

Assessor's Parcel Number: \_\_\_\_\_

Recording Requested By:

Name: FIRST AMERICAN TITLE

Address: 1512 Highway 395 North #1

City/State/Zip Gardnerville, NV 89410

R.P.T.T.: *[Signature]*

REQUESTED BY  
**FIRST AMERICAN TITLE CO.**

IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

2003 SEP 26 PM 4:44

WERNER CHRISTEN  
RECORDER

S. 74<sup>03</sup> PAID KA DEPUTY

Agreement of Covenants, conditions and Restriction and grant of Easements  
(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

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**AGREEMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS  
AND GRANT OF EASEMENTS**

**THIS AGREEMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS** (this "Agreement") is made on this 17<sup>th</sup> day of September, 2003 (the "Effective Date"), by **AIG BAKER CARSON VALLEY, L.L.C.**, a Delaware limited liability company (the "Declarant").

**RECITALS**

**WHEREAS**, Declarant is the owner of a tract or parcel of land located in Douglas County, Carson City, Nevada, on which Declarant has constructed a retail shopping center known as the "Carson Valley Plaza Shopping Center," said parcel being referred to herein as the "Shopping Center", and being described on Exhibit A attached hereto and shown on the site plan attached hereto as Exhibit C (as such site plan may be modified from time to time, the "Site Plan"); and

**WHEREAS**, Declarant is also the owner of certain tracts or parcels of land located adjacent to the Shopping Center, which Declarant intends to sell or lease, and which are designated on the Site Plan and hereinafter referred to as "Pad A," "Pad B," "Pad C," "Pad D," "Pad E," and "Pad F," respectively, and more particularly described in Exhibit B attached hereto (said parcels being hereinafter referred to individually as a "Pad" and collectively as the "Pads"); and

**WHEREAS**, in order to facilitate the development of the Shopping Center and the Pads as an integrated commercial retail shopping center substantially as shown on the Site Plan, and to protect the retail character and intent of the development, Declarant hereby declares and imposes certain covenants, conditions and restrictions upon the Shopping Center and the Pads; and

**WHEREAS**, Declarant expressly intends that each covenant stated herein shall constitute a covenant running with the land, and shall inure to the equal benefit of the owner of the Shopping Center, and the owners of the Pads, and may inure to the benefit of any other entity which may acquire any interest, in whole or in part in the Shopping Center or the Pads, as the case may be.

**NOW, THEREFORE**, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficient of which is hereby acknowledged, the parties hereto agree as follows:

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## ARTICLE I

### DEFINITIONS

#### 1.1 **Building.**

“Building” shall mean any enclosed structure placed, constructed or located on the Property, which for the purpose of this Agreement, shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions.

#### 1.2 **Building Areas.**

“Building Areas” shall mean the limited areas of the Property within which Buildings are or may be constructed, placed or located, including, without limitation, all drive-thru lanes and trash enclosure areas.

#### 1.3 **Common Areas.**

“Common Areas” shall mean all of the Shopping Center other than the Building Areas, as such areas may change from time to time. Those portions of the Building Areas on the Shopping Center which are not from time to time used or cannot be used for Buildings shall become part of the Common Areas for the uses permitted hereunder.

#### 1.4 **Declarant.**

“Declarant” shall mean AIG Baker Carson Valley, L.L.C., and, after compliance with the notice requirements set forth in Section 7.1, its successors and assigns who become owners of all or any portion of the Shopping Center.

#### 1.5 **Floor Area.**

“Floor Area” means the aggregate from time to time of the actual number of square feet of floor space in any Building designated or intended for use by an Owner or Occupant, whether or not actually occupied, measured from the exterior faces or the exterior lines of the exterior walls, store fronts, walls fronting on any enclosed malls or interior common area, corridors and service area (except party and interior common walls, as to which the center thereof instead of the exterior faces thereof shall be used). “Floor Area” shall include outdoor balconies, patios or other outdoor areas utilized for retail sales or food or beverage service (exclusive of any permitted drive through or walk-up, take-out food or beverage service).

#### 1.6 **Hazardous Materials.**

“Hazardous Materials” shall include, without limitation, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or

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related materials, petroleum and petroleum products and substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any governmental authority.

**1.7 Improvements.**

“Improvements” shall mean all Buildings and surrounding areas including without limitation all landscaping, entrances, exits, signs, driveways, parking areas and other improvements to be constructed or located on the Pads.

**1.8 Occupant.**

“Occupant” shall mean any Person, from time to time entitled to the use and occupancy of the Property, or any portion thereof, under an ownership right or any lease, sublease, license, concession or other similar agreement.

**1.9 Owner.**

“Owner” shall mean, as of any time, the fee simple owner of the Pads at such time, and, after compliance with the notice requirements set forth in Section 7.1, its successors and assigns who become owners of all or any portion of the Pads. Each Owner, by acceptance of a deed conveying ownership of and to its Pad, consents to all of the terms, conditions, rights and obligations hereunder.

**1.10 Party.**

“Party” shall mean the Declarant and the Owner and, after compliance with the notice requirements set forth in Section 7.1, their respective successors and assigns who become owners of all or any portion of the Property. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Property owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party shall be released from the obligations of this Agreement arising subsequent to the effective date of the transfer notice.

**1.11 Permittee.**

“Permittee” shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, guests, invitees, licensees, tenants, subtenants, and concessionaires of Occupants and other persons who have business with owners of the Property insofar as their activities relate to the permitted use of such Property.

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**1.12 Person.**

“Person” shall mean any individual, partnership, firm, association, corporation, limited liability company, trust or any other form of business or government entity.

**1.13 Property.**

“Property” shall mean, collectively, the Shopping Center and the Pads, collectively.

**1.14 Utility Lines.**

“Utility Lines” shall mean those facilities and systems for the transmission of utility services, including drainage and storage of surface water.

**ARTICLE II**

**EASEMENTS**

**2.1. Ingress, Egress and Parking.** Declarant hereby establishes and creates for the benefit of, and as an appurtenance to, the Pads, and for the benefit of the Owners thereof from time to time and their Permittees, a non-exclusive, perpetual easement for the passage and parking of vehicles over and across the parking and driveway areas located in the Common Areas of the Shopping Center, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the Common Areas of the Shopping Center, as the same may from time to time be constructed and maintained for such use. Declarant hereby establishes and creates for the benefit of, and as an appurtenance to, the Shopping Center and the Pads, and for the benefit of the Declarant, all Owners, and all Permittees, a non-exclusive, perpetual easement for the passage and parking of vehicles over and across the parking and driveway areas located on the Pads, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the Pads, as the same may from time to time be constructed and maintained for such use. Such easement rights shall be subject to the following reservations, as well as other provisions contained in this Agreement:

(a) Declarant further reserves the right to close off the Common Areas for such reasonable period of time as may be legally necessary, in the opinion of Declarant or its counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that in no event shall any such closing prevent access to any Pads and prior to closing off any portion of the Common Areas, as herein provided, Declarant shall give written notice to the affected Owner(s) of its intention to do so, and shall attempt to coordinate such closing with such Owner(s) so that no unreasonable interference in the passage of pedestrians or vehicles shall occur; and

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(b) The Owners shall have the right to close off the parking and access areas located on the Pads for such reasonable period of time as may be legally necessary, in the opinion of the Owners or their counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that in no event shall any such closing prevent use of the Common Areas of the Shopping Center, and the Owners shall give written notice to Declarant of their intention to do so; and

(c) Each Party reserves the right to, at any time and from time to time, to exclude and restrain any Person who is not a Party or Permittee from using the Common Areas on the Shopping Center or the parking and access areas of the Pads, as the case may be; and

(d) In no event shall any Owner be entitled to store materials or personal property, or construct staging materials or construction facilities on, or park construction vehicles within, the Shopping Center without Declarant's prior written consent or except as otherwise set forth herein.

## **2.2 Utilities.**

(a) Declarant hereby grants and conveys to the Owners a non-exclusive perpetual easement in, to, over, under, along and across those portions of the Common Areas (exclusive of any portion located within Building Areas) located on the Shopping Center necessary for the tie-in and use of Utility Lines installed by Declarant or its agents serving the Pads, including, but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines; provided, however, in no event shall the operation of any such Utility Line have a material, adverse impact on the Shopping Center.

(b) The Owners shall be responsible for all governmental impact fees due for development on their respective Pads, and the Owners shall, at their sole cost and expense, be responsible for tap in/hook-up into the utilities upon payment by said Owners of the standard tap in/ hook-up fees to the respective utility providers.

**2.3 Storm Water.** Declarant hereby grants and conveys to the Owners a non-exclusive perpetual right and easement to discharge surface storm drainage and/or runoff from the Pads over, upon and across the Common Areas of the Shopping Center and into the water collection, retention and distribution facilities, so long as such drainage shall not cause any damage to the Shopping Center or any improvements thereon.

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**ARTICLE III**  
**CONSTRUCTION**

**3.1 General Requirements.**

(a) All construction activities performed within the Pads shall be performed in compliance with all applicable laws, rules, regulations, orders and ordinances of the city, county, state and federal government, or any department or agency thereof. All construction shall utilize new materials, and shall be performed in a good, safe, workman like manner.

(b) The construction activities on the Pads, if any, shall not:

(i) unreasonably interfere with the use, occupancy or enjoyment of any part of the Shopping Center by any occupant thereof; and

(ii) cause the Shopping Center or any Building located in the Shopping Center to be in violation of any law, rule, regulation, order or ordinance authorized by any city, county, state, federal government, or any department or agency thereof, including, without limitation, all parking codes, regulations and ordinances, or cause Declarant to be in default or in violation of any lease.

(c) All Owners shall use the staging area designated on the site plan attached hereto as Exhibit E (the "Staging Areas"), and each Owner shall conduct its construction activities on its Pad in such a manner so as to keep its construction activities solely within the designated Staging Areas, including, without limitation, all vehicles, workers, materials and scaffolding. All Staging Areas on the Pads shall be fenced with an opaque wall around the site of such construction of a size necessary to screen such construction from ground level view and all access thereto shall be limited to the ingress/egress entrance closest to the Pads. Parking for all motor vehicles involved in the construction shall only be allowed to park within the confines of the Staging Areas. All construction on the Pads shall be conducted in a manner as to minimize any interference with the construction or operation of the Shopping Center.

(d) Each Owner shall conduct its construction activities on its Pad in such a manner so as to minimize damage to the Shopping Center or the Common Areas. In the event any part of the Shopping Center, the Common Areas or another Pad is damaged due to any Owner's construction activities conducted on its Pad, the damaging Owner shall promptly repair and restore the damaged area to the same condition as existed immediately prior to said Owner's construction activities. To the extent permitted by laws, each Owner shall and agrees to defend, indemnify and hold harmless Declarant from all claims, losses, liabilities, actions, proceedings and costs (including reasonable attorneys' fees and costs of suit), including liens, and any accident, injury or loss or damage whatsoever occurring to any Person or to the property of any Person (including without limitation any damage to the Shopping Center) arising out of or resulting from any construction activities performed or authorized by such indemnifying Owner, including, without limitation, any violations of Owner's obligation to keep all construction activities entirely within the Staging Areas as set forth above (a "Staging Area Violation");;

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provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the negligence or willful act or omission of Declarant or its agents or anyone claiming by, through or under any of them.

(e) Each Owner shall commence construction of its Improvements as soon as reasonably practicable after Closing, and shall thereafter continue to pursue such construction with due diligence to completion.

(f) In connection with the construction of improvements upon its Pad, each Owner shall regularly clean, as reasonably needed, the roadways and driveways used by its construction vehicles of mud, dirt and construction debris resulting from its construction, and upon completion of such construction activity shall promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

(g) From and after January 2, 2004, no exterior construction or scaffolding and no construction staging shall be permitted on the Pads during the period from October 1 through January 1 of any calendar year, except for emergency repairs. All scaffolding shall be removed within seventy-two (72) hours of completion of the work for which it was necessary. Interior construction shall be permitted at all time, provided that no construction materials shall be stored outside any Building except in designated Staging Areas.

### **3.2 Building Restrictions.**

(a) No sign or Building constructed, placed or erected on any Pad shall exceed one story in height; (c) exceed a maximum height of twenty-eight feet (28') as measured from the finished floor level to the highest point on such building or structure (inclusive of the height of all types of projections or architectural treatments or embellishments thereon, such as, but without limitation, HVAC equipment, parapets, mansards, signs, satellite dishes, and antennae).

(b) The Floor Area of any Building constructed, placed or erected on any Pad shall not exceed the following sizes (provided that for the purposes of this Section 3.2, the courtyard between "Pad B" and "Pad C" shall not be considered to be Floor Area):

Pad A -	7,000 square feet
Pad B -	7,000 square feet
Pad C -	7,000 square feet
Pad D -	7,000 square feet
Pad E -	7,000 square feet
Pad F -	4,800 square feet

(c) No more than one building shall be constructed on any Pad.

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### **3.3 Signage.**

(a) No free-standing signage shall be permitted on the Pads, including without limitation pylon or monument signage. Notwithstanding the foregoing, the following signage shall be permitted on the Pads (i) directional signage located within Pads or in such other areas as approved by Declarant, not to exceed four feet in height, containing only that verbiage typically used on directional signage and not any other identifying verbiage except that such signage may employ colors or designs prototypical for the business employing or listed on such signage; and (ii) menu or reader boards located within Pads or in such other areas as approved by Declarant, containing only that verbiage typically used on such boards and employing only colors or designs prototypical for the business employing such signage.

(b) All building-mounted signage to be located on any Building shall be in accordance with the sign criteria approved by Douglas County. Declarant shall approve all Pad signage prior to construction and installation as a part of the Plans (as hereinafter defined) in accordance with the provisions of Section 3.4 below. Such approval shall be conditioned upon the following requirements: (i) the signage must not obstruct the view of the Shopping Center or another Occupant thereof; (ii) the signage must be architecturally compatible or harmonious with the architectural theme of the Shopping Center; (iii) the signage must meet the governmental and developmental requirements, including compliance with the approved sign criteria for the Shopping Center; and (iv) such signage shall not jeopardize Declarant's right to erect a monument or pylon sign for the Shopping Center. Owner shall remove any non-conforming signage upon written notice by Declarant.

(c) No exterior identification signs attached to any Building on a Pad shall be of the following type: (1) flashing, moving or audible signs; (2) signs employing exposed raceways (provided that the foregoing shall be permitted only for the installation of internally illuminated self-contained channel letters), exposed ballast boxes, or exposed transformers; or (3) paper or cardboard signs (other than professionally-prepared interior window signs advertising special sales within the subject premises), temporary signs (other than contractor's signs or grand opening signs), stickers or decals; provided, however, that the foregoing shall not prohibit the placement at the entrance of each such premises of (A) a small sticker or decal which indicates hours of business, emergency telephone numbers, credit cards accepted and other similar information and/or (B) a small sticker or decal which contains the words "No Solicitation" or words of like import.

### **3.4 Site Plan Approval.**

(a) It is the intention of Declarant that all buildings, signs, landscaping and related improvements located upon the Pads be constructed, installed, erected, operated and maintained so as to be consistent with standards of first class shopping center development and, in any case, compatible with and complementary to the improvements and landscaping within the Shopping Center. Accordingly, site layout and all buildings, signs, landscaping and related improvements upon the Pads, including initial construction and any exterior alterations on the

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Pads, exterior remodeling, or reconstruction of any improvements following the initial construction thereof (except for any reconstruction pursuant to plans previously approved by Declarant), shall be performed only in accordance with plans for such work approved by Declarant as set forth in this Section 3.4.

(b) No initial construction of any Improvements, including any structure, building, fence, wall, parking area facility, landscaping, driveway or sign shall be initiated or begun upon the Pads without Declarant's prior written approval of the Plans (as hereinafter defined), and upon Declarant's approval of such Plans, any construction shall be effected substantially in accordance with such approved Plans (the "Approved Plans"). As used herein, the term "Plans" shall mean constructions plans, working drawings and specifications prepared under supervision of an architect and engineer licensed to practice architecture and engineering in the State of Nevada and shall include:

(i) A site plan showing location of all Buildings and other structures to be constructed on the Pads as well as location of all entrances, exits, signs, driveways, parking areas (including without limitation, parking space detail if applicable) and other pertinent material.

(ii) Complete details as to the grading, drainage, utility service, paving, exterior lighting, landscaping and screening.

(iii) Front, side and rear colored elevation drawings, including floor and roof plans, for all buildings and structures.

(iv) Wall sections.

(v) Detailed identification of construction materials and colors.

(vi) Detailed signage drawings, including color samples, for any signage to be located on the Building.

(c) Declarant reserves to itself the sole and exclusive authority to approve such Plans or to disapprove the same for initial consideration, and Declarant will disapprove such proposed Plans only if it deems, in its reasonable discretion, (i) that the Improvements (including landscaping) contemplated by the Plans are not in accordance with the construction standards or the requirements required by the applicable governing authority or by occupants or tenants in the Shopping Center, (ii) that the Improvements will detract from the attractiveness of the Shopping Center or will be unsuitable, undesirable or inappropriate for aesthetic reasons, (iii) that the exterior design, color scheme, finish, proportions or style of architecture of the proposed Improvements are not compatible with the improvements in the Shopping Center, or (iv) that the Plans do not include such information as is reasonably required by Declarant for the purposes of approving the proposed development of the Pads.

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(d) Prior to construction, unless otherwise agreed by the Parties, the Owners shall provide Declarant with a minimum of two (2) sets of its Plans for Declarant's approval. Declarant shall have twenty (20) days from receipt of the Plans to approve or disapprove the Plans. Declarant shall approve the Plans by causing both sets of Plans to be initialed on its behalf and returning one (1) set of Plans to the Owners (the "Approved Plans"). If Declarant fails to respond either approve the Plans or reject the Plans within said twenty-day period, the Plans shall be deemed as approved by Declarant. If Declarant shall disapprove the Plans, it shall give its reasons therefore and the Owners shall not commence construction until the Plans have been revised so as to meet Declarant's reasonable objections or until Declarant and Owner mutually consult to establish Approved Plans for the proposed Improvements.

(e) The Owners shall construct the Improvements on the Pads in substantial compliance with the Approved Plans, subject to site modifications and zoning conditions. Declarant reserves the right to approve any material changes from the Approved Plans including but not limited to any material changes in the elevations and signage, and reserves the right to approve any plans to reconstruction or future alterations or renovations.

(f) In furtherance of the foregoing, but without limiting in any way the right of Declarant to approve all Plans as aforesaid, the foregoing standards shall be applicable:

(i) All exposed exterior surfaces of any Buildings on the Pads shall be properly finished prior to the occupancy or use of the same.

(ii) No used materials shall be incorporated in, on or into the exterior surfaces of any Buildings on the Pads without the express written consent of Declarant.

(iii) All Improvements on the Pads shall be construed and maintained at all times in accordance with all applicable building codes, ordinances, rules and regulations of all governmental authorities having jurisdiction therefor.

(iv) Storage tanks, cooling towers, vents, hoods, transformers, garbage dumpsters, loading docks and other loading and unloading facilities, and any other like structures or equipment located on the Pads shall be fully screened and hidden from public view. All roof top equipment shall be fully screened.

(g) No provision or requirement set forth herein shall constitute Declarant as an agent of any Owner relating to the compliance of the Approved Plans with any laws, rules, orders, ordinances, directions, regulations, and requirements of any federal, state, county and municipal authorities, now in force or which hereafter be in force, including but not limited to the Americans with Disabilities Act or 1990. Such approval by Declarant shall be to insure that the Improvements do not violate the restrictions set forth herein and are reasonably architecturally harmonious with the Shopping Center.

(h) The parking and access area on the Pads, if any, shall be constructed

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substantially as shown on the Site Plan and shall not be altered in any manner without the prior written consent of Declarant.

**ARTICLE IV**  
**MAINTENANCE**

**4.1 Maintenance of the Pads.**

(a) From and after the date of Closing, the Owners shall maintain or cause to be maintained, the Improvements on the Pads in good condition and repair. The minimum standard of maintenance for the Improvements on the Pads shall be comparable to the standard of maintenance currently existing at the Shopping Center and otherwise followed in other first class commercial shopping centers in the metropolitan Douglas County, Nevada area. Notwithstanding the foregoing, the Improvements on the Pads shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances. All materials used in the repair and/or replacement of any Improvements shall be at least equal to the quality of the materials used originally and shall maintain the architectural and aesthetic harmony of the Shopping Center as a whole. The maintenance and repair obligation shall include, but not be limited to, the following:

(i) Keeping and 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;

(ii) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(iii) Maintaining, cleaning and replacing any necessary directional, stop or handicapped signs or markers; restriping any parking lots and drive lanes located on the Pads as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian cross-walks, if any;

(iv) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;

(v) Maintaining all perimeter and exterior building walls, including, but not limited to, all parapets and retaining walls in a good condition and state of repair;

(vi) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; and

(vii) Maintaining elements of the storm drainage system.

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(c) After construction of building improvements upon any Pad, the Owner of such Pad shall maintain and keep, or cause to be maintained and kept, the exterior portions of such improvements, including service areas, loading docks and signage, in a good, clean, safe, sightly, and orderly condition and state of repair, reasonably free from odors and vermin, consistent with the standards of maintenance followed in other first-class retail developments of comparable size in the metropolitan area where the Shopping Center is located. All trash and garbage from the operation of business upon any Pad shall be stored in adequate containers, and areas near trash containers shall be maintained in a clean, neat and safe condition. Each Owner shall arrange or cause its tenants to arrange for regular removal of such trash or garbage from its Pad.

(d) In the event the Building or any of the Improvements upon any Pad are damaged by fire or other casualty (whether insured or not), the Owner upon whose Pad such improvements are located shall promptly remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the improvements so damaged, (ii) erect other improvements in such location, or (iii) restore any remaining improvements to an architectural whole, demolish any unrestored improvements, remove all debris, and pave or grass and otherwise restore the area to a neat, orderly, sanitary and attractive condition. Each Owner shall have the option to choose among the aforesaid alternatives, but each Owner shall be obligated to perform one of such alternatives. Nothing herein shall limit the rights or obligations of any Owner and Occupant of a Pad under the terms of any lease or other separate agreement between such Owner and Occupant.

**4.2 Liens.** Each Owner agrees to defend, indemnify and hold Declarant harmless from and against any mechanic's, materialman's and/or labor's liens filed on or against the Shopping Center, and all costs, expenses and liabilities in connection therewith, including reasonable attorneys' fees and court costs, arising out of the maintenance and operation of each Owner's respective Pad, and in the event that the Shopping Center or any portion thereof shall become subject to such a lien, the affected Owner shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to the lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

## ARTICLE V

### OPERATION OF THE SHOPPING CENTER

#### 5.1 Uses.

(a) The Pads shall be used for any lawful commercial retail purposes subject only to the restrictions set forth in this Agreement.

(b) During the term of this Agreement, no portion of the Pads shall be used for the uses or purposes as set forth in Exhibit D attached hereto.

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(c) At all times, the Pads shall be operated in compliance with all applicable governmental rules, regulations, codes and ordinances, including without limitation those regulations regarding parking. At all times, the Pads shall be operated so that the entire Shopping Center remains in compliance with such codes. Once each Owner's Plans are initially approved by Declarant as set forth in Section 3.4 above, any changes in use which require additional parking shall be approved in writing by Declarant.

(d) Parking by employees of any Owner or Occupant shall be in designated "employee parking" areas, the location of which shall be determined by Declarant in the event Declarant deems it necessary to designate such areas; provided Declarant shall be under no obligation to do so.

**5.2 Taxes.** Each Owner shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real and personal property taxes and assessments which are levied against each Owner's Pad.

**5.3 Insurance/Indemnification.**

(a) Each Owner shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each Owner's insurance to afford protection to the limit of not less than \$2,000,000.00 for injury or death of a single person, and to the limit of not less than \$2,000,000.00 for any one occurrence, and to the limit of not less than \$2,000,000.00 for property damage. Each Owner shall also name Declarant as an additional insured on its general liability insurance and deliver to Declarant a certificate of insurance evidencing such prior to its entry onto the Property. Each Owner shall provide to the Declarant its certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by each Owner which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be cancelled without thirty (30) days prior written notice to the Declarant.

(b) Each Owner covenants and agrees to defend, protect, indemnify and hold harmless Declarant from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorneys' fees and cost of suit) arising from or as a result of the injury to or death of any Person, or damage to property of any Person located on each Owner's Pad, except for claims caused by the negligence or willful act or omission of the Declarant or its Permittees.

**5.4 Hazardous Materials.** As of the Effective Date, no Owner shall use, or permit the use of Hazardous Materials on or about, under the Pads, or the Shopping Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all applicable federal, state and local laws governing the same.

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Each Owner shall indemnify, protect, defend and hold harmless the Declarant from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including, but not limited to, costs of investigation, litigation and remedial response, arising out of any Hazardous Material used or permitted to be used by such Owner, occurring after the Effective Date hereof, whether or not in the ordinary course of business.

## ARTICLE VI

### DEFAULT

**6.1 Default.** Except in the case of Staging Area Violations or any default arising out of a violation of the obligations set forth in Section 3.1 (collectively, "Construction Defaults"), if any Owner shall fail to perform any covenant or condition contained in this Agreement, the Declarant shall give the defaulting Owner at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default is not reasonably susceptible of being cured within said period of thirty (30) days, and said defaulting Owner shall have not in good faith have commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to completion), the Declarant may institute legal and/or equitable proceedings for full and adequate relief from the consequences of said default or threatened default. In the event of Construction Defaults, each Owner of a Pad shall immediately cure or cause to be cured such violation upon written notice from Declarant to said Owner, each Owner taking responsibility for its Occupants, and each Owner acknowledging that Declarant will suffer material harm from any such violation that is not cured immediately upon notice to such defaulting Owner.

### **6.2 Self-Help.**

(a) If any Owner fails to operate or maintain all or any portion of its Pad hereunder or defaults under any other obligations set forth in this Agreement, then the Declarant, after notice and time to cure as herein permitted, shall have the right (but not the obligation) to perform such obligations on behalf of the defaulting Owner and the defaulting Owner shall reimburse the Declarant performing the work within thirty (30) days of receipt of an invoice documenting such costs. Any such claim for reimbursements shall be secured by a lien on the defaulting Owner's Pad which lien shall be effective upon recording of a notice thereof in the appropriate public records for Douglas County, Nevada.

(b) Any claim for reimbursements as set forth in Section 6.2(a) and each Owner's obligation to pay its Pro Rata Share, together with interest thereon at the lesser of (i) the rate of twelve percent (12%) per annum, or (ii) the maximum rate allowed by law from the due date thereof if not paid when due, shall be secured by an equitable charge and lien on the Pad of the defaulting Owner as set forth herein. Any such lien shall be effective upon recording of a Lien Notice (as defined below) in the appropriate public records for Douglas County, Nevada. Upon such recording, such lien shall be superior and prior to all other liens encumbering the Pad, except that such lien shall not be prior and superior to any mortgages, deeds of trust, or security

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deeds of record prior to the recording of such Lien Notice or any renewal extension or modification (including increases) of such prior recorded mortgages, deeds of trust, or security deeds, or to the interest of any party which has, prior to the recording of such Lien Notice, purchased the Pad and leased it back to the preceding owner, or its subsidiary or affiliate, on a net lease basis with the lessee assuming all obligations thereunder in what is commonly referred to as a "sale-leaseback" transaction; and any purchaser at any foreclosure sale (as well as any grantee by deed in lieu of foreclosure) under any such mortgage or deed of trust shall take title subject only to liens accruing pursuant to this Section 6.2(b) after the date of such foreclosure sale or conveyance in lieu of foreclosure. Furthermore, the right of possession and leasehold interest or tenancy of any tenant or subtenant of the Pad encumbered by any lien accruing pursuant to this Section 6.2(b) shall not be terminated, affected or disturbed by such lien or any foreclosure thereof. To evidence such lien, Declarant shall prepare a written notice ("Lien Notice") setting forth (i) the amount owing and a brief statement of the nature thereof; and (ii) reference to this Agreement as the source and authority for such lien. The Lien Notice shall be signed and acknowledged by Declarant and shall be recorded in the appropriate records of Douglas County, Nevada. A copy of such Lien Notice shall be mailed to the Owner or reputed Owner of the Pad within thirty (30) days after such recording. Any such lien may be enforced by judicial foreclosure upon the Pad in like manner as a mortgage on real property is judicially foreclosed under the laws of Nevada. In any foreclosure, the Owner of the Pad shall be required to pay the reasonable costs, expenses and attorneys' fees in connection with the preparation and filing of the Lien Notice as provided herein, and all reasonable costs and reasonable attorneys' fees in connection with the foreclosure. Declarant shall mail a copy of any Lien Notice to any mortgagee of the Pad if Declarant has been notified of such mortgagee's interest and its name and address.

## ARTICLE VII

### MISCELLANEOUS

**7.1 Notices.** Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt or (d) by legible facsimile (followed by hard copy delivered in accordance with the preceding subsections (a)-(c)), and such notices shall be addressed as follows:

To Declarant:

AIG Baker Carson Valley, L.L.C.  
c/o AIG Baker Shopping Center Properties, L.L.C.  
1701 Lee Branch Lane  
Birmingham, AL 35242  
Attn: Legal Department  
Telephone No.: (205) 969-1000  
Facsimile No.: (205) 969-9467

or to such other address as the Parties may from time to time specify in writing to the other Party. Any notice shall be effective only upon receipt (or refusal by the intended recipient to

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accept delivery). Notices sent or received by a party's designated counsel shall be deemed sent or received, as the case may be, to the applicable Party. The address for the Owner of each Pad shall be the address maintained by the Owners on file with the office of the County Assessor for delivery of ad valorem tax statements relating to each Owner's respective Pads, unless Declarant is otherwise notified. A Party transferring all or any portion of its interest in the Property shall give notice to the other Party(s) of such transfer and shall include therein at least the following information: (1) the name and address of the new Party; (2) a copy of the legal description of the portion of the Property transferred; and (3) in the case of an Owner, an agreement by the transferee Owner to assume all obligations which accrue during its period of ownership.

**7.2 Estoppel Certificate.** Each Party, upon request by another Party, agrees that upon written request not more than once per annum, it will issue to such Person, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer's knowledge that as of such date:

- (a) whether it knows of any default under this Agreement by the requesting Person, and if there are known defaults, specifying the nature thereof;
- (b) whether the Agreement has been assigned, modified or amended in any way by it and if so, then stating the nature thereof; and
- (c) whether this Agreement is in full force and effect.

**7.3 Mortgagee Protection.** Any Owner shall have the right to encumber its interest in its respective Pad by mortgage or deed of trust, provided that such mortgage or deed of trust is subject to and subordinate to this Agreement.

**7.4 Time.** Time is of the essence in the performance of each of the Owner's respective obligations contained herein.

**7.5 Attorneys' Fees.** If either Party hereto fails to perform any of its obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party on account of such default and/or in enforcing or establishing its rights hereunder, including, without limitation, court costs (including costs of any trial or appeal therefrom) and reasonable attorneys' fees and disbursements.

**7.6 Governing Law; Jurisdiction and Venue.**

(a) **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA.**

(b) For the purposes of any suit, action or proceeding involving this Agreement, each Party hereby expressly submits itself to the jurisdiction of all federal and state

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courts sitting in the State of Nevada and consents that any order, process, notice of motion or other application to or by any such court or a judge thereof may be served within or without such court's jurisdiction by registered mail or by personal service, provided that a reasonable time for appearance is allowed, and each Party agrees that such courts shall have the exclusive jurisdiction over any such suit, action or proceeding commenced by any Party. In furtherance of such agreement, each Party agrees upon the request of another Party to discontinue (or agree to the discontinuance of) any such suit, action or proceeding pending in any other jurisdiction.

(c) Each Party hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any federal or state court sitting in the State of Nevada and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

**7.7 Waiver of Trial by Jury.**

EACH PARTY HEREBY WAIVES, IRREVOCABLY AND UNCONDITIONALLY, TRIAL BY JURY IN ANY ACTION BROUGHT ON, UNDER OR BY VIRTUE OF OR RELATING IN ANY WAY TO THIS AGREEMENT OR ANY OF THE DOCUMENTS EXECUTED IN CONNECTION HEREWITH, THE PROPERTY, OR ANY CLAIMS, DEFENSES, RIGHTS OF SET-OFF OR OTHER ACTIONS PERTAINING HERETO OR TO ANY OF THE FOREGOING.

**7.8 Rights of Successors.** The provisions of this Agreement will be binding upon Declarant and each Owner of the Pads, and their respective successors, heirs, assigns and mortgagees to the extent herein provided. Each covenant herein is made for the mutual and reciprocal benefit of the Pads and the Shopping Center and constitutes a covenant running with the land and binds every owner now having or hereinafter acquiring an interest in the Pads or the Shopping Center. This Agreement shall create privity of contract with and among Declarant and all grantees of all or any portion of the Property and their respective heirs, executors, administrators, successors and assigns. Each of the easements and restrictions created by this Agreement are appurtenant to the property to which they relate and may not be transferred, assigned or encumbered except as an appurtenance to said property.

**7.9 Severability.** The invalidation of any one of the covenants, conditions, restrictions or other provisions herein contained by judgment or court order shall in no way affect the remaining covenants, conditions, restrictions or other provisions hereof, and the same shall remain in full force and effect.

**7.10 Joint Venture.** Nothing herein shall be construed to make any Party a partner or party to a joint venture with any other Party, or to render any Party responsible or liable for the debts of any other Party. Nothing herein shall restrict a Party's right to sell, lease, mortgage or otherwise convey its interest in the Property; provided, however, upon any such conveyance, the successor in interest shall be subject to the terms, conditions and obligations set forth in this Agreement.

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**7.11 Modification.** This Agreement may be modified, or amended in whole or in part only by a written and recorded instrument recorded in said public records and signed by Declarant only; provided that in the event any such modification or amendment materially affects the rights of any Owner hereunder or materially affects said Owner's use of its Pad, then the affected Owner's consent to such modification or amendment shall be obtained. Nothing herein shall prohibit or restrict the Owners from entering into separate agreements which, as between such parties only, modify their respective rights and obligations under this Agreement.

**7.12 Remedies.** The rights established hereunder, and each of them, shall be enforceable at law or in equity, it being fully understood that an action for damages shall not be an adequate remedy for a breach of this Agreement. Any Party hereto shall be entitled to pursue injunctive relief or specific performance with respect to any violation or threatened violation by any party of any of the terms, covenants, or conditions of this Agreement.

**7.13 Merger of Title.** The covenants, agreements, rights, privileges and easements established herein shall survive any merger of title to the Pads and the Shopping Center.

**7.14 Non-Waiver.** The failure of Declarant to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which Declarant may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

**7.15 Captions.** The captions and paragraphs of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein stated.

**7.16 Not a Dedication.** Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purpose whatsoever. It is the intention of the Declarant that this Agreement be strictly limited to and for the purposes expressed herein.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

DECLARANT:

AIG BAKER CARSON VALLEY, L.L.C.,  
a Delaware limited liability company,

By: AIG Baker Shopping Center Properties, L.L.C.,  
a Delaware limited liability company,  
its sole member

By: *W. Ernest Moss*  
Alex D. Baker, President OR  
W. Ernest Moss, Executive Vice President

ACKNOWLEDGMENT FOR DECLARANT

STATE OF ALABAMA )  
 ) SS:  
COUNTY OF SHELBY )

On this 17<sup>th</sup> day of September, 2003, before me appeared W. ERNEST MOSS, to me personally known, who being by me duly sworn, did say that he is the Executive Vice President of AIG Baker Shopping Center Properties, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware, the sole member of AIG Baker Carson Valley, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware and that said instrument was signed and sealed on behalf of said limited liability company by authority of its members, and said officer acknowledged said instrument to be the free act and deed of said limited liability company.

*Cristine K. Byrd* SEAL  
Print Name: Cristine K. Byrd  
Notary Public, State at Large, Alabama  
My Commission Expires: 7-2-07



## EXHIBIT A

### LEGAL DESCRIPTION OF SHOPPING CENTER

**Parcel 7** - as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 403, Page 1471, Document No. 572306, Official Records of Douglas County, Nevada.

A parcel of land situate within the South Half of the Northeast Quarter of Section 6, Township 14 North, Range 20 East, Douglas County, Nevada, more particularly described as follows: Beginning at a point on the Easterly Right-of-Way of Vista Grande Boulevard from which the Center Section of said Section 6 bears South 89°32'59" West a distance of 100.01 feet; thence with said Right-of-Way North 00°17'23" East a distance of 1211.46 feet; thence along a tangent circular curve to the right with a radius of 36.00 feet and a central angle of 89°14'47" an arc length of 56.08 feet to a point on the Southerly Right-of-Way of Topsy Lane; thence with said Right-of-Way North 89°32'09" East a distance of 416.38 feet; thence along a tangent circular curve to the left with a radius of 540.00 feet and a central angle of 11°24'42" an arc length of 107.55 feet; thence departing said Right-of-Way with a non-tangent line South 00°18'51" West a distance of 926.02 feet; thence North 89°32'49" East a distance of 729.25 feet to a point on the Westerly Right-of-Way of U.S. Highway 395; thence with said Right-of-Way South 07°48'25" West a distance of 335.28 feet; thence departing said Right-of-Way South 89°32'34" West a distance of 27.35 feet; thence South 89°32'59" West a distance of 1216.25 feet to the Point of Beginning.

**Parcel 8** - as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 903, Page 8767, Document No. 590198

A parcel of land situate within the South Half of the Northeast Quarter of Section 6, Township 14 North, Range 20 East, Douglas County, Nevada, more particularly described as follows: Beginning at a point on the Southerly Right-of-Way of Topsy Lane from which the Center Section of said Section 6 bears South 27°46'02" West a distance of 1427.31 feet; thence with said Right-of-Way from a tangent which bears North 78°07'28" East, along a circular curve to the left with a radius of 540.00 feet and a central angle of 04°23'05" an arc length of 41.33 feet; thence North 73°44'22" East a distance of 12.15 feet; Thence along a tangent circular curve to the right with a radius of 285.50 feet and a central angle of 13°02'54" an arc length of 65.02 feet; thence along a tangent circular curve to the left with a radius of 314.50 feet and a central angle of 09°27'32" an arc length of 51.92 feet; thence along a tangent circular curve to the right with a radius of 446.00 feet and a central angle of 12°04'54" an arc length of 94.05 feet; thence along a tangent circular curve to the right with a radius of 26.00 feet and a central angle of 90°54'58" an arc length of 41.26 feet; thence with a non-tangent line South 89°40'24" East a distance of 42.87 feet; thence departing said Right-of-Way South 00°19'37" West a distance of 939.45 feet; thence South 89°32'43" West a distance of 329.24 feet; thence North 00°18'51" East a distance of 926.02 feet to the Point of Beginning.

EXCEPTING THEREFROM all that property contained within parcels 2, and 3 as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 403, Page 1471, Document No. 572306, Official Records of Douglas County, Nevada and Parcel 1 as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 903, Page 8767, Document No. 590198.

**Parcel 9** - as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 903, Page 8767, Document No. 590198

A parcel of land situate within the South Half of the Northeast Quarter of Section 6, Township 14 North, Range 20 East, Douglas County, Nevada, more particularly described as follows: Beginning at a point on the Southerly Right-of-Way of Topsy Lane from which the Center Section of said Section 6 bears South 37°51'52" West a distance of 1620.06 feet; thence with said Right-of-Way South 89°40'24" East a distance of 47.13 feet; thence North 00°19'36" East a distance of 1.96 feet; thence along a tangent circular curve to the right with a radius of 26.00 feet and a central angle of 89°12'33" an arc length of 40.48 feet; thence North 89°32'09" East a distance of 9.37 feet; thence departing said Right-of-Way South 00°43'23" East a distance of 227.42 feet; thence North 89°16'37" East a distance of 294.00 feet; thence North 00°43'23" West a distance of 226.11 feet to a point on said Right-of-Way; thence with said Right-

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of-Way North  $89^{\circ}31'04''$  East a distance of 8.72 feet; thence along a tangent circular curve to the right with a radius of 285.50 feet and a central angle of  $11^{\circ}28'43''$  an arc length of 57.20 feet; thence along a tangent circular curve to the left with a radius of 314.50 feet and a central angle of  $11^{\circ}28'43''$  an arc length of 63.01 feet; thence along a tangent circular curve to the right with a radius of 934.65 feet and a central angle of  $01^{\circ}18'19''$  an arc length of 21.29 feet to a point on the Westerly Right-of-Way of U.S. Highway 395; thence with said Right-of-Way along a non-tangent line South  $07^{\circ}48'25''$  West a distance of 964.24 feet; thence departing said Right-of-Way South  $89^{\circ}32'43''$  West a distance of 400.19 feet; thence North  $00^{\circ}19'37''$  East a distance of 939.45 feet to the Point of Beginning.

EXCEPTING THEREFROM all that property contained within parcels 4, and 5 as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 403, Page 1471, Document No. 572306, Official Records of Douglas County, Nevada and Parcel 6 as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 903, Page 8767, Document No. 590198.



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**EXHIBIT B**

**LEGAL DESCRIPTION OF THE PADS**

**Pad A**

Parcel 1 as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 903, Page 8767, Document No. 590198, Official Records of Douglas County, Nevada.

A parcel of land situate within the South Half of the Northeast Quarter of Section 6, Township 14 North, Range 20 East, Douglas County, Nevada, more particularly described as follows: Beginning at a point from which the Center Section of said Section 6 bears South 35°56'47" West a distance of 1433.63 feet; thence North 00°43'50" West a distance of 45.00 feet; thence South 89°16'10" West a distance of 20.35 feet; thence North 00°43'50" West a distance of 40.29 feet; thence North 89°16'10" East a distance of 129.74 feet; thence South 00°43'50" East a distance of 85.29 feet; thence South 89°16'10" West a distance of 103.39 feet to the Point of Beginning.

**Pad B**

Parcel 2 as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 403, Page 1471, Document No. 572306, Official Records of Douglas County, Nevada.

A parcel of land situate within the South Half of the Northeast Quarter of Section 6, Township 14 North, Range 20 East, Douglas County, Nevada, more particularly described as follows: Beginning at a point from which the Center Section of said Section 6 bears South 43°52'48" West a distance of 1152.95 feet; thence North 89°16'16" East a distance of 119.61 feet; thence South 00°43'44" East a distance of 127.50 feet; thence South 89°16'16" West a distance of 119.61 feet; thence North 00°43'44" West a distance of 127.50 feet to the Point of Beginning.

**Pad C**

Parcel 3 as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 403, Page 1471, Document No. 572306, Official Records of Douglas County, Nevada.

A parcel of land situate within the South Half of the Northeast Quarter of Section 6, Township 14 North, Range 20 East, Douglas County, Nevada, more particularly described as follows: Beginning at a point from which the Center Section of said Section 6 bears South 48°41'55" West a distance of 1065.95 feet; thence North 89°16'16" East a distance of 119.61 feet; thence South 00°43'44" East a distance of 127.50 feet; thence South 89°16'16" West a distance of 119.61 feet; thence North 00°43'44" West a distance of 127.50 feet to the Point of Beginning.

**Pad D**

Parcel 4 as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 403, Page 1471, Document No. 572306, Official Records of Douglas County, Nevada.

A parcel of land situate within the South Half of the Northeast Quarter of Section 6, Township 14 North, Range 20 East, Douglas County, Nevada, more particularly described as follows: Beginning at a point from which the Center Section of said Section 6 bears South 54°31'20" West a distance of 1273.38 feet; thence North 00°43'44" West a distance of 98.41 feet; thence North 89°16'16" East a distance of 153.00 feet; thence South 00°43'44" East a distance of 123.23 feet; thence North 82°08'11" West a distance of 69.12 feet; thence South 89°16'16" West a distance of 70.16 feet to the Point of Beginning.

**Pad E**

Parcel 5 as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 403, Page 1471, Document No. 572306, Official Records of Douglas County, Nevada.

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A parcel of land situate within the South Half of the Northeast Quarter of Section 6, Township 14 North, Range 20 East, Douglas County, Nevada, more particularly described as follows: Beginning at a point from which the Center Section of said Section 6 bears South 60°36'26" West a distance of 1173.51 feet; thence North 00°47'24" East a distance of 98.33 feet; thence North 45°01'50" East a distance of 20.23 feet; thence North 89°16'16" East a distance of 60.26 feet; thence South 86°25'58" East a distance of 42.25 feet; thence South 82°08'11" East a distance of 50.16 feet; thence South 00°43'44" East a distance of 101.75 feet; thence South 89°16'16" West a distance of 169.09 feet to the Point of Beginning.

**Pad F**

Parcel 6 as shown on that certain Record of Survey in support of a Boundary Line Adjustment, Book 903, Page 8767, Document No. 590198, Official Records of Douglas County, Nevada.

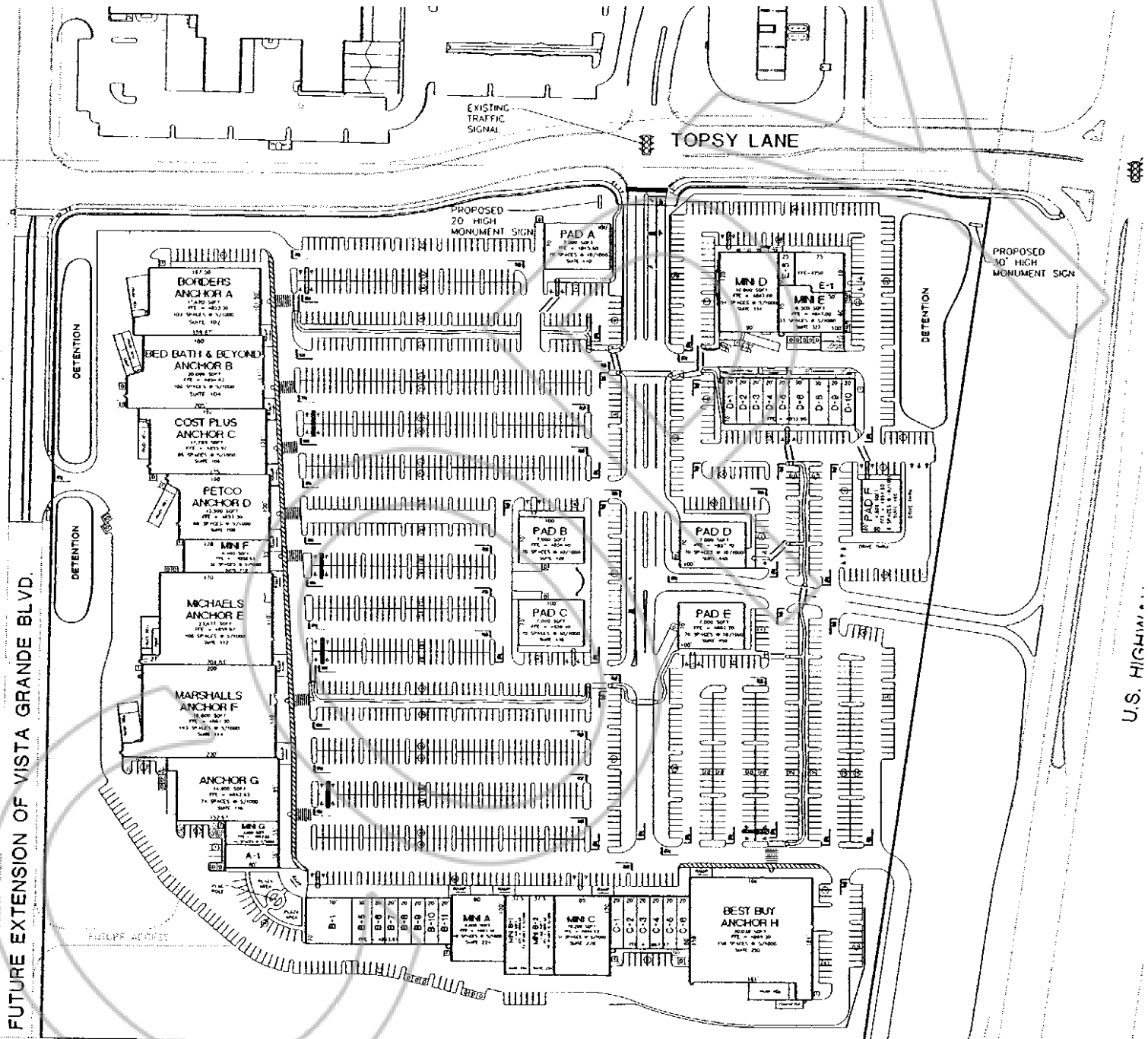
A parcel of land situate within the South Half of the Northeast Quarter of Section 6, Township 14 North, Range 20 East, Douglas County, Nevada, more particularly described as follows: Beginning at a point from which the Center Section of said Section 6 bears South 54°31'20" West a distance of 1573.93 feet; thence North 89°16'31" East a distance of 64.00 feet; thence North 00°43'29" West a distance of 50.00 feet; thence North 89°16'31" East a distance of 115.16 feet to a point on the westerly right-of-way of U.S. Highway 395; thence South 07°48'25" West along said westerly right-of-way a distance of 271.93 feet; thence North 82°24'33" West leaving said westerly right-of-way a distance of 140.29 feet; thence North 00°43'29" West a distance of 198.63 feet to the Point of Beginning.

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EXHIBIT C

SITE PLAN



FUTURE EXTENSION OF VISTA GRANDE BLVD.

TOPSY LANE

U.S. HIGHWAY 95

CARSON VALLEY PLAZA



AIG Baker Carson Valley, L.L.C.  
DOUGLAS COUNTY, NEVADA

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## EXHIBIT D

### PROHIBITED USES

**A. BED, BATH & BEYOND, INC. ("BB&B")** - For so long as BB&B, its successors and assigns, leases or occupies the Center, no portion of any Pad may be sold, leased, occupied or used for any of the following prohibited uses or operations that produce or are accompanied by the following characteristics:

- (1) Any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse.
- (2) Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
- (3) Any "second hand" store, "surplus" store;
- (4) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- (5) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);
- (6) Any fire sale, bankruptcy sale (unless pursuant to a court order), auction house operation, fictitious going-out-of-business sale, lost-our-lease sale or similarly advertised event;
- (7) Any central laundry, dry cleaning plant, or laundromat (except that a dry cleaner that performs all dry cleaning outside the Shopping Center shall be permitted, so long as its on-site premises are located more than 150 feet away from the BB&B premises);
- (8) Any automobile, truck, trailer, boat, or recreational vehicle sales, leasing, display or body shop repair operation;
- (9) Any bowling alley or skating rink;
- (10) Any live performance theater, auditorium, meeting hall, sporting event, or other entertainment use;
- (11) Any living quarters, sleeping apartments, or lodging rooms;
- (12) Any veterinary hospital or animal raising or boarding facilities (except to the extent permitted below);
- (13) Any mortuary or funeral home;
- (14) Any "Pornographic Use", which shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto; the parties hereto acknowledge and agree the sale of books, magazines and other publications by a national bookstore of the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Borders and Barnes & Noble, as said stores currently operate) shall not be deemed a "pornographic use" hereunder; or massage parlor;
- (15) Any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia;
- (16) Any bar, tavern, or other establishment selling alcoholic beverages for on- or off-premises consumption (except as incidental to a family-oriented, sit-down restaurant such as TGI Fridays, Red Lobster, and Bennigans, to the extent permitted hereunder);
- (17) Any catering or banquet hall;
- (18) Any flea market, amusement or video arcade, pool or billiard hall, night club, discotheque, or dance hall;
- (19) Any training or education facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business on a Pad;
- (20) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or

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charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the Occupant;

- (21) Any unlawful use;
- (22) Any pawn shop, gun shop, or tattoo parlor;
- (23) Any church or other place of religious worship;
- (24) Any car wash, automobile repair shop, or any business servicing motor vehicles in any respect, including, without limitation, any quick lube oil change service, tire center or gasoline or service station or facility.
- (25) Any carnival, amusement park or circus;
- (26) Any medical clinics or medical offices;
- (27) Any office use, other than office space used in connection with and ancillary to a permitted retail use hereunder;
- (28) hotel/motel;
- (29) daycare center;
- (30) veterinary office, except as may be incidental to a full-line pet and pet supply store operating in at least 15,000 square feet of Floor Area; such occupant shall use reasonable efforts to prevent its customers from allowing their pets to urinate or defecate in the Common Areas of the Shopping Center and will promptly remove any "dog dirt" from said Common Areas (it being agreed that such pet and pet supply store shall not be adjacent to the BB&B premises);
- (31) children's entertainment or activity facility (such as "Discovery Zone", or "Chuck E. Cheese's");
- (32) karate center;
- (33) movie theater;
- (34) a supermarket, except that there shall be permitted an upscale, boutique-type food store of the normally operated in the State of Nevada (such as, by way of example, Zagara's, Whole Foods, Fresh Fields, or Wild Oats), provided, that such store shall not occupy more than 25,000 square feet of Floor Area;
- (35) restaurant serving meals for on- or off-premises consumption within three hundred (300) feet of the BB&B premises, except that restaurants may be located in the premises designated "Pad A", "Pad B" or "Pad C";
- (36) beauty parlor or nail salon within three hundred (300) feet of the BB&B Premises; or
- (37) health spa, exercise facility or similar type business within three hundred (300) feet of the BB&B premises.

**B. BEST BUY STORES, L.P. ("Best Buy")** - For so long as Best Buy, its successors and assigns, leases or occupies the Center, no portion of any Pad may be sold, leased, occupied or used for any of the following prohibited uses or operations that produce or are accompanied by the following characteristics:

- (1) Any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse.
- (2) Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
- (3) Any "second hand" store, "surplus" store;
- (4) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- (5) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);
- (6) Any fire sale, bankruptcy sale (unless pursuant to a court order), auction house operation, fictitious going-out-of-business sale, lost-our-lease sale or similarly advertised event;
- (7) Any automobile, truck, trailer, boat, or recreational vehicle sales, leasing, display or body shop repair operation;
- (8) Any bowling alley or skating rink;
- (9) Any live performance theater, auditorium, meeting hall, sporting event, or other entertainment use;
- (10) Any living quarters, sleeping apartments, or lodging rooms;
- (11) Any veterinary hospital or animal raising or boarding facilities (except to the extent permitted below);
- (12) Any mortuary or funeral home;
- (13) Any "Pornographic Use", which shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature,

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which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto; the parties hereto acknowledge and agree the sale of books, magazines and other publications by a national bookstore of the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Borders, Barnes & Noble and Best Buy, as said stores currently operate) shall not be deemed a "pornographic use" hereunder; or massage parlor;

(14) Any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia;

(15) Any bar, tavern, or other establishment selling alcoholic beverages for on- or off-premises consumption (except this prohibition shall not apply to a restaurant that derives less than 40% of its revenue from the sale of alcohol);

(16) Any catering or banquet hall;

(17) Any flea market, amusement or video arcade, pool or billiard hall, night club, discotheque, or dance hall;

(18) Any training or education facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an Occupant incidental to the conduct of its business on a Pad;

(19) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the Occupant;

(20) Any unlawful use;

(21) Any pawn shop, gun shop, or tattoo parlor;

(22) Any church or other place of religious worship;

(23) Any car wash, automobile repair shop, or any business servicing motor vehicles in any respect, including, without limitation, any quick lube oil change service, tire center or gasoline or service station or facility.

(24) Any carnival, amusement park or circus;

(25) hotel/motel;

(26) daycare center;

(27) veterinary office, except as may be incidental to a full-line pet and pet supply store operating in at least 12,000 square feet of Floor Area; such occupant shall use reasonable efforts to prevent its customers from allowing their pets to urinate or defecate in the Common Areas of the Shopping Center and will promptly remove any "dog dirt" from said Common Areas (it being agreed that such pet and pet supply store shall not be adjacent to the Best Buy premises);

(31) children's entertainment or activity facility (such as "Discovery Zone", or "Chuck E. Cheese's"); and

(32) movie theater.

C. **BORDER'S, INC. ("Border's")** - For so long as Border's, its successors and assigns, leases or occupies the Center, no portion of any Pad may be sold, leased, occupied or used for any of the following prohibited uses or operations that produce or are accompanied by the following characteristics:

1. flea market
2. swap shop or "outlet store" selling merchandise that is used, damaged or discontinued
3. bowling alley
4. arcade
5. game room
6. skating rink
7. billiard room
8. massage parlor
9. adult book store
10. bar, tavern, pub or restaurant which has an entrance within three hundred (300) feet of the entrance to the Border's premises (provided that this restriction shall not apply to a restaurant located on "Pad A", provided such restaurant derives no more than forty percent (40%) of its gross sales from the sale of alcohol)
11. ballroom, dance hall, discotheque

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12. beauty shop which has an entrance within two hundred fifty (250) feet of the entrance to the Border's premises;
- barber college
13. theater having a customer entrance or exit within three hundred (300) feet of the entrance to the Border's premises
14. health club having a customer entrance or exit within three hundred (300) feet of the entrance to the Border's premises
15. offices (including full service bank offices, savings and loan association offices or credit unions)
16. place of instruction, reading room or any operation catering primarily to students or trainees rather than to customers
17. funeral parlors
18. facility for the sale of paraphernalia for use with illicit drugs
19. off-track betting parlor
20. carnival, amusement park or circus
21. new or used car dealership
22. gas station on the west side of the entrance road off of Topsy Lane as depicted on the Site Plan; provided, in no event shall a gas station permitted hereunder be construed as an auto repair shop
23. auto repair shop

**D. Cost Plus, Inc. ("Cost Plus")** - For so long as Cost Plus, its successors and assigns, leases or occupies the Center, no portion of any Pad may be sold, leased, occupied or used for any of the following prohibited uses or operations that produce or are accompanied by the following characteristics:

1. any activity which constitutes a public or private nuisance or which generates excessive noise, litter, dust, dirt or odor;
2. any unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks);
3. warehouse operation, or any assembling, manufacturing, distilling, refining, smelting, industrial, agricultural, drilling or mining operation;
4. trailer court, mobile home park, lot for sale of new or used motor vehicles, labor camp, junk yard, stock yard or animal raising (other than pet shops located not closer than two hundred feet (200') from the Cost Plus premises); and
5. dumping, disposal, incineration or reduction of garbage or refuse other than handling or reducing such waste if produced on the premises from authorized uses and, in such latter event, only if handled in a reasonably clean and sanitary manner.

In addition no Building shall be used as a:

6. laundromat, veterinarian, veterinary hospital or car washing establishment;
7. karate school;
8. game room or arcade;
9. funeral establishment, mortuary or similar service;
10. auction or bankruptcy sale, except per order of court;
11. pawn shop;
12. outdoor circus or other outdoor entertainment use;
13. outdoor meetings, meeting hall or other place of assembly;
14. operation of "elephant trains" or similar transportation devices;
15. flea market, flea circus, surplus store or other operation for the sale of used goods;
16. shooting gallery or gun range;
17. employment agency;
18. bar serving alcoholic beverages (except as an incident to a full service and full kitchen restaurant operation), nightclub, discotheque or dance hall within 400 feet of the Cost Plus premises;
19. massage parlor;
20. off-track betting establishment;

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E. **Marshall's ("Marshall's")** - For so long as Marshall's, its successors and assigns, leases or occupies the Shopping Center, no portion of any Paderty shall be used for any non-retail purposes (repairs, alteration and offices incidental to retailing, and banks and small loan offices, not being deemed non-retail), or for any entertainment purposes such as a bowling alley, skating rink, cinema, bar, nightclub, discotheque, amusement gallery, poolroom, healthclub, massage parlor, sporting event, sports or game facility, off-track betting club or any establishment for the sell or display of pornographic materials.

F. **Michael's ("Michael's")** - For so long as Michael's, its successors and assigns, leases or occupies the Center, no portion of any Pad may be sold, leased, occupied or used for any of the following prohibited uses or operations that produce or are accompanied by the following characteristics:

1. funeral establishment;
2. automobile sale, leasing, repair or display establishment or used car lot, including body repair facilities;
3. auction or bankruptcy sale;
4. pawn shop;
5. outdoor circus, carnival or amusement park, or other entertainment facility;
6. outdoor meetings;
7. bowling alley;
8. primarily pool or billiard establishment;
9. shooting gallery;
10. off-track betting (provided that state sponsored lottery tickets shall not be prohibited);
11. refinery;
12. adult bookstore or facility selling or displaying pornographic books, literature, or videotapes (materials shall be considered "adult" or "pornographic" for such purpose if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality), massage parlor
13. any residential use, including but not limited to living quarters, sleeping apartments or lodging rooms;
14. theater;
15. auditorium, meeting hall, ballroom, school or other place of public assembly;
16. unemployment agency, service or commission;
17. gymnasium, health club, exercise or dance studio within 300 feet of the Michael's premises;
18. dance hall;
19. cocktail lounge, bar, disco or night club (provided this prohibition shall not apply to a permitted restaurant that derives less than 45% of its revenues from the sale of alcohol);
20. bingo or similar games of chance, but lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of business;
21. video game or amusement arcade, except as an incidental part of another primary business;
22. skating or roller rink;
23. second hand store, auction house, or flea market;
24. restaurant within 300 feet of the Michael's premises; or
25. non-retail use

G. **Petco Animal Supplies, Inc. ("Petco")** - For so long as Petco, its successors and assigns, leases or occupies the Shopping Center, no portion of any Pad may be sold, leased, occupied or used for any of the following prohibited uses or operations that produce or are accompanied by the following characteristics:

1. Any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse.
2. Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operations.
3. Any "second hand" store, "surplus" store;
4. Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);

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5. Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);
6. Any fire sale, bankruptcy sale (unless pursuant to a court order), auction house operation, fictitious going-out-of-business sale, lost-our-lease sale or similarly advertised event;
7. Any automobile, truck, trailer, boat, or recreational vehicle sales, leasing, display or body shop repair operation;
8. Any bowling alley or skating rink;
9. Any live performance theater, auditorium, meeting hall, sporting event, or other entertainment use;
10. Any living quarters, sleeping apartments, or lodging rooms;
11. Any veterinary hospital or animal raising or boarding facilities (except to the extent permitted below);
12. Any mortuary or funeral home;
13. Any "Pornographic Use", which shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale of rental video cassettes or other medium capable of projection, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto; the parties hereto acknowledge and agree the sale of books, magazines and other publications by a national retailer of the type normally associated with the sale of books, magazines and other publications by a national retailer of the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Borders, Barnes & Noble and Best Buy, as said stores currently operated) shall not be deemed a "pornographic use: hereunder, or massage parlor;
14. Any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia;
15. Any bar, tavern, or other establishment selling alcoholic beverages for on or off-site consumption (except this prohibition shall not apply to a restaurant that derives less than 40% of its revenue from the sale of alcohol);
16. Any catering or banquet hall;
17. Any flea market, amusement or video arcade, pool or billiard hall, night club or discotheque, or dance hall;
18. Any training or education facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business on the Pads;
19. Any gambling facility or operation, including but not limited to; off-track or sports betting parlor; table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities or charitable gambling activities, so long as such governmental and/or charitable gambling activities are incidental to the business operation being conducted by the occupant;
20. Any unlawful use;
21. Any pawn shop, gun shop, or tattoo parlor;
22. Any church or other place of religious worship;
23. Any car wash, automobile repair shop, or any business servicing motor vehicles in any respect, including without limitation, any quick lube oil change service, tire center or gasoline or service station or facility;
24. Any carnival, amusement park or circus;
25. hotel/motel;
26. daycare center;
27. veterinary office, except as may be incidental to a full-line pet and pet supply store operating in at least 12,000 square feet of Floor Area; such occupant shall use reasonable efforts to prevent its customers from allowing their pets to urinate or defecate in the Common Areas of the Shopping Center and will promptly remove any "dog dirt" from said Common Areas;
28. children's entertainment or activity facility (such as "Discovery Zone", or Chuck E. Cheese's") or
29. movie theater.

H. **Pier 1 ("Pier 1")** - For so long as Pier 1, its successors and assigns, leases or occupies the Shopping Center, no portion of any Pad may be sold, leased, occupied or used for any of the following prohibited uses or operations that produce or are accompanied by the following characteristics:

- (i) bowling alley, (ii) movie theater, (iii) arcade, (iv) tavern or bar (except as incidental [not to exceed forty percent (40%)

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of revenues] to a family-oriented, sit-down restaurant such as TGI Fridays, Red Lobster, and Bennigans), (v) health club, spa or gymnasium, (vi) night club or discotheque, (vii) any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction), (viii) any dumping, disposing, incineration, or reduction of garbage (exclusive of dumpsters located in the rear of any building), (ix) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, (x) any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to on-site service oriented to pickup and delivery by the ultimate consumer, including nominal supporting facilities, as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located, (xi) any automobile, truck, trailer or R.V. sales, leasing, display or repair, (xii) any skating rink, (xiii) any living quarters, sleeping apartments, or lodging rooms, (xiv) any veterinary hospital, animal raising facilities or pet shop (except that this prohibition shall not prohibit pet shops which are not adjacent to the Pier 1 premises), (xv) any mortuary, (xvi) any establishment renting, selling or exhibiting pornographic materials; provided, however, the sale of books, magazines and other publications by a national bookstore of the type normally located in first-class shopping centers (such as, by way of example, Barnes & Noble, Borders and Books-A-Million) shall not be deemed "pornographic" hereunder, and (xvii) any gambling facility or operation, including but not limited to: off-track or sports betting parlor, table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by a tenant in the Shopping Center.

1. Without Declarant's prior written consent, no portion of the Pads may be sold, leased, occupied or used for any of the following uses or operations that may produce or are accompanied by the following characteristics:

1. any use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse provided, that the foregoing shall not prohibit odors and noises typical of a restaurant operation; or
2. any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
3. any "second hand" store, "surplus" store;
4. any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
5. any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);
6. any fire sale, bankruptcy sale (unless pursuant to a court order), auction house operation, fictitious going-out-of-business sale, lost-our-lease sale or similarly advertised event;
7. any central laundry, dry cleaning plant, or laundromat;
8. any automobile, truck, trailer, boat, or recreational vehicle sales, leasing, display or body shop repair operation;
9. any bowling alley or skating rink;
10. any live performance theater, auditorium, meeting hall, sporting event, or other entertainment use;
11. any living quarters, sleeping apartments, or lodging rooms;
12. any veterinary hospital or animal raising or boarding facilities (except to the extent permitted below);
13. any mortuary or funeral home;
14. any "Pornographic Use", which shall include, without limitation, a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or un-rated by the Motion Picture Rating Association, or any successor thereto; the parties hereto acknowledge and agree the sale of books, magazines and other publications by a national bookstore of the type normally located in first-class shopping centers in the State in which the Shopping Center is located (such as, for example, Borders and Barnes & Noble, as said stores currently operate) shall not be deemed a "pornographic use" hereunder; or massage parlor;
15. any so-called "head shop", or other establishment primarily selling or exhibiting drug-related paraphernalia;

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16. any bar, tavern, or other establishment selling alcoholic beverages for on- or off-premises consumption (except as incidental to a family-oriented, sit-down restaurant such as TGI Fridays, Red Lobster, and Bennigans);
17. any catering or banquet hall;
18. any flea market, amusement or video arcade, pool or billiard hall, night club, discotheque, or dance hall;
19. any training or education facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to on-site employee training by an occupant incidental to the conduct of its business on the Pads; 20. any gambling facility or operation, including but not limited to: off-track or sports betting parlor, table games such as black-jack or poker; slot machines; video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the occupant;
21. any pawn shop, gun shop, or tattoo parlor;
22. any church or other place of religious worship;
23. any car wash, automobile repair shop, or any business servicing motor vehicles in any respect, including, without limitation, any quick lube oil change service, tire center or gasoline or service station or facility;
24. any carnival, amusement park or circus;
25. any medical clinics or medical offices;
26. any supermarket (except to the extent permitted below);
27. any office use, unless Declarant's prior written consent is provided;
28. hotel/motel;
29. daycare center;
30. veterinary office, except as may be incidental to a full-line pet and pet supply store operating in a least 15,000 square feet of floor area; such occupant shall use reasonable efforts to prevent its customers from allowing their pets to urinate or defecate in the Pad and the Common Areas of the Shopping Center and will promptly remove any "dog dirt" from said Common Areas;
31. children's entertainment or activity facility (such as "Discovery Zone", or "Chuck E. Cheese's");
32. karate center;
33. movie theater;
34. an upscale, boutique-type food store of the normally operated in the State of Nevada (such as, by way of example, Zagara's Whole Foods, Fresh Fields, or Wild Oats), provided, that such store shall not occupy more than 20,000 square feet of Floor Area;
35. health spa, gymnasium, exercise facility or similar type business;
36. a manufacturing, distilling, refining, smelting, agricultural, or mining operation;
37. a mobile home sales facility, car sales facility, car wash, a labor camp, junkyard or stockyard;
38. for any operation in connection with the collection, compacting, incineration, reduction or recycling of garbage;
39. for any use that would violate the law (including, without limitation, applicable zoning and building codes, rules and regulations).

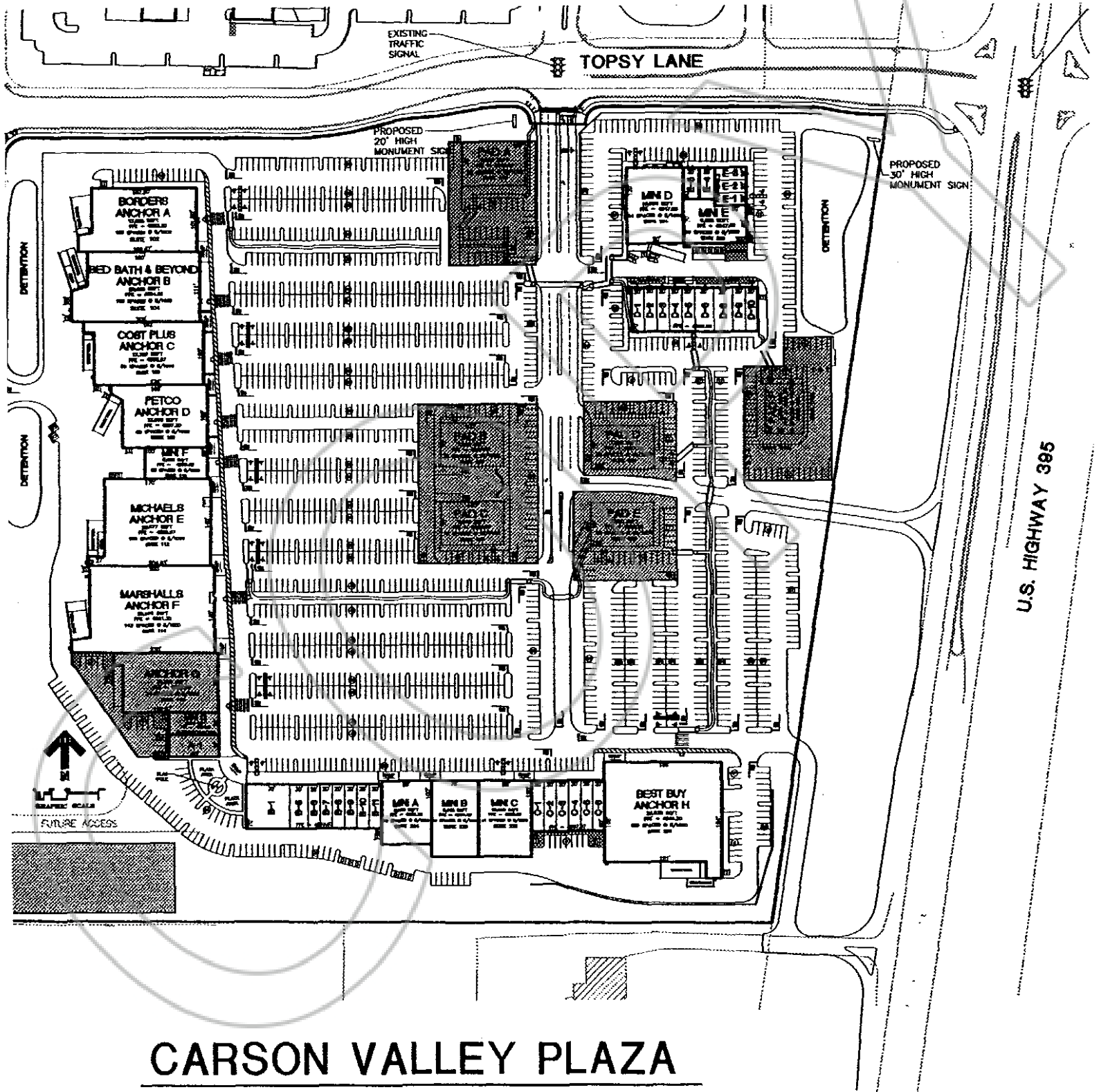
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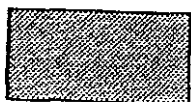


**EXHIBIT E**

**SITE PLAN DEPICTING STAGING AREAS**



**CARSON VALLEY PLAZA**



**STAGING AREAS**

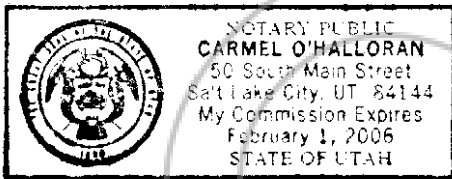
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**ACKNOWLEDGEMENT**

STATE OF UTAH )  
 )  
:ss.  
COUNTY OF SALT LAKE )

On the 18<sup>th</sup> day of September, 2003, personally appeared before me Lynn V. Despain, the Vice President of KeyBank, N.A., who duly acknowledged before me that he signed the foregoing instrument for and on behalf of said corporation having all requisite authority to so act..



*Carmel O'Halloran*  
Notary Public

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**CONSENT AND SUBORDINATION**

The undersigned, as the beneficiary under that certain Deed of Trust executed by AIG Baker Carson Valley, L.L.C., a Delaware limited liability company, Trustor, recorded December 2, 2002, as Document No. 559564, in Book 1202, Page 694, in the office of the County Recorder of Douglas County, Nevada (the "Deed of Trust"), encumbering the real property described on Exhibit A and Exhibit B hereby (1) consents to the execution and delivery by the parties thereto of an that certain AGREEMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS AND GRANT OF EASEMENTS (the "Agreement"), (2) subordinates to the rights of the parties under the Agreement any lien or security interest the undersigned may have by virtue of such recorded Deed of Trust and all amendments thereto, and (3) agrees that the foreclosure of such Deed of Trust will have no effect on the continuing validity and enforceability of the Agreement. Nothing in this Consent and Subordination shall be construed to impose on the undersigned any obligation created by the Agreement, unless and until the undersigned has acquired fee title to property burdened by the Agreement.

Signed and delivered as of Sept. 18, 2003.

**KEYBANK NATIONAL ASSOCIATION**, a national banking association

*Witnesses:*

\_\_\_\_\_  
Print name:

\_\_\_\_\_  
Print Name:

By: \_\_\_\_\_  
Its: Vice President  
LYNN DESPAIN

[ACKNOWLEDGMENT TO FOLLOW ON NEXT PAGE]

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