

# Policy of Title Insurance



Issued By  
**First American Title Insurance Company**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at the address shown in Section 18 of the Conditions.

## COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS, First American Title Insurance Company, a California corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
  - (a) A defect in the Title caused by
    - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
    - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
    - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
    - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
    - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
    - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
    - (vii) a defective judicial or administrative proceeding.
  - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
  - (c) 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. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (a) the occupancy, use, or enjoyment of the Land;

- (b) the character, dimensions, or location of any improvement erected on the Land;
  - (c) the subdivision of land; or
  - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
  - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
  - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
    - (i) to be timely, or
    - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this policy, but only to the extent provided in the Conditions.

First American Title Insurance Company

BY

PRESIDENT

ATTEST

SECRETARY



## EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

- (i) the occupancy, use, or enjoyment of the Land;
- (ii) the character, dimensions, or location of any improvement erected on the Land;
- (iii) the subdivision of land; or
- (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

- (a) created, suffered, assumed, or agreed to by the Insured Claimant;
- (b) not known to the Company, not recorded in the Public Records at Date of Policy, but known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is

- (a) a fraudulent conveyance or fraudulent transfer; or
- (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

## CONDITIONS

### 1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 11 and 12 of these Conditions.

(b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.

(c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.

(d) "Insured": The Insured named in Schedule A.

- (i) The term "Insured" also includes

(A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;

(B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;

(C) successors to an Insured by its conversion to another kind of Entity;

(D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title

(1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,

(2) if the grantee wholly owns the named Insured,

(3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or

(4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

(ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.

(e) "Insured Claimant": An Insured claiming loss or damage.

(f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the

Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

### 2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

### 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

### 4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

### 5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Policy Page 2 Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

(c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

## 6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

## 7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

## 8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

## 9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

## 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

## 11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

## 12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

## 13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

## 14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

**15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT**

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

**16. SEVERABILITY**

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

**17. CHOICE OF LAW; FORUM**

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

**18. NOTICES, WHERE SENT**

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 1 First American Way, Santa Ana, CA 92707, Attn: Claims Department.

*Policy of Title Insurance*

# OWNER'S POLICY OF TITLE INSURANCE

Issued by

*First American Title Insurance Company*

## SCHEDULE A

Name and Address of Title Insurance Company:  
**FIRST AMERICAN TITLE INSURANCE COMPANY**  
1 First American Way, Santa Ana, California 92707

File No.: 12219EW

Policy No.: 5011400-344151

Address Reference: N/A

Amount of Insurance: \$1,725,000.00

Premium: \$4,447.00

Date of Policy: March 29, 2012, at 4:39pm

1. Name of Insured:

**8980 East Shea Boulevard, LLC, a Florida limited liability company**

2. The estate or interest in the Land that is insured by this policy is:

**Fee**

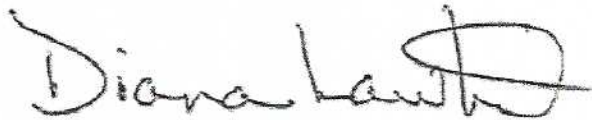
3. Title is vested in:

**8980 East Shea Boulevard, LLC, a Florida limited liability company**

4. The Land referred to in this policy is described as follows:

**Lot 4B, LOT 4 EDWARDS BUSINESS PARK, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 1101 of Maps, Page 35.**

Countersigned  
**Empire West Title Agency**



By:

\_\_\_\_\_  
**Diana Lawter**

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*ALTA Owner's Policy (6-17-06)*  
*Schedule A*

AMERICAN  
LAND TITLE  
ASSOCIATION



# OWNER'S POLICY OF TITLE INSURANCE

Issued by

**First American Title Insurance Company**

## SCHEDULE B

File No.: 12219EW

Policy No.: 5011400-344151

### EXCEPTIONS FROM COVERAGE

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

1. **Second installment of 2011 taxes, a lien, payable on or before March 1, 2012 and delinquent May 1, 2012.**
2. **Taxes for the year 2012, a lien not yet due and payable.**
3. **ANY ACTION by the County Assessor and/or Treasurer, altering the current or prior tax assessment, subsequent to the date of the Policy of Title Insurance.**
4. **Reservations or exceptions in Patents, or in Acts authorizing the issuance thereof.**
5. **Water rights, claims or title to water, whether or not shown by the public records.**
6. **An easement for public utilities, cable, non-vehicular access and scenic corridor and incidental purposes, recorded in Docket 6002, page 140 of Official Records.**
7. **Easements, restrictions, reservations, conditions and set-back lines as set forth on the plat recorded in Book 257 of Maps, Page 20, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).**
8. **An easement for street and non-vehicular access and incidental purposes, recorded in Document no. 92-369586 of Official Records.**
9. **An easement for utilities and incidental purposes, recorded in Document no. 95-61656 of Official Records.**
10. **An easement for utilities and incidental purposes, recorded in Document no. 95-570008 of Official Records.**
11. **All matters as set forth in survey recorded as Book 1056 of Maps, page 50, of Official Records.**
12. **Covenants, conditions, restrictions, easements, liabilities and obligations in the document recorded in Document No. 2011-594154 of Official Records, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes.**

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*ALTA Owner's Policy (6-17-06)  
Schedule B*

AMERICAN  
LAND TITLE  
ASSOCIATION



**SCHEDULE B**  
Continued

13. Easements, restrictions, reservations, conditions and set-back lines as set forth on the plat recorded in Book 1101 of Maps, Page 35, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).
14. An unrecorded lease dated September 8, 1994, executed by Edwards Family Properties of Arizona, Inc. as lessor and SWH Corporation DBA Mimi's Cafe as lessee, as disclosed by a(n) Memorandum of Lease recorded October 20, 1994 as Document No. 94-756446 of Official Records.

The lessor's interest in the lease has been assigned to Shea-Edwards Limited Partnership by assignment recorded 080395 as 95-459969 of Official Records.

and thereafter a Leasehold Deed of Trust to secure an original indebtedness of and any other amounts or obligations secured thereby, recorded May 16, 2002 as Document No. 2002-504559 of Official Records.

Dated: April 16, 2002  
Trustor: SWH Corporation  
Trustee: Chicago Title  
Beneficiary: ABLECO Finance LLC, a Delaware limited liability company

NOTE: Said Deed of Trust covers more property and affects the Leasehold interest.

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ALTA Owner's Policy (6-17-06)  
Schedule B

AMERICAN  
LAND TITLE  
ASSOCIATION



# Unofficial Document

DKT 6002 PAGE 140

STATE OF ARIZONA I hereby certify that the within instrument was filed  
 County of Maricopa ss. \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ M. 71954  
 In Docket No. 6002, Page 140, at the request of CITY OF SCOTTSDALE Indexed DI-DEED  
 1966 APR 13 3 19  
 When recorded mail to: City of Scottsdale  
 Right of Way Div.  
 60 W. Indian School Rd.  
 Scottsdale, Arizona  
 Witness my hand and official seal.  
CLIFFORD H. WARD  
 County Recorder  
 By [Signature]  
 Deputy Recorder  
 Compared: \_\_\_\_\_  
 Photostated: \_\_\_\_\_  
 Fee: \_\_\_\_\_  
 J.R.S. \_\_\_\_\_

## Quit-Claim Deed

For the consideration of Ten Dollars, and other valuable considerations, I or we, Edward L. Edwards and Frances R. Edwards his wife, who acquired title as Edward L. Chubinski and Frances R. Chubinski, his wife, hereby quit-claim to City of Scottsdale, a municipal corporation,

all right, title, or interest in the following real property situated in Maricopa County, Arizona:

All that part of the East half of Lot 4, Section 19, Township 3 North, Range 5 East, G&SRB&M, described as follows: BEGINNING at the Southeast corner of said Lot 4, Thence Westerly, along the South line of said Lot 4 (assumed bearing South 89 deg. 58 min. 26 sec. West), a distance of 660.00 feet, more or less, to the Southwest corner of said East half of Lot 4, Thence Northerly, along the East line of the West half of said Lot 4, a distance of 48.76 feet to a point, Thence Easterly, along a curve concave Southeasterly, whose beginning tangent bearing is North 85 deg. 30 min. 59 sec. East, and whose radius 5,794.58 feet, a distance of 433.95 feet to a point; Thence North 89 deg. 58 min. 26 sec. East 65.00 feet North of, and parallel to, the South line of said Section 19, a distance of 226.46 feet to a point on the East line of said Lot 4; Thence Southerly, along the East line of said Lot 4, a distance of 65.00 feet to the point of beginning, the same containing 0.850 acres more or less.

Dated this 1st day of April, 1966

Edward L. Edwards  
Frances R. Edwards

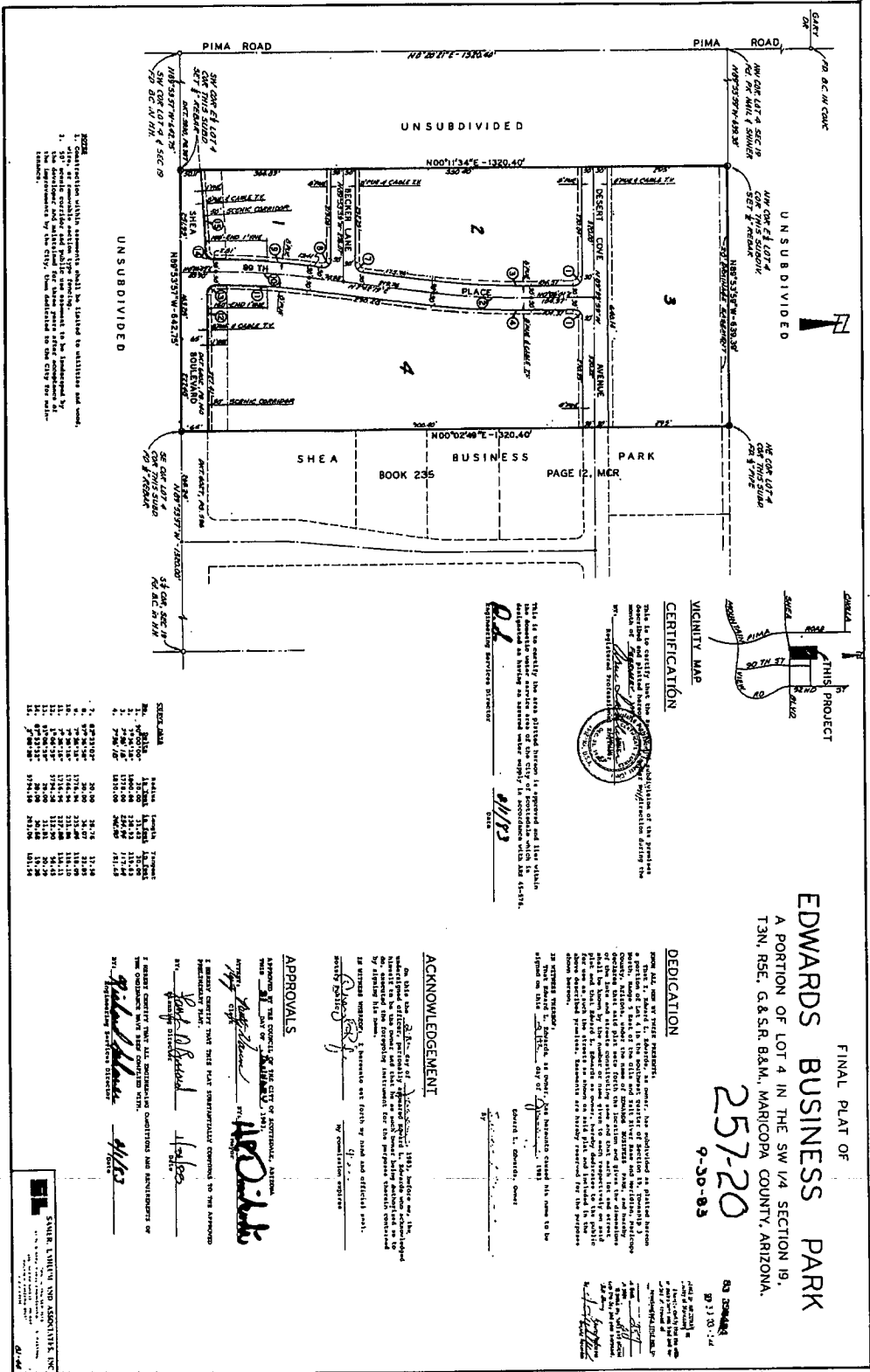
STATE OF Arizona ss.  
 County of Maricopa

This instrument was acknowledged before me this 1st day of April, 1966, by \_\_\_\_\_



Douglas R. [Signature]  
 Notary Public.

My Commission Expires Feb. 5, 1977



1. AREA OF EACH LOT SHALL BE DETERMINED BY THE CITY ENGINEER AND SHALL BE SHOWN ON THE PLAT MAP.  
 2. THE CITY ENGINEER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE PLAT MAP AND SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE AREA CALCULATIONS.  
 3. THE CITY ENGINEER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE BEARINGS AND DISTANCES SHOWN ON THE PLAT MAP.  
 4. THE CITY ENGINEER SHALL BE RESPONSIBLE FOR THE ACCURACY OF THE SETBACKS AND EASEMENTS SHOWN ON THE PLAT MAP.

| NO. | DESCRIPTION | AREA                    | PERCENT | TOTAL                   |
|-----|-------------|-------------------------|---------|-------------------------|
| 1.  | LOT 1       | 100'02'48" E - 1320.40' | 25.00%  | 100'02'48" E - 1320.40' |
| 2.  | LOT 2       | 100'02'48" E - 1320.40' | 25.00%  | 100'02'48" E - 1320.40' |
| 3.  | LOT 3       | 100'02'48" E - 1320.40' | 25.00%  | 100'02'48" E - 1320.40' |
| 4.  | LOT 4       | 100'02'48" E - 1320.40' | 25.00%  | 100'02'48" E - 1320.40' |
| 5.  | TOTAL       |                         | 100.00% |                         |

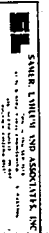
**CERTIFICATION**  
 I, the undersigned, being a duly qualified and licensed surveyor in the State of Arizona, do hereby certify that the above described plat and plat map were prepared by me or under my direct supervision and that I am a duly licensed and qualified surveyor in the State of Arizona.  
 \_\_\_\_\_  
 DATE: 01/23/03

**DEDICATION**  
 I, the undersigned, do hereby dedicate to the public use of the City of Phoenix the above described plat and plat map and the land shown thereon for the use of the City of Phoenix as a public park and recreation area.  
 \_\_\_\_\_  
 DATE: 01/23/03

**ACKNOWLEDGEMENT**  
 I, the undersigned, do hereby acknowledge the receipt of the above described plat and plat map and the land shown thereon from the City of Phoenix and do hereby certify that the same have been received by me or under my direct supervision and that I am a duly licensed and qualified surveyor in the State of Arizona.  
 \_\_\_\_\_  
 DATE: 01/23/03

**FINAL PLAT OF**  
**EDWARDS BUSINESS PARK**  
 A PORTION OF LOT 4 IN THE SW 1/4 SECTION 19,  
 T3N, R5E, G & S.R. B&M, MARICOPA COUNTY, ARIZONA.  
**257-20**  
 9-30-03

BY: \_\_\_\_\_  
 DATE: 01/23/03



79-02-01




**BRADY • AULERICH & ASSOCIATES, INC.**

 Civil Engineering • Land Surveying  
 Construction Staking

 Dennis H. Brady P.L.S.  
 C.E. Aulerich P.L.S.  
 Robert N. Hermon P.E./P.L.S.

**LEGAL DESCRIPTION: ADDITIONAL STREET RIGHT-OF-WAY**

That part of Lot 4, EDWARDS BUSINESS PARK, an official Plat recorded in Book 257 of Maps, page 20, Maricopa County Records, and located in the Southwest quarter of Section 19, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Southeast corner of said Lot 4;

thence North 89° 53' 57" West along the South line of said Lot 4 a distance of 195.93 feet to the True Point of Beginning, said point being on the arc of a circle, the center of which bears South 10° 24' 45" West 306.50 feet therefrom;

thence Northwesterly along said arc, through a central angle of 10° 33' 20" a distance of 56.47 feet to a point on the arc of a second circle, the center of which bears South 00° 08' 35" East 5,799.58 feet therefrom;

thence Westerly along said second arc, through a central angle of 00° 52' 17" a distance of 88.20 feet to a point on the arc of a third circle, the center of which bears North 01° 00' 52" West 20.00 feet therefrom;

thence Northwesterly along said third arc, through a central angle of 91° 17' 03" a distance of 1,716.94 feet to a point on the arc of a fourth circle, the center of which bears South 89° 43' 49" East 1,716.94 feet therefrom;

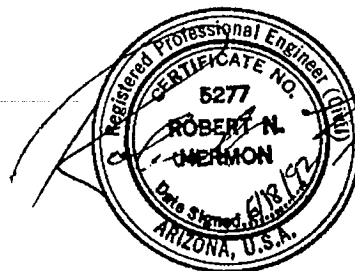
thence Southerly along said fourth arc through a central angle of 00° 10' 08" a distance of 5.06 feet to a point on the arc of a fifth circle, the center of which bears South 89° 53' 57" East 20.00 feet therefrom;

thence Southeasterly along said fifth arc, through a central angle of 91° 06' 59" a distance of 31.81 feet to a point on the arc of a seventh circle, the center of which bears South 01° 00' 56" East 5,794.58 feet therefrom;

thence Easterly along said seventh arc, through a central angle of 01° 06' 59" a distance of 112.91 feet;

thence South 89° 53' 57" East 31.49 feet to the Point of Beginning.

The above described property being in and forming a part of the City of Scottsdale, Maricopa County, Arizona, and comprising an area of 731.65 square feet, more or less.



92 369586



**BRADY • AULERICH & ASSOCIATES, INC.**

Civil Engineering • Land Surveying  
Construction Staking

Dennis H. Brady P.L.S.  
C.E. Aulerich P.L.S.  
Robert N. Hermon RE./P.L.S.

**LEGAL DESCRIPTION: NON VEHICULAR ACCESS EASEMENT**

That part of Lot 4, EDWARDS BUSINESS PARK, an official Plat recorded in Book 257 of Maps, page 20, Maricopa County Records, and located in the Southwest quarter of Section 19, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Commencing at the Southeast corner of said Lot 4;

thence North 89° 53' 57" West along the South line of said Lot 4 a distance of 195.93 feet to the True Point of Beginning, said point being on the arc of a circle, the center of which bears South 10° 24' 45" West 306.50 feet therefrom;

thence Northwesterly along said arc, through a central angle of 10° 33' 20" a distance of 56.47 feet to a point on the arc of a second circle, the center of which bears South 00° 08' 35" East 5,799.58 feet therefrom;

thence Westerly along said second arc, through a central angle of 00° 52' 17" a distance of 88.20 feet to a point on the arc of a third circle, the center of which bears North 01° 00' 52" West 20.00 feet therefrom;

Unofficial Document

thence Northwesterly along said third arc, through a central angle of 91° 17' 03" a distance of 31.86 feet;

thence South 89° 43' 49" East 1.00 foot to a point on the arc of a fourth circle, the center of which bears South 89° 43' 49" East 19.00 feet therefrom;

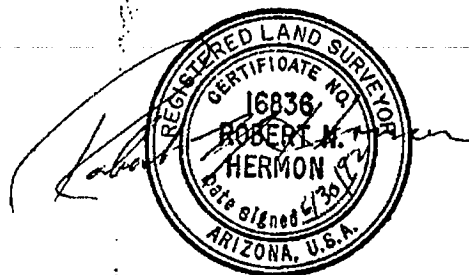
thence Southeasterly along said fourth arc, through a central angle of 91° 17' 03" a distance of 30.27 feet to a point on the arc of a fifth circle, the center of which bears South 01° 00' 52" East 5,800.58 feet therefrom;

thence Easterly along said fifth arc, through a central angle of 00° 52' 17" a distance of 88.23 feet to a point on the arc of a sixth circle, the center of which bears South 00° 08' 35" East 307.50 feet therefrom;

thence Southeasterly along said sixth arc, through a central angle of 10° 32' 32" a distance of 56.58 feet;

thence South 06° 19' 52" West 1.01 feet to the Point of Beginning.

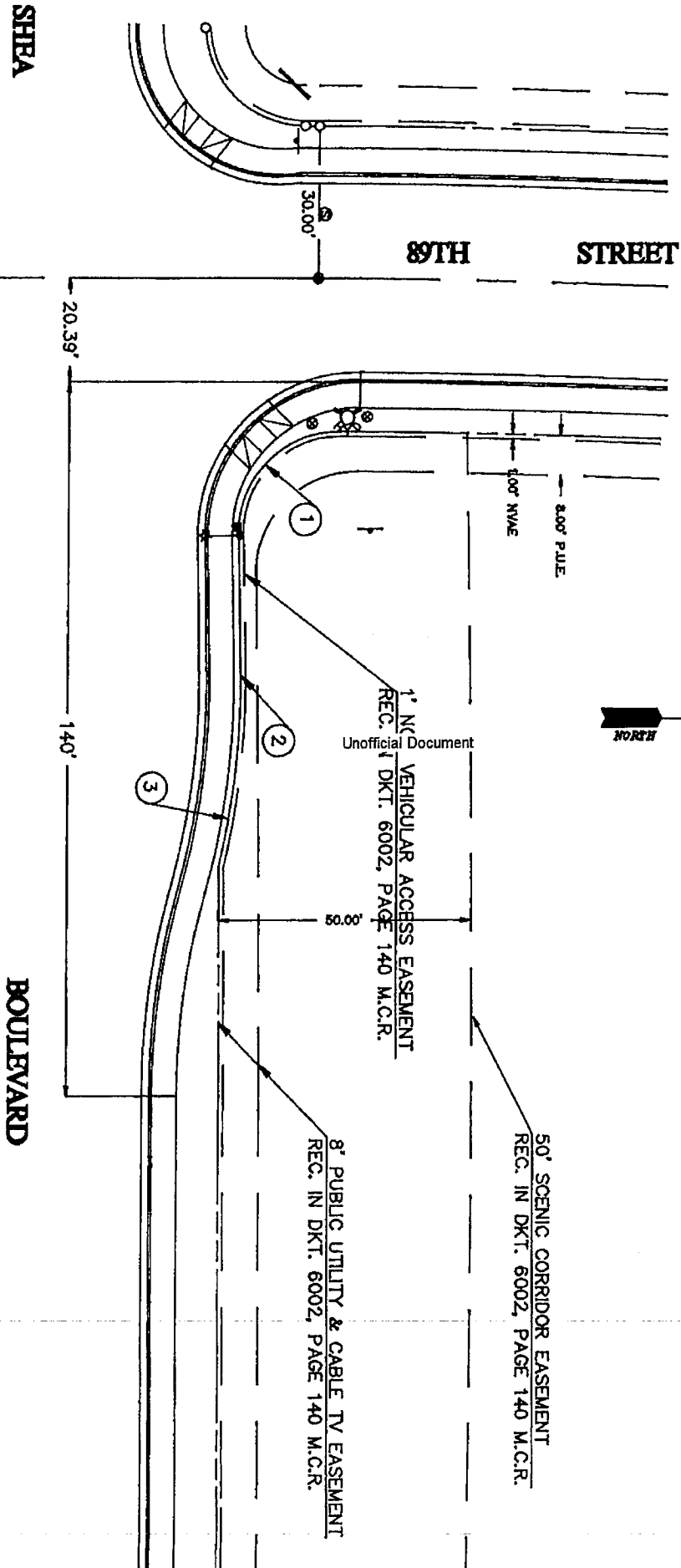
The above described property being in and forming a part of the City of Scottsdale, Maricopa County, Arizona.



**EXHIBIT "A"**

**CURVE DATA**

| C # | Δ         | R.       | L.     |
|-----|-----------|----------|--------|
| 1   | 91°17'03" | 20.00'   | 31.86' |
| 2   | 00°52'17" | 5799.58' | 88.20' |
| 3   | 10°33'20" | 306.50'  | 56.47' |



1' VEHICULAR ACCESS EASEMENT  
REC. IN DKT. 6002, PAGE 140 M.C.R.

50' SCENIC CORRIDOR EASEMENT  
REC. IN DKT. 6002, PAGE 140 M.C.R.

8' PUBLIC UTILITY & CABLE TV EASEMENT  
REC. IN DKT. 6002, PAGE 140 M.C.R.

**89TH STREET**

**BOULEVARD**



# Unofficial Document

HOLD FOR PICKUP  
ARIZONA PUBLIC SERVICE CO.

95-61656

UTILTY

34276

SW-19-3N-SE  
57-6357/S97212  
57-6356/S97211  
Survey 377/87  
JL

In consideration of One Dollar (\$1.00), the receipt of which is hereby acknowledged, EDWARD L. EDWARDS, as owner of Edwards Business Park (hereinafter called "Grantor"), does hereby grant and convey to ARIZONA PUBLIC SERVICE COMPANY (hereinafter called "Company"), its successors and assigns, an easement 10 feet in width, to construct, operate and maintain electric 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:

A parcel of land situated in the Southwest Quarter of Section 19, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as:

Lot 4 of Edwards Business Park, a 1983 subdivision recorded in Book 257, Map 20 of the Maricopa County Recorder's Office, Maricopa County, Arizona.

Said easement being 10 feet in width, 5 feet on each side of the following described centerline:

Commencing at the intersection of Becker Lane and 89th Place as shown on Edwards Business Park (MCR 257/20); thence South 7° 42' 19" West a distance of 70.53 feet to the P.C. of a curve concave Southeasterly; thence South 82° 17' 41" East a distance of 30 feet to a point on the Easterly right of way line of 89th Place (said point hereinafter referred to as Point "A"); thence along a curve to the left, a tangent bearing of South 7° 42' 19" West, a radius of 1716.94, a delta of 1° 22' 03", a distance of 40.98 feet to the TRUE POINT OF BEGINNING of said easement; thence North 89° 26' 01" East a distance of 29.81 feet; thence North 61° 59' 43" East, 19.91 feet; thence North 89° 54' 41" East a distance of 258.82 feet; thence South 45° 42' 07" East a distance of 47.30 feet; thence North 88° 29' 17" East a distance of 9.33 feet.

ALSO BEGINNING at Point "A" as described above; thence North 7° 42' 19" East, along the East right of way line of 89th Place, a distance of 184.76 feet; thence South 82° 17' 41" East a distance of 37.06 feet.

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: 1-20-95

WITNESS:

*Shirley Lynn Duster*

*Edward L. Edwards*  
Edward L. Edwards

STATE OF ARIZONA }  
                                  } ss.  
County of Maricopa }

This instrument was acknowledged before me this 20 day of JANUARY, 1995, by Edward L. Edwards.

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

My Commission Expires:  
12-23-96

Suzanne L. Johnson  
Notary Public



Unofficial Document



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

95-0570008 09/20/95 02:01

FRANK 5 OF 37

HOLD FOR PICKUP  
ARIZONA PUBLIC SERVICE CO.

UTILITY EASEMENT

34819

SW-19-3N-5E  
S111484/57-9302  
SURVEY 392-92  
MJB

In consideration of One Dollar (\$1.00), the receipt of which is hereby acknowledged, SHEA-EDWARDS LIMITED PARTNERSHIP, an Arizona limited partnership (hereinafter called "Grantor") do(es) hereby grant and convey to ARIZONA PUBLIC SERVICE COMPANY (hereinafter called "Company"), its successors and assigns, an easement to construct operate and maintain electric 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:

A parcel of land situated in the Southwest quarter of Section 19, Township 3 North, Range 5 East of the Gila and Salt River Base and Meridian, more particularly described as:

The North 470.00 feet of Lot 4 of EDWARDS BUSINESS PARK, a subdivision according to Book 257 of Maps, Page 20, records of Maricopa County, Arizona, as measured perpendicular to the North line of said Lot 4.

Said utility easement in the above described premises consists of a linear easement for underground electric lines and a padmounted transformer, the approximate dimensions and locations of which are shown on Exhibit "A" attached hereto and by this reference incorporated herein.

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: \_\_\_\_\_

Shea-Edwards Limited Partnership, By: Edwards Family Properties of Arizona, Inc., an Arizona corp., its general partner

By: Edward L. Edwards  
Edward L. Edwards, President

WITNESS:

Title: President

STATE OF ARIZONA

County of Maricopa

} ss.

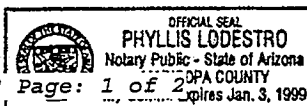
This instrument was acknowledged before me this 25 day of August, 19 95, by Edward L. Edwards, President of Edwards Family Properties of Arizona, Inc., an Arizona corporation, as general partner of Shea-Edwards Limited Partnership, an Arizona limited partnership, for and on behalf of the partnership.

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

Phyllis L. Odestro  
Notary Public

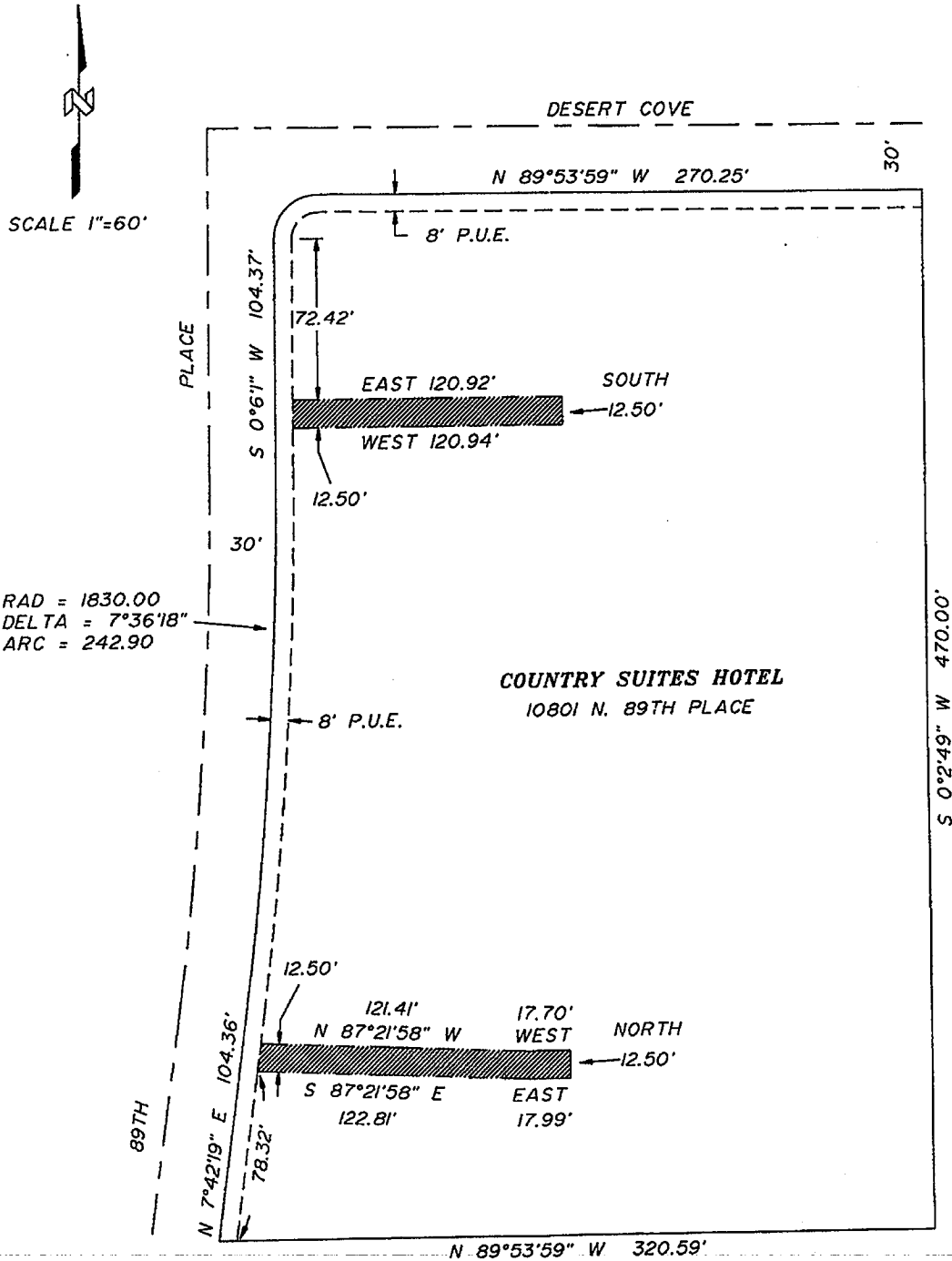
My Commission Expires:

Jan 3, 1999



# EXHIBIT "A"

SKETCH SHOWING LOCATION AND LIMITS OF  
UTILITY EASEMENT

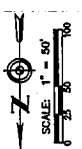
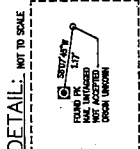
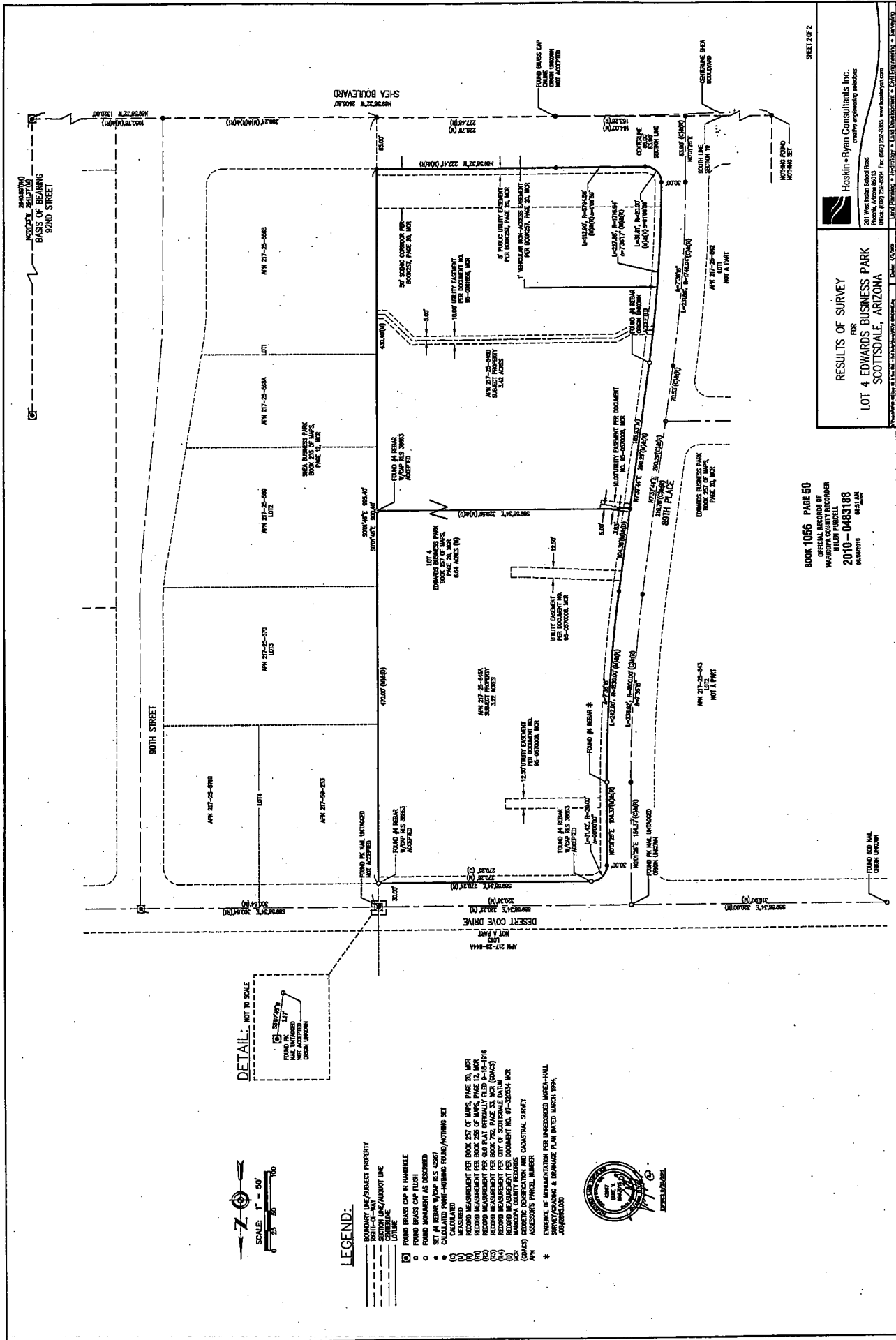


RAD = 1830.00  
DELTA = 7°36'18"  
ARC = 242.90

| LEGEND |                 |
|--------|-----------------|
|        | EASEMENT AREA   |
|        | ROAD CENTERLINE |
|        | PROPERTY LINE   |
|        | PROPERTY CORNER |

|                       |              |
|-----------------------|--------------|
| JOB# S111484          | DATE 8/08/95 |
| SW 1/4 SEC 19         | T 3N R 5E    |
| SCALE 1"=60'          | MAP#         |
| R/W MIKE BOUCHE       |              |
| SURVEY: BOUCHE-GRIMES |              |
| DRAWN BY: BOUCHE      |              |





- LEGEND:**
- BOUNDARY LINE/SUBJECT PROPERTY
  - LINE
  - SECTION LINE/ADJACENT LINE
  - CENTERLINE
  - FOUND BRASS CAP & MARKER
  - FOUND BRASS CAP FLUSH
  - FOUND INHABITANT (AS DESCRIBED)
  - SET IN REAR W/CP RLS CORNER
  - CALCULATED POINT-MARKING FOUND/NOTHING SET
  - CALCULATED
  - RECORDED MEASUREMENT PER BOOK 257 OF MAPS, PAGE 2A, MCR
  - RECORDED MEASUREMENT PER BOOK 255 OF MAPS, PAGE 12, MCR
  - RECORDED MEASUREMENT PER BOOK 254 OF MAPS, PAGE 11, MCR
  - RECORDED MEASUREMENT PER BOOK 253 OF MAPS, PAGE 10, MCR
  - RECORDED MEASUREMENT PER CITY OF SCOTTSDALE DATUM
  - RECORDED MEASUREMENT PER DOCUMENT NO. 67-100534 MCR
  - RECORDED MEASUREMENT PER DOCUMENT NO. 67-100534 MCR
  - ASSASSIN'S PINNACLE NUMBER
  - EVIDENCE OF MONUMENTATION PER UNRECORDED MORA-HALL SURVEY/BOUNDARY & TRAILBLAZE PLAT DATED MARCH 1994, 10/20/2000



BOOK 1056 PAGE 50  
 ORIGINAL RECORD OF SURVEY  
 MANAGED BY  
 HELEN PURCELL  
 2010-0483188  
 8/20/2016 M-11-AM

RESULTS OF SURVEY  
 FOR  
**LOT 4 EDWARDS BUSINESS PARK**  
 SCOTTSDALE, ARIZONA

Hoskin + Ryan Consultants Inc.  
 creative engineering solutions  
 201 West Indian School Road  
 Scottsdale, AZ 85260  
 Office: (602) 252-8264 Fax: (602) 252-8265 www.hoskinryan.com  
 Land Planning • Hydrology • Land Development • Civil Engineering • Surveying

SHEET 2 OF 2

09-003-01 B05

613300000CCRS-11-1-1--  
Hoyp

When Recorded Mail To:  
Suzanne Johnson,  
Shea Edwards Limited Partnership  
9432 E. Casitas Del Rio  
Scottsdale, AZ 85255

Space Above For Recorder's Use

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS**

This Declaration of Covenants, Conditions, Restrictions and Easements (the "Declaration") is made as of July 5, 2014, by Shea Edwards Limited Partnership, an Arizona limited partnership ("Edwards") and is adopted with respect to the prospective subdivision of Lot 4, EDWARDS BUSINESS PARK, according to Book 257 of Maps, Page 20, records of Maricopa County, Arizona, by means of a proposed Re-Plat of "Lot 4, Edwards Business Park" (the "Re-Plat") if and when such Re-Plat is recorded (draft copy of the Re-Plat layout of the Lots and the location of the Easement Areas for the P.A.E. & E.M.V.A.E. and the Runoff Storage Easement is attached as Exhibit A and by this reference incorporated herein as if set forth in full, the "Draft Re-Plat"). For reference purposes, the designations on the Re-Plat (if any) of (a) the Proposed P.A.E. & E.M.V.A.E. refers to the rights of one or more persons or entities (the "New Owner" whether singular or plural and whether, if more than one such persons or entities own one or more Lots, as tenants in common or each owns a separate Lot or both) who acquire all or a substantial portion of one or more, but less than all of the Lots (the "Transferred Lot," again, whether singular or plural) to the use of the designated areas for ingress and egress purposes and for emergency motor vehicle ingress and egress and (b) the Proposed Runoff Storage Easement refers to the rights of the New Owner of Lots 4A and 4B for storage from runoff from rainfall events on Lots 4A and 4B. It is intended that the terms hereof shall to the extent applicable, govern the rights and responsibilities created by the Re-Plat, if, and only if, it is recorded and then only to the extent that the Re-Plat does not specifically supersede the provisions hereof. In this context, if and to the extent that the Re-Plat references and/or indicates the creation of easements, to the extent possible, such easements shall be governed by the terms hereof so as to eliminate any duplication of easements and/or to supplement the terms of such easements to deal with the potential need to modify the size, location, rights to, benefits of and responsibilities concerning such easements and the portion of the Property subject to such easements.

**Recitals**

- A. Edwards is the owner of the Property.
- B. If and when Edwards sells, assigns or transfers a Lot to a New Owner, Edwards as the owner of one or more of the Lots and the New Owners will share the use of portions of the Property for ingress, egress, parking, lighting, landscaping, utility, signage and runoff storage from a rainfall event purposes as described herein.
- C. Edwards wishes to make this Declaration to establish the provisions for the sharing of such use by means of the covenants, conditions, restrictions and easements as described herein.

**NOW, THEREFORE**, in consideration of the above Recitals and the provisions set forth below, Edwards, as the owner of the Property does hereby declare that the provisions of this Declaration shall create in favor of Edwards as the owner of the Property, the New Owners and their respective successors and assigns those rights provided to or for the benefit of Edwards as owner of one or more Lots and the New Owners of one or more of the Lots and all future transferees and/or assignees of one or more of the Lots by Edwards and/or the New Owners. Each Lot Owner shall be subject to the terms, covenants, easements, restrictions and conditions set forth in this Declaration, so that said Lots shall be maintained, kept, sold and used in full compliance with and subject to this Declaration and the Lot Owners and Edwards as owner of one or more Lots, on behalf of itself and its successors and assigns, shall be bound as follows:

**Declaration**

1. **Terms and Conditions.** The following rights, terms, conditions and obligations apply to the Property. In this respect, the capitalized words and terms shall have the following meanings. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require:

1.1 **"Runoff Storage Easement"** means non-exclusive, perpetual easements in favor of: (a) the Owner of Lot 4A as to the portion of Lot 4B (the "4B Runoff Storage") designed to store runoff from rainfall events; (b) in favor of the Owner of Lot 4B as to the portion of Lot 4A (the "4A Runoff Storage") also designed to store runoff from rainfall events; and (c) in favor of the Owner of Lot 4C as to the 4A Runoff Storage and the 4B Runoff Storage. The Lot 4A Runoff Storage and Lot 4B Runoff Storage are depicted upon the Draft Re-Plat as the Retention Area; provided that no significant increase in the use of the Lot 4A Runoff Storage and the Lot 4 B Runoff Storage shall be commenced by the Owner of Lot 4A, 4B or 4C without the express written approval of the Owners of Lot 4B and/or Lot 4A, as applicable.

1.2 **"Dominant Parcel(s)"** shall mean with respect to the applicable Easement, the Parcel(s) that are to benefit from such Easement.

1.3 **"Drainage Easement"** shall mean a non-exclusive easement on, over and across the portions of Lots 4A and/or 4B by which drainage of runoff from rainfall events on Lot 4C transitions to the Lot 4A Runoff Storage and/or the Lot 4B Runoff Storage either over the surface of Lots 4A and/or 4B or by means of underground pipes or other Facilities presently in place and any replacements of the same.

1.4 **"Easement"** means each easement created or reserved under this document, including the Access Easements, the Parking Easements, the Sign Easement, the Runoff Storage Easements, the Drainage Easements, the Utility Easements and the Temporary Easements.

1.5 **"E.S.V.A.E."** shall mean the emergency and service vehicle access easement that is intended to be dedicated to the City when, if and as the Re-Plat is recorded, provided that it is intended to be co-extensive with and modified as the location of the P.A.E. may be modified from time to time, and further provided that any such modification shall comply with the then applicable requirements of the City as to an E.S.V.A.E. and be approved in writing by the City.

1.6 **"Facilities"** means those improvements made to the Parcel(s) which are created for purposes of facilitating the creation or use of one or more of the Easements.

1.7 "**Hazardous Substance**" means and includes any substance, material, or waste, including asbestos, petroleum, and petroleum products (including crude oil), that is or becomes designated, classified, or regulated as "toxic" or "hazardous" or a "pollutant," or that is or becomes similarly designated, classified, or regulated, under any federal, state, or local law, regulation, or ordinance, other than any such substance that is a customary and ordinary household, cleaning, or office product, or customary construction materials used during the course of construction, provided such use is in accordance with applicable hazardous materials laws and regulations.

1.8 "**Improvements**" means any buildings and other improvements presently existing or hereafter constructed on any Parcel.

1.9 "**Landscaping**" means the existing, additional and/or replacement trees, plants, grass, shrubs and other vegetation located portions of each of the Parcels, excluding planters and real or artificial plants that are located immediately adjacent to but not more than 10' from the exterior walls of any Improvement on a Parcel and which are designated by such Owner as relating to marketing the Owner's or its tenant(s)' products or services.

1.10 "**Owner**" means the holder of fee simple title to all or any portion of a Lot, including New Owner and Edwards, and any and all successors or assigns of such persons as an Owner or Owners of fee simple title to all or any portion of a Lot, whether by sale, assignment, inheritance, operation of law, trustees sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such Lot.

1.11 "**P.A.E.**" means a non-exclusive, perpetual easement in favor of the Dominant Parcel(s) on, over and across the portions of the Subservient Parcel(s) the initial location of which is identified as P.A.E. on the Re-Plat. However, and notwithstanding the foregoing, the location and boundaries of the P.A.E. may be modified by the Subservient Parcel Owner from time to time, provided that the modifications do not materially impair the use of the P.A.E. by the Dominant Parcel Owner.

1.12 "**Parcel**" means Lot 4A, 4B and/or 4C, and any subdivisions thereof.

1.13 "**Parking Easement**" means a non-exclusive, perpetual Easement in favor of the Dominant Parcel(s) for parking purposes, on, over and across those portions of the Subservient Parcel(s) generally available for and striped or designated for parking, provided that the Owner of a Subservient Parcel may, at its election, designate up to, but no more than 20% of the available parking on the Subservient Parcel as being for its exclusive use provided that such designation relates to a reasonable need or useful purpose relating to such exclusive use and further provided that if and to the extent that such Owner of a Subservient Parcel designates a portion of the Subservient Parcel for exclusive use for parking, the Owner shall have the obligation to create and maintain signage clearly designating those portions of the parking area for such exclusive use.

1.14 "**Parking Lot Lighting**" consists of the lights that illuminate areas of the parking lots adjacent to or within the access and parking areas on all of the Parcels.

1.15 "**Permittee**" means, as to each Owner, its successors and assigns, and its tenants, subtenants, licensees, occupants, employees, contractors, agents, invitees, lenders, customers,

guests, and visitors, and their respective successors and assigns.

1.16 "**Sign Easement**" means an Easement in favor of Lot 4C and against Lot 4A to be located within the Landscaping area on Lot 4A for the use of a monument sign designating the user and/or use of Lot 4C, provided that the sign is fully in compliance with the requirements of the City and further provided that the size, color and materials and specific location of the sign shall not be materially changed without the approval of the Owner of Lot 4A, which approval may not be unreasonably or untimely withheld. Moreover, upon any loss of the right to use the sign, for any reason, including the loss of rights to the use of the sign under a legal non-conforming use, the Sign Easement shall be abandoned, of no further force and effect and the owner of Lot 4C shall at the request of the owner of Lot 4A execute a confirmation of this abandonment.

1.17 "**Subservient Property**" shall mean the Parcel(s) against which an Easement is granted herein.

1.18 "**Temporary Easement**" means the Easements created by Section 5.2 below.

1.19 "**Utility Easement**" means a non-exclusive, perpetual easement for utility purposes on, over and across those portions of the Subservient Parcel(s) that do not then have Improvements which would be impaired by the use of such portions of the Subservient Parcel(s) for the applicable Utility Easements and as may be adjusted from time to time. The Owners of the Subservient Parcel(s) shall execute such Easement documents in favor of a public utility or utilities as may be reasonably or necessarily required to provide such Easement to comply with the requirements of public utility companies in providing public utility service to the Dominant Parcel(s).

2. **Easement Grants.** Edwards as the owner of the Retained Property, and for its successors and assigns does hereby grant to the New Owner as Owner of the Transferred Lot and its successors and assigns, a Parking Easement, Utility Easement, PAE, Runoff Storage Easement, Drainage Easement and, if applicable a Sign Easement, on over and across those portions of the Retained Property as include such Easements. Correspondingly, Edwards does hereby reserve for itself, as the owner of the Retained Property, and its heirs, successors and assigns a Parking Easement, Utility Easement, Access Easement, Runoff Storage Easement, Drainage Easement and, if applicable a Sign Easement, on over and across those portions of the Transferred Lot as include such Easements. Moreover, upon the further subdivision of the Transferred Lot or the Retained Property, the then Owner subdividing such property shall be deemed to have granted and retained the same Easements with respect to the property transferred and retained at the time of such subdivision and transfer of portions of the applicable portions of the applicable Lot(s).

3. **Edwards's Construction of Facilities.** As a part of its prior development of the Retained Property and the Transferred Lot, Edwards and/or its agents or predecessor constructed or caused to be constructed, the access, landscaping, parking lot, parking lot lighting, monument sign, drainage and runoff storage and utility improvements (the "Access Facilities," "Landscaping Facilities," the "Parking Facilities," the "Lighting Facilities," the "Runoff Storage Facilities," the "Sign Facilities," the "Drainage Facilities" and the "Utility Facilities," respectively) on the Retained Property and on the Transferred Lot, as applicable. Neither Edwards nor Transferee

Owner shall have an obligation to construct any additional Facilities on the Retained Property or on the Transferred Lot.

**4. Maintenance; Maintenance Costs.**

**4.1 Maintenance of Retained Property Facilities.** Edwards, as Owner of the Retained Property and its successors and assigns, shall, at its sole cost and expense, commencing with the recording of the transfer of the Transferred Lot, at all times thereafter, maintain the Retained Property and all Access Facilities, Landscaping Facilities, Parking Facilities, Lighting Facilities (including the electrical costs of operating such Lighting Facilities from dusk to dawn), Sign Facilities (if applicable), Runoff Storage Facilities and the Utility Facilities, located on the Retained Property in accordance with the maintenance standards set forth below.

**4.2 Maintenance of The Transferred Lot Facilities.** Transferee Owner, as Owner of the Transferred Lot and its successors and assigns, shall, at its sole cost and expense, commencing with the recording of the transfer of the Transferred Lot, at all times thereafter, maintain the Retained Property and all Access Facilities, Landscaping Facilities, Parking Facilities, Lighting Facilities (including the electrical costs of operating such Lighting Facilities from dusk to dawn), Sign Facilities (if applicable), Runoff Storage Facilities and the Utility Facilities, located on the Transferred Lot in accordance with the maintenance standards set forth below.

**4.3 Drainage Facilities.** The obligation to maintain, repair or replace the Drainage Facilities shall be primarily that of the Owner of Lot 4C, except that the Owners of Lots 4A and/or 4B, as applicable, shall be obligated to maintain, repair or replace the Drainage Facilities to the extent that the Drainage Facilities are damaged, otherwise rendered less efficient or moved by such Owners. If and to the extent that the failure to maintain, repair or replace the Drainage Facilities on Lots 4A and/or 4B causes accumulations of runoff from rainfall events on Lot 4C (a "4C Accumulation") or on either Lots 4A and/or 4B (a "4AB Accumulation"), a Lot Owner may precipitate the maintenance, repair or replacement of the Drainage Facilities as follows: (a) if there is a 4C Accumulation caused by the failure of the Lot 4A Owner and/or the Lot 4B Owner to fulfill its respective obligations hereunder, the Lot 4C Owner may invoke the provisions of Section 5 below. Correspondingly, if there is a 4AB Accumulation caused by the failure of the Lot 4C Owner to fulfill its obligations hereunder, the Lot 4A Owner and/or the Lot 4B Owner may invoke the provisions of Section 5 below.

**5. Maintenance Standards and Procedures.**

**5.1 Maintenance Standards.** Each Owner shall reconstruct, operate and maintain its respective Facilities on such Owner's Parcel in a clean, first class condition, free from trash, debris, weeds and graffiti, and use such Parcel for uses authorized by the city of Scottsdale, consistent with similar properties and in accord with the ordinances of the city of Scottsdale for its benefit and that of all other Owners.

**5.2 Temporary Easements for Reconstruction, Operation or Maintenance.** Edwards as the Owner of the Retained Property does hereby grant to the Transferee Owner of the Transferred Lot a Temporary Easement (nonexclusive) on, over and across those portions of the Retained Property as are necessary for the Transferee Owner to reconstruct, operate and/or maintain the Transferred Lot or alternatively to reconstruct, operate or maintain the Retained

Property that it is otherwise allowed to do where entry onto the Retained Property is reasonably or necessarily required to the limited extent necessary to perform its reconstruction, operation or maintenance obligations or rights hereunder. Edwards as the Owner of the Transferred Lot does hereby reserve a Temporary Easement (nonexclusive) on, over and across those portions of the Transferred Lot as are necessary for Edwards to reconstruct, operate and/or maintain the Retained Property or alternatively to reconstruct, operate or maintain the Transferred Lot that it is otherwise allowed to do where entry onto the Transferred Lot is reasonably or necessarily required to the limited extent necessary to perform its reconstruction, operation or maintenance obligations or rights hereunder. Such Temporary Easement shall be limited to the extent reasonably necessary to perform the Facilities work and shall not be exercised in such a manner as to unreasonably impede the other Owner's work, development or use of its Parcel. Use of these Temporary Easements shall be minimized to the extent reasonable practicable.

**5.3 Restoration of Parcel.** Each Owner performing reconstruction, operation or maintenance obligations or rights of Facilities located upon its Parcel or another Owner's Parcel shall remove all equipment and other items placed upon such other Owner's Parcel by or for such Owner, fill and level all ruts and depressions caused by the construction operations, remove all debris resulting therefrom, and generally restore the other Owner's Parcel to the condition that existed prior to the constructing or maintaining Owner's entering onto the other Owner's Parcel, all within a reasonable time after the completion of the applicable construction or maintenance.

**5.4 Failure to Perform Reconstruction, Operation and/or Maintenance Obligations; Reimbursement of Expenses.** If any Owner fails to perform and satisfy any reconstruction, operation and/or maintenance obligation hereunder, then the Owner of a Parcel benefiting from such reconstruction, operation and/or maintenance obligation, upon giving ten (10) days written notice to the defaulting Owner, may undertake such obligations at the expense of the defaulting Owner. Any such expense incurred shall be reimbursed by the defaulting Owner to the Owner performing or satisfying the applicable maintenance obligation within ten (10) days after written notice thereof, together with a detailed invoice for such expenses so incurred, is given to the defaulting Owner, and if not paid when due shall bear interest at the rate of twelve percent (12%) per annum from the date due until paid.

**5.5 Protection Against Liens.** Each Owner (a "Contracting Party") performing reconstruction, operation and/or maintenance upon another Owner's Parcel shall pay or otherwise promptly discharge all claims and liens for labor done and materials and services furnished in connection with such maintenance. The Contracting Party has the right to contest in good faith any claim or lien, provided that it does so diligently and without prejudice to the Owner or the Parcel upon which the work was performed and without delay in completing the maintenance work. If the Contracting Party contests any such claim or lien, then promptly upon applicable Parcel Owner's request, the Contracting Party shall provide, a bond, cash deposit, or other security reasonably satisfactory to applicable Parcel Owner.

**6. Remedies and Enforcement.**

**6.1 All Legal and Equitable Remedies Available.** In the event of a breach or threatened breach by the Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of

such breach, including payment of any amounts due and/or specific performance.

**6.2 Lien Rights.** Any claim for reimbursement of construction and/or maintenance costs not paid when due, including interest thereon as provided herein, and all costs and expenses (including reasonable attorneys' fees) awarded to either Owner in enforcing any payment thereof in any suit or proceeding under these Easement provisions, shall constitute a lien against the Parcel of the defaulting Owner until paid (an "Assessment Lien"), effective upon the recording of a notice of lien with respect thereto in the Office of the County Recorder of Maricopa County, Arizona. The Assessment Lien shall be subordinate to all liens or encumbrances recorded prior to the recording of the Assessment Lien. All liens recorded subsequent to the recording of the Assessment Lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which an Assessment Lien was recorded, the party recording same shall record an appropriate release of such Assessment Lien.

**6.3 Remedies Cumulative.** The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

**6.4 Irreparable Harm.** In the event of a violation or threat thereof of any of the provisions of these Easements, each Owner agrees that such violation or threat thereof shall cause the nondefaulting Owner and/or its Permittees to suffer irreparable harm and such nondefaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of these Easements, the nondefaulting Owner, in addition to all remedies available at law or otherwise under these Easements, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of these Easements.

**7. Combined Performance.** Any two or more Owners may enter into contracts for the purpose of implementing the reconstruction, operation and/or maintenance of all or any portion of the Facilities as they shall determine from time to time. Alternatively, upon the Agreement of the affected Owners, such Owners may form a Property Owners Association to own and/or operate all or any portion of the Facilities and to administer the reconstruction, operation and/or maintenance of such Facilities from time to time. Any such Association may assume such obligations, with or without release of the Owners from their responsibility to the other participating Owners for the reconstruction, operation and/or maintenance of such Facilities, and in the absence of such release, it shall be presumed that no such release is effective.

**8. Miscellaneous**

**8.1 Amendment.** The provisions of these Easements may be modified or amended, in whole or in part, or terminated, by the written consent of the record Owners of the Transferred Lot and the Retained Property, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the County Recorder of Maricopa County, Arizona. If and to the extent that the Replat is approved by the City and recorded, upon such recording and only following such recording, any amendment to this Declaration that affects (a) the location of the PAE and the E.S.V.A.E., or (b) the Parking Easement may impact the use of similar City facilities. Therefore, at that time and only at that time, no amendment to the Declaration that affects any of these aspects of this Declaration shall be effective, unless and until approved in writing by the City.

8.2 **No Waiver**. No waiver of any default of any obligation by any Owner shall be implied from any omission by the other Owner to take any action with respect to such default.

8.3 **No Agency**. Nothing in these Easements shall be deemed or construed by any Owner or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the Owners.

8.4 **No Merger**. No merger shall occur as a result of any Owner's acquiring any other estate in or any lien on any other Parcel unless such Owner consents to a merger in writing.

8.5 **Covenants to Run with Land**. It is intended that each of the Easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the Parcel benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective Owners and their successors, assigns, heirs, and personal representatives.

8.6 **Floating Easements/Obstructions**. It is intended that the location of any and all Easements hereunder not be permanently fixed in any specific location, but that they be flexible to be moved, when, if and as reasonably necessary for the development, redevelopment and/or use of all or any portion of the Property. Nevertheless, any such construction, development, reconstruction and redevelopment shall be done in a manner which reasonably provides all portions of the Property subject to these Easements with substantially similar benefits. Specifically access on the west and northern boundaries that front on public rights of way extending to another Parcel shall not be impaired; provided, however, that notwithstanding the foregoing, the Owners shall not be prevented or prohibited from temporarily and reasonably inhibiting the use of the applicable Easement to perform its construction or maintenance obligations hereunder. No Improvement, fence, wall, curb, or other barrier which would unduly or unreasonably impair, interfere with, or burden the rights under these Easements shall be constructed or erected.

8.7 **Redevelopment**. If any Owner wishes to build or redevelop a Parcel and wishes to confirm that the Improvement does not violate the restriction of these Easements, such Owner shall submit (a) a written notice of intent to develop or redevelop all or a portion of a Parcel, (b) a clear written warning to the other Owner(s) that it must respond within the time provided herein or have waived its rights hereunder and (c) a site plan with sufficient detail to show the changes in the Easements affected by such plan to the other Parcel Owner(s). In the absence a written objection being given within fifteen (15) business days of receipt of such notice to such Owner (and if requested, to one or more of a title insurance company and lender), then such other Parcel Owner(s) shall be deemed to have waived any objection that such redevelopment impairs any Easement hereunder. If the other Parcel Owner timely provides an objection to a redevelopment plan and the Owner elects to contest such objection and is successful in such contest, whether by action or arbitration, the Other Parcel Owner(s) shall be responsible for the costs and expenses of such action, including costs of delay, attorneys fees and the like.

8.8 **Hazardous Substances**. No Owner shall use, or permit the use of, dispose of, release to or from, or otherwise allow Hazardous Substances in, on, under, or around, any Easement except in full accord with all applicable laws, rules and regulations pertaining thereto. Each Owner will comply and use reasonable efforts to cause its Permittees to comply, with all

federal, state, and local laws, regulations, and ordinances governing or applicable to Hazardous Substances.

**8.9 Notices.** Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by a national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Unless otherwise provided by to a Parcel Owner, a Parcel Owner giving notice hereunder shall be entitled to give the written notice to the address noted in the records of the Maricopa County, Arizona Assessor's office.

**8.10 Successors and Assigns.** The provisions hereof are binding on and inure to the benefit of the Owners and their respective heirs, successors, and assigns of all or any portion of the Property.

**8.11 Attorneys' Fees.** In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

**8.12 Governing Law.** This Declaration shall be governed by, and construed in accordance with, the laws of the State of Arizona.

**8.13 Taxes and Assessments.** Each Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Parcel.

**8.14 No Rights in Public; No Implied Easements.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Retained Property or the Transferred Lot. No Easements shall be implied by this Declaration.

Executed on the date set forth above.


**Shea Edwards Limited Partnership**, an Arizona limited partnership,

By: Edwards Family Properties of Arizona, Inc.,  
an Arizona corporation, its General Partner

By:   
Suzanne Johnson, CEO

STATE OF ARIZONA )  
 ) ss.  
County of ~~Maricopa~~ *Gila* )

This instrument was acknowledged and executed before me this 5<sup>th</sup> day of July, 2011, by Suzanne Johnson, CEO of Edwards Family Properties of Arizona, Inc., an Arizona corporation in its capacity as General Partner of **Shea Edwards Limited Partnership**, an Arizona limited partnership, for and on behalf of the same.

  
\_\_\_\_\_  
Notary Public

SEAL

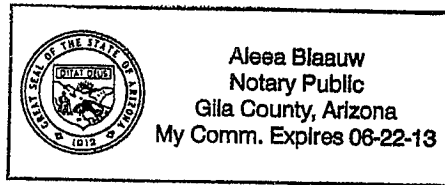
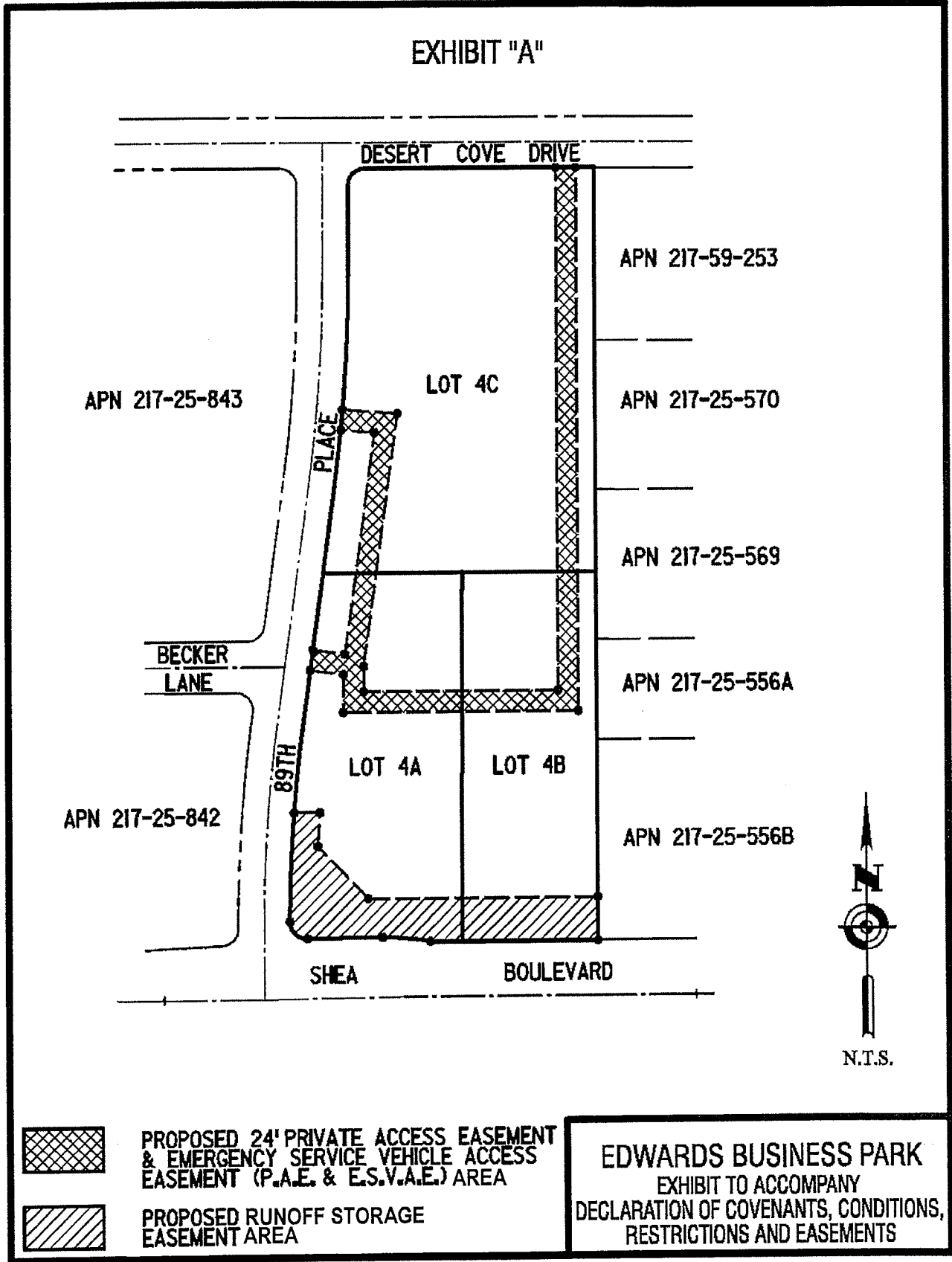


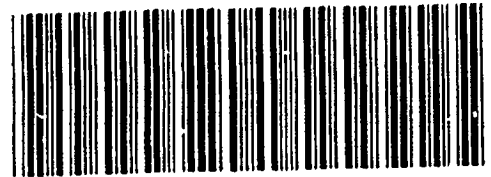
EXHIBIT "A"







RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO  
PICK-UP BASKET FOR:



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

94-0756447 10/20/94 03:30

LAUDENCE 2 OF 2

Peter Ambelang, Esq.  
**WARNER ANGLE ROPER & HALLAM P.C.**  
1500 First Interstate Tower  
3550 North Central Avenue  
Phoenix, Arizona 85012

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### MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into as of the 20<sup>th</sup> day of October, 1994, by and between **EDWARDS FAMILY PROPERTIES OF ARIZONA, INC.**, an Arizona corporation, hereinafter referred to as "Landlord", and **RED ROBIN INTERNATIONAL, INC.**, a Nevada corporation, hereinafter referred to as "Tenant".

#### WITNESSETH:

1. By Lease dated as of October 20<sup>th</sup>, 1994 (hereinafter referred to as the "Lease"), Landlord demised and leased to Tenant and Tenant leased from Landlord certain real property consisting of an undeveloped building pad ("Pad") located in the City of Scottsdale, County of Maricopa, State of Arizona, as depicted on the plot plan attached hereto as Exhibit "A: and made a part hereof and legally described in Exhibit "B" ("Project"), which is attached hereto and made a part hereof, containing approximately ten thousand (10,000) square feet of land area, and Landlord granted to Tenant certain rights of ingress, egress, parking and all other rights appurtenant to the Project.

2. The addresses of the parties are as follows:

Landlord: 10752 North 89th Place  
Scottsdale, Arizona 85260

Tenant: 28 Executive Park, Suite 200  
Irvine, California 92714

3. The term of the Lease, unless extended or sooner terminated under

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LDH:09-13-94

the provisions thereof, shall be twenty (20) years beginning on the Commencement Date as is specified in the Lease, and ending on December 31, 2014.

4. Tenant has the right and option to extend the term of the Lease on the same terms and conditions as provided therein, for two (2) successive periods of five (5) years each.

5. So long as the principal use of the Pad is that of a restaurant as described in the Lease, being a Red Robin Burger & Spirits Emporium, the Landlord will not lease, use or permit all or any portion of the Project to any restaurant of a similar type and style (e.g. Applebee's, Chili's, Spoons, Islands, Fridays or Bennigans).

6. The Landlord and the Tenant agree that the recording of this Memorandum of Lease constitutes a cloud on the title of the property. Therefore, the Landlord and Tenant agree that the Landlord and Tenant shall both be obligated to execute a notice of termination of this Memorandum of Lease at and simultaneously with the actual termination of the Lease and record the same to confirm the termination of the Lease. The Landlord and Tenant recognize that because of the circumstances, the Tenant may not be available or may not wish to cooperate in confirming the termination of the Lease. Therefore, the Tenant agrees that if the Landlord records a notice confirming that the Lease is terminated, referencing this Memorandum of Lease and at the same time deposits a notice of such termination postage prepaid in the United States mail addressed to the Tenant, both at the address set forth in the Memorandum of Lease (or any alternate address by recorded document updating the address set forth in the Memorandum of Lease), together with mailing a copy to the street address of the premises, if the Tenant does not within thirty (30) days thereafter record its positive assertion that the Lease has not been terminated, then such notice shall be deemed to be record notice of the termination of the Lease and both the Landlord and Tenant hereby agree that all third parties who have notice of such Termination of Lease, are entitled to rely upon such notice thereafter.

7. All of the terms, conditions, provisions and covenants of the Lease are incorporated herein by reference as though written out at length herein, and both the Lease and this Memorandum of Lease shall be deemed to constitute a single instrument or document. This Memorandum of Lease is not intended to amend, modify, supplement or supersede any of the provisions of the Lease and to the extent there may be any conflict or inconsistency between the Lease or this Memorandum of Lease, the Lease shall control.

8. The Lease and the provisions thereof are binding upon the signatories hereto and their successors and assigns.

IN WITNESS WHEREOF, Landlord and Tenant have caused this

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LDH:09-13-94

Memorandum of Lease to be duly executed as of the date and year first above written.

"LANDLORD"

"TENANT"

EDWARDS FAMILY PROPERTIES OF ARIZONA, INC., an Arizona corporation

RED ROBIN INTERNATIONAL, INC., a Nevada corporation

BY: Edward L. Edwards  
Edward L. Edwards, President

BY: [Signature]  
Its: President

STATE OF ARIZONA )  
§:  
County of Maricopa )

The foregoing instrument was acknowledged before me this the 10<sup>th</sup> day of October, 1994, by Edward L. Edwards as President of EDWARDS FAMILY PROPERTIES OF ARIZONA, INC., an Arizona corporation, for and on behalf of the corporation.

Suzanne L. Johnson  
Notary Public

My Commission Expires:

Dec. 23, 1996



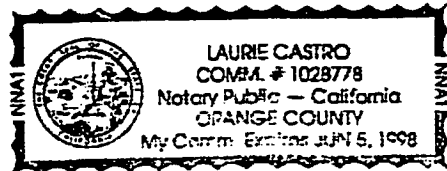
STATE OF CALIFORNIA )  
§:  
County of Orange )

The foregoing instrument was acknowledged before me this the 18<sup>th</sup> day of October, 1994, by William C. Baker as President of RED ROBIN INTERNATIONAL, INC., a Nevada corporation, for and on behalf of the corporation.

Laurie Castro  
Notary Public

My Commission Expires:

6-5-98



19599G9111  
LDH:08-13-94



ADJACENT PROPERTY ZONES



A PORTION OF LOT 11 IN THE 1911 AND 1912 PLATS OF THE TOWN OF MARICOPA, MARICOPA COUNTY, ARIZONA

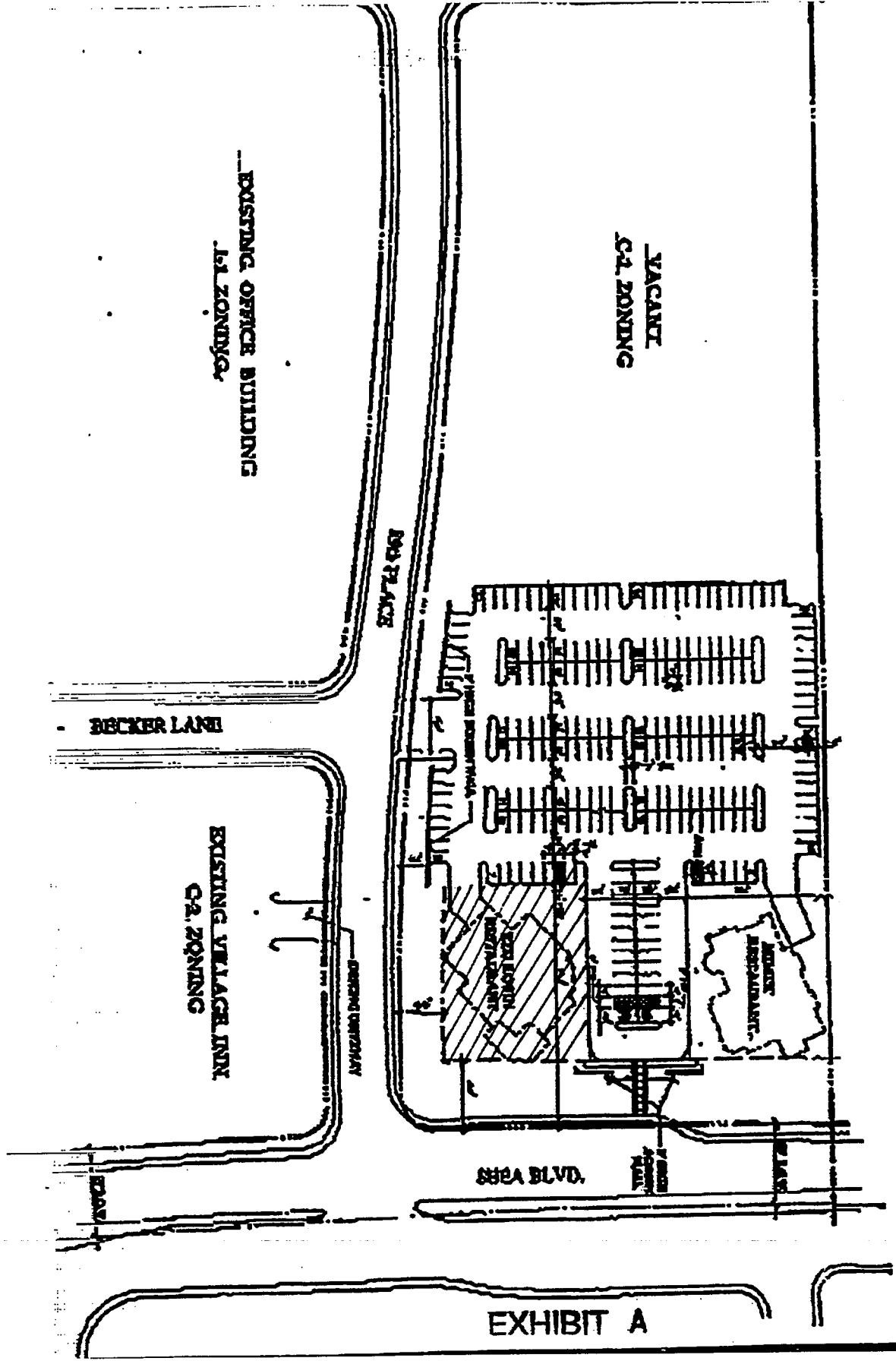
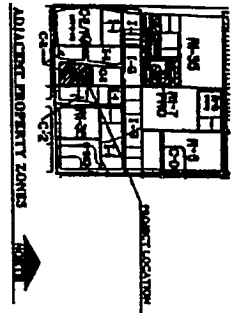
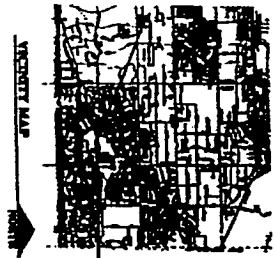
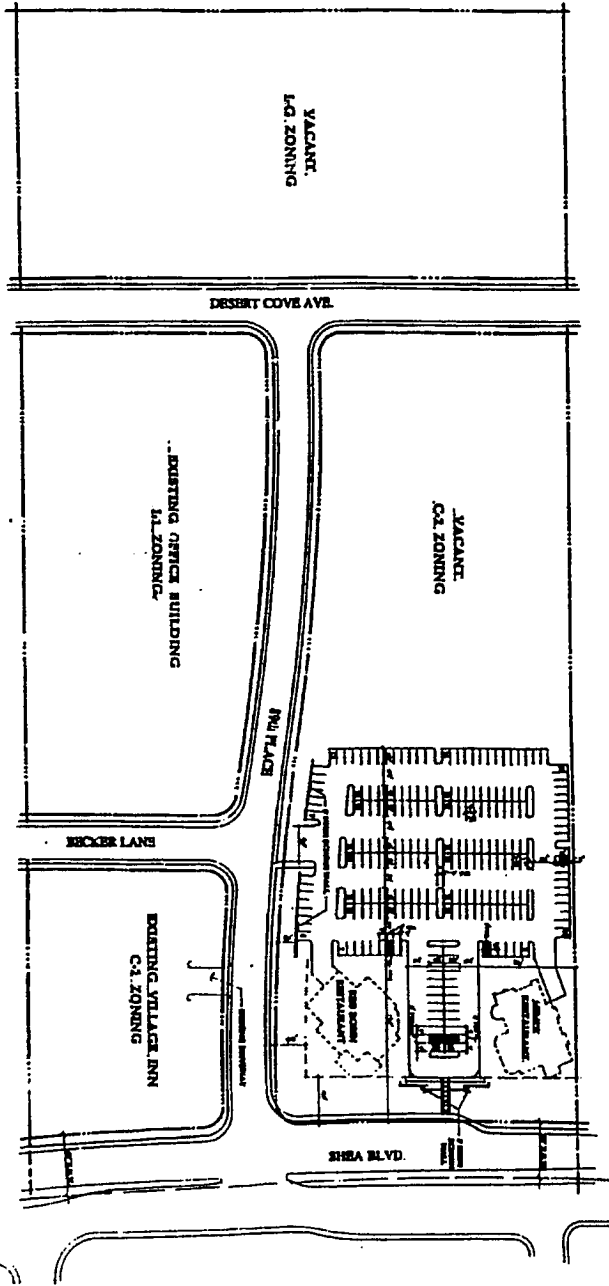


EXHIBIT A



LEGAL DESCRIPTION:  
 LOT 1 (PORTION) SUBDIVISION 1 AND  
 A PORTION OF LOT 1 IN THE SW 1/4 SECTION 16,  
 T1N, R1E, G. AND R1E, AND IN MARICOPA COUNTY, ARIZONA



SITE PLAN

1" = 40' 0"

MAPS AND RED ROBIN  
 RESTAURANTS  
 EDWARDS BUSINESS PARK  
 NORTHEAST CORNER OF  
 9TH PLACE &  
 SHEA BOULEVARD  
 SCOTTSDALE, ARIZONA

Penady and Reddell Architects, Inc.  
 1000 N. 10th Street, Suite 100  
 Scottsdale, Arizona 85257  
 Phone: 480-344-1111  
 Fax: 480-344-1112

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

BUCKNER & YOUNG  
3146 Redhill, Suite 200  
Costa Mesa, California 92626



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

94-0756446 10/20/94 03:30

LHW:PC 1 OF 2

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### MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE is made and entered into as of the \_\_\_\_\_ day of July, 1994, by and between **EDWARDS FAMILY PROPERTIES OF ARIZONA, INC.**, an Arizona corporation, hereinafter referred to as "Landlord", and **SWH CORPORATION D/B/A MIMI'S CAFE**, a California corporation, hereinafter referred to as "Tenant".

#### WITNESSETH:

1. By Lease dated as of <sup>Sept</sup> ~~July~~ 8<sup>th</sup>, 1994 (hereinafter referred to as the "Lease"), Landlord demised and leased to Tenant and Tenant leased from Landlord certain real property consisting of an undeveloped building pad ("Pad") located in the City of Scottsdale, County of Maricopa, State of Arizona, as depicted on the plot plan attached hereto as Exhibit "A: and made a part hereof and legally described in Exhibit "B" ("Project"), which is attached hereto and made a part hereof, containing approximately ten thousand (10,000) square feet of land area, and Landlord granted to Tenant certain rights of ingress, egress, parking and all other rights appurtenant to the Project.

2. The addresses of the parties are as follows:

Landlord: 10752 North 89th Place  
Scottsdale, Arizona 85260

Tenant: 17852 East 17th Street  
South Building, Suite 108  
Tustin, California 92680

3. The term of the Lease, unless extended or sooner terminated under the provisions thereof, shall be twenty (20) years beginning on the Commencement Date as is specified in the Lease, and ending on December 31, 2014.

4. Tenant has the right and option to extend the term of the Lease on the same terms and conditions as provided therein, for two (2) successive periods

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LDH:08-22-94

of five (5) years each.

5. So long as the principal use of the Pad is that of a restaurant as described in the Lease, Landlord will not least any portion of the Project for use as a full-service, sit-down family restaurant or coffee shop which serves breakfast and does not sell hard liquor or mixed drinks containing hard liquor.

6. The Landlord and the Tenant agree that the recording of this Memorandum of Lease constitutes a cloud on the title of the property. Therefore, the Landlord and Tenant agree that the Landlord and Tenant shall both be obligated to execute a notice of termination of this Memorandum of Lease at and simultaneously with the actual termination of the Lease and record the same to confirm the termination of the Lease. The Landlord and Tenant recognize that because of the circumstances, the Tenant may not be available or may not wish to cooperate in confirming the termination of the Lease. Therefore, the Tenant agrees that if the Landlord records a notice confirming that the Lease is terminated, referencing this Memorandum of Lease and at the same time deposits a notice of such termination postage prepaid in the United States mail addressed to the Tenant, both at the address set forth in the Memorandum of Lease (or any alternate address by recorded document updating the address set forth in the Memorandum of Lease), together with mailing a copy to the street address of the premises, if the Tenant does not within thirty (30) days thereafter record its positive assertion that the Lease has not been terminated, then such notice shall be deemed to be record notice of the termination of the Lease and both the Landlord and Tenant hereby agree that all third parties who have notice of such Termination of Lease, are entitled to rely upon such notice thereafter.

7. All of the terms, conditions, provisions and covenants of the Lease are incorporated herein by reference as though written out at length herein, and both the Lease and this Memorandum of Lease shall be deemed to constitute a single instrument or document. This Memorandum of Lease is not intended to amend, modify, supplement or supersede any of the provisions of the Lease and to the extent there may be any conflict or inconsistency between the Lease or this Memorandum of Lease, the Lease shall control.

IN WITNESS WHEREOF, Landlord and Tenant have caused this Memorandum of Lease to be duly executed as of the date and year first above written.

"LANDLORD"

EDWARDS FAMILY PROPERTIES OF  
ARIZONA, INC., an Arizona corporation

BY:

Edward L. Edwards  
Edward L. Edwards, President

"TENANT"

SWH CORPORATION D/B/A MIMI'S  
CAFE, a California corporation

BY:

Its:

Thomas L. Smith  
President

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LDH:08-22-94

-2-

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

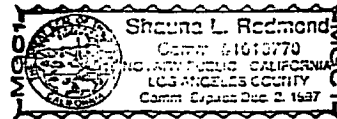
STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES ) SS.

On 9/2/94 before me, SHAUNA L. REDMOND, NOTARY PUBLIC  
DATE NAME, TITLE OF OFFICER

personally appeared, THOMAS M. SIMMS  
personally known to me (~~or proved to me on the basis of satisfactory evidence~~) to be the  
person(x) 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(x), or the entity upon behalf of which the person(x)  
acted, executed the instrument.

WITNESS my hand and official seal.

Shauna L. Redmond (SEAL)



**OPTIONAL INFORMATION**

TITLE OF TYPE OF DOCUMENT MEMORANDUM OF LEASE  
DATE OF DOCUMENT 9/2/94 NUMBER OF PAGES 5  
SIGNER(S) OTHER THAN NAMED ABOVE EDWARD L. EDWARDS

STATE OF ARIZONA )  
  §:  
County of Maricopa )

The foregoing instrument was acknowledged before me this the 8  
day of SEPTEMBER, 1994, by EDWARD L EDWARDS as  
PRESIDENT of **EDWARDS FAMILY PROPERTIES OF**  
**ARIZONA, INC.**, an Arizona corporation, for and on behalf of the corporation.

*Suzanne L. Johnson*  
Notary Public

My Commission Expires:

DECEMBER 23, 1996



~~STATE OF CALIFORNIA )  
  §:  
County of \_\_\_\_\_ )~~

~~The foregoing instrument was acknowledged before me this the \_\_\_\_\_  
day of \_\_\_\_\_, 1994, by \_\_\_\_\_ as  
\_\_\_\_\_ of **SWH CORPORATION D/B/A MIMI'S CAFE**,  
a California corporation, for and on behalf of the corporation.~~

~~\_\_\_\_\_  
Notary Public~~

~~My Commission Expires:  
\_\_\_\_\_~~

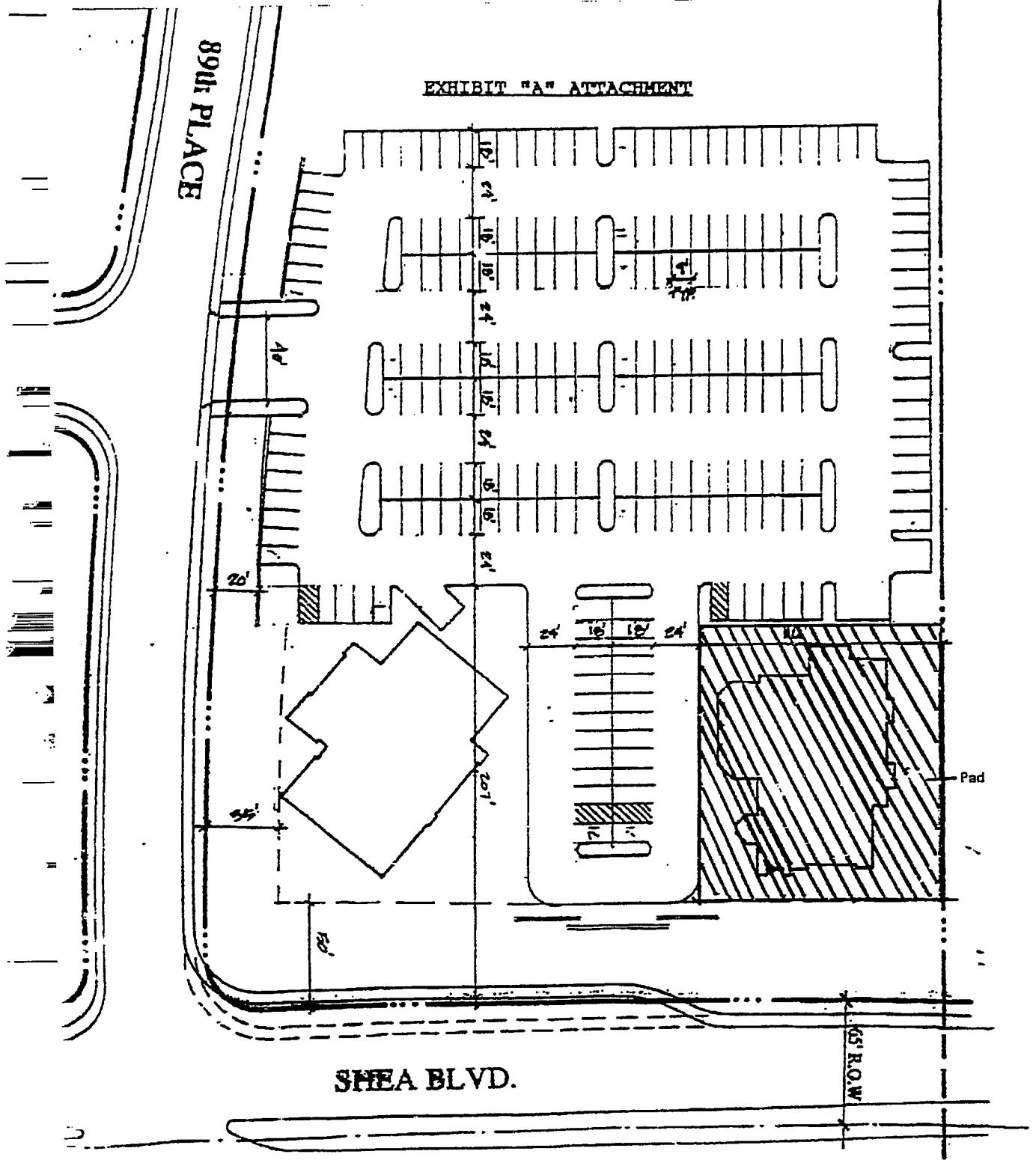
EXHIBIT "A" ATTACHMENT

89th PLACE

SHEA BLVD.

65' ROW

Pad



**EXHIBIT "B"**

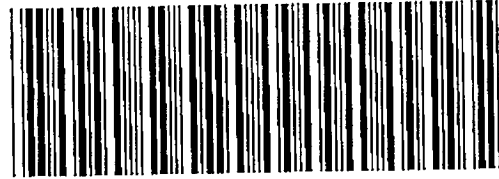
**Legal Description**

**Lot 4, Edwards Business Park, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, in Book 257 of Maps, page 20.**

**1119.05/LSMem/07.12.94**

**4**

Return Originals to:  
STEWART TITLE & TRUST OF PHOENIX  
~~STEWART TITLE & TRUST OF PHOENIX~~



RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Peter Ambelang, Esq.  
3550 N. Central Suite 1500  
Phoenix, Arizona 85012

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

95-0459969 08/03/95 02:32

KATHERINE 2 OF 4

2/4 9511.3012

**MEMORANDUM OF OWNERSHIP & LEASE ASSIGNMENT**

THIS MEMORANDUM OF OWNERSHIP is made and entered into as of the 20th day of July, 1995, by and between EDWARDS FAMILY PROPERTIES OF ARIZONA, INC., an Arizona corporation, hereinafter referred to as the "Assignor", and SHEA-EDWARDS LIMITED PARTNERSHIP, an Arizona limited partnership, hereinafter referred to as the "Assignee".

**W I T N E S S E T H:**

1. Assignor, through an Agreement with Edward L. Edwards, as Trustee of the Edward L. Edwards Trust dated May 19, 1977, as amended, (the "Trust") is the equitable owner of certain real property, including but not limited to Lot 4, Edwards Business Park, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona in Book 247 of Maps, page 20 (the "Property").

2. Assignor is the general partner of Assignee. On or about December 30, 1994, as a part of a restructuring of property ownership, the Assignor contributed its equitable ownership in the Property to the Assignee in exchange for a larger capital investment and profit participation in the Assignee.

3. At or about the same time as the execution hereof, the Trust has confirmed the equitable ownership of the Assignor in the Property and the contribution of the Property to the Assignee by executing and recording a deed transferring the Property directly to the Assignee.

4. In addition, by this document, the Assignor does hereby sell assign and transfer to the Assignee all of its right title and interest in and to the following identified leases: (a) That certain Lease dated December 2, 1994 between Assignor, as Landlord and Suites of Arizona, L.L.C., as Tenant, a Memorandum of which was recorded as Document No. 95-0208361 in the records of Maricopa County, Arizona on April 14, 1995; (b) That certain Lease dated October 20, 1994 between Assignor, as Landlord and Red Robin International, Inc., as Tenant, a Memorandum of which was recorded as Document No. 94-0756447 in the records of Maricopa County, Arizona on October 20, 1994; and (c) That certain Lease dated September 8, 1994 between Assignor, as Landlord and SWH Corporation

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LDH:7-20-95

d/b/a Mimi's Cafe, as Tenant, a Memorandum of which was recorded as Document No. 94-0756446 in the records of Maricopa County, Arizona on October 20, 1994.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Memorandum of Ownership and Lease Assignment to be duly executed as of the date and year first above written.

"ASSIGNEE"

"TENANT"

SHEA-EDWARDS LIMITED PARTNERSHIP, an Arizona limited partnership, by its sole General Partner, Edwards Family Properties of Arizona, Inc., an Arizona corporation,

EDWARDS FAMILY PROPERTIES OF ARIZONA, INC., an Arizona corporation,

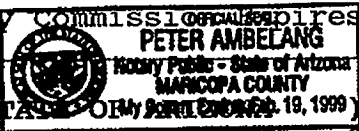
BY: Edward L. Edwards  
Edward L. Edwards, Pres.

BY: Edward L. Edwards  
Edward L. Edwards, Pres.

STATE OF ARIZONA )  
                                  §:  
County of Maricopa )

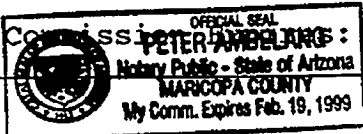
The foregoing instrument was acknowledged before me this the 21st day of July, 1995, by Edward L. Edwards, as President of Edwards Family Properties of Arizona, Inc. an Arizona corporation, Assignor herein, for and on behalf of the same.

[Signature]  
Notary Public

My Commission Expires: \_\_\_\_\_  
  
STATE OF ARIZONA )  
                                  §:  
County of Maricopa )

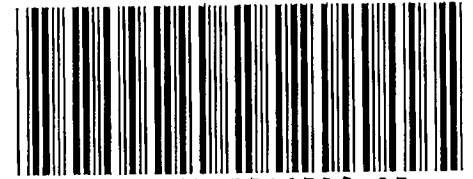
The foregoing instrument was acknowledged before me this the 21st day of July, 1995, by Edward L. Edwards, as President of Edwards Family Properties of Arizona, Inc. an Arizona corporation, the sole General Partner of Shea-Edwards Limited Partnership, an Arizona limited partnership, Assignee herein, for and on behalf of the same.

[Signature]  
Notary Public

My Commission Expires: \_\_\_\_\_  
  
STATE OF ARIZONA )  
                                  §:  
County of Maricopa )

[9599G711]  
LDH:7-20-95

COLLECT PICK UP



OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL  
2002-0504559 05/16/02 15:17  
2 OF 2  
GORDONE

Recording Requested by and  
When Recorded Return to:

Return acknowledgment to:



Capitol Document Services, Inc.  
P.O. Box 13461 Phoenix AZ 85002  
800/255-4052

(Space Above Line for Recorder's Use)

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING**

**THIS DEED OF TRUST SECURES REVOLVING LOAN OBLIGATIONS  
AND FUTURE ADVANCES**

**THIS DEED OF TRUST SECURES OBLIGATIONS  
WHICH ARE SUBJECT TO A VARIABLE RATE OF INTEREST**

This Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (this "Deed of Trust") dated as of April 16, 2002, is entered into by SWH CORPORATION, a California corporation ("Trustor"), in favor of CHICAGO TITLE INSURANCE COMPANY, as trustee ("Trustee"), for the benefit of ABLECO FINANCE LLC, a Delaware limited liability company, as the Collateral Agent for the Lenders referenced below, as beneficiary ("Beneficiary").

THIS DEED OF TRUST CONSTITUTES A FIXTURE FILING UNDER SECTION 47-9334 OF THE UNIFORM COMMERCIAL CODE OF THE STATE OF ARIZONA ("UCC") AND APPLIES TO ALL GOODS AND PERSONAL PROPERTY WHICH, UNDER ARIZONA LAW, ARE OR ARE TO BECOME FIXTURES ON THE REAL PROPERTY LOCATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND MORE PARTICULARLY DESCRIBED ON EXHIBIT A WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

**WITNESSETH**

WHEREAS, Trustor has entered into those certain lease agreements more particularly described on Exhibit B which is attached hereto and incorporated herein by this reference (collectively, the "Leaseholds").

**WHEREAS**, Trustor has entered into that certain Financing Agreement, dated as of April 16, 2002, with the lenders from time to time party thereto (the "Lenders") and Beneficiary, as the Collateral Agent for the Lenders, pursuant to which the Lenders have agreed to make certain financial accommodations and extensions of credit to Trustor. Such agreement, as it may from time to time be amended, modified, supplemented, renewed, or restated, is referred to herein as the "Loan Agreement", and the term "Loan Documents" when used herein has the meaning ascribed thereto in the Loan Agreement. All other initially capitalized terms set forth in this Deed of Trust, if not otherwise defined herein, shall have the meanings ascribed to them in the Loan Agreement.

**WHEREAS**, in order to induce the Lenders to make certain financial accommodations and extensions of credit to Trustor and pursuant to the Loan Agreement, Trustor desires to enter into this Deed of Trust to secure the Secured Obligations (as defined below).

### **GRANT IN TRUST**

**NOW, THEREFORE**, for good and valuable consideration, including the indebtedness recited herein and the trust created herein, the receipt and adequacy of which are hereby acknowledged, and as security for payment to the Lenders of all principal with interest, and all other sums provided for in the Loan Agreement, in the other Loan Documents and in this Deed of Trust, and as further security for the full and faithful performance by Trustor of its obligations under the Loan Agreement, the other Loan Documents and this Deed of Trust, according to its terms and conditions, and for performance of the agreements, conditions, covenants, provisions and stipulations contained herein and therein, and in certain other agreements and instruments made and given by Trustor to the Lenders in connection therewith, Trustor irrevocably and unconditionally grants, conveys, and assigns to Trustee, in trust, for the benefit of Beneficiary on behalf of the Lenders, with power of sale and right of entry and possession, all of Trustor's estate, right, title and interest, whether now owned or hereafter acquired, whether as lessor or lessee and whether vested or contingent, in and to the following property:

All of Trustor's estate, right, title and interest in, to and under the Leaseholds, including, without limitation, Trustor's right or option, or exercise thereof, to acquire the Real Property (as defined below) pursuant to the terms and conditions thereto;

**TOGETHER** with all of Trustor's estate, right, title and interest in, to and under any and all of the real property located in the State of Arizona, County of Maricopa, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (collectively, the "Land").

**TOGETHER** with all of Trustor's estate, right, title and interest in and to all buildings, structures and improvements now or hereafter located or to be erected on the Land, including, without limitation, all plant equipment, apparatus, railroads, machinery and fixtures of every kind and nature whatsoever now or hereafter located on or forming part of said buildings, structures and improvements (collectively, the "Improvements");

**TOGETHER** with all of Trustor's estate, right, title, interest, claim, demand, reversion, or remainder whatsoever, in and to all easements, rights, privileges, tenements, hereditaments, appurtenances and interests now or in the future benefiting or otherwise relating to the Land or the Improvements or thereunto belonging or in any way appertaining thereto (including, without limitation, all minerals and quarries thereon or therein, all mining claims thereunto appertaining, all oil, gas and mineral rights and all royalties of every kind and nature), either at law or in equity, in possession or expectancy, now or hereafter acquired, including, without limitation, all and singular the ways, waters, water courses, water stock, water rights and powers, liberties, privileges, sewers, pipes, conduits, wires and other facilities furnishing utility or other services to the Land or the Improvements (collectively, the "Appurtenances"; the Appurtenances, together with the Land and the Improvements being hereinafter collectively referred to as the "Real Property");

**TOGETHER** with all of Trustor's estate, right, title and interest in and to the land lying in the bed of any street, road, highway or avenue in front of, adjoining or within the Real Property;

**TOGETHER** with all of Trustor's estate, right, title and interest in and to goods, equipment, machinery, furniture, furnishings, fixtures, railroad equipment, rolling stock, pipes, pipelines, pumps, casings, appliances, inventory, building materials, chattels and articles of personal property (other than personal property which is or at any time has become hazardous or toxic waste or waste products or hazardous substances), including any interest therein now or at any time hereafter affixed to, attached to or used in any way in connection with or to be incorporated at any time into the Real Property or placed on any part thereof wheresoever located, whether or not attached to or incorporated in the Real Property, together with any and all replacements thereof, appertaining and adapted to the complete and compatible use, enjoyment, occupancy, operation or improvement of the Real Property (collectively, the "Personal Property");

**TOGETHER** with all of Trustor's estate, right, title and interest in and to any and all claims, demands, awards, settlements and other payments arising or resulting from or otherwise relating to (whether heretofore made or hereafter to be made) the conversion, voluntary or involuntary, of any of the Land, Improvements or Personal Property into cash or liquidated claims, including, without limitation, proceeds of all present and future insurance policies, any loss or destruction of, injury or damage to, trespass on and all condemnation awards or payments in lieu thereof made by any public body or decree by any court of competent jurisdiction for taking or for degradation of the value in any condemnation or eminent domain proceeding, and any and all other causes of action and the proceeds thereof of all types for any damage or injury to the Land, Improvements or Personal Property or any part thereof, including, without limitation, causes of action arising in tort or contract and causes of action for fraud or concealment of a material fact, and all claims, causes of action and recoveries by settlement or otherwise for any damage to, or loss, taking or diminution in the value of, any of the Real Property, or for any breach (or rejection in bankruptcy) of the Leases (as defined below) by any lessee thereunder (or such lessee's trustee in bankruptcy) (collectively "Proceeds"), all of which said Proceeds are hereby assigned to Beneficiary for the benefit of the Lenders, and Beneficiary,

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at the election of the Required Lenders (as such term is defined in the Loan Agreement), is hereby authorized, directed and empowered to collect, receive and apply the Proceeds of the same and to give proper receipts and acquittances therefor, as hereinafter provided; and Trustor hereby covenants and agrees, upon request by Beneficiary, to make, execute and deliver, at Trustor's expense, any and all assignments and other instruments sufficient for the purpose of assigning the aforesaid Proceeds to Beneficiary free, clear and discharged of any and all encumbrances of any kind or nature whatsoever except for Permitted Liens (as defined in the Loan Agreement);

**TOGETHER** with all of Trustor's estate, right, title and interest in and to each and every lease or sublease of every kind and nature whatsoever as may affect or otherwise relate to the Personal Property or the Real Property, including, without limitation, all ground subleases, mineral leases, facilities leases, and oil and gas leases, if any, and any rental agreements, license agreements, service and maintenance agreements, purchase and sale agreements and purchase options relating to the Real Property or any part thereof now or hereafter entered into and all right, title and interest of Trustor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees, licensees or other obligors of their obligations thereunder (whether such cash or securities are to be held until the expiration of the terms of such leases, license or other agreements or applied to one or more of the installments of rent or other payments coming due immediately prior to the expiration of such terms), and unearned insurance premiums arising from or relating to the Personal Property or the Real Property, all other rights and easements of Trustor now or hereafter existing pertaining to the use and enjoyment of the Real Property and all right, title and interest of Trustor in and to all declarations of covenants, conditions and restrictions as may affect or otherwise relate to the Real Property (collectively, the "Leases");

**TOGETHER** with all of Trustor's estate, right, title and interest in and to all permits, plans, licenses, specifications, subdivision rights, security interests, accounts, chattel paper, deposit accounts, instruments, documents, money, contracts, contract rights, public utility deposits, prepaid sewer and water hook-up charges, or other rights or general intangibles, now or in the future arising in connection with, as may affect or otherwise relate to or derived from the Personal Property or the Real Property, or the ownership, use, development, construction, maintenance, management, operation, marketing, leasing, occupancy, sale or financing thereof;

**TOGETHER** with all of Trustor's estate, right, title and interest in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions and appurtenances to, the Mortgaged Property (as defined below), hereafter acquired by, or released to, the Trustor or constructed, assembled or placed by the Trustor on the Land, and all conversions of the security constituted thereby, including, without limitation, Trustor's acquisition of fee simple title to the Mortgaged Property (as defined below) pursuant to the Leaseholds (collectively, "After Acquired Property Interests"), immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further deed of trust, conveyance, assignment or other act by the Trustor, shall become subject to the lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by the Trustor and specifically described in the granting

clauses hereof. Trustor shall notify Beneficiary of any such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, and shall execute and deliver to the Beneficiary all such other assurances, mortgages, conveyances or assignments thereof as the Beneficiary may reasonably require for the purpose of expressly and specifically subjecting such After Acquired Property Interests to the lien of this Deed of Trust. The Trustor hereby irrevocably authorizes and appoints the Beneficiary as the agent and attorney-in-fact of the Trustor to execute all such documents and instruments on behalf of the Trustor, which appointment shall be irrevocable and coupled with an interest, if the Trustor fails or refuses to do so after the Trustor's receipt of a written request therefor by the Beneficiary.

**TOGETHER** with all of Trustor's right, title, interest, claim or demand whatsoever in and to all rents, issues, profits, proceeds, products, royalties, prepaid municipal and utility fees, bonds, revenues, income and other benefits to which Trustor may now or hereafter be entitled from, or which are derived from, the Personal Property or the use, management, operation, leasing or occupancy of the Real Property, including those past due and unpaid, together with all guarantees thereof and all deposits (to the full extent permitted by law) and other security therefor (collectively "Rents"). (The Leaseholds, Land, Improvements, Appurtenances, Personal Property, Proceeds, Leases, Rents and After Acquired Property Interests and all other estate, right, title and interest of Trustor described above are hereinafter collectively referred to as "Mortgaged Property").

**TO HAVE AND TO HOLD** the Mortgaged Property unto Trustee, its successors and assigns, in trust, forever.

**IN ADDITION**, Trustor absolutely, irrevocably and unconditionally assigns to Beneficiary for the benefit of the Lenders all right, title and interest of Trustor in and to the Leases and the Rents.

1. Obligations Secured.

1.1 Trustor makes this Deed of Trust, for the purpose of securing:

1.1.1 Payment of all indebtedness and performance of all "Obligations" (as defined in the Loan Agreement) arising under, related to, evidenced by or pursuant to the Loan Agreement;

1.1.2 Payment and performance of all "Obligations" (as defined in the Loan Agreement) arising under, related to, or evidenced by or pursuant to any other Loan Document;

1.1.3 Payment and performance of all obligations under this Deed of Trust, including payment of all sums expended or advanced by Beneficiary hereunder, together with interest thereon;

1.1.4 Payment and performance of all future advances and other obligations that the then record owner of all or part of the Mortgaged Property may agree to pay

or perform (whether as principal, surety or guarantor) for the benefit of the Lenders, when such obligation is evidenced by a writing which states that it is secured by this Deed of Trust; and

1.1.5 All modifications, extensions and renewals (if any) of one or more of the obligations secured hereby, including without limitation (i) modifications of the required principal payment dates or interest payment dates, deferring or accelerating payment dates wholly or partly, and (ii) modifications, extensions or renewals at a different rate of interest whether or not, in the case of a note or other contract, the modification, extension or renewal is evidenced by a new or additional promissory note or other contract.

1.2 The obligations secured by this Deed of Trust are herein collectively called the "Secured Obligations". Anything herein to the contrary notwithstanding, but subject to the proviso at the end of this sentence, the lien granted in this Deed of Trust on the Mortgaged Property does not secure the Indemnity Obligations (as defined below) of Trustor; provided that the UCC security interests granted hereinbelow by Trustor in the Personal Property may secure the Indemnity Obligations in Beneficiary's sole and absolute discretion. As used in this Section, "Indemnity Obligations" means, collectively, the obligations of Trustor arising under or pursuant to Section 4.7 of this Deed of Trust.

## 2. Leases and Rents.

2.1 Neither the assignment of the Leases and Rents set forth above nor any other provision of any of the Loan Documents shall impose upon Beneficiary any duty to produce Rents from the Mortgaged Property or cause Beneficiary to be (i) a "mortgagee in possession" for any purpose, (ii) responsible for performing any of the obligations of Trustor under any Lease or (iii) responsible or liable for any waste by any Trustor or any other parties, for any dangerous or defective condition of the Mortgaged Property, for any negligence in the management, upkeep, repair or control of the Mortgaged Property or for any other act or omission by any other person. The foregoing assignment is an absolute assignment and not an assignment for security only and Beneficiary's right to the Rents is not contingent upon its possession of the Mortgaged Property.

2.2 Trustor irrevocably appoints Beneficiary as its true and lawful attorney-in-fact, at the option of Beneficiary, at any time after an Event of Default, to make or demand, receive and enforce payment, to give receipts, releases and satisfactions and to sue, in the name of Trustor or, as applicable, Beneficiary, for all such Leases and Rents and apply the same to the Secured Obligations; provided, however, Beneficiary confers upon Trustor the authority to collect and retain the Rents as they become due and payable, subject, however, to the right of Beneficiary to revoke said authority at any time following the occurrence and during the continuation of an Event of Default, and without taking possession of all or any part of the Mortgaged Property. Beneficiary may require that all deposits and prepayments held by Trustor be delivered to Beneficiary after an Event of Default. Trustor covenants and agrees that Trustor shall not (i) amend, modify or change any term, covenant or condition of any Lease in existence on the date of this Deed of Trust without the prior written consent of Beneficiary if such action will result in a Material Adverse Effect (as defined in the Loan Agreement) or (ii) enter into any

Lease of the Mortgaged Property from and after the date of this Deed of Trust without the prior written consent of Beneficiary if such action will result in a Material Adverse Effect.

2.3 Trustor shall (i) fulfill or perform each and every condition and covenant of each Lease to be fulfilled or performed by the Trustor thereunder if failure to do so will result in a Material Adverse Effect, (ii) give prompt notice to Beneficiary of any notice of default by the lessor or the lessee thereunder received by Trustor together with a complete copy of any such notice, and (iii) enforce, short of termination thereof, the performance or observance of each and every covenant and condition to be performed or observed thereunder for the benefit of Trustor if failure to do so will result in a Material Adverse Effect.

2.4 Trustor shall furnish to Beneficiary, within thirty (30) days after Trustor's receipt of a request by Beneficiary, a written statement containing the names of all lessors and lessees of the Mortgaged Property, the terms of their respective Leases, the spaces occupied and the rentals payable thereunder and a copy of each Lease.

2.5 All Leases of the Mortgaged Property by Trustor as a lessor shall provide for the subordination, in form and substance reasonably satisfactory to Beneficiary, of such Leases to this Deed of Trust and all extensions, renewals and modifications thereof. In addition, each Lease shall provide that, in the event of the enforcement by Trustee or Beneficiary of the remedies provided at law or by this Deed of Trust, each lessee under such a Lease shall, if requested by Beneficiary as a result of such enforcement, automatically become the lessee of such successor, without any change in the terms or other provisions of the respective Lease; provided, such successor shall not be (i) bound by any payment of rent or other sum more than one (1) month in advance, except payments in the nature of security, (ii) bound by any amendment or modification to the respective Lease made without the consent of Beneficiary, (iii) liable for damages or any act or omission of any prior lessor or (iv) subject to any offsets or defenses which such lessee might have against any prior lessor.

### 3. Representations, Warranties and Covenants.

3.1 Representations, Warranties and Covenants of Trustor. Trustor acknowledges, represents, warrants and covenants as follows:

a. Trustor is a corporation, duly organized and validly existing under the laws of the State of California. The execution, delivery and performance of this Deed of Trust has been duly authorized by all necessary action of Trustor. Trustor has all requisite power and authority to carry on its business and to own, develop, manage, encumber and transfer its property. Trustor will, so long as it is an owner of the Mortgaged Property, do all things necessary to preserve and keep in full force and effect its existence and all material licenses, franchises, permits, rights and privileges under the laws of the states of California and Arizona and will comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Trustor or to the Mortgaged Property or any part thereof which may reasonably be expected to materially adversely affect Trustor's ability to perform its obligations hereunder.

b. [Intentionally Omitted.]

c. Trustor has good, indefeasible and marketable title in and to the Mortgaged Property, subject to no lien, claim, security interest or encumbrance except for Permitted Liens. Trustor has paid or discharged all lawful claims which, if unpaid, might become a lien against any of the Mortgaged Property that is not a Permitted Lien. Trustor has power and lawful authority to convey the Mortgaged Property in the manner and form herein prescribed and will preserve such title, and Trustor will forever preserve, warrant and defend the same unto Trustee and Beneficiary, and Trustor will forever preserve, warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

d. To the best of Trustor's knowledge, neither Trustor nor the Mortgaged Property is in violation of any statute, ordinance, regulation, order or other law or enactment of any federal, state or local government, agency or court.

e. The Leaseholds constitute valid and subsisting demises of the premises described therein for the term described therein. None of the Leaseholds have been altered, amended, changed or modified in any manner whatsoever and the Leaseholds are in full force and effect in each and every respect, except to the extent disclosed to Beneficiary in writing. Neither Trustor, nor, to the best of Trustor's knowledge, any of the lessors under the Leaseholds are in default under the Leaseholds and, to the best of Trustor's knowledge, no condition exists or event has occurred which with the passage of time or the giving of notice or both will constitute a default thereunder. All rents, additional rents and other amounts presently due to or from Trustor under all Leaseholds have been paid in full and neither Trustor nor, to the best of Trustor's knowledge, any of the lessors under the Leaseholds have commenced any action or given or received any notice for the purposes of terminating any of the Leaseholds.

f. When executed and delivered by the undersigned persons on behalf of Trustor, this Deed of Trust will be valid and binding obligations of Trustor (and/or other signatories, as applicable) legally enforceable in accordance with their express terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally.

g. To the best of Trustor's knowledge, Trustor has obtained all consents and permissions required under any covenant, agreement, encumbrance, law, ordinance or regulation to which Trustor is subject or may be bound, with respect to this Deed of Trust.

h. To the best of Trustor's knowledge, Trustor's execution and performance of this Deed of Trust does not conflict with or violate any law, statute, rule or regulation or any order of any court or other governmental authority or any contract or other obligation of Trustor.

i. No Event of Default or, to the best of Trustor's knowledge, event or condition which with notice or the passage of time or both would constitute an Event of Default now exists and no default now exists on any obligation or under any contract or

instrument secured by any lien or security interest on any of the Mortgaged Property or under any contract or instrument creating any such lien or security interest.

j. Trustor has not received any oral or written notice that the Improvements, as built to date, or their intended use, violate any applicable laws, ordinances, rules, regulations, restrictive covenants and requirements of governmental authorities (including, without limitation, zoning laws and environmental regulations).

k. To the best of Trustor's knowledge, there is no litigation or proceeding pending or threatened against or affecting either Trustor or the Mortgaged Property, or any circumstance existing which would result in a Material Adverse Effect.

l. No information, certification or report prepared by Trustor and submitted to Beneficiary pursuant to this Deed of Trust or any of the other Loan Documents contains any material misstatement of fact or omits to state any fact necessary to make the information contained therein not misleading.

m. Trustor has filed all required federal and local tax returns and paid all taxes due pursuant to said returns or any assessments against Trustor or the Mortgaged Property.

n. Trustor will, in addition to the payment of all rent, additional rent, impositions and other payments and charges required to be paid by Trustor, as lessee, under and pursuant to the provisions of the Leaseholds, diligently perform and observe all of the terms, covenants and conditions of the Leaseholds required to be performed and observed by Trustor as such lessee thereunder, to the end that all things shall be done which are necessary to keep unimpaired Trustor's rights as lessee under the Leaseholds and to preserve the security of this Deed of Trust.

o. Trustor will promptly notify Beneficiary in writing of any notice of default received by Trustor in the performance or observance of any of the covenants, agreements, obligations or conditions on the part of Trustor to be performed or observed under the Leaseholds or of the occurrence of any event which, regardless of the lapse of time, would constitute a default thereunder.

p. Trustor will promptly (i) notify Beneficiary in writing of the receipt by it of any notice of default from the lessor under the Leaseholds; (ii) notify Beneficiary in writing of the receipt by it of any notice under Leaseholds of the termination of the Leaseholds; (iii) cause a copy of any such notice received by the Trustor from the lessor under the Leaseholds to be delivered to Beneficiary; and (iv) cause a copy of any notice of election or the exercise of any rights of option, purchase or renewal under the Leaseholds sent by the Trustor to the lessor under the Leaseholds to be delivered to Beneficiary.

q. Except as otherwise set forth or permitted under the Loan Documents, Trustor will not, without the prior written consent of Beneficiary, modify, terminate

or surrender or suffer or permit any such modification, termination or surrender of the Leaseholds.

4. Hazardous Materials.

4.1 Definitions. For the purposes of this Section 4, the following terms shall have the following meanings: (i) the term "Hazardous Material" shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as a hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement, or which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any Environmental Requirement, or which is or contains petroleum, gasoline, diesel fuel or another petroleum hydrocarbon product, (ii) the term "Environmental Requirement(s)" shall collectively mean all present and future laws, statutes, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or addressing the protection of the environment or human health, and (iii) the term "Governmental Authority" shall mean the Federal government or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof exercising executive, legislative, judicial, regulatory or administrative functions.

4.2 Representations and Warranties. Trustor hereby represents and warrants to the Lenders that, to the best of Trustor's knowledge, (i) no Hazardous Material is currently located at, in, on, under or about the Mortgaged Property in a manner which violates any Environmental Requirement or which requires cleanup, remedial or other corrective action of any kind under any environmental law or regulation, (ii) no releasing, emitting, discharging, leaching, dumping or disposing of any Hazardous Material from the Mortgaged Property onto or into any other property or from any other property onto or into the Mortgaged Property has occurred or is occurring in violation of any Environmental Requirement, (iii) except as disclosed on Exhibit C attached hereto and incorporated herein by this reference, no notice of violation, lien, complaint, suit, order or other notice with respect to the Mortgaged Property is presently outstanding under any Environmental Requirement, and (iv) the Mortgaged Property and the operation thereof are in full compliance with all Environmental Requirements.

4.3 Covenants. Trustor shall comply, and shall exercise all reasonable and good faith efforts to cause all tenants or other occupants of the Mortgaged Property to comply in all respects with all Environmental Requirements, and will not generate, release, store, handle, process, dispose of or otherwise use, and will not knowingly permit any tenant or other occupant of the Mortgaged Property to generate, release, store, handle, process, dispose of or otherwise use, Hazardous Materials at, in, on, under or about the Mortgaged Property in a manner that is likely to lead to the imposition on Trustor, Beneficiary, any other member of the Lenders, or the Mortgaged Property of any liability or lien of any nature whatsoever under any Environmental Requirement. Trustor shall notify Beneficiary promptly in the event of any spill or other release of any Hazardous Material at, in, on, under or about the Mortgaged Property. Trustor will promptly forward to Beneficiary copies of any notices received by Trustor relating to alleged

violations of any Environmental Requirement and will promptly pay when due any fine or assessment against Trustor, Beneficiary, any other member of the Lenders, or the Mortgaged Property relating to any Environmental Requirement. If at any time it is determined by any Governmental Authority or Beneficiary that the operation or use of the Mortgaged Property violates any applicable Environmental Requirement or that there are Hazardous Materials located at, in, on, under or about the Mortgaged Property which, under any Environmental Requirement, require special handling in collection, storage, treatment or disposal, or any other form of cleanup or corrective action, Trustor shall, within thirty (30) days after receipt of notice thereof from any Governmental Authority or from Beneficiary, take, at its sole cost and expense, such actions as may be necessary to fully comply in all material respects with all Environmental Requirements; provided, however, that if such compliance cannot reasonably be completed within such thirty (30) day period, Trustor shall commence such necessary action within such thirty (30) day period and shall thereafter diligently and expeditiously proceed to fully comply in all material respects and in a timely fashion with all Environmental Requirements. If Trustor fails to timely take, or to diligently and expeditiously proceed to complete in a timely fashion, any such action, Beneficiary may, in its sole and absolute discretion, make advances or payments towards the performance or satisfaction of the same, but shall in no event be under any obligation to do so. All sums so advanced or paid by Beneficiary (including, without limitation, counsel and consultant fees and expenses, investigation and laboratory fees and expenses, and fines or other penalty payments) and all sums advanced or paid in connection with any judicial or administrative investigation or proceeding relating thereto, will immediately, upon demand, become due and payable from Trustor and shall bear interest at the rate set forth in Section 2.03(c) of the Loan Agreement from the date any such sums are so advanced or paid by Beneficiary until the date any such sums are repaid by Trustor to Beneficiary. Trustor will execute and deliver, promptly upon Trustor's receipt of a request, such instruments as Beneficiary may deem useful or necessary to permit Beneficiary to take any such action, and such additional notes and mortgages, as Beneficiary may reasonably require to secure all sums so advanced or paid by Beneficiary.

4.4 Liens. If a lien is filed against the Mortgaged Property by any Governmental Authority resulting from the need to expend or the actual expending of monies arising from an action or omission, whether intentional or unintentional, of Trustor or for which Trustor is responsible, resulting in the releasing, spilling, leaking, leaching, pumping, emitting, pouring, emptying or dumping of any Hazardous Material into the waters or onto land or into the air located within or without the State where the Mortgaged Property is located, then Trustor will, within thirty (30) days from the date that Trustor is first given notice that such lien has been placed against the Mortgaged Property (or within such shorter period of time as may be specified by Beneficiary if such Governmental Authority has commenced steps to cause the Mortgaged Property to be sold pursuant to such lien) either (a) pay the claim and remove the lien, or (b) furnish a cash deposit, bond, or such other security with respect thereto as is reasonably satisfactory in all respects to Beneficiary and is sufficient to effect a complete discharge of such lien on the Mortgaged Property.

#### 4.5 Tests and Studies.

4.5.1 Trustor hereby authorizes Beneficiary and any prospective bidder at any foreclosure sale and their respective officers, directors, employees, agents and independent contractors to enter upon all or any portion of the Mortgaged Property (including, without limitation, following the occurrence of an Event of Default hereunder) for the purpose of conducting such tests, inspections, inquiries, examinations, studies, analyses, samples, surveys, and other information gathering activities (collectively, the "Tests and Studies") with respect to the Mortgaged Property as any of them may from time to time reasonably deem necessary or appropriate, including, without limitation, Tests and Studies with respect to the presence of Hazardous Materials in or around the Mortgaged Property and the occurrence of any actual, proposed or threatened storage, existence, release, removal, remediation, handling or transportation of any Hazardous Materials in or around the Mortgaged Property in violation of any Environmental Requirement. Except in case of an emergency, or when the Trustor or any tenant has abandoned the Mortgaged Property, or if it is impracticable to do so, Beneficiary shall give Trustor at least 24 hours advance notice of Beneficiary's intent to enter the Mortgaged Property and shall enter the Mortgaged Property only during normal business hours accompanied by a representative of Trustor. Trustor hereby covenants and agrees to cooperate fully with such parties in their efforts to conduct the Tests and Studies, and further covenants and agrees to make available to such parties such portions of the Mortgaged Property as any of them may designate. If Beneficiary is refused the right of entry and inspection by the Trustor or any tenant of the Mortgaged Property, or is otherwise unable to enter and conduct Tests and Studies on the Mortgaged Property without a breach of peace, Beneficiary may obtain an order from a court of competent jurisdiction, the appointment of a receiver, or both, to enable Beneficiary to exercise its rights under this Section 4.5. In that regard, the decision of Beneficiary as to whether there exists a release or threatened release of Hazardous Materials onto the Mortgaged Property shall be deemed reasonable and conclusive as between the parties hereto. The results of all Tests and Studies shall be and at all times remain the property of the Lenders and under no circumstances shall any member of the Lenders have any obligation whatsoever to disclose or otherwise make available to Trustor or any other party such results or any other information obtained by them in connection with such Tests and Studies, unless Trustor has reimbursed Beneficiary in full for its reasonable costs and expenses incurred in connection therewith.

4.5.2 Notwithstanding the provisions of Section 4.5.1 above, Beneficiary hereby reserves the right, and Trustor hereby expressly authorizes Beneficiary to make available to any party (including, without limitation, any governmental agency or authority and any prospective bidder at any foreclosure sale of the Mortgaged Property), any and all information which Beneficiary may have with respect to the Mortgaged Property, whether provided by Trustor or any third party or obtained as a result of Tests and Studies, including, without limitation, environmental reports, surveys and engineering reports. Trustor consents to Beneficiary notifying any party (either as part of a notice of sale or otherwise) of the availability of any or all of the Tests and Studies and the information contained therein. Trustor acknowledges that Beneficiary cannot control or otherwise assure the truthfulness or accuracy of the Tests and Studies, and that the release of Tests and Studies, or any information contained therein, to prospective bidders at any foreclosure sale of the Mortgaged Property may have a

material and adverse effect upon the amount which a party may bid at such sale. Trustor agrees that Beneficiary shall not have any liability whatsoever as a result of delivering any or all of the Tests and Studies or any information contained therein to any third party, and Trustor hereby releases, remises and forever discharges Beneficiary from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the delivery thereof of the Tests and Studies as provided herein.

4.5.3 Except as provided below, all reasonable costs and expenses incurred by Beneficiary pursuant to this Section 4.5, including, without limitation, costs of consultants and contractors, costs of repair of any physical injury to the Mortgaged Property normal and customary to the Tests and Studies, court costs and reasonable attorneys' fees, whether incurred in litigation or not and whether before or after judgment, shall be payable by Trustor and, to the extent advanced or incurred by Beneficiary, shall be reimbursed to Beneficiary by Trustor upon demand. It is the parties' intention that Beneficiary be responsible only for the cost of repair of physical injury to the Mortgaged Property that was not reasonable or necessary to the conducting of the Tests and Studies in accordance with normal and customary procedures. Any and all reasonable costs and expenses incurred or advanced by Beneficiary pursuant to this Section 4.5, together with interest thereon at the rate then applicable under the Loan Agreement, shall be secured by this Deed of Trust and shall enjoy the same priority as the original principal amount of the Loan Agreement.

4.6 [Intentionally Omitted.]

4.7 Indemnification. Trustor will defend, indemnify, and hold harmless the Lenders, and their employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, reasonable counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses) arising out of, or in any way related to (i) any breach by Trustor of any of the provisions of this Section 4, (ii) the presence, disposal, spillage, discharge, emission, leakage, generation, release, or threatened release of any Hazardous Material which is at, in, on, under, about, from or affecting the Mortgaged Property, including, without limitation, any damage or injury resulting from any such Hazardous Material to or affecting the Mortgaged Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Mortgaged Property or on any other property or otherwise, (iii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Material, (iv) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material, or (v) any violation of any Environmental Requirement. The aforesaid indemnification shall, notwithstanding any exculpatory or other provision of any nature whatsoever to the contrary set forth in the Loan Agreement, the other Loan Documents, this Deed of Trust or any other document or in instrument now or hereafter executed and delivered in connection with the Loan Documents, constitute the personal recourse undertakings, obligations and liabilities of Trustor. The aforesaid indemnification shall not be applicable to any claim, demand, penalty, cause of action,

fine, liability, settlement, damage, cost or other expense of any type whatsoever (1) occasioned, arising and caused as the result of the gross negligence or willful misconduct of Beneficiary, its nominee or wholly owned subsidiary or their respective employees or agents and irrespective of whether occurring prior or subsequent to the date upon which Beneficiary, its nominee or wholly owned subsidiary acquires possession of the Mortgaged Property by foreclosure of this Deed of Trust, a sale of the Mortgaged Property pursuant to the provisions of this Deed of Trust, acceptance of a deed or assignment in lieu of foreclosure or sale or otherwise, or (2) occasioned, arising and caused solely and directly as the result of any act of any person or party (other than an act of Trustor, its partners, employees or agents or persons or parties under the control of Trustor, or an act of Beneficiary, its nominee or wholly owned subsidiary or their respective employees or agents which does not constitute gross negligence or willful misconduct, or an act of any Governmental Authority, including, without limitation, any change in any Environmental Requirement) and occurring subsequent to the earlier to occur of (x) the date of payment to Beneficiary in cash of the entire Secured Obligations, and (y) the date upon which Beneficiary, its nominee or wholly owned subsidiary acquires possession of the Mortgaged Property by foreclosure of this Deed of Trust, a sale of the Mortgaged Property pursuant to the provisions of this Deed of Trust, acceptance of a deed or assignment in lieu of foreclosure or sale or otherwise. Except as hereinabove specifically provided to the contrary in this Section 4.7, the obligations and liabilities of Trustor under this Section 4.7 shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Secured Obligations have been paid in full and irrespective of any foreclosure of this Deed of Trust, sale of the Mortgaged Property pursuant to the provisions of this Deed of Trust or acceptance by Beneficiary, its nominee or wholly owned subsidiary of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever.

5. Taxes and Assessments.

5.1 Trustor shall pay prior to delinquency all taxes, assessments, levies and charges of any kind or nature whatsoever imposed by any governmental or quasi-public authority or utility company which are (or, if not paid, may become) a lien upon or cause a loss in value of any interest in any of the Mortgaged Property. Trustor shall also pay prior to delinquency all taxes, assessments, levies and charges imposed by any governmental authority upon Beneficiary by reason of its interest in any Secured Obligation or in any of the Mortgaged Property or by reason of any payment made to Beneficiary hereunder or pursuant to any Secured Obligation; but Trustor shall have no obligation to pay or discharge taxes which may be imposed from time to time upon this Deed of Trust and which are measured by and imposed upon Beneficiary's net income. Trustor shall furnish Beneficiary, within thirty (30) days after Trustor's receipt of a request by Beneficiary, official receipts of the appropriate authority or other proof satisfactory to Beneficiary evidencing the payment thereof.

5.2 In the event of the passage, after the date of this Deed of Trust, of any law of the State of Arizona changing in any way the laws now in force for the taxation of deeds of trust, or debts secured thereby, for state or local purposes, or the manner of operation of any such taxes so as to result in a Material Adverse Effect, then and in such event, Trustor shall bear and

pay the full amount of such taxes, provided that if for any reason payment by Trustor of any such new or additional taxes would be unlawful or if the payment thereof would constitute usury or render any Secured Obligations wholly or partially usurious under any of the terms or provisions of the Loan Documents or the other obligations secured by this Deed of Trust, or otherwise, Beneficiary may, at its option, upon thirty (30) days' written notice to Trustor, pay that amount or portion of such taxes as renders the Secured Obligations unlawful or usurious, in which event Trustor shall concurrently therewith pay the remaining lawful non-usurious portion or balance of said taxes.

6. Insurance. At Trustor's sole cost and expense, Trustor will obtain and maintain insurance with respect to the Mortgaged Property against any and all loss or damage of the kinds and in such amounts as are reasonably required by Beneficiary as set forth in the Loan Agreement and/or the other Loan Documents.

7. Condemnation Proceeds.

7.1 All awards of damages and all other compensation payable directly or indirectly to Trustor by reason of a condemnation for public or private use affecting any interest in any of the Mortgaged Property shall be governed by the terms hereof and paid over to Beneficiary.

7.2 Trustor shall immediately notify Beneficiary of the institution of any proceeding for the condemnation or taking by eminent domain of the Mortgaged Property, or any portion thereof, a change of grade affecting the Improvements or any part thereof, or a conveyance in lieu of or in anticipation of the exercise of any such right of condemnation or eminent domain (each of the foregoing events hereinafter referred to as a "Taking"). Trustee and Beneficiary may participate in any such proceeding and Trustor from time to time will deliver to Beneficiary all instruments reasonably requested by Beneficiary to permit such participation. In the event of such a Taking (unless there has occurred and is continuing an Event of Default in which case all proceeds are assigned to Beneficiary), the award or compensation payable shall, after deducting all expenses of Trustor and Beneficiary in connection with such proceedings, be paid and distributed as set forth below. The Lenders shall be under no obligation to question the amount of any such award or compensation and may accept the same in the amount in which the same shall be paid, but shall have no right to bind Trustor or to make settlement of its claim, except to the extent of the interest of Trustee and Beneficiary. In any such condemnation proceedings Trustee and Beneficiary may be represented by counsel selected by Beneficiary. The proceeds of any award or compensation so received after reimbursement of any expenses incurred by Trustor or Beneficiary in connection with such proceedings, shall be paid over to Beneficiary to be applied by Beneficiary, subject to applicable law governing the use of such proceeds, to the Secured Obligations in the manner provided in the Loan Agreement, or, in Beneficiary's discretion, to be released by Beneficiary to Trustor upon any conditions chosen by Beneficiary.

7.3 In case of any damage to the Mortgaged Property or any part thereof as the result of a Taking and at Beneficiary's direction, Trustor, at its expense, to the extent of available

proceeds, shall promptly commence and complete the restoration, repair, replacement or rebuilding of the Improvements to a value, condition and character equal to or greater than that immediately prior to the Taking ("Restoration").

7.4 In the event of a partial Taking such that the Mortgaged Property is subject to Restoration, all proceeds and awards received by Trustor shall be paid to Beneficiary to accomplish the Restoration in the event that Trustor requests and satisfies the Beneficiary's conditions for the same. In the event of a total Taking (or in the event Beneficiary does not elect to apply such award or proceeds to the Restoration, as permitted under Section 7.2 above), such amount shall be applied to the Secured Obligations in the manner provided for in the Loan Agreement.

#### 8. Liens, Claims, Encumbrances and Charges.

8.1 Trustor shall immediately cure any default under the Leases and discharge any lien, claim, encumbrance or charge which is not a Permitted Lien or approved by Beneficiary in writing that has priority over this Deed of Trust. Trustor shall pay at or prior to maturity all monetary obligations of Trustor under the Leases and all obligations secured by or reducible to liens, claims, encumbrances or charges, which shall now or hereafter encumber all or any of the Mortgaged Property, whether senior or subordinate hereto. Upon the occurrence and during the continuance of an Event of Default, Beneficiary shall have the right, but shall not be obligated, to pay, without notice to Trustor, such liens, claims, encumbrances and charges, and Trustor shall, on demand, reimburse Beneficiary for amounts so paid. In addition, upon default (beyond any applicable notice and cure period) of Trustor due to Trustor's failure to perform any other terms, covenants, conditions or obligations by it to be performed under any such lien, claim, encumbrance or charge, Beneficiary shall have the right, but shall not be obligated, to cure such default in the name and on behalf of Trustor. All sums advanced and reasonable expenses incurred at any time by Beneficiary pursuant to this Section 8 or as otherwise provided under the terms and provisions of this Deed of Trust or under applicable law shall bear interest from the date that such sum is advanced or expense incurred, to and including the date of reimbursement, computed at the interest rate set forth in Section 2.03(c) of the Loan Agreement, computed from the original due date to the date of receipt of such payment by Beneficiary, as applicable, in good funds. Trustor agrees that any such delinquency charges shall not be deemed to be additional interest or a penalty, but shall be deemed to be liquidated damages because of the difficulty in computing the actual amount of damages in advance.

8.2 Trustor shall have the right, at Trustor's expense and in Trustor's name, to contest or object in good faith to any claim, demand, levy or assessment filed against or asserted against the Mortgaged Property (other than in respect of any indebtedness or contractual obligations of Trustor to Beneficiary hereunder or under any of the other Loan Documents) by appropriate legal proceedings which are not prejudicial to Beneficiary's rights (but the foregoing shall not be deemed or construed as in any way relieving, modifying or providing any extension of time with respect to Trustor's covenant to pay and comply with any such claim, demand, levy or assessment) if (i) Trustor shall have demonstrated to Beneficiary's reasonable satisfaction that such legal proceedings shall conclusively operate to prevent enforcement prior to final

determination of any such proceedings and (ii) Trustor shall have furnished such bond, surety, undertaking or other security in connection therewith as is reasonably requested by and satisfactory to Beneficiary. In the event that, by non-payment of any such items, the security afforded pursuant to this Deed of Trust is endangered or the Mortgaged Property or any part thereof is subject to imminent loss or forfeiture, such taxes, assessment or charges shall be immediately paid. Trustor shall indemnify and save the Lenders harmless against any liability, costs or expense of any kind that may be imposed in connection with any such contest and any resulting loss.

9. [Intentionally Omitted.]

10. Impound Account. "Costs," as used in this Section 10, means taxes, bond installments, assessments, levies, insurance premiums and other expenses which Trustor agrees to pay under this Deed of Trust. Upon the occurrence and during the continuation of an Event of Default, at Beneficiary's option and upon its demand, each time a payment of principal or interest is due under any of the Loan Agreement or the other Loan Documents, Trustor shall pay to Beneficiary an additional amount ("Payment") reasonably estimated by Beneficiary to be equal to the total of the amount next due for all Costs, divided by, for each item of Costs, the greatest number of payments required under any of the Loan Agreement or the other Loan Documents before that item of Costs will become due, less one. Beneficiary shall use the amounts in the account, or at Beneficiary's sole option, Beneficiary may release those amounts to Trustor, for payment of the Costs. Beneficiary shall maintain an account showing all Payments received and all Costs paid by Beneficiary and shall give Trustor reports on the account as required by law, but not less than annually. Beneficiary, at its sole option, may refund any amount in the account which exceeds the amount due or may continue to hold the excess and reduce proportionately the Payments for the next year. Trustor grants Beneficiary, for the benefit of the Lenders, a security interest in the account to secure payment and performance of the Secured Obligations. Upon the occurrence of any Event of Default and to the extent permitted by law, Beneficiary, at its sole option, may apply all or any part of the account to payment or performance of any Secured Obligation. The existence of the account shall not limit Beneficiary's rights under any other provision of this Deed of Trust or any other agreement or statute or rule of law. Trustor shall not receive interest on the account except to the extent and in the amount required by law. The relationship between Trustor and Beneficiary with respect to the account shall be one of debtor and creditor, and Beneficiary shall not be a trustee, special depository or any other fiduciary acting for the benefit of Trustor.

11. Maintenance and Preservation of the Subject Property. Trustor covenants:

11.1 To keep the Mortgaged Property in good condition and repair;

11.2 Except as expressly permitted by the Loan Documents, not to remove or demolish any of the Mortgaged Property without Beneficiary's prior written consent;

11.3 Except as expressly permitted by the Loan Documents, not to make any capital improvements in or to any of the Mortgaged Property without Beneficiary's prior written consent, other than (a) repairs and maintenance which preserve the value of the Mortgaged

Property; or (b) those certain capital improvements as more particularly described in Exhibit D attached hereto and incorporated herein by this reference (and as may be described in any amendment, restatement, modification, or supplement to Exhibit D agreed to in writing by Beneficiary from time to time after the date hereof).

11.4 To complete or restore promptly and in good and workmanlike manner any of the Mortgaged Property which may be damaged or destroyed or which may be affected by any condemnation or eminent domain proceeding;

11.5 Not to suffer violation of any, and to comply with all, (i) laws, ordinances, regulations and standards; (ii) covenants, conditions, restrictions and equitable servitudes, whether public or private, of every kind and character; and (iii) requirements of insurance companies; which affect any of the Mortgaged Property or pertain to acts committed or conditions existing thereon;

11.6 Not to initiate or acquiesce in any change in any zoning or other land use or legal classification without Beneficiary's prior written consent if such action will result in a Material Adverse Effect;

11.7 Not to alter the use of all or any part of the Mortgaged Property without the prior written consent of Beneficiary if such action will result in a Material Adverse Effect;

11.8 Not to commit or permit waste of the Mortgaged Property or to conduct or permit any nuisance thereon or abandon the same;

11.9 To do all other reasonable acts which from the character or use of the Mortgaged Property may be reasonably necessary to maintain and preserve its value;

11.10 To make no further assignment of the Rents or Leases without Beneficiary's prior written consent; and

11.11 To pay when due all installments owing upon conditional sales or like agreements with respect to any personal property.

12. Defense and Notice of Losses, Claims and Actions. Trustor shall protect, preserve and defend the Mortgaged Property and title to and right of possession of the Mortgaged Property, the security and priority hereof and the rights and powers of Beneficiary, as applicable, hereunder at Trustor's sole expense against all adverse claims. Trustor shall give Beneficiary prompt notice in writing of the assertion of any claim, of the filing of any action or proceeding, of the occurrence of any damage to any of the Mortgaged Property if such damage will result in a Material Adverse Effect, of any condemnation offer or action and of any other Event of Default.

13. Inspection. Beneficiary and its agents and employees may enter the Real Property at any reasonable time for the purpose of inspecting the Real Property and ascertaining Trustor's compliance with the terms of this Deed of Trust and each of the other Loan Documents. Such entry shall not unreasonably interfere with Trustor's conduct of its business on the Real Property.

14. Compensation; Exculpation. Trustor shall pay to Beneficiary reasonable compensation for services rendered by Beneficiary or their respective agents which relate to this Deed of Trust, including, without limitation, preparation of any statement of any Secured Obligation. No member of the Lenders shall be directly or indirectly liable to Trustor or any other person as a consequence of (i) the exercise of the rights, remedies or powers granted to Beneficiary under this Deed of Trust, (ii) the failure or refusal of Beneficiary to perform or discharge any obligation or liability of Trustor under any agreement related to the Mortgaged Property or under this Deed of Trust, or (iii) any loss sustained by Trustor or any third party resulting from Beneficiary's failure to lease the Mortgaged Property after an Event of Default or from any other act or omission of Beneficiary in managing the Mortgaged Property after an Event of Default unless the loss is caused by the gross negligence, willful misconduct or bad faith of Beneficiary. All costs or expenses required to be reimbursed by Trustor to Beneficiary hereunder shall, if not paid immediately when due, bear interest at the rate set forth in Section 2.03(c) of the Loan Agreement until paid by Trustor.

15. General Indemnity. Trustor shall indemnify the Lenders against, and shall hold it harmless from, all losses, damages, liabilities, claims, causes of action, judgments, court costs, reasonable attorneys' fees and other legal expenses, cost of evidence of title, cost of evidence of value, and other reasonable expenses which the Lenders may suffer or incur (i) by reason of this Deed of Trust or any of the other Loan Documents, (ii) in performance of any act required or permitted hereunder, under any of the other Loan Documents or by law, (iii) as a result of any failure of Trustor to perform or discharge any of Trustor's obligations or liabilities under any agreement relating to the Mortgaged Property or under this Deed of Trust, or (iv) by reason of any alleged obligation or undertaking on the Lenders' part to perform or discharge any of the representations, warranties, conditions, covenants, or other obligations contained in any other document related to any of the Mortgaged Property. All costs or expenses required to be reimbursed by Trustor to the Lenders hereunder shall, if not paid immediately when due, bear interest at the rate set forth in Section 2.03(c) of the Loan Agreement until paid by Trustor.

16. Statement. Trustor shall, at any time and from time to time upon not less than twenty (20) days prior written notice from Beneficiary, execute, acknowledge and deliver to Beneficiary, as applicable, a statement (i) certifying that this Deed of Trust and the other Secured Obligations are unmodified and in full force and effect or, if modified, stating the nature thereof and certifying that each Secured Obligation, as so modified, is in full force and effect and the date to which principal, interest and other sums secured hereby have been paid, (ii) acknowledging that Beneficiary is not in breach of any of its obligations under this Deed of Trust or any of the other Loan Documents or specifying such breach if any is claimed, (iii) stating that no setoffs or defenses exist against the Deed of Trust or specifying such setoffs and defenses if any are alleged, and (iv) attesting to any other matters affecting this Deed of Trust, or any Secured Obligation, which Beneficiary may reasonably request. Any such certificate may be conclusively relied upon by Beneficiary and any prospective purchaser or assignee of Beneficiary's interest in the Mortgaged Property.

17. Further Assurances. Trustor shall do, execute, acknowledge and deliver, at the sole cost and expense of Trustor, all and every such further acts, deeds, conveyances, mortgages,

assignments, estoppel certificates, notices of assignment, transfers and assurances as Beneficiary may reasonably require from time to time in order to better assure, convey, assign, transfer and confirm unto Beneficiary, the rights now or hereafter intended to be granted Beneficiary under this Deed of Trust, and other instruments executed in connection with this Deed of Trust, or any other instrument under which Trustor may be or may hereafter become bound to convey, mortgage or assign to Beneficiary for carrying out the intention of facilitating the performance of the terms of this Deed of Trust.

18. Expenses and Fees. All reasonable expenses, costs and other liabilities, including reasonable attorneys' fees, which the Lenders or Trustee may incur (i) in enforcing, defending or construing (or, to the extent authorized by the Loan Documents, administering) this Deed of Trust (or its priority) or any of the other Loan Documents, (ii) for any inspection, evaluation, appraisal, survey or other service in connection with any of the Mortgaged Property, (iii) for any title examination or title insurance policy relating to the title to any of the Mortgaged Property, or (iv) in the exercise by Beneficiary of any rights or remedies granted by this Deed of Trust or any of the other Loan Documents, shall be paid by Trustor upon demand therefor by Beneficiary, together with interest thereon, from the date of expenditure until payment in full, at the rate then in effect under the Loan Agreement.

19. [Intentionally Omitted.]

20. Beneficiary's Powers. Beneficiary may commence, appear in, defend or prosecute any assigned claim or action relating to this Deed of Trust; and Beneficiary may adjust, compromise, settle and collect all claims and awards assigned to Beneficiary, but shall not be responsible for any failure to collect any claim or award regardless of the cause of the failure. Without affecting the liability of any other person liable for the payment of any obligation herein mentioned, and without affecting the lien or charge of this Deed of Trust upon any portion of the Mortgaged Property not then or theretofore released as security for the full amount of the Secured Obligations, the Lenders may, from time to time and without notice (i) release any person so liable, (ii) extend the maturity or alter any of the terms of any such obligation, (iii) grant other indulgences, (iv) instruct Beneficiary to release or reconvey, or cause to be released or reconveyed, at any time and at the Lenders's option, any parcel, portion or all of the Mortgaged Property, (v) instruct Beneficiary to take or release any other or additional security for any Secured Obligation or (vi) compromise or make other arrangements with debtors in relation thereto.

21. Trustee's Powers. At any time, or from time to time, without liability therefor and without notice, upon written request of Beneficiary and without affecting the effect of this Deed of Trust upon the remainder of the Mortgaged Property, Trustee may (i) reconvey any part of the Mortgaged Property, (ii) consent in writing to the making of any map or plat thereof, (iii) join in granting any easement thereon or (iv) join in any extension agreement or any agreement subordinating the lien or charge hereof. The grantee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor agrees to pay a reasonable Trustee's fee for full or partial reconveyance, together with a recording fee for recording the reconveyance.

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22. Security Agreement; Fixture Filing.

22.1 Trustor hereby grants, assigns and transfers to Beneficiary, for the benefit of the Lenders, continuing security interests in and to the Personal Property and the Proceeds (collectively "Collateral"); and this Deed of Trust shall constitute a security agreement pursuant to the UCC with respect to the Collateral. For purposes of treating this Deed of Trust as a security agreement, Trustor shall be deemed to be the "Debtor" and Beneficiary the "Secured Party."

22.2 Trustor shall maintain a place of business in the State of Arizona; and Trustor shall immediately notify Beneficiary in writing of any change in its place of business.

22.3 At the request of Beneficiary, Trustor shall join Beneficiary in executing one or more financing statements and continuations and amendments thereof pursuant to the UCC in form satisfactory to Beneficiary; and Trustor will pay the cost of filing the same in all public offices wherever filing is deemed by Beneficiary to be necessary or desirable. In the event Trustor fails to execute such documents, Trustor hereby authorizes Beneficiary to file such financing statements and irrevocably constitutes and appoints Beneficiary, or any officer of Beneficiary, as its true and lawful attorney-in-fact to execute the same on behalf of Trustor.

22.4 In addition to Beneficiary's rights under the UCC, Beneficiary may, but shall not be obligated to, at any time without notice and at the expense of Trustor, (i) give notice to any person of Beneficiary's rights hereunder and enforce such rights; (ii) insure, protect, defend and preserve the Collateral and any rights or interest of Beneficiary therein; (iii) inspect the Collateral; and (iv) endorse, collect and receive any right to payment of money owing to Trustor under or from the Collateral. Beneficiary shall not have any duty or obligation to make or give any presentments, demand for performance, notices of nonperformance, notices of protest or notices of dishonor in connection with any of the Collateral.

22.5 Upon the occurrence and during the continuation of an Event of Default, Beneficiary shall have with respect to the Collateral, in addition to all of its rights and remedies as stated in this Deed of Trust, all rights and remedies of a secured party under the UCC as well as all other rights and remedies available at law or in equity.

22.6 This Deed of Trust constitutes a financing statement filed as a fixture filing under A.R.S. § 47-9502(c) in the official records of the county in which the Mortgaged Property is located with respect to any and all fixtures included within the term "Mortgaged Property" and with respect to any goods or other personal property that may now be or hereafter become such a fixture.

22.7 Beneficiary has no responsibility for, and does not assume any of, Trustor's obligations or duties under any agreement or obligation which is part of the Collateral or any obligation relating to the acquisition, preparation, custody, use, enforcement or operation of any of the Mortgaged Property.

22.8 Trustor and Beneficiary agree that the filing of a financing statement in the records normally having to do with personal property shall never be construed as in any way derogating from or impairing this Deed of Trust and the intention of the parties that everything used in connection with the production of income from the Mortgaged Property or adapted for use therein or which is described or reflected in this Deed of Trust is, and at all times and for all purposes and in all proceedings both legal or equitable shall be regarded as, part of the real estate subject to the lien hereof, irrespective of whether (i) any such item is physically attached to improvements located on such real property or (ii) any such item is referred to or reflected in any financing statement so filed at any time. Similarly, the mention in any such financing statement of (A) the rights in or the proceeds of any fire or hazard insurance policy or (B) any award in eminent domain proceedings for taking or for loss of value or for any cause of action or proceeds thereof in connection with any damage or injury to the Mortgaged Property or any part thereof shall never be construed as in any way altering any of the rights of Beneficiary as determined by this instrument or impugning the priority of Beneficiary's lien granted hereby or by any other recorded document, but such mention in such financing statement is declared to be for the protection of Beneficiary in the event any court shall at any time hold with respect to matters (A) and (B) above that notice of Beneficiary's priority of interest, to be effective against a particular class of persons, including, without limitation, the Federal government and any subdivision or entity of the Federal government, must be filed in the personal property records or other commercial code records.

22.9 Trustor shall not permit any of the Collateral to be removed from the Improvements without the prior written consent of Beneficiary unless (i) the replacements for such items of Collateral are of equivalent value and quality and (ii) Trustor has good and clear title to such replacements free and clear of any and all liens, encumbrances, security interests, ownership interests, claims of title (contingent or otherwise) or charges of any kind or the rights of any such conditional sellers, vendors or any other third parties have been expressly subordinated, at no cost to Beneficiary, to the lien and security interest granted hereby in a manner reasonably satisfactory to Beneficiary.

22.10 It is understood and agreed that, in order to protect Beneficiary from the effect of A.R.S. § 47-9334, as amended from time to time, in the event that (A) Trustor intends to purchase any goods which may become fixtures to the Mortgaged Property, or any part thereof, and (B) such goods will be subject to a security interest held by a seller or any other party, Trustor shall, before executing any security agreement or other document evidencing such security interest, obtain the prior written approval of Beneficiary, and all requests for such written approval shall be in writing and contain the following information:

22.10.1 A description of the Collateral to be replaced, added to, installed or substituted;

22.10.2 The address at which the Collateral will be replaced, added to, installed or substituted; and

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22.10.3 The name and address of the proposed holder and proposed amount of the security interest; and any failure of Trustor to obtain such approval shall be a material breach of Trustor's covenants under this Deed of Trust, and shall, at the option of Beneficiary, entitle Beneficiary to all rights and remedies provided for herein upon an Event of Default. No consent by Beneficiary pursuant to this Section 22 shall be deemed to constitute an agreement to subordinate any right of Beneficiary in fixtures or other property covered by this Deed of Trust.

22.11 Beneficiary shall have the right to acquire by assignment from the holder of such security interest any and all contract rights, accounts receivable, negotiable or non-negotiable instruments or other evidence of Trustor's indebtedness for such Collateral and, upon acquiring such interest by assignment, shall have the right to enforce the security interest as assignee thereof, in accordance with the terms and provisions of the UCC then in effect and in accordance with any other provisions of law.

22.12 If at any time Trustor fails to make any payment on an obligation secured by a security interest in any Collateral, Beneficiary, at its option, may at any time pay the amount secured by such security interest and the amount so paid shall be (i) secured by this Deed of Trust and shall be a lien on the Mortgaged Property having the same priorities as the liens and security interests created by this Deed of Trust, and (ii) payable on demand with interest at the rate then applicable under the Loan Agreement from the time of such payment. If Trustor shall fail to make such payment to Beneficiary within ten (10) days after receipt of written demand, the entire principal sum secured thereby with all unpaid accrued interest and late charges or other amounts owing thereunder, shall, at the option of Beneficiary, become due and payable immediately.

### 23. Transfers.

23.1 By delivery of this Deed of Trust, Trustor acknowledges that the financial standing and managerial and operational ability of Trustor are substantial and material considerations to the Lenders in its agreement to make the extensions of credit evidenced by the Loan Agreement. Therefore, as a material inducement to the Lenders to make the extensions of credit evidenced by the Loan Agreement secured hereby, Trustor agrees that neither Trustor nor any general partner or affiliate of Trustor shall directly or indirectly, without Beneficiary's prior written consent or except as permitted by the Loan Agreement, (i) sell, transfer or convey or further pledge, encumber, hypothecate, mortgage, assign or lease (except in the ordinary course of Trustor's business, as such business is generally conducted on the date of the Loan Agreement), whether voluntary, involuntary or by operation of law, or suffer or permit the same, all or any part of the Mortgaged Property, (ii) sell, transfer or convey any legal or beneficial ownership interest in Trustor or any affiliate thereof (except as otherwise permitted under the Loan Documents), or (iii) pay, make or declare any dividend or distribution to any shareholder or partner of (or any owner of any other equity interest in) Trustor while any Event of Default exists under any Loan Document (each of such actions or events being herein called a "Transfer"). Any such Transfer made without Beneficiary's prior written consent or except as permitted by the Loan Agreement shall be void and shall constitute an Event of Default hereunder.

23.2 If any Transfer occurs in violation of Section 23.1, then, at its sole option, Beneficiary (in each case, at the direction of the Required Lenders (as such term is defined in the Loan Agreement)) may, by written notice to Trustor, declare all Secured Obligations immediately due and payable. Trustor shall notify Beneficiary promptly in writing of all Transfers. As a condition to waiving its option to accelerate due to the sale or transfer of the Mortgaged Property, the Lenders may charge a fee to Trustor or Trustor's successor in interest and may change the terms of the Loan Agreement or the other Loan Documents, including changing the monthly installment to correspond to any adjustment in the interest rate which the Lenders may select.

23.3 Upon the occurrence of any Transfer in violation of Section 23.1, and without waiving Lenders' right to declare all Secured Obligations immediately due and payable, all Secured Obligations shall bear interest at the rate set forth in Section 2.03(c) of the Loan Agreement.

24. Subordinate Deed of Trust. Without the prior written consent of Beneficiary, Trustor will not execute or deliver any pledge, security agreement, mortgage or deed of trust covering all or any portion of the Mortgaged Property ("Subordinate Deed of Trust"). If Beneficiary consents to the foregoing or in the event the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable, Trustor will not execute or deliver any Subordinate Deed of Trust unless there shall have been delivered to Beneficiary not less than ten (10) days prior to the date thereof a copy thereof which shall contain express covenants to the effect that:

24.1 The Subordinate Deed of Trust is in all respects subject and subordinate to this Deed of Trust.

24.2 If any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust (regardless of whether the same is a judicial proceeding or pursuant to a power of sale contained therein), no lessee of any Lease will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any Lease without the consent of Beneficiary.

24.3 The Rents, if collected through a receiver or by the holder of the Subordinate Deed of Trust, shall be applied first to the Secured Obligations, including principal and interest due and owing on or to become due and owing on the Loan Agreement and the other Loan Documents, and then to the payment of maintenance, operating charges, taxes, assessments and disbursements incurred in connection with the ownership, operation and maintenance of the Mortgaged Property.

24.4 If any action or proceeding shall be brought to foreclose the Subordinate Deed of Trust, prompt notice of the commencement thereof will be given to Beneficiary.

24.5 The holder of the Subordinate Deed of Trust shall not acquire by subrogation, contract or otherwise any lien upon any other estate, right or interest in the Mortgaged Property (including any which may arise in respect to real estate taxes, assessments

or other governmental charges) which is or may be prior in right to this Deed of Trust or any extension, consolidation, modification or supplement thereto unless within ninety (90) days following written notice of such intention from the holder of the Subordinate Deed of Trust the then holder of this Deed of Trust shall fail or refuse to purchase or acquire by subrogation or otherwise such prior lien, estate, right or interest, or shall fail within such period to commence and thereafter proceed diligently to purchase or acquire the same.

24.6 The Subordinate Deed of Trust and the lien thereof shall be expressly subject and subordinate to this Deed of Trust and any and all advances and amounts secured hereby, in whatever amounts and whenever made, with interest thereon, and to any expenses, charges and fees incurred thereby, including any and all of such advances, interest, expenses, charges and fees which may increase the indebtedness secured by this Deed of Trust above the original principal amount thereof.

24.7 That the holder of the Subordinate Deed of Trust shall agree to assign and release unto the holder of this Deed of Trust all of its right, title, interest or claim, if any, in and to the proceeds of all policies of insurance covering the Mortgaged Property and all awards or other compensation made for any taking of any part of the Mortgaged Property for application in accordance with the provisions of this Deed of Trust.

25. Event of Default. Trustor will be in default under this Deed of Trust upon the occurrence of an Event of Default under Section 9.01 of the Loan Agreement (collectively, "Event of Default").

26. Remedies. Upon the occurrence and during the continuation of an Event of Default, Beneficiary (in each case, at the election of the Required Lenders (as such term is defined in the Loan Agreement)) may at any time, at its option and in its sole discretion, declare all Secured Obligations to be due and payable and the same shall thereupon become immediately due and payable, including any prepayment charge or fee payable under the terms of any Secured Obligation. Beneficiary may also do any or all of the following, although it shall have no obligation to do any of the following:

26.1 Either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of Beneficiary's security, enter upon and take possession of the Mortgaged Property, or any part thereof, and do any acts which Beneficiary deems necessary or desirable to preserve the value, marketability or rentability of the Mortgaged Property, or to increase the income therefrom or to protect the security hereof and, with or without taking possession of any of the Mortgaged Property, sue for or otherwise collect all rents and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees and expenses, upon the Secured Obligations, all in such order as Beneficiary, as applicable, may determine. The collection of rents and profits and the application thereof shall not cure or waive any Event of Default or notice thereof or invalidate any act done in response thereto or pursuant to such notice.

26.2 Bring an action in any court of competent jurisdiction to foreclose this instrument or to enforce any of the covenants hereof.

26.3 Exercise any or all of the remedies available to a secured party under the UCC, including, but not limited to:

26.3.1 either personally or by means of a court appointed receiver, take possession of all or any of the Collateral and exclude therefrom Trustor and all others claiming under Trustor and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Trustor in respect to the Collateral; and in the event Beneficiary demands or attempts to take possession of the Collateral in the exercise of any of its rights hereunder, Trustor promises and agrees promptly to turn over and deliver complete possession thereof to Beneficiary;

26.3.2 without notice to or demand upon Trustor, make such payments and do such acts as Beneficiary may deem necessary to protect the security interests held by Beneficiary for the benefit of the Lenders in the Collateral, including, without limitation, paying, purchasing, contesting or compromising any encumbrance, charge or lien which is prior or superior to the security interests granted hereunder, and in exercising any such powers or authority, to pay all expenses incurred in connection therewith;

26.3.3 require Trustor to assemble the Collateral or any portion thereof at a place designated by Beneficiary and promptly to deliver such Collateral to Beneficiary, or an agent or representative designated by it. Beneficiary and its respective agents and representatives, shall have the right to enter upon any or all of the Trustor's premises and property to exercise Beneficiary's rights hereunder;

26.3.4 sell, lease or otherwise dispose of the Collateral at public sale, with or without having the Collateral at the place of sale, and upon such terms and in such manner as Beneficiary may determine; and any member of the Lenders may be a purchaser at any such sale. Beneficiary shall not be deemed to have accepted any property other than cash in satisfaction of any Secured Obligation unless Beneficiary shall make an express written election of said remedy under A.R.S. § 47-9620 or other applicable law;

26.3.5 pursuant to the provisions of A.R.S. § 47-9604, proceed as to both the real and some or all of the personal property covered by this Deed of Trust in accordance with its rights and remedies in respect of said real property, in which event (i) the other provisions of the UCC shall not apply to disposition of the Collateral, and (ii) the sale of the Collateral in conjunction with and as one parcel with said real estate shall be deemed to be a commercially reasonable manner of sale; or

26.3.6 proceed as to some or all of the Collateral separately from said real property, in which event the requirement of reasonable notice shall be met by mailing notice of the sale, postage prepaid, to Trustor or any other person entitled thereto at least ten (10) days before the time of the sale or other disposition of any of the Collateral.

26.4 Elect to sell by power of sale Trustor's interest in the Mortgaged Property and, upon such election, such notice of Event of Default and election to sell shall be given as may then be required by law. Thereafter, upon the expiration of such time and the giving of such notice of sale as may then be required by law, at the time and place specified in the notice of sale, Trustee shall sell such property, or any portion thereof specified by Beneficiary, at public auction to the highest bidder for cash in lawful money of the United States. Trustee may, and upon request of Beneficiary shall, from time to time, postpone the sale by public announcement thereof at the time and place noticed therefor. If the Mortgaged Property consists of several lots, parcels or interests, Beneficiary may designate the order in which the same shall be offered for sale or sold. Trustor waives all rights to direct the order in which any of the Mortgaged Property will be sold in the event of any sale under this Deed of Trust, and also any of right to have any of the Mortgaged Property marshalled upon any sale. In the case of a sale under this Deed of Trust, the said property, real, personal and mixed, may be sold in one parcel or more than one parcel. Should Beneficiary desire that more than one such sale or other disposition be conducted, Beneficiary may, at its option, cause the same to be conducted simultaneously, or successively on the same day, or at such different days or times and in such order as Beneficiary may deem to be in its best interest. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. Upon any sale, Trustee shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property so sold, but without any covenant or warranty whatsoever, express or implied. Beneficiary, from time to time before the trustee's sale pursuant to this Section 26, may rescind any notice of breach or default and of election to cause to be sold the Mortgaged Property by executing and delivering to Trustee a written notice of such rescission, which notice, shall also constitute a cancellation of any prior declaration of default and demand for sale. The exercise by Beneficiary of such right of rescission shall not constitute a waiver of any breach or default then existing or subsequently occurring or impair the right of Beneficiary to execute and deliver to Trustee, as above provided, other declarations of default and demand for sale, and notices of breach or default, the obligations hereof, nor otherwise affect any provision, covenant or condition of the Loan Agreement, the other Loan Documents and/or this Deed of Trust or any of the rights, obligations or remedies of the parties thereunder or hereunder.

26.5 Exercise each of its other rights and remedies provided under this Deed of Trust and each of the other Loan Documents, and at law and in equity.

26.6 Except as otherwise required by law, apply the proceeds of any foreclosure or disposition hereunder to payment of the following: (i) the expenses of such foreclosure or disposition, (ii) the cost of any search or other evidence of title procured in connection therewith and revenue stamps on any deed or conveyance, (iii) all sums expended under the terms hereof, not then repaid, with accrued interest in the amount provided herein, (iv) all other sums secured hereby and (v) the remainder, if any, to the person or persons legally entitled thereto.

26.7 Upon any sale or sales made under or by virtue of this Section 26, whether made under the power of sale or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, any member of the Lenders may bid for and acquire the Mortgaged Property or any part thereof. In lieu of paying cash for the Mortgaged Property, any member of the Beneficiary may make settlement for the purchase price by crediting against the Secured

Obligations the sales price of the Mortgaged Property, as adjusted for the expenses of sale and the costs of the action and any other sums for which Trustor is obligated to reimburse Trustee or the Lenders under this Deed of Trust.

26.8 In the event that Trustor has an equity of redemption and the Mortgaged Property is sold through court action under or by virtue of this Section 26, the purchaser may, during any redemption period allowed, make such repairs or alterations on said property as may be reasonably necessary for the proper operation, care, preservation, protection and insuring thereof. Any reasonable sums so paid together with interest thereon from the time of such expenditures at the rate set forth in Section 2.03(c) of the Loan Agreement (if not prohibited by law, otherwise at the highest lawful contract rate) shall be added to and become a part of the amount required to be paid for redemption from such sale.

27. Subrogation. Beneficiary shall be subrogated to any mechanic's or vendor's lien, superior titles, mortgages, deeds of trust, liens, encumbrances, rights, equities and charges of all kinds heretofore or hereafter existing on the Mortgaged Property, notwithstanding their release of record, to the extent that the same are paid or discharged from the proceeds of the loans evidenced by the Loan Agreement and the other Loan Documents.

28. Releases, Extensions, Modifications and Additional Security. Without notice to or the consent, approval or agreement of Trustor, any subsequent owner of any part of the Mortgaged Property, any surety, guarantor, or endorser of this Deed of Trust or any other Secured Obligation, or any holder of a lien or other claim on all or any part of the Mortgaged Property, whether senior or subordinate hereto, the Lenders may, from time to time, do one or more of the following: release any person's liability for the payment of any Secured Obligation, take any action or make any agreement extending the maturity or otherwise altering the terms or increasing the amount of any Secured Obligation, or accept additional security or release all or a portion of the Mortgaged Property and other security for any Secured Obligation. No such release of liability, taking of additional security, release of security, change in terms or conditions of any Secured Obligation, or other action shall release or reduce the personal liability of Trustor (if any), subsequent purchasers of all or any part of the Mortgaged Property, or makers, sureties, guarantors or endorsers of this Deed of Trust or any other Secured Obligation, under any covenant of this Deed of Trust or any other Secured Obligation, or release or impair the priority of the lien of this Deed of Trust upon any of the Mortgaged Property.

29. No Waiver. Any failure by the Lenders to insist upon the strict performance by Trustor of any of the terms and provisions of any of the Loan Documents shall not be deemed to be a waiver of any of the terms and provisions of any of the Loan Documents; and the Lenders, notwithstanding any such failure, shall have the right thereafter to insist upon the strict performance by Trustor of any and all of the terms and provisions of each of the Loan Documents. The acceptance by the Lenders of any sum after any Event of Default shall not constitute a waiver of the right to require prompt performance of all of the covenants and conditions contained in any of the Loan Documents. The acceptance by the Lenders of any sum less than the sum then due shall be deemed an acceptance on account only and shall not constitute a waiver of the obligation of Trustor to pay the entire sum then due, Trustor's failure to

pay said entire sum due shall be and continue to be an Event of Default notwithstanding such acceptance of such lesser amount on account, the Lenders shall be entitled to exercise all rights conferred upon it following an Event of Default notwithstanding such acceptance.

30. Stamps; Credits. If at any time the United States of America, any state thereof or any governmental subdivision of such state shall require revenue stamps to be affixed to any of the Loan Agreement or any of the other Loan Documents, or the payment of any other tax paid on or in connection therewith, Trustor shall pay the same with any interest or penalties imposed in connection therewith if Trustor is permitted by law to pay such amount and, if not so permitted, then at Beneficiary's election, Beneficiary may pay same and charge Trustor therefor. Trustor will not claim nor demand nor be entitled to any credit or credits against the indebtedness secured hereby for so much of the taxes assessed against the Mortgaged Property or any part thereof, and no deductions shall otherwise be made or claimed from the taxable value of the Mortgaged Property or any part thereof by reason of this Deed of Trust or the Indebtedness.

31. Joint and Several. If Trustor consists of more than one party, such parties shall be jointly and severally liable under any and all obligations, covenants and agreements of Trustor contained herein.

32. Cumulative. The rights of Beneficiary arising under this Deed of Trust and the other Loan Documents shall be separate, distinct and cumulative, and none of them shall be in exclusion of the others. No act of Beneficiary shall be construed as an election to proceed under any one provision to the exclusion of any other provision, notwithstanding anything herein or otherwise to the contrary. Any specific enumeration of powers of Beneficiary, or of acts to be done or not to be done by Trustor, shall not be deemed to exclude or limit the general. All covenants hereof shall be construed as affording to Beneficiary rights additional to and not exclusive of the rights conferred under any applicable law.

33. Statement of Condition. Beneficiary shall furnish any statement required by law regarding the obligations secured hereby or regarding the amounts held in any trust or reserve fund hereunder. For any such statement, Beneficiary may charge a reasonable fee, not to exceed the maximum amount permitted by law at the time of the request therefor.

34. Reconveyance. Upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Loan Agreement to Trustee for cancellation, and upon payment of its fees, Trustee shall reconvey, without warranty, the Mortgaged Property, or that portion of the Mortgaged Property then held hereunder. The recitals in any such reconveyance of any matters or facts shall be conclusive proof of the truth thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." Neither Beneficiary nor Trustee shall have the duty to determine the rights of the persons claiming to be rightful grantees of any reconveyance.

35. Substitution. Beneficiary may substitute Trustee hereunder in any manner now or hereafter provided by law or, in lieu thereof, Beneficiary may from time to time, by an instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed and acknowledged by Beneficiary and recorded in the

office of the recorder of the county or counties in which the Land and Improvements are situated, shall be conclusive proof of proper substitution of such successor Trustee, who shall thereupon and without conveyance from the predecessor Trustee, succeed to all its title, estate, rights, powers and duties.

36. Law. The enforcement of this Deed of Trust shall be governed by and construed in accordance with the laws of the state in which the Land is located.

37. Severable. If any provision of this Deed of Trust or its application to any person or circumstance is held invalid, the other provisions hereof or the application of the provision to other persons or circumstances shall not be affected.

38. Successors and Assigns. Each of the covenants and obligations of Trustor set forth in this Deed of Trust and each of the other Loan Documents shall run with the land and shall bind Trustor, the heirs, personal representatives, successors and assigns of Trustor and all subsequent encumbrancers and tenants of the Mortgaged Property and shall inure to the benefit of Beneficiary and their respective successors and assigns.

39. Captions. The captions or headings at the beginning of each section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

40. Notice. Any notice, request, demand, consent, approval or other communication ("Notice") provided or permitted under this Deed of Trust, or any other instrument contemplated hereby, shall be in writing, signed by the party giving such Notice, and shall be given by personal delivery to the other party or by United States certified or registered mail, postage prepaid, return receipt requested, addressed to the party for whom it is intended at its address as set forth below. Unless otherwise specified, Notice shall be deemed given when received, but if delivery is not accepted, on the earlier of the date delivery is refused or the third day after same is deposited in any official United States Postal Depository. Any party from time to time, by Notice to the other parties given as above set forth, may change its address for purposes of receipt of any such communication. The Trustor requests that a copy of any notice of default and any notice of sale under this Deed of Trust be mailed to Trustor at the notice address specified in this Section 40.

If to Trustor: SWH Corporation  
17852 East 17<sup>th</sup> Street, South Building, Suite 108  
Tustin, California 92780  
Attn: Chief Financial Officer

With a copy to: Stradling Yocca Carlson & Rauth, P.C.  
660 Newport Center Drive, Suite 1600  
Newport Beach, California 92660  
Attn: Michael E. Flynn, Esq.

If to Trustee: Chicago Title Insurance Company  
700 South Flower Street, Suite 900  
Los Angeles, California 90017  
Attn: Escrow Officer/Title Officer

If to Beneficiary: Ableco Finance LLC  
450 Park Avenue, 28<sup>th</sup> Floor  
New York, New York 10022  
Attn: Kevin Genda

With a copy to: Brobeck Phleger & Harrison LLP  
550 South Hope Street, Suite 2100  
Los Angeles, California 90071-2604  
Attn: John Francis Hilson, Esq.

41. No Third Party Beneficiaries. This Deed of Trust is made and entered into for the sole protection and benefit of the parties hereto, and no other person or entity shall be a direct or indirect beneficiary of, or shall have any direct or indirect cause of action or claim in connection with this Deed of Trust or any of the other Loan Documents.

42. No Offset. Under no circumstances shall Trustor fail or delay to perform (or resist the enforcement of) any of its obligations in connection with any of the Loan Documents because of any alleged offsetting claim or cause of action against any member of the Lenders (or any indebtedness or obligation of any member of the Lenders) which has not been confirmed in a final judgment of a court of competent jurisdiction (sustained on appeal, if any) against the applicable member of the Lenders, and Trustor hereby waives any such rights of setoff (or offset) which it might otherwise have with respect to any such claims or causes of action against each member of the Lenders (or any such obligations or indebtedness of any such member of the Lenders), unless and until such right of setoff is confirmed and liquidated by such a final judgment. Trustor further waives any right that it might otherwise have to require a marshalling of any security of the Lenders or to direct the order in which the Lenders pursue their rights or remedies with respect to any of their security.

43. Amendments. This Deed of Trust may only be modified or amended by a written instrument executed by each of the parties hereto.

44. Survival of Warranties. All representations, warranties, covenants and agreements of Trustor hereunder shall survive the delivery of this Deed of Trust and shall continue in full force and effect until the full and final payment and performance of all of the Secured Obligations.

45. Time. Time is of the essence of each provision of this Deed of Trust.

46. Waivers. To the fullest extent permitted by law, Trustor hereby waives the benefit of all laws now existing or hereafter enacted providing for the pleading of any statute of

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limitation as a defense to any Secured Obligation or extending the time for the enforcement of the collection of any Secured Obligation; and Trustor agrees that Trustor shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any stay of execution, extension or marshalling in the event of foreclosure of the liens and security interests hereby created. In addition, Trustor expressly waives and relinquishes any and all rights, remedies and defenses which Trustor may have or be able to assert by reason of any laws pertaining to the rights, remedies and defenses of sureties or any law pertaining to the marshalling of assets, the administration of estates of decedents and any exemption from execution or sale of the Mortgaged Property or any part thereof, excluding any statutory right of redemption, including without limitation, A.R.S. §§ 12-1641 through 12-1644, 44-142, 47-3605, and Rule 17(f) of the Arizona Rules of Civil Procedure.

47. Continuation of Payments. Notwithstanding any taking by eminent domain or other governmental action causing injury to, or decrease in value of, the Mortgaged Property and creating a right to compensation therefor, Trustor shall continue to make the required payments of principal and interest on the Loan Agreement and all other payments required by the Loan Documents. If, prior to the receipt by Beneficiary of such award or compensation, the Mortgaged Property shall have been sold in any action or proceeding to foreclose this Deed of Trust, the Lenders shall have the right to receive said award or compensation to the extent of any deficiency found to be due upon such sale, with interest thereon, whether or not a deficiency judgment on this Deed of Trust shall have been sought or recovered, together with reasonable counsel fees and the costs and disbursements incurred by the Lenders in connection with the collection of such award or compensation.

48. Occupancy Rent. In the event of the occurrence and during the continuation of any Event of Default, Trustor will pay monthly, in advance, to Beneficiary, on its entry into possession or to any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of the Mortgaged Property or of such part thereof as may be in the possession of Trustor; and upon failure to make any such payment, Trustor shall vacate and surrender possession of the Mortgaged Property or such part thereof, as the case may be, to the Lenders or to such receiver and, in failure thereof, may be evicted by summary proceedings or otherwise.

49. Specific Performance. At any time, Beneficiary may commence and maintain an action in any court of competent jurisdiction for specific performance of any of the covenants and agreements contained herein, and may obtain the aid and direction of the court in the performance of any of the covenants and agreements contained herein, and may obtain orders or decrees directing the execution of the same and, in case of any sale hereunder, directing, confirming or approving its or Trustee's acts and granting it such relief as may be warranted in the circumstances.

50. Usury Savings. All agreements between Trustor and Beneficiary are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to the Lenders for the use, forbearance or retention of the money advanced thereunder or hereunder exceed the highest lawful rate permissible. If, from any circumstances whatsoever, fulfillment of any

provisions of this Deed of Trust or any of the Loan Agreement, the other Loan Documents or any other Loan Document at the time performance of such provision shall be due shall involve transcending the limit of validity prescribed by law which a court of competent jurisdiction may deem applicable thereto or hereto, then the obligations to be fulfilled shall be reduced to the limit of such validity and, if from any circumstances Beneficiary shall ever receive as interest an amount which would exceed the highest lawful rate, such amount which would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder and not to the payment of interest. This provision shall control every other provision of all agreements between Trustor and Beneficiary.

**51. Waiver of Jury Trial. Beneficiary and Trustor each waive trial by jury in any action or other proceeding (including counterclaims), whether at law or equity, brought by Beneficiary or Trustor against the other on matters arising out of or in any way related to or connected with this Deed of Trust, the Loan Agreement, the other Loan Documents, or any transaction contemplated thereby, or the relationship between Beneficiary and Trustor, or any action or inaction by any party under this Deed of Trust, the Loan Agreement, the other Loan Documents or any transaction contemplated thereby.**

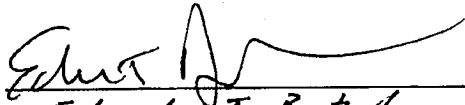
**52. Exhibits. All Exhibits attached to this Deed of Trust are incorporated herein by this reference.**

IN WITNESS WHEREOF, this Deed of Trust has been duly executed and acknowledged by Trustor as of the day and year first above written.

TRUSTOR PLEASE NOTE: UPON THE OCCURRENCE OF AN EVENT OF DEFAULT, ARIZONA PROCEDURE PERMITS THE TRUSTEE TO SELL THE MORTGAGED PROPERTY AT A SALE HELD WITHOUT SUPERVISION BY ANY COURT AFTER EXPIRATION OF A PERIOD PRESCRIBED BY LAW. UNLESS YOU PROVIDE AN ADDRESS FOR THE GIVING OF NOTICE, YOU MAY NOT BE ENTITLED TO NOTICE OF THE COMMENCEMENT OF SALE PROCEEDINGS. BY EXECUTION OF THIS DEED OF TRUST, YOU CONSENT TO SUCH PROCEDURE. BENEFICIARY URGES YOU TO GIVE PROMPT NOTICE OF ANY CHANGE IN YOUR ADDRESS SO THAT YOU MAY RECEIVE PROMPTLY ANY NOTICE GIVEN PURSUANT TO THIS DEED OF TRUST.

"Trustor":

**SWH CORPORATION,**  
a California corporation

By:   
Name: Edward T. Bartholmey  
Title: Treasurer



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**EXHIBIT A**

(Legal Description)

Lot 4, Edwards Business Park, according to the plat of record in the Office of the County Recorder of Maricopa County, Arizona, in Book 257 of Maps, page 20.

Tract 1 as shown on the Plat Map of Dedication-Metro Center, as recorded in Book 163 of Maps, Page 37, in the Official Records of Maricopa County, Arizona, being situated in the northwest quarter of the northeast quarter of Section 26, Township 3 North, Range 2 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

**EXHIBIT A**

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## EXHIBIT "A"

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A parcel of land located in the Northeast quarter of the Northeast quarter of Section 32, Township 1 North, Range 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more fully described as follows:

Commencing for a tie at the Northeast corner of Section 32;

thence South 00 degrees 00 minutes 05 seconds West, along the East line of said Section, 277.43 feet;

thence North 89 degrees 59 minutes 55 seconds West, 55.00 feet to a point on the West right-of-way line of Alma School Road, the Point of Beginning;

thence South 00 degrees 00 minutes 05 seconds West, along the West right-of-way line of Alma School Road, described in Docket 10639, page 1176, 121.07 feet;

thence South 04 degrees 34 minutes 31 seconds West, along said West right-of-way line, described in Docket 11445, page 506, 106.84 feet;

thence along said curve to the left having a radius of 349.50 feet; a central angle of 20 degrees 33 minutes 29 seconds a tangent bearing of North 25 degrees 30 minutes 47 seconds West, an arc distance of 125.40 feet to a point on the arc;

thence North 43 degrees 55 minutes 44 seconds East, 175.50 feet;

thence North 89 degrees 59 minutes 55 seconds West, 123.74 feet to the Point of Beginning.

## EXHIBIT "A"

PAD 4  
ARROWHEAD FESTIVAL

That portion of the Southwest quarter of the Southwest quarter of Section 36, Township 4 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Southwest corner of said Section 36, the South quarter of which bears South 89 degrees 48 minutes 22 seconds East, 2642.38 feet;

thence South 89 degrees 48 minutes 22 seconds East along the South line of said Section 36, a distance of 369.39 feet;

thence North 00 degrees 11 minutes 38 seconds East, 74.79 feet to a point on the North right of way line of Bell Road, said point being the TRUE POINT OF BEGINNING;

thence North 86 degrees 09 minutes 04 seconds West along said North right of way line, 26.75 feet to an angle point;

thence North 89 degrees 48 minutes 22 seconds West along said North right of way line, 237.26 feet to an angle point;

thence North 44 degrees 38 minutes 23 seconds West along said North right of way line, 26.09 feet;

thence leaving said North right of way line North 42 degrees 13 minutes 26 seconds East, 253.11 feet to a point on a nontangent curve left having a radial bearing of North 56 degrees 15 minutes 25 seconds East;

thence along said curve left having a radius of 77.00 feet, a central angle of 56 degrees 03 minutes 47 seconds, an arc distance of 75.34 feet to a point of tangency;

thence South 89 degrees 48 minutes 22 seconds East, 6.00 feet;

thence North 00 degrees 11 minutes 38 seconds East, 53.00 feet;

thence South 89 degrees 48 minutes 22 seconds East, 31.50 feet;

thence North 00 degrees 11 minutes 38 seconds East, 108.26 feet;

thence South 89 degrees 48 minutes 22 seconds East, 94.50 feet to a point on the West line of that parcel described in 95-0368499, of Official Records, Maricopa County Records (M.C.R.);

thence along said West line South 00 degrees 11 minutes 38 seconds West, 161.93 feet;

thence leaving said West line North 89 degrees 48 minutes 22 seconds West, 83.00 feet;

thence South 00 degrees 11 minutes 38 seconds West, 173.54 feet to the TRUE POINT OF BEGINNING.

EXCEPT 1/16th of all oil, gases, and other hydrocarbon substances, coal, stone, metals, minerals, fossils and fertilizers of every name and description and except all materials which may be essential to production of fissionable material as reserved in Arizona Revised Statutes.

**EXHIBIT B**

(Leaseholds)

1. Lease dated July 27, 1997, between Edward Family Properties of Arizona, Inc., an Arizona corporation, and Trustor (and as amended, modified, supplemented, renewed or restated).
2. Lease dated April 30, 1996, between Shelby Properties and Trustor (and as amended, modified, supplemented, renewed or restated).
3. Lease dated February 27, 1997, between Winslow Maxwell, a single man, and Trustor (and as amended, modified, supplemented, renewed or restated).
4. Ground Lease dated June 24, 1998, between Westbar Limited Partnership, an Arizona limited partnership and Trustor (and as amended, modified, supplemented, renewed or restated).

**EXHIBIT B**

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**EXHIBIT C**  
(Litigation Disclosures)

None.

**EXHIBIT C**

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**EXHIBIT D**

(Permitted Capital Improvements)

None.

EXHIBIT D

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