017 (hereinafter called "Lender"), and NATURE'S ALTERNATIVE INC., having an office at 7901 East Thomas, Suite 109-110B, Scottsdale, Arizona 85251 (hereinafter called "Tenant").

WITNESSETH:

WHEREAS, by a lease (the "Original Lease") dated September 28, 1988 between Indian River Plaza, an Arizona limited liability company (hereinafter called "Landlord"), as landlord, and Tenant, as tenant, as amended by lease amendments dated November 30, 1989, July 30, 1991 and July 1, 1994 (the Original Lease, as so amended, hereinafter the "Lease"), Landlord leased to Tenant certain premises known as Indian River Plaza, 7901 East Thomas Road, Suite 109-110B, Scottsdale, Arizona 85251 (the "Leased Premises") on the real property described in Exhibit A annexed hereto and made a part hereof (the "Property"); and

WHEREAS, Lender is about to make a loan to Landlord, which loan shall be secured by, among other things, a mortgage or deed of trust (which mortgage or deed of trust, and all amendments, renewals, increases, modifications, replacements, substitutions, extensions, spreaders and consolidations thereof and all re-advances thereunder and additions thereto, is referred to as the "Security Instrument") encumbering the Property; and

WHEREAS, Lender and Tenant desire to confirm their understanding and agreement with respect to the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:


1. The Lease, and all of the terms, covenants, provisions and conditions thereof (including, without limitation, any right of first refusal, right of first offer, option or any similar right with respect to the sale or purchase of the Property, or any portion thereof), is, shall be and shall at all times remain and continue to be subject and subordinate in all respects to the lien, terms, covenants, provisions and conditions of the Security Instrument and to all advances and re-advances made thereunder and all sums secured thereby. This provision shall be self-operative but Tenant shall execute and deliver any additional instruments which Lender may reasonably require to effect such subordination.

2. So long as (i) Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions of the Lease on Tenant's part to be performed or observed, (ii) Tenant is not in default under this Agreement and (iii) the Lease is in full force and effect: (a) Tenant's possession of the Leased Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Leased Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Lender under the Security Instrument which would cut-off, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease (except to the extent required so that Tenant's right to receive or set-off any monies or obligations owed or to be performed by any of Lender's predecessors-in-interest shall not be enforceable thereafter against Lender or any of Lender's successors-in-interest). Notwithstanding the foregoing provisions of this paragraph, if it would be procedurally disadvantageous for Lender not to name or join Tenant as a party in a foreclosure proceeding with respect to the Security Instrument, Lender may so name or join Tenant without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement.

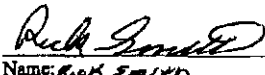
NY:654691.1

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

LENDER *SEE ATTACHED*
~~CIBC INC., a Delaware corporation~~

By: 
Name: Todd Roth
Title: As Agent


TENANT
Nature's Alternative Inc.

By:  10/14/07
Name: Rick Smith
Title: President

AGREED AND CONSENTED TO:

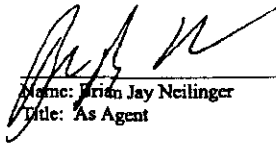
LANDLORD

Indian River Plaza L.L.C., an Arizona limited liability company

By: 
Name: Bruce Shapiro
Title: Manager

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CANADIAN IMPERIAL BANK OF COMMERCE,
New York Agency,

By: 
Name: Brian Jay Neilinger
Title: As Agent

NATURE'S ALTERNATIVE INC.

By: _____
Name:
Title:

AGREED AND CONSENTED TO:

INDIAN RIVER PLAZA L.L.C.,
an Arizona limited liability company

By: MBS Partners LLC,
an Arizona limited liability company,
its Sole Member

By: _____
Name: Marko Collins Burns
Title: Manager

By: _____
Name: Bruce Shapiro
Title: Manager

NY:654691.1

LandlordSTATE OF Arizona)COUNTY OF Maricopa) ss

On the 18th day of January in the year 2007, before me, Sandra Trevino, Notary Public in and for said State, personally appeared Bruce I. Simpson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public State of Arizona
Maricopa County
Sandra Trevino
Expires October 21 2008

Signature

Sandra Trevino

TenantSTATE OF ARIZONA)COUNTY OF Maricopa) ss

On October 16, 2007, before me, Renée Kramer, a Notary Public in and for said State, personally appeared Rick Smith, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



OFFICIAL SEAL
RENEE KRAMER
NOTARY PUBLIC - STATE OF ARIZONA
MARICOPA COUNTY
My Comm Expires Aug. 24, 2004

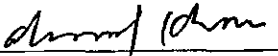
Signature

Renée Kramer

DOCSNY1-433839.1

STATE OF NEW YORK)
)SS.
COUNTY OF NEW YORK)

On the 6th day of February in the year 2002 before me, the undersigned, personally appeared Brian J. Neilinger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



NOTARY PUBLIC

My commission expires: 12/15/05

AHMAD S. KHAN
Notary Public, State of New York
No. 01KH6000284
Qualified in New York County
Commission Expires Dec. 15, 05

NY:654691.1

EXHIBIT A**Legal Description of Property**PARCEL NO. 1:

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof; and

EXCEPT the North 55 feet; and

EXCEPT the East 65 feet

EXCEPT that part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 35;

thence North 89 degrees 59 minutes 52 seconds West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

thence South 00 degrees 08 minutes 06 seconds East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 240.06 feet to the Point of Beginning;

thence continuing South 00 degrees 08 minutes 06 seconds East, a distance of 3.88 feet;

thence South 89 degrees 59 minutes 52 seconds East, parallel with said North line, a distance of 152.94 feet to a point on the West right of way line of Hayden Road, said point being 65.00 feet West of said East line;

thence South 00 degrees 08 minutes 06 seconds East, along the West right of way line and parallel with said East line, a distance of 200.10 feet;

thence departing said West right of way line, South 89 degrees 51 minutes 55 seconds West, a distance of 194.22 feet;

thence North 00 degrees 21 minutes 44 seconds East, a distance of 204.39 feet;

thence North 89 degrees 54 minutes 48 seconds East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

PARCEL NO. 2:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 35;

thence West along the North line of said Section 35, 710 feet;

thence South 00 degrees 08 minutes 06 seconds East, 55 feet to the POINT OF BEGINNING;

thence continuing South 00 degrees 08 minutes 06 seconds East, 30 feet;

thence Northwesterly, 39 feet, more or less, to a point on a line lying 55 feet South of, and parallel to, the North line of said Section 35, said point lying 25 feet West of the POINT OF BEGINNING of this description;

thence East, along said line, 25 feet to the POINT OF BEGINNING.

NY 654691.1

PARCEL NO. 3:

That part of the Northeast quarter of the Northeast of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

thence North 00 degrees 08 minutes 06 seconds West, along the said West line of the North 710 feet of the East 710 feet, 3.40 feet to the POINT OF BEGINNING;

thence continuing North 00 degrees 08 minutes 06 seconds West, along the said West line, herein before described, 246.60 feet;

thence South 29 degrees 08 minutes 45 seconds West, 267.58 feet;

thence South 84 degrees 22 minutes 21 seconds East, 131.54 feet, more or less, to the POINT OF BEGINNING.

DOCSNY1:433839.1

5

NY:654691.1

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20010229158 03/23/2001 16:22
ELECTRONIC RECORDING

When recorded mail to:

9918211-6-7-5--
calderj

CHICAGO TITLE INSURANCE COMPANY

This space reserved for recording information

Order No. 009918211 -41 5/8

CAPTION HEADING: SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT

EMX11844-8/4/06-JES

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS AGREEMENT ("Agreement") made as of this 2nd day of March, 2004 by and among Tuesday Morning, Inc. a Texas Corporation ("Tenant") and INLAND MORTGAGE CORPORATION, an Illinois corporation ("Lender"), 2901 Butterfield Road, Oak Brook, Illinois 60523.

RECITALS:

1.1 Tenant is the tenant under a certain Lease dated October 25, 1999, between Indian River Plaza L.L.C. ("Landlord") and Tenant, pertaining to and covering a portion of that certain real estate which is legally described on Exhibit A attached hereto and the buildings and improvements located thereon (the "Property").

1.2 Lender has made a loan (the "Loan") to Landlord secured by the Property. Accordingly, this Agreement is entered into by the parties hereto with the intention of having Lender rely thereon in disbursing the Loan.

AGREEMENTS

NOW THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency whereof are acknowledged, Tenant and Lender covenant and agree as follows:

1. Consent to Assignment: Tenant hereby consents to the assignment by Landlord to Lender, pursuant to the assignment, of the Lease and all rents, issues, profits, royalties, contract rights, or otherwise in connection therewith.
2. Subordination: Said Lease, all extensions, modifications, replacements and renewals thereof (the "Lease"), and all of Tenant's rights and interests thereunder, shall be, are hereby made and shall remain completely subject and subordinate to that certain ~~First Mortgage~~ and Security Agreement dated 03 of 2/19/99 recorded with the office of The Recorder of Deeds of Maricopa County as Document No. 99-078026, and all extensions, modifications, replacements and renewals thereof (the "Mortgage"), and all other documents, including an Assignment of Leases and Rents (the "Assignment"), and all extensions, modifications, replacements and renewals thereof, now or hereafter securing the Loan (the Mortgage, Assignment and other documents being together referred to herein as the "Loan Documents"), to the same extent as if the Loan Documents had been executed, delivered and recorded prior to execution of the Lease.
3. Attornment: If Lender obtains title to the Premises through foreclosure, exercise of the power of sale or deed in lieu of foreclosure under the Mortgage, or by any other method, and Lender succeeds to the interest of Landlord under the Lease, or Lender takes possession of the Premises in accordance with the assignment, then Tenant agrees to continue occupancy of the Premises under the same terms of the Lease for the balance of the Lease term, including all extensions and renewals, to the same extent and with the same force as if Lender were the Landlord under the Lease. Lender shall be entitled to, but not obligated, to exercise the claims, rights, powers, privileges, options, and remedies of the Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all covenants to be performed by Tenant under the Lease as though Lender were named therein as the Landlord. Lender shall not, by virtue of the Assignment or this Agreement, be or become subject to any liability or obligation to Tenant under the Lease or otherwise, until Lender shall have obtained title to the Premises. Tenant agrees to recognize the rights of the Lender under the Assignment and agrees that it will not modify any terms of the Lease or terminate the Lease without Lender's consent. Lender shall not be bound by any amendment or modification of the Lease made without such consent, that requires its consent as described herein.

4. **Payment or Rent:** Tenant shall not pay an installment of rent or any part thereof more than thirty (30) days prior to the due date of such installment. Lender shall be entitled to recover from Tenant as rent under the Lease any payment of rent or additional rent made by Tenant to Landlord more than one month in advance. After Lender notifies Tenant that the Lease rental should be paid to Lender, Tenant shall pay to Lender, or in accordance with the directions of Lender, all rentals and other monies due and to become due to the Landlord under the Lease. Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord on account of such payments. Landlord agrees that any rental payments Tenant makes to Lender pursuant to Lender's notice and demands shall be applied towards Tenant's obligations under the Lease regardless of whether or not Lender is or was entitled to demand (and/or receive) such rental payments. Furthermore, in connection elsewhere herein, Landlord and its successors and assigns hereby agree to indemnify and hold harmless Tenant against any expenses, claims, losses or damages incurred by Tenant resulting from or arising out of claims by Landlord, its successors and assigns that such rental payments should not have been, or cannot be made to the Lender, or the like.

5. **Interpretation:** This Agreement shall inure to the benefit of and shall be binding upon Tenant and Lender, and their respective heirs, personal representatives, successors and assigns. If any one or more of the provisions of the Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of the Lender, not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been included. This Agreement shall be governed by and construed according to the laws of Illinois.

6. **Representations:** Tenant hereby represents and warrants to Lender.

(a) All duties of an inducement nature required to the Landlord by the Lease have been fulfilled.

(b) The Lease is in full force and effect. There is no existing default on the part of the Landlord or Tenant in the Lease terms, nor does there exist any fact or condition which, with the giving of notice or passage of time, or both, would constitute a default under the Lease. The Lease constitutes the entire rental agreement between Landlord and tenant for the Leased Premises and has not been amended, modified, supplemented or superseded.

(c) To the best of its knowledge, Tenant does not now have or hold any claim against Landlord which might be set off or credited against future accruing rents.

(d) Tenant has received no notice of a prior sale, transfer, assignment, hypothecation or pledge by Landlord of the Lease or of the rents secured therein except the Assignment.

7. **Notices of Default and Right to Cure:** In the event the Tenant sends written notice to Landlord of a default by Landlord under the Lease and Landlord fails to cure the default within the time specified in the notice, then, following expiration of the applicable cure period, Tenant shall send written notice of such uncured default by registered or certified mail, return receipt requested, by personal delivery or by nationally recognized overnight courier service to Lender at the address set forth below. Following receipt of such notice, Lender shall have the right, but not obligation, to remedy such default within thirty (30) days; provided, however, if the uncured default is such that possession and control of the Property is necessary to effectuate the cure, then Lender shall have such additional time to cure such default as may be necessary to either (a) obtain possession and control of the Property and thereafter cure the default or (b) obtain the appointment of a receiver and give such receiver a reasonable period of time in which to cure the default. Lender's notice address is as follows:

Inland Mortgage Corporation
2901 Butterfield Road
Oak Brook, Illinois 60523
Attention: Mr. Robert H. Baum, General Counsel

8. **Non-Disturbance.** Lender agrees that in the event of a default by Landlord under the terms of the Note, the Assignment, the Mortgage or any of the other Loan Documents, and the exercise by Lender of any or all its remedies set forth therein, the Lease shall continue in full force and effect in accordance with the covenants, agreements, terms, conditions, and warranties thereof and Lender shall not disturb the rights and interests of the Tenant thereunder so long as the Tenant shall not be in default beyond any applicable notice and cure period under any of the covenants, agreements, terms, conditions, and warranties set forth in the Lease. In consideration of the agreements of Tenant contained herein, Lender agrees that in the event of foreclosure or other right asserted under the Mortgage by the holder thereof, provided Tenant is not in default under the terms of the Lease beyond any applicable notice and cure period, said Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated or disturbed, except in accordance with the provisions of the Lease and the holder of such Mortgage or any person claiming thereunder shall be bound to Tenant under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof, which may be effected in accordance with any option therefore in the Lease with the same force and effect as if the holder of such Mortgage or any person claiming thereunder were the Landlord under the Lease.

IN WITNESS WHEREOF, the parties who have caused this Agreement to be duly executed the day and year first above written.

TENANT: Tuesday Morning, Inc. a Texas Corporation

s(n)

By:

Name:

Its:

ROBERT CASTIGLIONE
VICE PRESIDENT

ATTEST:

By:

Name:

Its:

LENDER:

INLAND MORTGAGE CORPORATION, an
Illinois corporation

By:

Name:

Its:

Leslie L. Landon
SVP

ATTEST:

By:

Name:

Its:

LANDLORD: Indian River Plaza, LLC

MBS Partners, LLC
Sole Member

a(n):

By:

Name:

Its:

ATTES

By:

Name:

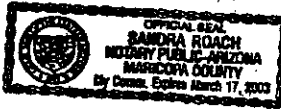
Its:

STATE OF ARIZONA

SS.

COUNTY OF MARICOPA

I, Sandra Roach, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Bruce Shapiro of said company, both personally known to me to be the same persons whose names are subscribed to the foregoing Agreement, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said Subordination, Non-Disturbance and Attornment Agreement on behalf of said company for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 10th day of November, 2000

Sandra Roach
Notary Public

STATE OF ARIZONA

SS.

COUNTY OF MARICOPA

I, Amy Martin, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Karen Castigan of said company, both personally known to me to be the same persons whose names are subscribed to the foregoing Agreement, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said Subordination, Non-Disturbance and Attornment Agreement on behalf of said company for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 21st day of September, 2000.

Notary Public



STATE OF ILLINOIS }
COUNTY OF COOK } SS.

I, Gail P. Gress a notary public in and for said County, in the State
aforesaid, DO HEREBY CERTIFY that Edna Lunden of INLAND
MORTGAGE CORPORATION and _____ of said company, both
personally known to me to be the same persons whose names are subscribed to the foregoing Agreement, appeared
before me this day in person and acknowledged that they signed, sealed and delivered the said Subordination, Non-
Disturbance and Assignment Agreement on behalf of said company for the uses and purposes therein set forth.

GIVEN under my hand and seal, this 24 day of March, 2001.

Gail P. Gress
Notary Public



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20020132272 02/07/2002 11:12
ELECTRONIC RECORDING

116906-11-3-2--
Alanize

CHICAGO TITLE INSURANCE COMPANY

Record and return by mail to:

WINSTON & STRAWN
200 Park Avenue
New York, New York 10166
Attention: William C. Seligman, Esq.

2116906-41

2013

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

TUESDAY MORNING INC.,

TENANT

AND

CANADIAN IMPERIAL BANK OF COMMERCE,
New York Agency,
Lender

Section: 35
County: Maricopa
State: Arizona

Premises: Indian River Plaza
7919 E. Thomas, Suite 104B
Scottsdale, Arizona 85251

Dated: as of January 18, 2002

NY:634690.1

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN'T AGREEMENT

THIS AGREEMENT made as of this 18th day of January, 2002, between CANADIAN IMPERIAL BANK OF COMMERCE, New York Agency, having an office at Attn: Real Estate Finance Group, 622 Third Avenue, 10th Floor, New York, New York 10017 (hereinafter called "Lender"), and TUESDAY MORNING INC., a Texas corporation, having an office at 14621 Inwood Road, Addison, Texas 75001 (hereinafter called "Tenant").

WITNESSETH:

WHEREAS, by a lease (the "Original Lease") dated October 25, 1999 between Indian River Plaza, an Arizona limited liability company (hereinafter called "Landlord"), as landlord, and Tenant, as tenant, as amended by lease amendment dated June 20, 2000 (the Original Lease, as so amended, hereinafter the "Lease"), Landlord leased to Tenant certain premises known as Indian River Plaza, 7919 East Thomas Road, Suite 104B, Scottsdale, Arizona 85251 (the "Leased Premises") on the real property described in Exhibit A annexed hereto and made a part hereof (the "Property"); and

WHEREAS, Lender is about to make a loan to Landlord, which loan shall be secured by, among other things, a mortgage or deed of trust (which mortgage or deed of trust, and all amendments, renewals, increases, modifications, replacements, substitutions, extensions, spreaders and consolidations thereof and all re-advances thereunder and additions thereto, is referred to as the "Security Instrument") encumbering the Property; and

WHEREAS, Lender and Tenant desire to confirm their understanding and agreement with respect to the Lease and the Security Instrument.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, Lender and Tenant hereby agree and covenant as follows:

1. The Lease, and all of the terms, covenants, provisions and conditions thereof (including, without limitation, any right of first refusal, right of first offer, option or any similar right with respect to the sale or purchase of the Property, or any portion thereof), is, shall be and shall at all times remain and continue to be subject and subordinate in all respects to the lien, terms, covenants, provisions and conditions of the Security Instrument and to all advances and re-advances made thereunder and all sums secured thereby. This provision shall be self-operative but Tenant shall execute and deliver any additional instruments which Lender may reasonably require to effect such subordination.

2. So long as (i) Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance or observance of any of the other terms, covenants, provisions or conditions of the Lease on Tenant's part to be performed or observed, (ii) Tenant is not in default under this Agreement and (iii) the Lease is in full force and effect: (a) Tenant's possession of the Leased Premises and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof which may be effected in accordance with any option therefor which is contained in the Lease, shall not be diminished or interfered with by Lender, and Tenant's occupancy of the Leased Premises shall not be disturbed by Lender for any reason whatsoever during the term of the Lease or any such extensions or renewals thereof and (b) Lender will not join Tenant as a party defendant in any action or proceeding to foreclose the Security Instrument or to enforce any rights or remedies of Lender under the Security Instrument which would cut-off, destroy, terminate or extinguish the Lease or Tenant's interest and estate under the Lease (except to the extent required so that Tenant's right to receive or set-off any monies or obligations owed or to be performed by any of Lender's predecessors-in-interest shall not be enforceable thereafter against Lender or any of Lender's successors-in-interest). Notwithstanding the foregoing provisions of this paragraph, if it would be procedurally disadvantageous for Lender not to name or join Tenant as a party in a foreclosure proceeding with respect to the Security Instrument, Lender may so name or join Tenant without in any way diminishing or otherwise affecting the rights and privileges granted to, or inuring to the benefit of, Tenant under this Agreement.

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3. (A) After notice is given by Lender that the Security Instrument is in default and that the rentals under the Lease should be paid to Lender, Tenant will attorn to Lender and pay to Lender, or pay in accordance with the directions of Lender, all rentals and other monies due and to become due to Landlord under the Lease or otherwise in respect of the Leased Premises. Such payments shall be made regardless of any right of set-off, counterclaim or other defense which Tenant may have against Landlord, whether as the tenant under the Lease or otherwise.

(B) In addition, if Lender (or its nominee or designee) shall succeed to the rights of Landlord under the Lease through possession or foreclosure action, delivery of a deed or otherwise, or another person purchases the Property or the portion thereof containing the Leased Premises upon or following foreclosure of the Security Instrument or in connection with any bankruptcy case commenced by or against Landlord, then at the request of Lender (or its nominee or designee) or such purchaser (Lender, its nominees and designees, and such purchaser, and their respective successors and assigns, each being a "Successor-Landlord"), Tenant shall attorn to and recognize Successor-Landlord as Tenant's landlord under the Lease and shall promptly execute and deliver any instrument that Successor-Landlord may reasonably request to evidence such attornment. Upon such attornment, the Lease shall continue in full force and effect as, or as if it were, a direct lease between Successor-Landlord and Tenant upon all terms, conditions and covenants as are set forth in the Lease. If the Lease shall have terminated by operation of law or otherwise as a result of or in connection with a bankruptcy case commenced by or against Landlord or a foreclosure action or proceeding or delivery of a deed in lieu, upon request of Successor-Landlord, Tenant shall promptly execute and deliver a direct lease with Successor-Landlord which direct lease shall be on substantially the same terms and conditions as the Lease (subject, however, to the provisions of clauses (i)-(v) of this paragraph 3(B)) and shall be effective as of the day the Lease shall have terminated as aforesaid. Notwithstanding the continuation of the Lease, the attornment of Tenant thereunder or the execution of a direct lease between Successor-Landlord and Tenant as aforesaid, Successor-Landlord shall not:

- (i) be liable for any previous act or omission of Landlord under the Lease;
- (ii) be subject to any off-set, defense or counterclaim which shall have theretofore accrued to Tenant against Landlord;
- (iii) be bound by any modification of the Lease or by any previous prepayment of rent or additional rent for more than one (1) month which Tenant might have paid to Landlord, unless such modification or prepayment shall have been expressly approved in writing by Lender;
- (iv) be liable for any security deposited under the Lease unless such security has been physically delivered to Lender or Successor-Landlord; and
- (v) be liable or obligated to comply with or fulfill any of the obligations of the Landlord under the Lease or any agreement relating thereto with respect to the construction of, or payment for, improvements on or about the Leased Premises (or any portion thereof), leasehold improvements, tenant work letters and/or similar items.

4. Tenant agrees that without the prior written consent of Lender, it shall not (a) amend, modify, terminate or cancel the Lease or any extensions or renewals thereof, (b) tender a surrender of the Lease, (c) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof, or (d) subordinate or permit the subordination of the Lease to any lien subordinate to the Security Instrument. Any such purported action without such consent shall be void as against the holder of the Security Instrument.

5. (A) Tenant shall promptly notify Lender of any default by Landlord under the Lease and of any act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction.

(B) In the event of a default by Landlord under the Lease which would give Tenant the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease or to claim a partial or

total eviction, or in the event of any other act or omission of Landlord which would give Tenant the right to cancel or terminate the Lease, Tenant shall not exercise such right (i) until Tenant has given written notice of such default, act or omission to Lender and (ii) unless Lender has failed, within sixty (60) days after Lender receives such notice, to cure or remedy the default, act or omission or, if such default, act or omission shall be one which is not reasonably capable of being remedied by Lender within such sixty (60) day period, until a reasonable period for remedying such default, act or omission shall have elapsed following the giving of such notice and following the time when Lender shall have become entitled under the Security Instrument to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under the Lease or otherwise, after similar notice, to effect such remedy), provided that Lender shall with due diligence give Tenant written notice of its intention to and shall commence and continue to, remedy such default, act or omission. If Lender cannot reasonably remedy a default, act or omission of Landlord until after Lender obtains possession of the Leased Premises, Tenant may not terminate or cancel the Lease or claim a partial or total eviction by reason of such default, act or omission until the expiration of a reasonable period necessary for the remedy after Lender secures possession of the Leased Premises. To the extent Lender incurs any expenses or other costs in curing or remedying such default, act or omission, including, without limitation, attorneys' fees and disbursements, Lender shall be subrogated to Tenant's rights against Landlord.

(C) Notwithstanding the foregoing, Lender shall have no obligation hereunder to remedy such default, act or omission.

6. To the extent that the Lease shall entitle Tenant to notice of the existence of any mortgage and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument and Lender.

7. Upon and after the occurrence of a default under the Security Instrument, which is not cured after any applicable notice and/or cure periods, Lender shall be entitled, but not obligated, to exercise the claims, rights, powers, privileges and remedies of Landlord under the Lease and shall be further entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by Tenant under the Lease as though Lender were named therein as Landlord.

8. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor-Landlord shall acquire title to the Property or the portion thereof containing the Leased Premises, Successor-Landlord shall have no obligation, nor incur any liability, beyond Successor-Landlord's then interest, if any, in the Property, and Tenant shall look exclusively to such interest, if any, of Successor-Landlord in the Property for the payment and discharge of any obligations imposed upon Successor-Landlord hereunder or under the Lease, and Successor-Landlord is hereby released or relieved of any other liability hereunder and under the Lease. Tenant agrees that, with respect to any money judgment which may be obtained or secured by Tenant against Successor-Landlord, Tenant shall look solely to the estate or interest owned by Successor-Landlord in the Property, and Tenant will not collect or attempt to collect any such judgment out of any other assets of Successor-Landlord.

9. Notwithstanding anything to the contrary in the Lease, Tenant agrees for the benefit of Landlord and Lender that, except as permitted by, and fully in accordance with, applicable law, Tenant shall not generate, store, handle, discharge or maintain in, on or about any portion of the Property, any asbestos, polychlorinated biphenyls, or any other hazardous or toxic materials, wastes and substances which are defined, determined or identified as such (including, but not limited to, pesticides and petroleum products if they are defined, determined or identified as such) in any federal, state or local laws, rules or regulations (whether now existing or hereafter enacted or promulgated) or any judicial or administrative interpretation of any thereof, including any judicial or administrative orders or judgments.

10. If the Lease provides that Tenant is entitled to expansion space, Successor-Landlord shall have no obligation nor any liability for failure to provide such expansion space if a prior landlord (including, without limitation, Landlord), by reason of a lease or leases entered into by such prior landlord with other tenants of the Property, has precluded the availability of such expansion space.

11. Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Security Instrument or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Tenant under the Lease or otherwise.

12. (A) Tenant agrees that this Agreement satisfies and complies in all respects with the provisions of Article X of the Lease and that, to the extent inconsistent with the Lease, this Agreement supersedes the provisions of such Article and any other provision of the Lease relating to the priority or subordination of the Lease and the interests or estates created thereby to the Security Instrument.

(B) Tenant agrees to enter into a subordination, non-disturbance and attornment agreement with any lender which shall succeed Lender as lender with respect to the Property, or any portion thereof, if such agreement is substantially similar to this Agreement. Tenant does herewith irrevocably appoint and constitute Lender as its true and lawful attorney-in-fact in its name, place and stead to execute such subordination, non-disturbance and attornment agreement, without any obligation on the part of Lender to do so. This power, being coupled with an interest, shall be irrevocable as long as the indebtedness secured by the Security Instrument remains unpaid. Lender agrees not to exercise its rights under the preceding two (2) sentences if Tenant promptly enters into the subordination, non-disturbance and attornment agreement as required pursuant to the first sentence of this subparagraph (B).

13. (A) Any notice required or permitted to be given by Tenant to Landlord shall be simultaneously given also to Lender, and any right of Tenant dependent upon notice shall take effect only after notice is so given. Performance by Lender shall satisfy any conditions of the Lease requiring performance by Landlord, and Lender shall have a reasonable time to complete such performance as provided in Paragraph 5 hereof.

(B) All notices or other communications required or permitted to be given to Tenant or to Lender pursuant to the provisions of this Agreement shall be in writing and shall be deemed given only if mailed by United States registered mail, postage prepaid, or if sent by nationally recognized overnight delivery service (such as Federal Express or United States Postal Service Express Mail), addressed as follows: to Tenant, at the address first set forth above, Attention: Fredrick & Cheryl Smith; to Lender, at the address first set forth above, Attention: Real Estate Finance; or to such other address or number as such party may hereafter designate by notice delivered in accordance herewith. Except as otherwise provided in this Agreement, all such notices shall be deemed given three (3) business days after delivery to the United States Post office registry clerk if given by registered mail, or on the next business day after delivery to an overnight delivery courier.


14. This Agreement may be modified only by an agreement in writing signed by the parties hereto, or their respective successors-in-interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns. The term "Lender" shall mean the then holder of the Security Instrument. The term "Landlord" shall mean the then holder of the landlord's interest in the Lease. The term "person" shall mean an individual, joint venture, corporation, partnership, trust, limited liability company, unincorporated association or other entity. All references herein to the Lease shall mean the Lease as modified by this Agreement and to any amendments or modifications to the Lease which are consented to in writing by Lender. Any inconsistency between the Lease and the provisions of this Agreement shall be resolved, to the extent of such inconsistency, in favor of this Agreement.

15. **BOTH TENANT AND LENDER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

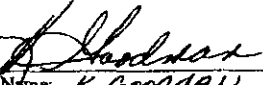
16. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Property is located.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

LENDER *SEE ATTACHED*
~~CIBC INC., a Delaware corporation~~

By: 
 Name: *Todd Roth*
 Title: *As Agent*


TENANT
 Tuesday Morning Inc., a Texas Corporation

By: 
 Name: *K. GOODMAN*
 Title: *VICE PRESIDENT*

AGREED AND CONSENTED TO:

LANDLORD

Indian River Plaza L.L.C., an Arizona limited liability company

By: 
 Name: *Bruce Pignatta*
 Title: *Manager*

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CANADIAN IMPERIAL BANK OF COMMERCE,
New York Agency,

By: 

Name: Brian Jay Neilinger
Title: AS Agent

TUESDAY MORNING INC.,
a Texas corporation

By: _____

Name:
Title:

AGREED AND CONSENTED TO:

INDIAN RIVER PLAZA I.L.C.,
an Arizona limited liability company

By: MBS Partners LLC,
an Arizona limited liability company,
its Sole Member

By: _____

Name: Marko Collins Burns
Title: Manager

By: _____

Name: Bruce Shapiro
Title: Manager

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Landlord

STATE OF Arizona)
COUNTY OF Maricopa) ss

On January 18th, 2001, before me Sandra Trevino Notary Public in and for said State, personally appeared Bruce I. Shapiro, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary Public State of Arizona
Maricopa County
Sandra Trevino
Expires October 21, 2005

Signature

Sandra Trevino

Tenant

STATE OF Texas)
COUNTY OF Dallas) ss

On October 16, 2001, before me, Amy Martin, a Notary Public in and for said State, personally appeared Karen Goodman, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Signature

Amy Martin

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STATE OF NEW YORK)
)SS.
COUNTY OF NEW YORK)

On the 6th day of February, in the year 2002 before me, the undersigned, personally appeared Brian J. Neilinger, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Ahmad S. Khan
NOTARY PUBLIC

My commission expires: 12/15/05

AHMAD S. KHAN
Notary Public, State of New York
No. 01KH8000284
Qualified in New York County
Commission Expires Dec. 15, 05

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EXHIBIT A**Legal Description of Property****PARCEL NO. 1:**

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof; and

EXCEPT the North 55 feet; and

EXCEPT the East 65 feet

EXCEPT that part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 35;

thence North 89 degrees 59 minutes 52 seconds West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

thence South 00 degrees 08 minutes 06 seconds East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 240.06 feet to the Point of Beginning;

thence continuing South 00 degrees 08 minutes 06 seconds East, a distance of 3.88 feet;

thence South 89 degrees 59 minutes 52 seconds East, parallel with said North line, a distance of 152.94 feet to a point on the West right of way line of Hayden Road, said point being 65.00 feet West of said East line;

thence South 00 degrees 08 minutes 06 seconds East, along the West right of way line and parallel with said East line, a distance of 200.10 feet;

thence departing said West right of way line, South 89 degrees 51 minutes 55 seconds West, a distance of 194.22 feet;

thence North 00 degrees 21 minutes 44 seconds East, a distance of 204.39 feet;

thence North 89 degrees 54 minutes 48 seconds East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

PARCEL NO. 2:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 35;

thence West along the North line of said Section 35, 710 feet;

thence South 00 degrees 08 minutes 06 seconds East, 55 feet to the POINT OF BEGINNING;

thence continuing South 00 degrees 08 minutes 06 seconds East, 30 feet;

thence Northwesterly, 39 feet, more or less, to a point on a line lying 55 feet South of, and parallel to, the North line of said Section 35, said point lying 25 feet West of the POINT OF BEGINNING of this description;

thence East, along said line, 25 feet to the POINT OF BEGINNING.

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PARCEL NO. 3:

That part of the Northeast quarter of the Northeast of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

thence North 00 degrees 08 minutes 06 seconds West, along the said West line of the North 710 feet of the East 710 feet, 3.40 feet to the POINT OF BEGINNING;

thence continuing North 00 degrees 08 minutes 06 seconds West, along the said West line, herein before described, 246.60 feet;

thence South 29 degrees 08 minutes 45 seconds West, 267.58 feet;

thence South 84 degrees 22 minutes 21 seconds East, 131.54 feet, more or less, to the POINT OF BEGINNING.

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**FIDELITY NATIONAL TITLE
HOLD FOR PICK-UP**

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HELEN PURCELL
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ELECTRONIC RECORDING

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CAPTION HEADING: Lease Subordination, Non-Disturbance
and Attornment Agreement

DO NOT REMOVE

This is part of the official document.

**LEASE SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENMENT AGREEMENT**

THIS LEASE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT ("Agreement") is made effective as of October 9, 2002 between Tuesday Morning, Inc., a Texas Corporation ("Tenant"); **WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY**, a Nebraska corporation ("**Lender**"), and Indian River Plaza, L.L.C., an Arizona limited liability company ("Borrower").

RECITALS:

A. Lender has agreed to make a loan (the "**Loan**") to Borrower, the repayment of which is to be secured by a mortgage, deed of trust, deed to secure debt, or other security instrument (the "**Security Instrument**") by Borrower to or for the benefit of Lender, pertaining to the real property commonly known as 7919 E. Thomas Rd., #104B, located at or about Thomas Road and Hayden Road, in Scottsdale, Maricopa County, Arizona, and legally described on **EXHIBIT "A"** attached hereto and incorporated herein by this reference (the "**Property**"), which is to be or has been recorded in the official real estate records in the county and State of Arizona.

B. Tenant is the current lessee of all or a certain portion (the "**Leased Premises**") of the Property pursuant to the provisions of that certain Lease Agreement between Indian River Plaza, L.L.C. and Tuesday Morning, Inc., dated October 25, 1999; Amendment to Lease, dated June 20, 2002 (said instrument, as now or hereafter amended or modified is herein referred to as the "**Lease**").

C. Tenant has been informed that the receipt of this Agreement is a condition to the making of the Loan.

AGREEMENTS

1. **SUBORDINATION**. The rights of Tenant under the Lease are subject and subordinate to the rights of Lender under the Security Instrument and to any renewal, modification, consolidation, replacement, increase, or extension of the Security Instrument.

2. **NON-DISTURBANCE**. Neither Lender nor any trustee under the Security Instrument may disturb Tenant's possession of the Leased Premises or otherwise interfere with Tenant's rights under the Lease, unless Tenant is in default under the Lease beyond any cure period in the Lease.

3. **ATTORNMENMENT; LIABILITY OF LENDER**. If the Property is transferred by foreclosure, by similar judicial or non-judicial proceedings, or by sale in lieu of foreclosure (each a "**Foreclosure Event**"), neither Lender nor any trustee under the Security Instrument shall name Tenant in any foreclosure or similar proceeding, unless Lender or the trustee is required to do so under applicable rules of procedure or other law. In any Foreclosure Event, the Property shall be transferred subject to the Lease; upon request by Lender or other transferee, Tenant shall attorn to Lender or such transferee and promptly execute such instruments as may be appropriate to evidence such attornment; and effective as of the date of transfer, the Lease shall bind Lender or such transferee and Tenant to the same extent as though the transferee had been named lessor in the Lease. However, neither Lender nor such transferee shall be:

(a) liable for any act or omission of the transferor before the transfer, except acts or omissions which continue subsequent to the time Lender or such transferee acquires ownership of the Property, and only to the extent of such continuation;

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(b) subject to any claims, offsets or defenses which Tenant had against the transferor (but Tenant is not obligated to pay to the transferee any offsets taken before the Property was transferred), unless Tenant has given Lender notice and opportunity to cure any default pursuant to the provisions of **Section 6**, below;

(c) bound by any rent, additional rent or other charges paid by Tenant more than 30 days in advance of the due date under the Lease;

(d) bound by any Lease amendment after the effective date of this Agreement (or the earlier date of any estoppel certificate given by Tenant to Lender) terminating the Lease prior to expiration or termination as expressly provided in the Lease; changing the term of the Lease other than as expressly provided in the Lease (including existing options, if any); reducing the rent or charges payable by Tenant under the Lease or modify the allocation of the cost of insurance, taxes or other expenses of the operation of the Property; or otherwise materially reducing the benefits of the Lease to the holder of the lessor's interest in the Lease, which is made without Lender's written consent; or

(e) responsible for any security deposit delivered under the Lease and not received by Lender.

The liability of Lender, a trustee under the Security Instrument, or any other transferee in a Foreclosure Event or the liability of a subsequent owner designated as landlord under the Lease shall exist only for so long as Lender or such trustee or other transferee is the owner of the Leased Premises.

4. **INSURANCE PROCEEDS AND CONDEMNATION AWARDS.** If Lender or any trustee under the Security Instrument may collect the proceeds of Borrower's property insurance or the award in eminent domain proceedings under the Security Instrument, unless Tenant is in default under the Lease, beyond any cure period in the Lease, Lender and the trustee shall allow Borrower and Tenant to use those proceeds or that award to reconstruct the Property or for payment to Tenant, as may be required in the Lease. Lender may require that Borrower and Tenant comply with reasonable disbursement procedures reasonable under the circumstances to ensure that the proceeds are applied to complete the reconstruction of the Property or paid to Tenant, as required under the Lease.

5. **RENT DIRECTIVE.** Borrower has assigned to Lender the right to receive the rents payable under the Lease. If Lender gives notice to Tenant that Lender has elected to have Tenant pay Lender directly the rental and other charges payable by Tenant under the Lease, Tenant shall, until Lender gives tenant notice that it cancels this election, pay the rent and other charges under the Lease to Lender or at Lender's direction. Borrower hereby irrevocably directs and authorizes Tenant to comply with any direction so received by Tenant from Lender. Borrower, by its execution of this Agreement, agrees to hold Tenant harmless for the application of any payments so made.

6. **NOTICE AND OPPORTUNITY TO CURE BORROWER DEFAULTS.** So long as the Obligations secured under the Security Instrument have not been satisfied, Tenant shall notify Lender of any default by Borrower of those obligations under the Lease which are of a nature as to give Tenant a right to terminate the Lease, reduce rent or other charges, or to credit or offset any amounts against future rents or other charges. Lender shall thereafter have the right, but not the obligation, to effect the cure of such default within the later of the expiration of Borrower's cure period, if any, under the Lease; or thirty (30) days after the giving of notice by Tenant to Lender; provided, that if such default cannot reasonably be cured by Lender within this thirty (30) day period, the period for cure by Lender shall be extended so long as Lender has expeditiously commenced to cure and is pursuing with due diligence to cure said defaults.

7. **TRADE FIXTURES.** The lien of the Security Instrument shall not encumber Tenant's trade fixtures, furniture or equipment at any time placed or installed in the Leased Premises.

8. **DEEMED CONSENT BY LENDER.** Lender shall be deemed to have given its consent to any amendment of the Lease to which Lender would not otherwise be bound, if Lender fails to respond, either by reasonably requesting additional information or by disapproving the request, within thirty (30) days after Lender's receipt of such request from Borrower, provided such request shall make specific reference to the provisions of this Section and shall expressly state, in solid capital letters on the first page thereof: "YOU ARE HEREBY REMINDED THAT YOUR FAILURE TO PROVIDE NOTIFICATION OF APPROVAL OR DISAPPROVAL OR REASONABLY REQUEST ADDITIONAL INFORMATION NOT LATER THAN THIRTY (30) DAYS AFTER YOUR RECEIPT OF THIS REQUEST SHALL BE DEEMED, PURSUANT TO SECTION 8 OF THE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT, TO CONSTITUTE YOUR APPROVAL THEREOF."

9. **NOTICES.** All notices under this Agreement shall be properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient, (ii) one (1) Business Day after deposit for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after deposit in any U.S. Postal Service mail depository and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant, Lender, or Borrower, as the case may be, at the addresses below or addressed as such party may from time to time designate by written notice to the other parties.

To Tenant:

Tuesday Morning, Inc., a Texas corporation
14621 Inwood Rd.
Addison, TX 75001

To Lender:

WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY
 AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY
 Woodmen Tower
 1700 Farnam Street
 Omaha, NE 68102
 Attn: Investment Division

Either party by written notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Subsection, "**Business Day**" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located.

10. **AUTHORITY.** The persons executing this Agreement on behalf of Tenant, Lender and Borrower each represent that he or she is authorized to execute such instruments on behalf of Tenant, Lender and Borrower, respectively.

11. **ATTORNEYS FEES.** If any action is commenced to enforce any provision of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, including reasonable attorney's fees and expenses. *(not to exceed \$20,000.00 per section 12.5 of the lease)*

12. **MISCELLANEOUS.** This Agreement contains the entire agreement between the parties concerning the matters addressed herein. The parties may amend this Agreement only in writing. This

Agreement benefits and binds the successors and assigns of each party and shall run with the land. This Agreement shall be governed in accordance with the laws of the state in which the Property is located and applicable laws of the United States of America. This Agreement may be executed in counterparts, and each counterpart shall be effective as an original when a counterpart has been signed by all parties.

[NO FURTHER TEXT ON THIS PAGE]

TENANT SNDA
DOCS/508708.1

WITNESS WHEREOF, this Agreement has been executed by the parties effective as of the day and year first above written.

TENANT

Tuesday Morning Inc., a Texas corporation

By: [Signature]

Name: K. GOODMAN

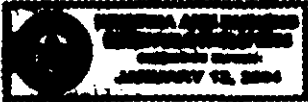
Title: VICE PRESIDENT

[NOTE: THE FOLLOWING FORM OF ACKNOWLEDGEMENT IS FOR ILLUSTRATION PURPOSES ONLY. BORROWER MUST ENSURE THAT THE ACKNOWLEDGEMENT OF THE TENANT IS IN PROPER FORM FOR RECORDING IN THE STATE WHERE THE LEASED PREMISES IS LOCATED]

STATE OF TEXAS
COUNTY OF Dallas ss.

The foregoing instrument was acknowledged before me this 16 day of October, 2002, by Karen Goodman as Vice President of Tuesday Morning Inc. Texas Corporation on behalf of the Tuesday Morning Corporation

Witness my hand and official seal.



Christine Ann Rudring
Notary Public

My commission expires: 1/12/04

[NO FURTHER TEXT ON THIS PAGE]

LENDER:

**WOODMEN OF THE WORLD LIFE
INSURANCE SOCIETY AND/OR OMAHA
WOODMEN LIFE INSURANCE SOCIETY, a
Nebraska corporation**

By: James L. MounceName: James L. MounceTitle: PresidentBy: Danny E. CumminsName: Danny E. CumminsTitle: Secretary

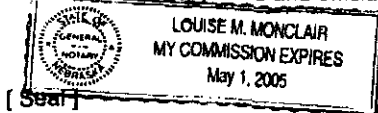
STATE OF NEBRASKA)

) ss.

COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 23rd day of January, 2003, by James L. Mounce and Danny E. Cummins as the President and Secretary, respectively, of WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY, a Nebraska corporation, on behalf of the corporation.

Witness my hand and official seal.



Louise M. Monclair
Notary Public

My commission expires: 5-01-05

[NO FURTHER TEXT ON THIS PAGE]

BORROWER:

Indian River Plaza, L.L.C., an Arizona limited
liability company

By: [Signature]
 Name: Beverly Sharp
 Title: Manager

[NOTE: THE FOLLOWING FORM OF ACKNOWLEDGEMENT IS FOR ILLUSTRATION PURPOSES ONLY. BORROWER MUST ENSURE THAT THE ACKNOWLEDGEMENT OF THE BORROWER IS IN PROPER FORM FOR RECORDING IN THE STATE WHERE THE LEASED PREMISES IS LOCATED]

STATE OF Arizona
 COUNTY OF Maricopa) ss.

The foregoing instrument was acknowledged before me this 18th day of October, 2002, by Beverly Sharp as Manager of Indian River Plaza a limited liability company on behalf of the Company.

Witness my hand and official seal.



Notary Public State of Arizona
 Maricopa County
 Sandra Trevino
 Expires October 21 2005

Sandra Melton / Sandra Trevino
 Notary Public

My commission expires: October 21, 2005

[NO FURTHER TEXT ON THIS PAGE]

EXHIBIT "A"

(DESCRIPTION OF LAND)

EXHIBIT "A"

DOCS/508708.1

EXHIBIT A

Legal Description of Shopping Center

INDIAN RIVER SHOPPING CENTER
Scottsdale, ArizonaPARCEL NO. 1:

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona:

EXCEPT the North 207.94 feet of the East 217.94 feet, thereof.

PARCEL NO. 2:

THAT PART of the Northeast quarter of the Northeast quarter, Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona: thence West along the North line of said Section 35, a distance of 710 feet; thence South 0 degrees 08 minutes 06 seconds East, a distance of 55 feet to the True Point of Beginning; thence continuing South 0 degrees 08 minutes 06 seconds East, a distance of 30 feet; thence Northwesterly, a distance of 39 feet, more or less, to a point on a line lying 55 feet South of and Parallel to the North line of Section 35, said point lying 25 feet West of the True Point of Beginning of this description; thence East along said line, a distance of 25 feet to the True Point of Beginning.

PARCEL NO. 3:

THAT PART of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35 and running thence North 0 degrees 08 minutes 06 seconds West along the said West line of the North 710 feet of the East 710 feet 3.40 feet to the True Point of Beginning: thence continuing North 0 degrees 08 minutes 06 seconds West along the said West line, hereinbefore described, 246.60 feet to a point, thence South 29 degrees 08 minutes 45 seconds West 267.58 feet; thence South 84 degrees 22 minutes 21 seconds East 131.54 feet, more or less to the True Point of Beginning.

**Recording Requested by and
When Recorded Mail To:**

Greg R. Nielsen, Esq.
Snell & Wilmer L.L.P.
15 West South Temple, Suite 1200
Salt Lake City, UT 84101



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2001-0250210 03/29/2001 04:52

RAQUEL 1 OF 4

Mail Tax Notice To:

Albertson's, Inc.
Attn: Property Management
Debbie Wallace
1955 West North Avenue
Building F
Melrose Park, Illinois 60160-1181

Lot 1 200-000-1255004
TA

MEMORANDUM OF LEASE

This MEMORANDUM OF LEASE is entered into as of the 4 day of May, 2000, between INDIAN RIVER PLAZA, LLC, an Arizona limited liability company ("Landlord"), and OSCO DRUG OF TEXAS, INC., a Delaware corporation ("Tenant"), collectively, the "Parties" and individually, a "Party"

1. **Premises.** For sufficient consideration received, Landlord leases to Tenant and Tenant leases from Landlord, on the terms and conditions set forth in the Lease, of even date herewith, between Landlord and Tenant (the "Lease"), the land at the southwest corner of Thomas and Hayden Roads, located in Scottsdale, Maricopa County, Arizona, which land is outlined and marked "Osco Drug Store Parcel" on the site plan attached as **Exhibit A** (as amended from time to time with the approval of Landlord and Tenant, the "Site Plan"), together with all easements, rights-of-way, rights, privileges, benefits and appurtenances now or hereafter belonging thereto or commonly enjoyed therewith (the "Premises"). The Premises are part of a larger parcel of land (the "Shopping Center"). The legal description of the Shopping Center is attached as **Exhibit B** and the legal description of the Premises is attached as **Exhibit C**. Tenant intends to construct a building of approximately 15,251 square feet with drive-through lanes on the Premises, together with related appurtenances (collectively, the "Building").

2. **Restrictions.** By virtue of the Lease, Tenant, its subtenants, invitees, customers and employees and parties holding possessory rights in the Premises shall have, and are hereby granted, the use in common with Landlord and other tenants of Landlord and their respective invitees, customers, employees and parties holding possessory rights in the Shopping Center, of the portions of the Shopping Center required by the terms of the Lease to be devoted to the purposes of driving and parking motor vehicles, loading and unloading of motor vehicles and vehicular and pedestrian ingress and egress to and from and within the Shopping Center (all of which are referred to as the "Common Areas"). Additional rights are granted by the Lease to such parties in connection with the construction and maintenance of utility facilities necessary to the Shopping Center. All buildings constructed in the Shopping Center shall be located wholly within the areas shown as "Building Areas" on the Site Plan. Additional use and development restrictions and maintenance, development and performance obligations with regard to the Premises and the Shopping Center are specified in the Lease. In addition to other restrictions and obligations set forth in the Lease, the Lease provides that the types of uses permitted in the Shopping

April 10, 2000
Nielsen@SLC\125915.1

Osco Drug Store #9328
SWC Thomas and Hayden Roads
Scottsdale, Arizona

Center shall be of a retail and/or commercial nature found in shopping centers of a similar size and quality in the metropolitan marketing area in which the Shopping Center is located.

3. Additional Restrictions. Notice is given of the following covenants contained in Article 21 of the Lease:

21.1 Restrictions on Uses Outside of the Premises.

(a) The types of uses permitted in the Shopping Center shall be of a retail and/or commercial nature found in first class shopping centers of a similar size in the metropolitan marketing area in which the Shopping Center is located. No premises (nor any part thereof) in the Shopping Center other than the Premises, shall be (a) used or occupied as a retail drug store; nor (b) except as provided in Section 21.1(b), for the sale of any of the following: (i) liquor or other alcoholic beverages in package form, including, but not limited to, beer, wine and ale; (ii) any combination of food items sufficient to be commonly known as a convenience food store or department; (iii) greeting cards; (iv) photo processing (including "one-hour" photo processing); (v) health aids, beauty aids, and related products, including vitamins; or (vi) items requiring dispensation by or through a pharmacy or requiring dispensation by or through a registered or licensed pharmacist. Except as provided in Section 21.1(b), the uses described above shall be permitted exclusively on the Premises. No premises (nor any part thereof) in the Shopping Center other than the Premises, shall be given the exclusive right to conduct financial services, (including, but not limited to, installation of automatic teller machines) such that Tenant is precluded from conducting financial services on the Premises.

(b) Attached to this Lease as **Schedule I** is a list of existing permitted uses in the Shopping Center (the "Existing Permitted Uses") pursuant to currently existing leases (the "Existing Leases"). Landlord warrants to Tenant that the Existing Leases are the only leases for space in the Shopping Center in effect as of the date of this Lease and that the Existing Permitted Uses are the only uses that are currently permitted in the Shopping Center. Any other provision of this Lease to the contrary notwithstanding, nothing in this Section 21.1 shall prohibit the use of space in the Shopping Center for any of the Existing Permitted Uses so long as such Existing Permitted Uses are pursuant to the Existing Leases, as such leases may be extended, renewed or assigned in the future. In addition, the sale of the items listed in Section 21.1(a)(i) through 21.1(a)(v), inclusive, shall be permitted in a supermarket occupying no more than 30,000 square feet of gross leaseable area in the Shopping Center; *provided, however*, that the gross leaseable floor area for the sale of the items listed in Sections 21.1(a)(i), 21.1(a)(iii), 21.1(a)(iv), and 21.1(a)(v) shall not exceed 1500 square feet of gross leaseable area.

21.2 Further Restrictions. In addition, none of the following uses shall be conducted in the Shopping Center: (a) funeral homes; (b) any production, manufacturing, industrial, or storage use of any kind or nature, except for storage and/or production of products incidental to the retail sale thereof from the Shopping Center; (c) entertainment or recreational facilities ("entertainment or recreational facilities" includes, but are not limited to, a bowling alley, skating rink, electronic or mechanical games arcade [except as an incidental use to a retail or commercial business, in which case such use shall be restricted to less than 5% of the floor area occupied by such business], theater, billiard room or pool hall, health spa or studio or fitness center, massage parlor, discotheque, dance hall, banquet hall, night club, bar or tavern, "head shop", pornographic or "adult" store, racquetball court or gymnasium, or other place of public

amusement; (d) training or educational facilities ("training or educational facilities" includes, but are not limited to, a beauty school, child care facility, barber college, library, reading room, church, school, place of instruction, or any other operation catering primarily to students or trainees rather than to customers); (e) restaurants; except that fast-food restaurants shall be permitted; (f) car washes or gasoline or service stations; (g) the displaying, repairing, renting, leasing or sale of any motor vehicle, boat or trailer; (h) dry cleaner with on-premises cleaning; (i) any use which creates a nuisance or materially increases noise or the emission of dust, odor, smoke, gases, or materially increases fire, explosion or radioactive hazards in the Shopping Center; (j) any business with drive-up or drive-through lanes other than in connection with the uses of the Building under this Lease and other than in connection with permitted fast-food restaurants; (k) second-hand or thrift stores, or flea markets; and (l) any use involving Hazardous Material, except as may be customary in first class neighborhood shopping centers in the metropolitan area where the Shopping Center is located. It is the Parties' intent that the parking and other common facilities shall not be burdened by either large scale or protracted use by persons other than customers of occupants of the Shopping Center. Notwithstanding anything to the contrary contained in this Lease, Tenant shall have the right to store, use, sell and/or provide any item or service on or from the Premises, and engage in any activity on the Premises, which Tenant or any affiliate of Tenant customarily stores, uses, sells, provides or engages in at any of their other locations.

21.3 Building Restrictions. No building constructed in the Shopping Center shall consist of more than one (1) story plus Mezzanine. "Mezzanine" means any floor area above the ground floor that does not extend over the entire ground floor and which is used in connection with the primary commercial use of the building but is not used as a sales area or generally open to the public. No Mezzanine or basement of any building in the Shopping Center shall be used as an area for sales or display or open to the public generally. No building or other structure constructed or located in the Shopping Center (except the Building) shall exceed the height of the highest structure in existence in the Shopping Center as of the date of this Lease; *provided, however*, that any structure constructed on the restaurant pad site designated as such on the Site Plan shall not exceed 18 feet in height. The height of any building in the Shopping Center shall be measured perpendicular from the finish floor to the top of the roof structure of such building, including any screening, parapet, penthouse, mechanical equipment or similar appurtenance located on the roof of such building.

21.4 Certain Exclusives to Existing Tenants.

(a) An's Chinese Buffet. So long as the Existing Lease with An's Chinese Buffet is in effect (including any extension, renewal or assignment thereof), the Premises shall not be used for a Chinese buffet restaurant.

(b) Office Depot. So long as the Existing Lease with Office Depot is in effect (including any extension, renewal or assignment thereof), (i) no more than 1,000 square feet of floor in the Premises shall be used for the sale, leasing, distribution or display of office supplies, including office furniture, office fixtures, office machines and equipment/electronics, computers (P.C.), computer hardware, software and accessories, cellular telephones and telecommunications equipment and devices, art supplies, architectural supplies, engineering supplies, photocopying services, facsimile services, or instant print shop services; nor (ii) shall the Premises be used primarily for the sale, leasing, distribution or display of any of the items set forth in clause (i).

(c) Little Ceasars Pizza. So long as the Existing Lease with Little Ceasars Pizza is in effect (including any extension, renewal or assignment thereof), the Premises shall not be used for the sale of pizza as the primary source of business.

(d) Fast Signs. So long as the Existing Lease with Fast Signs is in effect (including any extension, renewal or assignment thereof), the Premises shall not be used the making or selling of signs as the primary source of revenue.

4. Nature of Restrictions. The restrictions set forth in this Memorandum of Lease shall be deemed to be restrictions and covenants, and shall be a servitude upon the entire Shopping Center, shall run with the land and shall be binding upon any person acquiring any interest in any part of the Shopping Center.

5. Term.

(a) The "First Preliminary Term" of the Lease shall commence on the date hereof and shall expire at midnight on the later to occur of (i) the 45th day following the date hereof and (ii) 5 days following receipt by Tenant of the Entitlements Completion Notice (defined in the Lease).

(b) Provided the Lease has not been terminated during the First Preliminary Term, the "Second Preliminary Term" of the Lease shall commence upon expiration of the First Preliminary Term and shall expire at midnight on the date that the Permitting Conditions (as defined in the Lease) have been satisfied.

(c) Provided the Lease has not been terminated during the Second Preliminary Term, the "Third Preliminary Term" of the Lease shall commence upon expiration of the Second Preliminary Term and shall expire at midnight on the date that the Pre-Building Condition (as defined in the Lease) has been satisfied.

(d) Provided the Lease has not been terminated during the Third Preliminary Term, the "Construction Term" of the Lease shall commence upon the expiration of the Second Preliminary Term and shall expire on the earlier of (i) 270 days thereafter; (ii) 45 days following the date the Completion Requirements (as defined in the Lease) are satisfied; and (iii) the date that Tenant opens for business to the public on the Premises..

(e) The "Original Term" of the Lease shall commence upon the expiration of the Construction Term. The Original Term shall expire at midnight on the day immediately prior to the 20th anniversary of the commencement date of the Original Term; *provided, however*, that if the commencement date is other than the first day of a calendar month, then the Original Term shall expire at midnight on the day immediately prior to the 20th anniversary of the first day of the first full calendar month following the month in which the Original Term commences.

6. Option to Extend. Tenant, at its option, may extend the Original Term of the Lease for eight (8) consecutive periods of five (5) years each.

7. Inquiries. Inquiries concerning the precise terms of the Lease may be made:

20010250210

To Landlord:

INDIAN RIVER PLAZA L.L.C.
c/o Arizona Partners Retail Investment Group
3200 North Central Avenue, Suite 2450
Phoenix, Arizona 85012
Fax No.: (602) 266-6116

To Tenant:

ALBERTSON'S, INC.
250 Park Center Boulevard,
Box 20
Boise, Idaho 83726
Attention: Legal Department
Osco #9328
Fax No.: (208) 395-6575

8. Successors. The rights and obligations created in the Lease shall bind and inure to the benefit of the respective heirs, personal representatives, successors, grantees and assigns of Landlord and Tenant and the respective restrictions, covenants and obligations pertaining to the Premises and the Shopping Center shall run with the land.

9. Incorporation and Conflicts. All of the terms and conditions of the Lease are incorporated herein by reference as though set forth fully herein. In the event of any conflict between the terms hereof and of the Lease, the Lease shall prevail.

IN WITNESS WHEREOF, this Memorandum of Lease is executed as of the date first above written.

LANDLORD:

INDIAN RIVER PLAZA, L.L.C.,
an Arizona limited liability company

By _____
Its _____

**Indian River
Plaza L.L.C.**

TENANT:

OSCO DRUG OF TEXAS, INC.,
a Delaware corporation

Approved as to form
Snell & Wilmer

By Michael

By Thomas L. Saldin
Its Vice President

Osco Drug Store #9328
SWC Thomas and Hayden Roads
Scottsdale, Arizona

April 10, 2000
NielsenSLC125915.1

20010250210

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

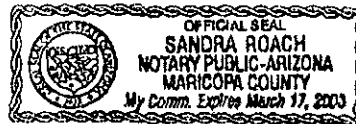
The foregoing instrument was acknowledged before me this 27th day of April, 2000
by Mark Burns, the Managing Member of INDIAN RIVER PLAZA, L.L.C., an
Arizona limited liability company, on behalf of the company.

My Commission Expires:

3-17-03

Sandra Roach
NOTARY PUBLIC

Residing at Phoenix AZ



April 10, 2000
NictsegiSLC\125915.1

Osco Drug Store #9328
SWC Thomas and Hayden Roads
Scottsdale, Arizona

20010250210

STATE OF IDAHO)

) ss.

County of Ada)

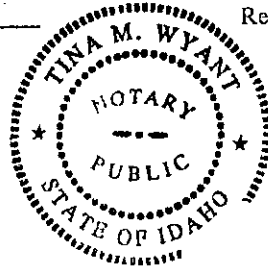
On May 4, 2000 before me _____, personally appeared
Thomas R. Baldwin, the Vice, of OSCO DRUG OF TEXAS, INC.,
A Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence)
to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted,
executed the instrument.

My Commission Expires:

04/02/03

Tina M. Wyant
NOTARY PUBLIC

Residing at: Boise, Idaho



20010250210

EXHIBIT A

Site Plan

Please refer to the Site Plan prepared the L.E.A.D.S., dated April 20, 2000, for Osco Drug Store #9328, drawing file 99106-dr, on file with Mr. Jeff Hardman, Albertson's, Inc., 15100 North 90th Street, Scottsdale, Arizona.

April 10, 2000
Nielsen-St.C:125915.1

Exhibit A -- Page 1

Osco Drug Store #9328
SWC Thomas and Hayden Roads
Scottsdale, Arizona

EXHIBIT B
Legal Description of the Shopping Center

PARCEL NO. 1:

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof.

PARCEL NO. 2:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

thence West along the North line of said Section 35, a distance of 710 feet;

thence South 0 degrees 08 minutes 06 seconds East, a distance of 55 feet to the TRUE POINT OF BEGINNING;

thence continuing South 0 degrees 08 minutes 06 seconds East, a distance of 30 feet;

thence Northwesterly, a distance of 39 feet, more or less, to a point on a line lying 55 feet South of and parallel to the North line of Section 35, said point lying 25 feet West of the TRUE POINT OF BEGINNING of this description;

thence East along said line, a distance of 25 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 3:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

thence North 0 degrees 08 minutes 06 seconds West along the said West line of the North 710 feet of the East 710 feet, 3.40 feet to the TRUE POINT OF BEGINNING;

20010250210

thence continuing North 0 degrees 08 minutes 06 seconds West along the said West line, herein before described, 246.60 feet to a point;

thence South 29 degrees 08 minutes 45 seconds West 267.58 feet;

thence South 84 degrees 22 minutes 21 seconds East 131.54 feet, more or less, to the TRUE POINT OF BEGINNING.

April 10, 2008
NielsenSLC125915.1

Exhibit B - Page 2 of 2

Oscor Drug Store #9328
SWC Thomas and Hayden Roads
Scottsdale, Arizona

20010250210

EXHIBIT C

Legal Description of the Premises

The Premises is shown on the Site Plan prepared the L.E.A.D.S., dated April 20, 2000, for Osco Drug Store #9328, drawing file 99106-dr, on file with Mr. Jeff Hardman, Albertson's, Inc., 15100 North 90th Street, Scottsdale, Arizona. Once construction has been completed and the exact legal description of the Premises has been determined, the Parties will execute an amendment to this Memorandum of Lease to add the legal description to this Exhibit C.

April 10, 2000
Nielsen\SLC\259251

Exhibit C - Page 1

Osco Drug Store #9328
SWC Thomas and Hayden Roads
Scottsdale, Arizona

WHEN RECORDED MAIL TO:
Albertson's, Inc.
Attn: Legal Department Real Estate
P. O. Box 20
Boise, Idaho 83726

BB3726-10-1-1--
hoyp

**FIDELITY NATIONAL TITLE
HOLD FOR PICK-UP**

1/1 75003210

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT

Store #9328 Thomas & Hayden
7901 E. Thomas Road
Scottsdale, Arizona

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT ("Agreement") is made as of _____, 2002, by and among OSCO DRUG OF TEXAS, INC., a Delaware corporation ("Tenant"), INDIAN RIVER PLAZA LLC., an Arizona limited liability company ("Landlord"), and ~~WOODMEN LIFE INSURANCE~~,* a Nebraska corporation ("Lender"), collectively, the "Parties" and individually, a "Party".

*WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY

RECITALS

A. Lender has agreed to make a loan ("Loan") to Landlord, repayment of which is to be secured by that certain Deed of Trust entered into by Landlord, as Trustor, and Lender, as Beneficiary (together with all supplements, amendments, modifications, renewals and extensions thereof, collectively referred to herein as the "Deed of Trust") which pertains to that certain real property located in the City of Scottsdale, County of Maricopa, State of Arizona, as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference ("Encumbered Property") and certain other written agreements and documents between Landlord and Lender relating to the Loan (the Deed of Trust, together with all supplements, amendments, modifications, renewals and extensions to the Deed of Trust and such other agreements and documents, being collectively referred to herein as the "Loan Documents").

B. Tenant is the current lessee of all or a portion of the Encumbered Property (such portion being referred to as the "Premises") under a Lease Agreement entered into with Landlord dated May 4, 2000 (as amended from time to time collectively, the "Lease").

C. As a condition precedent to Lender's making the Loan to Landlord, Lender has required that Tenant execute this Agreement and in return for Tenant's execution of this Agreement, Lender is willing to agree to not disturb Tenant's quiet possession of the Premises as long as Tenant is not in default under the Lease.

D. Lender is making the Loan in reliance upon the agreements herein made by Tenant and Tenant is entering into this Agreement in reliance upon the agreements and certifications herein made by Lender.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, Landlord, and Tenant agree as follows:

1. **SUBORDINATION.** All rights of Tenant under the Lease are hereby subjected and subordinated and shall remain subject, subordinate, and junior to the lien of the Deed of Trust, and to the rights and interest of the from time-to-time holder of the Deed of Trust. In addition, Tenant shall not be bound by any of the terms, conditions, or covenants of the Deed of Trust, Loan Documents (other than this Agreement), or any other document executed by Landlord in connection with the Loan. Lender acknowledges that the subordination of the Lease is solely for the purposes set forth in this Agreement, including, but not limited to, establishing the priority of the Deed of Trust in the real property records, and that Lender has not supplied Tenant with copies of the Deed of Trust or any of the Loan Documents and does not intend Tenant to be bound by the terms of those documents.

2. **NON-DISTURBANCE AND ATTORNMET.** Provided Tenant is not in material default under the Lease (as defined in the Lease and beyond any period given Tenant to cure the default), then Tenant's right of possession to the Premises and Tenant's other rights pursuant to the Lease or otherwise shall not be affected or disturbed by Lender or any successor or assign in the exercise of any of its rights under the Deed of Trust. Further, Tenant shall not (i) be named as a party defendant in any foreclosure on the lien of the Deed of Trust, except where required as a matter of law, or (ii) in any other way be deprived of its rights under the Lease. In the event Lender or any other person acquires title to the Premises pursuant to the exercise of any remedy provided for in the Deed of Trust or by any conveyance in lieu of foreclosure, the Lease shall not be terminated or affected by the foreclosure, conveyance or other proceeding. Lender also covenants that any sale by it of the Premises as a result of the exercise of any rights and remedies under the Deed of Trust, or otherwise, shall be subject to the Lease and the rights of Tenant under the Lease, and Tenant covenants and agrees to attorn to Lender or any person or entity acquiring the rights and interest of Landlord under the Lease, in any manner whatsoever (Lender and any such other person or entity being referred to in this Agreement as a "Successor"), as its new landlord, and the Lease shall continue in full force and effect as a direct lease between Tenant and Successor, upon all of the terms, covenants, conditions and agreements set forth in the Lease; provided, except as set forth in Paragraph 3 hereof, Tenant shall be under no obligation to pay rent to Successor until Tenant receives a photostatic copy of the recorded deed or other instrument by which such interest passed evidencing that Successor has succeeded to Landlord's interest under the Lease. Successor shall be liable to Tenant, effective as of the date of such acquisition, for the performance of all obligations of Landlord arising under the Lease from and after the date of such acquisition. Provided Successor has received notice pursuant to Paragraph 5 hereof, Successor shall also be liable as landlord for every obligation of Landlord arising or accruing under the Lease prior to the date of such acquisition which has not been performed or satisfied; provided, however, that Successor shall not be: (a) personally liable for the payment of any sum arising under or with respect to the Lease prior to the date Successor acquires Landlord's interest in the premises, which sum it is Landlord's obligation to pay, provided, however, that the foregoing shall not in any event prevent recourse by the Tenant against all or any part of Successor's right, title and interest in and to the Premises or the Shopping Center or any part thereof (including, without limitation, Successor's right, title and interest in and to the rents and other income or revenue receivable from the Premises or the Shopping Center or any part thereof, or the consideration receivable from the sale or other disposition, including a condemnation of all or any part of the Premises or the Shopping Center or from any fire or other casualty affecting all or any of the improvements located on the Premises or the Shopping Center); or (b) obligated to cure any

default of any prior landlord (including Landlord) under the Lease which occurred prior to the date Successor acquires Landlord's interest in the Premises, *provided, however*, that the foregoing shall not be deemed to constitute a waiver of any other rights or remedies of Tenant under the Lease, including without limitation, any right of offset against rent or any right of termination. No foreclosure or conveyance or other act or omission by a Successor, shall, in any event, relieve Landlord of any of the covenants, liabilities, or obligations of Landlord under the Lease. Successor shall not be bound by any payment of rent or additional rent made by Tenant to Landlord more than one month in advance, except if such payment is made pursuant to the terms of the Lease.

3. PAYMENT OF RENT. Upon the occurrence of an event of default under the Deed of Trust, and at any time thereafter during the continuance thereof, Lender may, at its option, send a notice to Tenant, which notice shall: (a) reference the name of the operating company (e.g., Lucky, Sav-on, etc.) of Albertson's, Inc. and store number set forth at the top of this Agreement; (b) indicate that a default or an event of default has occurred and that Lender has revoked Landlord's right or license to collect rent under the Lease; (c) indicate that Lender has elected to exercise its rights under this Section of this Agreement; (d) direct Tenant thereafter to make all payments of rent and to perform all obligations under the Lease to or for the benefit of Lender or as Lender shall direct; and (e) contain the Lender's employer identification number. Within fifteen (15) business days of receipt of any such notice from Lender, Tenant shall comply with the provisions of such notice, to make all payments of rent and to perform all obligations under the Lease to and for the benefit of Lender or as Lender shall direct. Such notice and direction shall remain effective until the first to occur of: (i) the receipt by Tenant of a subsequent notice from Lender to the effect that such event of default has been cured or that Lender has appointed Landlord to act as agent for Lender; (ii) the appointment of a receiver, in which event Tenant shall thereafter make payments of rent and perform all obligations under the Lease as may be directed by such receiver; or (iii) the issuance of a court order directing Tenant to pay rent and perform obligations in a manner not consistent with the notice. Tenant shall be entitled to rely upon any notice from Lender and shall be protected with respect to any payment made pursuant to such notice, irrespective of whether a dispute exists between Landlord and Lender with respect to the existence of an event of default or the rights of Lender under the Loan Documents or this Agreement. If Tenant receives a notice from Lender pursuant to this Paragraph, Tenant shall not be required to investigate or determine the validity or accuracy of such notice or the validity or enforceability of this Agreement. Landlord hereby agrees to indemnify, defend and hold Tenant harmless from and against any and all loss, claims, damage or liability arising from or related to any payment of rent or performance of obligations under the Lease by Tenant made in good faith in reliance on and pursuant to such notice.

4. LENDER AUTHORIZATION. As an express condition of, and as consideration for, Tenant's entering into this Agreement, Lender represents and warrants to Tenant that it has obtained all authorizations necessary to execute and deliver this Agreement and agrees that this Agreement shall be valid, legal and enforceable against Lender.

5. NOTICES OF DEFAULT. Before any termination due to a breach, default or event of default (a "Breach") under the Lease shall be declared by Tenant, or Tenant shall exercise any other remedy as a result of the Breach under the Lease, Tenant shall give notice in writing to Lender of the specific Breach of the Lease. Notice to Lender shall be given at least thirty (30) days (or such longer period as provided in the Lease for Landlord to cure the Breach) before Tenant shall terminate the Lease or Tenant shall exercise any other remedy as a result of the Breach. If Tenant has given notice to Lender pursuant to the preceding sentence,

Lender, in addition to any other remedies provided in the Deed of Trust, shall have the right, but not the obligation, to make such payments and cure such Breach on behalf of Landlord, and in connection therewith, do all work and make all payments deemed necessary or appropriate by Tenant to cure the Breach. Landlord hereby agrees to indemnify, defend, and hold Tenant harmless from and against any and all losses, claims, damages, or liabilities arising from or related to any payment or performance of any obligations under the Lease by Lender. If Lender elects to pursue any of Lender's remedies under the Loan Documents as the result of a default thereunder, Lender shall give notice in writing to Tenant of the specific reason by virtue of which such default or event of default is claimed. Notice of the occurrence of a default or an event of default may be combined with the notice required under Paragraph 3 of this Agreement but is required regardless of whether Lender exercises its option under Paragraph 3. The failure of Lender to give such notice under this Agreement shall not invalidate Lender's foreclosure action, provided that Lender has complied with all applicable statutory procedures, including giving all statutorily required notices to Tenant.

6. **ADDRESSES FOR NOTICES.** All notices and other communications hereunder shall be in writing and shall be given by (a) established express delivery service which maintains delivery records, (b) hand delivery, or (c) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner:

To Lender at:	Woodmen Life Insurance Woodmen Tower <u>1700 Parnam Street</u> <u>Omaha, NE 68102</u>
To Tenant at:	Oscro Drug of Texas, Inc. c/o Albertson's, Inc. P. O. Box 20 Boise, Idaho 83726 Attn: Legal Department Real Estate (#9328)
To Landlord at:	Indian River Plaza, L.L.C. c/o Arizona Partners Retail Investment Group LLC 6621 N. Scottsdale Road Scottsdale, Arizona 85250

Communications may also be given by fax, provided the communication is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery.

7. **INSURANCE PROCEEDS.** Lender agrees that, notwithstanding any provision contained in the Loan Documents, or any other agreement or instrument affecting Lender's interest in the Encumbered Property, if the Premises are damaged or destroyed and the Lease has not been terminated, then insurance proceeds relating to the damage or destruction that are received by, paid to, or made available to Lender, shall be made available and used by Lender without diminution, or offset, to pay the cost of repair or rebuilding of the Premises, to the extent such repair or rebuilding is required under the Lease, without condition other than that Tenant not be in default beyond any applicable cure period under the Lease at the time of such payment, it being the intention of the Parties that all of such proceeds shall be utilized to effect

the repair or rebuilding of the Premises to the extent required under the Lease.

8. **CONDEMNATION.** Lender agrees that, notwithstanding any provision contained in the Loan Documents, or any other agreement or instrument affecting Lender's interest in the Encumbered Property, in the event of a taking or other transfer in lieu of condemnation, then all proceeds relating thereto shall be made available and used by Lender without diminution or offset, to pay the condemnation award due to Tenant under the Lease and the laws of the state in which the Premises are located (including, if applicable, compensation for the cost of removal and decrease in value as a result of such taking of Tenant's fixtures, equipment, and stock-in-trade located in the Premises, the value of the leasehold of which Tenant is deprived for the remainder of the term of the Lease, including options, if any, and the value of any compensable goodwill associated with Tenant's business) and, if the Lease has not been terminated, to repair or rebuild the Premises, to the extent that such repair or rebuilding is required under the Lease.

9. **FIXTURES.** The Loan Documents shall not cover or encumber, and shall not be construed as subjecting in any manner to the lien thereof, any of Tenant's trade fixtures, furniture, furnishings, equipment, or other personal property at any time placed or installed in the Premises.

10. **COSTS AND ATTORNEYS' FEES.** In the event a Party brings or commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the losing Party, to be fixed by the court in the same action. The term "legal proceedings" shall include appeals from a lower court judgment as well as proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters. The "prevailing Party" involved in proceedings in the Federal Bankruptcy Court shall mean the prevailing Party in an adversary proceeding or contested matter, or any other actions taken by the non-bankrupt Party which are reasonably necessary to protect its rights under the terms of this Agreement.

11. **UNENFORCEABILITY.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

12. **AMENDMENT OF LEASE.** Lender and Tenant agree that notice to or consent of Lender shall not be required for any amendment to Lease; *provided, however*, that no such amendment, modification or supplement shall be binding on Lender without Lender's written consent, which consent shall not be unreasonably withheld. No provision contained herein shall be deemed an amendment or modification of any provision contained in the Lease, including, without limiting the generality of the foregoing, any rights thereunder given to Tenant to terminate the Lease.

13. **SUCCESSORS AND ASSIGNS.** All of the rights and obligations of the Parties under this Agreement shall bind, and the benefits shall inure to their respective heirs, legal representatives, successors, and assigns.

14. **LANDLORD'S TITLE.** Landlord warrants and covenants that it has good and marketable fee simple title to the Encumbered Property with full right and authority to grant the interest conveyed by the Deed of Trust. Landlord covenants that there are no monetary encumbrances other than the Deed of Trust, except taxes not yet delinquent, recorded against

Landlord's interest in the Encumbered Property.

15. **NO MODIFICATION OF LOAN DOCUMENTS.** Landlord hereby agrees that this Agreement is not intended to, and shall not, waive, supersede, amend, modify or diminish any of Landlord's obligations to Lender under the Loan Documents; *provided, however*, with respect to Tenant, in the event of any conflict between this Agreement and the Loan Documents, this Agreement will control.

16. **NO OTHER AGREEMENTS.** The terms set forth in this Agreement are intended by the Parties as a final expression of their agreement with respect to such terms and may not be contradicted or supplemented by evidence of any prior agreement or of any contemporaneous oral agreement. This Agreement is intended to be a complete and exclusive statement of the terms of the agreement between the Parties, and the terms of this Agreement *may not be explained or supplemented by evidence of consistent additional terms.* This Agreement may not be amended or modified by any act or conduct of the Parties or by oral agreement, unless reduced to a writing signed by all Parties.

17. **NON-DISTURBANCE AGREEMENT.** This Agreement satisfies any condition or requirement set forth in the Lease relating to the granting of a non-disturbance agreement from Lender.

18. **DELIVERY OF EXECUTED DOCUMENT.** THE SUBMISSION OF THIS DOCUMENT FOR EXAMINATION OR ITS NEGOTIATION OR THE NEGOTIATION OF THE TRANSACTION DESCRIBED HEREIN DOES NOT CONSTITUTE AN OFFER TO SUBORDINATE OR AMEND THE LEASE, AND THE EXECUTION OF THIS DOCUMENT BY LANDLORD AND LENDER DOES NOT CONSTITUTE A BINDING CONTRACT UNTIL SUCH TIME AS THIS DOCUMENT HAS BEEN APPROVED BY THE GOVERNING REAL ESTATE COMMITTEE OF TENANT, EXECUTED BY AUTHORIZED OFFICERS OF TENANT, AND DELIVERED TO LANDLORD.

[signatures on following page]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

TENANT:
OSCO DRUG OF TEXAS, INC.,
a Delaware corporation


By:


Vice President

LEE MUMFORD

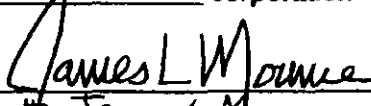
LENDER:
WOODMEN OF THE WORLD LIFE INSURANCE
SOCIETY AND/OR OMAHA WOODMEN LIFE
INSURANCE SOCIETY

By:


Donny F. Cummins
Exec. V. Pres. & Secretary

LENDER:
~~WOODMEN LIFE INSURANCE,~~
a Nebraska corporation

By:


James L. Mounce
President

LANDLORD:
INDIAN RIVER PLAZA, L.L.C.,
an Arizona limited liability company

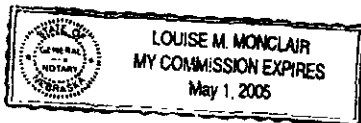
By:


IS MANAGER OF MBS PARTNERS
LLC, ITS MANAGING MEMBER

STATE OF NEBRASKA)
 : ss.
 County of DOUGLAS)

On this 15th day of November, 2002, before me, the undersigned Notary Public in and for said State, personally appeared James L. Mounce & Danny E. Cummins known to me to be a Pres. & Secretary of Woodmen Life Insurance, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of such corporation, for the uses and purposes mentioned herein, and on oath stated that he is authorized to execute the said instrument on behalf of such corporation.

WITNESS MY HAND and official seal affixed hereto the day and year in this certificate first above mentioned.



Louise M. Monclair
 Notary Public for NEBRASKA
 Residing at Omaha
 My commission expires 5-1-05

STATE OF Arizona)
 : ss.
 County of Maricopa)

On this 8th day of November, 2002, before me, the undersigned Notary Public in and for said State, personally appeared Bruce Shapiro known to me to be the Managing Member of Indian River Plaza, L.L.C., the limited liability company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of such limited liability company, for the uses and purposes mentioned herein, and on oath stated that he is authorized to execute the said instrument on behalf of such limited liability company.

WITNESS MY HAND and official seal affixed hereto the day and year in this certificate first above mentioned.



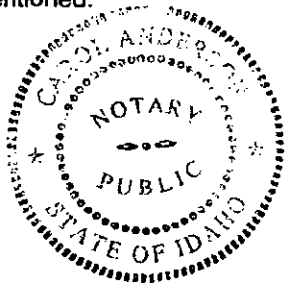
Notary Public State of Arizona
 Maricopa County
 Sandra Trevino
 Expires October 21 2005

Sandra Trevino
 Notary Public for COMPANY
 Residing at 4621 N Scottsdale Rd
 My commission expires October 21, 2005

STATE OF IDAHO)
 : ss.
County of Ada)

On this 12th day of March, 2003, before me, the undersigned Notary Public in and for said State, personally appeared C. Lee Mumford, known to me to be a Vice President of **Oscro Drug of Texas, Inc.**, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of such corporation, for the uses and purposes mentioned herein, and on oath stated that he is authorized to execute the said instrument on behalf of such corporation.

WITNESS MY HAND and official seal affixed hereto the day and year in this certificate first above mentioned.



Carol Anderson
Notary Public for Idaho
Residing at Boise
My commission expires 10/8/2003

EXHIBIT "A"**Legal Description of the Encumbered Property****PARCEL NO. 1:**

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof.

PARCEL NO. 2:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

thence West along the North line of said Section 35, a distance of 710 feet;

thence South 0 degrees 08 minutes 06 seconds East, a distance of 55 feet to the TRUE POINT OF BEGINNING;

thence continuing South 0 degrees 08 minutes 06 seconds East, a distance of 30 feet;

thence Northwesterly, a distance of 39 feet, more or less, to a point on a line lying 55 feet South of and parallel to the North line of Section 35, said point lying 25 feet West of the TRUE POINT OF BEGINNING of this description;

thence East along said line, a distance of 25 feet to the TRUE POINT OF BEGINNING.

PARCEL NO. 3:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

thence North 0 degrees 08 minutes 06 seconds West along the said West line of the North 710 feet of the East 710 feet, 3.40 feet to the TRUE POINT OF BEGINNING;

thence continuing North 0 degrees 08 minutes 06 seconds West along the said West line, herein before described, 246.60 feet to a point;

thence South 29 degrees 08 minutes 45 seconds West 267.58 feet;

thence South 84 degrees 22 minutes 21 seconds East 131.54 feet, more or less, to the TRUE POINT OF BEGINNING.



WHEN RECORDED, RETURN TO:

ONE STOP SHOP RECORDS
City of Scottsdale
7447 E. Indian School Road
Scottsdale, AZ 85281



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

2001-0923037 10/03/2001 05:00 PM
1 OF 3

**CITY OF SCOTTSDALE
LOT SPLIT APPROVAL**

CASE	<u>55 LS 01</u>	DATE	<u>August 26, 2001</u>
QS	<u>14-46</u>	PRESENT ZONING	<u>PNC</u>

It is requested that the CITY OF SCOTTSDALE approve the division of the following legally described property into:

☐ 2 PARCELS

APPLICANT Arizona Partners Investment Group
ADDRESS 3200 North Central Avenue, Suite 2450, Phoenix, Arizona 85012
PHONE NO: (602) 266-6868
SUBJECT PROPERTY LOCATION: SWC Thomas and Hayden Roads
COUNTY ASSESSOR'S NO. OF EXISTING PROPERTY 134-24-002E, 002K, and 002L
LEGAL DESCRIPTION OF EXISTING PROPERTY: SEE ATTACHED PARENT PARCELS
LEGAL DESCRIPTIONS OF NEW PARCELS:
PARCEL #1 SEE ATTACHED LEGAL DESCRIPTION "LOT 1"
PARCEL #2 SEE ATTACHED LEGAL DESCRIPTION "LOT 2"
In order to receive a building permit, I acknowledge the following stipulation(s) will be met:
WATER: Water is available
SEWER: Where public sewer is not located within six hundred-sixty (660) feet of the subject property, a private sewage disposal system may be constructed. Private sewage disposal systems must comply with all laws and regulations of the State of Arizona, Maricopa County, and the City of Scottsdale.
DRAINAGE: At the time of final plan submittal, a Final Drainage Report shall be provided that demonstrates that the off site runoff will enter and exit the site as it did historically.
RIGHT OF WAY: Until such time as full street improvements (pavement, curb, gutter, and sidewalk) are provided, Maintenance of the public right-of-way will be the responsibility of the adjacent property owners.
DRB: Stipulations as stated in case 4 DR 91 #3

20010923037

The applicant understands that approval of a lot split or lot tie by the City of Scottsdale does not constitute the creation of new lots. The approval illustrates the manner in which the lot may be split or tied so as to comply with Scottsdale's City Codes and Ordinances. Creation of the actual official recorded deed(s) is the responsibility of the applicant and usually accomplished through a title company.

DATED this 24th day of September, 2001.

[Signature]
(Signature of Property Owner)

[Signature]
(Signature of Property Owner)

[Signature]
(Signature of Property Owner)

[Signature]
(Signature of Property Owner)

State of Arizona)

) Ss

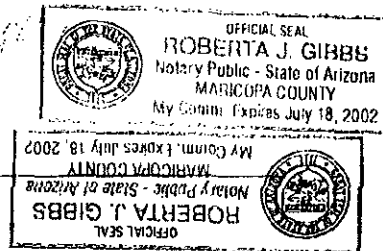
County of Maricopa)

This instrument was acknowledged before me this 24 day of September, 2001,

By: Walter P. [Signature]

In witness whereof I hereunto set my hand and official seal.

[Signature]
NOTARY PUBLIC



My commission expires 7-18-02

FOR DEPARTMENT

USE ONLY

Accepted by

[Signature]
Project Coordinator

[Signature]
Planning Coordination Manager

T:\LOTSPLIT\LSMSTR.DOC 8/28/01

20010923037



BRADY-AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

Tempe, Arizona 85283

Phone (602) 839-4000 Fax (602) 345-9259

PAGE 1 OF 2 PAGES

PROJECT: ARIZONA PARTNERS - PARENT PARCEL DATE: 07-11-01

LEGAL DESCRIPTION: PARCEL NO. 1

The East 710.00 feet of the North 710.00 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof and EXCEPT the North 55 feet and the East 65 feet thereof.

LEGAL DESCRIPTION: PARCEL NO. 2

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

thence West along the North line of said Section 35, a distance of 710.00 feet;

thence South 00° 08' 06" East, a distance of 55.00 feet to the True Point of Beginning;

thence continuing South 00° 08' 06" East, a distance of 30.00 feet;

thence Northwesterly, a distance of 39.00 feet, more or less, to a point on a line lying 55.00 feet South of and parallel to the North line of Section 35, said point lying 25.00 feet West of the True Point of Beginning of this description;

thence East along said line, a distance of 25.00 feet to the True Point of Beginning.

LEGAL DESCRIPTION: PARCEL NO. 3

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Southwest corner of the North 710.00 feet of the East 710.00 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

thence North 00° 08' 06" West, along the said West line of the North 710.00 feet of the East 710.00 feet, 3.40 feet to the True Point of Beginning;

thence continuing North 00° 08' 06" West, along the said West line, hereinbefore described, 246.60 feet to a point;

thence South 29° 08' 45" West, 267.58 feet;

thence South 84° 22' 21" East, 131.54 feet, more or less, to the True Point of Beginning.

Combined properties being in and forming a part of the City of Scottsdale, Arizona and comprising a net area of 415,595 square feet or 9.5407 acres more or less.

20010923037



BRADY-AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

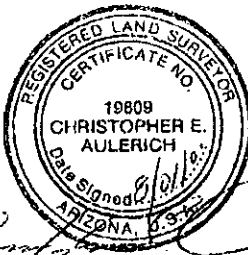
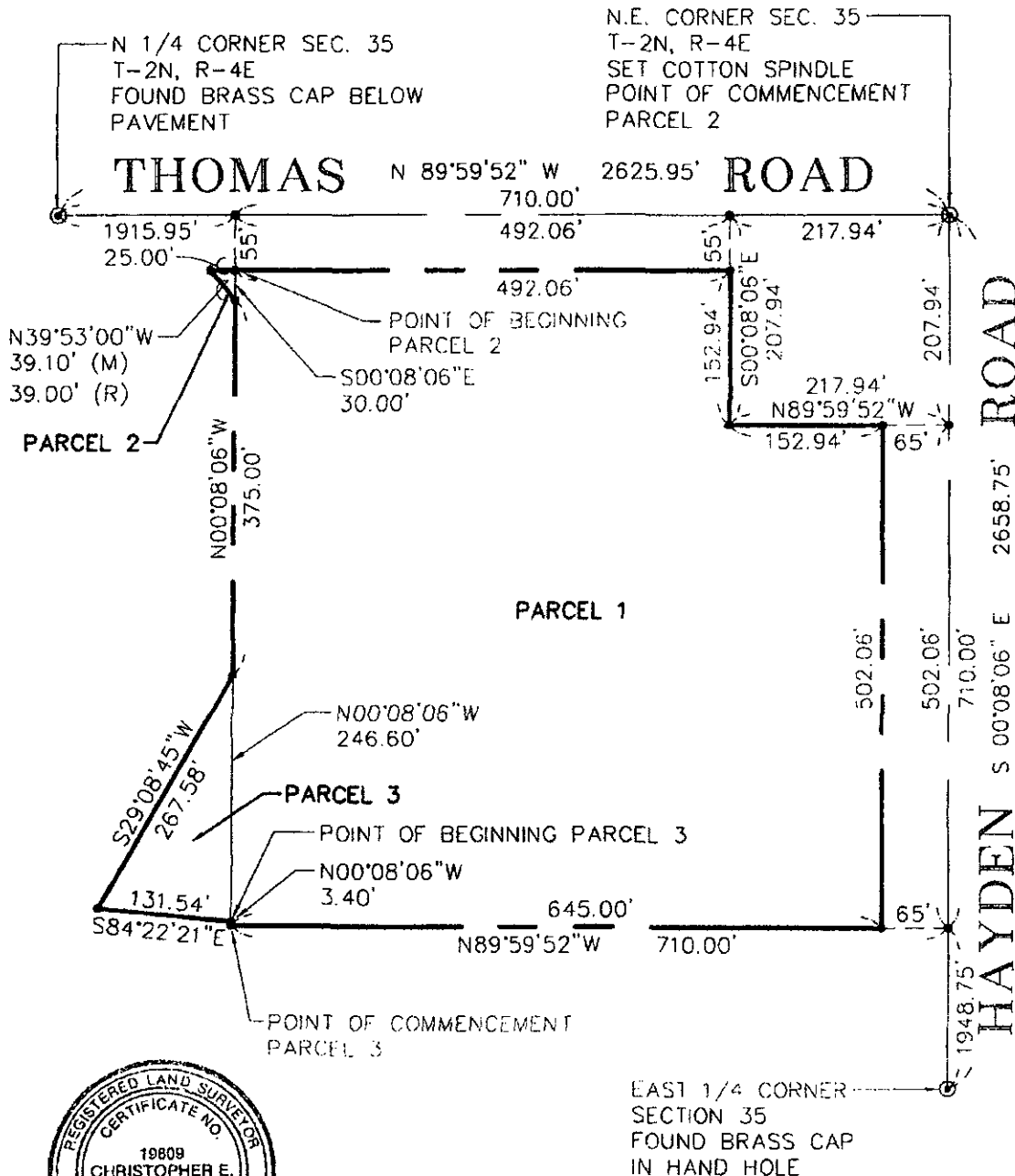
Tempe, Arizona 85283

Phone (602) 839-4000 Fax (602) 345-9259

PAGE 2 OF 2 PAGES

PROJECT: ARIZONA PARTNERS - PARENT PARCEL

DATE: 07-10-01



20010923037



BRADY•AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

Tempe, Arizona 85283

Phone (602) 839-4000 Fax (602) 345-9259

PAGE 1 OF 2 PAGES

PROJECT: ARIZONA PARTNERS - LOT 1

DATE: 07-11-01

LEGAL DESCRIPTION: LOT 1

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 35;

thence North 89° 59' 52" West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

thence South 00° 08' 06" East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 204.06 feet to the Point of Beginning;

thence continuing South 00° 08' 06" East, a distance of 3.88 feet;

thence South 89° 59' 52" East, parallel with said North line, a distance of 152.94 feet to a point on the West right-of-way line of Hayden Road, said point being 65.00 feet West of said East line;

thence South 00° 08' 06" East, along said West right-of-way line and parallel with said East line, a distance of 200.10 feet;

thence departing said West right-of-way line, South 89° 51' 55" West, a distance of 194.22 feet;

thence North 00° 21' 44" East, a distance of 204.39 feet;

thence North 89° 54' 48" East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

Described property containing 38,886 square feet or 0.8927 acres more or less.



20010923037



BRADY-AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

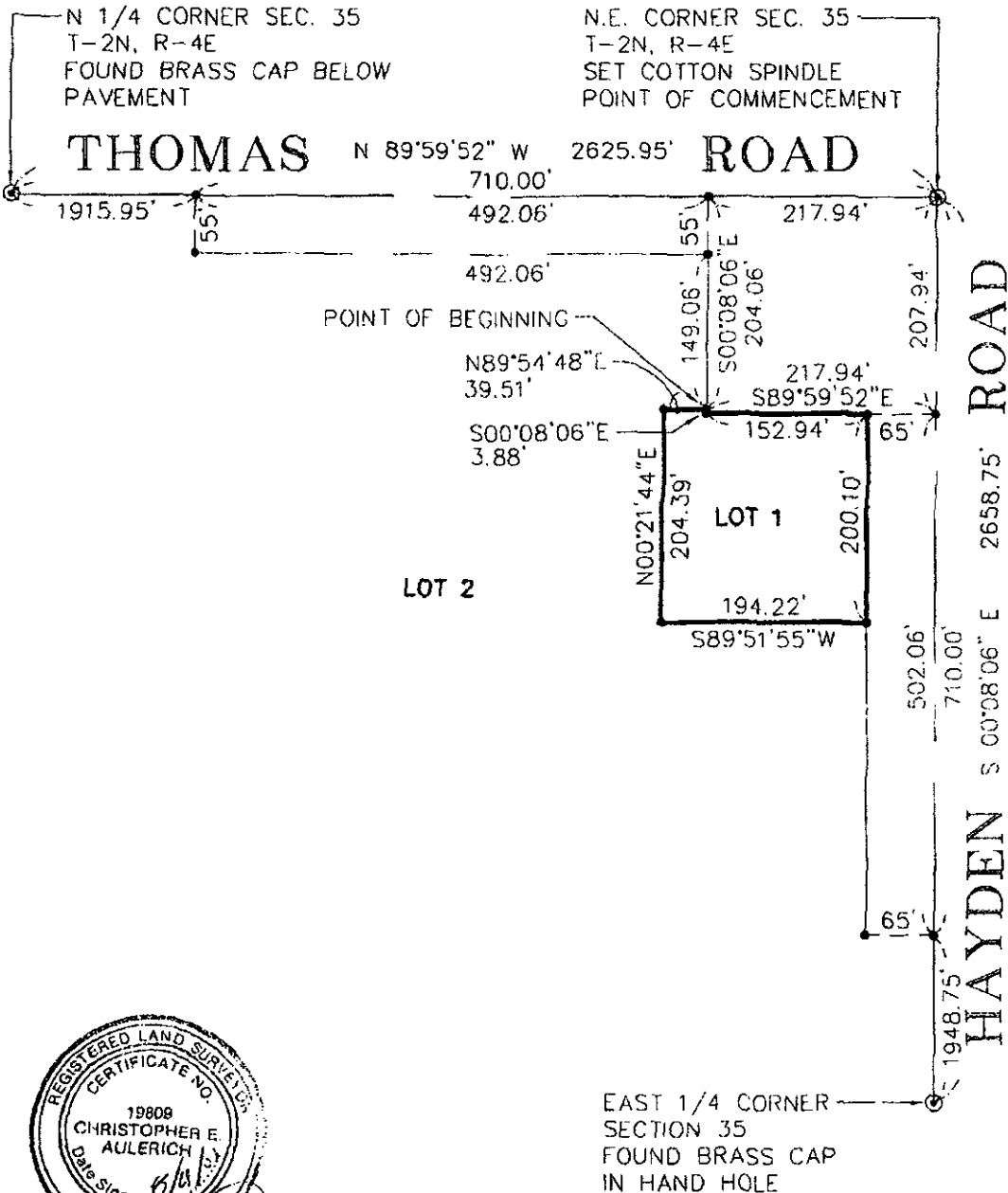
Tempe, Arizona 85283

Phone (602) 839-4000 Fax (602) 345-9259

PAGE 2 OF 2 PAGES

PROJECT: ARIZONA PARTNERS - LOT 1

DATE: 07-10-01



20010923037



BRADY•AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

Tempe, Arizona 85283

Phone (602) 839-4000 Fax (602) 345-9259

PAGE 1 OF 3 PAGES

PROJECT: ARIZONA PARTNERS - LOT 2

DATE: 07-11-01

LEGAL DESCRIPTION: LOT 2

PARCEL NO. 1

The East 710.00 feet of the North 710.00 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof and EXCEPT the North 55 feet and the East 65 feet thereof.

EXCEPT That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 35;

thence North 89° 59' 52" West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

thence South 00° 08' 06" East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 204.06 feet to the Point of Beginning;

thence continuing South 00° 08' 06" East, a distance of 3.88 feet;

thence South 89° 59' 52" East, parallel with said North line, a distance of 152.94 feet to a point on the West right-of-way line of Hayden Road, said point being 65.00 feet West of said East line;

thence South 00° 08' 06" East, along said West right-of-way line and parallel with said East line, a distance of 200.10 feet;

thence departing said West right-of-way line, South 89° 51' 55" West, a distance of 194.22 feet;

thence North 00° 21' 44" East, a distance of 204.39 feet;

thence North 89° 54' 48" East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

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BRADY-AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

Tempe, Arizona 85283

Phone (602) 839-4000 Fax (602) 345-9259

PAGE 2 OF 3 PAGES

PROJECT: ARIZONA PARTNERS - LOT 2

DATE: 07-11-01

PARCEL NO. 2

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

thence West along the North line of said Section 35, a distance of 710.00 feet;

thence South 00° 08' 06" East, a distance of 55.00 feet to the True Point of Beginning;

thence continuing South 00° 08' 06" East, a distance of 30.00 feet;

thence Northwesterly, a distance of 39.00 feet, more or less, to a point on a line lying 55.00 feet South of and parallel to the North line of Section 35, said point lying 25.00 feet West of the True Point of Beginning of this description;

thence East along said line, a distance of 25.00 feet to the True Point of Beginning.

PARCEL NO. 3

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Southwest corner of the North 710.00 feet of the East 710.00 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

thence North 00° 08' 06" West, along the said West line of the North 710.00 feet of the East 710.00 feet, 3.40 feet to the True Point of Beginning;

thence continuing North 00° 08' 06" West, along the said West line, hereinbefore described, 246.60 feet to a point;

thence South 29° 08' 45" West, 267.58 feet;

thence South 84° 22' 21" East, 131.54 feet, more or less, to the True Point of Beginning.

Combined properties being in and forming a part of the City of Scottsdale, Arizona and comprising a net area of 415,595 square feet or 9.5407 acres more or less.

Described property containing 376,729 square feet or 8.6485 acres more or less.



20010923037



BRADY•AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

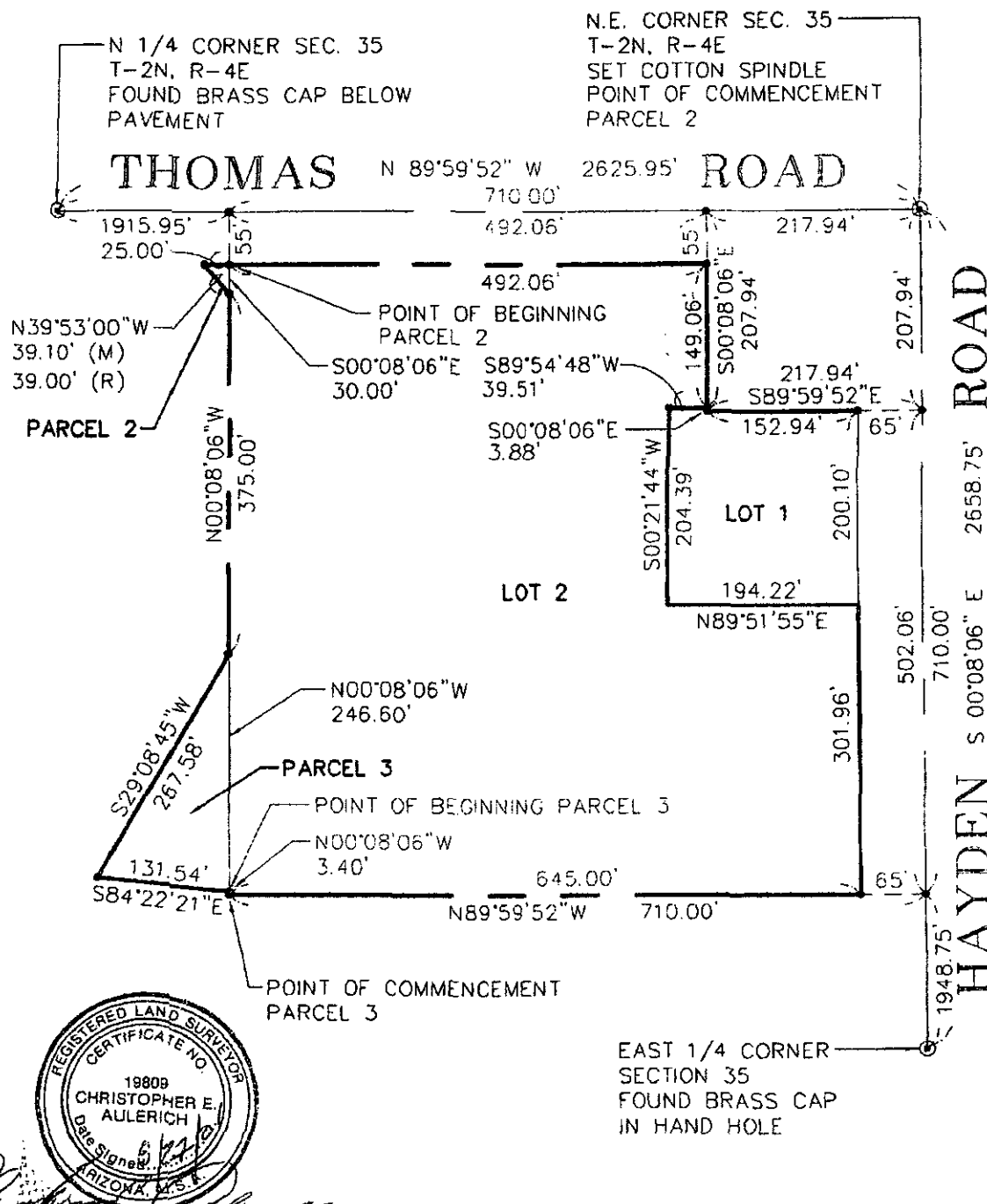
Tempe, Arizona 85283

Phone (602) 839-4000 Fax (602) 345-9259

PAGE 3 OF 3 PAGES

PROJECT: ARIZONA PARTNERS - LOT 2

DATE: 07-10-01





WHEN RECORDED, RETURN TO:
ONE STOP SHOP RECORDS
CITY OF SCOTTSDALE
7447 E. Indian School Road
Scottsdale, AZ 85281

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

2001-0923038 10/03/2001 05:00 PM
2 OF 3



CITY OF SCOTTSDALE
COVENANT AND AGREEMENT TO HOLD PROPERTY AS ONE PARCEL

CASE NO 55 LT 01

The undersigned hereby certify that I/we is/are the owner/s of the hereinafter legally described real property located in the CITY OF SCOTTSDALE, COUNTY OF MARICOPA, and STATE OF ARIZONA.

LEGAL DESCRIPTION: SEE ATTACHED LEGALS
referred to in Book 134 Map 24 Parcel/s 002E, 002K, and 002L Records of Maricopa County,
which property is located and known as South West Corner of Thomas Road and Hayden Road

and, for the purpose of PNC, Planned Neighborhood Center
as regulated by Section 5.2400 Of the Scottsdale Revised Code, I/we do hereby covenant and agree. With said City that the
above legally described land shall be held as one parcel and no portion shall be sold separately.

This covenant and agreement shall run with the land and shall be binding upon myself/ourselves, and future owners, encumbrances, their successors, heirs, and assigns and shall continue in effect until such time that the CITY OF SCOTTSDALE unconditionally permits the use or purpose herein above referred to or unless otherwise released by the authority of the Planning Coordination Manager of the City of Scottsdale.

The applicant understands that approval of a lot tie by the City of Scottsdale does not constitute the creation of new lots. The approval illustrates the manner in which the lot may be split or tied so as to comply with Scottsdale's City Codes and Ordinances. Creation of the actual official recorded deed(s) is the responsibility of the applicant and usually accomplished through a title company.

DATED this _____ day of _____, 2001.

[Signature]
(Signature of Property Owner)

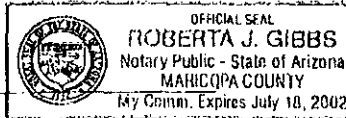
[Signature]
(Signature of Property Owner)

State of Arizona)
County of Maricopa)ss

This instrument was acknowledged before me this 24 day of September, 2001, by
Markel Burns and Bruce Shapiro
In witness whereof I hereunto set my hand and official seal

[Signature]

NOTARY PUBLIC



My commission expires 7-10-2002

FOR DEPARTMENT USE ONLY

Accepted by [Signature]
Senior Planner

[Signature]
Planning Coordination Manager



BRADY•AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

Tempe, Arizona 85283

Phone (602) 839-4000 Fax (602) 345-9259

PAGE 1 OF 2 PAGES

PROJECT: ARIZONA PARTNERS - PARENT PARCEL

DATE: 07-11-01

LEGAL DESCRIPTION: PARCEL NO. 1

The East 710.00 feet of the North 710.00 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof and EXCEPT the North 55 feet and the East 65 feet thereof.

LEGAL DESCRIPTION: PARCEL NO. 2

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

thence West along the North line of said Section 35, a distance of 710.00 feet;

thence South 00° 08' 06" East, a distance of 55.00 feet to the True Point of Beginning;

thence continuing South 00° 08' 06" East, a distance of 30.00 feet;

thence Northwesterly, a distance of 39.00 feet, more or less, to a point on a line lying 55.00 feet South of and parallel to the North line of Section 35, said point lying 25.00 feet West of the True Point of Beginning of this description;

thence East along said line, a distance of 25.00 feet to the True Point of Beginning.

LEGAL DESCRIPTION: PARCEL NO. 3

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Southwest corner of the North 710.00 feet of the East 710.00 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

thence North 00° 08' 06" West, along the said West line of the North 710.00 feet of the East 710.00 feet, 3.40 feet to the True Point of Beginning;

thence continuing North 00° 08' 06" West, along the said West line, hereinbefore described, 246.60 feet to a point;

thence South 29° 08' 45" West, 267.58 feet;

thence South 84° 22' 21" East, 131.54 feet, more or less, to the True Point of Beginning.

Combined properties being in and forming a part of the City of Scottsdale, Arizona and comprising a net area of 415,595 square feet or 9.5407 acres more or less.

20010923038



BRADY • AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

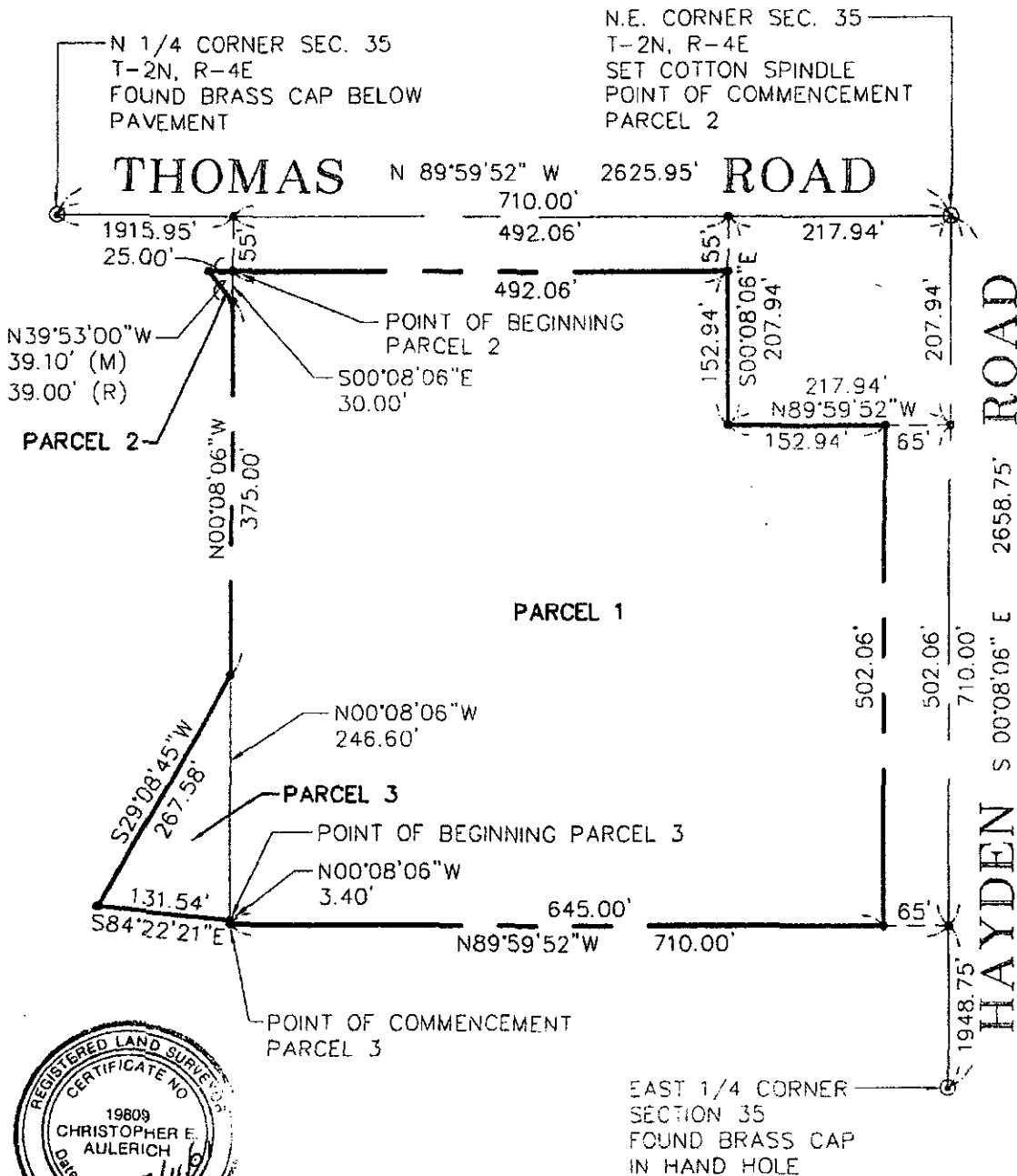
Tempe, Arizona 85283

Phone (602) 839-4000 Fax (602) 345-9259

PAGE 2 OF 2 PAGES

PROJECT: ARIZONA PARTNERS - PARENT PARCEL

DATE: 07-10-01



When recorded, return to:

Mr. Bruce Shapiro
Arizona Partners
6621 North Scottsdale Road
Scottsdale, Arizona 85250

2116906-18-5-1--
Alanize

115 2116906-11

CHICAGO TITLE INSURANCE COMPANY

**DECLARATION
OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS**

This DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS ("Declaration") is entered into effective as of the 18th day of JANUARY, 2002, by Indian River Plaza, L.L.C., an Arizona limited liability company ("Declarant").

Declarant, being the only owner of the Property (hereinafter defined), hereby declares as follows:

**ARTICLE 1
BINDING EFFECT**

1.1 Binding Effect. This Declaration shall be binding on and inure to the benefit of Declarant and all future owners (collectively "Owners"), tenants and occupants of any portion of the two parcels of real property described on Exhibit A ("Main Parcel") and Exhibit B ("Pad Parcel"). The rights and obligations imposed by this Declaration shall run with the title to the Main Parcel and the Pad Parcel (collectively, the "Property") in perpetuity unless amended or terminated by the Owners as provided herein.

1.2 No Merger. Declarant intends to sell portions of the Property and/or place different encumbrances on the Main Parcel and the Pad Parcel following recordation of this Declaration and intends that this Declaration bind the Property following such sale(s) or encumbrances. This Declaration shall therefore not terminate by merger of title.

**ARTICLE 2
COMMON AREAS**

2.1 Designation and Modification. The Common Area shall consist of all of the Property that is open to the public for parking or vehicular or pedestrian ingress or egress from time to time. Each Owner shall have the right to modify the Common Areas from time to time, except that the Owner of the Main Parcel shall not alter the locations of or close access to the curb cuts and driveways on the Main Parcel depicted on the site plan attached hereto as Exhibit C without the approval of the Owner of the Pad Parcel. The preceding sentence shall not affect the right of the Owner of the Main Parcel to temporarily close such areas for repairs, renovations, or for

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emergencies, provided, however, that no such closure shall totally block access to the Pad Parcel or extend more than two days in duration.

2.2 Grants of Easements. Each Owner, for the use and benefit of such Owner and its tenants, employees, invitees and licensees, is hereby granted a perpetual, non-exclusive easement to use the Common Areas for (i) vehicular and pedestrian ingress and egress and circulation within the driveways and sidewalks for the use, comfort and convenience of customers, invitees, licensees, agents and employees of such Owners and business occupants of the buildings constructed on the Property and for the servicing and supplying of such businesses, (ii) vehicular parking in designated parking spaces for the use, comfort and convenience of customers, invitees, licensees, agents and employees of such Owners and business occupants of the buildings on the Property and for the servicing and supplying of such businesses, provided, however, that the Owner of the Main Parcel may designate any parking spaces located within fifty feet of a building on the Main Parcel as being for the exclusive use of one or more occupants of such building and/or the customers, invitees, licensees, agents and employees of such occupants, and (iii) installation, operation, repair and maintenance of underground utility lines and related above ground improvements that do not interfere with surface usage of the Common Areas.

2.3 Easement Use. All easements granted hereby shall be used in a manner reasonably designed to minimize interference with business activities by other Owners, and all Owners shall make reasonable efforts to comply with reasonable requests by other Owners regarding usage of easement rights.

2.4 Construction and Maintenance.

a. Each Owner shall construct, maintain, operate, repair, and replace (as needed) all landscaping, paving, signage, buildings and other improvements (collectively, "Improvements") located on such Owner's portion of the Property, including Common Area improvements (other than utility lines serving only another Owner's portion of the Property, which utility lines shall be maintained by such other Owner). Each Owner shall keep Improvements on its portion of the Property in a safe, clean, sightly, good and functional condition and state of repair, and in compliance with all applicable laws, rules, regulations, orders, and ordinances of governmental bodies and agencies. The minimum maintenance and repair obligations of each Owner shall include but not be limited to the following:

1. Maintain and repair a lighting system to illuminate its portion of the Property in a manner customary for comparable shopping centers, including the maintenance and repair of all lighting facilities and standards and replacement of light bulbs;
2. Removal or correction of graffiti or other vandalism on its portion of the Property within one week of discovery;

3. Painting or otherwise treating all building surfaces on its portion of the Property sufficiently frequently to prevent flaking or peeling paint; and

4. Maintaining and repairing any and all exterior walls and facilities for utilities serving only such Owner's portion of the Property.

b. If any of the Improvements located within the Common Area are damaged or destroyed by fire or any other casualty, the Owner of the portion of the Property on which such Improvements are located shall repair or restore, or cause to be repaired or restored, such Improvements to their prior condition with all due diligence or remove the improvements and clear the area formerly occupied by the improvements to a clean, level area, provided, however, that improvements providing access to the Property may not be removed.

c. If any of the Common Area or any Improvement located therein is taken by condemnation or conveyance in lieu thereof, the Owner of the portion of the Property on which such affected portion of the Common Area is located shall with all due diligence, at its sole cost and expense, restore the remaining Common Area located within its portion of the Property to a functional condition, compatible and integrated with and complementary to the remaining Common Area within the Property. Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting any other Owner's portion of the Property or giving the public or any government any rights in the Property. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Area located within the Property, the award attributable to the land and improvements of such portion of the Common Area shall be payable only to the Owner in fee of the portion of the Property on which the affected Common Area is located and no claim thereon shall be made by the Owners of any other portion of the Common Area. All other Owners or persons having an interest in the Common Area so condemned may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken. Nothing in this Section shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between tenant and Owner for all or a portion of any such award or payment.

2.5 Common Area Restrictions and Certain Uses.

a. No building, barricade or structure may be placed, erected or constructed within the Common Area except pylon and other free-standing signs and directional signs, bumper guards or curbs, paving, landscaping and landscape planters, lighting standards, driveways, sidewalks, walkways and other improvements reasonably appropriate to enhance the use and appearance of the Common Areas; this prohibition shall not prohibit construction, maintenance or repair of any improvement required under applicable laws, rules, ordinances and regulations of any governmental body having jurisdiction over the

Property. No Owner shall have the right to construct any improvements, including signs, on a Parcel owned by another Owner.

b. The Owner of each portion of the Property may use and cause to be used the Common Area on its portion of the Property for such uses as may be permitted by applicable law provided such uses do not interfere with the rights of use and enjoyment of other Owners in the Common Area pursuant to this Declaration, including the access and easement rights provided herein.

ARTICLE 3 BUILDING IMPROVEMENTS

3.1 Required Parking. The Owner of each Parcel shall comply with all governmental parking requirements applicable to such Parcel without reference to the cross-parking easement contained in this Declaration. It is the intention of Declarant that this provision protect the Owner of each Parcel from having the Owner of the other Parcel reduce the parking available on such Parcel for compliance with applicable governmental parking requirements.

3.2 Construction. All building construction, once commenced, must be diligently prosecuted to completion, shall be performed in a workmanlike manner, and in accordance with the requirements of all governmental authorities having jurisdiction over such work and shall be performed in a manner that does not interfere with the operation of business on another Owner's portion of the Property.

3.3 Damage or Destruction of Buildings. If any building on the Property is damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the portion of the Property upon which such building is located shall, in its discretion, either tear down or rebuild the damaged building; however, if an Owner determines to tear down a damaged building, that Owner shall either promptly rebuild a new building on the same location or leave and maintain the portion of the Property of land on which the building was located in a smooth, level condition, free and clear of all refuse and weeds and sealed against dust by paving, lawn or other ground cover.

ARTICLE 4 ESTOPPEL CERTIFICATES

4.1 Requirement to Provide. Upon written request by any Owner, any other Owner, within 15 days of receipt of such request, shall certify to any prospective purchaser or lender of the requesting Owner that, to the then current knowledge of the responding Owner, (a) the requesting Owner is in compliance with the requesting Owner's obligations under this Declaration and (b) any other statements reasonably pertaining to this Declaration.

4.2 Failure. If an Owner fails to respond to a request hereunder within ten days, the requesting Owner, prospective purchaser or prospective lender shall have the right to rely on the accuracy of the statements requested by such Owner as though such Owner is in compliance with

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its obligation under this Declaration. Any recipient of a certificate from an Owner hereunder shall be entitled to rely on such certificate.

ARTICLE 5 INDEMNIFICATION AND INSURANCE

5.1 Indemnification Each Owner hereby indemnifies, holds harmless and agrees to defend each other Owner (and such Owner's affiliates) for, from and against all claims, damages, expenses (including, without limitation, attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property occurring on the Property and on the ways immediately adjoining the Property, caused by the active or passive negligence of the indemnifying Owner, or its agents, servants or employees; provided, however, this indemnification does not apply to the extent any loss of life, injury to any person, or damage to any property is caused by the active or passive negligence of such other Owner, or its agents, servants or employees.

5.2 Waiver of Subrogation. With respect to any loss or damage that may occur to the Property (or any improvements thereon) or the respective property of the Owners therein, arising from any peril customarily insured under a fire and extended coverage insurance policy, regardless of the cause or origin, excluding willful acts but including negligence of the Owners, their agents, servants or employees, the Owner carrying such insurance and suffering such loss hereby releases the other Owners from all claims with respect to such loss; and the Owners mutually agree that their respective insurance companies shall have no right of subrogation against the other Owners on account of any such loss, and each Owner shall procure from their respective insurers under all policies of fire and extended coverage insurance a waiver of all rights of subrogation against the other Owners which the insurance might otherwise have under such policies.

5.3 Insurance Requirements. Each Owner agrees to maintain and/or cause to be maintained, at its sole expense, liability insurance insuring its interests against claims for bodily injury, death and property damage occurring on, in or about the Property and the ways immediately adjoining the Property, with a "Combined Single Limit" (covering bodily injury liability, death and property damage liability) of not less than \$3,000,000 for total claims for any one occurrence and not less than \$3,000,000 for total claims in the aggregate during one policy year. Any insurance required to be provided under this Section may be in the form of blanket liability coverage so long as the blanket policy does not reduce the limits nor diminish the coverage required herein. Any insurance policy required to be maintained and/or caused to be maintained by an Owner under this Section shall be written by insurance companies which are qualified to do business in the State of Arizona. Upon request, each Owner shall cause a certificate of insurance reasonably evidencing compliance with the requirements of this Section to be delivered to the requesting Owner. The insurance limits in this Section shall be subject to increase from time to time by such amounts as the Owner of the Main Parcel may reasonably determine is necessary or desirable by written notice to all Owners.

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ARTICLE 6 RESTRICTIONS

6.1 General Restrictions. No Owner shall use or permit any other person to use its portion of the Property in violation of any applicable legal requirement, including without limitation zoning ordinances, building codes, and fire codes. No portion of the Property shall be used for the any following purposes: any disco, theater, bowling alley, pool hall, billiard parlor, automobile sales or leasing facility, skating rink, roller rink, amusement arcade, children's play or party facility, adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials, or any use which creates a nuisance.

6.2 Main Parcel Exclusive Uses. No portion of the Pad Parcel shall be used for any of the following prohibited uses:

Nail salon; day spa operations, including massages, facial, waxing and tanning booths, and retail sales of related items; Chinese buffet restaurant; hair salon; anyone whose primary use is check cashing or advancing or loaning money using a personal check as prepayment of the loan or as a security interest; the sale of any of the following: liquor, or other alcoholic beverages in package form, including, but not limited to, beer, wine and ale; any combination of food items sufficient to be commonly known as a convenience food store or department; greeting cards; photo processing, including one-hour photo processing; health aids, beauty aids, and related products, including vitamins; items requiring dispensation by or through a pharmacy or requiring dispensation by or through a registered or licensed pharmacist; funeral homes; any production, manufacturing, industrial or storage use of any kind or nature, except for storage and/or production of products incidental to the retail sale thereof; entertainment or recreational facilities, including but not limited to bowling alley, skating rink, electronic or mechanical games arcade, theater, billiard room or pool hall, health spa or studio or fitness center, massage parlor, discotheque, dance hall, banquet hall, night club, bar or tavern, "head shop", pornographic or "adult" store, racquetball court or gymnasium, or other place of public amusement; training or education facilities, including but not limited to beauty school, child care facility, barber college, library, reading room, church, school, place of instruction or any other operation catering primarily to student or trainees rather than to customers; car washes or gasoline or service stations; the displaying, repairing, renting, leasing or sale of any motor vehicle, boat or trailer; dry cleaner with on-premises cleaning; any use that creates a nuisance or materially increases noise or the emission of dust, odor, smoke gases or materially increases fire, explosion or radioactive hazards in the shopping center; any business with drive-up or drive-through lanes other than fast-food restaurants; second-hand or thrift stores, other than upscale second-hand stores; flea markets; any use involving hazardous material, except as may be customary in first-class neighborhood shopping centers in the metropolitan area where the shopping center is located; stores with more than one thousand (1,000) square feet of floor area for the sale, leasing, distribution or display of office supplies, including office furniture, office fixtures, office machines and equipment, computers, computer hardware, software and accessories, cellular telephones and telecommunications equipment and devices, art supplies,

architectural supplies, engineering supplies, photocopying services, facsimile services or instant print shop services; sports or entertainment facility, including without limitation karate or martial arts, gymnasium, health club, physical fitness facility; any use other than service and retail uses customarily found in similar shopping centers in the state and county where the shopping center is located; offices other than those incidental to retail uses or providing services to the general public and customarily found in similar shopping centers.

ARTICLE 7 DEFAULT

7.1 Default; Right to Cure. If any Owner fails to observe or perform any of its obligations under this Declaration, such Owner shall be in default under this Declaration if such failure continues for twenty (20) days after written notice of failure is given by any other Owner and except that if such failure is of such a character as to require more than twenty (20) days to correct, such Owner will not be in default if such Owner commences actions to correct such failure within the 20-day period and thereafter, using reasonable diligence, cures such failure;

7.2 Injunctive Relief. In the event of any violation or threatened violation of any provision of this Declaration, any Owner shall have the right, in addition to any other remedies herein or by law provided, to enjoin such violation or threatened violation.

7.3 Breach Shall Not Permit Termination. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.

7.4 No Limitation of Remedies. The various rights and remedies herein contained and reserved to the Owners, except as otherwise provided in this Declaration, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. The election of any one or more remedies shall not constitute a waiver of the right to pursue other remedies available under this Declaration, at law or in equity. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therein.

ARTICLE 8 MISCELLANEOUS

8.1 Reasonable Consent. Whenever in this Declaration consent or approval by an Owner is required or requested, such consent or approval shall not be unreasonably withheld or delayed. If an Owner requests such consent or approval in writing and references this section of the Declaration, such consent or approval shall be deemed given if the recipient of such request does not object in writing and state the reasonable grounds for such objection within thirty days following the request for consent or approval.

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8.2 Notices. Notices required or permitted hereunder shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service (e.g., Federal Express, DHL) addressed to each Owner at such Owner's address set forth in this Agreement (or if no address is set forth in this Agreement, then to the address of such Owner set forth for such Owner in the records of the Maricopa County, Arizona Assessor's Office) or to such other address as an Owner may specify by written notice given to all other Owners. Any such notice or communication shall be deemed to have been given as of the date of delivery, if hand or courier delivered, or as of three days after the date of mailing, if mailed certified, return receipt requested, postage prepaid. The addresses of Declarant is Indian River Plaza, L.L.C., Attn: Mr. Bruce Shapiro, c/o Arizona Partners, 6621 North Scottsdale Road, Scottsdale, Arizona 85250.

8.3 Attorneys' Fees. If suit is brought or an attorney is retained by any Owner to seek interpretation or construction of any term or provision of this Declaration, to enforce the terms of this Declaration, to collect any money due, to enforce any lien, or to obtain any money damages or equitable relief for breach, the prevailing party shall be entitled to recover, in addition to any other available remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation, and other related expenses.

8.4 Integration Clause; No Oral Modification. This Declaration represents the entire agreement of the parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Declaration are revoked and superseded by this Declaration. No representations, warranties, inducements, or oral agreements have been made by any of the parties except as expressly set forth herein, or in other contemporaneous written agreements. This Declaration may not be changed, modified, or rescinded, except as provided herein. Any attempt at oral modification of this Declaration shall be void and of no effect.

8.5 Governing Law; Choice of Forum. This Declaration shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to choice of law principles). Any action brought to interpret, enforce, or construe any provision of this Declaration shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona). The parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this section.

8.6 Severability. If any provision of this Declaration is declared void or unenforceable, such provision shall be deemed severed from this Declaration, and this Declaration shall otherwise remain in full force and effect.

8.7 Waiver. Failure of any party to exercise any right, remedy, or option arising out of a breach of this Declaration shall not be deemed a waiver of any right, remedy, or option with respect to any subsequent or different breach, or the continuance of any existing breach.

8.8 Time of Essence. Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Declaration.

8.9 Construction/Interpretation. The captions and paragraph headings used in this Declaration are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Declaration. When used herein, the terms "include" or "including" shall mean without limitation by reason of the enumeration. All grammatical usage herein shall be deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require. The term "person" shall include an individual, corporation, partnership, trust, estate, or any other entity. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

8.10 Modifications. This Declaration may not be modified in any respect whatsoever or rescinded, in whole or in part, except by a writing executed by the Owners of seventy-five percent (75%) of the land area in the Property and duly recorded; no signature by an Owner shall be effective for purposes of amending this Declaration unless the holders of any recorded mortgage or deed of trust on such Owner's Parcel consent to such amendment.

8.11 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public purposes whatsoever, it being the intention of the Owners that this Declaration shall be strictly limited to and for the purposes herein expressed. This Declaration shall only be enforceable by Owners and not by any other person or entity; there are no third party beneficiaries of this Declaration.

8.12 No Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted to create, a joint venture, a partnership, or any other similar relationship between the Owners.

8.13 Inurement. This Declaration and the easements, covenants, benefits and obligations created hereby shall inure to the benefit and be binding upon each Owner and its successors and assigns; provided, if any Owner conveys all of its interest in any portion of the Property owned by it, such Owner shall thereupon be released and discharged from any and all further obligations under this Declaration as fee owner of the property conveyed by it if the buyer assumes in writing all of such obligations; and provided further, no such sale shall release such Owner from any liabilities, actual or contingent, existing as of the time of such conveyance.

8.14 Force Majeure. If an Owner is delayed or hindered in or prevented from the performance of any act required by this Declaration by reason of inability to procure materials,

failure of power, acts of God, riots, insurrection, war or other reason of a like nature (other than labor disputes) not the fault of the party delayed in performing work or doing acts required under the terms of this Lease, then performance of such act will be excused for the period of delay and the time for the performance of any such act will be extended for a period equivalent to the period of such delay.

8.15 Lienholder Protection. Notwithstanding any other provision of this Agreement, any monetary obligation of one Owner to another Owner arising pursuant to this Declaration (including, without limitation any lien or judgment obtained by one Owner against another by reason of a violation or breach of this Declaration) shall be subject and subordinate to any mortgage or deed of trust that now or hereafter encumbers the debtor-Owner's parcel prior to the later of the date that the monetary obligation becomes payable or the date that the holder of the mortgage or deed of trust acquires knowledge of such obligation.

IN WITNESS WHEREOF, Declarant has executed this Declaration.

INDIAN RIVER PLAZA, L.L.C.


Bruce I. Shapiro, Manager


Marko E. Burns, Manager

STATE OF ARIZONA)
) ss
County of Maricopa)

Acknowledged before me this 18 day of January, 2002, by Bruce I. Shapiro, the manager of Indian River Plaza, L.L.C., an Arizona limited liability company, for and on behalf of the limited liability company.



Notary Seal/Stamp


Sandra Trevino
Notary Public

STATE OF ARIZONA)
) ss
County of Maricopa)

Acknowledged before me this 10 day of January, 2002, by Marko C. Burns, the manager of Indian River Plaza, L.L.C., an Arizona limited liability company, for and on behalf of the limited liability company.



Notary Public State of Arizona
Maricopa County
Sandra Trevino
Expires October 31, 2006

Notary Seal/Stamp
C:\Data\CPU\VAZ\Partners\IndianRiver\declaration.1.doc

Sandra Trevino

Notary Public

20020063503

EXHIBIT A

LEGAL DESCRIPTION OF MAIN PARCEL

NialagSLC085568.09

13

LEGAL DESCRIPTION

Order No: 2116906 41

PARCEL NO. 1:

EXHIBIT "A"

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof; and

EXCEPT the North 55 feet; and

Except the East 63 feet

Except that part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 35;

thence North 89 degrees 59 minutes 52 seconds West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

thence South 00 degrees 08 minutes 06 seconds East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 204.06 feet to the Point of Beginning;

thence continuing South 00 degrees 08 minutes 06 seconds East, a distance of 3.88 feet;

thence South 89 degrees 59 minutes 52 seconds East, parallel with said North line, a distance of 152.94 feet to a point on the West right of way line of Hayden Road, said point being 65.00 feet West of said East line;

thence South 00 degrees 08 minutes 06 seconds East, along the West right of way line and parallel with said East line, a distance of 200.10 feet;

thence departing said West right of way line, South 89 degrees 51 minutes 55 seconds West, a distance of 194.22 feet;

thence North 00 degrees 21 minutes 44 seconds East, a distance of 204.39 feet;

thence North 89 degrees 54 minutes 48 seconds East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

PARCEL NO. 2:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 35;

thence West along the North line of said Section 35, 710 feet;

thence South 00 degrees 08 minutes 06 seconds East, 55 feet to the POINT OF BEGINNING;

thence continuing South 00 degrees 08 minutes 06 seconds East, 30 feet;

thence Northwesterly, 39 feet, more or less, to a point on a line lying 55 feet South of, and parallel to, the North line of said Section 35, said point lying 25 feet west of the POINT OF BEGINNING of this description;

thence East, along said line, 25 feet to the POINT OF BEGINNING.

PARCEL NO. 3:

LEGALC7/1/08-MAS

LEGAL DESCRIPTION

Order No: 2116906 41

That part of the Northeast quarter of the Northeast of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

thence North 00 degrees 08 minutes 06 seconds West, along the said West line of the North 710 feet of the East 710 feet, 3.40 feet to the POINT OF BEGINNING;

thence continuing North 00 degrees 08 minutes 06 seconds West, along the said West line, herein before described, 246.60 feet;

thence South 29 degrees 08 minutes 45 seconds West, 267.58 feet;

thence South 84 degrees 22 minutes 21 seconds East, 131.54 feet, more or less, to the POINT OF BEGINNING

LEGALC-7/1/00-MAB

20020063503

EXHIBIT *B*

LEGAL DESCRIPTION OF PAD PARCEL

NichegSLC081568.09

12

EXHIBIT "B"**LEGAL DESCRIPTION: LOT 1**

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 35;
 thence North 89° 59' 52" West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;
 thence South 00° 08' 06" East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 204.06 feet to the Point of Beginning;
 thence continuing South 00° 08' 06" East, a distance of 3.88 feet;
 thence South 89° 59' 52" East, parallel with said North line, a distance of 152.94 feet to a point on the West right-of-way line of Hayden Road, said point being 65.00 feet West of said East line;
 thence South 00° 08' 06" East, along said West right-of-way line and parallel with said East line, a distance of 200.10 feet;
 thence departing said West right-of-way line, South 89° 51' 55" West, a distance of 194.22 feet;
 thence North 00° 21' 44" East, a distance of 204.39 feet;
 thence North 89° 54' 48" East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

Described property containing 38,886 square feet or 0.8927 acres more or less.



EXHIBIT C
SITE PLAN DEPICTING RESTRICTED DRIVEWAYS

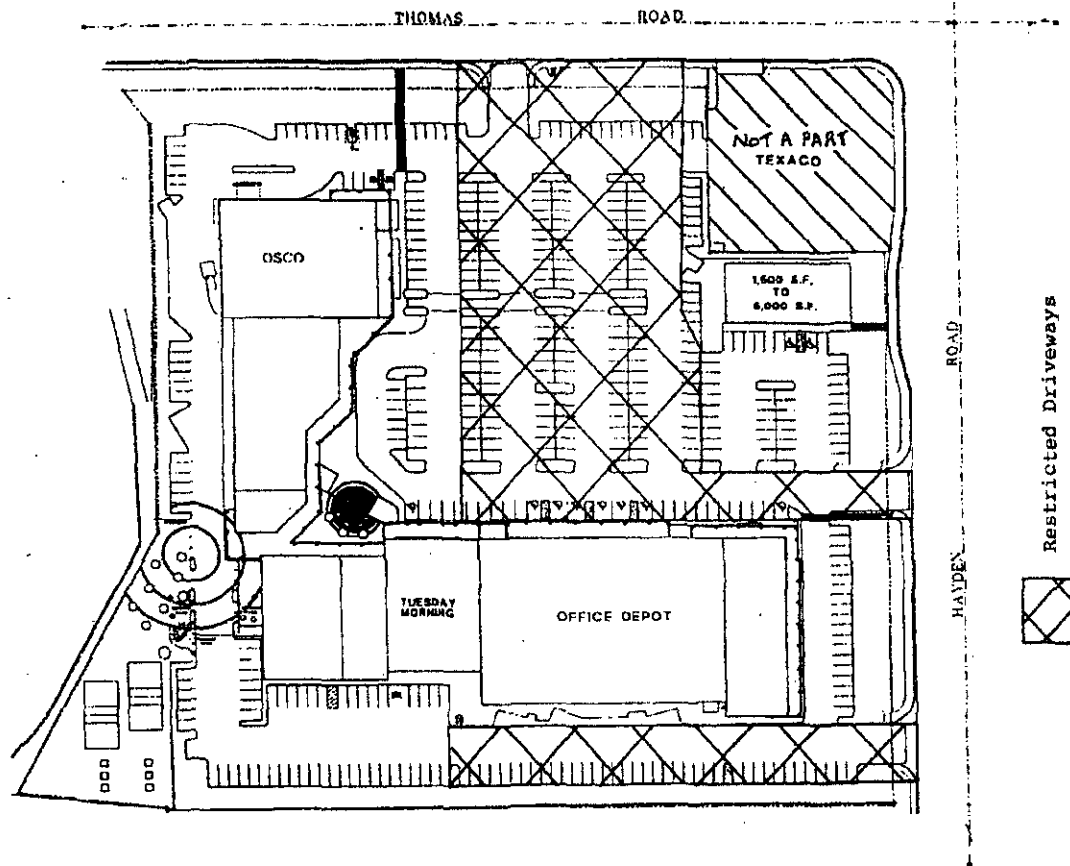
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20020063503

INDIAN RIVER PLAZA

S.W. CORNER THOMAS ROAD & HAYDEN ROAD



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
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ELECTRONIC RECORDING

2116906-64-5-2--
Alanize

CHICAGO TITLE INSURANCE COMPANY

Record and Return to:
Winston & Strawn
200 Park Avenue
New York, New York 10166
Attention: Ms. Lydia Coplin-Rechani
2116906-41 2/5

DEED OF TRUST AND SECURITY AGREEMENT

INDIAN RIVER PLAZA L.L.C.,
GRANTOR

TO

CHICAGO TITLE INSURANCE COMPANY,
AS TRUSTEE,

FOR THE BENEFIT OF

CANADIAN IMPERIAL BANK OF COMMERCE,
New York Agency
BENEFICIARY

DATED: AS OF JANUARY 18, 2002

Property Address:

Indian River Plaza
7901 - 7919 E. Thomas Road
Scottsdale, Arizona 85251

County: Maricopa
State: Arizona

NY:6474143

THIS DEED OF TRUST AND SECURITY AGREEMENT (this "Deed of Trust") is made as of the ____ day of January, 2002, by INDIAN RIVER PLAZA L.L.C., an Arizona limited liability company, as Grantor ("Grantor"), whose address is 3200 North Central Avenue, Suite 2450, Phoenix, Arizona 85012, to CHICAGO TITLE INSURANCE COMPANY, whose address is 2415 East Camelback Road, #300, Phoenix, Arizona 85016, as Trustee ("Trustee"), for the benefit of CANADIAN IMPERIAL BANK OF COMMERCE, New York Agency, ("Beneficiary"), whose address is Attn: Real Estate Finance Group, 200 West Madison, Suite 2610, Chicago, Illinois 60606.

WITNESSETH:

THAT for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged, Grantor has GRANTED, BARGAINED, SOLD, TRANSFERRED, ASSIGNED and CONVEYED, and by these presents does GRANT, BARGAIN, SELL and CONVEY, unto Trustee, in trust, with full power of sale for the benefit and security of Beneficiary and its successors and assigns all of the following described property, whether now owned or hereafter acquired (collectively, the "Property"):

A. All that certain real property situated at 7901 - 7919 E. Thomas Road, County of Maricopa, State of Arizona, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Land"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim and demand whatsoever of Grantor therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

B. All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Land (the "Improvements");

C. All furniture, furnishings, fixtures, goods, equipment, inventory or personal property owned by Grantor and now or hereafter located on, attached to or used in and about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Grantor as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situated on or about the Land or Improvements, and all warranties and guarantees relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

D. All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, air rights and other development rights now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Land and/or Improvements or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Grantor;

E. All water, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights which are appurtenant to, located on, under or above or used in connection with the Land or the Improvements, or any part thereof, whether now existing or hereafter created or acquired;

F. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land;

NY:647143

G. All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Beneficiary pursuant to this Deed of Trust or any other of the Loan Documents (as hereinafter defined), including, without limitation, all funds now or hereafter on deposit in the Impound Account, the Leasing Reserve, the Cash Collateral Reserve, the Environmental Compliance Reserve, the Osco Completion Reserve, the Repair and Remediation Reserve and the Replacement Reserve (collectively, the "Reserves");

H. All leases (including, without limitation, oil, gas and mineral leases), licenses, concessions and occupancy agreements of all or any part of the Land or the Improvements now or hereafter entered into (each, a "Lease" and collectively, the "Leases") and all rents, royalties, issues, profits, revenue, income and other benefits (collectively, the "Rents and Profits") of the Land or the Improvements, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any present or future Lease or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities deposited to secure performance by the tenants, lessees or licensees, as applicable (each, a "Tenant" and collectively, the "Tenants"), of their obligations under any such Leases, whether said cash or securities are to be held until the expiration of the terms of said Leases or applied to one or more of the installments of rent coming due prior to the expiration of said terms, subject to, however, the provisions contained in Section 1.11 of this Deed of Trust;

I. All contracts and agreements now or hereafter entered into covering any part of the Land or the Improvements (collectively, the "Contracts") and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Land or the Improvements (including plans, drawings, surveys, tests, reports, bonds and governmental approvals) or to the management or operation of any part of the Land or the Improvements;

J. All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Land or the Improvements;

K. All present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (including without limitation, trademarks, trade names, servicemarks and symbols now or hereafter used in connection with any part of the Land or the Improvements, all names by which the Land or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Grantor has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Land or the Improvements) and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Land or the Improvements (collectively, the "General Intangibles");

L. All water taps, sewer taps, certificates of occupancy, permits, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Land or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Land or the Improvements;

M. All building materials, supplies and equipment now or hereafter placed on the Land or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Land or the Improvements;

N. All right, title and interest of Grantor in any insurance policies or binders now or hereafter relating to the Property including any unearned premiums thereon;

O. All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards and proceeds of refunds of any taxes or assessments levied against the Property with respect to any period in which this Deed of Trust encumbers the Property; and

P. All other or greater rights and interests of every nature in the Land or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Grantor.

FOR THE PURPOSE OF SECURING:

(1) The debt evidenced by that certain promissory note (such promissory note, together with any and all renewals, modifications, consolidations and extensions thereof, is hereinafter referred to as the "Note") of even date with this Deed of Trust, made by Grantor to the order of Beneficiary in the original principal amount of Seven Million Three Hundred Fifty Thousand and 00/100 Dollars (\$7,350,00.00) together with interest as therein provided;

(2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, guarantying, securing, modifying or otherwise relating to the indebtedness evidenced by the Note, excluding only the Hazardous Indemnity Agreement (as hereinafter defined) (the Note, this Deed of Trust, and such other agreements, documents and instruments, together with any and all renewals, amendments, extensions and modifications thereof, are hereinafter collectively referred to as the "Loan Documents") and the payment of all other sums therein covenanted to be paid;

(3) Any and all additional advances made by Beneficiary to protect or preserve the Property or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Grantor's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Grantor remains the owner of the Property at the time of such advances); and

(4) Any and all other indebtedness now owing or which may hereafter be owing by Grantor to Beneficiary, including, without limitation, all prepayment fees, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof.

(All of the sums referred to in Paragraphs (1) through (4) above are herein sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby").

TO HAVE AND TO HOLD the Property unto Trustee, its successors and assigns forever, and Grantor does hereby bind itself, its successors and assigns, to WARRANT AND FOREVER DEFEND the title to the Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof;


PROVIDED, HOWEVER, that if the principal and interest and all other sums due or to become due under the Note and the other Loan Documents, including, without limitation, any prepayment fees required pursuant to the terms of the Note, shall have been paid at the time and in the manner stipulated therein and all other sums payable hereunder and all other indebtedness secured hereby shall

IN WITNESS WHEREOF, Grantor has executed this Deed of Trust as of the day and year first above written.

INDIAN RIVER PLAZA L.L.C.,
an Arizona limited liability company

By: MBS Partners LLC,
an Arizona limited liability company,
its Sole Member

By: 
Name: Marko Collins Burns
Title: Manager

By: 
Name: Bruce Shapiro
Title: Manager

NY:6424143

STATE OF ARIZONA)
COUNTY OF Maricopa)SS.

The forgoing instrument was acknowledged before me this 17 day of January, 2002 by Marko Collins Burns, Manager of MBS Partners LLC, an Arizona limited liability company, the Sole Member of Indian River Plaza L.L.C., an Arizona limited liability company.



Notary Public State of Arizona
Maricopa County
Sandra Trevino
Expires October 21 2005

Sandra Trevino
NOTARY PUBLIC

My commission expires: October 21, 2005

STATE OF ARIZONA)
COUNTY OF Maricopa)SS.

The forgoing instrument was acknowledged before me this 17 day of January, 2002 by Bruce Shapiro, Manager of MBS Partners LLC, an Arizona limited liability company, the Sole Member of Indian River Plaza L.L.C., an Arizona limited liability company.



Notary Public State of Arizona
Maricopa County
Sandra Trevino
Expires October 21 2005

Sandra Trevino
NOTARY PUBLIC

My commission expires: October 21, 2005

NY:6476143

EXHIBIT A
LEGAL DESCRIPTION

PARCEL NO. 1:

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof; and

EXCEPT the North 55 feet; and

EXCEPT the East 65 feet

EXCEPT that part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 35;

thence North 89 degrees 59 minutes 52 seconds West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

thence South 00 degrees 08 minutes 06 seconds East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 240.06 feet to the Point of Beginning;

thence continuing South 00 degrees 08 minutes 06 seconds East, a distance of 3.88 feet;

thence South 89 degrees 59 minutes 52 seconds East, parallel with said North line, a distance of 152.94 feet to a point on the West right of way line of Hayden Road, said point being 65.00 feet West of said East line;

thence South 00 degrees 08 minutes 06 seconds East, along the West right of way line and parallel with said East line, a distance of 200.10 feet;

thence departing said West right of way line, South 89 degrees 51 minutes 55 seconds West, a distance of 194.22 feet;

thence North 00 degrees 21 minutes 44 seconds East, a distance of 204.39 feet;

thence North 89 degrees 54 minutes 48 seconds East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

PARCEL NO. 2:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 35;

thence West along the North line of said Section 35, 710 feet;

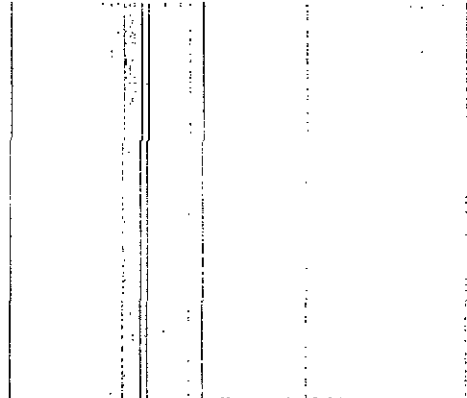
thence South 00 degrees 08 minutes 06 seconds East, 55 feet to the POINT OF BEGINNING;

thence continuing South 00 degrees 08 minutes 06 seconds East, 30 feet;

thence Northwesterly, 39 feet, more or less, to a point on a line lying 55 feet South of, and parallel to, the North line of said Section 35, said point lying 25 feet West of the POINT OF BEGINNING of this description;

thence East, along said line, 25 feet to the POINT OF BEGINNING.

NY16474143



PARCEL NO. 3:

That part of the Northeast quarter of the Northeast of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

thence North 00 degrees 08 minutes 06 seconds West, along the said West line of the North 710 feet of the East 710 feet, 3.40 feet to the POINT OF BEGINNING;

thence continuing North 00 degrees 08 minutes 06 seconds West, along the said West line, herein before described, 246.60 feet;

thence South 29 degrees 08 minutes 45 seconds West, 267.58 feet;

thence South 84 degrees 22 minutes 21 seconds East, 131.54 feet, more or less, to the POINT OF BEGINNING.

NY:6474143

EXHIBIT BGRANTOR'S CERTIFICATE

The undersigned is the _____ of _____, the general partner of _____ (the "Grantor") and has made due investigation as to the matters hereinafter set forth and does hereby certify the following to induce _____ (the "Beneficiary") to advance the aggregate sum of \$ _____ (the "Disbursement") [from the Replacement Reserve or Repair and Remediation Reserve or Environmental Reserve] to the Grantor pursuant to the terms of that certain Deed of Trust and Security Agreement, dated as of _____, 200__, by the Grantor in favor of the Beneficiary (together with any amendments, modifications, supplements and replacements thereof or therefor, the "Deed of Trust"), dated _____, pursuant to that certain Disbursement request which is being submitted to the Beneficiary. (Capitalized terms used and not otherwise defined shall have the respective meanings given to them in the Deed of Trust.)

1. No default beyond any applicable notice and/or grace period exists under the Deed of Trust or under any of the other Loan Documents.
2. The [Repairs, Deferred Maintenance or Environmental Work] relative to the Disbursement have been delivered or provided to Grantor and are properly, completely and permanently installed on or about the Property or otherwise properly completed, as applicable.
3. All of the statements, invoices, receipts and information delivered in connection with the Disbursement request being submitted to the Beneficiary in connection herewith are true and correct as of the date hereof, and the amount requested in said Disbursement request accurately reflects the precise amounts due and payable during the period covered by such Disbursement request. All of the funds to be received pursuant to such Disbursement request shall be used solely for the purpose of reimbursing the Grantor for items previously paid.
4. Nothing has occurred subsequent to the date of the Deed of Trust which has or may result in the creation of any lien, charge or encumbrance upon the Land or the Improvements or any part thereof, or anything affixed thereto or used in connection therewith, or which has or may substantially and adversely impair the ability of the Grantor to make any payments of principal and interest on the Note or the ability of the Grantor to meet its obligations under the Deed of Trust.
5. None of the labor, materials, overhead or other items of expense specified in the Disbursement request submitted herewith has previously been the basis of any Disbursement request by the Grantor or any payment by the Beneficiary and, when added to all sums previously disbursed by Beneficiary on account of the [Deferred Maintenance, Repairs or Environmental Work], do not exceed the costs of all [Deferred Maintenance, Repairs or Environmental Work] services completed, installed and/or delivered, as applicable, to the date of that certificate.
6. The amount remaining in the [Account] allocated to the payment of items on the [Deferred Maintenance, Repairs or Environmental Work] will be sufficient to pay in full the entire remaining cost of [Deferred Maintenance, Repairs or Environmental Work] required to be completed in accordance with the Deed of Trust.
7. All work required permits and approvals required to complete the work which work is now in process or was previously completed have been obtained.
8. All conditions to the Disbursement to be made in accordance with the Disbursement request submitted herewith have been met in accordance with the terms of the Deed of Trust.

By: _____

NY:647814.3

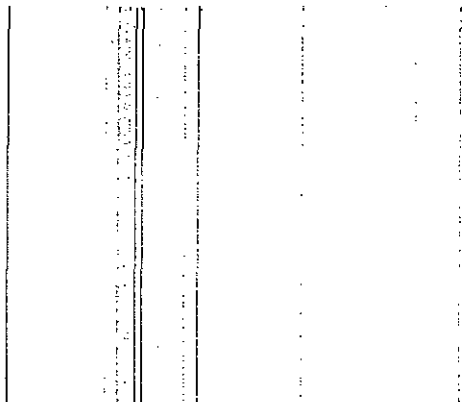


EXHIBIT CAdditional Stipulations

1. Repair and Remediation Reserve. Prior to the execution of this Deed of Trust, Beneficiary has caused the Property to be inspected and such inspection has revealed that the Property is in need of certain maintenance, repairs and/or remedial or corrective work. Contemporaneously with the execution hereof, Grantor has established with the Beneficiary a reserve in the amount of \$72,312.50 (the "Repair and Remediation Reserve") by depositing such amount with Beneficiary. Grantor shall cause each of the items described in Exhibit C-1 attached hereto and made a part hereof and as more particularly described in that certain Property Condition Assessment prepared for Beneficiary in connection herewith (the "Deferred Maintenance") to be completed, performed, remediated and corrected to the satisfaction of Beneficiary and as necessary to bring the Property into compliance with all applicable laws, ordinances, rules and regulations on or before the expiration of 90 days after the effective date hereof, as such time period may be extended by Beneficiary in its sole discretion. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the Repair and Remediation Reserve shall be held by Beneficiary in the Repair and Remediation Reserve to pay the costs and expenses of completing the Deferred Maintenance. So long as no Default hereunder, and no default under any of the other Loan Documents, has occurred and is continuing, Beneficiary shall, to the extent funds are available for such purpose in the Repair and Remediation Reserve, disburse to Grantor the amount paid or incurred by Grantor in completing, performing, remediating or correcting the Deferred Maintenance upon (a) the receipt by Beneficiary of a written request from Grantor for disbursement from the Repair and Remediation Reserve and a certification by Grantor in the form annexed hereto as Exhibit B that the applicable item of Deferred Maintenance has been completed in accordance with the terms of this Deed of Trust, (b) delivery to Beneficiary of invoices, receipts or other evidence satisfactory to Beneficiary verifying the costs of the Deferred Maintenance to be reimbursed, (c) delivery to Beneficiary of a certification from an inspecting architect, engineer or other consultant reasonably acceptable to Beneficiary describing the completed work, verifying the completion of the work and the value of the completed work and, if applicable, certifying that the Property is, as a result of such work, in compliance with all applicable laws, ordinances rules and regulations relating to the Deferred Maintenance so performed, (d) delivery to Beneficiary of affidavits, lien waivers or other evidence reasonably satisfactory to Beneficiary showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished materials or labor to the Property have been paid all amounts due for such labor and materials furnished to the Property, and (e) the receipt by Beneficiary of an administrative fee in the amount of \$150.00. Beneficiary shall not be required to make advances from the Repair and Remediation Reserve more frequently than once in any ninety (90) day period. In making any payment from the Repair and Remediation Reserve, Beneficiary shall be entitled to rely on such request from Grantor without any inquiry into the accuracy, validity or contestability of any such amount. Grantor hereby grants to Beneficiary, as additional security for payment of the indebtedness secured hereby, a security interest in the Repair and Remediation Reserve. In no event may Grantor be entitled to reimbursement of any costs with respect to each item of Deferred Maintenance in excess of the applicable amount set forth in Exhibit C-1 attached hereto and made part hereof. The Repair and Remediation Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but at Beneficiary's option and in Beneficiary's discretion, may either be held in a separate account or be commingled by Beneficiary with the general funds of Beneficiary. No interest on the funds contained in the Repair and Remediation Reserve shall be paid by Beneficiary to Grantor. The Repair and Remediation Reserve is solely for the protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the payment of the costs and expenses described in this paragraph in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. In the event that the amounts on deposit or available in the Repair

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and Remediation Reserve are inadequate to pay the costs of the Deferred Maintenance, Grantor shall pay the amount of such deficiency. Upon assignment of this Deed of Trust by Beneficiary, any funds in the Repair and Remediation Reserve shall be turned over to the assignee and any responsibility of Beneficiary, as assignor, with respect thereto shall terminate. Upon an Event of Default, Beneficiary may, but shall not be obligated to, apply at any time the balance then remaining in the Repair and Remediation Reserve against the indebtedness secured hereby in whatever order Beneficiary shall subjectively determine. No such application of the Repair and Remediation Reserve shall be deemed to cure any Default hereunder. Grantor hereby grants to Beneficiary a power-of-attorney, coupled with an interest, to cause the Deferred Maintenance to be completed, performed, remediated and corrected to the satisfaction of Beneficiary upon Grantor's failure to do so in accordance with the terms and conditions of this Deed of Trust, and to apply the amounts on deposit in the Repair and Remediation Reserve to the costs associated therewith, all as Beneficiary may determine in its sole and absolute discretion but without obligation to do so. Upon the earlier to occur of full payment of the indebtedness secured hereby in accordance with its terms, the completion of the Deferred Maintenance to the satisfaction of the Beneficiary or at such earlier time as Beneficiary may elect, the balance of the Repair and Remediation Reserve then in Beneficiary's possession shall be paid over to Grantor and no other party shall have any right or claim thereto.

2. Leasing Reserve. As additional security for the indebtedness secured hereby, Grantor shall establish and maintain at all times while this Deed of Trust continues in effect a reserve (the "Leasing Reserve") with Beneficiary for payment of leasing commissions and tenant improvement costs and expenses incurred by Grantor in connection with re-leasing the Property pursuant to Leases approved, or deemed approved, by Beneficiary (collectively, the "Leasing Costs"). Commencing on the first monthly payment date under the Note, Grantor shall pay to Beneficiary, concurrently with and in addition to the monthly payment due under the Note and until the Note and all other indebtedness secured hereby is fully paid and performed, an amount equal to \$5,416.67. So long as no Default hereunder, and no default under any of the other Loan Documents, has occurred and is continuing, all sums in the Leasing Reserve shall be held by Beneficiary to pay Leasing Costs. Additionally, so long as no Default hereunder, and no default under any of the other Loan Documents has occurred and is continuing, Beneficiary shall, to the extent funds are available for such purpose in the Leasing Reserve, disburse to Grantor the amount paid or incurred by Grantor in performing such Leasing Costs within five (5) business days following: (a) the receipt by Beneficiary of a written request from Grantor for disbursement from the Leasing Reserve and a certification by Grantor that (i) for Leasing Costs consisting of commissions payable to brokers not affiliated with Grantor and at a rate not greater than the then-current market rate, such leasing commission has been paid by Grantor, and (ii) for Leasing Costs consisting of amounts required to be expended pursuant to the relevant Lease for tenant improvement or related costs, said Leasing Costs have been incurred and the tenant under such Lease has taken possession of its demised premises and begun to pay rent under its Lease, (b) the delivery to Beneficiary of invoices, receipts or other evidence satisfactory to Beneficiary verifying the cost of such Leasing Costs; (c) for disbursement requests in excess of \$10,000.00, the delivery to Beneficiary of affidavits, lien waivers or other evidence reasonably satisfactory to Beneficiary showing that all materialmen, laborers, subcontractors and any other parties who might or could claim statutory or common law liens and are furnishing or have furnished material or labor to the property have been paid (or will be paid out of such disbursement) all amounts due for labor and materials furnished to the Property; (d) for disbursement requests in excess of \$10,000.00 (other than with respect to leasing commissions), delivery to Beneficiary of a certification from an inspecting architect or other third party acceptable to Beneficiary describing the completed tenant improvement or other work, and verifying the completion and the value thereof; (e) for disbursement requests in excess of \$10,000.00 (other than with respect to leasing commissions), delivery to Beneficiary of a new certificate of occupancy for the portion of the Improvements covered by such Lease, if said new certificate of occupancy was required by law, or a certification by Grantor that no new certificate of occupancy was required and (f) the receipt by Beneficiary of an administrative fee in the amount of

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\$150.00. In making any payment from the Leasing Reserve, Beneficiary shall be entitled to rely on such request from Grantor without any inquiry into the accuracy, validity or contestability of any such amount. The Leasing Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Beneficiary's option and in Beneficiary's discretion, may either be held in a separate account or be commingled by Beneficiary with the general funds of Beneficiary. Interest on the funds contained in the Leasing Reserve shall be credited as provided in Section 5.31 hereof. The Leasing Reserve is solely for the protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the payment of the costs and expenses described in this paragraph in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. In the event that the amounts on deposit or available in the Leasing Reserve are inadequate to pay Leasing Costs in connection with any Lease, Grantor shall pay the amount of such deficiency. Upon assignment of this Deed of Trust by Beneficiary, any funds in the Leasing Reserve shall be turned over to the assignee and any responsibility of Beneficiary, as assignor, with respect thereto shall terminate. Upon an Event of Default, Beneficiary may, but shall not be obligated to, apply at any time the balance then remaining in the Leasing Reserve against the indebtedness secured hereby in whatever order Beneficiary shall subjectively determine. No such application of the Leasing Reserve shall be deemed to cure any Default hereunder. Upon the full payment of the indebtedness secured hereby in accordance with its terms or at such earlier time as Beneficiary may elect, the balance of the Leasing Reserve then in Beneficiary's possession shall be paid over to Grantor and no other party shall have any right or claim thereto.

3. *Osco Completion Reserve.* Simultaneously herewith, as additional security for the indebtedness secured hereby, Grantor is depositing with Beneficiary the sum of \$1,037,870.00 (the "Osco Completion Reserve"). Beneficiary acknowledges that a portion of the Property has been leased by Grantor to Osco Drug of Texas, Inc. ("Osco"), pursuant to that certain lease dated as of May 4, 2000 (the "Osco Lease"). At such time as Grantor delivers to Beneficiary (a) Grantor's certification that the Completion Requirements (as defined in the Osco Lease) have been satisfied, together with evidence thereof reasonably satisfactory to Beneficiary, and (b) evidence reasonably satisfactory to Beneficiary of the aggregate amount of Building Costs (as defined in the Osco Lease) payable by Grantor to Osco, then provided no Default is continuing, Beneficiary shall disburse the funds held in the Osco Completion Reserve by means of a two-party check payable jointly to Grantor and Osco (or otherwise as jointly directed by Grantor and Osco). Notwithstanding the foregoing, if the proceeds remaining in the Osco Completion Reserve at the time of satisfaction of the foregoing conditions is less than the payment due to Osco for Building Costs, then Beneficiary shall not be obligated to release the proceeds of the Osco Completion Reserve until such time as Grantor makes an additional deposit thereto such that there are sufficient funds in the Osco Completion Reserve to pay the amount due to Osco on account of Building Costs. In making any payment from the Osco Completion Reserve, Beneficiary shall be entitled to rely on such request from Grantor without any inquiry into the accuracy, validity or contestability of any such amount. The Osco Completion Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Beneficiary's option and in Beneficiary's discretion, may either be held in a separate account or be commingled by Beneficiary with the general funds of Beneficiary. Interest on the funds contained in Osco Completion Reserve shall be credited as provided in Section 5.31 hereof. The Osco Completion Reserve is solely for the protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the payment of the costs and expenses described in this paragraph in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. In the event that the amounts on deposit or available in the Osco Completion Reserve are inadequate to pay the Building Costs, Grantor shall pay the amount of such deficiency. Upon assignment of this Deed of Trust by Beneficiary, any funds in the Osco Completion Reserve shall be turned over to the assignee and any responsibility of Beneficiary, as assignor, with respect thereto shall terminate. Upon an Event of Default, Beneficiary may, but shall not be obligated to, apply at any time the balance then remaining in the Osco Completion Reserve against the indebtedness secured hereby in whatever order Beneficiary shall subjectively determine. No such application of the Osco Completion

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Reserve shall be deemed to cure any Default hereunder. Upon the full payment of the indebtedness secured hereby in accordance with its terms or at such earlier time as Beneficiary may elect, the balance of the Osco Completion Reserve then in Beneficiary's possession shall be paid over to Grantor and no other party shall have any right or claim thereto.

4. Cash Collateral Reserve. As additional security for the indebtedness secured hereby, Grantor shall establish and maintain as required hereby a reserve (the "Cash Collateral Reserve") with Beneficiary. Grantor shall cause Office Depot, Inc. ("Office Depot") to remit to Beneficiary, for deposit to the Cash Collateral Reserve, the payment (the "Office Depot Payment") required to be made by Office Depot pursuant to Paragraph 11 of that certain Assignment and Assumption of Lease dated for reference purposes as of December 26, 2001 between Office Depot and 99th Only Stores ("99 Stores"), which is joined in by Grantor as "Landlord" (the "Assumption Agreement"). Additionally, Grantor shall cause 99 Stores to remit to Beneficiary, for deposit to the Cash Collateral Reserve, each payment (each, a "99 Stores Payment") required to be made by 99 Stores pursuant to Paragraph 11 of the Assumption Agreement. Furthermore, to the extent that Grantor receives either the Office Depot Payment or any 99 Stores Payment, Grantor shall promptly remit such amount to Beneficiary for deposit to the Cash Collateral Reserve. So long as no Event of Default has occurred and is continuing, Beneficiary shall hold the Cash Collateral Reserve as additional security for the indebtedness secured hereby. Provided no Default is continuing, at such time as 99 Stores has opened for business and is operating at the Improvements (as evidenced by either an estoppel certificate of 99 Stores or other evidence reasonably satisfactory to Beneficiary), promptly upon request of Grantor, Beneficiary shall remit to Grantor all sums held in the Cash Collateral Reserve, *provided, however*, that Beneficiary shall not be required to return any sums held in the Cash Collateral Reserve if the conditions to the release thereof are not satisfied at least 90 days prior to the Maturity Date of the Note. The Cash Collateral Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but, at Beneficiary's option and in Beneficiary's discretion, may either be held in a separate account or be commingled by Beneficiary with the general funds of Beneficiary. The Cash Collateral Reserve is solely for the protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the allowing of due credit for the sums actually received. Upon assignment of this Deed of Trust by Beneficiary, any funds in the Cash Collateral Reserve shall be turned over to the assignee and any responsibility of Beneficiary, as assignor, with respect thereto shall terminate. Upon an Event of Default, Beneficiary may, but shall not be obligated to, apply at any time the balance then remaining in the Cash Collateral Reserve against the indebtedness secured hereby in whatever order Beneficiary shall subjectively determine. No such application of the Cash Collateral Reserve shall be deemed to cure any Default hereunder. Upon the full payment of the indebtedness secured hereby in accordance with its terms or at such earlier time as Beneficiary may elect, the balance of the Cash Collateral Reserve then in Beneficiary's possession shall be paid over to Grantor and no other party shall have any right or claim thereto.

5. Environmental Compliance Reserve. Prior to the execution of this Deed of Trust, Beneficiary has caused the Property to be inspected by its environmental consultant, and such consultant has recommended that Grantor perform the items set forth in Section 1.31(g) hereof, including, without limitation, the Immediate Environmental Compliance Items. Contemporaneously with the execution hereof, Grantor has established with the Beneficiary a reserve in the amount of \$16,000.00 (the "Environmental Compliance Reserve") by depositing such amount with Beneficiary. Grantor shall cause each of the Immediate Environmental Compliance Items to be completed as required by Section 1.31(g) above. So long as no default hereunder or under the other Loan Documents has occurred and is continuing, all sums in the Environmental Compliance Reserve shall be held by Beneficiary in the Environmental Compliance Reserve until such time as all of the Immediate Environmental Compliance Items have been completed. So long as no Default hereunder, and no default under any of the other Loan Documents, has occurred and is continuing, Beneficiary shall, to the extent funds are available for such

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purpose in the Environmental Compliance Reserve, disburse to Grantor the funds held in the Environmental Compliance Reserve upon (a) the receipt by Beneficiary of a written request from Grantor for disbursement from the Environmental Compliance Reserve and a certification by Grantor in the form annexed hereto as Exhibit B that all of the Immediate Environmental Compliance Items have been completed in accordance with the terms of this Deed of Trust, (b) delivery to Beneficiary of a certification from Beneficiary's environmental consultant (to be provided at the cost and expense of Grantor or, at Beneficiary's discretion, paid out of the proceeds of the Environmental Compliance Reserve prior to disbursing any portion thereof to Grantor) verifying the completion of the Immediate Environmental Compliance Items, and (c) the receipt by Beneficiary of an administrative fee in the amount of \$150.00. Beneficiary shall not be required to make advances from the Environmental Compliance Reserve more frequently than once. In making any payment from the Environmental Compliance Reserve, Beneficiary shall be entitled to rely on such request from Grantor without any inquiry into the accuracy, validity or contestability of any such amount. Grantor hereby grants to Beneficiary, as additional security for payment of the indebtedness secured hereby, a security interest in the Environmental Compliance Reserve. The Environmental Compliance Reserve shall not, unless otherwise explicitly required by applicable law, be or be deemed to be escrow or trust funds, but at Beneficiary's option and in Beneficiary's discretion, may either be held in a separate account or be commingled by Beneficiary with the general funds of Beneficiary. No interest on the funds contained in the Environmental Compliance Reserve shall be paid by Beneficiary to Grantor. The Environmental Compliance Reserve is solely for the protection of Beneficiary and entails no responsibility on Beneficiary's part beyond the payment of the costs and expenses described in this paragraph in accordance with the terms hereof and beyond the allowing of due credit for the sums actually received. Upon assignment of this Deed of Trust by Beneficiary, any funds in the Environmental Compliance Reserve shall be turned over to the assignee and any responsibility of Beneficiary, as assignor, with respect thereto shall terminate. Upon an Event of Default, Beneficiary may, but shall not be obligated to, apply at any time the balance then remaining in the Environmental Compliance Reserve against the indebtedness secured hereby in whatever order Beneficiary shall subjectively determine. No such application of the Environmental Compliance Reserve shall be deemed to cure any Default hereunder. Grantor hereby grants to Beneficiary a power-of-attorney, coupled with an interest, to cause the Immediate Environmental Compliance Items to be completed, performed, remediated and corrected to the satisfaction of Beneficiary upon Grantor's failure to do so in accordance with the terms and conditions of this Deed of Trust, and to apply the amounts on deposit in the Environmental Compliance Reserve to the costs associated therewith, all as Beneficiary may determine in its sole and absolute discretion but without obligation to do so. Upon the earlier to occur of full payment of the indebtedness secured hereby in accordance with its terms, the completion of the Immediate Environmental Compliance Items to the satisfaction of the Beneficiary or at such earlier time as Beneficiary may elect, the balance of the Environmental Compliance Reserve then in Beneficiary's possession shall be paid over to Grantor and no other party shall have any right or claim thereto.

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EXHIBIT C-1

LIST OF DEFERRED MAINTENANCE ITEMS

Item	Quantity	Unit Cost	Immediate Cost
Parking lot asphalt deteriorating	5,000 sf	\$2.00/sf	\$10,000
Restripe and reseal parking lot	160,000 sf	\$0.10/sf	\$16,000
South property line wall - two holes	5 sq. ft	Lump Sum	\$400
Cracked concrete driveway at Office Depot rear loading area	2,000 sf	\$2.50/sf	\$5,000
Bad fire lane curb paint	800 lf	\$0.50 lf	\$400
Rusting and missing east elevation fire lane signs	3 signs	Lump Sum	\$400
Clear debris (abandoned evaporative coolers and piping) at roof of Affordable Dry Cleaners and at Office Depot and derelict satellite dish at Stooges roof - part of normal maintenance	300 sf	\$0	\$0
Remove asphalt debris at one parking space - south lot - part of normal maintenance	200 sf	\$0	\$0
Roof ladder bolts are loose at two ladders	4 bolts	Lump Sum	\$250
Office Depot roof drain strainers missing	2	\$75 ea.	\$150
Roof at Tuesday Morning space showing signs of ponding (monitor condition)	40 sq. ft	\$0	\$0
Cracked front sidewalk at Tuesday Morning space	1,200 sf	\$2.50/sf	\$3,000
Rotted beam at Tuesday Morning - front facade	1 Beam	Lump Sum	\$1,500
Broken concrete curb at north parking area near gas station	10 lf	Lump Sum	\$250
Repaint exterior walls	1	Lump Sum	\$20,500
Total Cost:			\$57,850
25% Contingency			\$14,462.50
TOTAL REPAIR AND REMEDIATION RESERVE			\$72,312.50

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OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
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Alanize

CHICAGO TITLE INSURANCE COMPANY

Record and Return to:
Winston & Strawn
2000 Park Avenue
New York, New York 10166
Attention: Ms. Lydia Coplin-Rehani

3/5 2116906-41

ASSIGNMENT OF LEASES AND RENTS

INDIAN RIVER PLAZA L.L.C.,

AS ASSIGNOR

IN FAVOR OF

CANADIAN IMPERIAL BANK OF COMMERCE,

New York Agency,

AS ASSIGNEE

County: Maricopa
State: Arizona

NY:6474802

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment") made as of the 18th day of January, 2002, is by INDIAN RIVER PLAZA L.L.C., an Arizona limited liability company ("Assignor"), whose address is 3200 North Central Avenue, Suite 2450, Phoenix, Arizona 85012, in favor of CANADIAN IMPERIAL BANK OF COMMERCE, New York Agency ("Assignee"), whose address is Attn: Real Estate Finance Group, 200 West Madison, Suite 2610, Chicago, Illinois 60606.

WITNESSETH:

THAT, WHEREAS, Assignor has executed that certain Promissory Note dated of even date herewith (as hereafter amended, consolidated or modified from time to time, the "Note"), payable to the order of Assignee in the stated principal amount of SEVEN MILLION THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$7,350,000.00); and

WHEREAS, the Note is secured by that certain Deed of Trust and Security Agreement dated of even date herewith (as hereafter amended, consolidated or modified from time to time, the "Security Instrument"), from Assignor, as grantor, for the benefit of Assignee, as beneficiary, encumbering that certain real property situated in the City of Scottsdale, County of Maricopa, State of Arizona, as is more particularly described on Exhibit A attached hereto and incorporated herein by this reference and all buildings and other improvements now or hereafter located thereon (collectively, the "Improvements") (said real property and the Improvements are hereinafter sometimes collectively referred to as the "Property"); and

WHEREAS, Assignor is desirous of further securing to Assignee the performance of the terms, covenants and agreements hereof and of the Note, the Security Instrument and each other document evidencing, securing, guaranteeing or otherwise relating to the indebtedness evidenced by the Note (the Note, the Security Instrument and such other documents, as each of the foregoing may from time to time be amended, consolidated, renewed or replaced, being collectively referred to herein as the "Loan Documents").

NOW, THEREFORE, in consideration of the making of the loan evidenced by the Note by Assignee to Assignor and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does hereby irrevocably, absolutely and unconditionally transfer, sell, assign, pledge and convey to Assignee, its successors and assigns, all of the right, title and interest of Assignor in and to:

(a) any and all leases, licenses, rental agreements and occupancy agreements of whatever form now or hereafter affecting all or any part of the Property and any and all guarantees, extensions, renewals, replacements and modifications thereof (collectively, the "Leases"); and

(b) all deposits (whether for security or otherwise), rents, issues, profits, revenues, royalties, accounts, rights, benefits and income of every nature of and from the Property, including, without limitation, minimum rents, additional rents, termination payments, forfeited security deposits, liquidated damages following default and all proceeds payable under any policy of insurance covering loss of rents resulting from untenantability due to destruction or damage to the Property, together with the immediate and continuing right to collect and receive the same, whether now due or hereafter becoming due, and together with all rights and claims of any kind that Assignor may have against any tenant, lessee or licensee under the Leases or against any other occupant of the Property (collectively, the "Rents").

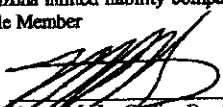
TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns.

NY:647480.2

IN WITNESS WHEREOF, Assignor has executed this Assignment under seal as of the
day and year first above written.

INDIAN RIVER PLAZA L.L.C.,
an Arizona limited liability company

By: MBS Partners LLC,
an Arizona limited liability company,
its Sole Member

By: 
Name: Mark Collins Burns
Title: Manager

By: 
Name: Bruce Shapiro
Title: Manager

NY:647489.2

STATE OF ARIZONA

COUNTY OF Maricopa) SS.

The forgoing instrument was acknowledged before me this 17 day of January, 2002, by Marko Collins Burns, Manager of MBS Partners LLC, an Arizona limited liability company, the Sole Member of Indian River Plaza L.L.C., an Arizona limited liability company.



Notary Public State of Arizona
Maricopa County
Sandra Trevino
Expires October 21 2005

Sandra Trevino
NOTARY PUBLIC

My commission expires October 21, 2005

STATE OF ARIZONA

COUNTY OF Maricopa) SS.

The forgoing instrument was acknowledged before me this 17 day of January, 2002, by Bruce Shapiro, Manager of MBS Partners LLC, an Arizona limited liability company, the Sole Member of Indian River Plaza L.L.C., an Arizona limited liability company.



Notary Public State of Arizona
Maricopa County
Sandra Trevino
Expires October 21 2005

Sandra Trevino
NOTARY PUBLIC

My commission expires October 21, 2005

NY:647489.2

EXHIBIT A
LEGAL DESCRIPTION

PARCEL NO. 1:

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof; and

EXCEPT the North 55 feet; and

EXCEPT the East 65 feet

EXCEPT that part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 35;

thence North 89 degrees 59 minutes 52 seconds West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

thence South 00 degrees 08 minutes 06 seconds East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 240.06 feet to the Point of Beginning;

thence continuing South 00 degrees 08 minutes 06 seconds East, a distance of 3.88 feet;

thence South 89 degrees 59 minutes 52 seconds East, parallel with said North line, a distance of 152.94 feet to a point on the West right of way line of Hayden Road, said point being 65.00 feet West of said East line;

thence South 00 degrees 08 minutes 06 seconds East, along the West right of way line and parallel with said East line, a distance of 200.10 feet;

thence departing said West right of way line, South 89 degrees 51 minutes 55 seconds West, a distance of 194.22 feet;

thence North 00 degrees 21 minutes 44 seconds East, a distance of 204.39 feet;

thence North 89 degrees 54 minutes 48 seconds East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

PARCEL NO. 2:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 35;

thence West along the North line of said Section 35, 710 feet;

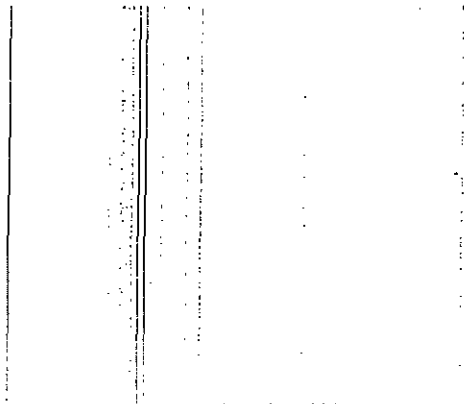
thence South 00 degrees 08 minutes 06 seconds East, 55 feet to the POINT OF BEGINNING;

thence continuing South 00 degrees 08 minutes 06 seconds East, 30 feet;

thence Northwesterly, 39 feet, more or less, to a point on a line lying 55 feet South of, and parallel to, the North line of said Section 35, said point lying 25 feet West of the POINT OF BEGINNING of this description;

thence East, along said line, 25 feet to the POINT OF BEGINNING.

NY:647488.2



PARCEL NO. 3:

That part of the Northeast quarter of the Northeast of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

thence North 00 degrees 08 minutes 06 seconds West, along the said West line of the North 710 feet of the East 710 feet, 3.40 feet to the POINT OF BEGINNING;

thence continuing North 00 degrees 08 minutes 06 seconds West, along the said West line, herein before described, 246.60 feet;

thence South 29 degrees 08 minutes 45 seconds West, 267.58 feet;

thence South 84 degrees 22 minutes 21 seconds East, 131.54 feet, more or less, to the POINT OF BEGINNING.

NY:647480.2

CHICAGO TITLE INSURANCE COMPANY

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20020063506 01/22/2002 11:09
ELECTRONIC RECORDING

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY 2116906-41
A. NAME & PHONE OF CONTACT AT FILER (optional)

2116906-9-5-4--
Alanize

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Winston & Strawn
200 Park Avenue
New York, New York 10166
Attn: Lydia Coplin-Rechani

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME Indian River Plaza, L.L.C.					
OR	1b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
1c. MAILING ADDRESS 3200 North Central Avenue, Suite 2450			CITY Phoenix	STATE AZ	POSTAL CODE 85012
1d. TAX ID #: SSN OR EIN 86-093209			1e. TYPE OF ORGANIZATION ltd. liability company		1f. JURISDICTION OF ORGANIZATION Arizona
1g. ORGANIZATIONAL ID #, if any L-0860176-2					<input type="checkbox"/> NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME					
OR	2b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
2c. MAILING ADDRESS			CITY	STATE	POSTAL CODE
2d. TAX ID #: SSN OR EIN			2e. TYPE OF ORGANIZATION		2f. JURISDICTION OF ORGANIZATION
2g. ORGANIZATIONAL ID #, if any					<input type="checkbox"/> NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR OR) - Insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME Canadian Imperial Bank of Commerce, New York Agency					
OR	3b. INDIVIDUAL'S LAST NAME		FIRST NAME	MIDDLE NAME	SUFFIX
3c. MAILING ADDRESS 200 West Madison, Suite 2610			CITY Chicago	STATE IL	POSTAL CODE 60606

4. This FINANCING STATEMENT covers the following collateral:

See Schedule A attached hereto and made a part hereof.

5. ALTERNATIVE DESIGNATION IF APPLICABLE	LESSOR/LESSOR	CONSIGNEE/CONSIGNOR	BAILEE/BAILOR	SELLER/BUYER	AG. UEN	NON-UCC FILING
6. THIS FINANCING STATEMENT IS TO BE USED FOR RECORD (or recorded in the REAL ESTATE RECORDS)	7. CHECK IF REQUEST SEARCH REPORT (R) ON DEBITOR(S)		8. OPTIONAL FILER REFERENCE DATA			

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT (FORM UCC-1) (REV. 07/28/08)
KATUCC1 - 5/4/01 C.T. Systems Update

Instructions for National UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read all instructions, especially Instruction 1; correct Debtor name is crucial. Follow instructions completely.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. Filing office cannot give legal advice. Do not insert anything in the open space in the upper portion of this form; it is reserved for filing office use.

When properly completed, send Filing Office Copy, with required fee, to filing office. If you want an acknowledgment, complete Item B and, if filing in a filing office that returns an acknowledgment copy furnished by filer, you may also send Acknowledgment Copy; otherwise detach. If you want to make a search request, complete Item 7 (after reading instruction 7 below) and send Search Report Copy; otherwise detach. Always detach Debtor and Secured Party Copies.

If you need to use attachments, use 8-1/2 X 11 inch sheets and put at the top of each sheet the name of the first Debtor, formatted exactly as it appears in Item 1 of this form; you are encouraged to use Addendum (Form UCC1Ad).

A. To assist filing offices that might wish to communicate with filer, filer may provide information in Item A. This item is optional.

B. Complete Item B if you want an acknowledgment sent to you. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form a carbon or other copy of this form for use as an acknowledgment copy.

1. Debtor name: Enter only one Debtor name in Item 1, an organization's name (1a) or an individual's name (1b). Enter Debtor's exact full legal name. Don't abbreviate.
 - 1a. **Organization Debtor.** "Organization" means an entity having a legal identity separate from its owner. A partnership is an organization; a sole proprietorship is not an organization, even if it does business under a trade name. If Debtor is a partnership, enter exact full legal name of partnership; you need not enter names of partners as additional Debtors. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed charter documents to determine Debtor's correct name, organization type, and jurisdiction of organization.
 - 1b. **Individual Debtor.** "Individual" means a natural person; this includes a sole proprietorship, whether or not operating under a trade name. Don't use prefixes (Mr., Mrs., Ms.). Use suffix box only for lines of lineage (Jr., Sr., III) and not for other suffixes or titles (e.g., M.D.). Use married woman's personal name (Mary Smith, not Mrs. John Smith). Enter individual Debtor's family name (surname) in Last Name box, first given name in First Name box, and all additional given names in Middle Name box.
For both organization and individual Debtors: Don't use Debtor's trade name, DBA, AKA, FKA, Division name, etc. In place of or combined with Debtor's legal name; you may add such other names as additional Debtors if you wish (but this is neither required nor recommended).
 - 1c. An address is always required for the Debtor named in 1a or 1b.
 - 1d. Debtor's taxpayer identification number (tax ID #) — social security number or employer identification number — may be required in some states.
 - 1e. f.g. "Additional information re organization Debtor" is always required. Type of organization and jurisdiction of organization as well as Debtor's exact legal name can be determined from Debtor's current filed charter document. Organizational ID #, if any, is assigned by the agency where the charter document was filed; this is different from tax ID #; this should be entered preceded by the 2-character U.S. Postal identification of state of organization if one of the United States (e.g., CA12345, for a California corporation whose organizational ID # is 12345); if agency does not assign organizational ID #, check box in item 1g indicating "none."
- Note: If Debtor is a trust or a trustee acting with respect to property held in trust, enter Debtor's name in Item 1 and attach Addendum (Form UCC1Ad) and check appropriate box in item 17. If Debtor is a decedent's estate, enter name of deceased individual in item 1b and attach Addendum (Form UCC1Ad) and check appropriate box in item 17. If Debtor is a transmitting utility or the Financing Statement is filed in connection with a Manufactured-Home Transaction or a Public Finance Transaction as defined in applicable Commercial Code, attach Addendum (Form UCC1Ad) and check appropriate box in item 18.
2. If an additional Debtor is included, complete item 2, determined and formatted per instruction 1. To include further additional Debtors, or one or more additional Secured Parties, attach either Addendum (Form UCC1Ad) or other additional page(s), using correct name format. Follow instruction 1 for determining and formatting additional names.
 3. Enter information for Secured Party or Total Assignee, determined and formatted per instruction 1. If there is more than one Secured Party, see instruction 2. If there has been a total assignment of the Secured Party's interest prior to filing this form, you may either (1) enter Assignor S/P's name and address in item 3 and file an Amendment (Form UCC3) [see item 5 of that form]; or (2) enter Total Assignee's name and address in item 3 and, if you wish, also attach Addendum (Form UCC1Ad) giving Assignor S/P's name and address in item 12.
 4. Use item 4 to indicate the collateral covered by this Financing Statement. If space in item 4 is insufficient, put the entire collateral description or continuation of the collateral description on either Addendum (Form UCC1Ad) or other attached additional page(s).
 5. If filer desires (at filer's option) to use titles of lessor and lessor, or consignee and consignor, or seller and buyer (in the case of accounts or chattel paper), or bailee and bailor instead of Debtor and Secured Party, check the appropriate box in item 5. If this is an agricultural lien (as defined in applicable Commercial Code) filing or is otherwise not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box in item 5, complete items 1-7 as applicable and attach any other items required under other law.
 6. If this Financing Statement is filed as a fixture filing or if the collateral consists of timber to be cut or as-extracted collateral, complete items 1-5, check the box in item 6, and complete the required information (items 13, 14 and/or 15) on Addendum (Form UCC1Ad).
 7. This item is optional. Check appropriate box in item 7 to request Search Report(s) on all or some of the Debtors named in this Financing Statement. The Report will list all Financing Statements on file against the designated Debtor on the date of the Report, including this Financing Statement. There is an additional fee for each Report. If you have checked a box in item 7, file Search Report Copy together with Filing Office Copy (and Acknowledgment Copy). Note: Not all states do searches and not all states will honor a search request made via this form; some states require a separate request form.
 8. This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 8 any identifying information (e.g., Secured Party's loan number, law firm file number, Debtor's name or other identification, state in which form is being filed, etc.) that filer may find useful.

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME Indian River Plaza, L.L.C.		
OR	9b. INDIVIDUAL'S LAST NAME	9c. INDIVIDUAL'S FIRST NAME
		9d. INDIVIDUAL'S MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only org names (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME				
OR	11b. INDIVIDUAL'S LAST NAME	11c. INDIVIDUAL'S FIRST NAME	11d. INDIVIDUAL'S MIDDLE NAME	11e. INDIVIDUAL'S SUFFIX
11f. MAILING ADDRESS		11g. CITY	11h. STATE	11i. POSTAL CODE
11j. TAX ID # SSN OR EIN	11k. ADDL INFO RE ORGANIZATION DEBTOR	11l. TYPE OF ORGANIZATION	11m. JURISDICTION OF ORGANIZATION	11n. ORGANIZATIONAL ID #, if any
<input type="checkbox"/> NONE				

12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only org names (12a or 12b)

12a. ORGANIZATION'S NAME				
OR	12b. INDIVIDUAL'S LAST NAME	12c. INDIVIDUAL'S FIRST NAME	12d. INDIVIDUAL'S MIDDLE NAME	12e. INDIVIDUAL'S SUFFIX
12f. MAILING ADDRESS		12g. CITY	12h. STATE	12i. POSTAL CODE
		12j. COUNTRY		

13. This FINANCING STATEMENT covers ☐ Real estate or ☐ Personal property or ☐ Both

14. Description of real estate:

15. Additional collateral description:

16. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

17. Check only if applicable and check only one box.
Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.
☐ Debtor is a TRANSMITTING UTILITY
☐ Filed in connection with a Manufactured Home Transaction - effective 30 years
☐ Filed in connection with a Public Finance Transaction - effective 30 years

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1AD) (REV. 07/29/96)
NATUCC1 - SMART C T Systems Online

Instructions for National UCC Financing Statement Addendum (Form UCC1Ad)

9. Insert name of first Debtor shown on Financing Statement to which this Addendum is related, exactly as shown in Item 1 of Financing Statement.
10. Miscellaneous: Under certain circumstances, additional information not provided on Financing Statement may be required. Also, some states have non-uniform requirements. Use this space to provide such additional information or to comply with such requirements; otherwise, leave blank.
11. If this Addendum adds an additional Debtor, complete Item 11 in accordance with Instruction 1 on Financing Statement. To add more than one additional Debtor, either use an additional Addendum form for each additional Debtor or replicate for each additional Debtor the formatting of Financing Statement Item 1 on an 8-1/2 X 11 inch sheet (showing at the top of the sheet the name of the first Debtor shown on the Financing Statement), and in either case give complete information for each additional Debtor in accordance with Instruction 1 on Financing Statement. All additional Debtor information, especially the name, must be presented in proper format exactly identical to the format of Item 1 of Financing Statement.
12. If this Addendum adds an additional Secured Party, complete Item 12 in accordance with Instruction 3 on Financing Statement. In the case of a total assignment of the Secured Party's interest before the filing of this Financing Statement, if filer has given the name and address of the Total Assignee in Item 3 of the Financing Statement, filer may give the Assignor S/P's name and address in Item 12.
- 13-15. If collateral is to be out-of-state extracted collateral, or if this Financing Statement is filed as a fixture filing, check appropriate box in Item 13; provide description of real estate in Item 14; and, if Debtor is not a record owner of the described real estate, also provide, in Item 15, the name and address of a record owner. Also provide collateral description in Item 4 of Financing Statement. Also check box 8 on Financing Statement. Description of real estate must be sufficient under the applicable law of the jurisdiction where the real estate is located.
16. Use this space to provide continued description of collateral, if you cannot complete description in Item 4 of Financing Statement.
17. If Debtor is a trust or a trustee acting with respect to property held in trust or is a decedent's estate, check the appropriate box.
18. If Debtor is a transmitting utility or if the Financing Statement relates to a Manufactured-Home Transaction or a Public-Finance Transaction as defined in the applicable Commercial Code, check the appropriate box.

NATUCC1 - 5/98 CT System Online

SCHEDULE A - ATTACHMENT TO UCC-1

Debtor: INDIAN RIVER PLAZA, L.L.C.
Secured Party: CANADIAN IMPERIAL BANK OF COMMERCE, New York Agency

All of Debtor's (as hereinafter defined) right, title and interest in and to the following:

A. All that certain real property situated at 7901 - 7919 E. Thomas Road, County of Maricopa, State of Arizona, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Land"), together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining and all of the estate, right, title, interest, claim and demand whatsoever of Debtor therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

B. All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Land (the "Improvements");

C. All furniture, furnishings, fixtures, goods, equipment, inventory or personal property owned by Debtor and now or hereafter located on, attached to or used in and about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Debtor as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situated on or about the Land or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

D. All easements, rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, air rights and other development rights now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Land and/or Improvements or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Debtor;

E. All water, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights which are appurtenant to, located on, under or above or used in connection with the Land or the Improvements, or any part thereof, whether now existing or hereafter created or acquired;

F. All minerals, crops, timber, trees, shrubs, flowers and landscaping features now or hereafter located on, under or above the Land;

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G. All cash funds, deposit accounts and other rights and evidence of rights to cash, now or hereafter created or held by Secured Party pursuant to the Deed of Trust or any other of the Loan Documents (as hereinafter defined), including, without limitation, all funds now or hereafter on deposit in the Impound Account, the Leasing Reserve, the Cash Collateral Reserve, the Oaco Completion Reserve, the Repair and Remediation Reserve and the Replacement Reserve (collectively, the "Reserves");

H. All leases (including, without limitation, oil, gas and mineral leases), licenses, concessions and occupancy agreements of all or any part of the Land or the Improvements now or hereafter entered into (each, a "Lease" and collectively, the "Leases") and all rents, royalties, issues, profits, revenue, income and other benefits (collectively, the "Rents and Profits") of the Land or the Improvements, now or hereafter arising from the use or enjoyment of all or any portion thereof or from any present or future Lease or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities deposited to secure performance by the tenants, lessees or licensees, as applicable (each, a "Tenant" and collectively, the "Tenants"), of their obligations under any such Leases, whether said cash or securities are to be held until the expiration of the terms of said Leases or applied to one or more of the installments of rent coming due prior to the expiration of said terms, subject to, however, the provisions contained in Section 1.11 of the Deed of Trust;

I. All contracts and agreements now or hereafter entered into covering any part of the Land or the Improvements (collectively, the "Contracts") and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents relating to construction on any part of the Land or the Improvements (including plans, drawings, surveys, tests, reports, bonds and governmental approvals) or to the management or operation of any part of the Land or the Improvements;

J. All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Land or the Improvements;

K. All present and future funds, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (including without limitation, trademarks, trade names, servicemarks and symbols now or hereafter used in connection with any part of the Land or the Improvements, all names by which the Land or the Improvements may be operated or known, all rights to carry on business under such names, and all rights, interest and privileges which Debtor has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Land or the Improvements) and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Land or the Improvements (collectively, the "General Intangibles");

L. All water taps, sewer taps, certificates of occupancy, permits, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Land or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings,

NY:650199.1

personal property or components of any of the foregoing now or hereafter located or installed on the Land or the Improvements;

M. All building materials, supplies and equipment now or hereafter placed on the Land or in the Improvements and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Land or the Improvements;

N. All right, title and interest of Debtor in any insurance policies or binders now or hereafter relating to the Property including any unearned premiums thereon;

O. All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards and proceeds of refunds of any taxes or assessments levied against the Property with respect to any period in which the Deed of Trust encumbers the Property; and

P. All other or greater rights and interests of every nature in the Land or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Debtor.

All capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in that certain Deed of Trust and Security Agreement dated as of January __, 2002 (the "Deed of Trust") from Debtor, as grantor, for the benefit of Secured Party, as beneficiary, and recorded in the Real Estate Records of Maricopa County, Arizona.

NY1650199.1

EXHIBIT A
LEGAL DESCRIPTION

PARCEL NO. 1:

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof; and

EXCEPT the North 55 feet; and

EXCEPT the East 65 feet

EXCEPT that part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Section 35;

thence North 89 degrees 59 minutes 52 seconds West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

thence South 00 degrees 08 minutes 06 seconds East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 240.06 feet to the Point of Beginning;

thence continuing South 00 degrees 08 minutes 06 seconds East, a distance of 3.88 feet;

thence South 89 degrees 59 minutes 52 seconds East, parallel with said North line, a distance of 152.94 feet to a point on the West right of way line of Hayden Road, said point being 65.00 feet West of said East line;

thence South 00 degrees 08 minutes 06 seconds East, along the West right of way line and parallel with said East line, a distance of 200.10 feet;

thence departing said West right of way line, South 89 degrees 51 minutes 55 seconds West, a distance of 194.22 feet;

thence North 00 degrees 21 minutes 44 seconds East, a distance of 204.39 feet;

thence North 89 degrees 54 minutes 48 seconds East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

PARCEL NO. 2:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 35;

thence West along the North line of said Section 35, 710 feet;

thence South 00 degrees 08 minutes 06 seconds East, 55 feet to the POINT OF BEGINNING;

thence continuing South 00 degrees 08 minutes 06 seconds East, 30 feet;

thence Northwesterly, 39 feet, more or less, to a point on a line lying 55 feet South of, and parallel to, the North line of said Section 35, said point lying 25 feet West of the POINT OF BEGINNING of this description;

NY:650199.1

thence East, along said line, 25 feet to the POINT OF BEGINNING.

PARCEL NO. 3:

That part of the Northeast quarter of the Northeast of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

thence North 00 degrees 08 minutes 06 seconds West, along the said West line of the North 710 feet of the East 710 feet, 3.40 feet to the POINT OF BEGINNING;

thence continuing North 00 degrees 08 minutes 06 seconds West, along the said West line, herein before described, 246.60 feet;

thence South 29 degrees 08 minutes 45 seconds West, 267.58 feet;

thence South 84 degrees 22 minutes 21 seconds East, 131.54 feet, more or less, to the POINT OF BEGINNING.

NY:650199.1

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20020836507 08/16/2002 15:50
ELECTRONIC RECORDING

WHEN RECORDED, RETURN TO:

Lila Madden (LARRY LANTZ)
ONE STOP SHOP RECORDS
CITY OF SCOTTSDALE
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

6792-9-1-1--
Yorkm



CITY OF SCOTTSDALE
DRAINAGE AND FLOOD CONTROL EASEMENT
AND PROVISION FOR MAINTENANCE

PROJECT: 4114-30-6

QS: _____

KNOW ALL MEN BY THESE PRESENTS: That Indian River Plaza, L.L.C.

AN ARIZONA LIMITED LIABILITY COMPANY he
reinafter referred to as **GRANTOR(S)**, for and in consideration of the sum of Ten Dollars (\$10.00), a receipt of which is hereby acknowledged, and other good and valuable considerations received from the **City of Scottsdale**, Maricopa County, Arizona, a municipal corporation, hereinafter called **GRANTEE**, does hereby grant and convey unto **GRANTEE**, and its successors and assigns, a perpetual right-of-way and easement, in, upon, over, and across the real property hereinafter described, for the purpose of construction, maintenance, operation, replacement, and repair of levees, dikes, channels, and other works of drainage or flood control upon, along, under, and over the hereinafter described lands.

TO HAVE AND TO HOLD for the purpose of drainage or flood control and all purposes consistent with this easement.

The lands through, over, and across which this easement is granted are situated in Maricopa County, State of Arizona, and are more fully described as follows:

**A Drainage Easement as described on the legal description
and as depicted on the sketch attached hereto and made part thereof**

The **Grantor(s)** hereby covenants that s/he (they) is (are) lawfully seized and possessed of this aforementioned tract or parcel of land; that s/he (they) has (have) a good and lawful right to sell and convey it; and that s/he (they) will warrant the title and quiet possession thereto against the lawful claim of all persons.

GRANTOR agrees not to construct any improvements which would obstruct passage of storm waters or which would endanger the health, safety, or welfare of any persons as a result of flooding or which would create a substantial danger to personal or real property or improvements thereon as a result of flooding.

GRANTOR agrees that **GRANTOR** will, at his/her expense, maintain the easement area in such condition that the easement area will safely pass storm waters as hereinbefore described and shall allow no refuse, debris, vegetation, or other obstruction to accumulate or collect in the easement area or any improvement; and if, in the opinion of the **GRANTEE**, the **GRANTOR** fails to so maintain the

easement area and any improvement, then GRANTEE shall serve written notice of such failure on GRANTOR, and if the GRANTOR fails to rectify said default within ten (10) days from the date said notice was received, GRANTEE may rectify such default. Upon completion of said maintenance work, GRANTEE may submit in writing to GRANTOR the cost incurred in maintaining the easement area. Upon GRANTOR'S receipt of notice of such amount, it shall immediately become a lien against the property hereinabove described, and it shall remain a lien in favor of GRANTEE until the same be paid in full by GRANTOR, together with interest at the annual rate of eight percent (8%).

The right and remedy hereby granted GRANTEE shall not be exclusive, and GRANTEE shall also have all the rights and remedies available to it in accordance with the laws of the State of Arizona and the City of Scottsdale. The establishment of a lien, as above provided, shall not preclude GRANTEE from subsequently establishing additional liens upon subsequent failure or failures of GRANTOR to so maintain the easement area and any improvement.

Nothing herein contained shall be construed to create or constitute any obligation or burden upon GRANTEE for maintenance, but rather the enforcement of the rights herein granted GRANTEE shall be at GRANTEE'S election.

The provisions hereof shall be binding upon the parties hereto and their heirs, executors, successors, and assigns.

DATED this 18 day of JUNE, 2002.

Indian River PLAZA L.L.C.

IT'S Manager

State of Arizona)
)ss
County of Maricopa)

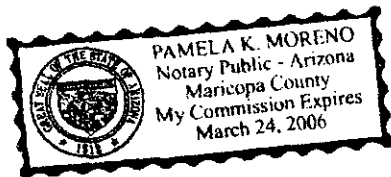
This instrument was acknowledged before me this 18th day of June, 20

2002, by Bruce I. Shapiro

In witness whereof I hereunto set my hand and official seal.

[Signature]
NOTARY PUBLIC

My Commission Expires 3-24-2006



mp\T:\PR-SHAP\WORDCS\FORMS\ERFCESM*.DOC
08 Apr 02

WHEN RECORDED, RETURN TO:

Lila Madden (_____))
 ONE STOP SHOP RECORDS
 City of Scottsdale
 7447 East Indian School Road, Suite 100
 Scottsdale, AZ 85251



**CITY OF SCOTTSDALE
 CONSENT TO DRAINAGE EASEMENT**

PROJECT 2117-00-6
 OS _____

The granting of an easement as described in the following legal description and as depicted in the following exhibit attached hereto and made a part hereof is herewith acknowledged and approved and consent is given to said drainage easement as to the interest of the undersigned.

CIBC, Inc. (Canadian Imperial Bank of Commerce) Beneficiary under a Deed of Trust recorded in the County Recorder's office, Maricopa County, Arizona, in Recorder's Number 2002 006 3504. The person signing for Beneficiary warrants and represents s/he has power and authority to do so.

IN WITNESS WHEREOF, the Beneficiary has signed and delivered this instrument this

20th day of June, 2002.

David C. Slade

Authorized Signatory

State of Arizona)
 Illinois) ss
 County of Maricopa)
 Cook

This instrument was acknowledged before me this 20th day of June, 2002.

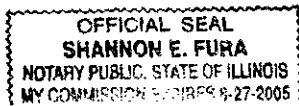
by David C. Slade as Authorized Signatory
 (TITLE)

of CIBC, Inc on behalf thereof.
 (NAME of Beneficiary)

IN WITNESS WHEREOF I hereunto set my hand and official seal.

Shannon E. Fura
 NOTARY PUBLIC

My Commission Expires 8-27-2005



15 JULY 96/VI T:\PR-SHARE\WORD\DOCS\EASEMENT\CONSENT.DOC

**BRADY • AULERICH & ASSOCIATES, INC.**Civil Engineering • Land Surveying
Construction Staking

C.E. Aulerich	P.L.S.
Dennis H. Brady	P.L.S.
Joseph J. Brahm	P.L.S.
Brant L. Henderson	P.E.
Robert N. Hermon	P.E./P.L.S.

LEGAL DESCRIPTION: DRAINAGE EASEMENT

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt Rive Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Northeast quarter;
 thence North 89° 59' 52" West, along the North line of said Northeast quarter, a distance of 217.94 feet;
 thence South 00° 08' 19" East, a distance of 55.00 feet to the South right-of-way line of Thomas Road;
 thence North 89° 59' 52" West, along said right-of-way line, a distance of 192.23 feet to the Point of Beginning;
 thence South 00° 13' 33" West, a distance of 30.40 feet;
 thence North 89° 59' 52" West, a distance of 76.70 feet;
 thence North 00° 00' 00" East, a distance of 30.40 feet to the aforementioned South right-of-way line of Thomas Road;
 thence South 89° 59' 52" East, along said right-of-way line, a distance of 76.52 feet to the Point of Beginning.



Page 1 of 2

1030 East Guadalupe Road • Tempe, Arizona 85283-3044 • (480) 839-4000 • FAX (480) 345-9259
www.baa-survey.com



BRADY•AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

Tempe, Arizona 85283

Phone (602) 839-4000 Fax (602) 345-9259

PAGE 2 OF 2 PAGES

PROJECT: INDIAN RIVER PLAZA

DATE: 7/19/01

DRAINAGE EASEMENTNE CORNER SECTION 35
T-2N, R-4E
SET COTTON SPINDLEN 1/4 COR. SEC. 35
FOUND BRASS CAP
0.20' BELOW PAVEMENTFOUND BRASS CAP IN
HANDHOLE
5.0' WEST OF SECTION
CORNER

THOMAS

ROAD

S 89°59'52" E

2625.95'

2408.01'

217.94'

N 89°59'52" W

55.00'
S 00°08'19" E

P.O.B.

S 89°59'52" E

76.52'

N 89°59'52" W

192.23'

S 00°13'33" W
30.40'

N 89°59'52" W

76.70'

N 00°00'00" E
30.40'

ROAD

HAYDEN

2658.75'

EAST LINE NE 1/4
SECTION 35

M-S 00°08'06" E

E. 1/4 COR. SEC. 35
FOUND BRASS CAP
IN HANDHOLE

SCALE: 1"=40'

**BRADY • AULERICH & ASSOCIATES, INC.**Civil Engineering • Land Surveying
Construction Staking

C.E. Aulerich	P.L.S.
Dennis H. Brady	P.L.S.
Joseph J. Brahm	P.L.S.
Brent L. Henderson	P.E.
Robert N. Hermon	P.E./P.L.S.

LEGAL DESCRIPTION: DRAINAGE EASEMENT

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt Rive Base and Meridian, Maricopa County, Arizona, described as follows:

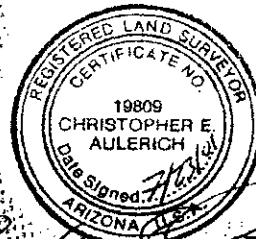
Commencing at the Southwest corner of the North 710.00 feet of the East 710.00 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

thence North 00° 08' 06" West, along the said West line of the North 710.00 feet of the East 710.00 feet, 3.40 feet to the True Point of Beginning;

thence continuing North 00° 08' 06" West, along the said West line, hereinbefore described, 246.60 feet to a point;

thence South 29° 08' 45" West, 267.58 feet;

thence South 84° 22' 21" East, 131.54 feet, more or less, to the True Point of Beginning.





BRADY•AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

Tempe, Arizona 85283

Phone (602) 839-4000 Fax (602) 345-9259

PAGE 2 OF 2 PAGES

PROJECT: INDIAN RIVER PLAZA

DATE: 7/19/01

N 1/4 COR. SEC. 35
 FOUND BRASS CAP
 0.20' BELOW PAVEMENT

DRAINAGE EASEMENT

THOMAS ROAD

S 89°59'52" E 2625.95'

NE CORNER SECTION 35
 T-2N, R-4E
 SET COTTON SPINDLE



SCALE: 1"=40'

ROAD

HAYDEN

EAST LINE NE 1/4
 SECTION 35

710.00'

M=S 00°08'06" E

1948.75'

S00°08'06"E 246.60'

N 29°08'45" E 267.58'

N 84°22'21" W 131.54'

P.O.B.
 N 00°08'06" W
 3.40'

N 89°59'50" W 710.00'

E. 1/4 COR. SEC. 35
 FOUND BRASS CAP
 IN HANDHOLE

**BRADY • AULERICH & ASSOCIATES, INC.**Civil Engineering • Land Surveying
Construction Staking

C.E. Aulerich	P.L.S.
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LEGAL DESCRIPTION: DRAINAGE EASEMENT

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt Rive Base and Meridian, Maricopa County, Arizona, described as follows:

Commencing at the Northeast corner of said Northeast quarter;
 thence North 89° 59' 52" West, along the North line of said Northeast quarter, a distance of 710.00 feet;
 thence South 00° 08' 06" East, a distance of 55.00 feet to the South right-of-way line of Thomas Road;
 thence South 89° 59' 52" East, a distance of 20.24 feet to the Point of Beginning;
 thence continuing South 89° 59' 52" East, along said South right-of-way line, a distance of 196.75 feet;
 thence South 00° 00' 00" West, a distance of 30.65 feet;
 thence North 89° 59' 52" West, a distance of 196.63 feet;
 thence North 00° 13' 27" West, a distance of 30.65 feet to the Point of Beginning.



Page 1 of 2

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BRADY • AULERICH & ASSOCIATES, INC.

1030 E. Guadalupe Road

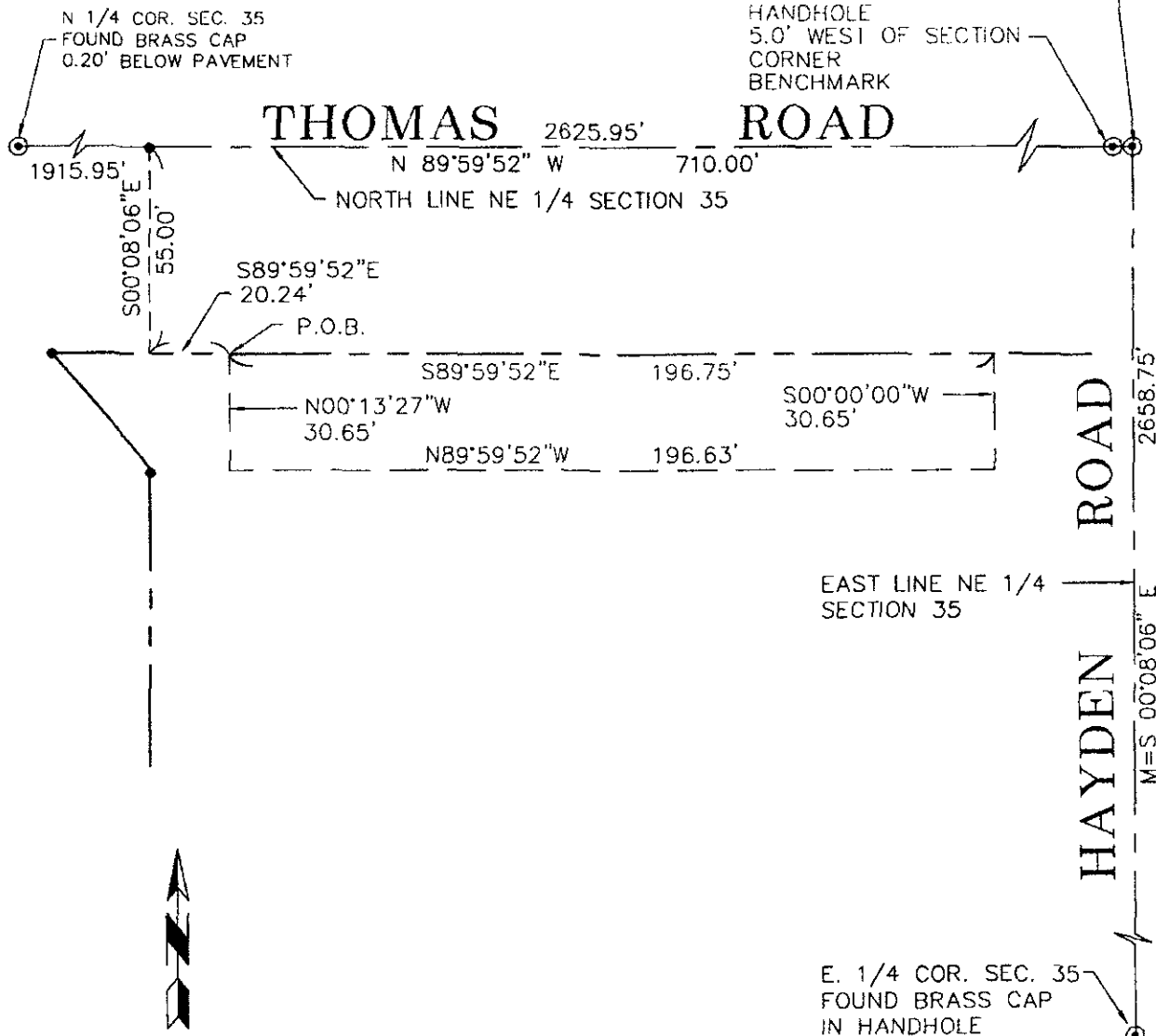
Tempe, Arizona 85283

Phone (602) 839-4000 Fax (602) 345-9259

PAGE 2 OF 2 PAGES

PROJECT: INDIAN RIVER PLAZA

DATE: 7/19/01

DRAINAGE EASEMENTNE CORNER SECTION 35
T-2N, R-4E
SET COTTON SPINDLEFOUND BRASS CAP IN
HANDHOLE
5.0' WEST OF SECTION
CORNER
BENCHMARK

**FIDELITY NATIONAL TITLE
HOLD FOR PICK-UP**

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20021372240 12/19/2002 13:35
ELECTRONIC RECORDING

BB003220-53-2-1--
guilleni

75003220 1/2

CAPTION HEADING: Deed of Trust

DO NOT REMOVE

This is part of the official document.

INDIAN RIVER PLAZA, L.L.C.,
an Arizona limited liability company, as grantor
("Borrower")

to

FIDELITY NATIONAL TITLE INSURANCE COMPANY
as trustee ("Trustee"),

for the benefit of
WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY
AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY,
a Nebraska corporation, as beneficiary
("Lender")

**DEED OF TRUST,
SECURITY AGREEMENT,
ABSOLUTE ASSIGNMENT OF LEASES AND RENTS
AND FIXTURE FILING**

(COLLATERAL IS OR INCLUDES FIXTURES)

Dated: December 19, 2002

Property Commonly
Known As: Indian River Plaza

City: Scottsdale
County: Maricopa
State: Arizona

**PREPARED BY AND
UPON RECORDATION RETURN TO:**

Lawrence E. Krittenbrink
BAIRD, HOLM, McEACHEN, PEDERSEN, HAMANN
and STRASHEIM, LLP
1500 Woodmen Tower
Omaha, NE 68102

SECURITY INSTRUMENT
DOCS/522006.4

THIS DEED OF TRUST, SECURITY AGREEMENT, ABSOLUTE ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("Security Instrument") is made as of December _____, 2002 by INDIAN RIVER PLAZA, L.L.C., an Arizona limited liability company, having its principal place of business at 3200 North Central Avenue, Suite 2450, Phoenix, Arizona 85012 ("**Borrower**") to FIDELITY NATIONAL TITLE INSURANCE COMPANY ("**Trustee**"), as trustee, having its principal place of business at 2390 East Camelback Road, No. 140, Phoenix, Arizona 85016, for the benefit of WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY, a Nebraska corporation ("**Lender**"), as payee, having an address at Woodmen Tower, 1700 Farnam Street, Omaha, Nebraska 68102 (Attn: Investment Division).

RECITALS:

Borrower is the fee owner of the real property described in Exhibit "A" attached hereto (the "**Land**").

Borrower by its promissory note of even date herewith given to Lender (the "**Note**") is indebted to Lender in the principal sum of SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000.00) (the "**Loan**"), with a final stated maturity date of January 1, 2013.

Borrower desires to secure the payment of the Debt (defined below) and the performance of all of its obligations under the Note and the Other Obligations.

All capitalized terms shall have the meanings ascribed in the Definitions Glossary in Section 20.2 or as otherwise defined in this Security Instrument.

Borrower hereby agrees, covenants, represents and warrants with and to Lender as follows:

ARTICLE 1 - GRANT

Section 1.1 - PROPERTY. Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey to Trustee, its successors and assigns, for the benefit of Lender WITH POWER OF SALE, and grant a security interest to Trustee and Lender in the Land;

TOGETHER WITH all right, title, interest and estate of Borrower now owned or hereafter acquired, in and to the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (the Land, together with such property, rights, interests and estates are herein collectively referred to as the "**Property**");

(a) Additional Land. All additional lands, estates and development rights hereafter acquired by Borrower for use in connection with the Land and the development of the Land that may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(b) Improvements. The buildings, structures, fixtures, additions, enlargements, extensions, modifications, repairs, replacements and improvements now or hereafter erected or located on the Land (the "**Improvements**");

(c) Easements. All easements, rights-of-way or use, rights, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, and all estates, rights, titles, interests, privileges, liberties, servitudes, tenements,

SECURITY INSTRUMENT
DOCS/522008.4

IN WITNESS WHEREOF, this Security Instrument has been executed by Borrower effective as of the day and year first above written.

BORROWER:

INDIAN RIVER PLAZA, L.L.C., an Arizona limited liability company

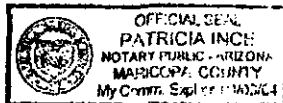
By: MBS PARTNERS, LLC, Managing Member

By: *BLS*
Bruce I. Shapiro, Manager

State of ARIZONA
County of MARICOPA

The foregoing instrument was acknowledged before me this 17 day of December, 2002, by BRUCE I. SHAPIRO, as Manager of MBS PARTNERS, LLC, the Managing Member of INDIAN RIVER PLAZA, L.L.C., an Arizona limited liability company, on behalf of the limited liability company:

[SEAL]



My commission expires: _____

Patricia Ince
Notary Public

EXHIBIT A
(DESCRIPTION OF LAND)

SECURITY INSTRUMENT
DOCS/522006.4

EXHIBIT "ONE"**TRACT I:****PARCEL NO. 1:**

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof; and
EXCEPT the North 55 feet; and

EXCEPT the East 65 feet;

EXCEPT that part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 35;

THENCE North 89 degrees 59 minutes 52 seconds West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

THENCE South 00 degrees 08 minutes 06 seconds East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 204.06 feet to the Point of Beginning;

THENCE continuing South 00 degrees 08 minutes 06 seconds East, a distance of 3.88 feet;

THENCE South 89 degrees 59 minutes 52 seconds East, parallel with said North line, a distance of 152.94 feet to a point on the West right of way line of Hayden Road, said point being 65.00 feet West of said East line;

THENCE South 00 degrees 08 minutes 06 seconds East, along the West right of way line and parallel with said East line, a distance of 200.10 feet;

THENCE departing said West right of way line, South 89 degrees 51 minutes 55 seconds West, a distance of 194.22 feet;

THENCE North 00 degrees 21 minutes 44 seconds East, a distance of 204.39 feet;

THENCE North 89 degrees 54 minutes 48 seconds East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

PARCEL NO. 2:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 35;

THENCE West along the North line of said Section 35, 710 feet;

THENCE South 00 degrees 08 minutes 06 seconds East, 55 feet to the POINT OF BEGINNING;

THENCE continuing South 00 degrees 08 minutes 06 seconds East, 30 feet;

THENCE Northwesterly, 39 feet, more or less, to a point on a line lying 55 feet South of, and parallel to, the North line of said Section 35, said point lying 25 feet West of the POINT OF BEGINNING of this description;

THENCE East, along said line, 25 feet to the POINT OF BEGINNING.

PARCEL NO. 3:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

THENCE North 00 degrees 08 minutes 06 seconds West, along the said West line of the North 710 feet of the East 710 feet, 3.40 feet to the POINT OF BEGINNING;

THENCE continuing North 00 degrees 08 minutes 06 seconds West, along the said West line, herein before described, 246.60 feet;

THENCE South 29 degrees 08 minutes 45 seconds West, 267.58 feet;

THENCE South 84 degrees 22 minutes 21 seconds East, 131.54 feet, more or less, to the POINT OF BEGINNING.

TRACT II:

PARCEL NO. 4:

A non-exclusive easement for vehicular and pedestrian ingress and egress and circulation, vehicular parking, and installation, operation, repair and maintenance of underground utility lines over the common areas as granted in Declaration of Covenants, Conditions, Restrictions and easements recorded January 22, 2002 in Instrument No. 20020063503; and thereafter First Amendment recorded December 19, 2002, in Instrument No. 20021369956.

**FIDELITY NATIONAL TITLE
HOLD FOR PICK-UP**

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20021372241 12/19/2002 13:35
ELECTRONIC RECORDING

BB003220-8-2-2--
guilleni

75003220 2/2

CAPTION HEADING: UCC Financing Statement

DO NOT REMOVE

This is part of the official document.

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

Drew K. Theophilus (402) 344-0500

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Lawrence Kritenbrink
Baird, Holm, McEachen, Pedersen,
Hermann & Strasheim LLP
1500 Woodmen Tower
Omaha, NE 68102

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names**1a. ORGANIZATION'S NAME**

Indian River Plaza, L.L.C.

OR 1b. INDIVIDUAL'S LAST NAME**FIRST NAME****MIDDLE NAME****SUFFIX****1c. MAILING ADDRESS**

3200 North Central Avenue - Suite 2450

CITY

Phoenix

STATE

AZ

POSTAL CODE

85012

COUNTRY

USA

1d. TAX ID #: SSN OR EIN

86-0939209

ADDL INFO RE

ORGANIZATION

DEBTOR

1e. TYPE OF ORGANIZATION

ltd. liability company

1f. JURISDICTION OF ORGANIZATION

Arizona

1g. ORGANIZATIONAL ID #, if any☐ NONE**2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names****2a. ORGANIZATION'S NAME****OR 2b. INDIVIDUAL'S LAST NAME****FIRST NAME****MIDDLE NAME****SUFFIX****2c. MAILING ADDRESS****CITY****STATE****POSTAL CODE****COUNTRY****2d. TAX ID #: SSN OR EIN****ADDL INFO RE**

ORGANIZATION

DEBTOR

2e. TYPE OF ORGANIZATION**2f. JURISDICTION OF ORGANIZATION****2g. ORGANIZATIONAL ID #, if any**☐ NONE**3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or 3b)****3a. ORGANIZATION'S NAME**

Woodmen of the World Life Insurance Society

OR 3b. INDIVIDUAL'S LAST NAME**FIRST NAME****MIDDLE NAME****SUFFIX****3c. MAILING ADDRESS**

1700 Farnam Street (Attn: Investment Division)

CITY

Omaha

STATE

NE

POSTAL CODE

68102

COUNTRY

USA

4. This FINANCING STATEMENT covers the following collateral:

All property of the debtor described on Exhibit "A" attached hereto and incorporated herein by reference.

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOER ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING6. ☐ THIS FINANCING STATEMENT is to be filed (for record) (or recorded) in the REAL ☐ 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) ☐ All Debtors ☐ Debtor 1 ☐ Debtor 28. OPTIONAL FILER REFERENCE DATA ☐ ATTACH ADDENDUM ☐ (if applicable) ☐ (ADDITIONAL FEE) ☐ (optional)

Real Estate Records - Maricopa County, Arizona

FILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

NATUCC1 - 54401 C.T. Systems Online

Instructions for National UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read all instructions, especially Instruction 1; correct Debtor name is crucial. Follow instructions completely.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. Filing office cannot give legal advice. Do not insert anything in the open space in the upper portion of this form; it is reserved for filing office use.

When properly completed, send Filing Office Copy, with required fee, to filing office. If you want an acknowledgment, complete item B and, if filing in a filing office that returns an acknowledgment copy furnished by filer, you may also send Acknowledgment Copy; otherwise detach. If you want to make a search request, complete item 7 (after reading Instruction 7 below) and send Search Report Copy, otherwise detach. Always detach Debtor and Secured Party Copies.

If you need to use attachments, use 8-1/2 X 11 inch sheets and put at the top of each sheet the name of the first Debtor, formatted exactly as it appears in item 1 of this form; you are encouraged to use Addendum (Form UCC1Ad).

A. To assist filing offices that might wish to communicate with filer, filer may provide information in item A. This item is optional.

B. Complete item B if you want an acknowledgment sent to you. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form a carbon or other copy of this form for use as an acknowledgment copy.

1. **Debtor name:** Enter only one Debtor name in item 1, an organization's name (1a) or an individual's name (1b). Enter Debtor's exact full legal name. Don't abbreviate.
 - 1a. **Organization Debtor.** "Organization" means an entity having a legal identity separate from its owner. A partnership is an organization; a sole proprietorship is not an organization, even if it does business under a trade name. If Debtor is a partnership, enter exact full legal name of partnership; you need not enter names of partners as additional Debtors. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed charter documents to determine Debtor's correct name, organization type, and jurisdiction of organization.
 - 1b. **Individual Debtor.** "Individual" means a natural person; this includes a sole proprietorship, whether or not operating under a trade name. Don't use prefixes (Mr., Mrs., Ms.). Use suffix box only for titles of lineage (Jr., Sr., III) and not for other suffixes or titles (e.g., M.D.). Use married woman's personal name (Mary Smith, not Mrs. John Smith). Enter individual Debtor's family name (surname) in Last Name box, first given name in First Name box, and all additional given names in Middle Name box.
For both organization and individual Debtors: Don't use Debtor's trade name, DBA, AKA, FKA, Division name, etc. In place of or combined with Debtor's legal name; you may add such other names as additional Debtors if you wish (but this is neither required nor recommended).
 - 1c. An address is always required for the Debtor named in 1a or 1b.
 - 1d. Debtor's taxpayer identification number (tax ID #) — social security number or employer identification number — may be required in some states.
 - 1e, f, g. "Additional information re organization Debtor" is always required. Type of organization and jurisdiction of organization as well as Debtor's exact legal name can be determined from Debtor's current filed charter document. Organizational ID #, if any, is assigned by the agency where the charter document was filed; this is different from tax ID #; this should be entered preceded by the 2-character U.S. Postal identification of state of organization if one of the United States (e.g., CA12345, for a California corporation whose organizational ID # is 12345); if agency does not assign organizational ID #, check box in item 1g indicating "none."
- Note:** If Debtor is a trust or a trustee acting with respect to property held in trust, enter Debtor's name in item 1 and attach Addendum (Form UCC1Ad) and check appropriate box in item 17. If Debtor is a decedent's estate, enter name of deceased individual in item 1b and attach Addendum (Form UCC1Ad) and check appropriate box in item 17. If Debtor is a transmitting utility or this Financing Statement is filed in connection with a Manufactured-Home Transaction or a Public-Finance Transaction as defined in applicable Commercial Code, attach Addendum (Form UCC1Ad) and check appropriate box in item 18.
2. If an additional Debtor is included, complete item 2, determined and formatted per Instruction 1. To include further additional Debtors, or one or more additional Secured Parties, attach either Addendum (Form UCC1Ad) or other additional page(s), using correct name format. Follow Instruction 1 for determining and formatting additional names.
 3. Enter information for Secured Party or Total Assignee, determined and formatted per Instruction 1. If there is more than one Secured Party, see Instruction 2. If there has been a total assignment of the Secured Party's interest prior to filing this form, you may either (1) enter Assignor S/P's name and address in item 3 and file an Amendment (Form UCC3) [see item 5 of that form]; or (2) enter Total Assignee's name and address in item 3 and, if you wish, also attaching Addendum (Form UCC1Ad) giving Assignor S/P's name and address in item 12.
 4. Use item 4 to indicate the collateral covered by this Financing Statement. If space in item 4 is insufficient, put the entire collateral description or continuation of the collateral description on either Addendum (Form UCC1Ad) or other attached additional page(s).
 5. If filer desires (at filer's option) to use titles of lessee and lessor, or consignee and consignor, or seller and buyer (in the case of accounts or chattel paper), or bailee and bailor instead of Debtor and Secured Party, check the appropriate box in item 5. If this is an agricultural lien (as defined in applicable Commercial Code) filing or is otherwise not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box in item 5, complete items 1-7 as applicable and attach any other items required under other law.
 6. If this Financing Statement is filed as a fixture filing or if the collateral consists of timber to be cut or as-extracted collateral, complete items 1-5, check the box in item 6, and complete the required information (items 13, 14 and/or 15) on Addendum (Form UCC1Ad).
 7. This item is optional. Check appropriate box in item 7 to request Search Report(s) on all or some of the Debtors named in this Financing Statement. The Report will list all Financing Statements on file against the designated Debtor on the date of the Report, including this Financing Statement. There is an additional fee for each Report. If you have checked a box in item 7, file Search Report Copy together with Filing Office Copy (and Acknowledgment Copy). Note: Not all states do searches and not all states will honor a search request made via this form; some states require a separate request form.
 8. This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 8 any identifying information (e.g., Secured Party's loan number, law firm file number, Debtor's name or other identification, state in which form is being filed, etc.) that filer may find useful.

UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT

9a. ORGANIZATION'S NAME

Indian River Plaza, L.L.C.

OR

9b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME, SUFFIX

10. MISCELLANEOUS:

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only ggg name (11a or 11b) - do not abbreviate or combine names

11a. ORGANIZATION'S NAME

OR

11b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

11c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

11d. TAX ID #: SSN OR EIN

ADD'L INFO RE
ORGANIZATION
DEBTOR

11e. TYPE OF ORGANIZATION

11f. JURISDICTION OF ORGANIZATION

11g. ORGANIZATIONAL ID #, if any

☐ NONE**12. ADDITIONAL SECURED PARTY'S or ASSIGNOR S/P'S NAME - insert only ggg name (12a or 12b)**

12a. ORGANIZATION'S NAME

OR

12b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

12c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☒ fixture filing.

14. Description of real estate:

15. Additional collateral description:

15. Name and address of a RECORD OWNER of above-described real estate
(if Debtor does not have a record interest):17. Check only if applicable and check only one box.Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate18. Check only if applicable and check only one box.☐ Debtor is a TRANSMITTING UTILITY☐ Filed in connection with a Manufactured Home Transaction — effective 30 years☐ Filed in connection with a Public-Finance Transaction — effective 30 yearsFILING OFFICE COPY — NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad) (REV. 07/29/98)
NATUCC1 - 544/01 C T Systems Online

Instructions for National UCC Financing Statement Addendum (Form UCC1Ad)

9. Insert name of first Debtor shown on Financing Statement to which this Addendum is related, exactly as shown in item 1 of Financing Statement.
10. Miscellaneous: Under certain circumstances, additional information not provided on Financing Statement may be required. Also, some states have non-uniform requirements. Use this space to provide such additional information or to comply with such requirements; otherwise, leave blank.
11. If this Addendum adds an additional Debtor, complete Item 11 in accordance with Instruction 1 on Financing Statement. To add more than one additional Debtor, either use an additional Addendum form for each additional Debtor or replicate for each additional Debtor the formatting of Financing Statement item 1 on an 8-1/2 X 11 inch sheet (showing at the top of the sheet the name of the first Debtor shown on the Financing Statement), and in either case give complete information for each additional Debtor in accordance with Instruction 1 on Financing Statement. All additional Debtor information, especially the name, must be presented in proper format exactly identical to the format of Item 1 of Financing Statement.
12. If this Addendum adds an additional Secured Party, complete Item 12 in accordance with Instruction 3 on Financing Statement. In the case of a total assignment of the Secured Party's interest before the filing of this Financing Statement, if filer has given the name and address of the Total Assignee in item 3 of the Financing Statement, filer may give the Assignor S/P's name and address in item 12.
- 13-15. If collateral is timber to be cut or as-extracted collateral, or if this Financing Statement is filed as a fixture filing, check appropriate box in item 13; provide description of real estate in item 14; and, if Debtor is not a record owner of the described real estate, also provide, in item 15, the name and address of a record owner. Also provide collateral description in item 4 of Financing Statement. Also check box 6 on Financing Statement. Description of real estate must be sufficient under the applicable law of the jurisdiction where the real estate is located.
16. Use this space to provide continued description of collateral, if you cannot complete description in item 4 of Financing Statement.
17. If Debtor is a trust or a trustee acting with respect to property held in trust or is a decedent's estate, check the appropriate box.
18. If Debtor is a transmitting utility or if the Financing Statement relates to a Manufactured-Home Transaction or a Public-Finance Transaction as defined in the applicable Commercial Code, check the appropriate box.

20021372241

EXHIBIT A
(DESCRIPTION OF LAND)

EXHIBIT "ONE"**TRACT I:****PARCEL NO. 1:**

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the North 207.94 feet of the East 217.94 feet thereof; and
EXCEPT the North 55 feet; and

EXCEPT the East 65 feet;

EXCEPT that part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 35;

THENCE North 89 degrees 59 minutes 52 seconds West, along the North line of the Northeast quarter of said Section 35, a distance of 217.94 feet;

THENCE South 00 degrees 08 minutes 06 seconds East, parallel with the East line of the Northeast quarter of said Section 35, a distance of 204.06 feet to the Point of Beginning;

THENCE continuing South 00 degrees 08 minutes 06 seconds East, a distance of 3.88 feet;

THENCE South 89 degrees 59 minutes 52 seconds East, parallel with said North line, a distance of 152.94 feet to a point on the West right of way line of Hayden Road, said point being 65.00 feet West of said East line;

THENCE South 00 degrees 08 minutes 06 seconds East, along the West right of way line and parallel with said East line, a distance of 200.10 feet;

THENCE departing said West right of way line, South 89 degrees 51 minutes 55 seconds West, a distance of 194.22 feet;

THENCE North 00 degrees 21 minutes 44 seconds East, a distance of 204.39 feet;

THENCE North 89 degrees 54 minutes 48 seconds East, parallel with said East line, a distance of 39.51 feet to the Point of Beginning.

PARCEL NO. 2:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of said Section 35;

THENCE West along the North line of said Section 35, 710 feet;

THENCE South 00 degrees 08 minutes 06 seconds East, 55 feet to the POINT OF BEGINNING;

THENCE continuing South 00 degrees 08 minutes 06 seconds East, 30 feet;

THENCE Northwesterly, 39 feet, more or less, to a point on a line lying 55 feet South of, and parallel to, the North line of said Section 35, said point lying 25 feet West of the POINT OF BEGINNING of this description;

THENCE East, along said line, 25 feet to the POINT OF BEGINNING.

PARCEL NO. 3:

That part of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35;

THENCE North 00 degrees 08 minutes 06 seconds West, along the said West line of the North 710 feet of the East 710 feet, 3.40 feet to the POINT OF BEGINNING;

THENCE continuing North 00 degrees 08 minutes 06 seconds West, along the said West line, herein before described, 246.60 feet;

THENCE South 29 degrees 08 minutes 45 seconds West, 267.58 feet;

THENCE South 84 degrees 22 minutes 21 seconds East, 131.54 feet, more or less, to the POINT OF BEGINNING.

TRACT II:

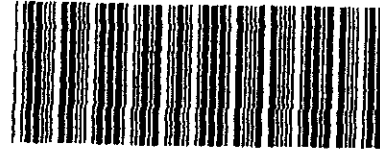
PARCEL NO. 4:

A non-exclusive easement for vehicular and pedestrian ingress and egress and circulation, vehicular parking, and installation, operation, repair and maintenance of underground utility lines over the common areas as granted in Declaration of Covenants, Conditions, Restrictions and easements recorded January 22, 2002 in Instrument No. 20020063503; and thereafter First Amendment recorded December 19, 2002, in Instrument No. 20021369956.

UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)	
Carol Stewart 949-852-0117 ext. 15	
B. SEND ACKNOWLEDGMENT TO: (Name and Address)	
Woodmen of the World Life Insurance Society c/o The Alison Company 3636 Birch Street, Suite 240 Newport Beach, CA 92660	



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2007-1275676 12/04/07 08:00 AM
35 OF 218

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #		1b. This FINANCING STATEMENT AMENDMENT is to be filed (for record) (or recorded) in the REAL ESTATE RECORDS.	
20021372241 recorded 12/19/2002		<input type="checkbox"/>	
2. <input type="checkbox"/> TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.			
3. <input checked="" type="checkbox"/> CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.			
4. <input type="checkbox"/> ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c, and also give name of assignor in item 9.			
5. AMENDMENT (PARTY INFORMATION): This Amendment affects <input type="checkbox"/> Debtor <input checked="" type="checkbox"/> Secured Party of record. Check only one of these two boxes. Also check one of the following three boxes and provide appropriate information in items 6 and/or 7. <input type="checkbox"/> CHANGE name and/or address: Please refer to the detailed instructions in regards to changing the name/address of a party. <input type="checkbox"/> DELETE name: Give record name to be deleted in item 6a or 6b. <input type="checkbox"/> ADD name: Complete item 7a or 7b, and also item 7c; also complete item 7e, 7f, 7g (if applicable).			
6. CURRENT RECORD INFORMATION			
6a. ORGANIZATION'S NAME			
Indian River Plaza, L.L.C.			
OR	6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME SUFFIX
7. CHANGED (NEW) OR ADDED INFORMATION.			
7a. ORGANIZATION'S NAME			
OR	7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME SUFFIX
7c. MAILING ADDRESS		CITY	STATE POSTAL CODE COUNTRY
2029 Glenview Drive		Las Vegas	NV 89134 US
7d. SEE INSTRUCTIONS	ADDITIONAL INFO RE ORGANIZATION DEBTOR	7e. TYPE OF ORGANIZATION	7f. JURISDICTION OF ORGANIZATION
	LLC	Arizona	7g. ORGANIZATIONAL ID #, if any
			L08601762 <input type="checkbox"/> NONE
8. AMENDMENT (COLLATERAL CHANGE): check only one box. Describe collateral <input type="checkbox"/> deleted or <input type="checkbox"/> added, or give entire <input type="checkbox"/> restated collateral description, or describe collateral <input type="checkbox"/> assigned.			

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here <input type="checkbox"/> and enter name of DEBTOR authorizing this Amendment.			
9a. ORGANIZATION'S NAME			
Woodmen of the World Life Insurance Society			
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME SUFFIX
10. OPTIONAL FILER REFERENCE DATA			
2447			

FILING OFFICE COPY — UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 05/22/02) International Association of Commercial Administrators (IACA)

10

**FIDELITY NATIONAL TITLE
HOLD FOR PICK-UP**

When Recorded, Return To:
One Stop Shop Records
City of Scottsdale
7447 E. Indian School Road
Scottsdale, AZ 85281
75003299

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
20021404900 12/27/2002 14:04
ELECTRONIC RECORDING

TC3299-3-1-1--
Bustamantey

**Addendum to
City of Scottsdale
Covenant and Agreement to Hold Property as One Parcel**

CASE NO 55 LT 01

The undersigned hereby certify that I/we is/are the owner/s of the hereinafter legally described real property located in the CITY OF SCOTTSDALE, COUNTY OF MARICOPA, and STATE OF ARIZONA.

RECITALS

1. Indian River Plaza L.L.C., an Arizona limited liability company and Hayson LLC, an Arizona limited liability company are the owners of record ("Owners") of portions of that certain property referred to in Book 134, Map 24, Parcels 002E, 002K, and 002L, Records of Maricopa County as more particularly described on the attached legal descriptions ("Property").
2. The City of Scottsdale ("City") previously recorded that certain Lot Split Approval dated August 26, 2001 in the official records of Maricopa County as Instrument 2001-0923037, recorded October 3, 2001 splitting the Property, approving the creation of two separate lots ("Lots 1 and 2"), subject to the conditions in the Lot Split Approval and recordation of required deed(s).
3. The City previously recorded that certain *Covenant and Agreement to Hold Property as One Parcel* ("Covenant and Agreement") dated September 24, 2001 in the official records of Maricopa County as Instrument number 2001-0923038, recorded October 3, 2001 which stated that the newly created Lots 1 and 2 must be held as one parcel.
4. The purpose of the *Covenant and Agreement* was to require any owner or proposed owner of Lots 1 or 2 to receive approval from the City of owner's compliance with the City Codes and Ordinances and not to require that Lots 1 and 2 be held as one parcel.

NOW, THEREFORE, in consideration of the foregoing recitals, the City and Owner wish to add the following:


AGREEMENT


1. Approvals. Notwithstanding anything to the contrary in the Covenant and Agreement, the City will allow Lots 1 and 2 to be held in fee simple title by multiple owners subject to the City's approval of an owner or proposed owner's use, compliance with City Codes and Ordinances and conditions of the Lot Split Approval.

DATED this 3rd day of December, 2002.

Indian River Plaza L.L.C., an Arizona
Limited liability company


By: MBS Partners, L.L.C., an Arizona
Limited liability company, its sole
Member

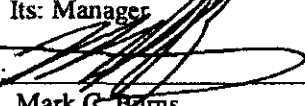
By: 
Bruce I. Shapiro
Its: Manager

By: 
Mark C. Burns
Its: Manager

Hayson LLC, an Arizona limited liability
Company

By: MBS Partners, L.L.C., an Arizona
Limited liability company, its sole
Member

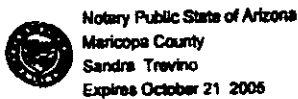
By: 
Bruce I. Shapiro
Its: Manager

By: 
Mark C. Burns
Its: Manager

State of Arizona)
)ss.
 County of Maricopa)

This instrument was acknowledged before me this 3 day of ~~November~~ ^{December}, 2002, by Bruce I. Shapiro as Manager of MBS Partners LLC, an Arizona limited liability company as the Sole Member of Indian River Plaza L.L.C., an Arizona limited liability company and as the Sole Member of Hayson LLC, an Arizona limited liability company.

In witness whereof I hereunto set my hand and official seal.



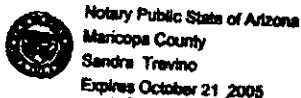
Sandra Melton/Sandra Trevino
 NOTARY PUBLIC

My commission expires October 21, 2005

State of Arizona)
)ss.
 County of Maricopa)

~~November~~ This instrument was acknowledged before me this 3 day of ~~November~~, 2002 by Mark C. Burns as Manager of MBS Partners LLC, an Arizona limited liability company as the Sole Member of Indian Rive Plaza L.L.C., an Arizona limited liability company as the Sole Member of Hayson LLC, an Arizona limited liability company.

In witness whereof I hereunto set my hand and official seal.



Sandra Melton/Sandra Trevino
 NOTARY PUBLIC

My commission expires: October 21, 2005

FOR DEPARTMENT USE ONLY

Accepted By

[Signature]
 Senior Planner

[Signature]
 Planning Coordination Manager

**FIDELITY NATIONAL TITLE
HOLD FOR PICK-UP**

1/3 75003220

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER

HELEN PURCELL

20030134486 02/04/2003 13:07

ELECTRONIC RECORDING

BB3220-10-3-1--

Esquivela

CAPTION HEADING: Lease Subordination, Non-Disturbance
and Attornment Agreement

DO NOT REMOVE

This is part of the official document.

**LEASE SUBORDINATION, NON-DISTURBANCE
AND ATTORNMEN AGREEMENT**

THIS LEASE SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT ("Agreement") is made effective as of October 7, 2002 between 99c Only Stores, a California Corporation ("Tenant"); WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY, a Nebraska corporation ("Lender"), and Indian River Plaza L.L.C., an Arizona limited liability company ("Borrower").

RECITALS:

A. Lender has agreed to make a loan (the "**Loan**") to Borrower, the repayment of which is to be secured by a mortgage, deed of trust, deed to secure debt, or other security instrument (the "**Security Instrument**") by Borrower to or for the benefit of Lender, pertaining to the real property commonly known as Indian River Plaza, located at or about 7919 E. Thomas Road, in Scottsdale, AZ, and legally described on EXHIBIT "A" attached hereto and incorporated herein by this reference (the "**Property**"), which is to be or has been recorded in the official real estate records in the county and State of Arizona.

B. Tenant is the current lessee of all or a certain portion (the "**Leased Premises**") of the Property pursuant to the provisions of that certain lease agreement (the "**Lease**") dated September 18, 1998, by and between Indian River Plaza L.L.C. ("Landlord") and Tenant, as assigned by Landlord Consent to Assignment (the "**Assignment**") dated January 11, 2002, (said instrument, as now or hereafter amended or modified is herein referred to as the "**Lease**").

C. Tenant has been informed that the receipt of this Agreement may be a condition to the making of the Loan.

AGREEMENTS

1. **SUBORDINATION.** Subject to each and all of the provisions of this Agreement, the rights of Tenant under the Lease are subject and subordinate to the rights of Lender under the Security Instrument and to any renewal, modification, consolidation, replacement, increase, or extension of the Security Instrument.

2. **NON-DISTURBANCE.** Neither Lender nor any trustee under the Security Instrument may disturb Tenant's possession of the Leased Premises or otherwise interfere with Tenant's rights under the Lease, unless Tenant is in default under the Lease beyond any cure period in the Lease.

3. **ATTORNMEN: LIABILITY OF LENDER.** If the Property is transferred by foreclosure, by similar judicial or non-judicial proceedings, or by sale in lieu of foreclosure (each a "**Foreclosure Event**"), neither Lender nor any trustee under the Security Instrument shall name Tenant in any foreclosure or similar proceeding, unless Lender or the trustee is required to do so under applicable rules of procedure or other law. In any Foreclosure Event, the Property shall be transferred subject to the Lease; upon request by Lender or other transferee, Tenant shall attorn to Lender or such transferee and promptly execute such instruments as may be appropriate to evidence such attornment; and effective as of the date of transfer, the Lease shall bind Lender or such transferee and Tenant to the same extent as though the transferee had been named lessor in the Lease. However, neither Lender nor such transferee shall be:

(a) liable for any act or omission of the transferor before the transfer, except acts or omissions which continue subsequent to the time Lender or such transferee acquires ownership of the Property, and only to the extent of such continuation;

TENANT SNDA
DOCS/508708.1

(b) subject to any claims, offsets or defenses which Tenant had against the transferor (but Tenant is not obligated to pay to the transferee any offsets taken before the Property was transferred), unless Tenant has given Lender notice and opportunity to cure any default pursuant to the provisions of Section 6, below;

(c) bound by any rent, additional rent or other charges paid by Tenant more than 30 days in advance of the due date under the Lease;

(d) bound by any Lease amendment after the effective date of this Agreement (or the earlier date of any estoppel certificate given by Tenant to Lender) terminating the Lease prior to expiration or termination as expressly provided in the Lease; changing the term of the Lease other than as expressly provided in the Lease (including existing options, if any); reducing the rent or charges payable by Tenant under the Lease or modify the allocation of the cost of insurance, taxes or other expenses of the operation of the Property; or otherwise materially reducing the benefits of the Lease to the holder of the lessor's interest in the Lease, which is made without Lender's written consent, which consent shall not be unreasonably withheld or delayed; or

(e) responsible for any security deposit delivered under the Lease and not received by Lender.

The liability of Lender, a trustee under the Security Instrument, or any other transferee in a Foreclosure Event or the liability of a subsequent owner designated as landlord under the Lease shall exist only for so long as Lender or such trustee or other transferee is the owner of the Leased Premises.

4. **INSURANCE PROCEEDS AND CONDEMNATION AWARDS.** If Lender or any trustee under the Security Instrument may collect the proceeds of Borrower's property insurance or the award in eminent domain proceedings under the Security Instrument, unless Tenant is in default under the Lease, beyond any cure period in the Lease, Lender and the trustee shall allow Borrower and Tenant to use those proceeds or that award to reconstruct the Property or for payment to Tenant, as may be required in the Lease. Lender may require that Borrower and Tenant comply with reasonable disbursement procedures reasonable under the circumstances to ensure that the proceeds are applied to complete the reconstruction of the Property or paid to Tenant, as required under the Lease.

5. **RENT DIRECTIVE.** Borrower has assigned to Lender the right to receive the rents payable under the Lease. If Lender gives notice to Tenant that Lender has elected to have Tenant pay Lender directly the rental and other charges payable by Tenant under the Lease, Tenant shall, until Lender gives tenant notice that it cancels this election, pay the rent and other charges under the Lease to Lender or at Lender's direction. Borrower hereby irrevocably directs and authorizes Tenant to comply with any direction so received by Tenant from Lender. Borrower, by its execution of this Agreement, agrees to hold Tenant harmless for the application of any payments so made.

6. **NOTICE AND OPPORTUNITY TO CURE BORROWER DEFAULTS.** So long as the Obligations secured under the Security Instrument have not been satisfied, Tenant shall notify Lender of any default by Borrower of those obligations under the Lease which are of a nature as to give Tenant a right to terminate the Lease, reduce rent or other charges, or to credit or offset any amounts against future rents or other charges. Lender shall thereafter have the right, but not the obligation, to effect the cure of such default within the later of the expiration of Borrower's cure period, if any, under the Lease; or thirty (30) days after the giving of notice by Tenant to Lender; provided, that if such default cannot reasonably be cured by Lender within this thirty (30) day period, the period for cure by Lender shall be extended so long as Lender has expeditiously commenced to cure and is pursuing with due diligence to cure said defaults, including, without limitation, seeking the appointment of a receiver to effect the cure of said defaults.

7. **TRADE FIXTURES.** The lien of the Security Instrument shall not encumber Tenant's trade fixtures, furniture or equipment at any time placed or installed in the Leased Premises.

8. **DEEMED CONSENT BY LENDER.** Lender shall be deemed to have given its consent to any amendment of the Lease to which Lender would not otherwise be bound, if Lender fails to respond, by disapproving or approving the request, within thirty (30) days after Lender's receipt of such request from Borrower, provided such request shall make specific reference to the provisions of this Section and shall expressly state, in solid capital letters on the first page thereof: "YOU ARE HEREBY REMINDED THAT YOUR FAILURE TO PROVIDE NOTIFICATION OF APPROVAL OR DISAPPROVAL OR REASONABLY REQUEST ADDITIONAL INFORMATION NOT LATER THAN THIRTY (30) DAYS AFTER YOUR RECEIPT OF THIS REQUEST SHALL BE DEEMED, PURSUANT TO SECTION 8 OF THE SUBORDINATION, NON-DISTURBANCE AND ATTORNEYMENT AGREEMENT, TO CONSTITUTE YOUR APPROVAL THEREOF."

9. **NOTICES.** All notices under this Agreement shall be properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient, or (ii) one (1) Business Day after deposit for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after deposit in any U.S. Postal Service mail depository and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant, Lender, or Borrower, as the case may be, at the addresses below or addressed as such party may from time to time designate by written notice to the other parties.

To Tenant:

99¢ Only Stores, Real Estate Dept.
4000 Union Pacific Avenue
City of Commerce, CA 90023

To Lender:

WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY
 AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY
 Woodmen Tower
 1700 Farnam Street
 Omaha, NE 68102
 Attn: Investment Division

Either party by written notice to the other may designate additional (maximum of 2) or different addresses for subsequent notices or communications. For purposes of this Subsection, "**Business Day**" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located.

10. **AUTHORITY.** The persons executing this Agreement on behalf of Tenant, Lender and Borrower each represent that he or she is authorized to execute such instruments on behalf of Tenant, Lender and Borrower, respectively.

11. **ATTORNEYS FEES.** If any action is commenced to enforce any provision of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, including reasonable attorney's fees and expenses.

12. **MISCELLANEOUS.** This Agreement contains the entire agreement between the parties concerning the matters addressed herein. The parties may amend this Agreement only in writing. This Agreement benefits and binds the successors and assigns of each party and shall run with the land. This Agreement shall be governed in accordance with the laws of the state in which the Property is located and applicable laws of the United States of America. This Agreement may be executed in counterparts, and each counterpart shall be effective as an original when all parties have signed a counterpart.

[NO FURTHER TEXT ON THIS PAGE]



WITNESS WHEREOF, this Agreement has been executed by the parties effective as of the day and year first above written.

TENANT

99c Only Stores, a California corporation

By: 

Name: Jeff Gold

Title: S. Vice President

(NOTE: THE FOLLOWING FORM OF ACKNOWLEDGEMENT IS FOR ILLUSTRATION PURPOSES ONLY. BORROWER MUST ENSURE THAT THE ACKNOWLEDGEMENT OF THE TENANT IS IN PROPER FORM FOR RECORDING IN THE STATE WHERE THE LEASED PREMISES IS LOCATED)

STATE OF California
COUNTY OF Los Angeles ss.

The foregoing instrument was acknowledged before me this 16th day of October, 2002, by JEFF GOLD as Vice President of 99c Only Stores Corporation on behalf of the Corporation.

Witness my hand and official seal.




Notary Public

My commission expires: Oct. 18, 2002

(NO FURTHER TEXT ON THIS PAGE)

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LENDER:

**WOODMEN OF THE WORLD LIFE
INSURANCE SOCIETY AND/OR OMAHA
WOODMEN LIFE INSURANCE SOCIETY, a
Nebraska corporation**

By: James L. MounceName: James L. MounceTitle: PresidentBy: Danny E. CumminsName: Danny E. CumminsTitle: Secretary

STATE OF NEBRASKA)

COUNTY OF DOUGLAS)

) ss.

The foregoing instrument was acknowledged before me this 23rd day of January,
2003 by James L. Mounce and Danny E. Cummins
as the President and Secretary, respectively, of
WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY AND/OR OMAHA WOODMEN LIFE
INSURANCE SOCIETY, a Nebraska corporation, on behalf of the corporation.

Witness my hand and official seal.



Louise M. Monclair
Notary Public

My commission expires: 5-01-05

[NO FURTHER TEXT ON THIS PAGE]

TENANT SNDA
DOCS/508708.1

BORROWER:

Indian River Plaza LLC
an Arizona limited liability
company

By: B/SName: Isaac SteinTitle: Manager

[NOTE: THE FOLLOWING FORM OF ACKNOWLEDGEMENT IS FOR ILLUSTRATION PURPOSES ONLY. BORROWER MUST ENSURE THAT THE ACKNOWLEDGEMENT OF THE BORROWER IS IN PROPER FORM FOR RECORDING IN THE STATE WHERE THE LEASED PREMISES IS LOCATED]

STATE OF Arizona)
) ss.
 COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 28th day of October, 2002, by Bruce Shapiro as Manager of Indian River Plaza LLC Limited liability company on behalf of the company

Witness my hand and official seal.



Notary Public State of Arizona
 Maricopa County
 Sandra Trevino
 Expires October 21 2006

Sandra Trevino/Sandra Trevino
 Notary Public

My commission expires: October 21, 2005

[NO FURTHER TEXT ON THIS PAGE]

TENANT SNDA
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20030134486

EXHIBIT "A"

(DESCRIPTION OF LAND)

DOCS/508708.1

EXHIBIT "A"



EXHIBIT A

Legal Description of Shopping Center

INDIAN RIVER SHOPPING CENTER
Scottsdale, ArizonaPARCEL NO. 1:

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona:

EXCEPT the North 207.94 feet of the East 217.94 feet, thereof.

PARCEL NO. 2:

THAT PART of the Northeast quarter of the Northeast quarter, Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona: thence West along the North line of said Section 35, a distance of 710 feet; thence South 0 degrees 08 minutes 06 seconds East, a distance of 55 feet to the True Point of Beginning; thence continuing South 0 degrees 08 minutes 06 seconds East, a distance of 30 feet; thence Northwesterly, a distance of 39 feet, more or less, to a point on a line lying 55 feet South of and Parallel to the North line of Section 35, said point lying 25 feet West of the True Point of Beginning of this description; thence East along said line, a distance of 25 feet to the True Point of Beginning.

PARCEL NO. 3:

THAT PART of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35 and running thence North 0 degrees 08 minutes 06 seconds West along the said West line of the North 710 feet of the East 710 feet 3.40 feet to the True Point of Beginning: thence continuing North 0 degrees 08 minutes 06 seconds West along the said West line, hereinbefore described, 246.60 feet to a point, thence South 29 degrees 08 minutes 45 seconds West 267.58 feet; thence South 84 degrees 22 minutes 21 seconds East 131.54 feet, more or less to the True Point of Beginning.

**FIDELITY NATIONAL TITLE
HOLD FOR PICK-UP**

2/3 75003220

**OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL**

20030134487 02/04/2003 13:07
ELECTRONIC RECORDING

BB3220-10-3-2--
Esquivela

CAPTION HEADING: Lease Subordination, Non-Disturbance
and Attornment Agreement

DO NOT REMOVE

This is part of the official document.

**LEASE SUBORDINATION, NON-DISTURBANCE
AND ATTORNMEN AGREEMENT**

THIS LEASE SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN AGREEMENT ("Agreement") is made effective as of October 9, 2002 between America's Health Systems, Inc. dba Stoooge's ("Tenant"); **WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY**, a Nebraska corporation ("**Lender**"), and Indian River Plaza, L.L.C., an Arizona limited liability company ("Borrower").

RECITALS:

A. Lender has agreed to make a loan (the "**Loan**") to Borrower, the repayment of which is to be secured by a mortgage, deed of trust, deed to secure debt, or other security instrument (the "**Security Instrument**") by Borrower to or for the benefit of Lender, pertaining to the real property commonly known as 7919 E. Thomas Rd., #101B & 102B, located at or about Thomas Road and Hayden Road, in Scottsdale, Maricopa County, Arizona, and legally described on **EXHIBIT "A"** attached hereto and incorporated herein by this reference (the "**Property**"), which is to be or has been recorded in the official real estate records in the county and State of Arizona.

B. Tenant is the current lessee of all or a certain portion (the "**Leased Premises**") of the Property pursuant to the provisions of that certain Lease Agreement between Indian River Plaza, L.L.C. and America's Health Systems, Inc. dba Stoooge's dated March 30, 1987; Amendment to Lease, dated August 2, 1990; Second Amendment to Lease, dated April 22, 1991; Amendment to Lease, dated August 29, 1993; Addendum to Lease, dated August 2, 1999; Amendment to Lease, dated March 30, 2000; Lease Amendment No. 6, dated June 1, 2002 (said instrument, as now or hereafter amended or modified is herein referred to as the "**Lease**").

C. Tenant has been informed that the receipt of this Agreement is a condition to the making of the Loan.

AGREEMENTS

1. **SUBORDINATION.** The rights of Tenant under the Lease are subject and subordinate to the rights of Lender under the Security Instrument and to any renewal, modification, consolidation, replacement, increase, or extension of the Security Instrument.

2. **NON-DISTURBANCE.** Neither Lender nor any trustee under the Security Instrument may disturb Tenant's possession of the Leased Premises or otherwise interfere with Tenant's rights under the Lease, unless Tenant is in default under the Lease beyond any cure period in the Lease.

3. **ATTORNMEN; LIABILITY OF LENDER.** If the Property is transferred by foreclosure, by similar judicial or non-judicial proceedings, or by sale in lieu of foreclosure (each a "**Foreclosure Event**"), neither Lender nor any trustee under the Security Instrument shall name Tenant in any foreclosure or similar proceeding, unless Lender or the trustee is required to do so under applicable rules of procedure or other law. In any Foreclosure Event, the Property shall be transferred subject to the Lease; upon request by Lender or other transferee, Tenant shall attorn to Lender or such transferee and promptly execute such instruments as may be appropriate to evidence such attornment; and effective as of the date of transfer, the Lease shall bind Lender or such transferee and Tenant to the same extent as though the transferee had been named lessor in the Lease. However, neither Lender nor such transferee shall be:

TENANT SNDA
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(a) liable for any act or omission of the transferor before the transfer, except acts or omissions which continue subsequent to the time Lender or such transferee acquires ownership of the Property, and only to the extent of such continuation;

(b) subject to any claims, offsets or defenses which Tenant had against the transferor (but Tenant is not obligated to pay to the transferee any offsets taken before the Property was transferred), unless Tenant has given Lender notice and opportunity to cure any default pursuant to the provisions of **Section 6**, below;

(c) bound by any rent, additional rent or other charges paid by Tenant more than 30 days in advance of the due date under the Lease;

(d) bound by any Lease amendment after the effective date of this Agreement (or the earlier date of any estoppel certificate given by Tenant to Lender) terminating the Lease prior to expiration or termination as expressly provided in the Lease; changing the term of the Lease other than as expressly provided in the Lease (including existing options, if any); reducing the rent or charges payable by Tenant under the Lease or modify the allocation of the cost of insurance, taxes or other expenses of the operation of the Property; or otherwise materially reducing the benefits of the Lease to the holder of the lessor's interest in the Lease, which is made without Lender's written consent; or

(e) responsible for any security deposit delivered under the Lease and not received by Lender.

The liability of Lender, a trustee under the Security Instrument, or any other transferee in a Foreclosure Event or the liability of a subsequent owner designated as landlord under the Lease shall exist only for so long as Lender or such trustee or other transferee is the owner of the Leased Premises.

4. INSURANCE PROCEEDS AND CONDEMNATION AWARDS. If Lender or any trustee under the Security Instrument may collect the proceeds of Borrower's property insurance or the award in eminent domain proceedings under the Security Instrument, unless Tenant is in default under the Lease, beyond any cure period in the Lease, Lender and the trustee shall allow Borrower and Tenant to use those proceeds or that award to reconstruct the Property or for payment to Tenant, as may be required in the Lease. Lender may require that Borrower and Tenant comply with reasonable disbursement procedures reasonable under the circumstances to ensure that the proceeds are applied to complete the reconstruction of the Property or paid to Tenant, as required under the Lease.

5. RENT DIRECTIVE. Borrower has assigned to Lender the right to receive the rents payable under the Lease. If Lender gives notice to Tenant that Lender has elected to have Tenant pay Lender directly the rental and other charges payable by Tenant under the Lease, Tenant shall, until Lender gives tenant notice that it cancels this election, pay the rent and other charges under the Lease to Lender or at Lender's direction. Borrower hereby irrevocably directs and authorizes Tenant to comply with any direction so received by Tenant from Lender. Borrower, by its execution of this Agreement, agrees to hold Tenant harmless for the application of any payments so made.

6. NOTICE AND OPPORTUNITY TO CURE BORROWER DEFAULTS. So long as the Obligations secured under the Security Instrument have not been satisfied, Tenant shall notify Lender of any default by Borrower of those obligations under the Lease which are of a nature as to give Tenant a right to terminate the Lease, reduce rent or other charges, or to credit or offset any amounts against future rents or other charges. Lender shall thereafter have the right, but not the obligation, to effect the cure of such default within the later of the expiration of Borrower's cure period, if any, under the Lease; or thirty (30) days after the giving of notice by Tenant to Lender; provided, that if such default cannot reasonably be cured by Lender within this thirty (30) day period, the period for cure by Lender shall be extended so long as Lender has expeditiously commenced to cure and is pursuing with due diligence to cure said defaults.

7. **TRADE FIXTURES.** The lien of the Security Instrument shall not encumber Tenant's trade fixtures, furniture or equipment at any time placed or installed in the Leased Premises.

8. **DEEMED CONSENT BY LENDER.** Lender shall be deemed to have given its consent to any amendment of the Lease to which Lender would not otherwise be bound, if Lender fails to respond, either by reasonably requesting additional information or by disapproving the request, within thirty (30) days after Lender's receipt of such request from Borrower, provided such request shall make specific reference to the provisions of this Section and shall expressly state, in solid capital letters on the first page thereof: "YOU ARE HEREBY REMINDED THAT YOUR FAILURE TO PROVIDE NOTIFICATION OF APPROVAL OR DISAPPROVAL OR REASONABLY REQUEST ADDITIONAL INFORMATION NOT LATER THAN THIRTY (30) DAYS AFTER YOUR RECEIPT OF THIS REQUEST SHALL BE DEEMED, PURSUANT TO SECTION 8 OF THE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENMENT AGREEMENT, TO CONSTITUTE YOUR APPROVAL THEREOF."

9. **NOTICES.** All notices under this Agreement shall be properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient, (ii) one (1) Business Day after deposit for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after deposit in any U.S. Postal Service mail depository and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to Tenant, Lender, or Borrower, as the case may be, at the addresses below or addressed as such party may from time to time designate by written notice to the other parties.

To Tenant:

America's Health Systems dba Stooze's
7919 E. Thomas Rd., #101B and 102B
Scottsdale, AZ 85251

To Lender:

WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY
 AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY
 Woodmen Tower
 1700 Farnam Street
 Omaha, NE 68102
 Attn: Investment Division

Either party by written notice to the other may designate additional or different addresses for subsequent notices or communications. For purposes of this Subsection, "**Business Day**" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located.

10. **AUTHORITY.** The persons executing this Agreement on behalf of Tenant, Lender and Borrower each represent that he or she is authorized to execute such instruments on behalf of Tenant, Lender and Borrower, respectively.

11. **ATTORNEYS FEES.** If any action is commenced to enforce any provision of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any

other relief it may obtain, its reasonable costs and expenses, including reasonable attorney's fees and expenses.

12. **MISCELLANEOUS.** This Agreement contains the entire agreement between the parties concerning the matters addressed herein. The parties may amend this Agreement only in writing. This Agreement benefits and binds the successors and assigns of each party and shall run with the land. This Agreement shall be governed in accordance with the laws of the state in which the Property is located and applicable laws of the United States of America. This Agreement may be executed in counterparts, and each counterpart shall be effective as an original when a counterpart has been signed by all parties.

[NO FURTHER TEXT ON THIS PAGE]

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WITNESS WHEREOF, this Agreement has been executed by the parties effective as of the day and year first above written.

TENANT

America's Health Systems, Inc. dba Stoooge's

By [Signature]

Name: A. Gutenberg

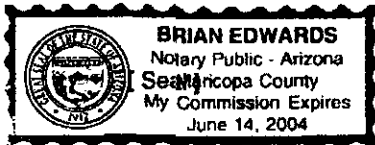
Title: President

[NOTE: THE FOLLOWING FORM OF ACKNOWLEDGEMENT IS FOR ILLUSTRATION PURPOSES ONLY. BORROWER MUST ENSURE THAT THE ACKNOWLEDGEMENT OF THE TENANT IS IN PROPER FORM FOR RECORDING IN THE STATE WHERE THE LEASED PREMISES IS LOCATED]

STATE OF Arizona)
)ss.
COUNTY OF Maricopa

The foregoing instrument was acknowledged before me this 18 day of October, 2003 by A. Gutenberg as President of AHS Inc., a _____ on behalf of the _____.

Witness my hand and official seal.



My commission expires: June 14, 2004

B. Edwards
Notary Public

[NO FURTHER TEXT ON THIS PAGE]

LENDER:

**WOODMEN OF THE WORLD LIFE
INSURANCE SOCIETY AND/OR OMAHA
WOODMEN LIFE INSURANCE SOCIETY, a
Nebraska corporation**

By: James L. Mounce
Name: James L. Mounce
Title: President

By: Danny E. Cummins
Name: Danny E. Cummins
Title: Secretary

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 23rd day of January, 2003, by James L. Mounce and Danny E. Cummins as the President and Secretary respectively, of WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY AND/OR OMAHA WOODMEN LIFE INSURANCE SOCIETY, a Nebraska corporation, on behalf of the corporation.

Witness my hand and official seal.



Louise M. Monclair
Notary Public

My commission expires: 5-01-05

[NO FURTHER TEXT ON THIS PAGE]

BORROWER:

Indian River Plaza, L.L.C., an Arizona limited
liability company

By: Bruce ShapiroName: Bruce ShapiroTitle: Manager

(NOTE: THE FOLLOWING FORM OF ACKNOWLEDGEMENT IS FOR ILLUSTRATION PURPOSES ONLY. BORROWER MUST ENSURE THAT THE ACKNOWLEDGEMENT OF THE BORROWER IS IN PROPER FORM FOR RECORDING IN THE STATE WHERE THE LEASED PREMISES IS LOCATED)

STATE OF Arizona
 COUNTY OF Maricopa ss.

The foregoing instrument was acknowledged before me this 28th day of October, 2002, by Bruce Shapiro as Manager of Indian River Plaza, L.L.C. Limited liability company on behalf of the company

Witness my hand and official seal.

[Seal]



Notary Public State of Arizona
 Maricopa County
 Sandra Trevino
 Expires October 21 2005

Sandra Melton / Sandra Trevino
 Notary Public

My commission expires: October 21, 2005

[NO FURTHER TEXT ON THIS PAGE]

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EXHIBIT "A"
(DESCRIPTION OF LAND)

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EXHIBIT "A"

EXHIBIT A

Legal Description of Shopping Center

INDIAN RIVER SHOPPING CENTER
Scottsdale, Arizona

PARCEL NO. 1:

The East 710 feet of the North 710 feet of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona:

EXCEPT the North 207.94 feet of the East 217.94 feet, thereof.

PARCEL NO. 2:

THAT PART of the Northeast quarter of the Northeast quarter, Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northeast corner of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona: thence West along the North line of said Section 35, a distance of 710 feet; thence South 0 degrees 08 minutes 06 seconds East, a distance of 55 feet to the True Point of Beginning; thence continuing South 0 degrees 08 minutes 06 seconds East, a distance of 30 feet; thence Northwesterly, a distance of 39 feet, more or less, to a point on a line lying 55 feet South of and Parallel to the North line of Section 35, said point lying 25 feet West of the True Point of Beginning of this description; thence East along said line, a distance of 25 feet to the True Point of Beginning.

PARCEL NO. 3:

THAT PART of the Northeast quarter of the Northeast quarter of Section 35, Township 2 North, Range 4 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of the North 710 feet of the East 710 feet (as measured along the North and East lines thereof) of the said Northeast quarter of the Northeast quarter of Section 35 and running thence North 0 degrees 08 minutes 06 seconds West along the said West line of the North 710 feet of the East 710 feet 3.40 feet to the True Point of Beginning: thence continuing North 0 degrees 08 minutes 06 seconds West along the said West line, hereinbefore described, 246.60 feet to a point, thence South 29 degrees 08 minutes 45 seconds West 267.58 feet; thence South 84 degrees 22 minutes 21 seconds East 131.54 feet, more or less to the True Point of Beginning.