

REQUESTED BY
FIRST AMERICAN TITLE CO.

IN OFFICIAL RECORDS OF
DOUGLAS CO., NEVADA

2004 OCT 14 PM 3:56

WERNER CHRISTEN
RECORDER

24⁵⁰ PAID *KY* DEPUTY

APN. 1920-06-602-015

LEHMAN BROTHERS BANK, FSB,
as "Lender"

and

RUBENSTEIN REAL ESTATE CO., L.C.,
as "Landlord"

BEST BUY STORES, L.P.,
as "Tenant"

**SUBORDINATION, NON-DISTURBANCE AND
ATTORNMEN T AGREEMENT**

Dated: *August 31*, 2004

Carson Valley Plaza Shopping Center,
Carson City, Nevada

UPON RECORDATION
RETURN TO:

Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, NY 10038-4982
Attention: Karen Cam

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the 31st day of August, 2004 by and between **LEHMAN BROTHERS BANK, FSB**, a federal stock savings bank, having an address at 399 Park Avenue, 8th Floor, New York, New York 10022 ("Lender"), **BEST BUY STORES, L.P.**, a Delaware limited partnership, having an address at 7601 Penn Avenue South, Richfield, Minnesota 55423, Attention: Legal Department - Real Estate ("Tenant"), and **RUBENSTEIN REAL ESTATE CO., L.C.**, a Kansas limited liability company, having an address at 4350 Shawnee Mission Parkway, Suite 159, Shawnee Mission, Kansas 66215 ("Landlord").

RECITALS:

A. Lender is the present owner and holder of a certain mortgage, deed of trust, deed to secure debt or similar security agreement dated August 31, 2004, given by Landlord to Lender (the "Security Instrument") which encumbers the fee estate of Landlord in certain premises described in Exhibit A attached hereto (the "Property") and which secures the payment of certain indebtedness owed by Landlord to Lender evidenced by a certain promissory note, dated August 31, 2004, given by Landlord to Lender (the "Note"); and

B. Tenant is the holder of a leasehold estate in a portion of the Property pursuant to the provisions of a certain lease, described as follows (collectively, the "Lease"): (i) a Lease dated November 1, 2002, (ii) a Letter Agreement dated November 1, 2002, (iii) a First Amendment to Lease dated November 26, 2002, (iv) a Second Amendment to Lease dated September 22, 2003, (v) a Commencement of Lease Term Agreement dated November 3, 2003, and (iv) a Third Amendment to Lease dated June 7, 2004; and

C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. Subordination. Tenant agrees that the Lease, as the same may hereafter be modified, amended or extended, and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the Security Instrument and the lien thereof, including without

limitation all renewals, increases, modifications, consolidations and extensions thereof.

2. Non-Disturbance. So long as Tenant is not in default under the Lease beyond any applicable notice and cure periods, Lender agrees for itself and its successors in interest and for any purchaser of the Property upon a foreclosure of the Security Instrument for the foreclosure of the Security Instrument or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession, quiet enjoyment or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding and the exercise by Lender of any of its other rights under the Security Instrument shall be made subject to all rights of Tenant under the Lease. For purposes of this Agreement, a "foreclosure" shall include (but not be limited to) a sheriff's or trustee's sale under the power of sale contained in the Security Instrument, and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, an assignment or sale in lieu of foreclosure.

3. Attornment. After its receipt of notice from Lender or any person or entity which acquires the Property through a foreclosure (an "Acquiring Party") of the completion of a foreclosure under the Security Instrument or that Lender or Acquiring Party has received a conveyance of the Property in lieu of foreclosure or otherwise obtained the right to possession of the Property, Tenant will be considered to have attorned to and recognized Lender or Acquiring Party as its substitute landlord under the Lease, and Tenant's possession, quiet enjoyment and use of the Property will not be disturbed. The foregoing provision will be self-operative, and will not require the execution of any further instrument or agreement by Tenant to effectuate the attornment and recognition. The attornment and recognition of a substitute landlord will be upon all of the terms set forth in the Lease.

4. No Liability. Lender and Tenant agree that if Lender or any Acquiring Party shall become the owner of the Property by reason of the foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Lender or any Acquiring Party and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to Lender or Acquiring Party and Lender or Acquiring Party agree to accept such attornment, provided, however, that Lender or Acquiring Party shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), unless Lender has been given written notice thereof and the same time to cure as afforded Landlord under the Lease, or

(b) subject to any offsets or defenses that Tenant might have against any prior landlord (including Landlord) unless Lender has been given written notice thereof and the same time to cure as afforded Landlord under the Lease; or

(c) bound by any rent or additional rent which is payable on a monthly basis and

which Tenant might have paid for more than one (1) month in advance to any prior landlord (including Landlord), unless such prepayment is required under the Lease; or

(d) bound by any amendment or modification of the Lease which would change the term of the Lease or the fixed rent specified therein made without Lender's prior written consent.

5. Rent. Tenant hereby agrees to and with Lender that upon receipt from Lender of a notice of any default by Landlord under the Security Instrument, Tenant will pay to Lender directly all rents, additional rents, and other sums due under the Lease. Tenant shall have no responsibility to ascertain whether such demand by Lender is permitted under the Security Instrument, or to inquire into the existence of default by Landlord under the Security Instrument. In the event of the foregoing, Landlord hereby authorizes Tenant to pay to Lender directly all rents, additional rents, and other sums due under the Lease and hereby waives any right, claim or demand it may now or hereafter have against Tenant by reason of such payment to Lender, and any such payment shall discharge the obligations of Tenant under the Lease to make such payment to Landlord. In addition, Landlord hereby indemnifies and holds Tenant harmless from and against any and all claims, causes of actions, demands, liabilities and losses of any kind or nature, including but not limited to attorney's fees and expenses, sustained by Tenant as a result of its payment of the rent, additional rents, and other sums due under the Lease directly to Lender in accordance with the terms and conditions hereof.

6. Lender's Consent. Unless Lender shall give its written consent to the same (which consent shall be obtained by Landlord), (a) Lender shall not be bound by any agreement amending or modifying the Lease which would change the term of the Lease or the fixed rent specified therein and (b) Lender shall not be responsible for any prepayment of the rents, additional rents or other sums due under the Lease for more than one (1) month in advance of the due dates thereof, unless such prepayment is required under the terms of the Lease.

7. Lender to Receive Notices. Tenant shall provide Lender with copies of all written notices of any default by Landlord sent to Landlord pursuant to the Lease simultaneously with the transmission of such notices to the Landlord. Lender shall have the right to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied during the same time period as Landlord as set forth in the Lease. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord.

8. Notices. All notices or other written communications hereunder shall be deemed to have been properly given if given in accordance with the provisions of the Lease and addressed as follows:

If to Tenant:

Best Buy Stores, L.P.
7601 Penn Avenue South
Richfield, MN 55423
Attention: Legal Department - Real Estate

with a copy to: Robins, Kaplan, Miller & Ciresi
2800 LaSalle Plaza
800 LaSalle Avenue
Minneapolis, MN 55402
Attention: Steven A. Schumeister, Esq.

If to Lender: Lehman Brothers Bank, FSB
399 Park Avenue, 8th Floor
New York, NY 10022
Attention: John Herman

If to Landlord: Rubenstein Real Estate Co., LC
4350 Shawnee Mission Parkway, Suite 159
Shawnee Mission, KS 66215
Attention: John Rubenstein

or to such other address in the United States as such party from may from time to time designate by written notice to the other parties.

9. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Lender, Landlord and Tenant and their respective successors and assigns.

10. Definitions. The term "Lender" as used herein shall include the successors and assigns of Lender and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Security Instrument or the acceptance of a deed or assignment in lieu of foreclosure or otherwise to which Tenant has received written notice of. The terms "Tenant" and "Landlord" as used herein include any successor and assign of the named Tenant and Landlord herein, respectively.

11. No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by all the parties hereto, or if the Note is paid in full, this Agreement shall automatically terminate.

12. Governing Law. This Agreement shall be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

13. Inapplicable Provisions. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.

14. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This

Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single agreement. This Agreement shall not be binding on Tenant until a fully-executed and recorded copy hereof has been returned to it.

15. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular forms of nouns and pronouns shall include the plural and vice versa.

16. Tenant's Personal Property. It is expressly agreed to between Lender, Landlord and Tenant that in no event shall the Security Instrument cover or encumber (shall not be construed as subjecting in any manner to the lien thereof) any of Tenant's moveable trade fixtures, business equipment, furniture, signs, inventory, or other personal property at any time placed in, on or about the Property.

IN WITNESS WHEREOF, Lender, Landlord and Tenant have duly executed this Agreement as of the date first above written.

[SIGNATURES ON NEXT PAGE]

LENDER:

LEHMAN BROTHERS BANK, FSB, a federal stock savings bank

By: _____
Name: Charlene Thomas
Title: CHARLENE THOMAS
Date: VICE PRESIDENT

TENANT:

BEST BUY STORES, L.P., a Delaware limited partnership

By: BBC Property Co., a Minnesota corporation, its general partner

By: James E. Ista
Name: James E. Ista
Title: Associate General Counsel
Date: July 29, 2004

LANDLORD:

RUBENSTEIN REAL ESTATE CO, LC, a Kansas limited liability company

By: John L. Rubenstein
Name: John L. Rubenstein
Title: Manager
Date: 8/27/04

STATE OF NEW YORK)
) ss.
COUNTY OF New York)

On September 9, 2004, before me, Saleenah Callaway, a Notary Public in and for said State, personally appeared Charlene Thomas ~~Vice President~~ of **LEHMAN BROTHERS BANK, FSB**, a federal stock savings bank, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, of the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

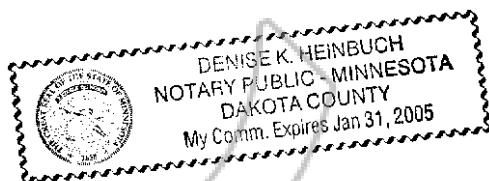
SALEENAH CALLAWAY
NOTARY PUBLIC, State of New York
No. 01CA6047908
Qualified in New York County
Commission Expires September 18, 2008

Saleenah Callaway
Notary Public
My Commission Expires: 9/18/08

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On July 29, 2004, before me, Denise K. Heinbuch, a Notary Public in and for said State, personally appeared James E. Istas, Associate General Counsel of BBC Property Co., a Minnesota corporation, the general partner of **BEST BUY STORES, L.P.**, a Delaware limited partnership, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, of the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

**DENISE K. HEINBUCH**
NOTARY PUBLIC - MINNESOTA
DAKOTA COUNTY
My Comm. Expires Jan 31, 2005

Denise K. Heinbuch
Notary Public
My Commission Expires: January 31, 2005

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

On August 27, 2004, before me, Kimberly S. Norris, a Notary Public in and for said State, personally appeared John L. Rubenstein, Manager of **RUBENSTEIN REAL ESTATE CO, LC**, a Kansas limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, of the entity upon behalf of which the person acted, executed the instrument.

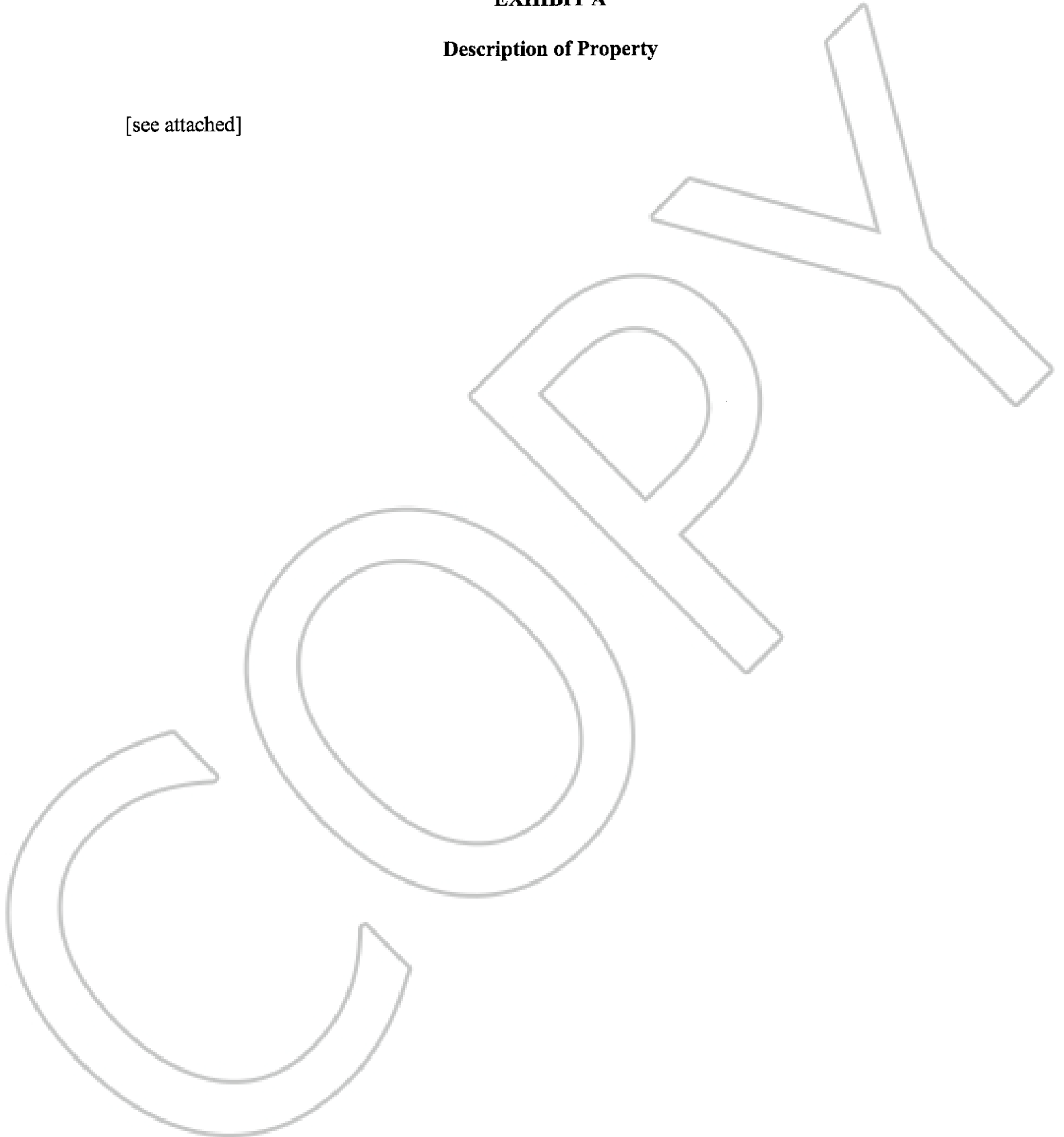
WITNESS my hand and official seal.

Kimberly S. Norris
Notary Public
My Commission Expires: **KIMBERLY S. NO**
Notary Public - State of
My Comm. Exp. 8/9/2005

EXHIBIT A

Description of Property

[see attached]



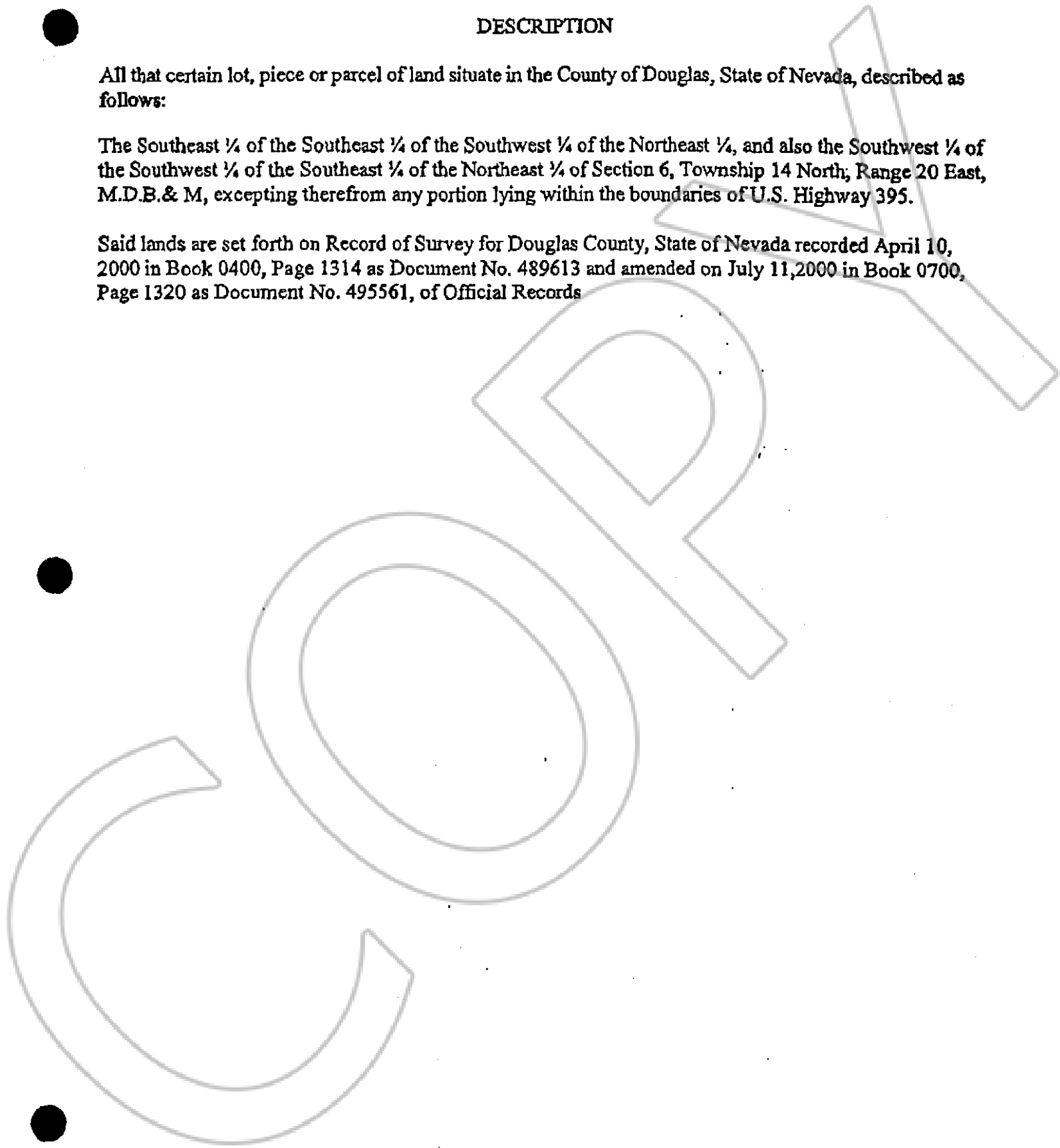
**EXHIBIT A
LEGAL DESCRIPTION**

DESCRIPTION

All that certain lot, piece or parcel of land situate in the County of Douglas, State of Nevada, described as follows:

The Southeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Northeast $\frac{1}{4}$, and also the Southwest $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 6, Township 14 North, Range 20 East, M.D.B. & M, excepting therefrom any portion lying within the boundaries of U.S. Highway 395.

Said lands are set forth on Record of Survey for Douglas County, State of Nevada recorded April 10, 2000 in Book 0400, Page 1314 as Document No. 489613 and amended on July 11, 2000 in Book 0700, Page 1320 as Document No. 495561, of Official Records



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