Pub 41

This instrument prepared by: MetroCenter Properties, Inc., formerly Aladdin Resources, Inc., 210 Athens Way, Nashville, Tennessee 37228.

**SPECIAL WARRANTY DEED** BOOK 7862 PAGE 314

| ADDRESS NEW OWNER(S) AS FOLLOWS: Eakin & Smith, L.P. | SEND TAX BILLS TO: Same | MAP-PARCEL NUMBERS 70-16-17 |
|---|---|---|
| (NAME) 2100 West End Avenue, Suite 950 | (NAME) | |
| (STREET ADDRESS OR ROUTE NUMBER) Nashville, TN 37203 | (STREET ADDRESS) | |
| (CITY) (STATE) (P.O. ZIP) | (CITY) (STATE) (ZIP) | |

STATE OF TENNESSEE
COUNTY OF DAVIDSON

The actual consideration or value, whichever is greater, for this transfer is $1,600,000.00.

Affiant

Subscribed and sworn before me, this the 9th day of June 1989.

Notary Public

My Commission Expires: 3/27/93

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FOR AND IN CONSIDERATION of the sum of Ten Dollars ($10.00) cash in hand paid by EAKIN & SMITH, L.P., a Tennessee Limited Partnership, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, METROCENTER PROPERTIES, a Tennessee General Partnership, hereinafter called the GRANTOR, bargained and sold, and by these presents do transfer and convey unto EAKIN & SMITH, L.P., hereinafter called GRANTEE, its successors and assigns, a certain tract or parcel of land in Davidson County, Tennessee, described as follows, to-wit:

Being Lot 1 on the Plan of MetroCenter, Tract 22, of record in Plat Book 6900, Page 883, Register's Office for Davidson County, Tennessee.

Being part of the property conveyed to METROCENTER PROPERTIES, a Tennessee General Partnership composed of MetroCenter Properties, Inc. (formerly known as Aladdin Resources, Inc.), a Delaware corporation, Managing General Partner by instrument of record in Book 4983, Page 781, and Cumberland Bend Investments, Inc., by instrument of record in Book 5718, Page 52, Register's Office of Davidson County, Tennessee.

This conveyance is made subject to Restrictive Covenants recorded in Book 5225, Pages 112 and 120; Book 5242, Page 389; Book 5792, Page 787; Book 7012, Page 61 and Book 7487, Page 952 Register's Office for Davidson County, Tennessee; subject to Colonial Pipeline easement of record in Book 3644, Page 3; Pad mounted Switch Easement of record in Book 5333, Page 19; Right of Way Agreement of record in Book 1450, Pages 546 and 550; Interceptor sewer easement of record in Book 2634, Page 124; Right of way easement of record in Book 3649, Page 94, said Register's Office; and subject to easements and setback lines shown on Plat of Survey, recorded in Book 6900, Page 883, said Register's Office, and those Special Covenants and Restrictions attached hereto as Exhibit "A" and incorporated herein by reference.

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TO HAVE AND TO HOLD the said tract or parcel of land, with the appurtenances, estate, title and interest thereto belonging to the said GRANTEE; its successors and assigns, forever, and we do covenant with the said GRANTEE that we are lawfully seized and possessed of said land, in fee simple, have a good right to convey it, and the same is unencumbered, unless otherwise herein set out; and we do further covenant and bind ourselves to warrant and forever defend the title to the said land to said GRANTEE, its successors and assigns, against the lawful claims of all persons claiming by, through or under GRANTOR. Wherever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the undersigned, MetroCenter Properties, has caused this deed to be executed by its duly authorized representatives this 9th day of June, 1989.

METROCENTER PROPERTIES, a
Tennessee General Partnership

BY: METROCENTER PROPERTIES, INC.,
(formerly Aladdin Resources, Inc.)
a Delaware corporation,
Managing General Partner

ATTEST: Deborah S. Peatross
Deborah S. Peatross
Assistant Secretary

BY: Randall W. Parham
Randall W. Parham, AIA
Vice President-
Project Development

(Corporate Seal)

STATE OF TENNESSEE )
COUNTY OF DAVIDSON )

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared Randall W. Parham, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be Vice President of MetroCenter Properties, Inc. (formerly Aladdin Resources, Inc.), a Delaware corporation, managing general partner of MetroCenter Properties, the within named bargainor, a Tennessee general partnership, and that he as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the partnership by himself as Vice President of MetroCenter Properties, Inc. (formerly Aladdin Resources, Inc.), Managing general partner of MetroCenter Properties.

Witness my hand and seal, at office in Nashville, Tennessee, this the 9th day of June, 1989.

Deborah S. Peatross
Notary Public

My Commission Expires March 27, 1993

My Commission Expires: _____

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## DECLARATION OF SPECIAL COVENANTS AND RESTRICTIONS

This Declaration of Special Covenants and Restrictions between EAKIN & SMITH, L. P., a Tennessee limited partnership ("BUYER") and METROCENTER PROPERTIES, a Tennessee General Partnership, ("MCP").

BOOK 7862 PAGE 316

WHEREAS, MCP owns all that tract of land known as Lot 1 on the Plan of MetroCenter, Tract 22, of record in Plat Book 6900 Page 883, Register's Office of Davidson County, Tennessee, (the "Property") as described in the deed from MCP to BUYER dated the 9th day of June, 1989.

WHEREAS, as a part of the consideration for the conveyance of the Property by MCP to BUYER, MCP and BUYER agree to restrict the use of the Property by those certain covenants and restrictions hereinafter set forth.

NOW THEREFORE, for valuable consideration and the representations, covenants, obligations and warranties hereinafter set forth by Buyer and MCP, the parties hereto agree as follows:

A. BUYER hereby covenants, warrants and agrees for itself, its successors and assigns that the Property shall be used solely for:

1. A commercial building, showroom, open motor vehicle display and related improvements for the sale of new motor vehicles and related services, such as automobile service and incidental used car sales, the commercial building and showroom facility initially containing approximately Sixty SEVEN Thousand (60,000) square feet with approximately 27,000 square feet being used for a new Cadillac showroom facility and related offices for management and approximately 40,000 square feet being used for the servicing of automobiles, said facility to be One Hundred Percent (100%) Owner Occupied (the "Buildings"). The term "Owner Occupied" (or any variation or derivative thereof, such as "Owner Occupant") as used herein shall mean and refer to occupation of the Property by Buyer, Buttery-Scoles Leasing of Nashville, Scoles Cadillac of Nashville, Inc. ("Scoles Cadillac"), or other affiliated companies, whether such affiliated companies are owned or controlled by Buyer, Buttery-Scoles Leasing of Nashville, Scoles Cadillac or another related entity, or whether such companies are companies which contract with Buyer, Buttery-Scoles Leasing of Nashville or Scoles Cadillac or other related entity, whether by lease, sublease, license agreement, franchise agreement or otherwise, to provide sales and service of items and/or accessories which complement a retail automobile dealership whose primary business is the selling and/or servicing of new motor vehicles. By way of example, such affiliated companies could include those companies which facilitate sales and service of items such as cellular telephones or tires. It is expressly understood and agreed that such entities included within the term "Owner Occupant" shall be entities which do not in any way make, or permit, another use of the Property other than the permitted use (specified in this Paragraph 1).

2. These covenants and restrictions shall extend for a period of Twenty-Five (25) years from the date hereof. No use other than the aforesaid use specified in Paragraph 1 above shall be made of the Property without the prior written approval of MCP. Such approval shall be in the reasonable discretion of MCP and shall be reasonably consistent with the existing uses in the MetroCenter Business Park. No other use shall be made of the Property without the prior written approval of the PRC or any successor entity (or if there is no successor entity, then MCP, its successor or assigns). The said PRC, in determining whether to grant such approval shall take into account the necessity for and the suitability of the proposed use in the neighborhood, its effect on surrounding property, the nature, quality, appearance and general compatibility of the structure proposed for such use to the character of MetroCenter. The failure to approve of one such use shall not bar further applications for other uses. In the event that such approval is obtained from the appropriate parties aforesaid, such party shall, at the expense of BUYER, its successors or assigns, record a written declaration thereof among the land records of Davidson County, Tennessee. The written approval of MCP and PRC as above provided shall not unreasonably be withheld.

B. In the event of a breach of any of the special covenants or restrictions contained herein, MCP, or the PRC, as the case may be, after written notice to BUYER, its successors or assigns, and after reasonable opportunity to cure such breach, shall have the right to injunctive relief and any other relief to which it may be entitled under law or equity including liquidated damages in the amount of Two Thousand Dollars ($2,000.00) per day for each day of a continuing violation;

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provided, however, the foregoing provision for liquidated damages shall be applicable only with respect to a party who has failed to make a good faith effort to cure such breach. The benefits of the special covenants and restrictions contained herein shall inure solely to the benefit of and be enforceable solely by MCP or its successors or assigns, or by the PRC or its successor, during such twenty-five (25) year period.



C. All exterior design features, exterior materials, roofing, color schemes and general appearance of any building on the Property shall be subject to the approval of the PRC as constituted under the covenants and restrictions recorded in Deed Book 5242, Page 389; Deed Book 5225, Page 112; Deed Book 5225, Page 120; Deed Book 5792, Page 787; Deed Book 7012, Page 61 and Deed Book 7487, Page 952 in the Register's Office of Davidson County, Tennessee.

D. This Declaration of Special Covenants and Restrictions is intended to be complementary to all covenants and restrictions herein before recorded among the land records of Davidson County which apply to the Property and to be solely for the benefit of MCP and PRC, its successors and assigns as herein set forth. In the event of any conflict between the provisions of any one or more or part of any one of these special covenants and restrictions with any other covenant, restriction, zoning or subdivision ordinance or regulation, the provisions of these special covenants and restrictions shall prevail.

E. BUYER covenants and agrees that it will become a member of an association or associations which may hereinafter be formed by MCP for the purpose of the maintenance and improvement of common (including public) planted/landscaped areas in MetroCenter, provided that at least Fifty Percent (50%) of the property owners qualified to be a member of any such association do in fact belong to such association. Such association shall be formed among the owners of property in MetroCenter for the purpose of serving the mutual interest of such property owners and the preservation of the safety and aesthetic appeal of MetroCenter, and any such association shall be cooperatively financed by its members on a pro rata basis proportionate to the land area owned by each in MetroCenter, and any such association shall be non-profit with no part of its net earnings inuring to the benefit of any private person.

The formation and operation of any such association shall not affect the rights of MCP and others as set forth in any recorded covenants and restrictions and declarations to enforce any covenant, restriction or lien against the Property.

This Declaration of Special Covenants and Restrictions shall run with and bind the Property and shall be binding upon its successors and assigns.

This Agreement is entered into by the parties this 14th day of June, 1989.

METROCENTER PROPERTIES, a
Tennessee general partnership

BY: METROCENTER PROPERTIES, INC.,
formerly Aladdin Resources, Inc., a
Delaware corporation
Managing general partner

ATTEST: Deborah S. Peatross
Deborah S. Peatross
Assistant Secretary

BY: Randall W. Parham
Randall W. Parham
Vice President-
Project Development

EAKIN & SMITH, L.P., a
Tennessee limited partnership

BY: EAKIN & SMITH, INC., a
Tennessee corporation
general partner

WITNESS: Deborah S. Peatross

BY: John W. Eakin
John W. Eakin
President

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STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared JOHN W. EAKIN, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be President of Eakin & Smith, Inc., the managing general partner of Eakin & Smith, L.P., the within named bargainor, a Tennessee limited partnership, and that he as such President of the managing general partner, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited partnership by himself as President of Eakin & Smith, Inc., managing general partner of Eakin & Smith, L.P.

Witness my hand and seal, at office in Nashville, Tennessee, this the 9th day of June, 1989.

NOTARY PUBLIC

My Commission Expires: 9/9/89

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

Before me, the undersigned, a Notary Public in and for the County and State aforesaid, personally appeared RANDALL W. PARHAM, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who upon oath acknowledged himself to be Vice-President - Project Development of MetroCenter Properties, Inc., the managing general partner of MetroCenter Properties, the within named bargainor, a Tennessee general partnership, and that he as such Vice President -Project Development of the managing general partner, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the managing general partner by himself as Vice President -Project Development of MetroCenter Properties, Inc., managing general partner of MetroCenter Properties.

Witness my hand and seal, at office in Nashville, Tennessee, this the 9th day of June, 1989.

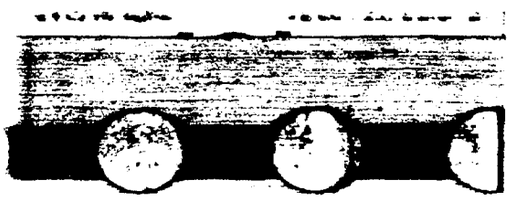
NOTARY PUBLIC

My Commission Expires: 9/9/89

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JUN 12 10 27 AM '89

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**OFFICIAL RECEIPT**

FELIX Z. WILSON, II
REGISTER OF DAVIDSON COUNTY
NASHVILLE, TENNESSEE

RECEIVED OF _____

FOR _____

BOOK 7862 PAGE 319

| | | |
|---|---|---|
| CO - CONVEYANCE | CC - CERTIFIED COPY | MISC - MISCELLANEOUS |
| MO - MORTGAGE | REL - RELEASE | CO TAX - STATE TAX CONVEY |
| WD - WARRANTY DEED | UCC - UNIFORM COMMERCIAL CODE | MO TAX - STATE TAX MORT |
| TD - TRUST DEED | | PRFEE - PROBATE FEE |

| DATE | SYMBOL | VALUATION | TAX AND FEES | TOTAL |
|---|---|---|---|---|

CAMT 1600000.00
CON TX 5280.00
PRFEE 0.50
WDEED 15.00
TOTAL 5295.50
CHECK 5295.50

06/12/89 01 10:29 0001 3894

RECEIPT IS NOT VALID UNTIL CHECK IS PAID BY BANK

40236

IDENTIFICATION REMOVED

JUN 12 10 27 AM '89

FELIX Z. WILSON II REGISTER
DAVIDSON COUNTY, TN

No. 218235