

mtc-68539 KR

AFTER RECORDING RETURN TO:  
OREGON ECONOMIC AND COMMUNITY  
DEVELOPMENT DEPARTMENT  
775 Summer St. NE, Suite 200  
Salem, OR 97301-1280

OBDF Loan No. 422

**M05-68489**

Klamath County, Oregon

11/07/2005 03:13:50 PM

Pages 8 Fee: \$56.00

INTERCREDITOR AGREEMENT

THIS INTERCREDITOR AGREEMENT ("Agreement") is made as of the 4<sup>th</sup> day of November, 2005, between the STATE OF OREGON, ACTING BY AND THROUGH ITS ECONOMIC AND COMMUNITY DEVELOPMENT COMMISSION ("Commission"), and SOUTH CENTRAL OREGON ECONOMIC DEVELOPMENT DISTRICT ("Lender"). Commission and Lender may be referred to below individually without distinction as "Party" or collectively as "Parties".

WHEREAS, Commission has or is loaning to Integrated Building Solutions, LLC ("Borrower") through the Oregon Business Development Fund the sum of Three Hundred Thirty Seven Thousand DOLLARS (U.S. \$337,000) for the purpose of purchasing a parcel of real property and constructing a building thereon ("Commission's Loan"), which will be evidenced by a promissory note dated November 4, 2005 (as amended, renewed, or extended "Commission's Note"), and the repayment of which is secured by the collateral described in a trust deed dated November 4, 2005 executed by \*see below and recorded on November 1, 2005 in Book M05, Page 60488 as document number                      in the records of Klamath County, Oregon (as amended from time to time "Commission's Trust Deed" or "Commission's Collateral Documents"; together with Commission's Note and any other agreement or instrument relating to Commission's Loan collectively "Commission's Loan Documents"); and

\* Integrated Building Solutions, LLC, an Oregon limited liability company

WHEREAS, Lender is loaning to Borrower the sum of Two Hundred Fifteen Thousand DOLLARS (U.S. \$215,000) for the purpose of purchasing a parcel of real property and constructing a building thereon ("Lender's Loan"), which will be evidenced by a promissory note dated November 4, 2005 (as amended, renewed, or extended "Lender's Note"), and the repayment of which is secured by the collateral described in a trust deed executed by \*\*see below dated November 4, 2005 and recorded on November 1, 2005 in Book M05, Page 60488 as document number                      in the records of Klamath County, Oregon (as amended from time to time "Lender's Trust Deed" or "Lender's Collateral Documents"; together with Lender's Note and any other agreement or instrument relating to Lender's Loan are collectively referred to as "Lender's Loan Documents"); and

\*\* Integrated Building Solutions, LLC, an Oregon limited liability company

WHEREAS, Commission's Collateral Documents and Lender's Collateral Documents encumber or will encumber certain property described in Attachment A which is by this reference incorporated herein ("Common Collateral"); and

WHEREAS, contemporaneously with the above, Commission and Lender wish to establish equal priority as to the liens and security interests of Commission and Lender in the Common Collateral, on the following terms and conditions;

NOW, THEREFORE, in consideration of the transactions described in the recitals above and the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Commission and Lender agree as follows:

1. CERTAIN DEFINITIONS

As used in this Agreement, unless the context requires otherwise:

1.1 Loan(s). "Loan(s)" means the Commission's Loan and the Lender's Loan, collectively and individually without distinction.

1.2. Net Proceeds. "Net Proceeds" means all cash proceeds of the Common Collateral or Owned Common Collateral received by a Party as a result of a Realization Event, after deduction of all costs and expenses incurred by either Party for the benefit of both Parties to achieve such Realization Event.

1.3 Pro Rata Share of Costs. "Pro Rata Share of Costs" means a Party's pro rata share of costs and expenses incurred by either Party for the benefit of both Parties in regard to a Realization Event calculated on the basis of (a) (as of a date prior to the time the Parties acquire the Common Collateral) that Party's unpaid Loan balance (not to exceed the sums set forth in Section 2.1) and (b) (as of a date after the time the Parties acquire the Common Collateral) that Party's Pro Rata Ownership Interest.

1.4 Pro Rata Share of Net Proceeds. "Pro Rata Share of Net Proceeds" means a Party's pro rata share of Net Proceeds calculated on the basis of the unpaid balance (excluding costs and expenses) of that Party's Loan as of the date of a Realization Event; provided that, for the purposes of calculating a Party's Pro Rata Share of Net Proceeds, the unpaid balance amount used for that Party shall not exceed the maximum amount specified in Section 2.1.

1.5 Pro Rata Ownership Interest. "Pro Rata Ownership Interest" means a Party's pro rata undivided

56.00

tenancy in common interest in the Owned Common Collateral calculated on the basis of the principal amount of such Party's outstanding balance that was credit bid in, or was otherwise deemed satisfied as a result of, the Realization Event that resulted in ownership of such Owned Common Collateral.

1.6 Pro Rata Share of Foreclosure Proceeds. "Pro Rata Share of Foreclosure Proceeds" means a Party's pro rata share of the Net Proceeds calculated based upon each party's bid (by credit bid of the amount due under the Commission's Loan or the Lender's Loan, as the case may be, or otherwise) at the foreclosure sale; provided that, for the purposes of calculating a Party's Pro Rata Share of Foreclosure Proceeds, the credit bid amount used for that Party shall not exceed the maximum amount specified in Section 2.1. In the event of a deed-in-lieu of foreclosure, the Pro Rata Share of Net Proceeds shall be substituted for the Pro Rata Share of Foreclosure Proceeds for distributions under Section 5.2.

1.7 Realization Event. A "Realization Event" means, as to the Common Collateral, any sale or disposition (other than in the ordinary course of business) thereof, whether under the Uniform Commercial Code, bankruptcy or other insolvency proceeding or otherwise; any foreclosure or other realization thereon; receipt of insurance or condemnation proceeds; the sale or other transfer thereof by Borrower, the proceeds of which Borrower is obligated to pay to either Party as proceeds of the Common Collateral; or the sale or disposition of Owned Common Collateral.

## 2. PARI PASSU

2.1 Pari Passu. The liens and security interests of Commission and Lender in the Common Collateral securing Commission's Loan and Lender's Loan, respectively, pursuant to Commission's Collateral Documents and Lender's Collateral Documents, respectively, are pari passu and of equal priority, as though Commission's Collateral Documents and Lender's Collateral Documents were recorded simultaneously; provided, however, that this Agreement applies only to (a) Commission's Loan up to a maximum principal amount of Three Hundred Thirty Seven Thousand Dollars (\$337,000), plus interest, and (b) Lender's Loan up to a maximum principal amount of Two Hundred Fifteen Thousand Dollars (\$215,000), plus interest.

2.2 Priorities. The priorities specified hereinabove are applicable irrespective of the time or order of attachment or perfection of the security interests, trust deeds or other interests referred to herein, the time or order of filing or recording of financing statements, trust deeds, the acquisition of purchase money or other security interests, or the time of giving or failure to give notice of the acquisition or expected acquisition of purchase money or other security interests.

2.3 Nonavoidability, Perfection and Absence of Intervening Liens. The priorities in and to the Common Collateral specified in this Agreement are expressly conditioned upon the nonavoidability and perfection of the liens and security interests of Commission and Lender in such Common Collateral and the absence of any intervening liens and security interests therein. If the lien or security interest of a Party is not or ceases to be perfected or is avoided for any reason, or if a valid intervening lien or security interest exists in the Common Collateral, then this Agreement shall not be effective as to the particular property or asset of Borrower that is the subject of the unperfected, avoided or intervening lien or security interest.

2.4 No Limitation as to Obligations of Borrower, Guarantors or Third Parties. Reservation of Rights. Nothing in this Agreement shall in any way whatsoever affect or limit (a) the amount owed by Borrower or any guarantor to either Party, which amount shall be determined under the terms of the applicable Loan Documents, (b) the liens and security interests that each of the Parties hereto has or may hereafter acquire in the property and assets of Borrower, any guarantor, or any third parties, whether tangible or intangible, insofar as the rights of Borrower, any guarantor and any third parties are involved, or (c) the amount of the balance due on a Party's Loan submitted as a credit bid on the Common Collateral in any Realization Event. The Parties hereto specifically reserve any and all of their respective rights, liens and security interests, and rights to assert liens and security interests as against Borrower, any guarantor and any other third parties.

2.5 No Marshalling; No Sharing of Proceeds of Guaranties or Other Collateral. Neither Party may require the other Party to marshal other assets before foreclosing on the Common Collateral. Nothing contained in this Agreement shall in any way (a) require either Party to share with the other Party the proceeds of any guaranty of its Loan to Borrower or the proceeds of any security for any such guaranty or (b) limit the ability of or require either Party to realize on, or require either Party to share with the other Party the proceeds of, property or assets of the Borrower that are not Common Collateral.

2.6 ORS 79 Notice. Each Party agrees to give the other written notice of the time and place of any public sale or the time after which any private sale or other intended disposition is to be made by it of the Common Collateral. This Agreement is intended, in part, to constitute a request for notice and a written notice of a claim by each Party hereto to the other of an interest in the Common Collateral in accordance with the provisions of ORS 79.0611 and ORS 79.0613 and any successor thereto.

2.7 Further Assurances. A Party will execute and deliver to the other Party all such documents, instruments and agreements and do all such other acts and things as may be reasonably requisite to enable said Party other to exercise and enforce its rights hereunder and in connection with this Agreement.

### 3. DEFAULT

3.1 Retention of Rights. Each Party retains all rights with respect to the enforcement, collection and administration of its own Loan and the security therefor.

3.2 Notice of Default. Any notice of default or acceleration issued by a Party to Borrower shall, at the time it is delivered to Borrower, also be delivered to the other Party to this Agreement; provided that failure to do so shall not affect the validity of such notice.

3.3 Event of Default. For purposes of this Section, an event of default means a breach by the Borrower of the Commission's Loan Documents or the Lender's Loan Documents, whether denominated as a default, event of default, or otherwise, which after delivery of any required notices, the expiration of any rights to cure or other provision of said documents, authorizes that Party to exercise default remedies, and with respect to such breach, the Party has elected to proceed with its default remedies. The Parties (and, by signing below, the Borrower and any guarantors) agree that any event of default under the Commission's Loan Documents or the Lender's Loan Documents, which has not been cured by the Borrower within the cure period provided or waived by the Commission or Lender, as applicable, shall be deemed to be an event of default under the other Party's documents.

### 4. REALIZATION

4.1 Receipt of Proceeds. Upon the occurrence of a Realization Event resulting in cash proceeds, the Party receiving the cash proceeds shall make the required distributions of unreimbursed costs and expenses. Except as provided in Sections 4.4 and 5.2, each Party shall then receive its Pro Rata Share of Net Proceeds. The Party who received the cash proceeds shall promptly remit to the other Party such Party's Pro Rata Share of Net Proceeds or the sums due under Section 4.4 or 5.2. In the event a Party has waived its rights in the Common Collateral, that Party shall not be entitled to recovery of its unreimbursed costs and expenses nor to share in the Net Proceeds and shall have no liability to the other Party for the other Party's unreimbursed costs and expenses.

#### 4.2 Joint Realization.

4.2.1 Upon an event of default by Borrower as described in Section 3.3, the Parties shall promptly consult and attempt to agree upon a mutually acceptable course of action to take with respect to such event of default and then pursue this course of action without delay and with due diligence. If agreement is reached, the Parties shall designate and authorize a Party (in such case the "Realizing Party") to pursue the agreed upon course of action ("Joint Realization") on behalf of both Parties, and the Realizing Party shall be entitled to bid all or a portion of the aggregate balance due on the Parties' Loans at a Realization Event with respect to all or any portion of the Common Collateral. If the Realizing Party is Lender, its authority to act on behalf of the State is subject to the ORS chapter 180 requirements that only the Department of Justice or an attorney appointed as a special assistant attorney general may represent the State.

4.2.2 A Realizing Party shall not be deemed to be a fiduciary of the other Party with respect to any Joint Realization and shall have no liability to the other Party with respect to its actions in connection therewith except for its own gross negligence or intentional misconduct.

4.3 Individual Realization. If the Parties cannot agree on a procedure for a Joint Realization, then both Parties shall proceed to judicially foreclose their respective liens and security interests in the Common Collateral in a single action in which the Parties shall also seek a declaration by the court that sets forth their respective rights in the Common Collateral pursuant to this Agreement.

4.4 Distribution of Net Proceeds from Foreclosure Sale. Net Proceeds from a foreclosure sale shall be distributed to the Parties in the following order:

- (a) Each Party shall receive the amount it bid (by credit bid or otherwise) for the Common Collateral, not to exceed the amount set forth for that Party in Section 2.1.
- (b) Each Party shall receive its Pro Rata Share of Foreclosure Proceeds until one Party's judgment has been repaid in full or up to the amount set forth in Section 2.1.
- (c) The Net Proceeds shall then be paid to the other Party until its judgment has been repaid in full or up to the amount set forth in Section 2.1.
- (d) Any remaining Net Proceeds to be distributed as provided by law.

### 5. JOINTLY OWNED COMMON COLLATERAL

5.1 Management of Jointly Owned Common Collateral. In the event any or all of the Common Collateral is acquired by the Parties through a Realization Event, each Party shall have an undivided tenancy in common interest in all Common Collateral so acquired ("Owned Common Collateral"). Each Party's undivided tenancy in common interest in the Owned Common Collateral shall be determined in accordance with its Pro Rata Ownership Interest. Title to any Owned Common Collateral shall be in the name of Commission and Lender as tenants in common in accordance with their respective Pro Rata Ownership Interests. The Parties shall prepare a proposed plan for sale, management, maintenance, repair or improvement of the Owned Common Collateral, including cost

estimates. Such plan shall be subject to the written approval of both parties. So long as both Parties continue to have joint ownership interest in the Owned Common Collateral, all costs, expenses and liabilities arising out of the possession and management of the Owned Common Collateral shall, to the extent permitted by law, be shared by the Parties in accordance with their Pro Rata Ownership Interests.

5.2 Distribution of Net Proceeds Sale of Jointly Owned Common Collateral. Upon sale of any Owned Common Collateral by the Parties, the Net Proceeds thereof shall be shared by the Parties as follows:

- (a) First, each Party shall receive its Pro Rata Share of Foreclosure Proceeds until one Party has received all sums it paid (by credit bid or otherwise) for the Owned Common Collateral, and a further sum for interest on such amount at that Party's original interest rate. No payment to either Party under this Section may exceed the amount set forth for that Party in Section 2.1.
- (b) The other Party will then receive the Net Proceeds up to the amount of the remainder of the sum it paid (by credit bid or otherwise) for the Owned Common Collateral, and a further sum for interest on such amount at that Party's original interest rate, but not to exceed the amount set forth for that Party in Section 2.1.
- (c) Each Party will then receive its Pro Rata Share of Foreclosure Proceeds until one Party's Loan has been repaid in full up to the amount set forth in Section 2.1.
- (d) The other Party will then receive the remaining Net Proceeds until the remainder of that Party's Loan has been repaid in full up to the amount set forth in Section 2.1.
- (e) If one or more Parties has not received the amount it paid (by credit bid or otherwise) for the Owned Common Collateral, the remaining Net Proceeds shall be distributed towards that amount in the order of priority of claims.
- (f) Thereafter, all Net Proceeds shall be shared by the Parties according to their Pro Rata Ownership Interests.

5.3 Sale by Sole Purchaser. This Agreement does not restrict the ability of either Party to sell any Common Collateral without restriction after becoming the sole purchaser thereof at a Realization Event.

## 6. MISCELLANEOUS

6.1 Notice. Any notices which may be required herein shall be in writing and shall be given by personal delivery, facsimile or deposit in the United States mail with registered or certified postage prepaid, return receipt requested, to the following addresses or facsimile numbers:

Oregon Economic and Community Development Commission  
c/o Oregon Economic and Community Development Department  
775 Summer Street N.E., Suite 200  
Salem, Oregon 97301-1280  
Attn: Manager, Business Finance  
Tel: \_\_\_\_\_  
Fax: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Tel: (\_\_\_\_)  
Fax: (\_\_\_\_)

Any notice delivered by mail shall be deemed to be given three (3) days after mailing as provided above. Any notice delivered by facsimile shall be deemed to be given when a confirmation of successful transmission is generated by the transmitting machine. To be effective against Commission, such facsimile transmission must be confirmed by telephone notice to a Business Finance officer of the Oregon Economic and Community Development Department. Any notice by personal delivery shall be deemed to be given when actually delivered. A Party may designate a change of address or telephone or facsimile number by notice to the other Party in accordance with this Section 6.1.

6.2 Not a Security; No Pledge or Joint Venture. The granting of pari passu rights represented by this Agreement shall not be deemed to be a security within the meaning of the Securities Act of 1933, the Securities Exchange Act of 1934, or the Oregon Securities Law (ORS chapter 59). This Agreement shall not be deemed to represent a pledge of any interest in Commission's Loan to Lender, or in Lender's Loan to Commission. In addition, this Agreement shall not be construed to create a joint venture or partnership between Commission and Lender.

6.3 No Third Party Beneficiaries. All of the understandings and agreements contained herein are solely for the benefit of Commission and Lender, and there are no other parties (including Borrower) who are intended to be benefited in any way whatsoever by this Agreement.

6.4 Assignments; Successors and Assigns. Without the prior written consent of the other, neither Party shall assign or otherwise dispose of all or any part of its interest in this Agreement or any of the Loan Documents. All rights, benefits, burdens, and obligations set forth in this Agreement shall bind and inure to all successors and assigns of each of the Parties.

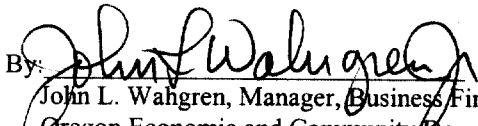
6.5 Amendment of Agreements with Borrower; Amendment and Waiver. The agreements and priorities set forth hereinabove shall remain in full force and effect regardless of whether any Party hereto in the future seeks to rescind, amend, terminate or reform, by litigation or otherwise, its agreements with Borrower. No modification of this Agreement shall be binding unless in writing and signed by the Parties, and no waiver of any of the terms of this Agreement shall be enforceable unless in writing and signed by the Party against whom such waiver is being asserted. The failure of a Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision. Waiver by either Party of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the Party's right to require strict performance of the same provision in the future or of any other provision.

6.6 Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Oregon without regard to the principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between Commission (and/or any other agency or department of the State of Oregon) and Lender that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon (except when the location of the collateral requires that the Claim be brought in the court of the county where the collateral is located); provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any Claim or from the jurisdiction of any court. LENDER, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS.

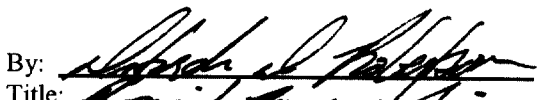
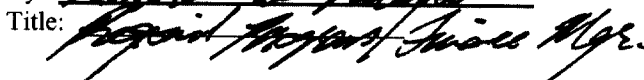
6.7 Headings; Counterparts. The captions or headings of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement. This Agreement may be executed in any number of counterparts and by each signatory on a separate counterpart, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, Commission and Lender have duly executed this Agreement as of the day and year first above written. By its execution of this Agreement, each Party warrants and represents that it has full and complete power and authority to execute this Agreement and to fulfill and perform the duties and obligations set forth herein.

STATE OF OREGON, acting by and through its  
Oregon Economic and Community Development Commission

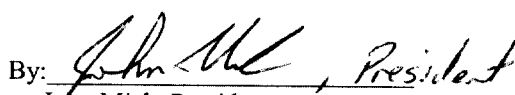
By:   
John L. Wahgren, Manager, Business Finance  
Oregon Economic and Community Development Department

SOUTH CENTRAL OREGON ECONOMIC DEVELOPMENT DISTRICT (Lender)

By:   
Title: 

AGREED:

INTEGRATED BUILDING SOLUTIONS OF OREGON, INC.

By:   
John Mick, President  
Date: 11/4/05

By: Robert Mick, Vice President  
Robert Mick, Vice President  
Date: 11-4-05

By: Carol Mick, Secretary  
Carol Mick, Secretary  
Date: 11-4-2005

John Mick  
John Mick, individually

Robert Mick  
Robert Mick, individually

Carol Mick  
Carol Mick, individually

STATE OF OREGON

County of Marion

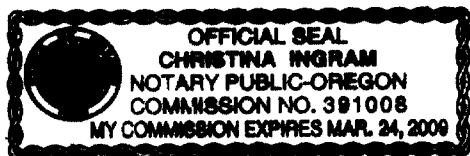


) This instrument was acknowledged before me on  
) 10-25-05, by John L. Wahrgren, Manager, Business  
) Finance, Oregon Economic and Community Development  
Department.

Notary Public for Oregon: Mindee E. A. Sublette  
My commission expires: April 3, 2009

STATE OF OREGON

County of Clatsop  
Klamath



) This instrument was acknowledged before me on 11/4/05  
) 10-25-05, by Deborah DasRobertson, Regional Program  
) Finance Mgr. of South Central Oregon Economic  
Development District.

Notary Public for Oregon: Christina Ingram  
My commission expires: March 24, 2009

State of Oregon  
County of KLAMATH

This instrument was acknowledged before me on Nov. 4, 2005 by John Mick, Carol Mick and Robert Mick, individually and John Mick as President, Robert Mick as Vice President and Carol Mick as Secretary of Integrated Building Solutions, LLC, an Oregon Limited Liability Company.

Kristi L. Redd  
(Notary Public for Oregon)

My commission expires 11/16/2007



Attachment A  
Common Collateral

OBDF Loan No. 422

I.

Real property owned by Integrated Building Solutions of Oregon, Inc., located in Klamath County, State of Oregon, more particularly described as:

A parcel of land situated in the NW ¼ of Section 22, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, being a portion of Parcel 3 of Land Partition 32-95 as recorded at the Klamath County Clerks office, being more particularly described as follows:

Beginning at the Northwest corner of said Parcel 3, said point being marked by a 2-1/2" aluminum cap stamped "City of Klamath Falls"; thence along the Northerly line of said Parcel 3, South 89 degrees 27' 28" East 353.81 feet; thence parallel to the Easterly line of said Parcel 3, South 00 degrees 32' 32" West 549.05 feet to the right-of-way line of Joe Wright Road; thence along said right-of-way line, North 89 degrees 27' 28" West, 398.81 feet to the right-of-way line of Swan Court; thence along said right-of-way line North 00 degrees 32' 32" East 453.00 feet to a point of curvature; thence continuing along said right-of-way line along the arc of a 50.00 foot radius curve to the right through a central angle of 50 degrees 12' 29" (the long chord of which bears North 25 degrees 38' 47" East 42.43 feet) a distance of 43.82 feet to a point of reverse curvature; thence continuing along said right-of-way line along the arc of a 75.00 foot radius curve to the left through a central angle of 50 degrees 12' 29" (the long chord of which bears North 25 degrees 38' 47" East, 63.64 feet) a distance of 65.72 feet to the point of beginning.

Tax Account No: 3909-02200-00203-000

Key No: 87820

II.

Real property owned by Robert and Carol Mick, located in Klamath County, State of Oregon, more particularly described as:

Lots 1 and 2 in Block 19, MOUNTAIN VIEW ADDITION TO THE CITY OF KLAMATH FALLS, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

Tax Account No: 3809-021CC-03500-000 Key No: 174322

GENO2153.DOC (10/24/05)