

AFTER RECORDING, PLEASE RETURN TO:

Charles L. Maak
Martineau & Maak
1800 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111

Recorded... AUG 26 1976
Request of SECURITY TITLE COMPANY
Fee Paid KATIE L. DIXON
Recorder, Salt Lake County, Utah
By Cheryl Warrington
Rel.

2849657

DECLARATION OF RESTRICTIONS
AND RECIPROCAL EASEMENTS

THIS INSTRUMENT, dated as of August 1, 1976, is executed by HILLSIDE PLAZA ASSOCIATES, a Utah Limited Partnership, and by such other parties, if any, as are signatories to this instrument (all of which parties, including said Hillside Plaza Associates, are hereinafter sometimes collectively referred to as the "Signatories," and each or any of which parties is hereinafter sometimes referred to merely as a "Signatory").

SECURITY TITLE COMPANY
12/11

RECITALS:

A. Each of the Signatories has an interest in one or both of the Parcels of real property described in items (i) and (ii) below. The nature of the interest held by each Signatory, and the Parcel(s) in which such interest is held, is set forth and generally described in that portion of this instrument which is reserved for signatures. The Signatories, taken together as of the date on which this instrument is filed for record, constitute all of those parties having an interest in either Parcel the nature of which interest is such as to require that the holder thereof join in this instrument in order that the terms and provisions hereof be appropriately effective and enforceable (whether such interest be a mortgage, deed of trust, or other encumbrance, fee title, or a leasehold estate under a lease or similar agreement containing provisions such that the tenant thereunder is an appropriate party to this instrument).

(i) The following-described real property (hereinafter referred to as "Parcel A") situated in Salt Lake County, State of Utah:

BEGINNING at a point on the East line of 2300 East Street, said point being South 0° 14' 40" West 40.01 feet and South 89° 51' 30" East 33.00 feet from the North quarter corner of Section 27, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 89° 51' 30" East 830.752 feet; thence South 39° 30' 00" East 116.859 feet; thence South 39° 10' 00" West 243.69 feet; thence South 45° 11' 35" West 720.00 feet; thence South 66° 22' 30" West 102.47 feet; thence North 89° 45' 20" West 150.00 feet to the East line of 2300 East Street; thence North 0° 14' 40" East 828.99 feet to the point of BEGINNING.

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(ii) The following-described real property (hereinafter referred to as "Parcel B") located immediately to the Northeast of, and contiguous with, Parcel A, and situated in Salt Lake County, State of Utah:

BEGINNING at a point South 0° 14' 40" West 33.0 feet and South 89° 51' 30" East 857.94 feet from the North quarter corner of Section 27, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 89° 51' 30" East 260.06 feet to a point of a 15.0 foot radius curve to the right; thence Easterly and Southerly along the arc of said curve 23.56 feet to a point of tangency on the West line of Promenade Drive; thence South 0° 08' 30" West along said West line 102.52 feet to a point of a 15.0 foot radius curve to the right; thence Southwesterly along the arc of said curve 22.51 feet to a point of a reverse curve to the left on the North line of Cinnebar Lane, the radius point of said curve being South 3° 51' 30" East 200.0 feet; thence Southwesterly along the arc of said curve and North line 124.41 feet; thence North 39° 30' West 231.14 feet to the point of BEGINNING. EXCEPTING THEREFROM the North 7.0 feet thereof conveyed to Salt Lake County.

[Parcel A and Parcel B are herein sometimes collectively referred to as the "Parcels," and each or either thereof is herein sometimes referred to merely as a "Parcel."]

B. The Parcels have been, and/or it is contemplated that the Parcels will or perhaps may be, separately owned, encumbered, and/or otherwise dealt with. The Signatories recognize that it would be necessary or desirable to create an arrangement suitable to such state of affairs and accordingly have agreed that each of the Parcels shall be burdened and/or benefitted by certain easements, restrictions, and/or requirements affecting the other Parcel. The Signatories desire to reduce to writing their understanding and agreement respecting such matters and to effectuate said agreement by an appropriate instrument.

NOW, THEREFORE, for the foregoing purposes and in consideration of the reciprocal benefits to be derived from the easements, restrictions, and requirements set forth below, the Signatories and each of them hereby consent, acknowledge,

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and agree to all of the following terms and provisions. Each of the Signatories, with respect to the Parcel(s) in which such Signatory has an interest and/or with respect to the rights concerning a Parcel or Parcels which are held by or vested in such Signatory, hereby grants such rights and easements, hereby agrees to such restrictions and requirements, and/or hereby agrees that the interests held by such Signatory with respect to a Parcel or Parcels shall be subject and subordinate to the arrangement provided for in this instrument (as the case may be), as is, are, or may be necessary to effectuate each and all of the terms and provisions set forth below and to make the arrangement provided for in this instrument prior and superior to the interests in or rights concerning any Parcel which are held by or vested in any Signatory.

1. Definition of Owner. When used in this instrument the term "Owner" shall mean and refer to the party which at the time concerned is the owner of a fee or of an undivided fee interest in the Parcel or in any portion of the Parcel concerned. In the event there is more than one Owner of the Parcel involved at the time concerned, the liability of each such Owner for performance or compliance with the applicable provisions of this instrument shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term Owner shall not mean or include a mortgagee under a mortgage or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure, ^{LOR} or any arrangement or proceeding in lieu thereof.

C. J. ...
J. H. ...

2. General Use Restrictions Concerning Parcel B.
The use of Parcel B shall be limited and restricted to the site for: (i) roadways, walkways, and vehicular parking areas; or (ii) an office, professional, and/or commercial building having not more than two levels and having a gross floor area (computed through use of dimensions measured from the exterior surface of exterior walls) not in excess of 8,000 square feet, together with roadways, walkways, and vehicular parking areas. In the event the building referred to in the foregoing item (ii) is constructed, it shall be located entirely within and it shall not protrude beyond the boundaries of Parcel B.

3. Specific Use Restrictions Concerning Parcel B.
Neither Parcel B nor any building or space located or constructed

J. M. ...
...

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thereon shall be used for or as the site for the sale of any of the following: (i) Lumber or building materials; (ii) Hardware, except for sales of hardware items which are carried as an incidental line in a retail store; or (iii) Trees, shrubs, plants, and nursery stock items, except for sales of potted plants which are made by a florist shop.

4. Common Areas. All portions of each of the Parcels on which no building or other structure is existing or erected at the time concerned (such portions shall include open malls, roadways, walkways, and vehicular parking areas, but shall not include loading docks, service areas, and similar facilities) are referred to hereinafter as "Common Areas" and shall be used for vehicular driving and parking, pedestrian traffic, and/or landscaping. Unless and until such time as construction of the building contemplated by item (ii) of Section 2 hereof occurs, the entirety of Parcel B shall constitute Common Areas and shall at all times be and remain appropriately and customarily improved as such. If and after construction of such building occurs, that portion of Parcel B not occupied by such building shall constitute Common Areas and shall at all times after completion of construction of such building be and remain appropriately and customarily improved as such. The Owner of Parcel B shall be obligated to accomplish or cause to be accomplished the Common Areas improvement referred to in the preceding two sentences.

5. Easement for Ingress, Egress, and Parking. Each of the Parcels shall have appurtenant thereto and be benefitted by a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and for vehicular parking on, over, and across such of the Common Areas of the other Parcel as are suitable for such purposes (in view of the nature of the particular Common Areas concerned), as such Common Areas may exist from time to time. Each of the Parcels shall be subject to and burdened by such nonexclusive easement benefitting the other Parcel. Except as reasonably necessary or appropriate during periods that construction activities are ongoing or during periods that improvements may be unsafe or unusable due to damage or destruction, there shall not be constructed or erected on a Parcel or on the perimeter of a Parcel any barricade or obstruction, whether temporary or permanent in nature, which limits or impairs the enjoyment of the easements created by and described in this Section and the free and unimpeded access between the Parcels.

6. Maintenance. The Owner of each Parcel shall be obligated to perform or cause to be performed such upkeep, maintenance, and/or improvements of the Common Areas within such Parcel as may be reasonably necessary or desirable to keep and maintain all of such Common Areas at all times in good condition, order, and repair, usable for their intended purposes, reasonably safe, and reasonably attractive.

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7. Employee Parking Areas Within Parcel B. The Owner of Parcel A may at any time and from time to time designate a portion of the vehicular parking areas situated within Parcel B as an employee parking area. In the event and each time that such a designation is made, and notwithstanding the provisions of Section 5 of this instrument, the area so designated (and no other area) shall be used for vehicle parking purposes by the employees of any business or enterprise which is conducted on Parcel B (whether such business or enterprise is conducted by the Owner of Parcel B, by a tenant or lessee of Parcel B, or by any other party), and the Owner of Parcel B and any tenant or lessee of Parcel B shall be obligated to take all reasonable measures to cause such employees to park within the area so designated.

8. Liability Insurance Covering Parcel B. The Owner of Parcel B shall at all times maintain or cause to be maintained continuously in force public liability and property damage insurance providing coverage against personal injury, death, and property damage occurring on or about the Common Areas within Parcel B. Such insurance shall be carried with a responsible company or companies and the limits thereof shall be such as to afford at least the coverage provided by a "combined single limit" of \$1,000,000.00 for bodily injury, death, and property damage. The named insureds under such insurance shall be the Owner of Parcel A, the Owner of Parcel B, each tenant or lessee of Parcel A, and each tenant or lessee of Parcel B; as their respective interests may appear. The Owner of Parcel B shall, upon the written request of any party which then has an interest in Parcel A (including the mortgagee under any first mortgage and the beneficiary under any first deed of trust then affecting Parcel A), furnish to such party written evidence that the insurance required by this Section 8 is in force.

9. Hazard Insurance Covering Parcel B. In the event construction of the building contemplated by item (ii) of Section 2 hereof occurs, the Owner of Parcel B shall at all times thereafter maintain or cause to be maintained continuously in force insurance providing coverage equal to 100% of the replacement cost of such building (excluding foundation and excavation costs) and insuring against at least the perils of fire, lightning, windstorm, hail, explosion, riot, damage from aircraft or vehicles, smoke damage, water damage, theft, and vandalism. The Owner of Parcel B shall, upon the written request of any party which then has an interest in Parcel A (including the mortgagee under any first mortgage and the beneficiary under any first deed of trust then affecting Parcel A), furnish to such party written evidence that the insurance required by this Section 9 is in force.

10. Covenants to Run with Land. This instrument and all of the provisions hereof shall constitute covenants

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to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Signatories, any other party which has, acquires, or comes to have any interest in a Parcel, and their respective grantees, transferees, heirs, devisees, personal representatives; successors, and assigns. This instrument and all of the provisions hereof shall inure to the benefit of and be binding upon each Parcel, and all interests in each Parcel shall be subject to all of the terms and provisions hereof. By acquiring or in any way coming to have any interest in a Parcel, the party acquiring or coming to have such interest consents to, and agrees to be bound by, each and every provision of this instrument.

11. Title and Mortgagee Protection. A breach of any of the provisions, restrictions, or requirements of this instrument shall not result in any forfeiture or reversion of title or of any other interest in a Parcel. A breach of any of the provisions, restrictions, or requirements hereof shall not defeat, impair, or render invalid the lien of or other rights under any mortgage or deed of trust. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu thereof, any mortgagee, trustee, or beneficiary interested under any mortgage or deed of trust affecting a Parcel (including any such mortgagee, trustee, or beneficiary which is a Signatory) shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the provisions or requirements of this instrument.

12. Enforcement. Any Signatory or any other party which has, acquires, or comes to have any interest in any Parcel shall have the right to enforce, through appropriate proceedings at law or in equity, the provisions, restrictions, and requirements of this instrument. In the event of a breach of any of the provisions, restrictions, or requirements hereof, the party held to be in default or at fault shall pay all costs and expenses, including attorneys' fees (including any incurred in connection with any appeal), incurred by any other party in enforcing its rights hereunder or in obtaining redress for the breach. Except as specifically provided to the contrary therein, the provisions of the second Paragraph of this Section 12 are not intended to be and shall not be construed to be in limitation of the provisions of the foregoing portion of this Section.

In the event the Owner of Parcel B at any time fails to perform or cause to be performed or to accomplish or cause to be accomplished any of the obligations of such Owner respecting Parcel B under Sections 4, 7, 8, or 9 of this instrument, or in the event the Owner of Parcel B at any time fails to perform or cause to be performed, in a manner and to a

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standard which is in all respects satisfactory in the absolute and unfettered judgment of the Owner of Parcel A, such upkeep, maintenance, and/or improvement of the Common Areas within Parcel B as is required by Section 6 hereof, then any party which then has an interest in Parcel A (including the Owner of Parcel A) may give the Owner of Parcel B written notice specifying the matters to which the failure concerned relates. If such notice is given to the Owner of Parcel B, the party giving the same shall simultaneously therewith also give such notice to the mortgagee under each recorded first mortgage and to the beneficiary under each recorded first deed of trust then affecting Parcel B. The Owner of Parcel B shall have fifteen (15) days following the giving of the notice(s) contemplated by the foregoing portion of this Paragraph within which to cure the failure involved or, if such failure cannot reasonably be cured within that period, such additional time as may be necessary if within such fifteen (15) day period the Owner of Parcel B has commenced, and thereafter diligently pursues, the efforts necessary to cure the failure involved. If such failure is not cured within the time provided for in the preceding sentence, the party which gave the notice(s) provided for herein shall itself have the right to perform or cause to be performed or to accomplish or cause to be accomplished the matters to which such failure relates. If such party does so, all costs and expenses incurred by it in curing the failure and in enforcing its rights hereunder, including attorneys' fees (including any incurred in connection with any appeal), shall immediately be paid to such party by the Owner of Parcel B (together with interest on all such sums at the rate of twelve percent (12%) per annum from the date of expenditure until paid). Such payment obligation of the Owner of Parcel B shall, at the option of the party which effected the cure, be secured by a lien against Parcel B evidenced by a Notice of Lien or like instrument filed for record by such party with the County Recorder of Salt Lake County, Utah. Any such lien may be foreclosed in the same manner as is provided for the foreclosure of mortgages covering real property, shall be subject and subordinate to each first mortgage or first deed of trust affecting Parcel B or interests in Parcel B which is of record at the time said Notice of Lien or like instrument is filed, shall be subject and subordinate to this instrument and all of the provisions hereof, shall also be subject and subordinate to the interests of the tenant or lessee under each lease, lease agreement, or similar instrument (whether recorded or unrecorded) affecting Parcel B or interests in Parcel B which is in effect at the time said Notice of Lien or like instrument is filed, but shall be prior and superior to any and all other interests or estates (whether recorded or unrecorded at the time said Notice of Lien or like instrument is filed) in or respecting Parcel B. The provisions of this Paragraph are not intended to create or imply and shall not be construed

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to create or imply rights in favor of parties having an interest in Parcel B which are analogous to the rights provided for herein in favor of parties having an interest in Parcel A.

13. Partial Invalidity. The invalidity or unenforceability of any portion of this instrument shall not affect the validity or enforceability of the remainder hereof, and if any provision of this instrument or the application thereof to any Signatory, other party, or circumstances should to any extent be invalid, the remainder of this instrument or the application of such provision to Signatories, other parties, or circumstances other than those as to which a holding of invalidity is reached shall not be affected thereby, and each provision of this instrument shall be valid and enforceable to the fullest extent permitted by law.

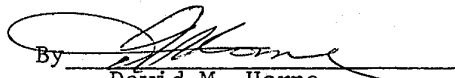
14. Effective Date and Duration. This instrument and all of the provisions hereof shall become effective on the date when this instrument is filed for record in the office of the County Recorder of Salt Lake County, Utah. This instrument and all of the provisions hereof shall remain in force and effect for the fifty (50) year period following said date of recording.

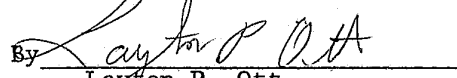
15. Interpretation. The captions which precede the Sections of this instrument are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. This instrument shall be governed by and construed in accordance with the laws of the State of Utah.

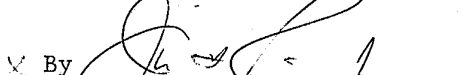
DATED as of August 1, 1976, and executed by the Signatories on the respective dates appearing below.

EXECUTED on this 24th day of August, 1976 by HILLSIDE PLAZA ASSOCIATES, a Utah Limited Partnership.

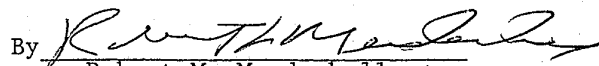
HILLSIDE PLAZA ASSOCIATES,
a Utah Limited Partnership

By 
David M. Horne,
General Partner

By 
Layton P. Ott,
General Partner

X By 
John H. Reininga, Jr.,
General Partner

By 
Paul W. Mendenhall,
General Partner

By 
Robert M. Mendenhall,
General Partner

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NOTE: Hillside Plaza Associates, a Utah Limited Partnership, is or concurrently with the recordation of this instrument is becoming the owner and holder of fee title to Parcel A and Parcel B.

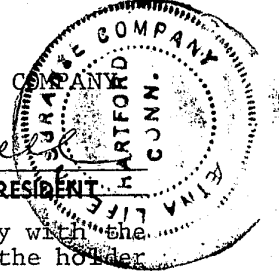
EXECUTED on this 19th day of August, 1976 by AETNA LIFE INSURANCE COMPANY, a Connecticut corporation.

ATTEST:

[Signature]
Title: Secretary

AETNA LIFE INSURANCE COMPANY

By [Signature]
Its ASSISTANT VICE PRESIDENT



NOTE: Aetna Life Insurance Company is or currently with the recordation of this instrument is becoming the holder of the beneficial interest under that certain Deed of Trust dated April 21, 1975, recorded in Salt Lake County, Utah on April 23, 1975 as Entry No. 2701860 in Book 3840 at Page 128, and executed by Hillside Plaza Associates, a General Partnership, as Trustor, in favor of Security Title company, as Trustee, and Zions First National Bank, as (the original) Beneficiary, which said Deed of Trust [as amended and modified by a certain "Loan Modification Agreement" among Aetna Life Insurance Company (as "Lender"), Hillside Plaza Associates, a Utah General Partnership (as the "General Partnership"), and Hillside Plaza Associates, a Utah Limited Partnership (as "Borrower"), recorded in Salt Lake County, Utah concurrently with the recordation of this instrument] secures a Promissory Note in the face amount of \$3,850,000.00 and affects Parcel A together with all of the rights, easements, privileges, benefits, and restrictions which are provided for in this instrument.

EXECUTED on this 26th day of August, 1976 by SECURITY TITLE COMPANY, a Utah corporation, as Trustee under the Deed of Trust referred to below.

ATTEST:

[Signature]
Title: Asst. Secretary

SECURITY TITLE COMPANY,
Trustee

By [Signature]
Its Exec Vice Pres.

NOTE: Security Title Company is Trustee under the Deed of Trust which is referred to and identified herein immediately below the signature space for Aetna Life Insurance Company.

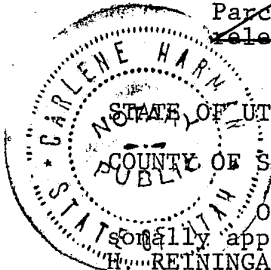
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EXECUTED on this _____ day of _____
1976 by ZIONS FIRST NATIONAL BANK, a National Association.

ATTEST: ZIONS FIRST NATIONAL BANK, N.A.

Title: _____ By _____
Its _____

NOTE: Zions First National Bank is the Trustee and Beneficiary under that certain Deed of Trust dated February 18, 1975, recorded in Salt Lake County, Utah on April 24, 1975 as Entry No. 2686543 in Book 3790 at Page 325, and executed by Hillside Plaza Associates, a Partnership, as Trustor, in favor of Zions First National Bank, N.A., as Trustee, and Zions First National Bank, N.A., as Beneficiary, which said Deed of Trust secures a Promissory Note in the amount of \$500,000.00 and affects Parcel B (together with certain other property not relevant here).



STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

On this 26th day of August, 1976, personally appeared before me DAVID M. HORNE, LAYTON P. OTT, JOHN H. REININGA, JR., PAUL W. MENDENHALL, and ROBERT M. MENDENHALL, each of whom duly acknowledged to me that he executed the foregoing Declaration of Restrictions and Reciprocal Easements as a General Partner in, and on behalf of, HILLSIDE PLAZA ASSOCIATES, a Utah Limited Partnership.

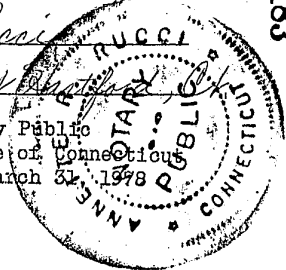
My Commission Expires: 10/10/78
Carlene Harman
Notary Public
Residing at: Salt Lake City, Utah

STATE OF CONNECTICUT)
COUNTY OF HARTFORD) ss.

On this 19th day of August, 1976, personally appeared before me W. E. Russell and R. St. Germain, who being by me duly sworn, did say that they are the Asst Vice President and Secretary, respectively, of AETNA LIFE INSURANCE COMPANY, a Connecticut corporation, and that the foregoing Declaration of Restrictions and Reciprocal Easements was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of Directors, and said Officers acknowledged to me that said corporation executed the same.

My Commission Expires: _____
Annette R. Rucci
Notary Public
Residing at: West Hartford, Conn

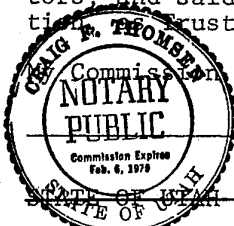
ANNETTE R. RUCCI, Notary Public
within and for the State of Connecticut
My Commission Expires March 31, 1978



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STATE OF UTAH)
COUNTY OF SALT LAKE) ss.

On this 20th day of August, 1976,
personally appeared before me Donald H. Dick
and Nancy H. Bartlett, who being by me duly sworn,
did say that they are the Exec Vice Pres and Asst Secretary
respectively, of SECURITY TITLE COMPANY, a Utah corporation,
and that the foregoing Declaration of Restrictions and Recip-
rocal Easements was signed on behalf of said corporation by
authority of its Bylaws or a resolution of its Board of Direc-
tors, and said Officers acknowledged to me that said corpora-
tion's trustee, executed the same.



My Commission Expires: _____

Clayton J. Stousser
Notary Public
Residing at: Salt Lake City, Utah

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

~~On this _____ day of _____, 1976, per-
sonally appeared before me _____ and
_____, who being by me duly sworn, did
say that they are the _____ and _____
respectively, of ZIONS FIRST NATIONAL BANK, N.A., a National
Association, and that the foregoing Declaration of Restric-
tions and Reciprocal Easements was signed on behalf of said
corporation by authority of its Bylaws or a resolution of its
Board of Directors, and said Officers acknowledged to me that
said National Association executed the same.~~

~~My Commission Expires: _____~~

~~Notary Public
Residing at: _____~~

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