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PREPARED BY AND AFTER
RECORDING MAIL TO:

Amanda A. Schwob
Chody Real Estate Corp.
401 N. Michigan Ave., Suite 1700
Chicago, Illinois 60611

Doc#: 1229201052 Fee: \$88.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/18/2012 10:29 AM Pg: 1 of 28

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DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made and entered into this 26 day of September, 2012, by Chody R.E. Partnership, I.P, an Illinois Limited Partnership, as to an undivided 40% interest and MTower LLC, an Illinois limited liability company, as to an undivided 60% interest, as tenants in common (collectively, the "Declarant").

RECITALS

- A. Declarant is the owner of that certain real property situated in the Village of Schaumburg, County of Cook, State of Illinois, more particularly described on **Exhibit A** attached hereto and incorporated herein by this reference, which real property is made up of two Lots, legally described on **Exhibit A** and referred to herein individually as "Lot 1" and "Lot 2" and collectively as the "Lots."
- B. Declarant intends to develop the Lots for use as a retail project, including, without limitation, but as way of example only, retail stores, restaurants, commercial office building or mixed-use medical.
- C. Declarant desires to impose certain easements upon the Lots, and to establish certain covenants, conditions and restrictions with respect to said Lots, for the mutual and reciprocal benefit and complement of Lot 1 and Lot 2 and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Declarant does hereby declare that the Lots and all present and future owners and occupants of the Lots shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Declaration, so that said Lots shall be maintained, kept, sold and used in full compliance with and subject to this Declaration and, in connection therewith, Declarant covenants and agrees as follows:

Box 400-CTCC

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AGREEMENTS

1. Definitions. For purposes hereof:

- (a) The term "7-Eleven" shall mean 7-Eleven, Inc., a Texas corporation d/b/a 7-Eleven.
- (b) The term "7-Eleven Lease" shall mean that lease of a portion of Lot 2 from Declarant as landlord to 7-Eleven as tenant, and any amendments, extensions or replacements thereof.
- (c) Intentionally deleted.
- (d) The term "Driveways" shall mean those driveways and related driveway improvements, paving, curbing, entrances and exits, in the location on the Lots as shown on the Site Plan.
- (e) The term "Dunkin" shall mean 2nd Gen – Schaumburg Inc., an Illinois corporation d/b/a Dunkin' Donuts Baskin Robbins.
- (f) The term "Dunkin Lease" shall mean that lease of a portion of Lot 2 from Declarant as landlord to Dunkin as tenant, and any amendments, extensions or replacements thereof.
- (g) Intentionally deleted.
- (h) Intentionally deleted.
- (i) Intentionally deleted.
- (j) Intentionally deleted.
- (k) Intentionally deleted.
- (l) The term "Lot" or "Lots" shall mean each separately identified Lot of real property now constituting a part of the real property subjected to this Declaration as described on **Exhibit A**, that is, Lot 1 and Lot 2, and any future subdivisions thereof.
- (m) Intentionally deleted.
- (n) Intentionally deleted.

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(o) The term "Owner" or "Owners" shall mean the Declarant and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.

(p) The term "Permittees" shall mean the tenant(s) or occupant(s) of a Lot, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Lot, and/or (ii) such tenant(s) or occupant(s).

(q) Intentionally deleted.

(r) The term "Site Plan" shall mean that site plan of the Lots attached hereto as **Exhibit B** and by reference made a part hereof. Except as may be otherwise provided in this Declaration, the Site Plan is for identification purposes only.

2. Easements.

2.1 Grant of Reciprocal Easements. Subject to any express conditions, limitations or reservations contained herein, Declarant hereby declares that the Lots, and all Owners and Permittees of the Lots, shall be benefited and burdened by the following nonexclusive, perpetual and reciprocal easements which are hereby imposed upon the Lots and all present and future Owners and Permittees of the Lots:

(a) An easement upon, under, over, above and across the Lots for the discharge, drainage, use, detention and retention of storm water runoff, and to install, maintain, repair and replace storm water collection, retention, detention and distribution lines, conduits, pipes and other apparatus under and across those portions of the Lots. The underground stormwater detention facilities shown on the Site Plan, and all lines, conduits, pipes and other apparatus for water drainage, and all storage systems necessary in connection therewith, shall be hereinafter called the "Stormwater Detention and Drainage Facilities," and the Stormwater Detention and Drainage Facilities shall not be used for any use other than as a storm water detention facility for the detention of storm water drainage for the benefit of the Lots without the prior written consent of the Owners of all Lots. The easement granted herein shall include the right of reasonable ingress and egress with respect to the Stormwater Detention and Drainage Facilities as may be required to maintain and operate the same. The underground stormwater detention facilities shall initially be constructed by Declarant in accordance with the Site Plan. Once constructed by Declarant, (i) except for modifications, alterations, allocations or other changes required by any governmental authority, the underground stormwater detention facilities shall not be modified, altered, relocated or otherwise changed without the prior written consent of the Owners of all Lots; and (ii) the Owner of Lot 2 shall operate and maintain, or cause to be

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operated and maintained, in good order, condition and repair, the Stormwater Detention and Drainage Facilities located upon the Lots and make any and all repairs and replacements that may from time to time be required with respect thereto, and the Owners of the Lots shall be responsible for their respective pro rata share, determined by dividing the square footage of each such Lot by the total square footage of all the Lots, of any and all costs associated therewith.

(b) An easement under and across those parts of the Lots that are not within any permissible building areas shown on the Site Plan, for the installation, maintenance, repair and replacement of water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas mains and other utility facilities necessary for the orderly development and operation of the Lots (including Signs located thereon) and each building from time to time located within the Lots; provided that (i) the rights granted pursuant to such easements shall at all times be exercised in such a manner as not to interfere materially with the normal operation of a Lot and the businesses conducted therein, (ii) the exact location of any new utilities not existing as of the date of this Declaration shall be subject to the approval of the Owner(s) of the burdened Lot(s), and (iii) except in an emergency, the right of any Owner to enter upon the Lot of another Owner for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the ground level or surface of the Lot (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the affected Lot).

2.2 Indemnification. Each Owner having rights with respect to an easement granted hereunder shall indemnify and hold the Owner whose Lot is subject to the easement, harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage or to any person or property arising from the negligent, intentional or willful acts or omissions of such Owner, its contractors, employees, agents, or others acting on behalf of such Owner.

2.3 Intentionally deleted.

2.4 Reasonable Use of Easements.

(a) The easements herein above granted shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Lot, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.

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(b) Once the Stormwater Detention and Drainage Facilities are installed pursuant to the easements granted in paragraph 2.1(b) hereof, and/or any new utility lines, systems and equipment not currently existing are installed pursuant to the easements granted in paragraph 2.1(c) hereof, no permanent building, structures, trees or other improvements inconsistent with the use and enjoyment of such easements (excluding improvements typically found in common areas of shopping centers) shall be placed over or permitted to encroach upon such water detention, drainage and utility installations. For purposes of this paragraph 2.4(b), Lot 2's drive-through facility as shown on the Site Plan shall not be deemed to be a permanent structure and therefore may be constructed in the locations shown on the Site Plan by the Owner of Lot 2 over the Stormwater Detention and Drainage Facilities. The Owner of the Lot served by such installations shall not unreasonably withhold its consent to the reasonable relocation of such installations requested by the Owner of a Lot where such installations are located, at such requesting Owner's sole cost and expense, so long as water detention and drainage services or utility services, as applicable, to the other Owner's Lot are not unreasonably interrupted and the remaining provisions of this paragraph 2.4 are not violated.

(c) Once commenced, any construction undertaken in reliance upon an easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with the business of any other Owner and its Permittees. Except in cases of emergency, the right of any Owner to enter upon a Lot of another Owner for the exercise of any right pursuant to the easements set forth, or to prosecute work on such own Lot if the same interferes with utility or drainage easements to or in favor of another Owner's Lot, shall be undertaken only in such a manner so as to minimize any interference with the business of the other Owner and its tenants or customers. In such case, no affirmative monetary obligation shall be imposed upon the other Owner and the Owner undertaking such work shall with due diligence repair at its sole cost and expense any and all damage caused by such work and restore the affected portion of the Lot upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the commencement of such work. In addition, the Owner undertaking such work shall pay all costs and expenses associated therewith and shall indemnify and hold harmless the other Owner(s) and its tenants, customers and Permittees from all damages, losses, liens or claims attributable to the performance of such work.

3. Maintenance.

3.1 General. Until such time as improvements are constructed on a Lot, the Owner thereof shall maintain the same in a clean and neat condition and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter or debris.

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3.2 Buildings and Appurtenances Thereto. Each Owner covenants to keep and maintain, or to cause to keep and maintain, at its sole cost and expense, the building(s) and improvements located from time to time on its respective Lot in good order, condition and repair, including, without limitation, trash removal. Once constructed, in the event of any damage to or destruction of a building on any Lot, the Owner of such Lot shall, at its sole cost and expense, with due diligence either (a) repair, restore and rebuild such building to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Declaration), or (b) demolish and remove all portions of such damaged or destroyed building then remaining, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level, graded condition. Nothing contained in subparagraph 3.2(b) shall be deemed to allow an Owner or its Permittee to avoid a more stringent obligation for repair, restoration and rebuilding contained in a lease or other written agreement between an Owner and such Owner's Permittee.

3.3 Intentionally deleted.

3.4 Utilities. Each Owner shall at all times during the term hereof construct, operate and maintain or cause to be constructed, operated and maintained, in good order, condition and repair, at its sole expense, any utility or other installations serving both the Lot of such Owner and from time to time existing on the Lot of another Owner pursuant to an easement described herein.

3.5 Signs. The Owners of Lots shall each have the right, subject to compliance with all applicable governmental requirements, to construct one (1) monument sign on its Lot (individually, a "Sign", and collectively, the "Signs") in the areas shown on the Site Plan. Each Owner shall bear all costs and expenses of construction of a Sign on its Lot and, once constructed, shall, at its sole expense, thereafter maintain, operate, illuminate and repair such Sign and related utility lines. Each Sign shall be for the use of such of the Owner or tenant(s) of the Lot on which such Sign is located as may be determined from time to time by the Owner of that Lot. No signs, structures, landscaping or improvements shall be placed or maintained on the Lots that shall obstruct or impair the visibility of the Signs from adjacent streets and roads.

4. Construction of Improvements. Every building, now or in the future constructed on each Lot, shall be constructed, operated and maintained so that the same is in compliance with all applicable governmental requirements; provided that the foregoing compliance covenant shall not give rise to any obligation on the part of an Owner or Permittee to construct a building on its Lot.

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5. Restrictions.

5.1 General. Each Lot shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Lot which is illegal. In addition to the foregoing, throughout the term of this Declaration, it is expressly agreed that neither all nor any portion of any Lot shall be used, directly or indirectly, for purposes of a cocktail lounge, bar, any other establishment that sells alcoholic beverages for on-premises consumption unless operated incidental to, in conjunction with, and under the same name as, a restaurant permitted hereunder; disco; bowling alley; pool hall; billiard parlor; skating rink, roller rink; amusement arcade; a theater of any kind; children's play or party facility; adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays (other than a book store or video store that caters to the general public); odd lot, closeout or liquidation store, auction house, flea market; educational or training facility greater than 4,500 square feet (including, without limitation, a beauty school or a barber college); auto repair shops of any kind (including detail shops, tire stores and body work stores, but excluding auto parts stores); blood bank; massage parlor; funeral home; sleeping quarters or lodging; the outdoor housing or raising of animals (except incidental to a full-line retail pet supply operation or veterinarian); leasing or storage of automobiles, boats or other vehicles; any industrial use (including, without limitation, any manufacturing, smelting, rendering, brewing (except incidental to a retail micro-brewing establishment), refining, chemical manufacturing or processing, or other manufacturing uses); any mining or mineral exploration or development except by non-surface means; a car wash; a carnival, amusement park or circus; an assembly hall; off track betting establishment, bingo hall; any use involving the use, storage, disposal or handling on any Lot of hazardous materials or underground storage tanks, any use which may require water and sewer services in excess of the capacities allocated to such Lot by any governmental authority, a church, temple, synagogue, mosque, or the like, any facility for the sale of paraphernalia for use with illicit drugs; any office use (except incidental to a retail use), or any use which creates a nuisance.

5.2 Dunkin's Exclusive Use. Notwithstanding anything to the contrary set forth in this Declaration, prior to the expiration or earlier termination of the Dunkin Lease but only as long as Dunkin is not in default under the Dunkin Lease beyond any applicable notice and cure period, the Owner of Lot 2 or its Permittee shall not lease space in Lot 2 to any tenant, with the exception of 7-Eleven, who sells coffee, coffee related beverages, espresso drinks, donuts, muffins, bagels, soft serve ice cream, ice cream based beverages and yogurt based beverages.

5.3 Drive-Throughs. No facility on any Lot for vehicular drive-up or drive-through, in which the stopping or standing of motor vehicles in line at a location for dropoff and/or pickup is intended (as, for example, at a restaurant, car wash or bank),

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shall be assigned, constructed, used or operated in any manner such that motor vehicles in line at such facility interfere with the normal pattern and flow of pedestrian or vehicular traffic on and across any Lot and/or the Driveways; provided that nothing contained herein shall be deemed to affect the drive-through serving the building on Lot 2, to be initially constructed, subject to compliance with all applicable governmental requirements, on Lot 2 by the Owner or Permittee thereof in the area shown on the Site Plan, which are hereby expressly approved and acknowledged not to interfere with the normal pattern and flow of pedestrian or vehicular traffic on and across any Lot and/or Driveways.

5.4 7-Eleven's Exclusive Use. Notwithstanding anything to the contrary set forth in this Declaration, prior to the expiration or earlier termination of the 7-Eleven's Lease no Owner or Permittee shall violate the exclusive use provision as set forth in **Exhibit C** attached hereto and made a part hereof.

6. Insurance. Throughout the term of this Declaration, each Owner shall procure and maintain general and/or comprehensive public liability and property damage insurance against claims for personal injury (including contractual liability arising under the indemnity contained in paragraph 2.2 above), death, or property damage occurring upon such Owner's Lot, with single limit coverage of not less than an aggregate of Three Million Dollars (\$3,000,000.00) including umbrella coverage, if any. The foregoing insurance limits may be adjusted from time to time with the consent of the Owners.

7. Taxes and Assessments. Prior to re-subdivision of the Shopping Center such that a separate tax property identification number is assigned to each Lot, the Owner of Lot 2 (a) shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to the Shopping Center (collectively, the "Taxes") and (b) shall be reimbursed for Taxes so paid by the Owner of each other Lot (or their tenants under leases), on a pro rata basis determined by dividing the square footage of the buildings on such Lot by the total square footage of all of the buildings on all of the Lots. Such reimbursement payments shall be made to the Owner of Lot 2 within thirty (30) days after the Owner of Lot 2 delivers evidence of payment of Taxes to the Owners of other Lots. After the re-subdivision of the Shopping Center such that a separate tax property identification number is assigned to each Lot, each Owner shall pay all Taxes with respect to its Lot.

8. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of a Lot.

9. Remedies and Enforcement.

9.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies

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from the consequences of such breach, including payment of any amounts due and/or specific performance.

9.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following written notice thereof by an Owner (unless, with respect to any such breach, the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any Owner shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by JP Morgan Chase Bank, NA (its successors or assigns), plus five percent (5%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency or (ii) blockage or material impairment of the easement rights, an Owner may immediately cure the same and be reimbursed by the other Owners upon demand for the reasonable cost thereof together with interest at the prime rate, plus five percent (5%), as above described.

9.3 Lien Rights. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner in connection with the exercise of its rights set forth in paragraphs 9.1 and/or 9.2 above) in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Lot of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Office of the County Recorder of Cook County, Illinois; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Office of the County Recorder of Cook County, Illinois prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien.

9.4 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

9.5 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Lot made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner

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of such Lot covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

9.6 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of paragraphs 2 and/or 5 of this Declaration, each Owner agrees that such violation or threat thereof shall cause the nondefaulting Owner and/or its Permittees to suffer irreparable harm and such nondefaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of paragraphs 2 and/or 5 of this Declaration, the nondefaulting Owner, in addition to all remedies available at law or otherwise under this Declaration, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of paragraphs 2 and/or 5 of this Declaration.

10. Term. The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the Cook County Recorder and shall remain in full force and effect thereafter for a period of seventy-five (75) years, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners of the Lots in accordance with paragraph 11.2 hereof.

11. Miscellaneous.

11.1 Attorneys' Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

11.2 Amendment. Declarant agrees that the provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of each Lot, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the County Recorder of Cook County, Illinois.

11.3 Consents. Wherever in this Declaration the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Declaration, to be effective, must be given, denied or conditioned expressly and in writing. Any consent or denial must be given in writing within ten (10) business days from the receipt of the request or such request shall be deemed approved. Any denial of such request must be accompanied by a writing specifying the reason for such denial.

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11.4 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

11.5 No Agency. Nothing in this Declaration shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

11.6 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

11.7 Grantee's Acceptance. The grantee of any Lot or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Lot, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

11.8 Separability. Each provision of this Declaration and the application thereof to each Lot are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of all Lots by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.

11.9 Time of Essence. Time is of the essence of this Declaration.

11.10 Entire Agreement. This Declaration contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

11.11 Notices. Any notice, consent, approval, demand, request or document which either party is required or desires to give or deliver to or make upon the other hereunder

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shall be in writing and may be personally delivered or sent by mail, postage prepaid (either by (a) United States registered or certified mail, return receipt requested, or (b) reputable national overnight courier or delivery service), addressed set forth in this Section 11.11 (subject to the right of either party to designate a different address for itself by notice similarly given).

Any notice, consent, approval, demand, request or document so delivered by overnight courier or delivery service shall be deemed to have been delivered on the day on which the same is delivered to a party, or after three (3) days if deposited in the United States mail as registered or certified mail, addressed as above provided, with postage thereon fully prepaid, or, if sooner, upon receipt; provided, however, in the event any time period provided for in this Declaration expires on a weekend or holiday recognized by the United States Postal Service, the time period shall be automatically extended to the next business day. Notwithstanding the foregoing, notices are effective upon attempted delivery if delivery is refused or if delivery is impossible because of the recipient's failure to provide a reasonable means for accomplishing delivery. The notice address of Declarant is as follows:

MTower LLC
 c/o Chody Real Estate Corp.
 401 N. Michigan Avenue
 Suite 1700
 Chicago, Illinois 60611
 Attn: Bart Friedmar

Chody R.E. Partnership, LP
 c/o Chody Real Estate Corp.
 401 N. Michigan Avenue
 Suite 1700
 Chicago, Illinois 60611
 Attn: Lance M. Chody

With a copy to: Chody Real Estate Corp.
 401 N. Michigan Avenue
 Suite 1700
 Chicago, Illinois 60611
 Attn: Legal

11.12 Governing Law. The laws of the State of Illinois shall govern the interpretation, validity, performance, and enforcement of this Declaration.

11.13 Estoppel Certificates. Each Owner shall from time to time, upon twenty (20) days prior written notice, provide a requesting Owner a certificate binding upon such Owner

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stating: (a) to the best of such Owner's knowledge, whether any party to this Declaration is in default or violation of this Declaration and if so identifying such default or violation; and (b) that this Declaration is in full force and effect and identifying any amendments to the Declaration as of the date of such certificate.

11.14 Bankruptcy. In the event of any bankruptcy affecting any Owner or Permittee of any Lot, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

12. Stormwater Detention and Drainage Facilities. Notwithstanding anything to the contrary in this Declaration, the proposed detention as shown on the Site Plan shall not be the detention initially built for water drainage. Initially, water drainage for Lot 1 shall be tied to the Village of Schaumburg's existing sewer line. Upon development of Lot 2, the proposed detention shall be built.

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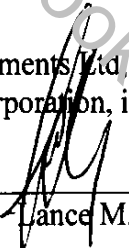
IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first written above.

By: MTOWER LLC,
an Illinois limited liability company,
as to an undivided 60% interest

By: 
Bart Friedman, Manager

By: The Chody R. E. Partnership LP,
an Illinois limited partnership,
as to an undivided 40% interest

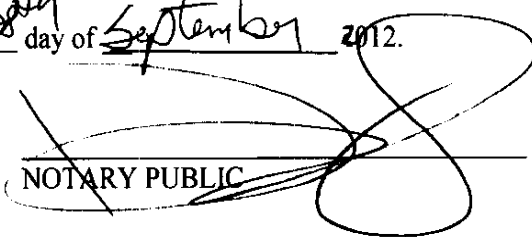
By: Chody Investments Ltd,
an Illinois corporation, its General Partner

By: 
Lance M. Chody, President

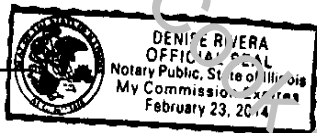
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Bart Friedman**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

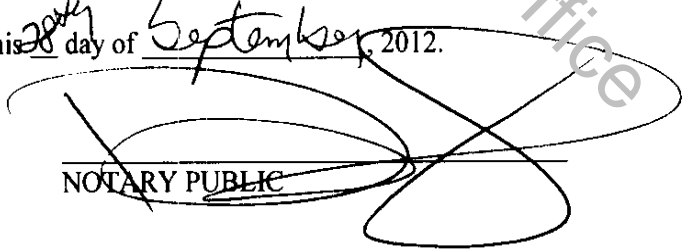
GIVEN under my hand and Notarial Seal this 20th day of September, 2012.

NOTARY PUBLIC

My Commission Expires:

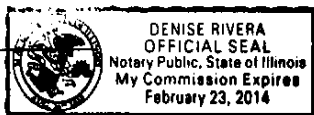


STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Lance M. Chody**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 20th day of September, 2012.

NOTARY PUBLIC


My Commission Expires:



UNOFFICIAL COPY

CONSENT OF OWNER OF RESTRICTED AREA TO THE SOUTH

The owner of restricted area to the south, Meacham 2004 LLC, an Illinois limited liability company, hereby consents to the Exclusives listed on Exhibit C of this Declaration.

By: 
Lance M. Chody, Manager

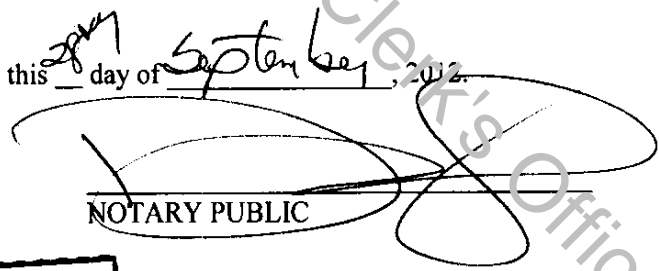
STATE OF ILLINOIS

) SS.

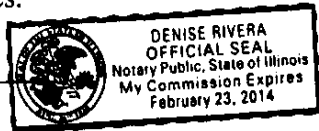
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Lance M. Chody**, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of September, 2012.


NOTARY PUBLIC

My Commission Expires:



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION OF LOTS 1 AND 2

PIN: 07-12-300-010-0000

LOT 1:

LOT 1 IN MTOVER RESUBDIVISION BEING A RESUBDIVISION OF PART OF LOT 8 IN SCHAUMBURG INDUSTRIAL PARK UNIT NO. 1, AND A PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

LOT 2:

LOT 2 IN MTOWER RESUBDIVISION BEING A RESUBDIVISION OF PART OF LOT 8 IN SCHAUMBURG INDUSTRIAL PARK UNIT NO. 1, AND A PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Address:

1430 Maacham Rd
Schaumburg, IL 60193

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EXHIBIT B

SITE PLAN

[See attached]

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

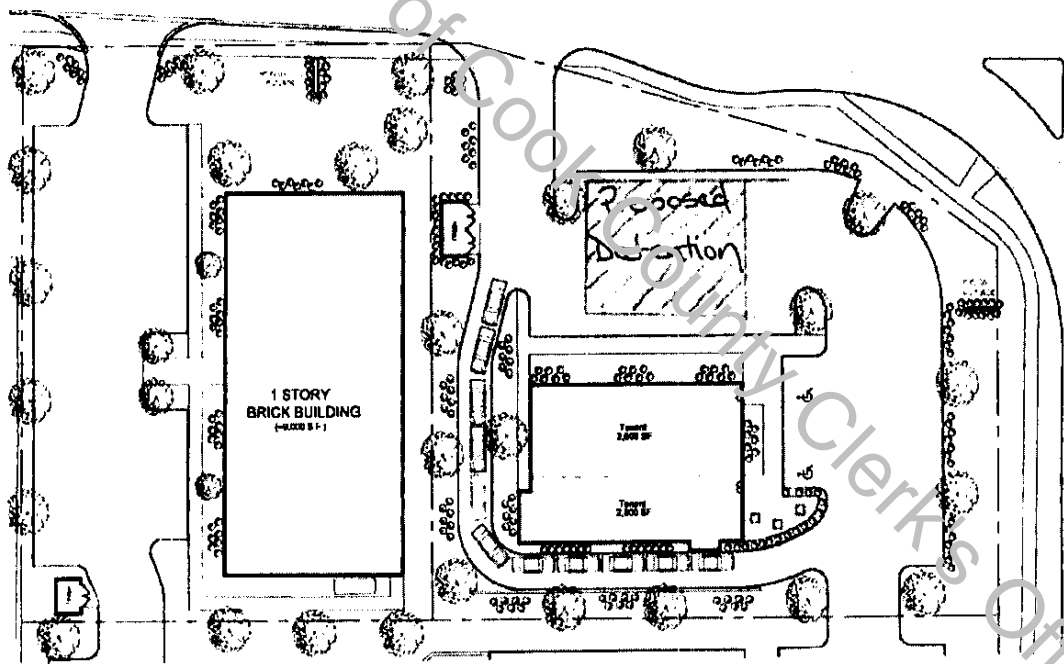
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Property of Coolidge County Clerks Office

TOWER ROAD

MEACHAM ROAD



1 PROPOSED SITE PLAN
 SCALE: 1" = 30'-0"
 0 25 50 100'

DCS MIDWEST LLC 123 N. TOWER ROAD SPRINGFIELD, ILLINOIS 60173
DATE: 08/30/11
SCALE: 1" = 30'-0"
DATE: 7/28/2011

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EXHIBIT C

Exclusives for 7-Eleven, Inc.

EXCLUSIVE. During the Term and any Extended Term of the 7-Eleven Lease, no occupant of Lot 2 other than 7-Eleven, Inc. shall operate a business which provides or offers, for sale or rental, in connection with all or any part of its business operations, any of the following items:

- (a) packaged fluid milk in one quart or larger containers;
- (b) commercially packaged bread and pastry products, unless sold by a Permitted Restaurant (as defined below);
- (c) made-to-order and pre-prepared sandwiches, burritos, salads and foods, and roller grill items (such as hot dogs and taquitos), for consumption on or off premises, provided, however, that made-to-order items may be sold by a Permitted Restaurant;
- (d) snacks and food items customarily sold from a first class convenience store of a size comparable to the Premises;
- (e) cigarettes and tobacco products, unless vended by machine;
- (f) beer and wine for off premise consumption;
- (g) health and beauty aids, unless sold from a hair salon, medical office, barber shop or spa;
- (h) soft drinks in six pack, eight pack, twelve pack, case lots, half, one or two liter bottles, or by the cup or can, unless sold by a Permitted Restaurant;
- (i) frozen or semi-frozen carbonated beverages, unless sold by a Permitted Restaurant;
- (j) candy, unless gift-boxed or sold in bulk;
- (k) coffee or hot chocolate by the cup, unless sold by a Permitted Restaurant;
- (l) newspapers, magazines and paperback books;
- (m) lottery tickets, money orders, phone cards; and
- (n) gift / cash cards (other than gift cards for the particular business occupying the space).

The term "Permitted Restaurant" shall mean a sit-down restaurant with menus and waiter/waitress service, or walk-up service, or a caterer or a fast-food restaurant, as long as any such restaurant is not a specialty coffee shop (such as, by way of example and not limitation, Starbucks, Panera, Caribou or similar). In addition, (I) a facility that specializes in and whose primary emphasis is the sale of meat, fish, ethnic food or other specialty food concept may operate, provided that such facility does not sell any of the items listed in (a)-(n) above and (II) a facility whose primary business is the sale of wine (and any other liquor sold within the store must be sold at room temperature, and the sale of beer for off premises consumption is not allowed, unless it is a Permitted Restaurant) may operate, provided that such facility does not sell any of the items listed in (a)-(e) and (g)-(n) above.

In addition to the foregoing, respective owner(s) of the Restricted Area, its affiliates, and members, and any other person or entity within their custody and control or its successors or assigns shall not allow any portion of the "Restricted Area," which is comprised of (A) the "south restricted area" as shown on Schedule 1 and legally described on Schedule 2 attached hereto and made a part hereof and (B) the "west restricted area" as shown on Schedule 1 and legally described on Schedule 3 attached hereto and made a part hereof, to be used for any of the following purposes:

- (i) as a food market, grocery, or other facility primarily engaged in the sale of grocery items (provided that the foregoing restriction does not apply from and after the end of the fifth (5th) year of the

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Term of the 7-Eleven Lease to a facility that sells grocery items, including beer and wine, from an area greater than 10,000 square feet). In addition, (I) a facility that specializes in and whose primary emphasis is the sale of meat, fish, ethnic food or other specialty food concept (specialty foods being foods other than those commonly sold in convenience stores) may operate, provided that such facility does not sell any of the items indicated in (ii)-(v) below and (II) a facility whose primary business would be the sale of wine (and any other liquor sold within the store must be sold at room temperature, and the sale of beer for off premises consumption shall not be allowed, unless it is a Permitted Restaurant or from a facility of greater than 10,000 square feet and consistent with this subsection (i)) may operate;

- (ii) as a dollar or discount store, or use substantially similar thereto;
- (iii) for the sale of beer or wine for off-premises consumption, except as allowed in (i) above;
- (iv) for a facility primarily engaged in the sale of coffee or coffee products, unless sold by a Permitted Restaurant (provided that the foregoing restriction shall only apply to the portion of the Restricted Area to the west of the Premises); or
- (v) for the sale of cigarettes and tobacco products, unless vended by a machine.

The foregoing exclusives shall not apply to existing tenants and occupants of Lot 2, which tenants and occupants are set forth on Schedule 4 attached hereto, or to Dunkin' Donuts, but no such tenants (including Dunkin' Donuts) may change their use to a use inconsistent with the prohibitions set forth in this Article, unless Landlord has no contractual right (in connection with approval for changes in permitted uses, assignment or sublease, or otherwise) to prevent such existing tenants and occupants from changing their uses to a use that would violate any exclusives granted to Tenant above in this Article.

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SCHEDULE 1 TO EXHIBIT C

Restricted Area

[See Attached]

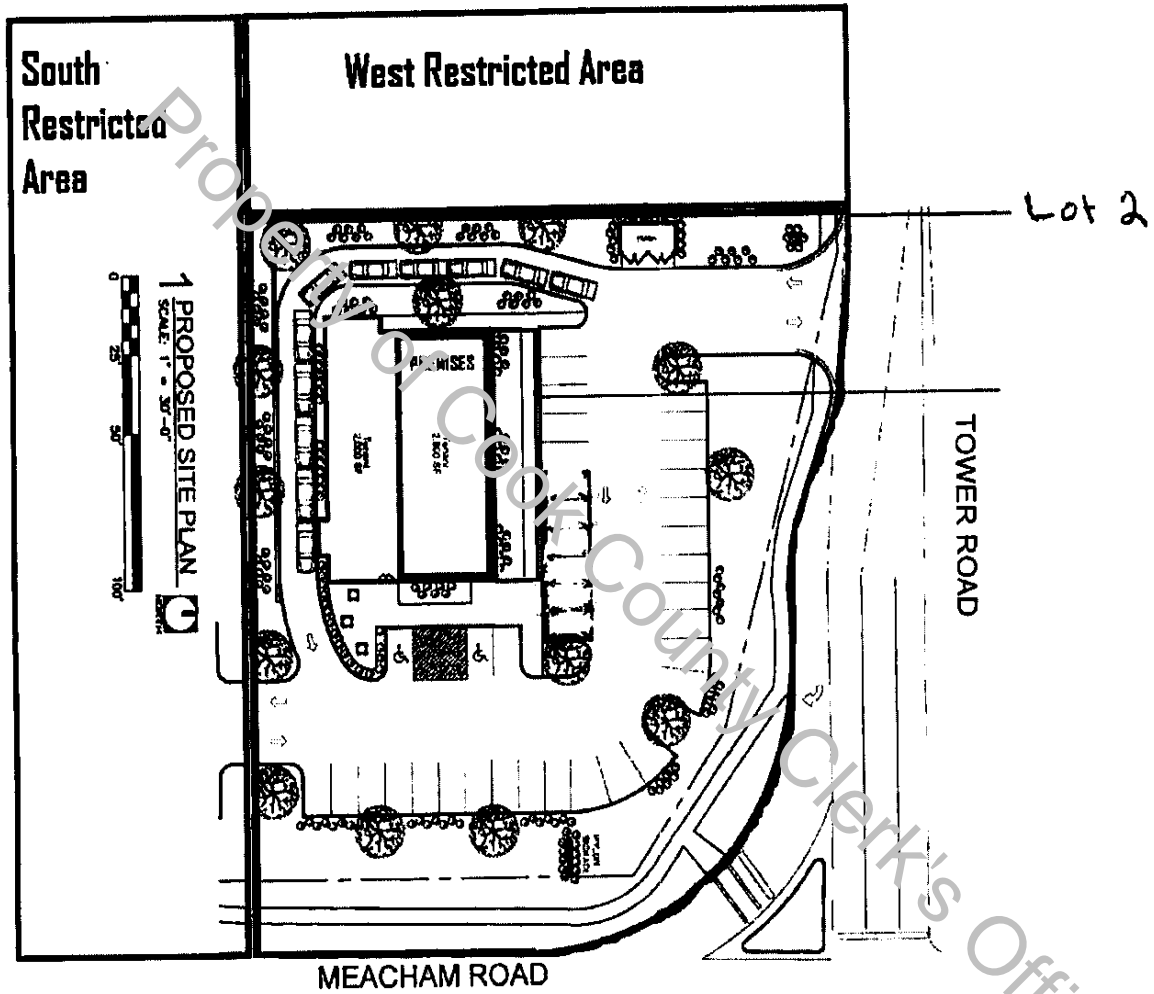
COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

Property of Cook County Clerk's Office

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Schedule 1 to Exhibit C



	DCS MIDWEST LLC 1921 Tower Road Schaumburg, Illinois 60173 815.399.8800
	DATE: 08/28/11 DRAWN BY: [illegible] CHECKED BY: [illegible]

UNOFFICIAL COPY

SCHEDULE 2 TO EXHIBIT C

LEGAL DESCRIPTION OF THE RESTRICTED AREA TO THE SOUTH

LOT 1 IN 1420-1432 MEACHAM ROAD SUBDIVISION BEING A RESUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 3, 2011 AS DOCUMENT NUMBER 1115429001, IN COOK COUNTY, ILLINOIS.

LOT 2 IN 1420-1432 MEACHAM ROAD SUBDIVISION BEING A RESUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 3, 2011 AS DOCUMENT NUMBER 1115429001, IN COOK COUNTY, ILLINOIS.

LOT 3 IN 1420-1432 MEACHAM ROAD SUBDIVISION BEING A RESUBDIVISION IN THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 3, 2011 AS DOCUMENT NUMBER 1115429001, IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY

SCHEDULE 3 TO EXHIBIT C

LEGAL DESCRIPTION OF THE RESTRICTED AREA TO THE WEST

LOT 1 IN MTOWER RESUBDIVISION BEING A RESUBDIVISION OF PART OF LOT 8 IN SCHAUMBURG INDUSTRIAL PARK UNIT NO. 1, AND A PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property of Cook County Clerk's Office

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SCHEDULE 4 TO EXHIBIT C

Existing Tenants

None

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

COOK COUNTY
RECORDER OF DEEDS
SCANNED BY _____

Property of Cook County Clerk's Office