

AGENDA

TUSAYAN PLANNING AND ZONING COMMISSION MEETING

PURSUANT TO A.R.S. § 38-431.02 & §38-431.03

Thursday, March 9, 2017 at 1pm

TUSAYAN TOWN HALL BUILDING

845 Mustang Drive, Tusayan Arizona

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Tusayan Planning and Zoning Commission, the Tusayan Town Council, and to the general public that the commission will hold a meeting open to the public on Thursday, March 9, 2017 at the Tusayan Town Hall Building. The commission may change, in its discussion, the order in which any agenda items are discussed during the course of the meeting.

Persons with a disability may request a reasonable accommodation by contacting the Town Manager (928) 638-9909 as soon as possible.

As a reminder, if you are carrying a cell phone, electronic pager, computer, two-way radio, or other sound device, we ask that you silence it at this time to minimize disruption of today's meeting.

PLANNING AND ZONING COMMISSION AGENDA

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

2. ROLL CALL

**CHAIR ROBERT GOSSARD
VICE CHAIR JANET ROSENER**

**COMMISSIONER CLAYANN COOK
COMMISSIONER ANAVON HARRIS
COMMISSIONER BETH HEARNE**

3. CALL TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA

Members of the public may address the Commission on items not on the printed agenda. The Commission may not discuss, consider or act upon any matter raised during public comment. Comments will be limited to three minutes per person.

4. CEREMONIAL AND/OR INFORMATIONAL MATTERS

None

5. CONSENT AGENDA

Approval of the Minutes of the Meeting held on 9/06/16

6. ACTION ITEM

Consideration, discussion, and possible approval of Design Review Case No. 2017-02, an application for a proposed Starbucks store and sign (elevations, materials, and colors)

7. MOTION TO ADJOURN

CERTIFICATION OF POSTING OF NOTICE

The undersigned hereby certifies that a copy of the foregoing notice was duly posted at the General Store in Tusayan, Arizona on this _____ day of March, 2017 at _____ am pm in accordance with the statement filed by the Tusayan Town Council.

Signature of person posting the agenda

ITEM NO. 5

TUSAYAN PLANNING AND ZONING COMMISSION
PURSUANT TO A.R.S. 38-431.02 & 38-431.03
TUESDAY, September 6, 2016 at 6:00 pm
TUSAYAN TOWN HALL
845 Mustang Drive, Tusayan, Arizona

PLANNING AND ZONING COMMISSION SPECIAL MEETING SUMMARIZED MINUTES

1. CALL TO ORDER AND PLEDGE OF ALLEGIANCE

Chair Gossard called the meeting to order at 4:01 pm and the Pledge of Allegiance was recited.

2. ROLL CALL

Upon roll call, the following were present:

CHAIR ROBERT GOSSARD
VICE CHAIR JANET ROSENER – excused
COMMISSIONER CLAYANN COOK
COMMISSIONER ANAVON HARRIS
COMMISSIONER BETH HEARNE

Also present were:

Eric Duthie, Town Manager
Melissa Drake, Town Clerk

3. CALL TO THE PUBLIC FOR ITEMS NOT ON THE AGENDA

None

4. ACTION ITEMS

A. Consideration, discussion, and possible approval of Preliminary Plat for Ten X Ranch, Phase I, Section 29, Township 30 North, Range 03 East, Gila & Salt River Meridian, Coconino County, Arizona

Manager Duthie introduced the development project and gave a brief background. He noted that this is an historic moment since it starts the process of developing the first ever housing in Tusayan, independent of employers. He then introduced Stuart Spaulding, contracted Project Manager and Engineer. Mr. Spaulding gave a presentation to the Commission showing the property, the planned development, and sewer treatment plant.

The Commission discussed the project with Mr. Spaulding and Manager Duthie.

Manager Duthie stated that a public meeting was held in June and comments gathered there have been incorporated into the plan. He also stated that all requirements in the Subdivision Code have been met and staff recommends approval of this preliminary plat.

Commissioner Hearne made a motion to approve the Preliminary Plat for Ten X Ranch, Phase I, Section 29, Township 30 North, Range 03 East, Gila & Salt River Meridian, Coconino County, Arizona. Commissioner Cook seconded the motion and it passed on unanimous vote.

B. Consideration, discussion, and possible approval of Preliminary Plat for Kotzin Ranch, Section 14, Township 30 North, Range 02 East, Gila & Salt River Meridian, Coconino County, Arizona

Manager Duthie stated that this is Phase 1 of the Kotzin Ranch development. No movement is expected at his time due to issues with access with the National Forest Service. If approved, this plat will be in the system prior to a possible declaration of a new National Monument in the area. Stuart Spaulding, Town Project Manager and Engineer, presented the preliminary plat to the Commission.

The Commission discussed the project with Mr. Spaulding and Manager Duthie. Manager Duthie recommended approval.

Commissioner Cook made a motion to approve the Preliminary Plat for Kotzin Ranch, Section 14, Township 30 North, Range 02 East, Gila & Salt River Meridian, Coconino County, Arizona. Commissioner Harris seconded the motion and it passed on unanimous vote.

5. MOTION TO ADJOURN

Commissioner Cook made a motion to adjourn at 7:02 pm. Commissioner Hearne seconded the motion and it passed unanimously.

ATTEST:

Robert Gossard, Chair

Date

Melissa M. Drake, Town Clerk

CERTIFICATION

State of Arizona)
) ss.
Coconino County)

I, Melissa Drake, do hereby certify that I am the Town Clerk of the Town of Tusayan, County of Coconino, State of Arizona, and that the above minutes are a true and correct summary of the meeting of the Planning and Zoning Commission of the Town of Tusayan held on September 6, 2016. I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this 16th day of September, 2016

Melissa M. Drake, Town Clerk

ITEM NO. 6

TOWN OF TUSAYAN STAFF REPORT

Date: February 28, 2017
To: Planning and Zoning Commission
From: Town Planner
Subject: Design Review No. 2017-01; a request to approve a new Starbucks facility.

Recommendation

Approve Design Review No. 2017-01; an application for approval of the elevations, materials, and colors for a proposed Starbucks store and sign.

Project Data:

Contact Person: Richard AQ. Reece, AIA
Address: 1254 W. University Avenue #100, Flagstaff, AZ, 86001
Phone: (927) 779-4340

Client: Mike Keller c/o Delaware North
Address: One Mather Business Center, Grand Canyon, AZ 86023
Phone: (928) 266-2441

Owner of Record: Foster Bess
Address: P. O. Box 3355, Grand Canyon, AZ 86023

Existing Land Use: General Store plus vacant area for Starbuck location

Parcel Size: 0.68 acres.

Assessor's Parcel No. 502-17-002M

Project Analysis: Starbucks is proposing to construct a facility adjacent to the General Store on the same parcel located at 577 Arizona Highway 64 in Tusayan. Included for Commission review are building elevations, materials, and colors.

The building has been designed to be compatible with the proposed revisions to the General Store, as can be seen on Exhibit A5.1c. Also included on the building elevation is the proposed Starbucks Coffee sign.

The proposed project is to be consistent with the following aspects of Section 16 (Signs) and Section 17 (Lighting) of the Tusayan Zoning Ordinance as follows:

1. The sign is less than the 100 sq. ft. area as specified in Section 16.7 (b).

2. Section 17.2 (A) states: The provisions of this zoning code are not intended to prevent the use of any design material or method of installation or operation not specifically prescribed by this code; provided, any such alternate has been approved by the Town Manager.
3. Section 17.6 (B) 1 states: Illumination of copy and background; colors. The sign face of an outdoor internally illuminated advertising sign must be composed of illuminated text and symbols against an opaque background. The colors of these elements are not restricted.
4. Architectural styles shall be respectful and compatible with the unique location of this community as a gateway to the south rim of the Grand Canyon.
5. External building materials should be predominantly those that fit the natural landscape.
6. Earthtone colors that blend with local soils and vegetation are highly desirable. Various shades of browns and tans, subtle greens, as well as sandstone and limestone are encouraged. Color schemes should be coordinated to complement the architectural style and mass of the buildings.

Attachments

Design Review Application

Site Plan (Exhibit A1.0)

Building Elevations (Exhibits A5.0c and A5.1c)

TOWN OF TUSAYAN

845 Mustang Street

P.O. Box 709

Tusayan, AZ 86023

(480) 787-5523

APPLICATION FOR DESIGN REVIEW

Application No.: _____ Date Received: _____ Fee: \$ _____

Receipt No.: _____ Received by: _____

In order to expedite processing of this application for Design Review, and to eliminate unnecessary delays to the applicant, the Zoning Administrator will not accept this application unless all applicable items have been checked off, and this application form has been signed and dated. In addition, all information is to be submitted in a neat and legible format, and all drawings drawn to scale.

In the event errors or omissions are discovered, the application will be deemed incomplete, and will be returned to the applicant for revision.

APPLICATION FILED FOR:

General Plan Amendment	<input type="checkbox"/>
Re-zone/ Zoning Change	<input type="checkbox"/>
Site Plan Review/Pre-Application Meeting	<input type="checkbox"/>

Preliminary Plan	<input type="checkbox"/>
Final Plat	<input type="checkbox"/>
Design Review	<input checked="" type="checkbox"/>

APPLICATION IS HEREBY MADE TO THE ZONING ADMINISTRATOR THAT:

Property Owner: (Attach sheet if more than one property owner.)

Name: Mike Keller c/o Delaware North

Phone No.: 9282662441

Address: One Mather Business Ctr

Cell No.: _____

City: Grand Canyon

State: AZ Zip: 86023

Applicant: (Attach sheet if more than one applicant.)

Name: Richard A. Reece, AIA

Phone No.: 928-779-4340

Address: 1254 W. University Ave #100

Cell No.: _____

City: Flagstaff

State: AZ Zip: 86001

BE GRANTED APPROVAL OF DESIGN REVIEW FOR THE FOLLOWING:
A new Starbucks facility

ON PROPERTY LOCATED AT: 577 Arizona 64, Tusayan AZ

Assessor's Parcel No.: 502-17-002M

Legal Description of Property: _____

Existing Use of the Subject Property: General Store (commercial)

Existing General Plan Land Use Designation: Highway Commercial

Existing Zoning of Subject Property: Commercial General (CG)

SUBMITTAL CHECKLIST:

- \$400 non-refundable filing fee.
The purpose of this fee is to pay for legal noticing and application processing.
- Pre-application meeting with a staff planner of the Town of Tusayan.
Date met with staff for pre-application: N/A
- A *typewritten* list of names and addresses of all property owners within 300 feet of subject property.

NOTE TO APPLICANT: Please check each of the following items when completed and made a part of this application.

- Copy of Deed of Record.
- Four (4) copies of a site plan (24" x 36"), including eight (8) reduced copies (8 1/2" x 11") indicating the following:
 - Location and boundaries of the property, dimensions of all lot lines, names and location of all bordering streets and alleys, size and dimensions of all on-site buildings (existing and proposed), design and layout of vehicular access, on-site parking and loading areas, location of trash bins, location of all free-standing signs (existing and proposed), location of all walls or fences, direction of existing and proposed drainage, scale, north arrow and date.
 - Identify landscape areas (existing and proposed), itemize size and type of plants and identify any trees that are to be removed, and depict all proposed inorganic landscaping.
 - Total land area in square feet or acreage.
 - Parking and paving areas (square footage and percent of lot coverage) including a parking layout.
 - Open Space Area (square footage and percent of lot coverage).
 - Recreational Areas (square footage and percent of lot coverage).
 - Architectural drawings including floor plans in sufficient detail to permit computation of yard and parking requirements and elevations of all proposed structure or additions as they will appear upon completion. All exterior surfacing materials and colors shall be specified. Color renderings or paint and material samples are required.
 - Lighting plan including location of all outdoor lighting fixtures and description of each (i.e. lamp type, lumen output, shielding).
 - Grading and drainage plans if applicable
 - Any additional information determined to be necessary by the Zoning Administrator.

PLANNING AND ZONING COMMISSION AND/OR TOWN COUNCIL REVIEW OF EACH DESIGN REVIEW APPLICATION WILL INVOLVE CONSIDERATION OF THE FOLLOWING FACTORS:

1. Compliance with all applicable requirements of the Town's General Plan, Zoning Code and Development Standards.
2. Overall site design and architectural quality as it relates to the intent of the Zoning Ordinance and to the general nature of the area in which the development is to be located.

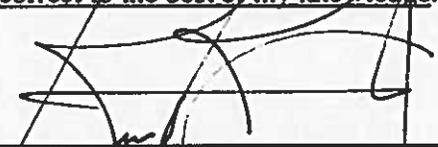
The Planning and Zoning Commission and/or Town Council will consider all aspects of the Design Review application before making a determination to approve, conditionally approve, or deny the request. The ruling of the Planning and Zoning Commission and/or Town Council will be final unless appealed to the Board of Adjustment in accordance with the requirements of the Tusayan Zoning Code.

PUBLIC HEARINGS

The Planning and Zoning Commission meets regularly. Applicants will be notified by phone, mail or email of meeting dates, times and places. An incomplete application may delay the scheduling of a hearing.

APPLICANT'S SIGNATURE AND DATE INDICATES COMPLETION AND INCORPORATION OF THE ABOVE-MENTIONED ITEMS INTO THIS APPLICATION FOR DESIGN REVIEW.

I certify that I am the record owner or authorized agent, and that the information filed is true and correct to the best of my knowledge.



Applicant's Signature

12-21-2016

Date



Owner's Signature

12/21/16

Date

THESE PLANS WERE PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND I AM A LICENSED PROFESSIONAL ARCHITECT IN THE STATE OF ARIZONA. I AM NOT PROVIDING CONTRACT ADMINISTRATION SERVICES FOR THIS PROJECT.

TUSAYAN STARBUCKS
 DELAWARE NORTH
 TUSAYAN, ARIZONA 85745



BRETT and HANNAH
ARCHITECTS

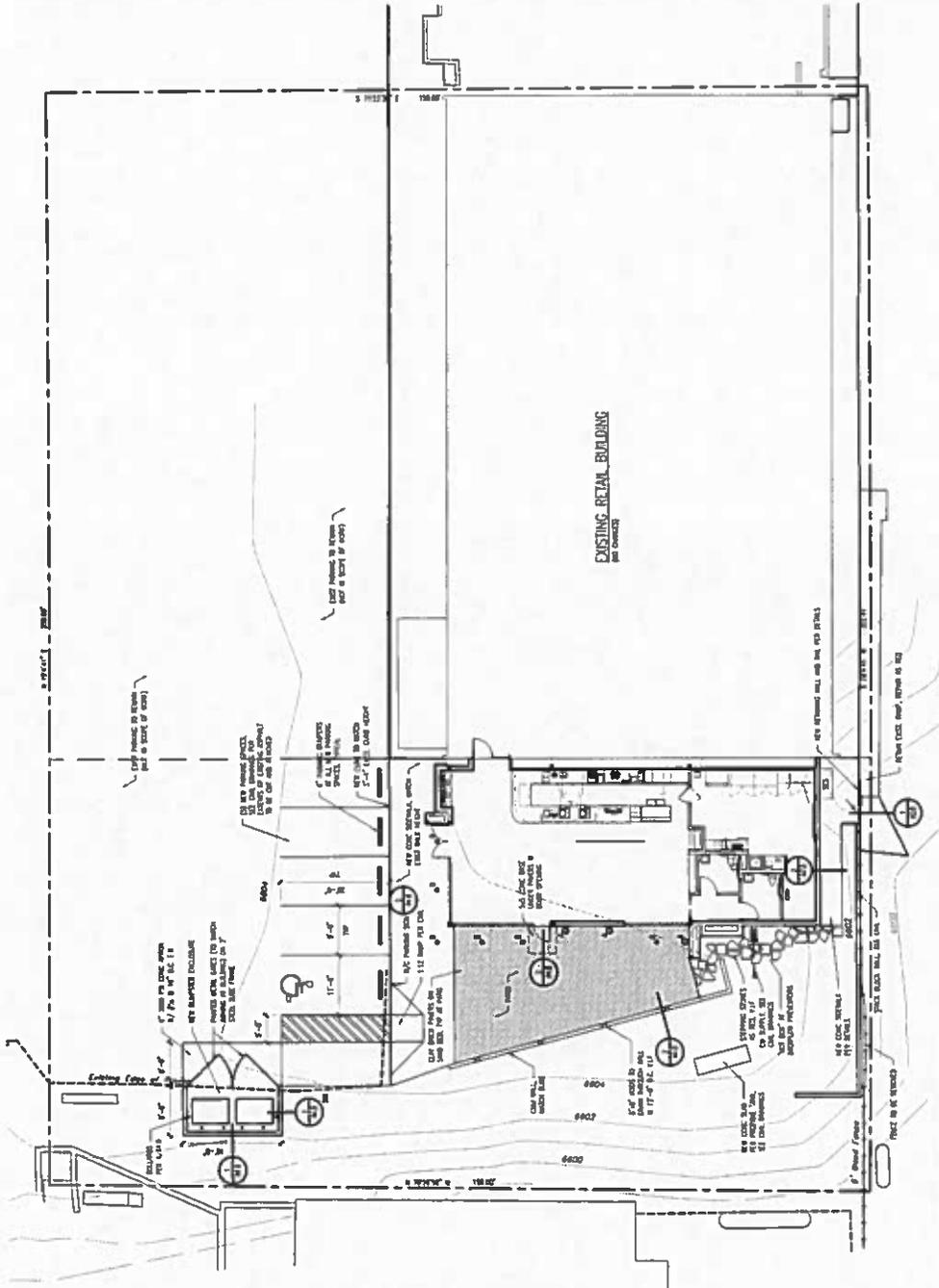
4111 E. Avenue One
 Phoenix, Arizona 85018
 Phone: (602) 971-4111
 Fax: (602) 971-7146

1234 W. University Ave #100
 Flagstaff, Arizona 86001
 Phone: (908) 779-1000
 Fax: (908) 779-1001

REVISIONS
 1. 10/15/17

TITLE: SITE PLAN
SCALE: 1/8" = 1'-0"
DATE: 10/15/17
JOB NO.: 17017

A1.0

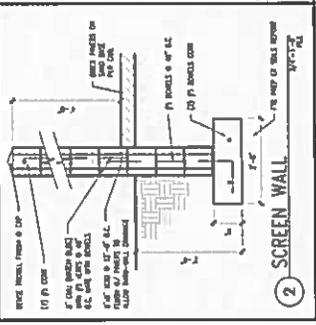
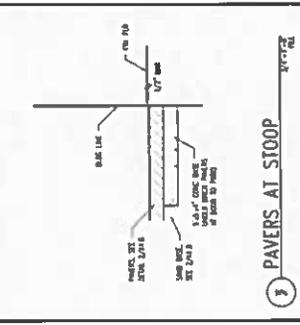
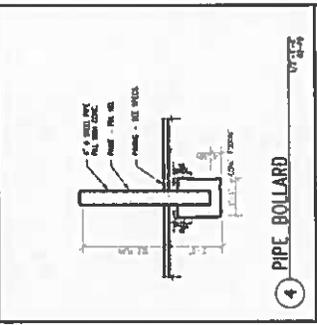
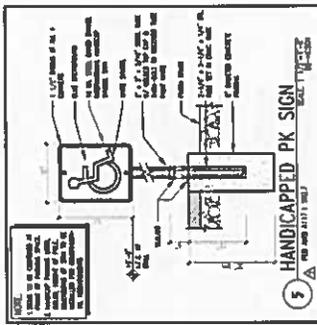


SCALE: 1/8" = 1'-0"

LOWEN CALCULATIONS:

FRONT SETBACK	REAR SETBACK	SIDE SETBACK	MAXIMUM COVER	MINIMUM COVER	MINIMUM OPEN SPACE
5'	5'	5'	25%	10%	100 SQ. FT.

MINIMUM OPEN SPACE PER SIDE: 100 SQ. FT. (MINIMUM)
 MINIMUM OPEN SPACE PER SIDE: 100 SQ. FT. (MINIMUM)
 MINIMUM OPEN SPACE PER SIDE: 100 SQ. FT. (MINIMUM)





PHOENIX:

4343 E. AVALON DRIVE
PHOENIX, ARIZONA 85018
PHONE: 602-957-4343

FLAGSTAFF:

1254 W. UNIVERSITY AVE, #100
FLAGSTAFF, ARIZONA 86001
PHONE: 928-779-4340

**STARBUCKS TUSAYAN – DESIGN REVIEW
PARCELS AND OWNERS WITHIN 300'**

*541 STATE RT 64
502-17-002N*

MEEKER SAGE PARTNERS, LLC
20343 N HAYDEN Rd #105-192
SCOTTSDALE, AZ 85255

*501 STATE Rt 64/469 STATE Rt 64
502-17-002R/502-17-002P*

BOOMERANG LLC
12515 WILLOWS Rd NE #200
KIRKLAND, WA 98034

*530 STATE RT 64
502-17-012D*

HALVORSON & SEIBOLD
4155 HARRISON BLVD #201
OGDEN, UT 84403

*605 STATE RT 64/549 STATE RT 64
502-17-002K/502-17-001P*

LOGAN-LUCA LLC
12515 WILLOWS Rd NE #200
KIRKLAND, WA 98034

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When recorded mail to:



Cathey L. Joseph
HEBERT SCHENK P.C.
1440 E. Missouri Avenue, Suite 125
Phoenix, AZ 85014

51001790

SPECIAL WARRANTY DEED

For good and valuable consideration, receipt of which is hereby acknowledged, COOK PROPERTIES, L.L.C., an Arizona limited liability company ("Grantor") does hereby grant and convey to LOGAN-LUCA LLC, an Arizona limited liability company, ("Grantee") that certain real property situated in Coconino County, Arizona which is described on Exhibit "A" attached hereto and made a part hereof, together with all rights and privileges appurtenant thereto, subject only to those Permitted Encumbrances identified on Exhibit "B" attached hereto and made a part hereof.

Grantor does hereby bind itself and its successors to warrant and defend the title against the acts of the Grantor and none other.

Dated this 2ND day of April, 2003.

GRANTOR:

COOK PROPERTIES, L.L.C.,
an Arizona limited liability company

Wayne Cook

By: Wayne Cook

Its: Manager

EXEMPT PURSUANT TO A.R.S. §11-1134 (A)(5).

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STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged before me this 1st of April, 2003, by Wayne Cook, as Manager of COOK PROPERTIES, L.L.C., an Arizona limited liability company.

Kimberly A. Miller
Notary Public

My Commission Expires:

Jan 26, 2006
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Official



EXHIBIT A

Legal Description

(Parcel 1P and 2K)

PARCEL 1:

A TRACT OF LAND IN HOMESTEAD ENTRY SURVEY NO. 401, IN SECTION 24, TOWNSHIP 30 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT FOR REFERENCE, SAID POINT BEING CORNER NO. 5 OF SAID H.E.S. 401.

THENCE SOUTH 12 DEGREES 53 MINUTES 40 SECONDS WEST (RECORD), SOUTH 13 DEGREES 47 MINUTES 33 SECONDS WEST (MEASURED), A DISTANCE OF 525.66 FEET (RECORD AND MEASURED) ALONG THE EASTERLY BOUNDARY LINE OF H.E.S. 401, BETWEEN CORNER NO. 5 AND CORNER NO. 6 TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EASTERLY BOUNDARY LINE, SOUTH 13 DEGREES 47 MINUTES 33 SECONDS WEST, A DISTANCE OF 623.40 FEET; THENCE NORTH 76 DEGREES 12 MINUTES 27 SECONDS WEST, A DISTANCE OF 157.00 FEET;

THENCE NORTH 65 DEGREES 08 MINUTES 22 SECONDS WEST, A DISTANCE OF 455.81 FEET TO A POINT ON A CONCAVE CURVE TO THE RIGHT;

THENCE NORTHERLY ALONG A CONCAVE CURVE TO THE RIGHT BEING PARALLEL WITH AND 150.00 FEET EAST OF THE EASTERLY 100 FOOT RIGHT-OF-WAY LINE OF STATE HIGHWAY 64, HAVING A RADIUS OF 12,250 FEET AND THROUGH AN ANGLE OF 02 DEGREES 37 MINUTES 16 SECONDS, A DISTANCE OF 560.40 FEET;

THENCE SOUTH 73 DEGREES 53 MINUTES 49 SECONDS EAST ALONG A NON-RADIAL LINE, A DISTANCE OF 558.29 FEET TO THE TRUE POINT OF BEGINNING.

(PARCEL 4)

A TRACT OF LAND IN HOMESTEAD ENTRY SURVEY NO. 401, IN SECTION 24, TOWNSHIP 30 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT FOR REFERENCE, SAID POINT BEING CORNER NO. 5 OF SAID H.E.S. 401.

THENCE SOUTH 12 DEGREES 53 MINUTES 40 SECONDS WEST (RECORD), SOUTH 13 DEGREES 47 MINUTES 33 SECONDS WEST (MEASURED), A DISTANCE OF 525.66 FEET (RECORD AND MEASURED) ALONG THE EASTERLY BOUNDARY LINE OF H.E.S. 401, BETWEEN CORNER NO. 5 AND CORNER NO. 6;

THENCE CONTINUING ALONG SAID EASTERLY BOUNDARY LINE, SOUTH 13 DEGREES 47 MINUTES 33 SECONDS WEST, A DISTANCE OF 623.40 FEET;



THENCE NORTH 76 DEGREES 12 MINUTES 27 SECONDS WEST, A DISTANCE OF 157.00 FEET TO THE TRUE POINT OF BEGINNING:

THENCE SOUTH 13 DEGREES 47 MINUTES 33 SECONDS WEST, A DISTANCE OF 330.00 FEET;

THENCE SOUTH 76 DEGREES 12 MINUTES 27 SECONDS EAST, A DISTANCE OF 157.00 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF H.E.S. 401, BETWEEN CORNER NO. 5 AND CORNER NO. 6;

THENCE ALONG SAID EASTERLY BOUNDARY LINE, SOUTH 13 DEGREES 47 MINUTES 33 SECONDS WEST, A DISTANCE OF 95.00 FEET TO A POINT, SAID POINT BEING CORNER NO. 6 OF SAID H.E.S. 401;

THENCE SOUTH 47 DEGREES 03 MINUTES 40 SECONDS WEST, A DISTANCE OF 259.74 FEET;

THENCE NORTH 71 DEGREES 15 MINUTES 28 SECONDS WEST, A DISTANCE OF 499.97 FEET;

THENCE NORTH 68 DEGREES 43 MINUTES 00 SECONDS WEST, A DISTANCE OF 50.00 FEET;

THENCE ALONG A LINE THAT IS PARALLEL TO AND 150.00 FEET EAST OF THE EASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 64, NORTH 21 DEGREES 17 MINUTES 00 SECONDS EAST, A DISTANCE OF 386.07 FEET TO A POINT ON A CURVE TO THE LEFT;

THENCE ALONG SAID CURVE BEING PARALLEL WITH AND 150.00 FEET EAST OF THE EASTERLY 100 FOOT RIGHT-OF-WAY LINE OF STATE HIGHWAY 64, HAVING A RADIUS 12,250 FEET AND THROUGH AN ANGLE OF 01 DEGREES 25 MINUTES 14 SECONDS, A DISTANCE OF 303.72 FEET;

THENCE SOUTH 65 DEGREES 08 MINUTES 22 SECONDS EAST, A DISTANCE OF 455.81 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2:

A TRACT OF LAND IN HOMESTEAD ENTRY SURVEY NO: 401, IN SECTION 24, TOWNSHIP 30 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT FOR REFERENCE, SAID POINT BEING CORNER NO. 5 OF SAID H.E.S. 401.

THENCE SOUTH 12 DEGREES 53 MINUTES 40 SECONDS WEST (RECORD), SOUTH 13 DEGREES 47 MINUTES 33 SECONDS WEST (MEASURED), A DISTANCE OF 475.70 FEET (RECORD AND MEASURED) ALONG THE EASTERLY BOUNDARY LINE OF H.E.S. 401 BETWEEN CORNER NO. 5 AND CORNER NO. 6 TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID EASTERLY BOUNDARY LINE, SOUTH 13 DEGREES 47 MINUTES 33 SECONDS WEST, A DISTANCE OF 49.96 FEET; THENCE ALONG A NON-RADIAL LINE NORTH 73 DEGREES 53 MINUTES 49 SECONDS WEST, A DISTANCE OF 558.29 FEET OF A POINT ON A CONCAVE CURVE TO THE RIGHT;

THENCE NORTHERLY ALONG A CONCAVE CURVE TO THE RIGHT BEING PARALLEL

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WITH AND 150.00 FEET EAST OF THE EASTERLY 100 FOOT RIGHT-OF-WAY LINE OF STATE HIGHWAY 64, HAVING A RADIUS OF 12,250 FEET AND THROUGH AN ANGLE OF 02 DEGREES 37 MINUTES 16 SECONDS, A DISTANCE OF 49.93 FEET; THENCE SOUTH 73 DEGREES 53 MINUTES 49 SECONDS EAST ALONG A NON-RADIAL LINE, A DISTANCE OF 555.39 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 3:

A TRACT OF LAND IN HOMESTEAD ENTRY SURVEY NO. 401, IN SECTION 24, TOWNSHIP 30 NORTH, RANGE 2 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, COCONINO COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT FOR REFERENCE, SAID POINT BEING CORNER NO. 5 OF SAID H.E.S. 401.

THENCE SOUTH 12 DEGREES 53 MINUTES 40 SECONDS WEST (RECORD), SOUTH 13 DEGREES 47 MINUTES 33 SECONDS WEST (MEASURED), A DISTANCE OF 475.70 FEET (RECORD AND MEASURED) ALONG THE EASTERLY BOUNDARY LINE OF H.E.S. 401 BETWEEN CORNER NO. 5 AND CORNER NO. 6;

THENCE ALONG A NON-RADIAL LINE NORTH 73 DEGREES 53 MINUTES 49 SECONDS WEST, A DISTANCE OF 555.39 FEET TO A POINT ON A CONCAVE CURVE TO THE LEFT, SAID POINT BEING THE TRUE POINT OF BEGINNING;

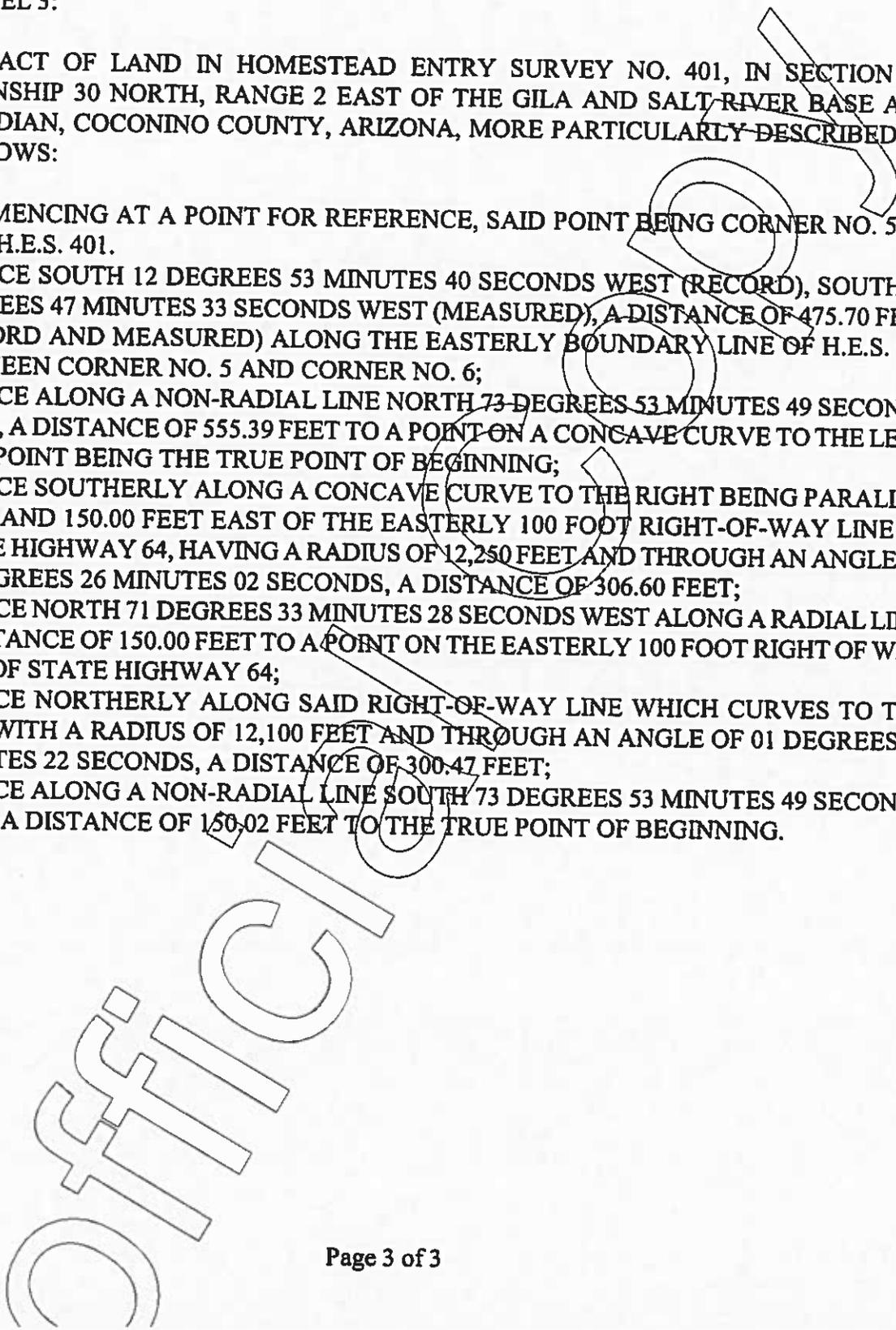
THENCE SOUTHERLY ALONG A CONCAVE CURVE TO THE RIGHT BEING PARALLEL WITH AND 150.00 FEET EAST OF THE EASTERLY 100 FOOT RIGHT-OF-WAY LINE OF STATE HIGHWAY 64, HAVING A RADIUS OF 12,250 FEET AND THROUGH AN ANGLE OF 01 DEGREES 26 MINUTES 02 SECONDS, A DISTANCE OF 306.60 FEET;

THENCE NORTH 71 DEGREES 33 MINUTES 28 SECONDS WEST ALONG A RADIAL LINE, A DISTANCE OF 150.00 FEET TO A POINT ON THE EASTERLY 100 FOOT RIGHT OF WAY LINE OF STATE HIGHWAY 64;

THENCE NORTHERLY ALONG SAID RIGHT-OF-WAY LINE WHICH CURVES TO THE LEFT WITH A RADIUS OF 12,100 FEET AND THROUGH AN ANGLE OF 01 DEGREES 25 MINUTES 22 SECONDS, A DISTANCE OF 300.47 FEET;

THENCE ALONG A NON-RADIAL LINE SOUTH 73 DEGREES 53 MINUTES 49 SECONDS EAST, A DISTANCE OF 150.02 FEET TO THE TRUE POINT OF BEGINNING.

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D



**EXHIBIT B
TO
SPECIAL WARRANTY DEED**

PERMITTED EXCEPTIONS

(See Following Page)

Official Copy

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D



COMMITMENT FOR TITLE INSURANCE

SCHEDULE B

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company. Rights are reserved to include additional exceptions and/or requirements with respect to any matters arising subsequent to the effective date hereof and prior to the recordation date of the transaction to be insured herein, but any such matters shall be dealt with prior to recordation hereunder.

1. **Exceptions and Exclusions** from coverage which will appear in the policy or policies to be issued as set forth in Exhibit A attached.

2. Any action by Coconino County Assessors and/or Treasurer altering the current or prior tax assessment subsequent to the date of this report.

3. **Property taxes**, including any personal property taxes and any assessments collected with taxes, for the second half 2002.

4. **Any obligations** imposed upon said land by its inclusion within the following named district.

District: TUSAYAN SPECIAL LIGHTING DISTRICT AND SOUTH GRAND CANYON DISTRICT

5. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: telephone lines
Recorded: Book 46, Page 174, of Deeds
Affects: as set forth therein

6. **Easement(s)** for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: electric lines
Recorded: Docket 88, Page 399, of Official Records
Affects: as set forth therein

7. All matters disclosed by Survey recorded in Book 1 of Land Surveys, Page 147.
-----Intentionally Deleted



8. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: stock tank
Recorded: Docket 156, Page 430
Affects: as set forth therein

9. Matters concerning water as set forth in instrument recorded in Docket 156, page 430 and Docket 156, page 435.

10. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: ingress and egress
Recorded: Docket 300, Page 545
Affects: as set forth therein

Docket 300, page 547 and Docket 341, page 204.

11. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: electric lines
Recorded: Docket 637, Page 94 and 96
Affects: as set forth therein

12. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: electric lines
Recorded: Docket 637, Page 90
Affects: as set forth therein

13. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: electric lines
Recorded: Docket 650, Page 247 and 249
Affects: as set forth therein

14. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: sewer lines
Recorded: Docket 917, Page 106, 110, 114, 123, 127, 130 and 132
Affects: as set forth therein



- 15. Improvement Lien as recorded in Docket 1324, page 101.
- 16. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: electric lines
Recorded: Docket 1365, Page 692
Affects: as set forth therein

- 17. Terms and Conditions as set forth in unrecorded lease as recorded in Docket 1808, page 935.
- 18. Notice of Lis Pendens as recorded in Docket 1823, page 159 and thereafter Judgment filed in the Superior Court of Arizona as recorded in Docket 2126, page 979.
- 19. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: sewer lines
Recorded: Docket 2118, Page 887 and 894
Affects: as set forth therein

- 20. Arizona Land Survey Corner recorded in Docket 2154, page 878.
- 21. All matters disclosed by Survey recorded in Book 15 of Land Surveys, Page 43.
- 22. Any conflict between subject property and property described as parcel 2 as recorded in Docket 1371, page 9.
- 23. Terms and Conditions as set forth in Memorandum of Loan Agreement as recorded in Docket 1809, page 1.
- 24. Assignment of Rents and Leases as recorded in Docket 1808, page 935.
- 25. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: vehicular and pedestrian
Recorded: Docket 1808, Page 902
Affects: as set forth therein



26. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: sewer lines
Recorded: Instrument No. 3037952
Affects: as set forth therein

27. Terms and Conditions as set forth in unrecorded lease as recorded in Docket 1808, page 989.

28. Assignment of Rents and Leases as recorded in Docket 1808, page 977.

29. Terms and Conditions as set forth in unrecorded lease as recorded in Docket 1808, page 935.

30. Terms and Conditions as set forth in unrecorded lease as disclosed by Assignment and Assumption of Lease Rights recorded in Instrument No. 3074671 from Fain Properties Limited Partnership, an Arizona limited partnership as Assignor and Two Cooks, L.L.C., an Arizona limited liability company as Assignee and 3074672 from Fain Properties Limited Partnership, an Arizona limited partnership as Assignor and Two Cooks, L.L.C., an Arizona limited liability company as Assignee.

NOTE: Leases are subject to current pending court action in US Bankruptcy Court Case Nos. 01-04498-ECF-CGC and 01-07273-ECF-CGC.

31. Easement(s) for the purpose(s) shown below and rights incidental thereto as granted in a document.

Purpose: sewer lines
Recorded: Instrument No. 3110791 and 3110792
Affects: as set forth therein

32. Water rights, claims or title to water, whether or not disclosed by the public records.

33. Any rights of the parties in possession of a portion of, or all of, said land, which rights are not disclosed by the public record.

34. Any facts, rights, interests, or claims which may exist or arise by reason of the following facts disclosed by survey, Job No. 103026, dated February 19, 2003 prepared by Urban Visser.



Parcel No. 1:

- a) a 6 foot chain link fence crosses back and forth across portions of the West line of said parcel.
- b) a wooden ramp encroaches across the West line of said parcel from the market parcel adjacent thereto.
- c) a portion of the building and concrete walkway on the adjoining restaurant parcel encroaches across the West line of said parcel.
- d) a propane tank, appurtenant to a mobile home located on said land, lies across the North line of said parcel.
- e) a mobile home, and appurtenant utility facilities, encroaches across the North line of said parcel from adjoining property.
- f) a 4 foot wire post fence encroaches on and off the East line of said parcel.

Parcel No. 2:

- a) encroachments of three separate 18" wide rock walls, on and off the property, along the North line of said parcel.
- b) a chain line fence of unknown ownership near the Northeast corner and a 4 foot wire and post fence lies outside the East boundary of said parcel.
- c) a mobile home, and appurtenant utility facilities, encroaches across the South line of said parcel.
- d) a propane tank appurtenant to a mobile home located on property adjacent to the South encroaches on said parcel.
- e) a barbed wire and chain line fence encroaches onto said land from adjoining property to the South.
- f) portions of Coyote Lane, as presently located, encroach across the North line of said parcel onto property adjacent to the North.

Parcel No. 3:

- a) portions of the asphalt parking areas lie outside the boundaries of said land, along the West line.
- b) an 18 inch wide rock wall encroaches across portions of the North line of said land.
- c) a 6 foot chain link fence crosses back and forth across portions of the East line of said parcel.
- d) a portion of the building and concrete walkway on the restaurant parcel encroaches across the East line of South parcel.
- e) a propane tank straddles the boundary line between the leased restaurant parcel and the remainder of the land.

Parcel No. 4:

- a) a 6 foot board fence on and off the West line of said parcel.
- b) a board and chain link fence on and off the South line of said parcel.

END OF EXCEPTIONS



1 William Novotny (#004239)
2 Mariscal, Weeks, McIntyre
3 & Friedlander, P.A.
4 2901 North Central Avenue, Suite 200
5 Phoenix, Arizona 85012-2705
6 Phone: (602) 285-5000
7 Fax: (602) 285-5100



8 Attorneys for Co-Personal Representatives

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF COCONINO**

11 In the Matter of the Estate of:)

12 LELAND E. THURSTON,)

13 Deceased,)

14 NO. PB 9073

15 **DEED OF DISTRIBUTION**

16 The undersigned Co-Personal Representatives, in order to distribute the following described real property
17 held by the Estate of Leland E. Thurston, Deceased (this "Estate"), hereby convey to Bess Foster (f/k/a
18 Bess Thurston), a married woman dealing with her sole and separate property, to John Thurston, a married
19 man dealing with his sole and separate property, and to Clarinda Vail (f/k/a Clarinda Thurston), a married
20 woman dealing with her sole and separate property, each as to an undivided one-third (1/3) interest as
21 tenant-in-common, in and to the real property situated in Coconino County, Arizona and more particularly
22 described on Exhibit A attached hereto and incorporated herein by this reference (Parcel No. 2: The
23 Residence Parcel; and Parcel No. 3: The Babbitt Store Parcel).

24 The addresses for the Co-Personal Representatives of this Estate are as follows:

25 Bess Foster
26 P.O. Box 3025
27 Grand Canyon, Arizona 86023

28 John Elliott Thurston
P.O. Box 3355
Grand Canyon, Arizona 86023

NO AFFIDAVIT OF PROPERTY VALUE IS REQUIRED PURSUANT TO A.R.S. § 11-1136(B)(3), (8) and (9).

DATED effective the 31st day of January, 2005.

Bess Foster (f/k/a Bess Thurston)
Co-Personal Representative of this Estate
P.O. Box 3025
Grand Canyon, Arizona 86023

John E. Thurston
John Elliott Thurston
Co-Personal Representative of this Estate
P.O. Box 3355
Grand Canyon, Arizona 86023

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STATE OF ARIZONA)
County of Coconino)

The foregoing instrument was acknowledged before me this 4th day of ~~February~~ April, 2005 by Bess Foster, as Co-Personal Representative of the Estate of Leland E. Thurston, Deceased, on behalf of the Estate, for the purposes set forth herein.

Julie Ann Forsythe
Notary Public

My Commission Expires:
 Notary Public State of Arizona
Julie Ann Forsythe
Expires April 30, 2008

STATE OF ARIZONA)
County of Coconino)

The foregoing instrument was acknowledged before me this _____ day of February, 2005 by John Elliott Thurston, as Co-Personal Representative of the Estate of Leland E. Thurston, Deceased, on behalf of the Estate, for the purposes set forth herein.

Julie Ann Forsythe
Notary Public

My Commission expires:

 Notary Public State of Arizona
Coconino County
Julie Ann Forsythe
Expires April 30, 2008



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**PARCEL NO. 2: THE RESIDENCE PARCEL
PARCEL NO. 3: THE BABBITT STORE PARCEL**

THE RESIDENCE PARCEL:

That part of HOMESTEAD ENTRY SURVEY NO. 401, as shown on Plat on file in the Bureau of Land Management, as granted by Patent recorded in Book 96 of Deeds, page 174, situate in Sections 23 and 24 of Township 30 North, Range 2 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, described as follows:

COMMENCING at Corner No. 3 of HES 401;
thence South 74° 18' West along the line between corners 3 and 2 HES 401, a distance of 250 feet;
thence South 15° 42' East 210 feet;
thence South 68° 43' East 50 feet to the TRUE POINT OF BEGINNING;
thence continuing South 68° 43' East 200 feet, to a point on the Northwesternly line of the American Legion Post;
thence South 21° 17' West partly along said Northwesternly line, 400 feet;
thence North 68° 43' West 200 feet;
thence North 21° 17' East 400 feet to the TRUE POINT OF BEGINNING.

THE BABBITT STORE PARCEL:

A portion of HOMESTEAD ENTRY SURVEY NO. 401 situate in Section 24, Township 30 North, Range 2 East of the Gila and Salt River Base and Meridian, Coconino County, Arizona, described as follows:

COMMENCING at a field rock set concrete and marked as being Corner No. 6 of HES No. 401;
thence South 47° 02" West, a distance of 1874.9 feet to the intersection with the Easterly right of way line of State Highway 64;
thence North 21° 12" East along said right of way line, a distance of 1806.16 feet to a concrete monument;
thence Northerly along the Easterly right of way line of said State Highway 64, a distance of 300 feet to the TRUE POINT OF BEGINNING;
thence Northerly along said Easterly right of way line of State Highway 64, a distance of 300 feet to a point;
thence Easterly at right angles to the said Easterly right of way line of State Highway 64, a distance of 150 feet to a point;
thence Southerly along a line parallel to and 150 feet easterly from the said Easterly right of way line of State Highway 64, a distance of 300 feet more or less to a point lying South 70° 13'15" East, 150 feet from the true Point of Beginning;
thence Westerly 150 feet to the TRUE POINT OF BEGINNING.

EXCEPT the Southernmost 100 feet of the above described property.

**EXHIBIT A TO
DEED OF DISTRIBUTION**

