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WILLIAM A. MUNDELL  
CHAIRMAN

JIM IRVIN  
COMMISSIONER

MARC SPITZER  
COMMISSIONER

415

ORIGINAL  
OPEN MEETING ITEM



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ARIZONA CORPORATION COMMISSION

MEMORANDUM

Arizona Corporation Commission  
DOCKETED

TO: Chairman William A. Mundell  
Commissioner Jim Irvin  
Commissioner Marc Spitzer

OPEN MEETING ITEM

MAY 29 2001

FROM: Mark Sendrow *MS*  
Director of Securities

DOCKETED BY *sd*

DATE: May 29, 2001

RE: Charles W. Testino, Jr., et al., Docket No. S-03353A-01-0000

CC: Brian C. McNeil, Executive Secretary

RECEIVED  
2001 MAY 29 A 11: 29  
AZ CORP COMMISSION  
DOCUMENT CONTROL

Attached is a proposed Order to Cease and Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same ("Order"), fully executed by Respondents Charles W. Testino, Jr. and Arizona Investment Advisors, Inc. ("Respondents") regarding the sale of unregistered securities and misrepresentations and omissions in the sale of securities.

From in or around July 1996 through December 1999, Respondents offered or sold unregistered securities in the form of promissory notes within and from Arizona. The investors' funds were to be used for interim financing for the development of an outlet mall in Dacono, Colorado.

On December 28, 2000, the Securities Division ("Division") filed a Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties and for Other Affirmative Action, alleging that Respondents engaged in the sale of unregistered securities and securities fraud, in violation of A.R.S. §§ 44-1841 and 44-1991.

Respondents have consented to entry of the proposed Order, which contains findings of Securities Act violations including the sale of unregistered and non-exempt securities, and fraud in the offer and sale of securities. Respondents have consented to an Order of restitution in the amount of \$3,000,000, plus interest from the date of the investments, and penalties in the amount of \$50,000.

Respondent Charles Testino was a registered securities salesman at the time he sold the notes to investors. He is no longer registered to sell securities in Arizona. Respondents have agreed not to apply for any registration as a securities salesman or dealer or licensure as an investment adviser or investment adviser representative in Arizona at any time in the future.

Pursuant to the requests of the Commission at the last Open Meeting, Respondents have agreed to the following revisions to the proposed Order:

- The Order includes a provision that Respondents shall not, individually or on behalf of other entities, direct or give consent to any transfer of development rights associated with the Dacono Project property, including, but not limited to, tax credits or municipal bond financing, unless the agreement for such transfer of rights provides that funds equal to full restitution as set forth in this Order shall be placed in escrow for the benefit of all Note investors.
- The Respondents agreed that they understand that nothing in this Order relieves them of any obligation or responsibility that they have to their investors or clients outside of this Order.

MS: ptj

W/ attachments

Originator: Pamela T. Johnson

Assistant Attorney General Assigned: Moira McCarthy

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

In the matter of

CHARLES RAY STEDMAN  
3001 East Frontage Road  
Amado, AZ 85629

WENDELL T. DECKER, JR.  
5249 N. Adobe Circle  
Tucson, AZ 85750

OXFORD DEVELOPMENT, L.L.C.  
5249 North Adobe Circle  
Tucson, AZ 85750

PROFUTURA, L.L.C.  
P.O. Box 4252  
Tubac, AZ 85646

CNT FAMILY FUN OUTLETS, INC.  
One East First Street  
Reno, NV 89501

CHARLES W. TESTINO, JR.  
3656 E. Windy Point Dr.  
Tucson, AZ 85718  
CRD#1216651

ARIZONA INVESTMENT ADVISORS, INC.  
2920 North Swan Road, Suite 206  
Tucson, AZ 85712

KEITH B. "SKIP" DAVIS  
6550 North Silversmith Place  
Tucson, AZ 85750

SPY GLASS ENTERPRISES L.L.C.  
6550 North Silversmith Place  
Tucson, AZ 85750

KEITH B. DAVIS, INC.  
6550 North Silversmith Place  
Tucson, AZ 85750,

Respondents.

DOCKET NO. S-03353A-00-0000

DECISION NO. \_\_\_\_\_

**ORDER TO CEASE AND DESIST,  
ORDER OF RESTITUTION, ORDER  
FOR ADMINISTRATIVE PENALTIES  
AND CONSENT TO SAME  
BY: RESPONDENTS CHARLES W.  
TESTINO, JR. and ARIZONA  
INVESTMENT ADVISORS, INC.**

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1           2.     ARIZONA INVESTMENT ADVISORS, INC. ("AIA") is an Arizona corporation,  
2 incorporated on August 30, 1998. Its principal place of business is 2920 North Swan Road, Suite  
3 206, Tucson, Arizona, 85712. TESTINO is at all pertinent times the president and owner of AIA.

4           3.     In or around July 1996, KEITH B. DAVIS ("DAVIS") recruited RESPONDENTS to  
5 assist in soliciting private investor funds for a development project involving an outlet mall to be  
6 developed in Dacono, Colorado, the "Dacono Project."

7           4.     The principals of the project, WENDELL T. DECKER ("DECKER") and CHARLES  
8 RAY STEDMAN ("STEDMAN") authorized DAVIS and RESPONDENTS to use promissory notes  
9 (the "Notes") to raise funds from private investors, and agreed to pay commissions of 10% of all  
10 money raised, and an additional equity interest in the project.

11          5.     Most of the Notes were to be secured by deeds of trust filed in Weld County on the  
12 property described as follows (the "Dacono Project property):

13                   A tract of land located in the South Half (S1/2) of Section Fourteen (14),  
14 Township One (1) North, Range Sixty-eight (68) West of the Sixth (6<sup>th</sup>)  
15 Principal Meridian, County of Weld, State of Colorado, being more  
particularly described as follows:

16                   Considering the South line of the Southwest Quarter (SW/4) of said Section  
17 14 as bearing North 88°57'30" East from a 3 1/4" aluminum cap at the  
18 Southwest corner of said Section 14 to a 3 1/4" aluminum cap at the South  
Quarter corner of said Section 14 and with all bearings contained herein  
relative thereto:

19                   Commencing at the Southwest corner of said Section 14; thence along said  
20 South line, North 88°57'30" East, 440.10 feet; thence, North 01°02'30"  
West, 30.00 feet to the POINT OF BEGINNING, said point being on the  
East line of Interstate 25;

21                   thence along said East line the following 3 courses, North 79°41'00" West,  
22 203.10 feet; thence, North 08°14'30" West, 943.60 feet; thence, North  
00°17'30" East, 914.78 feet to a point on the South right-of-way line of the  
23 Union Pacific Railroad Company;

24                   thence, along said South right-of-way line the following 6 courses, South  
25 78°47'56" East, 165.34 feet to a point on a curve concave to the North  
26 having a central angle of 11°44'53", a radius of 1886.98 feet and the chord  
of which bears South 84°40'23" East, 386.23 feet; thence, along the arc of  
said curve 386.91 feet; thence, North 89°27'11" East, 467.86 feet to a point  
on a curve concave to the Southwest having a central angle of 54°53'25", a

1 radius of 1839.60 feet and the chord of which bears South 63°06'07" East,  
 2 1695.74 feet; thence, along the arc of said curve 1762.37 feet; thence, South  
 3 35°39'24" East, 674.84 feet to a point on a curve concave to the Northeast  
 4 having a central angle of 11°56'40", a radius of 2902.76 feet and the chord  
 5 of which bears South 41°37'44" East, 604.04 feet; thence along the arc of  
 6 said curve 605.14 feet to a point on the North line of County Road 8;

7 thence along said North line, South 88°57'03" West, 788.41 feet; thence  
 8 continuing along said North line, South 88°57'30" West, 2203.18 feet to the  
 9 Point of Beginning.

10 6. DECKER and STEDMAN's plan was that STEDMAN would sign all of the Notes as  
 11 "Maker" and be personally liable to investors; the borrowed funds would be transferred to  
 12 PROFUTURA, L.L.C. ("PROFUTURA") to loan to OXFORD DEVELOPMENT, L.L.C.  
 13 ("OXFORD") to cover costs necessary to obtain construction financing for the project; OXFORD  
 14 would pledge the Dacono Project property as security for the Notes and would pay STEDMAN's  
 15 obligations to investors, including the interest on the Notes; and DECKER would determine what  
 16 portions of the Dacono Project property would be used to secure the Notes.

17 7. From approximately July 1996 through December 1999, RESPONDENTS issued,  
 18 offered, sold, or participated in the sale of approximately 81 Notes to approximately 76 private  
 19 investors, raising approximately \$3,000,000 from private investors.

20 8. RESPONDENTS told investors that their funds were to be used to pay expenses as  
 21 interim financing for a project described as the Dacono Factory Outlet Stores or the Dacono Factory  
 22 Outlet Mall and Sports Arena, and that their Notes would be paid upon the due date or at the close of  
 23 the construction financing.

24 9. Up until around April 1999, Notes sold to private investors were titled  
 25 "PROMISSORY NOTE SECURED BY DEED OF TRUST," and stated that the Notes and any  
 26 renewal or extension of the Notes were secured by a percent undivided interest in a deed of trust on  
 the Dacono Project property owned by OXFORD. In fact, from the inception of the project to date,  
 less than ten private investors are beneficiaries of any recorded interests in the Dacono Project  
 property.

1           10. As part of the paperwork for the Notes, investors were required to sign form letters  
2 addressed to STEDMAN, which the promoters called "Big Boy Letters." The letters stated that the  
3 investors were accredited investors, defined as investors whose net worth was over \$1,000,000, or  
4 whose income was at least \$200,000 for the two years prior to investment.

5           11. The interest rates on most of the Notes varied from 12% to 20% per annum. From  
6 1995 through around September 1997, the term of the Notes was one year. In or around September  
7 1997, after one or more commitments for construction financing failed to close, the promoters  
8 reduced the terms of most of the Notes to 90 days based upon representations that other construction  
9 financing would be obtained shortly. Existing Notes, including interest, were rolled over or renewed  
10 at the end of their terms.

11           12. DECKER offered DAVIS 10% commissions, and TESTINO was to be paid 5%  
12 commissions for their efforts to solicit investors to rollover their Notes. By August 2000, some of the  
13 Notes had been rolled over eighteen times.

14           13. In December 1998, one investor protested that the deed of trust that was supposed to  
15 secure his Note was never recorded. Within approximately three months, in or around April 1999,  
16 RESPONDENTS started to offer and sell "unsecured" Notes to new private investors.

17           14. According to Oxford's accounting records, the total principal amount due on  
18 outstanding Notes issued to private investors was approximately \$5,017,000 on or about May 31,  
19 2000. At that time, the total due including interest on those notes was approximately \$22,166,000.

20           15. In connection with the offer or sale of securities within or from Arizona,  
21 RESPONDENTS directly or indirectly made untrue statements of material fact or omitted to state  
22 material facts which were necessary in order to make the statements made not misleading in light of  
23 the circumstances under which they were made. RESPONDENTS' conduct includes, but is not  
24 limited to, the following:

- 25           a) Representing that the investment was a short-term loan because a construction loan for  
26 the Dacono Project was imminent and investors would be paid in full at the close of

1 that loan, and failing to disclose that there were a series of purported loan  
2 "commitments" and "letters of intent" that had never materialized and that the  
3 principals had failed to close on prior construction loans that they had believed to be  
4 imminent;

- 5 b) Representing until at least April 1999 that the Notes, and any extensions, renewals or  
6 rollovers of the Notes, were secured by a recorded interest in a deed of trust on a  
7 portion of the Dacono Project property located in Weld County, Colorado and owned  
8 by OXFORD; and misrepresenting that the total of all loans secured by Lot 6 would  
9 not exceed one million dollars. In fact only approximately eight of the original  
10 investors in 1996 and early 1997 were identified as beneficiaries on recorded deeds of  
11 trust, the total of all loans misrepresented as secured by Lot 6 far exceeded one million  
12 dollars, and the property that was supposed to be pledged to private investors was  
13 utilized instead as security to obtain financing from institutional "bridge" lenders;
- 14 c) Failing to disclose that substantial investor funds were used for failed funding  
15 attempts, attempts to obtain bonding, tax benefits for the future owners of the project,  
16 interest payments on prior investors' Notes; redeeming prior investors' defaulted  
17 Notes, profits to institutional bridge lenders, DECKER's living expenses, and  
18 DECKER's and STEDMAN's travel expenses;
- 19 d) Failing to disclose the risks involved with this development project, specifically, the  
20 uncertainty of getting construction financing, the repeated failed attempts to obtain  
21 construction financing and bond funding, the costs of attempts to obtain financing, and  
22 STEDMAN's inability to repay the Notes, if construction financing was not secured;
- 23 e) Failing to disclose to new investors that similar representations regarding the  
24 imminence of funding had been made to prior investors, that prior investors' notes had  
25 rolled over on maturity because there was no money to pay them, and that there was  
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1 an increasing risk that even if the construction loan closed, sufficient funds would not  
2 be available to pay the interim financing obligations represented by the notes;

3 f) Failing to disclose the background and financial condition of the principals and the  
4 project, including but not limited to the following:

5 (1) That DECKER had previously filed bankruptcy in 1989, and, as a result,  
6 private investors in prior factory outlet mall projects had lost their  
7 investments;

8 (2) That on January 21, 1994, the NASD censured STEDMAN, barred  
9 STEDMAN from associating with any NASD member in any capacity,  
10 and fined STEDMAN \$20,000, for conduct "inconsistent with just and  
11 equitable principles of trade," because STEDMAN had failed to timely and  
12 fully respond to a request for information from the NASD concerning a  
13 complaint alleging that he had misappropriated \$175,000 from the  
14 customer's account; and

15 (3) That TESTINO was terminated on September 15, 1998, by his former  
16 dealer, SunAmerica Securities, Inc. ("SAS"), upon allegations relating to  
17 his sale of these Notes, specifically, that "Without SAS knowledge or  
18 approval, Testino facilitated the lending of money via promissory notes  
19 from a number of individuals to a person who was subsequently  
20 determined by the firm to be subject to an industry bar;" and that  
21 TESTINO was under investigation by the NASD for violations of NASD  
22 Rules as a result of his unauthorized activity;

23 (g) Failing to disclose that the Notes were securities and that RESPONDENTS were  
24 selling the Notes to investors who were not accredited investors.

25 ...

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II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. RESPONDENTS offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. RESPONDENTS, except TESTINO, violated A.R.S. § 44-1842 by offering or selling securities while neither registered as dealers or salesmen nor exempt from registration.

5. RESPONDENTS violated A.R.S. § 44-1991 by offering or selling securities within or from Arizona by making untrue statements or misleading omissions of material facts.

6. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

8. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. § 44-2036.

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the RESPONDENTS' consent to the entry of this Order, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS, their agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

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IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall, jointly and severally, pay restitution to investors shown on the records of the Commission in the amount of \$3,000,000, plus interest at the rate of 10% per annum from the date of each investment until paid in full. Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. Any funds that the Attorney General is unable to disburse shall revert to the state of Arizona.

IT IS FURTHER ORDERED that, until full restitution is made to all Note investors identified on the records of the Division, RESPONDENTS shall subordinate all rights and interests in the Dacono Project property, described in paragraph 5 above, and any contractual rights and interests to income or payment from the development and/or sale of the Dacono Project property or the Dacono Project.

IT IS FURTHER ORDERED that RESPONDENTS shall not, individually or on behalf of other entities, direct or give consent to any transfer of development rights associated with the Dacono Project property, including, but not limited to, tax credits or municipal bond financing, unless the agreement for such transfer of rights provides that funds equal to full restitution as set forth in this Order shall be placed in escrow for the benefit of all Note investors.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS, jointly and severally, shall pay administrative penalties in the amount of \$50,000. Payment shall be made

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1 in full by cashier's check or money order on the date of this Order, payable to the "State of  
2 Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the date  
3 of this Order until paid in full.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION  
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8 CHAIRMAN

COMMISSIONER

COMMISSIONER

9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
10 Executive Secretary of the Arizona Corporation  
11 Commission, have hereunto set my hand and caused the  
12 official seal of the Commission to be affixed at the Capitol,  
13 in the City of Phoenix, this \_\_\_\_\_ day of June, 2001.

14 \_\_\_\_\_  
15 BRIAN C. McNEIL  
16 Executive Secretary

17 DISSENT

18 This document is available in alternative formats by contacting Shelly M. Hood, ADA Coordinator,  
19 voice phone number 602-542-3931, E-mail [shood@cc.state.az.us](mailto:shood@cc.state.az.us).

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**CONSENT TO ENTRY OF ORDER**

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2 1. RESPONDENTS CHARLES W. TESTINO, JR. (TESTINO) and ARIZONA  
3 INVESTMENT ADVISERS, INC. (AIA) (RESPONDENTS) admit the jurisdiction of the  
4 Commission over the subject matter of this proceeding. RESPONDENTS acknowledge that they  
5 have been fully advised of their rights to a hearing to present evidence and call witnesses and  
6 RESPONDENTS knowingly and voluntarily waive any and all rights to a hearing before the  
7 Commission and all other rights otherwise available under Article 11 of the Securities Act and Title  
8 14 of the Arizona Administrative Code. RESPONDENTS acknowledge that this Order To Cease  
9 And Desist, Order of Restitution, Order for Administrative Penalties and Consent to Same ("Order")  
10 constitutes a valid final order of the Commission.

11 2. RESPONDENTS knowingly and voluntarily waive any right they may have under  
12 Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or  
13 extraordinary relief resulting from the entry of this Order.

14 3. RESPONDENTS acknowledge and agree that this Order is entered into freely and  
15 voluntarily and that no promise was made or coercion used to induce such entry.

16 4. RESPONDENTS acknowledge that they have been represented by counsel in this matter,  
17 they have reviewed this Order with their attorney and understand all terms it contains.

18 5. RESPONDENTS admit only for purposes of this proceeding and any other  
19 administrative proceeding before the Commission or any other agency of the State of Arizona the  
20 Findings of Fact and Conclusions of Law contained in this Order.

21 6. By consenting to the entry of this Order, RESPONDENTS agree not to take any action or  
22 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of  
23 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual  
24 basis. RESPONDENTS will undertake steps necessary to assure that all of his agents and  
25 employees understand and comply with this agreement. Nothing in this provision affects  
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1 RESPONDENTS' testimonial obligations or right to take legal positions in litigation in which an  
2 administrative agency of the State of Arizona is not a party.

3 7. RESPONDENTS agree to take all steps necessary to subordinate all of their rights and  
4 interests, both currently existing or existing in the future, in the Dacono Project property, described  
5 in paragraph 5 of the Order, to the investors identified on the records of the Division.  
6 RESPONDENTS further agree to take all steps necessary to subordinate all of their contractual  
7 rights and interests, both currently existing or existing in the future, related to the development  
8 project known as the Dacono Factory Stores and located near Dacono, Weld County, Colorado, to  
9 the investors identified on the records of the Division.

10 8. RESPONDENTS understand that nothing in this Order relieves them of any obligation or  
11 responsibility that they have to their investors or clients outside of this Order.

12 9. While this Order settles this administrative matter between RESPONDENTS and the  
13 Commission, RESPONDENTS understand that this Order does not preclude the Commission from  
14 instituting other administrative proceedings based on violations that are not addressed by this Order.

15 10. RESPONDENTS understand that this Order does not preclude the Commission from  
16 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
17 that may be related to the matters addressed by this Order.

18 11. RESPONDENTS understand that this Order does not preclude any other agency or  
19 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal  
20 proceedings that may be related to matters addressed by this Order.

21 12. RESPONDENTS agree that they will not apply to the state of Arizona for registration as  
22 a securities dealer or salesman or for licensure as an investment adviser or investment adviser  
23 representative at any time in the future.

24 13. RESPONDENTS agree that they will not exercise any control over any entity that offers  
25 or sells securities or provides investment advisory services, within or from Arizona.

26 14. RESPONDENTS agree that until restitution and penalties are paid in full,

1 RESPONDENTS will notify the Director of the Securities Division within 30 days of any change in  
2 home address or any change in RESPONDENTS' ability to pay amounts due under this Order.

3 15. RESPONDENTS understand that default shall render them liable to the Commission for  
4 its costs of collection and interest at the maximum legal rate.

5 16. RESPONDENTS agree that they will continue to cooperate with the Securities Division  
6 including, but not limited to, providing complete and accurate testimony at any hearing in this  
7 matter and cooperating with the state of Arizona in any related investigation or any other matters  
8 arising from the activities described in this Order.

9 17. RESPONDENTS consent to the entry of this Order and agree to be fully bound by its  
10 terms and conditions. If RESPONDENTS breach any provision of this Order, the Commission may  
11 vacate this Order and restore this case to its active docket.

12 18. This agreement and Order shall be binding upon RESPONDENTS' agents, heirs,  
13 employees, assigns, representatives, beneficiaries or other successors in interest of any kind.

14 19. CHARLES W. TESTINO, JR. represents that he is President of AIA and has been  
15 authorized by AIA to enter into this Order for and on behalf of it.

16  
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\_\_\_\_\_  
CHARLES W. TESTINO, JR.

SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_\_ day of \_\_\_\_\_, 2001.

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NOTARY-PUBLIC

23 My Commission Expires:  
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ARIZONA INVESTMENT ADVISERS, INC.

By: Charles W. Testino, President

SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

NOTARY PUBLIC

My Commission Expires:

NAENFORCE\CASES\Dacono.pj\PLEADING\Final Consent TESTINO, AIA.doc

BEFORE THE ARIZONA CORPORATION COMMISSION

WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

In the matter of

CHARLES RAY STEDMAN  
3001 East Frontage Road  
Amado, AZ 85629

WENDELL T. DECKER, JR.  
5249 N. Adobe Circle  
Tucson, AZ 85750

OXFORD DEVELOPMENT, L.L.C.  
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PROFUTURA, L.L.C.  
P.O. Box 4252  
Tubac, AZ 85646

CNT FAMILY FUN OUTLETS, INC.  
One East First Street  
Reno, NV 89501

CHARLES W. TESTINO, JR.  
3656 E. Windy Point Dr.  
Tucson, AZ 85718  
CRD#1216651

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2920 North Swan Road, Suite 206  
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6550 North Silversmith Place  
Tucson, AZ 85750,

Respondents.

DOCKET NO. S-03353A-00-0000

DECISION NO. \_\_\_\_\_

**ORDER TO CEASE AND DESIST,  
ORDER OF RESTITUTION, ORDER  
FOR ADMINISTRATIVE PENALTIES  
AND CONSENT TO SAME  
BY: RESPONDENTS  
WENDELL T. DECKER, JR.,  
OXFORD DEVELOPMENT, L.L.C.  
CNT FAMILY FUN OUTLETS, INC.**



1           4.       OXFORD is an Arizona limited liability company organized on March 24, 1993. Its  
2 principal place of business is 5249 North Adobe Circle, Tucson, Arizona, 85750. At all pertinent  
3 times, OXFORD was the recorded owner of grassland property, which was to be the site for an outlet  
4 mall (the Dacono Project property). The Dacono Project property was represented as collateral for  
5 most of the Notes issued to investors. OXFORD is signatory to the Notes, through its managing  
6 member DECKER.

7           5.       CNT is a Nevada corporation incorporated on June 19, 1996. DECKER is its  
8 President and Director. STEDMAN is its Secretary/Treasurer and Director. Its resident agent is  
9 located at One East First Street, Reno, Nevada, 89501. CNT is signatory to the Notes, through its  
10 president DECKER.

11          6.       In approximately 1993, STEDMAN and DECKER agreed that PROFUTURA was to  
12 contribute funds in the amount of \$650,000 to \$1,000,000 to OXFORD in exchange for an equity  
13 interest in the Dacono Project.

14          7.       In approximately March 1996, after the project owners had exhausted their personal  
15 sources of funds and were still seeking construction financing, DECKER and STEDMAN approached  
16 KEITH B. "SKIP" DAVIS (DAVIS) to use the Notes to raise \$600,000 from private investors for  
17 interim financing to keep the project moving until the project owners could close on a construction  
18 loan in late 1996.

19          8.       In or around July 1996, DAVIS approached CHARLES W. TESTINO, JR.  
20 (TESTINO) to assist in soliciting private investor funds for the Dacono Project to keep the project  
21 "alive" until the principals could secure funding.

22          9.       The principals of the project, DECKER and STEDMAN, authorized DAVIS and  
23 TESTINO to use the Notes to raise funds from private investors, and agreed to pay commissions of  
24 10% of all investor funds secured, and an equity interest in the project.

25          10.       Most, but not all, of the Notes were to be secured by deeds of trust filed in Weld  
26 County on the Dacono Project property described as follows:

1 A tract of land located in the South Half (S1/2) of Section Fourteen (14),  
 2 Township One (1) North, Range Sixty-eight (68) West of the Sixth (6<sup>th</sup>)  
 3 Principal Meridian, County of Weld, State of Colorado, being more  
 particularly described as follows:

4 Considering the South line of the Southwest Quarter (SW/4) of said Section  
 5 14 as bearing North 88°57'30" East from a 3 1/4" aluminum cap at the  
 6 Southwest corner of said Section 14 to a 3 1/4" aluminum cap at the South  
 Quarter corner of said Section 14 and with all bearings contained herein  
 relative thereto:

7 Commencing at the Southwest corner of said Section 14; thence along said  
 8 South line, North 88°57'30" East, 440.10 feet; thence, North 01°02'30"  
 West, 30.00 feet to the POINT OF BEGINNING, said point being on the  
 East line of Interstate 25;

9 thence along said East line the following 3 courses, North 79°41'00" West,  
 10 203.10 feet; thence, North 08°14'30" West, 943.60 feet; thence, North  
 00°17'30" East, 914.78 feet to a point on the South right-of-way line of the  
 11 Union Pacific Railroad Company;

12 thence, along said South right-of-way line the following 6 courses, South  
 13 78°47'56" East, 165.34 feet to a point on a curve concave to the North  
 having a central angle of 11°44'53", a radius of 1886.98 feet and the chord  
 14 of which bears South 84°40'23" East, 386.23 feet; thence, along the arc of  
 said curve 386.91 feet; thence, North 89°27'11" East, 467.86 feet to a point  
 15 on a curve concave to the Southwest having a central angle of 54°53'25", a  
 radius of 1839.60 feet and the chord of which bears South 63°06'07" East,  
 16 1695.74 feet; thence, along the arc of said curve 1762.37 feet; thence, South  
 35°39'24" East, 674.84 feet to a point on a curve concave to the Northeast  
 17 having a central angle of 11°56'40", a radius of 2902.76 feet and the chord  
 of which bears South 41°37'44" East, 604.04 feet; thence along the arc of  
 said curve 605.14 feet to a point on the North line of County Road 8;

18 thence along said North line, South 88°57'03" West, 788.41 feet; thence  
 19 continuing along said North line, South 88°57'30" West, 2203.18 feet to the  
 Point of Beginning.

20 11. DECKER and STEDMAN's plan was that STEDMAN would sign all of the Notes as  
 21 "Maker" and be personally liable to investors; the borrowed funds would be transferred to  
 22 PROFUTURA to loan to OXFORD to cover costs necessary to obtain construction financing for the  
 23 project; OXFORD would pledge the Dacono Project property as security for most, but not all, of the  
 24 Notes and would pay STEDMAN's obligations to investors, including the interest on the Notes; and  
 25 DECKER would determine what portions of the Dacono Project property would be used to secure  
 26 most, but not all, of the Notes.

1           12. From approximately January 1995 through December 1999, RESPONDENTS issued  
2 approximately 124 Notes to approximately 110 private investors, raising approximately \$5,286,160  
3 from private investors.

4           13. Investors were told that their funds were to be used for interim financing until  
5 construction financing was in place to develop a project described as the Dacono Factory Outlet  
6 Stores or the Dacono Factory Outlet Mall and Sports Arena, and that their Notes would be paid upon  
7 the due date or at the close of the construction financing.

8           14. Up until around April 1999, Notes sold to private investors were titled  
9 "PROMISSORY NOTE SECURED BY DEED OF TRUST," and stated that the Notes and any  
10 renewal or extension of the Notes were secured by a percent of the undivided interest in a deed of  
11 trust on the Dacono Project property owned by OXFORD. In fact, from the inception of the project to  
12 date, not all of the private investors who received notes described as "secured by deed of trust" were  
13 beneficiaries of any recorded interests in the Dacono Project property.

14           15. As part of the paperwork for the Notes, investors were required to sign form letters  
15 addressed to STEDMAN, which the promoters called "Big Boy Letters." The letters stated that the  
16 investors were accredited investors, defined as investors whose net worth was over \$1,000,000, or  
17 whose income was at least \$200,000 for the two years prior to investment.

18           16. The interest rates on most of the Notes varied from 15% to 20% per annum. From  
19 1995 through around September 1997, the term of the Notes was one year. Because obtaining  
20 construction financing was delayed, in or around September 1997, the term of most of the Notes was  
21 reduced to 90 days, and existing Notes, including interest, were rolled over or renewed at the end of  
22 their terms. RESPONDENTS continued to attempt to obtain construction financing and believed, and  
23 told investors, that such financing would be in place within a short period of time.

24           17. DECKER offered DAVIS 10% commissions on rollovers, and TESTINO was to be  
25 paid 5% commissions, for their efforts to keep investors, pending construction financing. By August  
26 2000, some of the Notes had been rolled over eighteen times.

1 18. In December 1998, one investor protested that the deed of trust that was supposed to  
2 secure his Note was never recorded. RESPONDENTS continued to sell the Notes to new private  
3 investors. In or around April 1999, RESPONDENTS started to offer and sell "unsecured" Notes to  
4 new private investors.

5 19. According to OXFORD's accounting records, the total principal amount due on  
6 outstanding Notes issued to private investors was approximately \$5,002,082 on or about May 31,  
7 2000. At that time, the total due including interest on those notes was approximately \$22,166,000.

8 20. From 1993 to this date, DECKER continuously has attempted to obtain construction  
9 financing for the Dacono Project, dealing with a number of prospective lenders.

10 21. DECKER and STEDMAN secured tax benefits for the Dacono Project through a local  
11 election in Colorado. The tax benefits that were approved by the election would increase the value of  
12 the Dacono Project property, if the project was constructed within a certain time period.

13 22. In connection with the offer or sale of securities within or from Arizona,  
14 RESPONDENTS directly or indirectly made untrue statements of material fact or omitted to state  
15 material facts which were necessary in order to make the statements made not misleading in light of  
16 the circumstances under which they were made. RESPONDENTS' conduct includes, but is not  
17 limited to, the following:

- 18 a) Representing that the investment was a short-term loan and investors would be paid in  
19 full at the close of that loan, when in fact there were a series of construction loan  
20 letters of interest and commitment letters that never materialized and, to date, the  
21 principals have not succeeded in negotiating construction financing for the project.
- 22 b) Representing until at least April 1999, that the Notes, and any extensions, renewals or  
23 rollovers of the Notes, were secured by a recorded interest in a deed of trust on a  
24 portion of the Dacono Project property located in Weld County, Colorado and owned  
25 by OXFORD and that the total of all loans secured by Lot 6 would not exceed one  
26 million dollars. In fact, not all of the original investors in 1996 and early 1997, and

1 none of the new investors in 1998 and 1999 were named as beneficiaries on recorded  
2 deeds of trust, the total of all loans misrepresented as secured by Lot 6 was  
3 substantially in excess of one million dollars, and the property that was supposed to be  
4 pledged to private investors was utilized instead as security to obtain financing from  
5 institutional "bridge" lenders.

6 c) Representing that investor funds were to be used for interim financing. Specifically,  
7 investor funds were used primarily for attorney fees and loan fees for failed funding  
8 attempts, attempts to obtain tax benefits for the future owners of the project,  
9 redeeming prior investors' defaulted Notes, interest payments to early investors with  
10 secured loans, profits to bridge lenders, DECKER's living expenses, and DECKER's  
11 and STEDMAN's travel expenses.

12 d) Failing to disclose the risks involved with this development project, specifically, the  
13 uncertainty of getting construction financing, the repeated failed attempts to obtain  
14 construction financing and bond funding, the costs of attempts to obtain financing, and  
15 STEDMAN's inability to repay the Notes, if construction financing was not secured.

16 e) Failing to disclose to new investors that earlier investors were forced to accept  
17 rollover Notes because STEDMAN and OXFORD could not pay the Notes when  
18 due, and the total debt owed to prior investors, including interest on defaulted  
19 Notes, and the increasing commissions owed to DAVIS and TESTINO resulting  
20 from rollovers.

21 f) Failing to disclose the background and financial condition of the principals and the  
22 project, including but not limited to the following:

- 23 (1) That DECKER filed bankruptcy in 1989.
- 24 (2) That on January 21, 1994, the NASD censured STEDMAN, barred  
25 STEDMAN from associating with any NASD member in any capacity,  
26 and fined STEDMAN \$20,000, for conduct "inconsistent with just and

1 equitable principles of trade," because STEDMAN had failed to timely  
2 and fully respond to a request for information from the NASD  
3 concerning a complaint alleging that he had misappropriated \$175,000  
4 from the customer's account.

5 (3) That TESTINO was terminated on September 15, 1998, by his former  
6 dealer, SunAmerica Securities, Inc. ("SAS"), upon allegations relating  
7 to his sale of these Notes, specifically, that "Without SAS knowledge  
8 or approval, Testino facilitated the lending of money via promissory  
9 notes from a number of individuals to a person who was subsequently  
10 determined by the firm to be subject to an industry bar;" and that  
11 TESTINO was under investigation by the NASD for violations of  
12 NASD Rules as a result of his unauthorized activity.

13 g) Failing to disclose that RESPONDENTS were selling the Notes to investors who  
14 were not accredited investors.

## 15 II.

### 16 CONCLUSIONS OF LAW

17 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona  
18 Constitution and the Securities Act.

19 2. RESPONDENTS offered or sold securities within or from Arizona, within the meaning  
20 of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

21 3. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that were  
22 neither registered nor exempt from registration.

23 4. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while  
24 neither registered as dealers or salesmen nor exempt from registration.

25 5. RESPONDENTS violated A.R.S. § 44-1991 by offering or selling securities within or  
26 from Arizona by making untrue statements or misleading omissions of material facts necessary in

1 order to make the statements made, in the light of the circumstances under which they were made,  
2 not misleading.

3 6. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to A.R.S. §  
4 44-2032.

5 7. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-  
6 2032.

7 8. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. § 44-  
8 2036.

9 **III.**

10 **ORDER**

11 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the  
12 RESPONDENTS' consent to the entry of this Order, the Commission finds that the following relief  
13 is appropriate, in the public interest, and necessary for the protection of investors:

14 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS, their agents,  
15 employees, successors and assigns, permanently cease and desist from violating the Securities Act.

16 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall,  
17 jointly and severally, pay restitution to investors shown on the records of the Commission in the  
18 amount of no less than \$5,286,160, plus interest at the rate of 10% per annum from the date of each  
19 investment until paid in full, to be reduced by any distribution payments made to date. If additional  
20 investments in Notes are later discovered, RESPONDENTS shall pay claims of those investors  
21 under the terms of this Order. Payment shall be made by cashier's check or money order payable to  
22 the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the  
23 Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata  
24 basis to investors. Any funds that the Attorney General is unable to disburse shall revert to the state  
25 of Arizona.

26

1 IT IS FURTHER ORDERED that, until full restitution is made to all Note investors,  
2 RESPONDENTS shall subordinate all rights and interests in the Dacono Project property, described  
3 in paragraph 10 above, and any contractual rights and interests to income or payment from the  
4 development and/or sale of the Dacono Project property.

5 IT IS FURTHER ORDERED that RESPONDENTS shall not, individually or on behalf of  
6 other entities, direct or give consent to any transfer of development rights associated with the  
7 Dacono Project property, including, but not limited to, tax credits or municipal bond financing,  
8 unless the agreement for such transfer of rights provides that funds equal to full restitution as set  
9 forth in this Order shall be placed in escrow for the benefit of all Note investors.

10 IT IS FURTHER ORDERED that RESPONDENTS shall notify the Commission of any  
11 change in ownership of the Dacono Project property; any change in liens on the property; and the  
12 opening or closing of any escrow for funding a construction loan or for sale of the Dacono Project or  
13 the Dacono Project property. In addition, if construction of the project commences, RESPONDENTS  
14 shall provide the Commission quarterly reports reflecting all expenses related to the property and the  
15 project.

16 IT IS FURTHER ORDERED that the Commission shall retain jurisdiction in this matter to  
17 investigate the activities of the RESPONDENTS pursuant to A.R.S. § 44-1822 to address issues  
18 relating to restitution in accordance with A.R.S. § 44-2032.

19 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that DECKER, OXFORD, and  
20 CNT, jointly and severally, shall pay administrative penalties in the amount of \$50,000. Payment

21 ...  
22 ...  
23 ...  
24 ...  
25 ...  
26 ...

1 shall be made in full by cashier's check or money order on the date of this Order, payable to the  
2 "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from  
3 the date of this Order until paid in full.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6  
7  
8 CHAIRMAN

COMMISSIONER

COMMISSIONER

9 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
10 Executive Secretary of the Arizona Corporation  
11 Commission, have hereunto set my hand and caused the  
12 official seal of the Commission to be affixed at the Capitol,  
13 in the City of Phoenix, this \_\_\_\_\_ day of June, 2001.

14 \_\_\_\_\_  
15 BRIAN C. McNEIL  
16 Executive Secretary

17 \_\_\_\_\_  
18 DISSENT

19 This document is available in alternative formats by contacting Shelly M. Hood, ADA Coordinator,  
20 voice phone number 602-542-3931, E-mail [shood@cc.state.az.us](mailto:shood@cc.state.az.us).

21 PTJ  
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**CONSENT TO ENTRY OF ORDER**

1  
2 1. RESPONDENTS admit the jurisdiction of the Commission over the subject matter of  
3 this proceeding. RESPONDENTS acknowledge that they have been fully advised of their right to a  
4 hearing to present evidence and call witnesses and RESPONDENTS knowingly and voluntarily  
5 waive any and all rights to a hearing before the Commission and all other rights otherwise available  
6 under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code.  
7 RESPONDENTS acknowledge that this Order To Cease And Desist, Order for Restitution, Order  
8 for Administrative Penalties and Consent to Same ("Order") constitutes a valid final order of the  
9 Commission.

10 2. RESPONDENTS knowingly and voluntarily waive any right they may have under  
11 Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or  
12 extraordinary relief resulting from the entry of this Order.

13 3. RESPONDENTS acknowledges and agrees that this Order is entered into freely and  
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. RESPONDENTS acknowledge that they have been represented by counsel in this matter,  
16 have reviewed this Order with their attorneys and understand all terms it contains.

17 5. RESPONDENTS admit only for purposes of this proceeding and any other  
18 administrative proceedings before the Commission or administrative proceedings before any other  
19 agency of the State of Arizona the Findings of Fact and Conclusions of Law contained in this Order.

20 6. By consenting to the entry of this Order, RESPONDENTS agree not to take any action or  
21 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of  
22 Fact or Conclusion of Law in this Order or creating the impression that this Order is without factual  
23 basis. RESPONDENTS will undertake steps necessary to assure that all of their agents and  
24 employees understand and comply with this agreement.

25 7. RESPONDENTS agree to take all steps necessary to subordinate all of their rights and  
26 interests, both currently existing or existing in the future, in the Dacono Project property, described

1 in paragraph 10 of the Order, to the investors shown on the records of the Commission.  
2 RESPONDENTS further agree to take all steps necessary to subordinate all of their contractual  
3 rights and interests, both currently existing or existing in the future, related to the development  
4 project known as the Dacono Factory Stores and located near Dacono, Weld County, Colorado, to  
5 the investors shown on the records of the Commission.

6 8. RESPONDENTS understand that nothing in this Order relieves them of any obligation or  
7 responsibility that they have to their investors or clients outside of this Order.

8 9. While this Order settles this administrative matter between RESPONDENTS and the  
9 Commission, RESPONDENTS understand that this Order does not preclude the Commission from  
10 instituting other administrative proceedings based on violations that are not addressed by this Order.

11 10. RESPONDENTS understand that this Order does not preclude the Commission from  
12 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
13 that may be related to the matters addressed by this Order.

14 11. RESPONDENTS understand that this Order does not preclude any other agency or  
15 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal  
16 proceedings that may be related to matters addressed by this Order.

17 12. RESPONDENTS agree that they will not apply to the state of Arizona for registration as  
18 a securities dealer or salesman or for licensure as an investment adviser or investment adviser  
19 representative at any time in the future.

20 13. RESPONDENTS agree that they will not exercise any control over any entity that offers  
21 or sells securities or provides investment advisory services, within or from Arizona.

22 14. RESPONDENTS agree that until restitution and penalties are paid in full,  
23 RESPONDENTS will notify the Director of the Securities Division within 30 days of any change in  
24 home address or any change in RESPONDENTS' ability to pay amounts due under this Order.

25 15. RESPONDENTS understand that default shall render them liable to the Commission for  
26 its costs of collection and interest at the maximum legal rate.

1 16. RESPONDENTS agree that they will continue to cooperate with the Securities Division  
2 including, but not limited to, providing complete and accurate testimony at any hearing in this  
3 matter and cooperating with the state of Arizona in any related investigation or any other matters  
4 arising from the activities described in this Order.

5 17. RESPONDENTS consent to the entry of this Order and agree to be fully bound by its  
6 terms and conditions. If RESPONDENTS breach any provision of this Order, the Commission may  
7 vacate this Order and restore this case to its active docket.

8 18. This agreement and Order shall be binding upon RESPONDENTS' officers, directors,  
9 agents, heirs, employees, assigns, representatives, beneficiaries or other successors in interest of any  
10 kind.

11 19. DECKER represents that he is Managing Member of OXFORD, and President of CNT,  
12 and has been authorized by OXFORD and CNT to enter into this Order for and on behalf of them.

13  
14  
15  
16 \_\_\_\_\_  
WENDELL T. DECKER, JR.

17 SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_\_ day of \_\_\_\_\_, 2001.

18  
19 \_\_\_\_\_  
NOTARY PUBLIC

20 My Commission Expires:  
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22 \_\_\_\_\_  
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26 \_\_\_\_\_

OXFORD DEVELOPMENT, L.L.C.

By: Wendell T. Decker, Jr., Managing Member

SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

NOTARY PUBLIC

My Commission Expires:

CNT FAMILY FUN OUTLETS, INC.

By: Wendell T. Decker, Jr., President

SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

NOTARY PUBLIC

My Commission Expires:

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1 investors, and agreed to pay commissions of 10% of all money raised, and an additional equity  
2 interest in the project.

3 6. Until around March 1999, all of the Notes offered and sold by RESPONDENTS were  
4 represented as being secured by deeds of trust filed in Weld County on the property described as  
5 follows (the "Dacono Project property):

6 A tract of land located in the South Half (S1/2) of Section Fourteen (14),  
7 Township One (1) North, Range Sixty-eight (68) West of the Sixth (6<sup>th</sup>)  
8 Principal Meridian, County of Weld, State of Colorado, being more  
particularly described as follows:

9 Considering the South line of the Southwest Quarter (SW/4) of said Section  
10 14 as bearing North 88°57'30" East from a 3 1/4" aluminum cap at the  
11 Southwest corner of said Section 14 to a 3 1/4" aluminum cap at the South  
Quarter corner of said Section 14 and with all bearings contained herein  
relative thereto:

12 Commencing at the Southwest corner of said Section 14; thence along said  
13 South line, North 88°57'30" East, 440.10 feet; thence, North 01°02'30"  
West, 30.00 feet to the POINT OF BEGINNING, said point being on the  
East line of Interstate 25;

14 thence along said East line the following 3 courses, North 79°41'00" West,  
15 203.10 feet; thence, North 08°14'30" West, 943.60 feet; thence, North  
16 00°17'30" East, 914.78 feet to a point on the South right-of-way line of the  
Union Pacific Railroad Company;

17 thence, along said South right-of-way line the following 6 courses, South  
18 78°47'56" East, 165.34 feet to a point on a curve concave to the North  
19 having a central angle of 11°44'53", a radius of 1886.98 feet and the chord  
20 of which bears South 84°40'23" East, 386.23 feet; thence, along the arc of  
said curve 386.91 feet; thence, North 89°27'11" East, 467.86 feet to a point  
21 on a curve concave to the Southwest having a central angle of 54°53'25", a  
radius of 1839.60 feet and the chord of which bears South 63°06'07" East,  
22 1695.74 feet; thence, along the arc of said curve 1762.37 feet; thence, South  
35°39'24" East, 674.84 feet to a point on a curve concave to the Northeast  
having a central angle of 11°56'40", a radius of 2902.76 feet and the chord  
of which bears South 41°37'44" East, 604.04 feet; thence along the arc of  
said curve 605.14 feet to a point on the North line of County Road 8;

23 thence along said North line, South 88°57'03" West, 788.41 feet; thence  
24 continuing along said North line, South 88°57'30" West, 2203.18 feet to the  
Point of Beginning.

25 7. DECKER and STEDMAN's plan was that STEDMAN would sign all of the Notes as  
26 "Maker" and be personally liable to investors; the borrowed funds would be transferred to

1 PROFUTURA, L.L.C. ("PROFUTURA") to loan to OXFORD DEVELOPMENT, L.L.C.  
2 ("OXFORD") to cover costs necessary to obtain construction financing for the project; OXFORD  
3 would pledge the Dacono Project property as security for the Notes and would pay STEDMAN's  
4 obligations to investors, including the interest on the Notes; and DECKER would determine what  
5 portions of the Dacono Project property would be used to secure the Notes.

6 8. From approximately March 1996, RESPONDENTS directly offered and sold Notes to  
7 approximately 17 private investors, raising approximately \$1,063,000 from private investors.

8 9. RESPONDENTS told investors that their funds were to be used to pay expenses as  
9 interim financing for a project described as the Dacono Factory Outlet Stores or the Dacono Factory  
10 Outlet Mall and Sports Arena, and that their Notes would be paid upon the due date or at the close of  
11 the construction financing.

12 10. On December 26, 1998, DAVIS first learned that the Promissory Notes were not being  
13 recorded and secured by a deed of trust. In fact, from the inception of the project to date, less than ten  
14 private investors are beneficiaries of any recorded interests in the Dacono Project property.

15 11. As part of the paperwork for the Notes, investors were required to sign form letters  
16 addressed to STEDMAN, which the promoters called "Big Boy Letters." The letters stated that the  
17 investors were accredited investors, defined as investors whose net worth was over \$1,000,000, or  
18 whose income was at least \$200,000 for the two years prior to investment.

19 12. The interest rates on most of the Notes sold after RESPONDENTS became involved  
20 in March 1996 varied from 15% to 20% per annum. Until around September 1997, the term of the  
21 Notes was one year. After the project failed to obtain construction financing, in or around September  
22 1997, the term of most of the Notes was reduced to 90 days, and existing Notes, including interest,  
23 were rolled over or renewed at the end of their terms.

24 13. DECKER offered RESPONDENTS 10% commissions on the rollover of their  
25 investors' Notes. By August 2000, some of the Notes had been rolled over eighteen times.

26

1           14.    In December 1998, one investor protested that the deed of trust that was supposed to  
2 secure his Note was never recorded. Within approximately three months, in or around April 1999,  
3 RESPONDENTS started to offer and sell "unsecured" Notes to new private investors.

4           15.    In connection with the offer or sale of securities within or from Arizona,  
5 RESPONDENTS directly or indirectly made untrue statements of material fact or omitted to state  
6 material facts which were necessary in order to make the statements made not misleading in light of  
7 the circumstances under which they were made. RESPONDENTS' conduct includes, but is not  
8 limited to, the following:

- 9           a) Representing that the investment was a short-term loan because a construction loan for  
10 the Dacono Project was in place and investors would be paid in full at the close of that  
11 loan, when in fact there were a series of purported loan "commitments" that never  
12 materialized and the principals never succeeded in negotiating construction financing  
13 for the project;
- 14           b) Representing until at least April 1999 that the Notes, and any extensions, renewals or  
15 rollovers of the Notes, were secured by a recorded interest in a deed of trust on a  
16 portion of the Dacono Project property located in Weld County, Colorado and owned  
17 by OXFORD; and representing that the total of all loans secured by Lot 6 would not  
18 exceed one million dollars. In fact only approximately eight of the original investors  
19 in 1996 and early 1997 were identified as beneficiaries on recorded deeds of trust, the  
20 total of all loans represented as secured by Lot 6 far exceeded one million dollars, and  
21 the property that was supposed to be pledged to private investors was utilized instead  
22 as security to obtain financing from institutional "bridge" lenders;
- 23           c) Failing to disclose that substantial investor funds were used for failed funding  
24 attempts, attempts to obtain bonding, tax benefits for the future owners of the project,  
25 interest payments on prior investors' Notes; redeeming prior investors' defaulted  
26

Notes, profits to institutional bridge lenders, DECKER's living expenses, and DECKER's and STEDMAN's travel expenses; and

d) Failing to disclose STEDMAN's inability to repay the Notes, if construction financing was not secured.

II.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

2. RESPONDENTS offered or sold securities within or from Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

3. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that were neither registered nor exempt from registration.

4. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while neither registered as dealers or salesmen nor exempt from registration.

5. RESPONDENTS violated A.R.S. § 44-1991 by offering or selling securities within or from Arizona by making untrue statements or misleading omissions of material facts.

6. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-2032.

7. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-2032.

8. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S. § 44-2036.

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1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall,  
2 jointly and severally, pay an administrative penalty in the amount of \$10,000. Payment shall be  
3 made in full by cashier's check or money order on the date of this Order, payable to the "State of  
4 Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum from the date  
5 of this Order until paid in full.

6 IT IS FURTHER ORDERED that this Order shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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11 CHAIRMAN

COMMISSIONER

COMMISSIONER

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,  
13 Executive Secretary of the Arizona Corporation  
14 Commission, have hereunto set my hand and caused the  
15 official seal of the Commission to be affixed at the Capitol,  
16 in the City of Phoenix, this \_\_\_\_\_ day of  
17 \_\_\_\_\_, 2001.

18 \_\_\_\_\_  
BRIAN C. McNEIL  
Executive Secretary

19  
20 DISSENT

21 This document is available in alternative formats by contacting Shelly M. Hood, ADA Coordinator,  
22 voice phone number 602-542-3931, E-mail [shood@cc.state.az.us](mailto:shood@cc.state.az.us).

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**CONSENT TO ENTRY OF ORDER**

1  
2 1. RESPONDENTS KEITH B. DAVIS and KEITH B. DAVIS, INC. (RESPONDENTS)  
3 admit the jurisdiction of the Commission over the subject matter of this proceeding.  
4 RESPONDENTS acknowledge that they have been fully advised of their rights to a hearing to  
5 present evidence and call witnesses and RESPONDENTS knowingly and voluntarily waive any and  
6 all rights to a hearing before the Commission and all other rights otherwise available under Article  
7 11 of the Securities Act and Title 14 of the Arizona Administrative Code. RESPONDENTS  
8 acknowledge that this Order To Cease And Desist, Order of Restitution, Order for Administrative  
9 Penalties and Consent to Same ("Order") constitutes a valid final order of the Commission.

10 2. RESPONDENTS knowingly and voluntarily waive any right they may have under  
11 Article 12 of the Securities Act to judicial review by any court by way of suit, appeal, or  
12 extraordinary relief resulting from the entry of this Order.

13 3. RESPONDENTS acknowledge and agree that this Order is entered into freely and  
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. RESPONDENTS acknowledge that they have chosen not to be represented by counsel in  
16 this matter, they have reviewed this Order and understand all terms it contains.

17 5. RESPONDENTS admit only for purposes of this proceeding and any other  
18 administrative proceeding before the Commission or any other agency of the State of Arizona the  
19 Findings of Fact and Conclusions of Law contained in the Order.

20 6. By consenting to the entry of this Order, RESPONDENTS agree not to take any action  
21 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding  
22 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without  
23 factual basis. RESPONDENTS will undertake steps necessary to assure that all of his agents and  
24 employees understand and comply with this agreement. Nothing in this provision affects  
25 RESPONDENTS' testimonial obligations or right to take legal positions in litigation in which an  
26 administrative agency of the State of Arizona is not a party.

7. RESPONDENTS agree to take all steps necessary to subordinate all of their rights and  
interests, both currently existing or existing in the future, in the Dacono Project property, described

1 in paragraph 6 of the Order, to the investors identified on the records of the Division, until those  
2 investors have received full restitution as mandated by the Commission in the Order.  
3 RESPONDENTS further agree to take all steps necessary to subordinate all of their contractual  
4 rights and interests, both currently existing or existing in the future, related to the development  
5 project known as the Dacono Factory Stores and located near Dacono, Weld County, Colorado,  
6 including commissions from the sale of the Notes, to the investors identified on the records of the  
7 Division.

8 8. RESPONDENTS understand that nothing in this Order relieves them of any obligation or  
9 responsibility that they have to their investors or clients outside of this Order.

10 9. While this Order settles this administrative matter between RESPONDENTS and the  
11 Commission, RESPONDENTS understand that this Order does not preclude the Commission from  
12 instituting other administrative proceedings based on violations that are not addressed by this Order.

13 10. RESPONDENTS understand that this Order does not preclude the Commission from  
14 referring this matter to any governmental agency for administrative, civil, or criminal proceedings  
15 that may be related to the matters addressed by this Order.

16 11. RESPONDENTS understand that this Order does not preclude any other agency or  
17 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal  
18 proceedings that may be related to matters addressed by this Order.

19 12. RESPONDENTS agree that they will not apply to the state of Arizona for registration as  
20 a securities dealer or salesman or for licensure as an investment adviser or investment adviser  
21 representative for five years from the date of the Order and until such time as all restitution and  
22 penalties under the Order are paid in full.

23 13. RESPONDENTS agree that they will not exercise any control over any entity that offers  
24 or sells securities or provides investment advisory services, within or from Arizona.

25 14. RESPONDENTS agree that until restitution and penalties are paid in full,  
26 RESPONDENTS will notify the Director of the Securities Division within 30 days of any change in  
home address or any change in RESPONDENTS' ability to pay amounts due under this Order.

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15. RESPONDENTS understand that default shall render them liable to the Commission for its costs of collection and interest at the maximum legal rate.

16. RESPONDENTS agree that they will continue to cooperate with the Securities Division including, but not limited to, providing complete and accurate testimony at any hearing in this matter and cooperating with the state of Arizona in any related investigation or any other matters arising from the activities described in this Order.

17. RESPONDENTS consent to the entry of this Order and agree to be fully bound by its terms and conditions. If RESPONDENTS breach any provision of this Order, the Commission may vacate this Order and restore this case to its active docket.

18. This agreement and Order shall be binding upon RESPONDENTS' agents, heirs, employees, assigns, representatives, beneficiaries or other successors in interest of any kind.

19. KEITH B. DAVIS represents that he is President of KEITH B. DAVIS, INC. and has been authorized by KEITH B. DAVIS, INC. to enter into this Order for and on behalf of it.

\_\_\_\_\_  
KEITH B. DAVIS

SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
NOTARY PUBLIC

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

KEITH B. DAVIS, INC.

By: Keith B. Davis, President

SUBSCRIBED AND SWORN TO BEFORE me this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

NOTARY PUBLIC

My Commission Expires:

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