

**Carson City
Agenda Report**

Date Submitted: June 12, 2012

Agenda Date Requested: June 21, 2012

To: Board of Supervisors

Time Requested: 5 min.

From: Office of Business Development

Subject Title: For Possible Action: To approve an amendment to the Operating Covenant and Agreement by and between Carson City Redevelopment Authority and Carson City and The Carrington Company to extend the time in which a tenant must occupy the vacant retail space from July 1, 2012, to December 31, 2012. (Lee Plemel)

Staff Summary: The Carrington Company is the owner of the Carson Mall, located within Redevelopment Project Area No. 1 at 1312 South Carson Street. The mall consists of approximately 155,038 square feet of retail space. There is presently an anchor tenant space of 72,570 square feet that has been vacant since July 2009. With the assistance of the sales tax reimbursement funds, The Carrington Company may be able to attract a tenant to fill the vacant space.

Type of Action Requested: (check one)

Resolution

Ordinance

Formal Action/Motion

Other (Specify)

Does This Action Require a Business Impact Statement: Yes No

Recommended Board Action: I move to approve an amendment to the Operating Covenant and Agreement by and between Carson City Redevelopment Authority and Carson City and The Carrington Company to extend the time in which a tenant must occupy the vacant retail space from July 1, 2012, to December 31, 2012.

Explanation for Recommended Board Action: See attached staff memo for more information.

Applicable State, Code, Policy, Rule or Regulation: NRS 279

Fiscal Impact: 50% of the new sales tax generated from the new tenant would be reimbursed to the property owner.

Explanation of Impact: The reimbursement agreement with help generate new sales tax in support general fund activities.

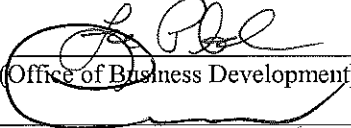
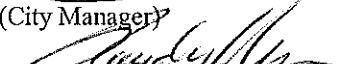
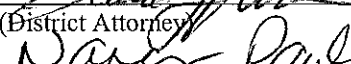
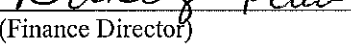
Funding Source: The new sales tax generated by this redevelopment project.

Alternatives: Not approve the amendment to the agreement.

Supporting Material:

- 1) Staff memo
- 2) Letter from The Carrington Company
- 3) Amended Agreement

Prepared By: Eva Chwalisz, Management Assistant

Reviewed By:  Date: 6-8-12
(Office of Business Development)
 Date: 6/12/12
(City Manager)
 Date: 6/12/12
(District Attorney)
 Date: 6/12/12
(Finance Director)

Board Action Taken:

Motion: _____

1)	_____	Aye/Nay
2)	_____	_____

(Vote Recorded By)



Office of Business Development

108 East Proctor Street
Carson City, Nevada 89701

Date: June 8, 2012

To: Redevelopment Authority and Board of Supervisors
Meeting of June 21, 2012

From: Lee Plemel, Planning Director

Subject: Carrington Company (Carson Mall) Sales Tax Reimbursement Agreement
Time Extension from July 1, 2012, to December 31, 2012

The Redevelopment Authority and Board of Supervisors approved a sales tax reimbursement agreement with the Carrington Company on May 19, 2011. The agreement provides that the City and the Carrington Company (property owner) will share 50% of any sales tax generated from a retail operator who occupies the currently vacant space—the space formerly occupied by Gottschalk's. The details of the agreement provisions can be found in the attached agreement.

One of the provisions of the agreement is that the new tenants must have their business in operation on the property by July 1, 2012. This deadline was based upon the policy established by the Redevelopment Authority and Board of Supervisors in February 2011, which offered sales tax reimbursement agreements to property owners with vacant commercial buildings for a short period of time subject to certain criteria and conditions.

The Carrington Company is requesting that their agreement be amended to extend the deadline to December 31, 2012. The agreement may be amended by approval of both parties per the provision of Section 13.9 of the approved agreement. The Carrington Company notes in their attached letter of request that they are currently working with a national retailer to lease the vacant space. The extension of the agreement would allow them to continue to negotiate with the retailer knowing the sales tax reimbursement agreement would remain in effect through the year. The agreement could help get a retailer in the vacant space because it may allow, for example, the property owner to offer reduced lease payments knowing that the revenue can be recouped from the sales tax generated by the business.

There were two other sales tax reimbursement agreements approved in May 2011: One for the former K-Mart property (N. Carson Street) and one for a portion of the Carson Tahoe Quail commercial center (S. Carson Street at Appion Way). If the Redevelopment Authority and Board of Supervisors believe the time extension is warranted for the Carrington Company, they may consider directing staff to contact the other property owners who entered into similar agreements and offer the same time extension.

If you have any questions regarding these special event applications, please contact Lee Plemel at 283-7075 or lplemel@carson.org.

Attachments:

- A. Letter from Carrington Company requesting time extension
- B. Amended Agreement

THE CARRINGTON COMPANY

RECEIVED

JUN 07 2012

CARSON CITY
PLANNING DIVISION

June 6, 2012

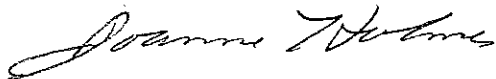
Carson City Planning/ Redevelopment Department
108 E. Proctor St.
Carson City, NV 89701
Attn: Lee Plemel

Dear Mr. Plemel:

The Carrington Company would like to request an extension of the Operating Covenant and Agreement by and between Carson City Redevelopment Authority and The City of Carson City and The Carrington Company as approved May 19, 2011. According of the terms of the agreement, a lease commitment is due by July 1, 2012. We are currently in negotiations with a national retailer. Our property is being considered as their preferred site. We are awaiting notification but cannot guaranty that we will be informed by July 1, 2012. We request that the due date be extended to December 31, 2012. The extended date would allow us to proceed with negotiations with the national retailer and an additional retailer that we are in negotiations with.

Please contact me with any questions. We are pleased to have the opportunity to bring a new retailer to the City and fill a large vacant space in central Carson City.

Sincerely,



Joanne Holmes
The Carrington Company

PHONE:
(707) 445-9601

ADDRESS:
627 H STREET
P.O. Box 1328
EUREKA, CA 95502

FAX:
(707) 445-8385

**AMENDMENT #1 TO
THE OPERATING COVENANT AND AGREEMENT
by and between
Carson City Redevelopment Authority
and the City of Carson City
and The Carrington Company**

1. **AMENDMENTS.** All provisions of the original Operating Covenant and Agreement ("Agreement") dated May 19, 2011, attached hereto as Exhibit A, remain in full force and effect with the exception of an amendment to the first paragraph of Section 3 of the Agreement as follows:

3. **RDA REVENUE SHARING COVENANT.** *The Participant agrees to exercise its right to enter into lease of its retail space. The Participant agrees to make all necessary improvements to the Properties so that its Tenants can fully operate their businesses in the Property by no later than ~~July 1, 2012~~ **December 31, 2012**. If one or more of the Tenants on the participant property decline to exercise their lease options in the future, and no replacement Tenant occupies that portion of the Property, the RDA's participation payments to the Participant will automatically decrease on a pro-rata basis. The Participant shall execute and record this OCA for the benefit of the RDA and the City binding the Participant, its successors, heirs and assigns. In consideration of the Participant entering in this OCA, the RDA and the City agree to participate in a revenue sharing covenant with the Participant for up to fifteen (15) consecutive years, commencing one year (365 days) from the first monthly sales tax report from the Tenant. The consecutive years shall run without interruption or stay regardless of any vacancy on the Property.*

2. **INCORPORATED DOCUMENTS.** Exhibit A (original Agreement) is attached hereto, incorporated by reference herein and made a part of this amended Agreement.

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IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written and intend to be legally bound thereby.

CARSON CITY REDEVELOPMENT AUTHORITY

By:
Its: Chairman

CARSON CITY

By: Robert L. Crowell
Its: Mayor

THE CARRINGTON COMPANY

By: Francis Carrington
Its: President

RECORDED AT THE REQUEST OF EXHIBIT A

CARSON CITY CLERK-RECORDER

2012 MAR 29 AM 11:31

FILE NO. 420796
ALAN GLOVER
CARSON CITY RECORDER
OFF. ALC DRP. [Signature]

APN 004.011.01

APN _____

APN _____

FOR RECORDER'S USE ONLY

Operating or Covenant Agreement, CCDTA
TITLE OF DOCUMENT Carrington Co.

I, the undersigned, hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain personal information of any person or persons. (NRS 239B.030)

I, the undersigned, hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain personal information of a person or persons as required by law. State specific law: _____

Signature

Print Name & Title

WHEN RECORDED MAIL TO:

Carson City Clerk

221 N. Carson St., Ste. 1

Carson City, NV 89701

420796

OPERATING COVENANT AND AGREEMENT

by and between

**Carson City Redevelopment Authority
And the City of Carson City**

and

The Carrington Company

420796

OPERATING COVENANT AND AGREEMENT

This Operating Covenant and Agreement ("OCA" or "Agreement") dated this 19th day of May, 2011 ("Effective Date") is entered into by and between the Carson City Redevelopment Authority ("RDA") and Carson City ("City") and The Carrington Company ("Participant"). RDA/City and Participant are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the Participant is the owner in fee simple of certain real property in the Carson Mall Shopping Center that presently contains a vacant, blighted Building, more specifically that blighted building is located on APN 004-011-01 and is located within Carson City Project Area No. 1 (the "Project Area"), and this OCA is relevant to Tenant leaseholds proposed to occupy part of this parcel, which leaseholds are more specifically described in Attachment A and is hereby incorporated into to this OCA (the "Property");

WHEREAS, the RDA desires to achieve a goal established by the Redevelopment Plan for the Project Area by providing a financial incentive to redevelop and lease the Property;

WHEREAS, completion of improvements to the Property and leasing the Property to sales tax generating is in the best interests of the City, the RDA and the health, safety and welfare of the residents and the taxpayers of the Project Area. It is also in accordance with the provisions of Nevada Revised Statutes (NRS) Chapter 279, the Redevelopment of Communities;

WHEREAS, RDA's participation in this Agreement requires the Participant's Tenants to generate and report net new taxable sales revenue annually to the City in order for Participant to receive fifty percent (50%) reimbursement of the City's share of annual net new sales tax generated by the leaseholds;

WHEREAS, the reimbursement of sales tax can not come from sales tax generated by Tenants that are relocated from either Douglas or Lyon County;

WHEREAS, for those Tenants relocating within Carson City, the reimbursement calculation will be limited to only the sales tax coming from the new location that is over and above the sales tax generated at the Tenant's former location (the relocating Tenant's "Tax Base Amount");

WHEREAS, completion of improvements to the Property and the leasing of space on the Property will assist in the elimination of blight in the Project Area, create additional jobs and improve safety in the Project Area;

WHEREAS, completion of improvements and the leasing of the property would not be financially feasible but for the RDA's assistance as further defined in this Agreement;

WHEREAS, the construction of improvements and leasing of the Property will substantially improve the economic and physical conditions in the Project Area and the City and is in accordance with the purposes and goals of the RDA's Redevelopment Plan;

WHEREAS, the RDA agrees to enter into this Agreement with the Participant in order to facilitate the continued redevelopment and occupancy of the property owned by the Participant in the Carson Mall Shopping Center;

WHEREAS, the Participant represents, and the RDA acknowledges, that the Participant's improvements and use of the Property as called for under this OCA will afford the RDA the opportunity to achieve important public policy objectives. Participant acknowledges that it is willing to lease and improve the Properties in support of such public purposes;

WHEREAS, the RDA has determined that this Agreement fulfills the requirements of Nevada Redevelopment Law and the RDA's rules governing participation by property owners, and that this Agreement, including without limitation the provisions relating to the construction of the improvements and development of the Property, is consistent with the provisions of the Redevelopment Plan and each of its applicable elements.

NOW, THEREFORE, in consideration of the above and mutual commitments by the Parties, as contained in this Agreement, the Parties agree as follows:

AGREEMENT

NOW THEREFORE, in consideration of the mutual commitments by the City, RDA and Participant, as contained in this Agreement, the Parties agree as follows:

1. **DEFINITIONS.** The following words and phrases shall be defined as follows:
 - 1.1 "BOS" means the Carson City Board of Supervisors.
 - 1.2 "City" means the consolidated city-county government of Carson City Nevada.
 - 1.3 "Effective Date" means the date first written above, which shall be the date upon which this Agreement is approved by the RDA and the Carson City Board of Supervisors.
 - 1.4 "Improvements" means the improvements to be constructed on or appurtenant to the Property.
 - 1.5 "Participant" means The Carrington Company, and its successors and assigns. The term "Participant" shall not include the City, the RDA or the BOS should one become the Participant's successor, assignee or transferee of the Property, the Project, or any portion thereof.

- 1.6 "Project" means the development of the Property and the design, development and installation of the Improvements in accordance with City Ordinances and Codes.
- 1.7 "Project Area" means the Redevelopment Project Area established by the Redevelopment Plan.
- 1.8 "Property" means all the real property that includes Tenant leaseholds proposed to occupy lease space in a vacant Building in the Carson Mall Shopping Center, in Carson City with APN 004-011-01, which is more specifically described in Attachment A.
- 1.9 "RDA" means the Carson City Redevelopment Authority.
- 1.10 "Redevelopment Law" means Nevada Revised Statutes Chapter 279 entitled Redevelopment of Communities.
- 1.11 "Redevelopment Plan" means the Redevelopment Plan for Carson City's Project Area No.1, adopting by the RDA and BOS by Ordinance No. 1986-10, and as amended on June 19, 2000 by Ordinance No. 2000-9, and as amended by Ordinance No. 2000-21, and as the same may hereafter be amended from time to time.
- 1.12 "Tax Base Amount" means with respect to each individual Tenant on the Property the designated past base sales tax revenue amount to be subtracted at each yearly reimbursement calculation from the current annual reported sales tax revenue to determine the amount upon which the agreed percentage revenue split between the City and the Participant is applied, which Tax Base Amount shall be:
- 1) for a new Tenant in Carson City: zero (0); and
 - 2) for those tenants relocating within Carson City, the reimbursement calculation will be limited to only the sales tax coming from the new location that is over and above the sales tax generated at the Tenant's former location.
- 1.13 "Tenant" means the current lessee(s) or any subsequent tenant(s) that lease the retail space at the Property from Participant or its agent.
2. **PROJECT DESCRIPTION.** The Project is the redevelopment of the vacant blighted building and property in the Carson Mall Shopping Center.
3. **RDA REVENUE SHARING COVENANT.** The Participant agrees to exercise its right to enter into lease of its retail space. The Participant agrees to make all necessary improvements to the Properties so that its Tenants can fully operate their businesses in the Property by no later than July 1, 2012. If one or more of the Tenants on the participant property decline to exercise their lease options in the future, and no replacement Tenant occupies that portion of the Property, the RDA's participation payments to the Participant will automatically decrease on a pro-rata basis. The Participant shall execute and record this OCA for the benefit

the City agree to participate in a revenue sharing covenant with the Participant for up to fifteen (15) consecutive years, commencing one year (365 days) from the first monthly sales tax report from the Tenant. The consecutive years shall run without interruption or stay regardless of any vacancy on the Property.

3.1. **Calculation of Revenue Sharing Covenant.** During the fifteen (15) years of this OCA and upon the expiration of each year that one or more of the Tenants generate and report gross taxable sales revenue at the Leased Premises, the City and RDA shall determine the amount of revenue generated and reported by the Tenants based upon the Basic City-County Relief Taxes and the Supplemental City-County Relief Tax Revenue. The determination shall be based upon a review and a right to audit the monthly sales tax reports submitted by the Tenants to the Nevada Department of Taxation. The reimbursement will be fifty (50) percent of net new total sales tax generated in each calendar year from each individual Tenant's respective Tax Base Amount. Payment shall be made within thirty (30) days upon the City and RDA's receipt of Tenants' annual Nevada sales tax reports at the Property.

3.4. **Assignability.** This OCA may be assigned if mutually agreed upon in writing by the Parties.

3.5. **Renegotiation of the OCA for Non-Appropriation.** The City and RDA's obligations under this Agreement to share revenue, as provided herein, is conditioned upon sufficient funds being collected, distributed and otherwise being made available by state law to meet any budgeted expenditures or bonding debt or other obligation of the City and the RDA. As a condition of participation in the program, Participant agrees that if for any reason the state law governing Carson City's ability to receive sales tax is amended to withdraw, limit, or impair Carson City's ability to collect or pay those funds, this Agreement may be renegotiated, in good faith, and the Parties shall use their best efforts to achieve an alternative reasonable incentive as anticipated in the Area 1 Redevelopment Plan. Participant waives any and all claim(s) for damages that may arise against the City and/or RDA in the event of any such non-appropriation or renegotiation as anticipated under this paragraph.

4. **OPERATING COVENANT FOR A FIXED TERM.** In consideration of RDA and the City's offer to share revenue generated by the sales tax of any of the Tenants at the Property, the Participant agrees to enter into commercial leases with the Tenants at the Property for a period of not less than fifteen (15) consecutive years from the date the Participant's Tenants are open for business as set forth in Paragraph 3 of this Agreement. To implement the obligations of the parties under this Agreement, Participant shall submit for RDA's and the City's review, an executed lease between Participant and the Tenants for the Property.

5. **DUTIES AND OBLIGATIONS OF THE PARTICIPANT.**

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- 5.1. **Lease.** Within twenty (20) days upon a Lease being executed with any Tenant, Participant shall provide the City and RDA with copies of the lease for the Property;
- 5.2. **Consent to Dissemination of Sales Tax Reports.** Participant shall obtain a written consent from the Tenants that they have no objection to this OCA. Participant shall further obtain from the Tenants a written consent to allow the release of any sales tax reports and information pertaining to the sales tax generated at the Property that is submitted to the Nevada Department of Taxation during the lease term. Participant shall provide to the City and RDA the monthly gross annual sales tax reports submitted to the Nevada Department of Taxation.
- 5.3. **Prevailing Wage Requirements.** Participant and its subcontractors and agents, shall comply with Nevada Revised Statutes Section 338.010 *et seq.* and its regulations along with NRS Chapter 279.500 and shall be responsible for carrying out the requirements of such provisions. The Participant and its subcontractors must obtain a Public Works Project Number. The most current prevailing wage rates for all classified positions are published by the Nevada Labor Commissioner's Office.
- 5.4. **Prevailing Wage Indemnification.** The Participant agrees to unconditionally indemnify, reimburse, defend, protect and hold harmless the RDA, the City and their respective elective and appointive boards, commissions, officers, agents, attorneys, consultants and employees, and their respective successors and assigns, from and against any and all claims, demands, suits and actions at law or in equity, and losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief, and costs and damages of every kind, nature and description (including but not limited to attorneys' fees and court costs, with counsel reasonably acceptable to the RDA and the City), and administrative, enforcement or judicial proceedings, whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to the Prevailing Wage Laws, or any act or omission of the RDA, the City or the Participant related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such claims, demands, suits, actions, losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief, costs, damages, or administrative, enforcement or judicial proceedings. It is further agreed that the RDA and the City do not, and shall not, waive any rights against the Participant, which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by the RDA or the City.

- 5.5 **Equal Opportunity.** During the construction of the Project, Participant shall not discriminate on the basis of race, color, religion, creed, sex, marital status, ancestry or national origin in the hiring, firing, promoting or demoting of any person engaged in the construction work and shall direct its contractors and subcontractors to refrain from discrimination on such basis.
- 5.6 **Obligation to Refrain from Discrimination.** The Participant shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, marital status, ancestry, or national original of any person. The Participant shall not discriminate against or segregate any person or group of persons on account of race, color, religion, creed, sex, marital status, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Property. Nor shall the Participant, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein transferred. The foregoing provisions shall run with the land, be binding upon any subcontracting parties, successors, assigns and other transferees under this Agreement and shall remain in effect in perpetuity.
- 5.7 **Hazardous Waste Indemnification.** The Participant shall, and hereby agrees to, unconditionally indemnify, reimburse, defend, protect and hold harmless the RDA and the City and their elected and appointed boards, commissions, officers, agents, attorneys, consultants and employees, and all of their respective successors and assigns, from and against any and all claims, demands, suits and actions at law or in equity, and losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief (whether known or unknown and whether based on personal injury, property damage, or contamination of, or adverse effects upon, the environment or natural resources), and costs and damages of every kind, nature and description (including but not limited to attorneys' fees and court costs, with counsel reasonably acceptable to the RDA and the City) and any expenses associated with the investigation, assessment, monitoring, response, removal, treatment, abatement or remediation of Hazardous Materials, and administrative, enforcement or judicial proceedings and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the presence, release or discharge, or alleged presence, release or discharge, of any Hazardous Materials in, on or under the Property, pursuant to this Agreement, or the failure to comply with any Environmental Laws, whether or not any insurance policies shall have been determined to be applicable to any such claims, demands, suits, actions, losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief, costs, damages, or administrative, enforcement or judicial proceedings. It is further agreed that the RDA and

the City do not, and shall not, waive any rights against the Participant, which they may have by reason of this indemnity and hold harmless agreement.

6. **PARTICIPANT'S DEFAULT.** The following events shall constitute an event of default ("Event of Default") on the part of Participant.
 - 6.1 If the Participant shall fail to keep, observe or perform any of its covenants, duties or obligations under this Agreement and such default shall continue for a period of thirty (30) days after written notice thereof from the RDA to the Participant, or in the case of a default which cannot with due diligence be cured within thirty (30) days, Participant fails to promptly begin and diligently proceed to cure such default promptly after such notice;
 - 6.2 The making by Participant of an assignment for the benefit of creditors, or filing by Participant of a petition in bankruptcy or of reorganization under any bankruptcy or insolvency law;
 - 6.3 The appointment of a receiver or trustee of the property of Participant which appointment is not vacated or stayed within ninety (90) days after such appointment; or
 - 6.4 The filing of a petition in bankruptcy against Participant or for its reorganization under any bankruptcy or insolvency law that is not dismissed or stayed within ninety (90) days after such filing.

7. **RDA'S REMEDIES IN THE EVENT OF DEFAULT.** If an Event of Default on the part of Participant shall occur and continue beyond any applicable cure period, then RDA shall have the following rights and remedies in addition to other rights available to it under law or this Agreement.
 - 7.1 **Termination.** RDA shall have the right to terminate this Agreement. If the RDA makes such an election, the RDA shall give written notice to Participant and to any mortgagee entitled to such notice, specifying the Event of Default and stating that this Agreement shall expire and terminate on the date specified in such notice, which shall be at least thirty (30) days after the giving of such notice, and upon the date specified in such notice, this Agreement and all rights of Participant under this Agreement shall expire and terminate.
 - 7.2 **Damages.** The RDA shall be entitled to proceed against Participant for all direct damages, costs and expenses arising from Participant's commission of an Event of Default hereunder and to recover all such direct damages, costs and expenses, including reasonable attorneys' fees.

8. **INDEMNIFICATION/HOLD HARMLESS.** Participant hereby shall indemnify, hold harmless and defend, not excluding the right of the RDA and City to

participate, the RDA and the City, their respective elected and appointed boards, commissions, officers, agents and employees (collectively, "Indemnified Parties") from and against any or all losses, expenses, claims, suits, demands, costs (including attorneys' fees and expenses of litigation), damages and liabilities of every kind (collectively, "Claims"), including without limitation, claims arising in connection with any personal injury, death or property damage, which may arise directly or indirectly as a result of any action or inaction, error, negligent or wrongful act or omission, breach of warranty, willful misconduct or fraudulent misrepresentation of Participant's or Participant's contractors, subcontractors, agents or employees in connection with the construction, improvement, operation or maintenance of the Project, the public improvements, or any part thereof. Participant shall defend the RDA, the City, and their elected and appointed boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damages caused, or alleged to have been caused, by reason of Participant's performance of its rights and obligations under this Agreement.

9. **LIABILITY AND WORKERS COMPENSATION INSURANCE.** Participant shall maintain in force during the construction of the Project and through the issuance of the Certificate of Completion of any improvements to the Property, comprehensive general liability and property damage insurance, including personal injury, contractual, and owned and non-owned automobile insurance with such coverage and limits as may be reasonably requested by the RDA and the City from time to time, but in no event for less than the sum of three million dollars (\$3,000,000) per occurrence combined single limit (which coverage amount may be obtained in part through umbrella coverage). During the term of this Agreement, Participant shall maintain Worker's Compensation insurance for all persons employed by Participant for work at the Project site. Participant shall require each contractor and subcontractor similarly to provide Worker's Compensation insurance for its respective employees. Participant agrees to indemnify the City and the RDA for any damage resulting from Participant's failure to maintain or require any such insurance.

9.1 **Additional Insureds.** Liability insurance policies shall name the RDA, the City, its officers, employees and immune contractors as additional insured's by endorsement for all liability arising out of this Agreement. The endorsement shall state that the coverage is primary insurance and that no other insurance held by the RDA or the City shall be contributory.

9.2 **Evidence of Insurance.** Participant shall furnish to the RDA duplicate originals or certificates evidencing such insurance coverage or coverage's prior to commencement of construction (or any work related thereto) on the Property, but in no event later than thirty (30) days after the Effective Date, and such certificate(s) shall provide that such insurance coverage will not be canceled or reduced without at least thirty (30) days prior written notice to RDA.

9.3 **Cancelled or Reduced Coverage.** If such coverage is canceled or reduced, Participant shall, within fifteen (15) days after receipt of notice of

such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with the RDA and the City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, RDA or the City may, without further notice and at its option, procure such insurance coverage at Participant's expense, and Participant shall promptly reimburse the RDA or City for such expense upon receipt of billing from the RDA or the City.

9.4 **Approved Insurer.** The insurance policies specified in this Section shall be provided by a reputable company or companies currently rated A.M. Best as A-VII or better, licensed to do business in Nevada and having agents in Nevada upon whom service of process may be made.

9.5 **Waiver of Subrogation.** Each liability insurance policy shall provide for a waiver of subrogation as to additional insured's.

10. **LIMITED LIABILITY.** The City and RDA will not waive and intends to assert available NRS Chapter 41 Liability limitations in all cases.

11. **BUSINESS LICENSE.** Participant and any Tenant of Participant shall obtain a Carson City business license and provide a copy of same to Carson City Purchasing & Contracts, 201 North Carson Street, Suite 11, Carson City, Nevada 89701, prior to commencing work.

12. **COMPLIANCE WITH LAW.** Participant and any Tenant of Participant shall comply with all Federal, State and local laws and regulations adopted thereunder.

13. **GENERAL PROVISIONS**

13.1 **Notices.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) Personal delivery, in which case notice is effective upon delivery;
- (ii) Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) Nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or
- (iv) Facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the

notice is promptly delivered by first-class or certified mail or by overnight delivery; or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

TO RDA:

Carson City Redevelopment Authority
108 E. Proctor Street
Carson City, NV 89701
Attn: Office of Business Development
Telephone (775) 283-7080
Facsimile (775) 887-2283

/// **TO PARTICIPANT:**

The Carrington Company
P.O. Box 1328
Eureka, CA 95502
Telephone: (707) 445-9601
Facsimile: (707) 445-8385

- 13.2 **Conflicts of Interest.** No member, official or employee of the RDA shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement which is prohibited by law.
- 13.3 **Warranties Against Payment of Consideration for Agreement.** Participant warrants that it has not paid or given, and will not pay or give, to any third party, any money or other consideration for obtaining this Agreement, other than to pay for the normal costs of conducting business and to pay for the services of such professionals as architects, engineers and attorneys.
- 13.4 **Non-liability of City Officials.** No member, official or employee of the RDA or the City shall personally be liable to Participant, or any assignee or successor of Participant, in the event of any default or breach by the RDA or for any amount which may become due to Participant or its successors or on any obligation under the terms of this Agreement.
- 13.5 **Parties Not Co-Venturers; No Third-Party Beneficiaries.** No provision of the Agreement nor any act of the City or the RDA shall be deemed or construed to establish the Parties as partners, co-venturers, or principal and agent with one another or to create any relationship of a third-party beneficiary.
- 13.6 **Litigation.** In the event of any dispute between the Parties hereto arising out of this Agreement the non-prevailing party agrees to pay to the prevailing party all sums paid or incurred by the prevailing party as

reasonable costs and expenses and incurred in the legal proceedings, including but not limited to reasonable attorneys' fees.

- 13.7 **Severability.** If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability. If as a result of any final judgment this Agreement or any other required approvals under this Agreement are determined to be invalid, the Parties agree to cooperate to amend this Agreement and other necessary documents in order to accomplish the basic purposes and intent of this Agreement.
- 13.8 **Counterparts; Entire Agreement; Captions.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall be deemed to be one agreement. This Agreement, together with all Exhibits attached hereto, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations or agreements between the Parties with respect thereto. The captions of the sections and articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions hereof.
- 13.9 **Amendments; Waivers.** This Agreement may be amended only by a written instrument executed by the Parties. No waiver of any provision of this Agreement shall constitute or be deemed a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless it is executed in writing by the Party making the waiver.
- 13.10 **Governing Law; Venue.** The laws of the State of Nevada shall govern the interpretation and enforcement of this Agreement without giving affect to any principle of conflict of law that would require application of the law of any other jurisdiction. Participant consents and agrees that any action to enforce or interpret this Agreement shall be filed in the First Judicial District Court for Carson City, Nevada.
- 13.11 **Waiver of Breach.** Failure of a party to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms shall not operate as a waiver of any of a party's rights or remedies as to any other breach.
- 13.12 **Lobbying.** The parties agree, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Agreement will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose the following:

- 13.12.1 Any federal, state, county or local agency, legislature, commission, counsel or board;
- 13.12.2 Any federal, state, county or local legislator, commission member, counsel member, board member or other elected official; or
- 13.12.3 Any officer or employee of any federal, state, county or local agency; legislature, commission, counsel or board.
- 13.13 **Recordation; Further Assurances.** The RDA is authorized to record in the official records of Carson City, Nevada this Agreement and any amendments. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as may be reasonably necessary to carry out the intent of this Agreement.
- 13.14 **Proper Authority.** The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement. Participant acknowledges that this Agreement is effective only after approval by the Carson City Board of Supervisors.
- 13.15. **Time is of the Essence.** In the event that any date specified in this Agreement falls on Saturday, Sunday or a public holiday, such date will be deemed to be the succeeding day on which the public agencies and major banks are open and available to Participant.
- 13.16 **Execution of Additional Documents.** In addition to documents and other matters specifically referenced in this Agreement, the Participant, City and RDA agree to execute and/or deliver, or cause to be executed and/or delivered such other documents and/or materials, including additional escrow instructions carrying out the terms and conditions of this Agreement, as may be reasonably necessary to effect the transaction contemplated by this Agreement.
- 13.17 **Governing Law.** The validity, construction and enforceability of this Agreement will be governed in all respects by the law of Nevada applicable to agreements negotiated, executed and performed in Nevada by Nevada residents, whether one or more of the parties is now or hereafter becomes a resident of another state.
- 13.18 **Ambiguities in Agreement.** Both Parties have participated in the drafting of this Agreement and any ambiguities in the language of the Agreement will not be construed against either party.
- 13.19 **Attorney's Fees.** In the event of any litigation between the parties hereto arising out of this Agreement, or if one party seeks to judicially enforce


- 13.19 **Attorney's Fees.** In the event of any litigation between the parties hereto arising out of this Agreement, or if one party seeks to judicially enforce the terms of this Agreement, the prevailing party will be reimbursed for all reasonable costs, including, but not limited to, reasonable attorney's fees.
- 13.20 **Effect of Termination.** No termination of this Agreement will be construed as relieving a party from liability to any other party for breach of this Agreement.
- 13.21 **Discrimination.** Participant agrees not to discriminate on the basis of race, color, creed, national origin, sex, age, disability, or any other legally protected class in the sale, lease, rental, use or occupancy of the subject Property or any improvements made to the subject Property.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written and intend to be legally bound thereby.

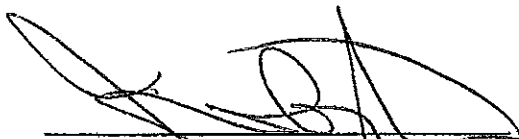
CARSON CITY REDEVELOPMENT AUTHORITY


By: Sherry Alderman
Its: Chairman

CARSON CITY


By: Robert L. Crowell
Its: Mayor

By: The Carrington Company


By: Francis Carrington
Its: President

420796

ATTACHMENT A

Description of the Property subject to this OCA

420796

DESCRIPTION

ALL THAT CERTAIN LOT, PIECE OR PARCEL OF LAND SITUATE IN CARSON CITY, STATE OF NEVADA, DESCRIBED AS FOLLOWS:

PARCEL 1:

A piece of parcel or land, situate, lying and being in the County of Ormsby, State of Nevada, and further described as being a portion of the E 1/2 of the NW 1/4 and the W 1/2 of the NE 1/4 of the NW 1/4 all in Section 20, T. 14 N., R. 20 E., M.D.B. & M., and more fully described by metes and bounds as follow, to wit:

Beginning at a point in the Easterly seventy-five foot right of way line of Highway U.S. 395-50 said point being further described as bearing S. 39°51'22" E., a distance of 1653.19 feet from the NW corner of Section 20, T. 15 N., R. 20 E., M.D.B. & M.; thence N. 0°27'40" E. along said Highway right of way line a distance of 894.83 feet to a point; thence N. 0°15'57" W. along said Highway right of way line a distance of 370.31 feet to an intersection with the South City limits of the City of Carson City, said point lying 75.00 feet right of and at right angles to Highway Engineer's Station "O" 153+69.90 P.O.T.; thence S. 89°51'00" E., along said City limits a distance of 578.24 feet to an intersection with the Westerly sixty foot right of way line of Stewart Street (F.A.S. 687) said point being 60.00 feet left of and measured radially from Highway Engineer's Station "A" 17+48.29 P.O.C.; thence from a tangent which bears S. 0°35'02" W., curving to the right with a radius of 1940.00 feet, through an angle of 14°13'28" an arc distance of 481.63 feet along said Stewart Street right of way line to a point 60.00 feet left of and at right angles to Highway Engineer's Station "A" 12+51.32 p.c.; thence S. 14°48'30" W. along said right of way line a distance of 516.32 feet to a point 60.00 feet left of and at right angles to Highway Engineer's Station "A" 7+35.00 P.O.T.; thence N. 75°11'30" W. along said right of way line a distance of 40.00 feet to a point 100.00 feet left of and at right angles to Highway Engineer's Station "A" 7+35.00 P.O.T.; thence S. 14°48'30" W. along said right of way line a distance of 52.97 feet to a point 100.00 feet, left of and at right angles to Highway Engineer's Station "A" 6+82.03 P.T.; thence from a tangent which bears the last described course, curving to the right with a radius of 400.00 feet through an angle of 47°13'31" an arc distance of 329.69 feet along said right of way line to a point 100.00 feet left of an measured radially from Highway Engineer's Station "A" 2+69.91 P.O.C.; thence N. 88°27'52" W. along said right of way line a distance of 137.25 feet to the point of beginning.

EXCEPTING THEREFROM the following described parcels.:

EXCEPTION A

Commencing at a point on Easterly right of way line of Highway 395-50 said point being the true point of beginning and further described as S. 39°51'22" E., a distance of 1653.19 feet from the NW corner of Section 20, T. 15 N., R. 20 E., M.D.B. & M.; thence N. 0°27'49" E. 200.00 feet along said right of way line to a point; thence S. 60°26'13" E., 155.00 feet; thence S. 23°16'02" E., 110.00 feet to the intersection with Westerly right of way of Stewart Street and P.O.C.; thence along said curve 50.00 feet, curving to the right along said Stewart Street's right of way, with a radius of 400.00 feet, through an angle of 7°0'44" and a tangent which bears S. 54°52'17" W. to a point; thence N. 88°27'52" W., 137.25 feet to the true point of beginning.

(Continued)

420796

LEGAL DESCRIPTION (continued)

EXCEPTION B

Commencing at a point on the Easterly right of way line of Highway U.S. 395-50 said point being further described as bearing S. 39°51'22" E., a distance of 1653.19 feet from the NW corner of Section 20, T. 15 N., R. 20 E., M.D.B. & M.; thence N. 0°27'40" E., 894.83 feet, along said right of way line to a point; thence N. 0°05'57" W., 280.31 feet, to the true point of beginning; thence N. 0°05'57" W., 90.00 feet; thence S. 89°51'00" E., 170.00 feet; thence S. 0°05'57" E., 90.00 feet; thence N. 89°51'00" W., 170.00 feet to the true point of beginning.

EXCEPTION C

Beginning at a point on the Easterly 75 foot right of way line of Highway U.S. 395-50 said point further described as bearing S. 39°51'22" E., a distance of 1,653.19 feet from the NW corner of Section 20, T. 15 N., R. 20 E., M.D.B. & M., thence N. 0°27'40" E., along said highway right of way line a distance of 894.83 feet to a point; thence N. 0°05'57" W., along said highway right of way line a distance of 370.31 feet to a point, said point lying 75.00 feet right of and at right angles to Highway Engineer's Station "0" 153+69.90 P.O.T.; thence S. 89°51'00" E., a distance of 448.40 feet to a point; thence S. 00°09'00" W., a distance of 30.00 feet to the true point of beginning; thence continuing S. 00°09'00" W., a distance of 93.00 feet to a point; thence S. 61°47'56" E. a distance of 135.32 feet to a point on a curve in the Westerly right of way line of Stewart Street (F.A.S.) whose radial bears N. 83°53'36" W.,; thence North and East along the curve of the Westerly right of way line of Stewart Street (F.A.S. 687) an arc length of 157.00 feet to a point whose radial bears N. 88°31'48" W., said curve subtending a central angle of 4°38'12" and having a radius of 1940.00 feet; thence N. 89°51'00" W., a distance of 129.38 feet to the true point of beginning.

TOGETHER WITH THE FOLLOWING NON-EXCLUSIVE EASEMENTS FOR INGRESS AND EGRESS DESCRIBED AS FOLLOWS:

Easement No. 1: Commencing at the Northwest corner of said Section 20, thence S. 39°51'22" E., 1653.19 feet to a point on the Easterly line of U. S. Highway 395-50 (150 feet wide); thence N. 00°27'40" E., along said Highway right of way line 35.00 feet; thence S. 60°26'13" E., 71.96 feet thence N. 89°32'20" W., 62.88 feet to the true point of beginning.

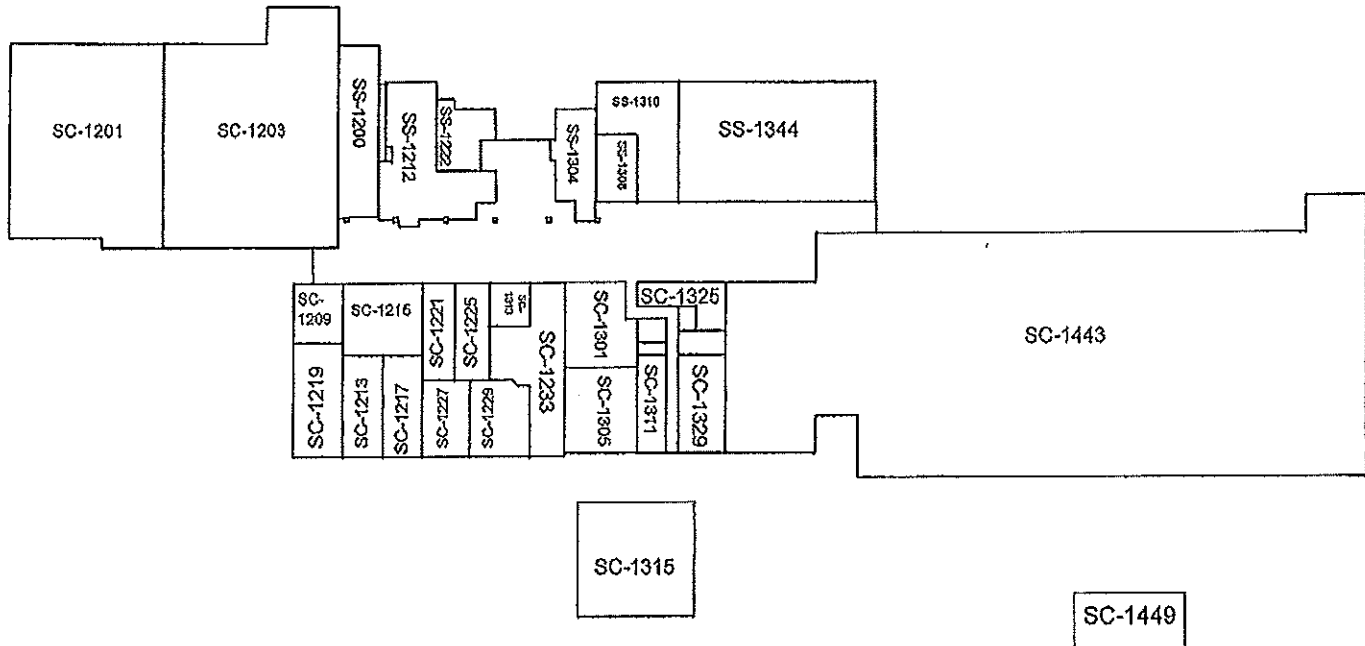
Easement No. 2: Commencing at the Northwest corner of said Section 20, thence S. 39°51'22" E., 1653.19 feet to a point on the Easterly line of U.S. Highway 395.50 (150 feet wide), thence S. 88°27'52" E., along the Northerly line of Stewart Street (width varies) 137.35 feet to the true point of beginning; thence Northeasterly and having a radius of 400.00 feet a distance of 50.00 feet; thence North 23°16'02" W., 110.00 feet; thence S. 00°23'31" E., 127.20 feet to the true point of beginning.

Assessor's Parcel No. 04-011-01

KAJC

420796

CARSON MALL SHOPPING CENTER



Street Address	TENANT	Sq. Ft.
* 1201 S. Carson St	Carson Regional Healthcare	10,800
* 1203 S. Carson St	Boot Barn	12,307
* 1209 S. Carson St	Get Nailed	1,281
* 1213 S. Carson St	Play Your Own Music	2,174
1215 S. Carson St	AVAILABLE	2,807
* 1217 S. Carson St	Little Caesar's	1,500
1219 S. Carson St	AVAILABLE	2,043
* 1221 S. Carson St	Sierra Gifts & Collectibles	1,450
* 1225 S. Carson St	Wedding Emporium	1,450
* 1227 S. Carson St	Gordon's Photo Service	1,560
* 1229 S. Carson St	Radio Shack	2,080
* 1233 S. Carson St	Alies Flowers	3,200
1301 S. Carson St	AVAILABLE	2,585
* 1305 S. Carson St	Strictly Scuba	2,100
1311 S. Carson St	AVAILABLE	1,150
* 1313 S. Carson St	Bellisimo	1,449
* 1315 S. Carson St	Carl's Jr.	4,003
1325 S. Carson St	AVAILABLE	1,172
1329 S. Carson St	AVAILABLE	2,000
1443 S. Carson St	AVAILABLE	72,570
* 1449 S. Carson St	Dutch Bros	KIOSK
* 1200 S. Stewart St	Paradise Café	3,096
* 1212 S. Stewart St	Schat's Bakery	3,902
1300 S. Stewart St	AVAILABLE	1,433
* 1304 S. Stewart St	Charley's Grilled Subs	2,031
* 1308 S. Stewart St	Home Treasures	1,544
* 1310 S. Stewart St	Bobby Page's Dry Cleaners	3,111
* 1344 S. Stewart St	Jo-Ann Fabrics and Crafts	10,240
GLA		155,038

* Excluded from Sale Incentive

420796

