

F. ANN RODRIGUEZ, RECORDER
Recorded By: JCC
DEPUTY RECORDER
305

TCCWB
CITY OF TUCSON-CITY CLERK
PICKUP



SEQUENCE: 20112940441
NO. PAGES: 10
MOD 10/21/2011
PICK UP 18:00
AMOUNT PAID: \$9.50

MODIFICATION OF EASEMENTS

THIS MODIFICATION OF EASEMENTS ("Modification") is made and entered into this 14th day of October, 2011 ("Effective Date") by and between City of Tucson, a Municipal corporation, hereinafter the "City", and JPMorgan Chase Bank, National Association, a national banking association, successor to Bank One, National Association, hereinafter "Chase", and BMO Harris Bank National Association, as successor-in-interest by merger to M&I Marshall and Isley Bank, hereinafter "BMO", and collectively referred to as the "Owners" and Pima County, a political subdivision of the State of Arizona, hereinafter "Pima", as easement holder.

WHEREAS, City is the fee owner of Lots 1, 3 and 4 of Eastpointe Commercial Center, a Subdivision of Pima County, Arizona ("Subdivision") according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona, in Book 52 of Maps and Plats, at page 100 thereof (as amended from time to time, the "Plat").

WHEREAS, Chase is the fee owner of Lot 2 of said Subdivision.

WHEREAS, BMO is the fee owner of Lot 5 of said Subdivision.

WHEREAS, Pima has existing facilities within said Subdivision. Pima also has easement rights to portions of said Subdivision, such easements are evidenced by the Plat.

WHEREAS, certain improvements have been built and are anticipated to be built that do not conform to the existing easements identified and shown on the Plat as Keynotes #1, 2 and 3 and Ret/Det Basins shown on the Plat ("collectively, "Existing Easements").

WHEREAS, the City anticipates obtaining approval for the construction of a Park and Ride facility on Lots 1, 3 and 4 of said Subdivision under Plan # D10-0032 ("Park and Ride Improvements"). The Park and Ride Improvements will also vary from the Existing Easements and Ret/Det Basins and further modify access points, driveways and the private cross access easements created by said Plat.

WHEREAS, the Owners and Pima desire to accommodate the City's construction of the Park and Ride Improvements and correct and update the Existing Easements and Ret/Det Basins established by the Plat.

NOW THEREFORE, in consideration of the mutual benefits contained herein, the undersigned Owners and Pima hereby grant, reserve and agree as follows:

1. The Existing Easements identified and shown on the Plat as Keynotes #1, 2 and 3; and the Det/Ret Basins are hereby modified, abandoned and replaced in their entirety by the easements and Det/Ret Basins shown on the attached Exhibit "A" ("collectively, "Newly Defined Easements").
 - (a) Nothing in this Modification shall affect the use and enjoyment of other legally permissible and established easements.
 - (b) Nothing in this Modification shall be construed or deemed to convey any rights to Owners that would permit parking on another Owner's property.
 - (c) Nothing in this Modification is intended to change the terms or conditions of the Restrictive Covenants, Easement and Maintenance Agreement recorded in the Pima County Recorder's office, Pima County, Arizona, in Docket 11189, at Page 2086, which terms and conditions shall apply to the Newly Defined Easements as if they were established by the Plat.

3090
10

Acknowledgement for MODIFICATION OF EASEMENTS, dated _____, 2011 by and between City of Tucson, a Municipal corporation, JPMorgan Chase Bank, National Association, a national banking association, successor to Bank One, National Association, BMO Harris Bank National Association, as successor-in-interest by merger to M&I Marshall and Ilsley Bank, and Pima County, a political subdivision of the State of Arizona.

PIMA COUNTY, a political subdivision of the State of Arizona

By: _____
Chairman, Pima County Board of Supervisors

Attest:

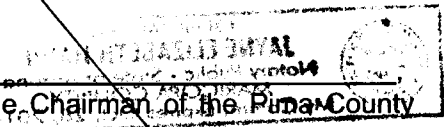
Clerk of the Board

Approved as to form:

Deputy County Attorney

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

This instrument was acknowledged before me this _____ day of _____, 2011, by _____ as the Chairman of the Pima County Board of Supervisors.



Notary Public

Acknowledgement for MODIFICATION OF EASEMENTS, dated _____, 2011 by and between City of Tucson, a Municipal corporation, JPMorgan Chase Bank, National Association, a national banking association, successor to Bank One, National Association, BMO Harris Bank National Association, as successor-in-interest by merger to M&I Marshall and Ilsley Bank, and Pima County, a political subdivision of the State of Arizona.

BMO Harris Bank National Association, as successor-in-interest by merger to M&I Marshall and Ilsley Bank (Owner #3)

By: William O'Zell
As: V.P.

STATE OF Wisconsin
COUNTY OF Milwaukee)ss.

This instrument was acknowledged before me this 7 day of September, 2011, by William Zeidler as Vice President of BMO Harris Bank National Association, as successor-in-interest by merger to M&I Marshall and Ilsley Bank, as the Act of said corporation.

Janine Hewitt
Notary Public 9-2-11

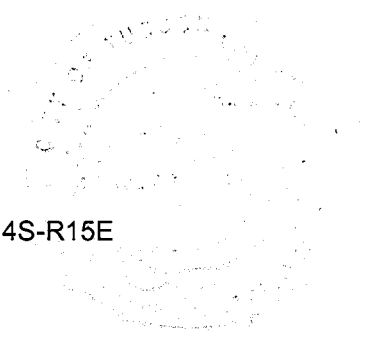
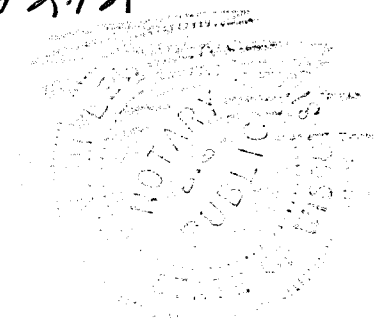
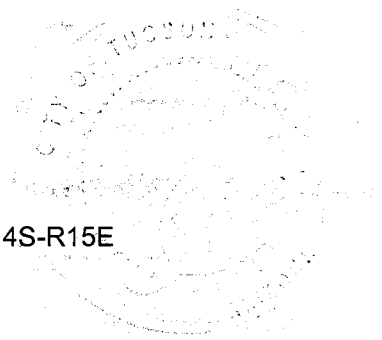


EXHIBIT A

ATTACH NEW EASEMENTS REPLACING KEYNOTES 1, 2 AND 3 TO PLAT

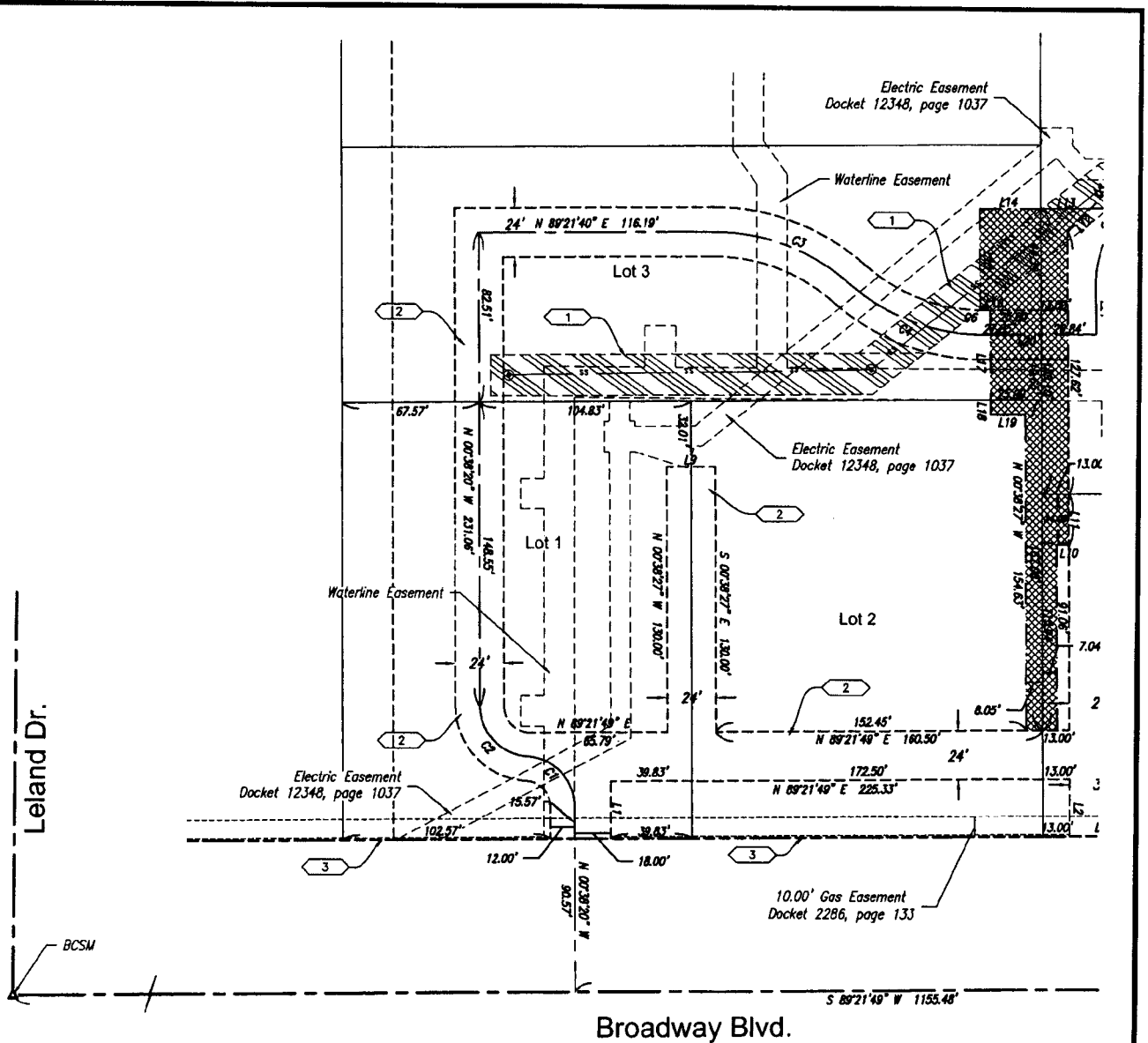
RP #3090

Sec11-T14S-R15E

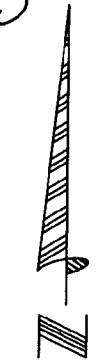


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Plot Date: 9/7/2011 Plot Time: 1:24 PM

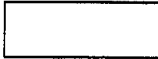

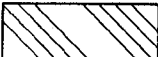



Expires: 09/30/14



1" = 80'

Legend:

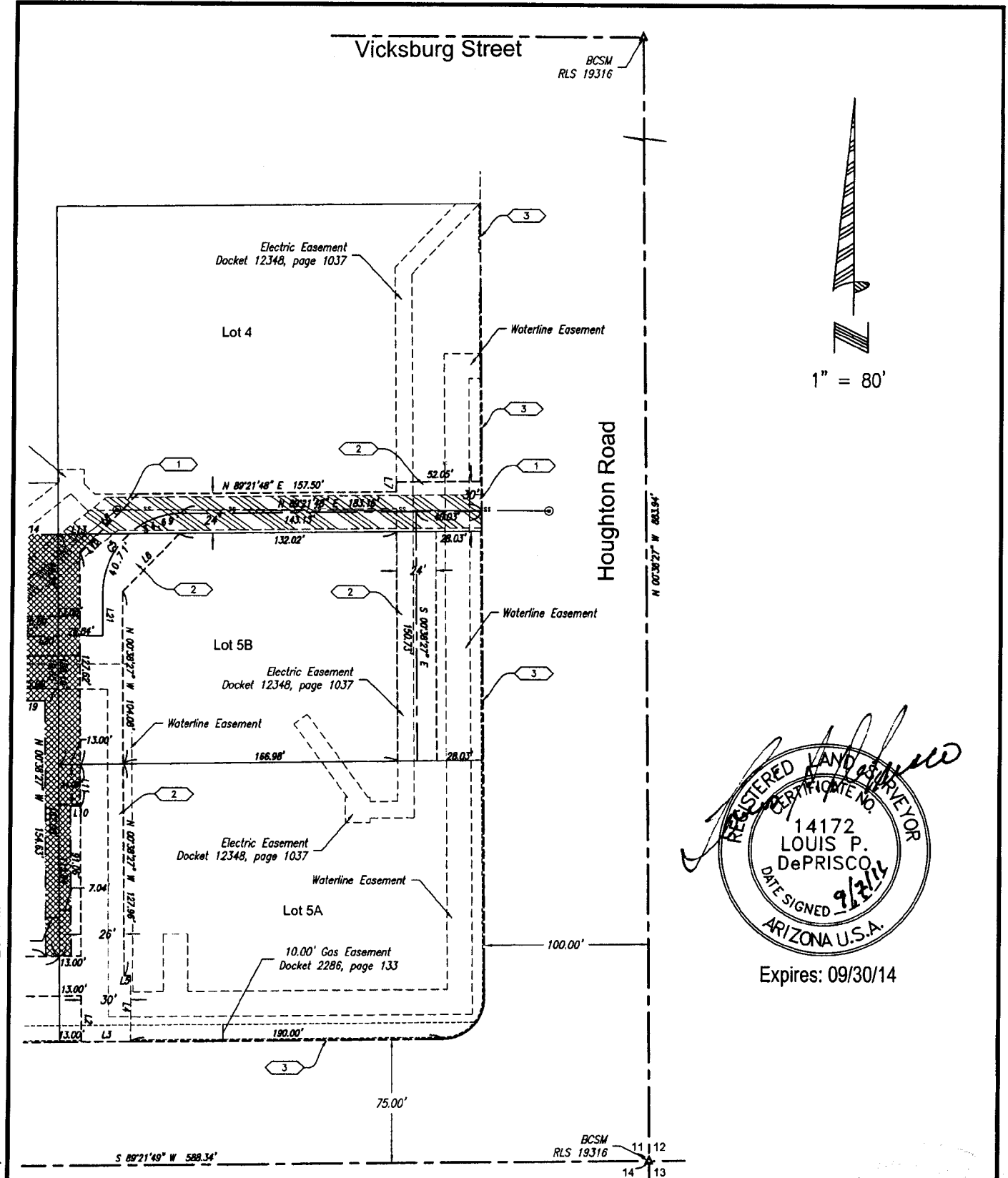
-  Private Cross Access Easement.
-  Retention/Detention Basin.
-  20.00' Sewer Easement DP Book 26 MP, page 77 and as Shown Herein.
-  Right-of-Way Line

DEPICTION OF EXHIBIT A

PREPARED: LPD DRAWN: RRF CHECK: LPD
 DATE: 09/2011 JOB No. 11023 SHEET 1 of 3

File Name: Legal Exhibit 8X11.dwg

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DEPICTION OF EXHIBIT A

Urban Engineering
 877 S. Alvernon Way-Tucson, AZ 85711-520.318.3800

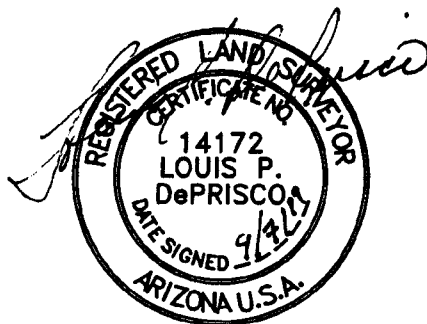
PREPARED: <u>LPD</u>	DRAWN: <u>RRF</u>	CHECK: <u>LPD</u>
DATE: <u>09/2011</u>	JOB No. <u>11023</u>	SHEET <u>2</u> of <u>3</u>

LINE	BEARING	LENGTH
L1	N 00°38'20" W	28.01'
L2	S 00°38'27" E	28.01'
L3	N 89°21'49" E	30.00'
L4	N 00°38'27" W	40.06'
L5	S 89°21'49" W	4.00'
L6	N 44°21'33" E	49.43'
L7	S 00°38'12" E	6.00'
L8	S 44°21'33" W	50.14'
L9	S 89°21'49" W	24.00'
L10	N 89°21'49" E	5.96'
L11	N 00°38'27" W	24.86'
L12	N 44°21'33" E	16.20'
L13	S 89°21'48" W	24.45'
L14	S 89°21'48" W	30.06'
L15	S 00°38'27" E	49.36'
L16	N 89°21'40" E	2.84'
L17	S 00°38'27" E	43.65'
L18	S 00°38'27" E	7.33'
L19	N 89°21'40" E	16.95'
L20	N 89°21'40" E	54.69'
L21	N 00°38'27" W	25.35'

CURVE	RADIUS	ARC LENGTH	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	25.00'	37.77'	86°33'37"	S 43°55'09" E	34.28'
C2	25.00'	37.77'	86°33'37"	S 43°55'09" E	34.28'
C3	100.00'	72.93'	41°47'11"	S 69°44'35" E	71.33'
C4	100.00'	72.93'	41°47'12"	S 69°44'35" E	71.33'
C5	48.00'	75.40'	90°00'15"	S 44°21'40" W	67.88'
C6	88.00'	2.21'	01°26'24"	S 89°54'57" E	2.21'

Keynotes Table

Symbol	Key	Description
①	1	20' Public Sewer Easement
②	2	Private Cross Access Easement Granted to each Lot and Pima County
③	3	1' No Vehicular Access Easement



Expires: 09/30/14

DEPICTION OF EXHIBIT A

PREPARED: LPD DRAWN: RRF CHECK: LPD
 DATE: 09/2011 JOB No. 11023 SHEET 3 of 3

Urban Engineering
 877 S. Alvernon Way-Tucson, AZ 85711-520.318.3800

File Name: Legal Exhibit 8X11.dwg
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 Plot Date: 9/7/2011 Plot Time: 1:16 PM



MAYOR & COUNCIL COMMUNICATION

January 27, 2009

**Subject: Property Acquisition for Regional Transportation Authority
Park-and-Ride Facility at Broadway/Houghton
(Ward 2)**

Page 1 of 1

Issue - Mayor and Council authorization is requested for the acquisition of three (3) parcels needed for construction of the Broadway/Houghton park-and-ride funded through the Regional Transportation Authority.

Recommendation - It is recommended that Mayor and Council authorize the acquisition of property for this park-and-ride facility.

Background - In May 2006, voters approved the 20-year regional transportation plan sponsored by the RTA and funded by a half-cent countywide sales tax. The Transit Element of the plan calls for construction of a park-and-ride facility near the Broadway/Houghton intersection to serve residents in east Tucson. Property acquisition is needed to allow staff to continue its progress for design and construction of the facility, which is scheduled for completion in 2011.

Present Considerations - Staff has identified three (3) parcels of land totalling three acres at the northwest corner of Broadway and Houghton for acquisition. These parcels have the appropriate zoning, utilities, and configuration to be developed as one facility that will accommodate expanded Sun Tran service and parking demand for east Tucson residents. Property owners have been contacted and are supportive of the future purchase.

Financial Considerations - The City's Intergovernmental Agreement (Resolution 20802, dated 10-16-07) with the RTA allows for reimbursement related to property acquisition. Capacity has been included in TDOT's Capital Improvement Program for these projects.

Legal Considerations - The attached Resolution, prepared by the City Attorney, authorizes and directs City staff to facilitate and complete the acquisition through negotiation with the property owners if possible. The Resolution also authorizes the acquisition through eminent domain, but this authority would only be exercised in the event that the negotiations are not successful in achieving the acquisition. Any acquisition through eminent domain would be accomplished under the procedures set out in Title 12 of Arizona Revised Statutes.

Respectfully submitted,


Richard Miranda
Assistant City Manager

Attachments:
Resolution

RM/JamesGlock/TF

JAN27-09-45

ADOPTED BY THE
MAYOR AND COUNCIL

RESOLUTION NO. 21199

RELATING TO TRANSPORTATION; AUTHORIZING AND DIRECTING THE CITY MANAGER TO ACQUIRE BY NEGOTIATION, AND THE CITY ATTORNEY TO CONDEMN IF NECESSARY, CERTAIN REAL PROPERTY LOCATED NEAR THE NORTHWEST CORNER OF BROADWAY BOULEVARD AND HOUGHTON ROAD FOR A REGIONAL TRANSPORTATION AUTHORITY PARK AND RIDE FACILITY; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The City Manager is authorized and directed to negotiate for and acquire the parcels of real property located near the northwest corner of Broadway Boulevard and Houghton Road, as shown on the map attached hereto as Attachment 1 (the "Property"), which is necessary for a Regional Transportation Authority Park and Ride Facility (the "Project"). The negotiated purchase price for the Property shall not exceed the appraised value by the greater of five percent (5%) thereof, or Five Hundred Dollars (\$500).

SECTION 2. The City Attorney is hereby authorized and directed to initiate eminent domain proceedings to condemn the Property and to secure immediate possession thereof should negotiations for acquisition be unsuccessful.

SECTION 3. The City Manager, or his designee, is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest to any and all documents necessary to effectuate the above-contemplated transaction for and on behalf of the City of Tucson.

SECTION 4. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

SECTION 5. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become immediately effective, an emergency is hereby declared to exist, and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, _____.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

REVIEWED BY:



CITY MANAGER

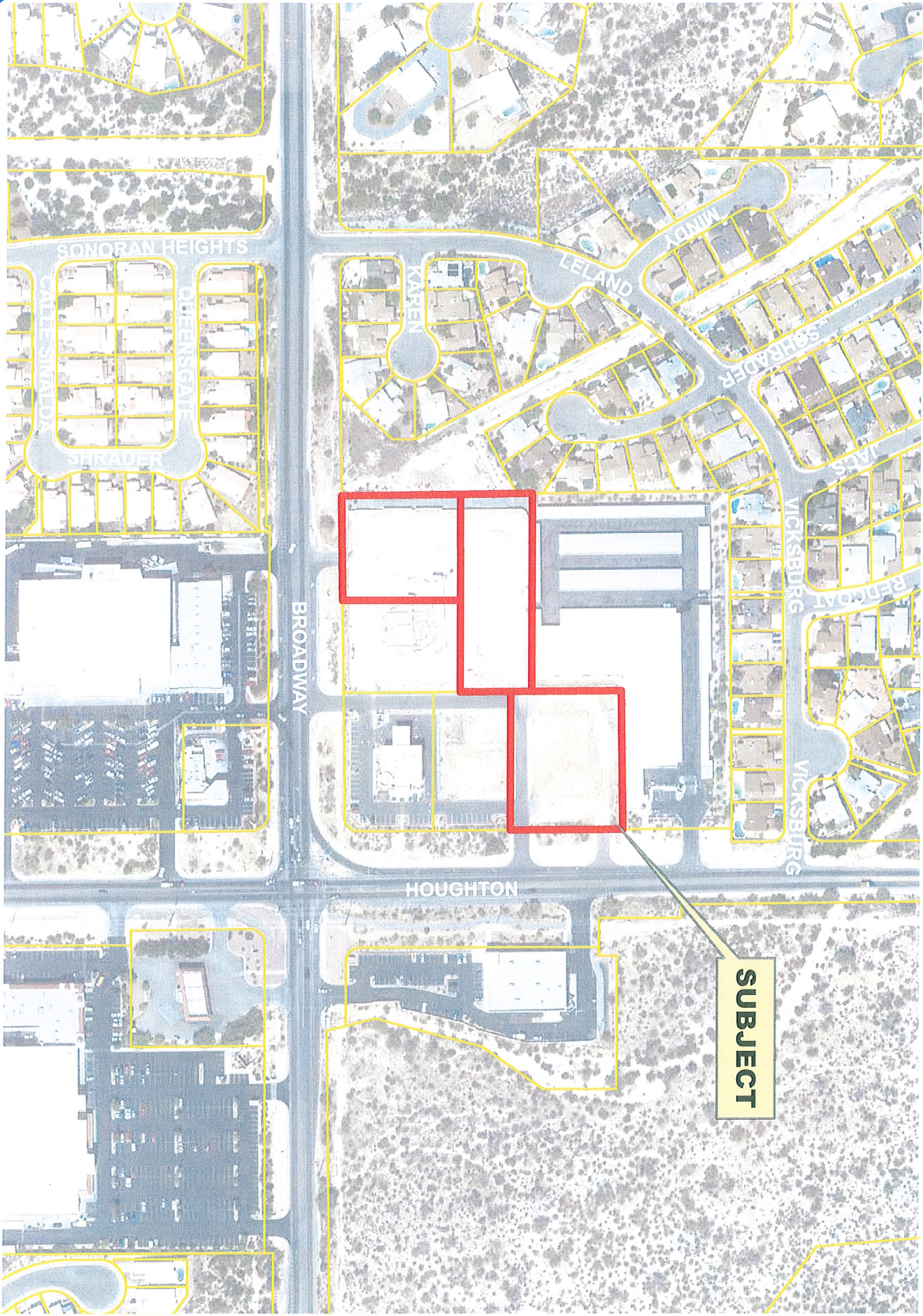
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CITY OF
TUCSON

BROADWAY/HOUGHTON PARK & RIDE



SUBJECT

DATA
PROJECTS
10/2008

REAL ESTATE PROGRAM



POLICY OF TITLE INSURANCE ISSUED BY



SUBJECT TO SCHEDULE B AND THE CONDITIONS AND STIPULATIONS HEREOF, STEWART TITLE GUARANTY COMPANY, a Texas corporation, herein called the Company, insures the insured, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the amount of insurance stated in Schedule A, and costs, attorneys' fees and expenses which the Company may become obligated to pay hereunder, sustained or incurred by said insured by reason of:

- 1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
 - 2. Any defect in or lien or encumbrance on such title;
 - 3. Unmarketability of such title; or
 - 4. Any lack of the ordinary right of an abutting owner for access to at least one physically open street or highway if the land, in fact, abuts upon one or more such streets or highways;
- and in addition, as to an insured lender only:
- 5. Invalidity of the lien of the insured mortgage upon said estate or interest except to the extent that such invalidity, or claim thereof, arises out of the transaction evidenced by the insured mortgage and is based upon
 - a. usury, or
 - b. any consumer credit protection or truth in lending law;
 - 6. Priority of any lien or encumbrance over the lien of the insured mortgage, said mortgage being shown in Schedule B in the order of its priority; or
 - 7. Invalidity of any assignment of the insured mortgage, provided such assignment is shown in Schedule B.

Signed under seal for the Company, but this Policy is to be valid only when it bears an authorized countersignature.

Countersigned by:

[Handwritten Signature]

Authorized Signature
STEWART TITLE & TRUST

Company

City, State



[Handwritten Signature]
Senior Chairman of the Board

[Handwritten Signature]
Chairman of the Board

[Handwritten Signature]
President

CONDITIONS AND STIPULATIONS

1. Definition of Terms

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company may have had against the named insured, those who succeed to the interest of such insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors. The term "insured" also includes (i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of such indebtedness (reserving, however, all rights and defenses as to any such successor who acquires the indebtedness by operation of law as described in the first sentence of this subparagraph (a) that the Company would have had against the successor's transferor), and further includes (ii) any governmental agency or instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing said indebtedness, or any part thereof, whether named as an insured herein or not, and (iii) the parties designated in paragraph 2(a) of these Conditions and Stipulations.
- (b) "insured claimant": an insured claiming loss or damage hereunder.
- (c) "insured lender": the owner of an insured mortgage.
- (d) "insured mortgage": a mortgage shown in Schedule B, the owner of which is named as an insured in Schedule A.
- (e) "knowledge": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records.
- (f) "land": the land described, specifically or by reference in Schedule A, and improvements affixed thereto which by law constitute real property; provided, however, the term "land" does not include any area excluded by Paragraph No. 6 of Part I of Schedule B of this Policy.
- (g) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (h) "public records": those records which by law impart constructive notice of matters relating to the land.

2. (a) Continuation of Insurance after Acquisition of Title by Insured Lender

If this policy insures the owner of the indebtedness secured by the insured mortgage, this policy shall continue in force as of Date of Policy in favor of such insured who acquires all or any part of the estate or interest in the land described in Schedule A by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of the insured mortgage, and if such insured is a corporation, its transferee of the estate or interest so acquired, provided the transferee is the parent or wholly owned subsidiary of such insured; and in favor of any governmental agency or instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage. After any such acquisition the amount of insurance hereunder, exclusive of costs, attorneys' fees and expenses which the Company may be obligated to pay, shall not exceed the least of:

- (i) the amount of insurance stated in Schedule A;
- (ii) the amount of the unpaid principal of the indebtedness plus interest thereon, as determined under paragraph 6(a)(iii) hereof, expenses of foreclosure and amounts advanced to protect the lien of the insured mortgage and secured by said insured mortgage at the time of acquisition of such estate or interest in the land; or
- (iii) the amount paid by any governmental agency or instrumentality, if such agency or instrumentality is the insured claimant, in acquisition of such estate or interest in satisfaction of its insurance contract or guaranty.

(b) Continuation of Insurance after Conveyance of Title

The coverage of this policy shall continue in force as of Date of Policy, in favor of an insured so long as such insured retains an estate or interest in the land, or owns an indebtedness secured by a purchase money mortgage given by a purchaser from such insured, or so long as such insured shall have liability by reason of covenants of warranty made by such insured in any transfer or conveyance of such estate or interest; provided, however, this policy shall not continue in force in

favor of any purchaser from such insured of either said estate or interest or the indebtedness secured by a purchase money mortgage given to such insured.

3. Defense and Prosecution of Actions – Notice of Claim to be Given by an Insured Claimant

(a) The Company, at its own cost and without undue delay, shall provide for the defense of an insured in litigation to the extent that such litigation involves an alleged defect, lien, encumbrance or other matter insured against by this policy.

(b) The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in (a) above, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If such prompt notice shall not be given to the Company, then as to such insured all liability of the Company shall cease and terminate in regard to the matter or matters for which such prompt notice is required; provided, however, that failure to notify shall in no case prejudice the rights of any such insured under this policy unless the Company shall be prejudiced by such failure and then only to the extent of such prejudice.

(c) The Company shall have the right at its own cost to institute and without undue delay prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured; and the Company may take any appropriate action, whether or not it shall be liable under the terms of this policy, and shall not thereby concede liability or waive any provision of this policy.

(d) Whenever the Company shall have brought any action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any such litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(e) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured hereunder shall secure to the Company the right to so prosecute or provide defense in such action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of such insured for such purpose. Whenever requested by the Company, such insured shall give the Company, at the Company's expense, all reasonable aid (i) in any such action or proceeding in effecting settlement, securing evidence, obtaining witnesses, or prosecuting or defending such action or proceeding, and (ii) in any other act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, including but not limited to executing corrective or other documents.

4. Proof of Loss or Damage – Limitation of Action

In addition to the notices required under Paragraph 3(b) of these Conditions and Stipulations, a proof of loss or damage, signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain or determine the facts giving rise to such loss or damage. Such proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage, and, when appropriate, state the basis of calculating the amount of such loss or damage.

Should such proof of loss or damage fail to state facts sufficient to enable the Company to determine its liability hereunder, insured claimant, at the written request of Company, shall furnish such additional information as may reasonably be necessary to make such determination.

No right of action shall accrue to insured claimant until 30 days after such proof of loss or damage shall have been furnished.

Failure to furnish such proof of loss or damage shall terminate any liability of the Company under this policy as to such loss or damage.

ORDER NO.: 09001840

POLICY NO.: AOJP-1301-156118

Exhibit A

PARCEL 1:

Lots 1 and 3 of Final Plat of **EASTPOINTE COMMERCIAL CENTER**, according to the plat of record in the office of the County Recorder of Pima County, Arizona , recorded in Book 52 of Maps, page 100.

PARCEL 2:

Easements for ingress, egress and utilities as created by the Eastpointe Commercial Center Restrictions, Covenants, Easement and Maintenance Agreement recorded in Docket 11180 at page 580 and thereafter Amended and Restated, including, but not limited to that certain instrument recorded in Docket 11189 at page 2086.

SCHEDULE B

ORDER NO.: 09001840

POLICY NO.: AOJP-1301-156118

This policy does not insure against loss or damage, nor against costs, attorneys' fees or expenses, any or all of which arise by reason of the following:

PART I

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
6. Any right, title, interest, estate or easement in land beyond the lines of the area specifically described or referred to in Schedule A, or in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing in this paragraph shall modify or limit the extent to which the ordinary right of an abutting owner for access to a physically open street or highway is insured by this policy.
7. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of the violation of any of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
8. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser of value without knowledge.

SCHEDULE B
PART I (CONTINUED)

ORDER NO.: 09001840

POLICY NO.: AOJP-1301-156118

9. 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; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

10. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws.

SCHEDULE B

ORDER NO.: 09001840

POLICY NO.: AOJP-1301-156118

PART II

1. Taxes and assessments collectible by the County Treasurer not yet due and payable for the year 2009.
2. 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.
3. Water rights, claims or title to water, and agreements, covenants, conditions or rights incident thereto, whether or not shown by the public records.

This exception is not limited by reason of the disclosure of any matter relating to Water Rights as may be set forth elsewhere in Schedule B.
4. Reservations or exceptions in Patents or in Acts authorizing the issuance thereof.
5. Easements, restrictions, reservations and conditions as set forth on the recorded plat of Eastpoint Commercial Center a subdivision recorded in Book 42 of Maps and Plats at page 35.
6. Easements, restrictions, reservations and conditions as set forth on the recorded Final Plat of Eastpointe Commercial Center recorded in Book 52 of Maps and Plats at page 100; amended by Book 34 of Record of Surveys at page 74; and as amended by Affidavit of Scrivener's Error recorded in Docket 11201 at page 133 and Docket 11581 at page 675; and by instruments recorded in Docket 12117 at page 254; Docket 12171 at page 3438; and Docket 12134 at page 5082.
7. Easement for electric transmission line or systems and rights incident thereto, as set forth in instrument recorded in Book 111 of Miscellaneous Records at page 265.
8. Easement for drainage and rights incident thereto, as set forth in instrument recorded in Docket 7238 at page 947 as shown on said recorded plat.
9. Restrictions, Conditions, Covenants, Reservations, including but not limited to any recitals creating easements, liabilities, obligations or party walls, omitting, if any, from the above, any restrictions based on race, color, religion, sex, handicap, familial status or national origin contained in instrument recorded in Docket 11180 at page 580;
Restated Restrictions Docket 11189 at page 2086;
Amended in Docket 12171 at page 3430
And Amended by instrument recorded in Docket 12171 at page 3438.
10. Terms and conditions as set forth in Easement Agreement recorded in Docket 11357 at page 2665.

SCHEDULE B

PART II (Continued)

ORDER NO.: 09001840

POLICY NO.: AOJP-1301-156118

11. Matters shown on survey recorded in Book 17 of Maps, page 24.
12. Easement for water pipes/mains and rights incident thereto, as set forth in instrument recorded in Docket 12256 at page 1529 and mesne instruments of record.
13. Easement for sewer and rights incident thereto, as set forth in instrument recorded in Docket 12269 at page 3058 and mesne instruments of record.
14. Easement for electric transmission line or systems and communication facilities and rights incident thereto, as set forth in instrument recorded in Docket 12348 at page 1037 and mesne instruments of record.
15. Easement for gas lines and rights incident thereto, as set forth in instrument recorded in Docket 2286 at page 133.

NOTE: Except as shown herein, no Leases, VEMUR'S, DEUR'S; Environmental Liens, or activity and use limitations, if any, were found currently recorded against the property as searched at the Pima County Records office.

5. Options to Pay or Otherwise Settle Claims and Options to Purchase Indebtedness

The Company shall have the option to pay or otherwise settle for or in the name of an insured claimant any claim insured against, or to terminate all liability and obligations of the Company hereunder by paying or tendering payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred up to the time of such payment or tender of payment by the insured claimant and authorized by the Company. In case loss or damage is claimed under this policy by the owner of the indebtedness secured by the insured mortgage, the Company shall have the further option to purchase such indebtedness for the amount owing thereon together with all costs, attorneys' fees and expenses which the Company is obligated hereunder to pay. If the Company offers to purchase said indebtedness as herein provided, the owner of such indebtedness shall transfer and assign said indebtedness and the mortgage and any collateral securing the same to the Company upon payment therefor as herein provided. Upon such offer being made by the Company, all liability and obligations of the Company hereunder to the owner of the indebtedness secured by said insured mortgage, other than the obligation to purchase said indebtedness pursuant to this paragraph, are terminated.

6. Determination and Payment of Loss

(a) The liability of the Company under this policy shall in no case exceed the least of:

- (i) the actual loss of the insured claimant; or
- (ii) the amount of insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in paragraph 2(a) hereof; or
- (iii) if this policy insures the owner of the indebtedness secured by the insured mortgage, and provided said owner is the insured claimant, the amount of the unpaid principal of said indebtedness, plus interest thereon, provided such amount shall not include any additional principal indebtedness created subsequent to Date of Policy, except as to amounts advanced to protect the lien of the insured mortgage and secured thereby.

(b) The Company will pay, in addition to any loss insured against by this policy, all costs imposed upon an insured in litigation carried on by the Company for such insured, and all costs, attorneys' fees and expenses in litigation carried on by such insured with the written authorization of the Company.

(c) When the amount of loss or damage has been definitely fixed in accordance with the conditions of this policy, the loss or damage shall be payable within 30 days thereafter.

7. Limitation of Liability

No claim shall arise or be maintainable under this policy (a) if the Company, after having received notice of an alleged defect, lien or encumbrance insured against hereunder, by litigation or otherwise, removes such defect, lien or encumbrance or establishes the title, or the lien of the insured mortgage, as insured, within a reasonable time after receipt of such notice; (b) in the event of litigation until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured, as provided in paragraph 3 hereof; or (c) for liability voluntarily admitted or assumed by an insured without prior written consent of the Company.

8. Reduction of Insurance; Termination of Liability

All payments under this policy, except payment made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto; provided, however, if the owner of the indebtedness secured by the insured mortgage is an insured hereunder, then such payments, prior to the acquisition of title to said estate or interest as provided in paragraph 2(a) of these Conditions and Stipulations, shall not reduce pro tanto the amount of the insurance afforded hereunder as to any such insured, except to the extent that such payments reduce the amount of the indebtedness secured by such mortgage.

Payment in full by any person or voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company to an insured owner of the indebtedness secured by the insured mortgage, except as provided in paragraph 2(a) hereof.

9. Liability Noncumulative

It is expressly understood that the amount of insurance under this policy, as to the insured owner of the estate or interest covered by this policy, shall be reduced by any amount the Company may pay under any policy insuring (a) a mortgage shown or referred to in Schedule B hereof which is a lien on the estate or interest covered by this policy, or (b) a mortgage hereafter executed by an insured which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy. The Company shall have the option to apply to the payment of any such mortgage any amount that otherwise would be payable hereunder to the insured owner of the estate or interest covered by this policy and the amount so paid shall be deemed a payment under this policy to said insured owner.

The provisions of this paragraph 9 shall not apply to an owner of the indebtedness secured by the insured mortgage, unless such insured acquires title to said estate or interest in satisfaction of said indebtedness or any part thereof.

10. Subrogation Upon Payment or Settlement

Whenever the Company shall have paid or settled a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant, except that the owner of the indebtedness secured by the insured mortgage may release or substitute the personal liability of any debtor or guarantor, or extend or otherwise modify the terms of payment, or release a portion of the estate or interest from the lien of the insured mortgage, or release any collateral security for the indebtedness, provided such act occurs prior to receipt by such insured of notice of any claim of title or interest adverse to the title to the estate or interest or the priority of the lien of the insured mortgage and does not result in any loss of priority of the lien of the insured mortgage. The Company shall be subrogated to and be entitled to all rights and remedies which such insured claimant would have had against any person or property in respect to such claim had this policy not been issued, and the Company is hereby authorized and empowered to sue, compromise or settle in its name or in the name of the insured to the full extent of the loss sustained by the Company. If requested by the Company, the insured shall execute any and all documents to evidence the within subrogation. If the payment does not cover the loss of such insured claimant, the Company shall be subrogated to such rights and remedies in the proportion which said payment bears to the amount of said loss, but such subrogation shall be in subordination to an insured mortgage. If loss should result from any act of such insured claimant, such act shall not void this policy, but the Company, in that event, shall as to such insured claimant be required to pay only that part of any losses insured against hereunder which shall exceed the amount, if any, lost to the Company by reason of the impairment of the right of subrogation.

11. Liability Limited to this Policy

This instrument together with all endorsements and other instruments, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company.

Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby, or any action asserting such claim, shall be restricted to the provisions and conditions and stipulations of this policy.

No amendment of or endorsement to this policy can be made except by writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

No payment shall be made without producing this policy for endorsement of such payment unless the policy be lost or destroyed, in which case proof of such loss or destruction shall be furnished to the satisfaction of the Company.

12. Notices, Where Sent

All notices required to be given the Company and any statement in writing required to be furnished the Company shall be addressed to it at P. O. Box 2029, Houston, Texas 77252, and identify this policy by its printed POLICY SERIAL NUMBER which appears on the bottom of the front of the first page of this policy.

13. THE CHARGE SPECIFIED IN SCHEDULE A IS THE ENTIRE CHARGE FOR TITLE SEARCH, TITLE EXAMINATION AND TITLE INSURANCE.