

INDENTURE OF ESTABLISHMENT OF
PROTECTIVE COVENANTS, CONDITIONS
AND RESTRICTIONS AND GRANTS OF EASEMENTS

THIS INDENTURE is made this 7th day of May,
1982, by TONOPAH PLAZA PARTNERS, a partnership, hereinafter re-
ferred to as "Declarant." This instrument is, for convenience,
hereinafter referred to as an "Indenture."

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Exhibits

- A Legal Description of the Shopping Center ~~and of the Individual Parcels.~~
- B Plot Plan of the Shopping Center Setting Forth Building Area and Common Area.

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RECITALS:

1. Declarant is owner of certain real property situate in the City of Las Vegas, County of Clark, State of Nevada, described in Exhibit A, attached hereto and incorporated herein by reference. Said real property described in Exhibit A is divided into nine (9) parcels, which are herein referred to separately as Parcels 1, 2, 3, 4, 5, 6, 7, 8 and 9, ^{which parcels are depicted on the plot plan which is Exhibit B, attached hereto, incorporated herein by reference.} Said Parcels are herein-
after collectively referred to as the "Shopping Center." Exhibit B ~~is a plot plan of the Shopping Center as Declarant proposes to develop it.~~ is a ^{plot plan of the Shopping Center as Declarant proposes to develop it.}

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2. Declarant plans to develop and operate the Shopping Center as an integrated retail sales area for the mutual benefit of all of the real property in the Shopping Center, and for such purposes does hereby fix and establish easements, covenants, restrictions, liens and charges (hereinafter collectively referred to as "Restrictions"), upon and subject to which all of .

said Shopping Center, or any part thereof, shall be improved, held, leased, sold and/or conveyed. Such Restrictions shall run with the land and shall inure to and pass with said property and shall apply to and bind the respective successors in interest thereof, and all and each thereof is imposed upon said property as a mutual equitable servitude in favor of said property and any portion thereof.

NOW THEREFORE:

In consideration of the premises and the various undertakings hereinafter set out, and of the covenants and agreements hereinafter contained, Declarant, as record owner of the Shopping Center, does hereby establish the covenants, conditions and restrictions hereafter set forth and grants to each occupant of the Shopping Center the easements hereafter described.

SECTION I - TERMINATION OF PRIOR DECLARATION

The Shopping Center is subject to a Declaration of Establishment of Protective Covenants, Conditions and Restrictions and Grants of Easements dated November 6, 1979, and recorded in the Official Records of Clark County on November 8, 1979, in Book 1145, as Instrument No. 1104239. Said Declaration was amended by that certain First Amendment to Declaration recorded in said Official Records on June 10, 1980, in Book 1238, as Document No. 1197648. Declarant hereby cancels and terminates said Declaration, as so amended, and the same shall be of no further force and effect.

SECTION II - USE AND DEVELOPMENT

1. The Shopping Center shall be used for commercial purposes only - for the construction, operation and maintenance of mercantile and business establishments and related facilities, including vehicular parking areas, all as more specifically described hereinafter.

2. For the purpose of this Indenture, the Shopping Center is divided into two (2) categories which relate to use,

both of which are hereafter referred to respectively as "Building Area" and "Common Area," and are shown on Exhibit B.

3. Except for building footings, canopies, signs, overhangs and other building appurtenances authorized in Section III, the construction, establishment and maintenance of buildings upon each Parcel of the Shopping Center shall be confined within the lines of those Building Areas shown on Exhibit B and said Building Areas shall be deemed to include those areas designated as "Future Expansion" on Exhibit B hereto.

4. No building shall be erected, placed, maintained or altered on any part of the Shopping Center unless the exterior appearance and coloring thereof, specifically including, but not limited to, elevations, height, canopy design and dimensions, and location of other building projections shall constitute a uniform and architecturally harmonious part of the development of the Shopping Center. No building or other structure erected in the Shopping Center shall exceed one (1) story in height (including mezzanine), nor shall any such building or structure exceed twenty-six (26) feet in height. In the event that there arises any dispute between any of the owners of the Shopping Center as to what shall constitute a uniform and harmonious part of the development of the Shopping Center, then in that event such dispute shall be arbitrated in accordance with the laws of the state in which the Shopping Center is located.

5. All buildings constructed in the Shopping Center shall be either equipped with such automatic sprinkler systems as meet all of the standards of the Insurance Services Office (or other similar local organization having jurisdiction), or shall be constructed in such a manner that all buildings so built may be fire rated as separate and distinct units from any other buildings built within the Shopping Center.

6. For the purposes of this Indenture all of the area within the Shopping Center to be used in common shall be referred -

to as "Common Area", and said Common Area includes all areas within the Shopping Center other than those portions of Building Areas upon which buildings are erected (it being acknowledged that since certain Building Areas are subject to maximum floor area limitations and others include future expansion areas, all as shown on Exhibit B hereto, portions of said Building Areas may not be improved with buildings). Said Common Area (except the portions thereof within Building Areas subject to a maximum floor area limitation) is shown on Exhibit B. Said Common Area shall be developed and maintained substantially in accordance with Exhibit B hereto. Any variation from said Exhibit B in the development and maintenance of said Common Area shall require the written consent of the record owners of one hundred percent (100%) of the Shopping Center and the tenants of record of the buildings located on Parcels 2 and 4.

SECTION III - EASEMENTS

1. The Common Area shall be used only for the following purposes:

(a) The parking of passenger vehicles and the pedestrian and vehicular traffic of the owners of any and all portions of the Shopping Center and their respective heirs, successors, assigns, grantees and tenants, and all persons who now own, hold or hereafter own or hold, portions of real property within the Shopping Center or any leasehold estate, or any other interest therein, or building space thereon; and the respective tenants or subtenants thereof; and the officers, directors, concessionaires, agents, employees, customers, visitors, and other licensees and invitees of any of them;

(b) The ingress and egress of any of the above designated persons, and the vehicles thereof, to any and from any portions of the Common Area and the public streets adjacent to the Common Area;

(c) The installation, maintenance and operation

within the confines of the Common Area of public utilities services serving the Building Area, together with and including vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, conduits and related facilities, and sewage facilities, all of which (except hydrants) shall, wherever reasonably feasible, be even with or below the surface; any of the above permitted installations which are located above the surface shall be located so that there shall be an unimpeded access for vehicles and trucks to and from the loading areas of the Building Area and to and from the public streets to the loading areas of the Building Area. Notwithstanding the foregoing there shall be permitted no utility poles carrying lines located above the surface;

(d) The movement of pedestrians and passenger vehicles between mercantile and business establishments and occupants located or to be located within said Building Area;

(e) The comfort and convenience of customers, visitors, invitees, licensees and patrons of mercantile and business establishments and occupants located or to be located upon the Building Area or any portion thereof by such other facilities (as, for example, mail boxes, public telephones, benches) as said owners and their respective heirs, successors, assigns or grantees may from time to time deem appropriate. Notwithstanding the foregoing, in accordance with the provisions of Section II, Paragraph 3, hereinabove set forth, all buildings are to be confined within the Building Areas;

(f) The construction, maintenance, repair, replacement, rearrangement and reconstruction of parking sites or stalls, sidewalks, ramps, driveways, lanes, curbs, gutters, traffic control areas, signals, traffic islands, traffic and parking lighting facilities, two (2) monument signs (with appropriate underground electrical connections) at those locations shown on Exhibit B, and two (2) pylon signs on Parcels 2 and 7 at the locations shown on Exhibit B hereto, which sign pylons shall be ✓

for the sole use of the occupants of the Building Areas on Parcels 2 and 4 and such other parties as the occupants of the Building Areas on Parcels 2 and 4 shall permit. The occupant of the Building Area on Parcel 2 shall be entitled to place its sign in the top position on each side of one (1) of such sign pylons and the occupant of the Building Area on Parcel 4 shall be entitled to place its sign in the top position on the other of such sign pylons. No sign pylon other than those shown on Exhibit B shall be erected, placed, maintained or altered on any part of the Shopping Center without the consent of all the then record owners of the Shopping Center and the tenants of Parcels 2 and 4 first obtained in writing. Any sign pylon erected, placed, maintained or altered on any part of the Shopping Center shall contain no advertisement of any business enterprise which is not an occupant of the Shopping Center. No signs located on any of said sign pylons shall obstruct the visibility from the streets adjacent to the Shopping Center of the signs located on any other of said sign pylons. Notwithstanding the foregoing, the provisions of Section II, Paragraph 6, hereinabove set forth, regarding the development and maintenance of the improvements on the Common Area must be complied with;

(g) The construction, maintenance, repair, replacement and reconstruction of any wall or landscaped area including planters, planting boxes, edgers, decorative walls and sprinklers and valves, all as may be required by appropriate governmental authority. Notwithstanding the foregoing, the provisions of Section II, Paragraph 6, hereinabove set forth, regarding the development and maintenance of the improvements on the Common Area must be complied with;

(h) The ingress and egress of delivery and service trucks and vehicles to and from the Building Area or any portion thereof and the public streets adjacent to the Shopping Center, for the delivery of goods, wares, merchandise and the rendition

of services to said owners, and their respective heirs, successors, and grantees and assigns, and all persons who now own or hold or hereafter own or hold portions of the Building Area or any leasehold estate, or any other interest therein, or building space thereon, and the respective tenants or subtenants thereof; and the officers, directors, concessionaires, agents, employees and licensees of any of them;

(i) The temporary parking or standing of trucks, tractors, trailers and other delivery vehicles used in conjunction with the exercise of any of the matters described in Subparagraph 1(h) of this Section III;

(j) The installation, removal, repair, replacement and maintenance of building canopies over pedestrian sidewalks and other Common Area from any Building Area a distance not exceeding fifteen (15) feet, together with canopy support columns upon and over such sidewalks and other Common Area;

(k) The installation, removal, repair, replacement and maintenance of such advertising or identification signs of building occupants as may be desired to be attached to or mounted upon their respective canopies or the surface of their respective buildings. Notwithstanding the foregoing, no such sign shall be so installed on any Parcel which shall obstruct the visibility of buildings and/or signs erected on any other Parcel;

(l) The installation, removal, replacement, repair, use and maintenance of hose bibbs, standpipes, fire hose connections, downspouts, yard or floodlights, subsurface building foundations, signs or shadow boxes of building occupants and any other building appurtenances as may be attached to or form an integral part of a building at any time situated upon any portion of the Building Area. In the event building wall footings encroach from one parcel onto another parcel, the party onto whose parcel the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall

footings encroach, provided such encroachment shall not exceed two (2) feet;

(m) The construction and operation of enclosed trash bins on portions of the Common Area contiguous to Building Area;

(n) The opening thereonto of doors of contiguous Building Area which open outward, subject to the requirements of governmental authority;

(o) The projection thereover of tracks extending outward from the Building Area, but not for a distance greater than 24 inches; and

(p) The temporary erection of ladders, scaffolding and store front barricades during periods of construction, remodeling or repair of buildings and building appurtenances, upon the condition, however, that such construction, remodeling or repair is diligently performed and such ladders, scaffolding and barricades thereupon promptly removed.

2. The easements hereinafter granted in each instance shall continue and endure to, and shall terminate at, midnight on December 31, 2082, and shall be appurtenant to each designated Parcel of the grantee of such easement and in each instance shall be non-exclusive and for the use and benefit, in common with grantor and others, of such grantee, its heirs, executors, administrators, successors, assigns, tenants, subtenants and others named in Paragraph 1(a) of this Section III.

3. Declarant does hereby establish easements for the purposes stated in Paragraph 1 of this Section III over, across, upon, in, under and through the Common Areas of the Shopping Center in favor of all owners and occupants of the Shopping Center and their customers, employees and invitees.

4. Areas to be used for motor vehicle parking purposes by employees of any owner, lessee or other occupant of the Shopping Center may be designated within the Shopping Center, or all

such employees may be restricted from parking within the Shopping Center, by a written directive signed by the owners of one hundred percent (100%) of the Shopping Center Building Area and by the tenants of the Building Area on Parcels 2 and 4. If such areas are so designated, no such employee shall use any part of the Common Area of the Shopping Center for motor vehicle parking purposes except such area or areas as may be so designated. If all such employees are so restricted, no such employee shall use any part of the Common Area of the Shopping Center for motor vehicle parking purposes.

SECTION IV - COMMON AREA MAINTENANCE AND TAXES

1. The full right, authority and obligation to operate, manage, control and maintain in a professional manner the Common Area, including, without limitation, driveways, sidewalks, parking areas, delivery ways, loading areas (except loading docks), landscaped areas, sign pylons, shall be and is hereby vested in the Declarant named herein or its designee (hereinafter referred to as the "Manager"), so long as such named Declarant has any interest in the Shopping Center or any portion thereof. Such right and authority shall continue until the earlier to occur of: (1) the date the Declarant named herein no longer has any interest in the Shopping Center or any portion thereof, in which event the owners of all of the parcels in the Shopping Center and the tenants of Parcels 2 and 4 shall reach an agreement among themselves as to who shall assume such duties, obligations, rights and remedies of the Manager; or (2) the then record fee owners of more than fifty-one percent (51%) interest in the permitted Shopping Center Building Area, according to the percentages provided for in Paragraph 6 of this Section IV, shall desire, jointly and severally, to assume the duties, obligations, rights and remedies of the Manager, pursuant to this Section IV, and with the written approval of the tenants of Parcels 2 and 4, shall execute and file for record and serve on the remaining fee

owners an instrument providing for the termination of such right and authority of the Manager; or (3) the Declarant named herein, after assuming for at least three (3) years the duties, obligations, rights and remedies imposed on it in this Section IV, shall execute, file for record and serve a formal written sixty (60) day notice of its resignation as Manager on the fee owners of the Shopping Center and the tenants of Parcels 2 and 4, in which event, upon receipt of said notice, the owners of all of the parcels in the Shopping Center and the tenants of Parcels 2 and 4 shall reach an agreement among themselves as to who shall assume such duties, obligations, rights and remedies of the Manager.

The Manager's successor or successors shall duly execute and acknowledge a written undertaking that it or they shall (i) faithfully and fully observe, perform and discharge each and every duty and obligation of Manager hereunder in the place and stead of the Manager for a specified period (which period shall in no event be for less than three [3] years, and which shall be described by calendar dates) and said successor, or successors, may utilize a nominee to perform such duties and obligations without relieving it, or them, however, of any of such duties and obligations, (ii) save and hold the Manager harmless of and from any and all liability or responsibility under the provisions hereof concerning the maintenance of the Common Area on account of any and all matters arising or occurring during such period. The party or parties taking over the duties of the Manager shall promptly cause an executed and acknowledged counterpart of such written undertaking to be duly recorded in the Office of the County Recorder of Clark County. The Manager hereby grants to said successor, or successors, during said period, all rights that the Manager shall possess hereunder including, but without limiting the foregoing, the right, in the place and stead of the Manager to issue the statements above contem-

plated, to collect, hold, receive, and disburse receipts on account thereof, and to have the full benefit of any liens contemplated hereinbelow which may arise by reason of any nonpayment on account thereof.

All references to the Manager herein set forth shall apply to the successors to the Declarant named herein as Manager.

During any and all periods of vacancy in the office of the Manager the fee owner of each Parcel is hereby obligated to properly maintain its own parcel and to maintain that insurance coverage provided for in Paragraph 14 hereinbelow and to bear the cost of such maintenance and insurance.

2. The owner of any Parcel in the Shopping Center or the tenant of either Parcels 2 or 4 shall have the right to serve written notice on the Manager and all the other owners of the Shopping Center that certain items of maintenance required hereunder are being neglected and are needed, and that the party responsible therefor in accordance with the provisions of Paragraph 1 of this Section IV has twenty-one (21) days following receipt of said notice within which to perform the necessary maintenance. If said party responsible does not complete said maintenance within said twenty-one (21) day period the party serving said notice shall have the right to act in the place of said party responsible with respect to such item of maintenance and undertake and complete the maintenance, be reimbursed for its cost from the owners of the Shopping Center Parcels, and be entitled to all lien rights granted in this Section IV.

3. The fee owner of each Parcel is hereby obligated to pay its proportionate share of the cost of operation, management, control and maintenance of the entire Common Area of the Shopping Center, determined as provided in Paragraph 6 of this Section IV.

4. The Manager agrees to expend only the monies reasonably necessary for such operation and maintenance in order to

keep the Common Area in good repair and clean condition and to operate the same on a non-profit basis to the end that the expense in connection therewith will be kept at a minimum.

5. The Manager shall, from time to time, but not more often than once each quarter, send to the fee owner of each Parcel both a written itemized and substantiated statement of the total costs and expense of operation and maintenance for the period of the preceding quarterly or longer period and a billing requesting such owner to pay its proportionate share of such costs and expenses. Within thirty (30) days after receipt thereof, each and every such owner shall pay to the Manager the fractions of the total amount of said costs and expenses hereinafter described.

6. The total amount of such cost for any such preceding quarterly or longer period, hereinafter called the "gross parking assessment", shall be spread and assessed upon and against all of the Parcels contained in the Shopping Center based on the ratio of the ground floor space of the building or buildings permitted to be constructed on such Parcel as shown on Exhibit B hereto (excluding "Future Expansion" areas not improved with building) to the total ground floor space of all buildings permitted to be constructed in the Shopping Center as shown on Exhibit B hereto (excluding "Future Expansion" areas not improved with building). At such time as any "Future Expansion" area is improved with a building or structure, the ground floor space of the improved portion of such area shall be included in the determination of such ratio. The amount so allocated to each Parcel and such fee owner is hereinafter called an "individual parking assessment" for such preceding quarterly or longer period. The present proration is as follows:

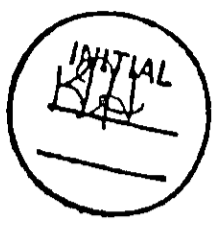
Parcel 1
Parcel 2
Parcel 3

3.2
35.8
7.83

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Parcel 4
 Parcel 5
 Parcel 6
 Parcel 7
 Parcel 8
 Parcel 9
 TOTAL

22.68
5.69
5.99
7.12
5.93
5.76
 100



7. Failure to pay an individual parking assessment within thirty (30) days after a billing for same from the Manager is received shall constitute a delinquency whereupon the Manager may serve a notice of payment past due on the fee owner of the Parcel to which such assessment relates. Failure of such fee owner to pay such assessment within ten (10) days following his receipt of such notice shall constitute a default with respect to the Parcel to which such assessment relates. The Manager is hereby authorized and empowered to proceed in the event of any such default to collect such delinquent individual assessment, together with simple interest upon the unpaid amount thereof at an annual rate equal to the then existing prime rate of interest charged by Bank of America National Trust and Savings Association, San Francisco, California, plus two percent (2%), (but in no event to exceed the maximum rate permitted by law) from the date of default as provided hereinabove, until the same is fully paid, together with recording fees, title costs, court costs and reasonable attorney's fees.

8. If and whenever there shall exist a default in payment of an individual parking assessment or any part thereof, the Manager is and shall be entitled to a lien against that parcel to which such individual parking assessment relates for the unpaid amount of such assessment and the costs and expenses described above. In the event of any such default, then, while such delinquency exists, at any time within twelve (12) months following the date on which payment of the billing in question became delinquent, the Manager may file for record with the Re-

corder of the County of Clark, a claim of lien signed and verified by the Manager, which shall contain at least:

(a) A statement of the delinquent unpaid amount of the individual parking assessment;

(b) A description sufficient for identification of that Parcel to which such individual parking assessment is delinquent;

(c) The name of the owner or reputed owner of the property described in (b) above.

9. Such claim of lien if filed within the time provided shall be effective to establish a lien against the real property described in such claim in the amount specified therein, together with a simple interest at an annual rate equal to the then existing prime rate of interest charged by Bank of America National Trust and Savings Association, San Francisco, California, plus two percent (2%), (but in no event to exceed the maximum rate permitted by law) from date of default, together with recording fees, reasonable costs of any title search or title policy theretofore or thereafter made or obtained in connection with such claim of lien or the foreclosure thereof, together with court costs and reasonable attorney's fees which may thereafter accrue in the enforcement of such lien.

10. Such liens when so established against the real property described in said claim shall be prior and superior to all of the right, title, interest, lien or claim which may be or may have been acquired in or attached to said real property subsequent to the time of establishing such lien. The lien of default shall be for the use and benefit of the fee owners of the Shopping Center and may be enforced and foreclosed in a suit or action brought by the Manager in any court of competent jurisdiction.

11. The Manager shall keep written records of its proceedings, activities, undertakings, obligations, receipts and ✓

expenditures, which shall be retained for a period of at least twelve (12) months following the end of the calendar year to which such records relate, and which shall be available at all reasonable times for inspection by the fee owners of the Shopping Center and the tenants of Parcels 2 and 4.

12. The cost of the operation, management, control and maintenance referred to herein shall not include initial development costs and expenses, but shall consist only of all costs for maintenance and replacements expended to maintain the Common Area in good condition and repair, considering aesthetics as well as function and durability, including, but not limited to the following:

(a) Maintaining the surfaces in a level, smooth, and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability;

(b) Removing all papers, debris, filth, and refuse and washing or thoroughly sweeping the areas including all sidewalks, to the extent reasonably necessary to keep such areas in a neat, clean and orderly condition;

(c) Placing, keeping in repair, and replacing any necessary appropriate directional signs, markers, and lines; and operating, keeping in repair, and replacing when necessary such artificial lighting facilities and other Common Area utilities as shall be reasonably required;

(d) Maintaining all perimeter walls and common area retaining walls;

(e) Maintaining all landscaped areas, making such replacement of shrubs and other landscaping as is necessary, and keeping said areas at all times adequately weeded and watered;

(f) Keeping the surface of parking and driveway and sidewalk areas free of ice and snow; ✓

(g) Paying insurance premiums as specified in Paragraph 14 of this Section IV; and

(h) A management fee not to exceed ten percent (10%) of all items of expense incurred pursuant to the preceding provisions of this Paragraph 12, excepting personal property taxes, insurance premiums, depreciation, capital expenditures which exceed Five Thousand Dollars (\$5,000.00) annually, and any management fee or other fee paid by the Manager to a third party to perform all or a portion of the Manager's obligations hereunder in connection with the operation and maintenance of the Common Area.

13. Notwithstanding anything to the contrary contained herein, in the event any item or cost pursuant to Paragraphs 12(a), (c) and (d) shall be expected in advance to cost in excess of Five Thousand Dollars (\$5,000.00) then same must be approved in writing in advance by one hundred percent (100%) of the then record fee owners of the Shopping Center Building Area, together with the tenants of Parcels 2 and 4.

14. The public liability and property damage insurance which shall be carried by the Manager for the mutual and common benefit of, and which shall name as additional insureds, as their interests may appear, all owners and tenants within the Shopping Center, shall have limits of liability of not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such policy or policies shall provide not less than ten (10) days advance written notice to the fee owners of the Shopping Center and the tenants of Parcels 2 and 4 of the effective date of cancellation thereof. Any such insurance policies shall be primary and non-contributing with any other insurance which may be carried by any owner or tenant within the Shopping Center. Such insurance shall cover all Common Areas within the Shopping Center, including sidewalks. Upon request of any person having an insurable interest hereunder, the Manager shall cause to be is-

sued proper certificates of insurance, or copies of the insurance policies, required to be maintained hereunder.

15. Each parcel owner shall pay directly to the Tax Collector prior to delinquency the real property taxes and assessments assessed against each Parcel owned by such party. If any parcel owner shall fail to so pay said taxes and assessments prior to delinquency, any other owner, or the tenant of any other owner, may pay said taxes or assessments, and the curing owner or tenant may then bill the defaulting owner for the expense incurred. If the defaulting owner shall not pay said bill within fifteen (15) days, the curing owner or tenant shall, in addition to any other remedies provided by law, have a lien on the property of the defaulting owner as provided in this Section IV for the amount of said bill, and any other costs incurred by the curing owner or tenant in connection with such lien, which amount shall bear interest at an annual rate equal to the then existing prime rate of interest charged by Bank of America National Trust and Savings Association, San Francisco, California, plus two percent (2%), (but in no event to exceed the maximum rate permitted by law).

16. Until such time as buildings are constructed on any Building Area of the Shopping Center, the owner of each Parcel shall take such measures as may be necessary to control weeds, blowing dirt and sand, etc., with respect to said undeveloped Building Area. If any owner shall fail to take such measures, the Manager may do so and may then bill the defaulting owner for the expense incurred. If the defaulting owner shall not pay said bill within fifteen (15) days, the Manager shall, in addition to any other remedies provided by law, have a lien on the property of the defaulting owner as provided in this Section IV for the amount of said bill, and any other costs incurred by the curing owner or tenant in connection with such lien, which amount shall bear interest at an annual rate equal to the then existing prime ✓

rate of interest charged by Bank of America National Trust and Savings Association, San Francisco, California, plus two percent (2%) (but in no event to exceed the maximum rate permitted by law).

SECTION V - RESTRICTIONS ON USE

1. No portion of the Shopping Center other than Parcel 2 shall ever be used, directly or indirectly, for purposes of a general market or any other grocery store, a meat market, a fruit store, a vegetable store, or any combination thereof.

(a) However, without limiting or expanding the foregoing restriction, said restriction shall not be deemed to apply to, nor to include in its terms, a Thrifty Drug and/or Discount Store (being a superdrug and/or discount store operated by Thrifty Corporation, a California corporation, whether as owner or as a lessee, tenant, or subtenant of the owner of Parcel 4 or some part thereof), its lessees, tenants, or successors to said real property, selling items customarily sold by other stores of said Thrifty Corporation, or its successor or successors, or to any other owner or tenant operating a drug store on said Parcel 4, upon the condition that it or they continue to conduct on Parcel 4, or some part thereof, a typical superdrug and/or discount store business and as long as such items as are customarily sold by it or them do not include fresh or frozen meat, fresh or frozen fish, fresh or frozen vegetables, or fresh fruits.

(b) Without limiting or expanding the foregoing restriction, said restriction shall not be deemed to apply to, or to include in its terms one (1) delicatessen occupying not more than three thousand five hundred (3,500) square feet of floor area and devoting not less than thirty-five percent (35%) of said floor area to the on-premises consumption of food and beverages, which delicatessen is located in the Building Area designated "Shop 'C'" on Exhibit B hereto. ✓

(c) Any and all other provisions of this Indenture to the contrary notwithstanding, the said restrictions shall expire fifteen (15) years from the date hereof unless prior to said expiration date the conduct of a food market or grocery store shall have commenced upon Parcel 2, in which event the foregoing restriction shall thereafter continue only so long as said Parcel 2 or some part thereof shall continue to be used for a food market or grocery store and for a period of two (2) years thereafter.

(d) The failure to use said Parcel 2 or some part thereof for a food market or grocery store during any period in which a food market or grocery store building or buildings are being built, rebuilt, repaired or remodeled upon said Parcel 2, or some part thereof, shall not cause the foregoing restriction to terminate unless any such building, rebuilding, repair, or remodeling shall result in the failure to use said Parcel 2, or some part thereof, for a food market or grocery store for a period in excess of two (2) years. Any such two (2) year period shall be extended by the period of any and each occurrence of any

~~building, rebuilding, repair, or remodeling upon said Parcel 2, or some part thereof, shall not cause the foregoing restriction to terminate unless any such building, rebuilding, repair, or remodeling shall result in the failure to use said Parcel 2, or some part thereof, for a food market or grocery store for a period in excess of two (2) years.~~

2. No portion of the Shopping Center other than Parcel 4 shall ever be used for a drug store, or a store compounding prescriptions or a store handling and selling, or handling or selling, patent or other medicines or drugs, including, but not limited to, any and all items of merchandise which, under any law, rule, regulation or order promulgated by a competent governmental authority must be sold by, or in the presence of, a registered pharmacist.

(e) However, without limiting or expanding the foregoing restriction, said restriction shall not be deemed to apply to, or to include in its terms, a Lucky Supermarket or

for said Drug Store Usage for a period in excess of two (2) years. Any such two (2) year period shall be extended by the period of any and each occurrence of any strikes, labor difficulties, governmental restrictions upon building activity, or delays caused by or resulting from fire, casualty, war, or acts of God.

3. No portion of the Shopping Center other than the Building Area designated "Shop 'A'" on Exhibit B hereto shall be occupied or used, directly or indirectly, for the purposes of an auto parts store.

(a) However, without limiting or expanding the foregoing restriction, said restriction shall not be deemed to apply to, nor to include in its terms, a Thrifty Drug and/or Discount Store (being a superdrug and/or discount store operated by Thrifty Corporation, a California corporation, whether as owner or as a lessee, tenant, or subtenant of the owner of Parcel 4 or some part thereof), its lessees, tenants, or successors to said real property, selling items customarily sold by other stores of said Thrifty Corporation, or its successor or successors, or to any other owner or tenant operating a drug store on said Parcel 4, upon the condition that it or they continue to conduct on Parcel 4, or some part thereof, a typical superdrug and/or discount store business.

(b) Any and all other provisions of this Indenture to the contrary notwithstanding, the said restriction shall expire fifteen (15) years from the date hereof unless prior to said expiration date the conduct of an auto parts store shall have commenced in the Building Area designated "Shop 'A'" on Exhibit B hereto, in which event the foregoing restriction shall thereafter continue only so long as said Building Area or some part thereof shall continue to be used for an auto parts store and for a period of two (2) years thereafter.

(c) The failure to use said Building Area or some part thereof for an auto parts store during any period in which

an auto parts store is being built, rebuilt, repaired or remodeled upon said Building Area, or some part thereof, shall not cause the foregoing restriction to terminate unless any such building, rebuilding, repair, or remodeling shall result in the failure to use said Building Area, or some part thereof, for an auto parts store for a period in excess of two (2) years. Any such two (2) year period shall be extended by the period of any and each occurrence of any strikes, labor difficulties, governmental restrictions upon building activity, or delays caused by or resulting from fire, casualty, war or acts of God.

4. No portion of the Shopping Center other than Parcels 2 and 4 shall ever be used, directly or indirectly, for the sale or handling of distilled spirits or beer or wine.

(a) Without limiting or expanding the foregoing restriction, said restriction shall not be deemed to apply to, or to include in its terms the following:

(i) one (1) restaurant which sells distilled spirits, beer and/or wine for on-premises consumption only, as an incidental part of its business;

(ii) one (1) cocktail lounge which sells distilled spirits, beer and/or wine for on-premises consumption only; provided the main entry door(s) thereof are located outside of eighty (80) feet of any portion of the building erected on Parcel 2;

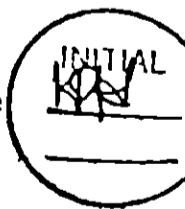
(iii) one (1) delicatessen of the type and in the location permitted by Paragraph 1(b) of this Section V which sells beer and/or wine for on- or off-premises consumption.

(b) Any and all other provisions of this Indenture to the contrary notwithstanding, the said restrictions shall expire fifteen (15) years from the date hereof unless prior to said expiration date the conduct of a store, or the liquor department of a store, handling and/or selling distilled spirits, beer or wine (hereafter collectively referred to as "Liquor Sales

Usage"), shall have commenced upon either Parcel 2 or 4, or both, in which event the foregoing restriction shall thereafter continue only so long as either said Parcel 2, or some part thereof, or Parcel 4, or some part thereof, shall continue to be used for said Liquor Sales Usage and for a period of two (2) years thereafter.

(c) The failure to use said Parcel 2, or some part thereof, or Parcel 4, or some part thereof, for said Liquor Sales Usage during any period in which a building or buildings are being built, rebuilt, repaired or remodeled upon said Parcel 2, or some part thereof, or Parcel 4, or some part thereof, shall not cause the foregoing restriction to terminate unless any such building, rebuilding, repair or remodeling shall result in the failure to use at least one of said Parcels or some part thereof for said Liquor Sales Usage for a period in excess of two (2) years. Any such two (2) year period shall be extended by the period of any and each occurrence of any strikes, labor difficulties, governmental restrictions upon building activity, or delays caused by or resulting from fire, casualty, war or acts of God.

5. No portion of the Shopping Center shall be occupied or used, directly or indirectly, for purposes of an office building or an entertainment or recreational facility or a training or educational facility; provided, however, the foregoing restriction shall not prohibit the placement in any cocktail lounge in the Shopping Center catering only to patrons twenty-one (21) years or older of not more than twelve (12) slot machines, four (4) bumper pool tables and/or four (4) video ^{games} ~~machines~~, the entrance door of which shall be not less than one hundred ten (110) feet distant from any portion of the building on Parcel 2. As used herein, "entertainment or recreational facility" includes, but is not limited to, a bowling alley, skating rink, theater, billiard room, game arcade, health spa or studio, massage parlor, bar or tavern, racquetball courts, gymnasium or

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other place of public amusement; and "training or educational facility" includes, but is not limited to, a beauty school, barber college, reading room, place of instruction, or any other operation catering primarily to students or trainees rather than to customers, it being the intent of this provision that the parking and other common facilities should not be burdened by either large scale or protracted use by customers of occupants of the Shopping Center.

SECTION VI - GENERAL PROVISIONS

1. Each and all of the agreements, rights, and covenants created in this Indenture shall be perpetual and shall be binding upon and shall inure to the benefit of Declarant, its successors (by merger, consolidation, or otherwise), assigns, tenants and all other persons acquiring said land or any part thereof, whether by operation of law or in any manner whatsoever, unless and until modified as herein provided. All the provisions of this Indenture shall be covenants running with the land pursuant to applicable law. It is expressly agreed that each covenant to do or refrain from doing some act on the Shopping Center (described in the Exhibits hereto) as the covenantor (a) is for the benefit of the land of the covenantee, (b) runs with both the land owned by the covenantor and the land owned by the covenantee, and (c) shall benefit and be binding upon each successive owner, during his ownership, of any portion of the land affected hereby and each person having an interest therein derived through any owner of the land affected hereby.

2. This Indenture may be cancelled, changed, modified or amended in whole or in part only by a written and recorded agreement executed by the then record fee owners of one hundred percent (100%) of the total Building Area of the Shopping Center and by the tenants of Parcels 2 and 4. In the event that more than one (1) person shall be the record fee owner of an interest in any parcel of the Shopping Center, then, for the purposes of

this Indenture, the persons holding a majority interest in the fee of said parcel shall be deemed the record fee owner thereof.

3. No breach of this Indenture shall entitle any owner to cancel, rescind or otherwise to terminate this Indenture, but such limitations shall not affect in any manner any other rights or remedies which such owner may have hereunder by reason of any breach of this Indenture. Breach of any of the covenants or restrictions contained in this Indenture shall not defeat nor render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Shopping Center or any part thereof; but all the foregoing provisions, restrictions and covenants shall be binding and effective against any owner of any of said Shopping Center, or any part thereof, whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

4. The term, "mortgagee", wherever used herein, shall be construed to include beneficiaries and trustees under deeds of trusts.

5. Any person, or entity owning or holding any portion of, or interest in, the Shopping Center, including but not limited to, any holder of a leasehold interest therein, any owner or holder of any first deed of trust (whether as beneficiary or trustee or otherwise) encumbering all or any part of the Shopping Center, or any occupant of any portion of the Shopping Center, may prosecute any proceedings at law or in equity against any person or entity violating or attempting to violate any of the covenants, conditions, easements and restrictions herein, and either prevent it, him or them, whether by injunctive relief or otherwise, from so doing, and/or to recover damages from or on account of such violation, and/or to secure, by way of specific performance or otherwise, the performance of such covenant, condition, easement or restriction.

6. This Indenture shall create privity of contract and estate with and among all grantees of all or any part of the

Shopping Center, and their respective heirs, executors, administrators, successors, and assigns. In the event of a breach, or attempted or threatened breach, by any owner of any part of said Shopping Center, in any of the terms, covenants and conditions hereof, any one or all of the owners or tenants of the Shopping Center shall be entitled forthwith to full and adequate relief by injunction and all such other available legal and equitable remedies from the consequences of such breach. All costs and expenses of any such suit or proceedings including attorney's fees, as hereinafter provided, shall be assessed against the defaulting owner and shall constitute a lien against such owner's parcel(s) in the Shopping Center, until paid, effective upon recording notice thereof in the Office of the County Recorder of Clark County, but any such lien shall be subordinate to any bona fide first mortgage or deed of trust covering any portion of the Shopping Center, and any purchaser at any foreclosure or trustee's sale (as well as any grantee of deed in lieu of foreclosure or trustee's sale) under any such first mortgage or deed of trust shall take title free from any such lien, but otherwise subject to the provisions hereof. The remedies permitted at law or equity of any one or all such owners or tenants specified herein shall be cumulative as to each and as to all.

7. In the event that suit is brought for the enforcement of this Indenture or as the result of any alleged breach thereof, the successful party or parties to such suit shall be entitled to be paid reasonable attorneys' fees by the losing party or parties, and any judgment or decree rendered shall include an award thereof.

8. In the event of condemnation by any duly constituted authority for a public or quasi-public use of all or any part of the Shopping Center, that portion of the award attributable to the value of any land within the Common Area so taken shall be payable only to the owner in fee thereof and no claim

thereon shall be made by other owners of any other portion of the Shopping Center; provided, however, all other owners of the Shopping Center may file collateral claims with the condemning authority over and above the value of the land of the area to be taken; provided further, however, that the owner of the fee of each portion of the area so condemned shall promptly repair and restore the remaining portion of the area so owned by such owner as near as practicable to the condition of same immediately prior to such condemnation and without contribution from any other owner, except to the extent that the proceeds of such award are insufficient to pay the costs of such restoration and repair. Should any land lying within the permitted Building Area be taken by way of such condemnation, then in that event, the proportionate shares referred to in Section IV, Paragraph 6 shall be altered accordingly.

9. The captions heading the various sections of this Indenture are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

10. If any clause, sentence or other portion of this Indenture shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

11. This Indenture, executed as of the date hereof, shall take effect only upon, from and after its recording in the Office of the County Recorder of Clark County.

12. There shall be no merger of any easements, rights, interests or estates created by this Indenture by reason of the fact that the entire Shopping Center may be owned or held directly or indirectly by or for the account of the same person or entity, and no such merger shall occur unless and until all persons and entities at the time having an interest in the entire

Shopping Center (including, but not limited to, the holders of any bona fide first deed of trust or first mortgage, having an interest in, or an encumbrance on, all or any portion of said entire Shopping Center) shall join in a written instrument affecting such merger and shall duly record the same.

13. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties hereto that this Indenture be strictly limited to and for the purposes herein expressed.

14. All conveyances of all or any portion of the Shopping Center subsequent to the date hereof shall recite that they are subject and subordinate to the terms and provisions hereof.

IN WITNESS WHEREOF, THIS INDENTURE is executed by Declarant as of the day and year first above written.

TONOPAH PLAZA PARTNERS,
a partnership

By *Kenneth D. Hinsvark*
KENNETH D. HINSVARK
By _____
"Declarant"

(To Be Notarially Acknowledged)

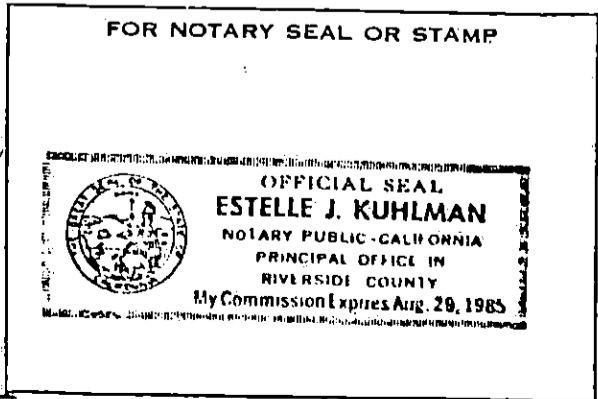
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Lawyers Title

STATE OF CALIFORNIA }
COUNTY OF RIVERSIDE } SS.

On May 24, 1982
before me, the undersigned, a Notary Public in and for said County and State, personally appeared
KENNETH D. HINSVARK

_____ known to me to be general partner of the partners of the partnership that executed the within instrument, and acknowledged to me that such partnership executed the same.

Signature *Estelle J. Kuhlman*



Misc.-112 (G.S.) Ack Partnership (Rev. 12-83) Staple

