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Prepared by and after recording, return to:  
Samuel A. Orticelli, Esq.  
3N831 Bittersweet Road  
St. Charles, IL 60175

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DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (the "**Declaration**") is made this 21<sup>st</sup> day of February, 2013, by SCHILLER PARK COMMONS, LLC, an Illinois limited liability company ("**Declarant**").

## RECITALS

- A. Declarant is the owner of that certain real property located in the Village of Schiller Park (the "**Village**") in Cook County, Illinois, which property is depicted as Lots 1 through 5 (each a "**Lot**") and legally described on the Plat of Resubdivision (the "**Plat**") attached hereto as Exhibit A (the "**Real Property**");
- B. The Real Property is improved with a commercial development commonly known as Schiller Park Commons (the "**Shopping Center**");
- C. Declarant, as owner of the Real Property, Aldi, Inc., an Illinois corporation ("**ALDI**"), as a tenant of Lot 1 of the Shopping Center, and JPMorgan Chase Bank, N.A. ("**Chase**"), as a tenant of Lot 4 of the Shopping Center, have recently been in the process of redeveloping the Shopping Center by causing new construction of an ALDI store on Lot 1, a new freestanding bank on Lot 4 and a re-facing of the existing structures on Lots 2 and 3, all as depicted on the Site Plan attached hereto as Exhibit B.
- D. In connection with the redevelopment referenced above and the continued operation of the Shopping Center, Declarant desires to impose certain easements for the benefit and burden of all of the Real Property, and to establish certain covenants, conditions and

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restrictions with respect thereto, for the mutual and reciprocal benefit and complement of all of said Real Property and the present and future owners 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 covenants and agrees as follows:

## AGREEMENTS

### 1. Definitions. For purposes hereof:

- (a) The term "**Owner**" or "**Owners**" shall mean the Declarant and any and all of its successors or assigns as the owner or owners of fee simple title to all or any portion of the Shopping Center covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise. The Owner of any Lot may assign any or all of its rights and obligations hereunder to a ground lessee of such Lot; provided that such assignment shall be deemed effective only upon the delivery to Declarant or Responsible Owner of written evidence thereof executed by the Owner and such lessee.
- (b) The term "**Permittees**" shall mean Owners and the tenant(s) or occupant(s) of a Lot, and the respective employees, agents, contractors, customers, invitees and licensees of such Owners, tenants or occupants.
- (c) The term "**Common Areas**" shall mean Lot 5 and those other portions of, and facilities within, the Shopping Center which may be located on Lots 1, 2 and 3, and which are intended for the common use of the Occupants, their customers, agents and employees, including, without limitation, parking areas, driveways, roadways, walkways, landscaped areas and identification signage serving the entire Shopping Center. Notwithstanding the foregoing, no Common Areas are nor shall be situated upon Lot 4; provided, however, the easements granted in Sections 2.1(a) and (b) shall apply to Lot 4.
- (d) The term "**Laws**" shall mean all ordinances, statutes, orders, codes, directives, rules and regulations of the federal, state, county and municipal governments and of all other governmental authorities affecting the Real Property or the appurtenances thereto or any part thereof whether the same are in force at the recording of this Declaration or in the future passed, enacted or directed.
- (e) The term "**Occupant**" or "**Occupants**" shall mean any person or entity which shall from time to time be entitled to the use and occupancy of any portion of the Real Property pursuant to its ownership thereof or any lease, license or concession agreement or other instrument or arrangement under which the Occupant acquires its right to such use and occupancy during the term of such use and occupancy.

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(f) The term “**Responsible Owner**” shall be the Owner of Lot 3.

## 2. Easements.

2.1 Grant of Easements. Subject to any express conditions, limitations or reservations contained herein, Declarant hereby declares that each Lot within the Real Property shall be subject to the following nonexclusive, perpetual easements, which are for the benefit of every Owner and its Permittees and their respective successors and assigns:

(a) Access. An easement for access, ingress and egress over and across the Common Areas and Lot 4, including all driveways, access points, parking areas and walkways as presently or hereafter constructed and constituting a part of the of the Shopping Center, so as to provide for the passage of motor vehicles and pedestrians between all portions of the of the Shopping Center intended for such purposes, and to and from all abutting streets or rights of way furnishing access to the Shopping Center.

(b) Utilities. An easement under and across those parts of the Common Areas or other portions of the Real Property designated as utility easements on any recorded document affecting the Real Property (“**Utility Areas**”) 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 (collectively, the “**Utilities**”) necessary for the orderly development and operation of the Common Areas and each building from time to time located within the Lots to the extent such maintenance and repair is not performed by the applicable utility provider; provided that (i) the rights granted pursuant to such easements shall at all times be exercised in such a manner so as not to interfere materially with the normal operation of a Lot and the businesses conducted therein, and (ii) 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). Any installation of, and connection to, Utilities on the Lot of another Owner shall be at the sole expense of the installing/connecting Owner, and shall be permitted only upon receiving the prior written approval of the Owner of the Lot whereupon such installation/connection is to occur (the “**Burdened Owner**”), which such approval shall not be unreasonably withheld, conditioned or delayed. Any work performed by an Owner to connect, repair, relocate, alter, replace, maintain or install the Utilities shall be accomplished in a good and workmanlike manner using good-faith efforts reasonably calculated to minimize interference with the provision of such services to any other Owner. No Owner shall interfere with any Utilities if such interference would materially and adversely disrupt the orderly development and/or operation of the business conducted by any other Owner or overburden the existing Utilities facilities. Any installation, alteration, replacement or repair of Utilities within the Utility Areas shall be undertaken in a manner reasonably calculated to minimize the impact upon traffic circulation within the Lots and access

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of all users to the various business establishments in the Shopping Center. Unless otherwise provided for herein, all Utilities installed by an Owner pursuant to the easements granted herein, and serving only such Owner's Lot, shall be installed, maintained, and repaired by such Owner without cost or expense to any other Owner.

(c) Temporary Construction and Maintenance Easements. Declarant hereby grants to each of ALDI and Chase, temporary construction and maintenance easements over and across Lot 5 as shall be reasonably necessary to facilitate construction and maintenance of their respective facilities to be located on Lots 1 and 4; provided, however that no such easement shall (i) unreasonably impede access to any other Lot without the express written consent of the Owner of such Lot or (ii) prohibit or impede full access in and out of the Shopping Center from the existing access point on Irving Park Road. All construction shall be conducted in a manner which will limit to the maximum extent practicable any interference with the operation of the Shopping Center. Declarant shall have the right to approve (such approval to be not unreasonably withheld) all staging and storage areas prior to the commencement of construction to the extent such will encroach upon the Common Areas. Declarant reserves the right to establish reasonable rules and regulations governing hours and means of access to the Shopping Center by construction personnel and vehicles serving the Shopping Center so as to minimize (i) interference with concurrent construction activities, (ii) disruption of neighboring homeowners and/or businesses, and (iii) labor problems. During construction, ALDI and Chase shall cause their respective construction areas to be cleared on a daily basis in order to clear construction dirt and debris and if construction debris shall impact the Shopping Center, the applicable party shall immediately clear such dirt and debris from the Shopping Center. All construction shall be in compliance with ordinances, rules and regulations established by the Village.

In the event ALDI is authorized, either specifically by Declarant as landlord under the lease between Declarant and ALDI for Lot 1 (the "**ALDI Lease**"), or pursuant to rights of ALDI as contained in the ALDI Lease, or pursuant to any other agreement between Declarant and ALDI (including but not limited to any contract between ALDI and Declarant for the purchase and sale of Lot 1) to perform work in the Shopping Center other than the work for which the above easement is granted (the "**Other ALDI Agreements**"), such as work which is the responsibility of Declarant as landlord under the ALDI Lease, then the above easement shall be expanded for that purpose, so that the easement extends over those Lots in the Shopping Center as may be required for ALDI to perform such work.

In the event Chase is authorized, either specifically by Declarant as landlord under the lease between Declarant and Chase for Lot 4 (the "**Chase Lease**"), or pursuant to rights of Chase as contained in the Chase Lease, to perform work in the Shopping Center other than the work for which the above easement is granted, such as work which is the responsibility of Declarant as landlord under the Chase Lease, then the above easement shall be expanded for that purpose, so that the easement extends over those Lots in the Shopping Center as may be required for Chase to perform such work.

(d) Parking. Subject to the terms of this Section 2.1(d), each Lot Owner, Occupant and their respective Permittees shall have the right to use, in common with all other Lot Owners,

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Occupants and their respective Permittees, all of the parking areas developed on the Common Areas. The right to park on Lot 4 and in the Replacement Parking Spaces (defined below) shall at all times be exclusive to Chase or its successors and assigns, and Chase or its successors and assigns shall have the right to enforce such exclusive parking rights including the marking of such parking spaces accordingly and the towing of unauthorized vehicles. In the event that Chase or its successors or assigns is precluded from using any of the parking spaces on Lot 4 as a result of the right of way easement described in the plat recorded on December 19, 1934 as Document No. 11527429, then Chase or its successors and assigns shall be entitled to, and the Declarant or Responsible Owner shall designate, up to ten (10) parking spaces (one parking space for each space that Chase or its successors and assigns is precluded from using) on Lot 5 located in the area designated as the “**Replacement Parking Spaces**” on **Exhibit F** attached hereto and incorporated herein, for the exclusive use of Chase or its successors and assigns (the “**Replacement Parking Spaces**”).

(e) Signage. So long as ALDI (or any successor or assignee) is an Occupant of the Shopping Center, it shall have the right and is hereby granted an easement for the purpose of installing, maintaining and illuminating its two (2) sided graphic sign panels in the top position on the Shopping Center multi-user sign located as depicted on the site plan attached hereto as **Exhibit B** (the “**Shopping Center Sign**”). ALDI shall be responsible for the maintenance of its graphic sign panels, at its sole cost and expense. Electric service for the sign panels shall be included in Operating Costs as defined in Section 3.3 below.

So long as Chase (or any successor or assignee) is an Occupant of the Shopping Center, it shall have the right and is hereby granted an easement for the purpose of installing, maintaining and illuminating its two (2) sided graphic sign panels in the bottom position on the Shopping Center Sign. Chase shall be responsible for the maintenance of its graphic sign panels, at its sole cost and expense. Electric service for the sign panels shall be included in Operating Costs as defined in Section 3.3 below.

(f) Common Area. If any portion of any parking area or drive area installed by Declarant intended to benefit all of the Occupants shall encroach upon any portion of Lots 1, 2, 3 or 4, an easement for such use is hereby established on such Lot or Lots, as the case may be; provided, however, that such encroachment shall, for all purposes of this Declaration (including maintenance, repair and insurance) shall be deemed to be Common Area.

(g) Building Encroachments. An easement is granted permitting encroachments of the existing building on Lot 1 onto Lot 2 and of the existing building on Lot 2 onto Lot 1 to the extent that, by reason of the original construction or any replacement thereof or subsequent settling or shifting, either building shall encroach on the adjoining Lot.

2.2 Indemnification. Each Owner having rights with respect to an easement granted hereunder shall indemnify and hold the other Owners harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, liens (including mechanics liens) or damage of or to any person or property arising from or in any manner relating to the use by the indemnifying Owner or its Permittees of any easement

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granted hereunder, except as may result from the negligence or intentional misconduct of the Owner whose Lot is subject to the easement or its Permittees and except claims resulting from the joint or sole negligence or willful act or omission of the indemnified Owner, or its Permittee, in which case the indemnification shall be in proportion to the indemnifying Owner's allocable share of negligence or willful misconduct.

2.3 Liens. In the event any mechanic's lien is filed against the Lot of one Owner as a result of services performed or materials furnished by or for the benefit of another Owner (the "**Contracting Owner**"), the Contracting Owner shall cause such lien to be discharged within forty five (45) days after receiving notice thereof either by paying the indebtedness which gave rise to such lien, or by posting bond or other security as shall be required by law to obtain such release and discharge. A Contracting Owner may contest such lien so long as it provides to the Owner whose Lot is affected an indemnity from the title insurance company insuring such Owner's title, insuring such Owner against all losses that may arise because of such lien.

### 3. Maintenance.

3.1 General. The Owner of each Lot, at its expense, shall maintain or shall cause the Occupants thereof to maintain, such Owner's Lot and all buildings and loading areas located thereon, in a clean and neat condition. However, since portions of the Common Areas are included in each Owner's Lot, the preceding sentence is qualified to the extent that the Owner of each Lot shall NOT be responsible for maintaining the Common Areas on such Owner's Lot (such responsibility being assigned to Responsible Owner as set forth in Section 3.2 hereof), and it being a further condition that the Owner of Lot 4, at its sole expense, shall maintain or shall cause the Occupants thereof to maintain, all walkways, driveways, parking areas and landscaping on Lot 4 (such portions of Lot 4 are not within the definition of Common Areas). The Owner of Lot 5 or the Responsible Owner shall maintain the Common Areas, including those portions of the Common Areas located on each Owner's Lot, per Section 3.2 hereof, subject to reimbursement by the Owners for their Proportionate Share of the Operating Costs attributable to the Common Areas.

3.1A Environmental Matters. The Owner of each Lot shall use its best efforts to cause its Lot to be and remain in compliance with all applicable "**Environmental Laws**". For purposes hereof, Environmental Laws means each and every applicable federal, state, regional, county or municipal statute, ordinance, rule, regulation, order, code, directive or requirement, relating to the environment or hazardous materials, including without limitation the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. sec 9601 et seq.; the Federal Water Pollution and Control Act, 33 U.S.C. Sec 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. sec 2601 et seq.; the Clean Air Act, 42 U.S.C. sec 7401 et seq.; and the Federal Underground Storage Law, Subtitle I of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sec 6901 et seq.; now or hereafter existing, together with any amendments thereto, regulations promulgated thereunder and all substitutions thereof, and any successor statutes, ordinances, rules, regulations, orders, directives or requirements now or hereafter existing. If it is discovered that any Lot is not in material compliance with Environmental Laws

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(an “**Environmental Condition**”), the Owner of the Lot that is not in compliance shall take all actions required, including environmental cleanup of the Lot, to comply with the covenants contained herein or applicable legal requirements, and in any event, shall take all action deemed necessary under all applicable Environmental Laws to remedy such Environmental Condition. Notwithstanding any provision of this Section 3.1A to the contrary, no Owner shall have any responsibility for any Environmental Condition of its Lot if and to the extent such Environmental Condition existed prior to the conveyance by Declarant of that Lot to such Owner, all such responsibility being expressly assumed and held by Declarant. Further, and notwithstanding any provision of this Section 3.1A to the contrary, the Owner of any Lot shall be responsible for an Environmental Condition on its Lot only if such Owner caused said Environmental Condition. Each Owner, and the Declarant as to any period prior to conveyance of a Lot by Declarant, agrees to indemnify and hold all other Owners and Occupants harmless from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, judgments, administrative orders, remediation requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorneys’ fees and expenses) arising out of any material breach by the Owner or Declarant, as applicable, of its obligations under this Section.

3.1B. Declarant’s Remaining Work. Declarant, at its expense, shall perform and complete certain work to the façade of the buildings on Lot 2 and Lot 3 and the shared monument sign for the Shopping Center (such work being referred to herein as “Declarant’s Remaining Work”), which is more particularly described in the ALDI Lease and Other ALDI Agreements, not later than May 31, 2013 (the “Outside Completion Date”). In the event Declarant has not completed Declarant’s Remaining Work by the Outside Completion Date, then ALDI (so long as ALDI is an Occupant of the Shopping Center) shall have the right to complete Declarant’s Remaining Work and ALDI shall be entitled to reimbursement for any funds spent or costs incurred by ALDI in connection with such completion (the “ALDI Renovation Costs”) by means of offsetting the ALDI Renovation Costs against the amounts ALDI would otherwise be required to pay, either as an Owner of Lot 1 or as a tenant of Lot 1, for the Proportionate Share of Operating Costs and Common Area Taxes attributable to the Owner of Lot 1. To the extent that ALDI offsets the ALDI Renovation Costs as aforesaid, the Declarant shall contribute a like amount towards Operating Costs and Common Area Taxes, in addition to any other amounts that Declarant may owe as an Owner of any other Lot, as and when the amounts that ALDI offsets would have come due. In the event that Declarant fails to make the additional contributions required in this Section 3.1B, Declarant shall be deemed to be a Defaulting Owner as provided in Section 9.3 hereof, and the lien rights afforded under Section 9.3 hereof shall extend to any other Owner who may elect to cure Declarant’s default in payment and thereby become a Non-Defaulting Owner as provided in Section 9.3 hereof.

3.2 Common Areas. The Owner of Lot 3, its successors and assigns (the “**Responsible Owner**”) at all times during the term hereof shall operate and maintain or cause to be operated and maintained at its expense (subject to reimbursement as set forth below) all Common Areas located within the Shopping Center and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter, rodents, vermin or debris. Maintenance of the Common Areas shall include, without limitation, maintaining and keeping in

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good order and repair, all access roads, parking spaces (including keeping parking areas properly striped), common delivery areas, driveways and aprons, aisles, curbing, sidewalks, walkways, landscaped areas, planters, lighting and Shopping Center identification signs and directional signs, and utility facilities serving more than one Lot, removing all papers, debris and other refuse, snow and ice and periodically sweeping all parking and road areas to the extent necessary, and keeping Common Areas lighted during hours of darkness while stores are open for business, all so as to maintain the same in a clean, safe and orderly condition, and in compliance with all applicable laws and ordinances and otherwise in a first class condition. The Responsible Owner shall also ensure that (a) the requirements set forth in Section 5.4 hereof are adhered to, and (b) no permanent or temporary structures (except for signs and such temporary structures relating to construction as provided hereunder) shall be constructed or placed on the Common Areas without the express consent of all of the Owners.

3.3 Payment of Operating Costs. For purposes hereof, "**Operating Costs**" shall mean all costs of the maintenance and repair as shall be required in the Responsible Owner's or its designee's judgment to preserve the utility and condition of the Common Areas in substantially the same condition and status as they were in as of the time of the completion of the redevelopment referred to in the Recitals of this Declaration; including, but not limited to: (a) lighting (including the cost of light bulbs and electric current), sewer, water, drainage, gas and electricity furnished to the Common Areas; (b) ordinary repairs, cleaning and maintenance and the annual amortized portion of non-recurring repairs or improvements (but not capital expenditures) such as parking lot sealing, striping, or other repairs required on the Common Areas; (c) landscaping maintenance including plantings, replantings and replacing flowers and the annual amortized portion of landscaping replacement (but not any new or additional landscaping) on the Common Areas; (d) Shopping Center security; (e) Shopping Center common signage; (f) costs of property insurance covering improvements on Common Areas as well as commercial general liability insurance on Lot 5; (g) costs of snow removal from Lot 5 and other Common Areas; (h) a management fee, which shall be in no event in excess of five percent (5%) of the Operating Costs (exclusive of insurance, Common Area Taxes, and individual expenditures in excess of \$10,000); (i) traffic direction and control; (j) pest control; (k) reasonable replacement reserves as determined by generally acceptable accounting standards, which for any given calendar year shall in no event be in excess of five percent (5%) of other Operating Costs for that year and which will be placed in a segregated account with an accounting for the use of such replacement reserves to be made available to any Lot Owner for examination and inspection and to be delivered to each Lot Owner at the same time as the Reconciliation Statement (as hereinafter defined) is delivered, and (l) such other costs as the Responsible Owner may determine in its reasonable discretion are necessary or desirable for the proper maintenance of the Common Areas.

Notwithstanding the above definition of Operating Costs, or anything else in this Declaration to the contrary, the term Operating Costs shall not include (a) costs of a capital nature, including all capital improvements, alterations, repairs and/or replacements (for purposes hereof, "costs of a capital nature" shall mean the cost of any item or service the useful life of which exceeds sixty (60) months), except to the extent of the annual amortized portion of such items projected to be incurred and which amortized portion will be includable in replacement



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reserves; (b) depreciation or amortization of the Shopping Center, any portion or component of the Shopping Center or any equipment or other property; (c) loan payments, principal or interest, or ground lease or similar payments; (d) the following costs relating to tenant leases: leasing costs, including costs of leasing equipment considered to be of a capital nature, consulting fees, brokerage commissions, accounting fees, legal fees, vacancy costs, rent or other concessions, refurbishment or improvement expenses, costs related to repairs of heating, ventilating and air conditioning systems in any tenant leased space, and any other costs relating to repair or maintenance of any tenant leased space; (e) any and all collection costs, including legal fees and or bad debt losses or reserves; (f) any otherwise permissible fees or costs to the extent in excess of prevailing and competitive rates; (g) any costs or expenses resulting from a violation by Declarant or Responsible Owner of any agreement to which it is a party or any applicable laws or ordinances or governmental rules, regulations or orders; (h) any expenses relating to the maintenance, repair or replacement of any of the buildings in the Shopping Center or of Common Areas located on any Lots other than Lot 5; (i) costs incurred by Declarant or Responsible Owner to the extent that Declarant or Responsible Owner is reimbursed by insurance proceeds, governmental agencies or entities, or any tenant or other person; (j) costs, including compensation paid to clerks, attendants or other persons, in connection with any commercial concession operated by Declarant or Responsible Owner, including such costs that relate to the operation of the parking areas; (k) advertising and promotional expenditures for promoting the Shopping Center and purchasing or construction costs of signs in or on the Shopping Center identifying the owner of the Shopping Center; (l) costs relating to the negligence of Declarant or Responsible Owner or their contractors, agents or employees or the payment of any claims or damages resulting from such negligence; (m) costs associated with work done by Declarant as landlord under the ALDI Lease or Other ALDI Agreements, including façade and parking lot renovations, as well as costs associated with work done by any landlord under any lease if such costs are not otherwise considered Operating Costs hereunder; and (n) costs and expenses incurred by Declarant or Responsible Owner for the removal, abatement or containment of hazardous substances that cause, have caused or might cause an Environmental Condition.

At such time as the Responsible Owner, in its reasonable judgment, deems it necessary to perform capital repairs or improvements to the Common Area (which the Responsible Owner has a duty to perform if such capital repair or improvement to the Common Area is necessary in order to keep the Common Area in a first class condition), it shall obtain at least 3 competitive bids for such work. The bids shall be submitted to the Owners for their selection. The bid which is selected unanimously by the Owners shall be awarded, the work completed, and payment therefor shall be made from the reserve account. In the event there is not a unanimous selection of one of the bids, the bid that will be awarded will be the bid that is selected by Owners with the highest combined Proportionate Shares (as defined and identified below). In the event an Owner other than the Responsible Owner deems it necessary that a capital repair or improvement to the Common Area is necessary in order to keep the Shopping Center in a first class condition, that Owner may propose the capital repair or improvement to the other Owners by obtaining at least 3 competitive bids for such work, and submitting the bids to the other Owners for their review and approval. The other Owners shall not unreasonably withhold their approval and their approval shall be deemed to have been given if the proposing Owner and either the Owner of Lot 2 or the

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Owner of Lot 3 affirmatively approve the capital repair or improvement or such capital repairs or improvements to the Common Area are necessary to keep the Common Area in a first class condition. In that event, and provided the requisite approvals are given by Owners or deemed to have been given as provided hereinabove, the proposing Owner shall manage the work of the capital repair or improvement, and shall submit the cost thereof to the Responsible Owner for payment by the Responsible Owner from the reserve account. Following the completion of such capital repair or improvement work, to the extent that the cost of such capital repair work is not covered by the replacement reserve, each Owner shall pay its Proportionate Share of the remaining cost thereof within thirty (30) days after receipt of an invoice for such work from the Responsible Owner, which invoice shall be accompanied by supporting documentation including; (i) evidence of the bids obtained, (ii) an explanation of the selected bid, (iii) evidence that the work has been completed in a satisfactory manner, and (iv) the calculation of each Owner's Proportionate Share thereof. The Responsible Owner or such proposing Owner undertaking the work of the capital repair or improvement as permitted by this Section 3.3 shall provide evidence, in the form of a final lien waiver, that the work has been fully paid for, within thirty (30) days of the date the Owner delivers its Proportionate Share of the cost of such work.

The Owners of the Lots shall pay their respective Proportionate Share (defined below) of the Operating Costs to the Responsible Owner together with their respective Proportionate Share of real estate taxes attributable to Lot 5, ("Common Area Taxes"). For purposes of sharing Common Area Taxes and Operating Costs, the applicable "Proportionate Share" of each Lot shall be as follows:

Lot 1.....	30%
Lot 2.....	27%
Lot 3.....	29%
Lot 4.....	14%

Notwithstanding the above stated Proportionate Share for Lot 4, in the event that application of the Proportionate Share for Lot 4 to the Operating Costs (exclusive of expenses attributable to snow removal and insurance) in any given year, other than the first two calendar years following the recording of this Declaration, would result in an assessment to the Owner of Lot 4 of a share of the Operating Costs (exclusive of expenses attributable to snow removal and insurance) that exceeds an amount which is three percent (3%) higher than the amount assessed to the Owner of Lot 4 for the immediately preceding calendar year, then such excess shall be assessed against and paid for by the Owner of Lot 3 instead.

Notwithstanding the above stated Proportionate Share for Lot 1, in the event that application of the Proportionate Share to the Operating Costs (exclusive of expenses attributable to snow removal, insurance and non-recurring repair items not of a capital nature) in any given year, other than the first two calendar years following the recording of this Declaration, would result in an assessment to the Owner of Lot 1 of a share of the Operating Costs (exclusive of expenses attributable to snow removal, insurance and non-recurring repair items not of a capital nature) that exceeds an amount which is five percent (5%) higher than the amount assessed to the

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Owner of Lot 1 for the immediately preceding calendar year, then such excess shall be assessed against and paid for by the Owner of Lot 3 instead.

Prior to the commencement of each calendar year (or partial calendar year for the first year) that this Declaration shall be in effect, but not later than October 1 of each calendar year, the Responsible Owner shall deliver to each Owner a budget showing in detail on a line item basis the costs and expenses anticipated to be incurred as Operating Costs for the following calendar year, and a calculation of that Owner's Proportionate Share of such Operating Costs. The Owner shall pay one twelfth (1/12) of such estimate to the Responsible Owner on the first day of each calendar month, monthly in advance, commencing on January 1<sup>st</sup> of the calendar year to which the budget pertains. Within ninety (90) days after expiration of each calendar year, the Responsible Owner shall deliver to each Owner a statement in detail on a line item basis, with supporting documentation, showing actual Operating Costs for the preceding calendar year, a calculation of the Owner's Proportionate Share of actual Operating Costs, the aggregate amount of estimated payments made by that Owner for such Operating Costs for such calendar year, and a calculation of the overpayment or underpayment made by that Owner (a "**Reconciliation Statement**"). Within thirty (30) days following an Owner's receipt of a Reconciliation Statement, the Owner shall pay the Responsible Owner the amount of any underpayment, and in the event that any Owner has overpaid its share of Operating Costs for the applicable year, said overpayment shall be credited to that Owner's share of Operating Costs for the immediately succeeding calendar year and shall be considered by Responsible Owner in setting the amount of such Owner's monthly payments of estimated Operating Costs for the succeeding calendar year.

If there is more than one (1) Owner of a Lot, the Proportionate Share attributable to each such partial Owner shall be a fraction of the total share for such Lot (as set forth above) the numerator of which is the square footage of the land comprising said Owner's portion of said Lot and the denominator of which is the square footage of all of the land comprising said Lot.

Any Owner or ALDI or Chase shall have the right to audit the Operating Costs for any year, including charges for insurance, utilities and other charges, as well as Common Area Taxes, for which Responsible Owner has billed such Owner during any preceding calendar year or accounting period. The Owner shall have the right to conduct this audit not more than once each year to determine if the Operating Costs and Common Area Taxes are correct and Responsible Owner shall fully cooperate in such regard. If an audit discloses any charge to Owner which is three percent (3%) or more in excess of the amount actually owed by Owner, Responsible Owner shall be responsible for and shall reimburse Owner for the costs of the audit conducted plus interest from the date paid until the date refunded at five percent (5%) or the highest lawful rate, whichever is less.

The lien rights afforded under Section 9.3 hereof shall extend to the Responsible Owner against the property of any other Owner for amounts not paid by that Owner for that Owner's Proportionate Share of Operating Costs as required by this Section 3.3.

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4. Construction and Design of Improvements. Every building (including its appurtenant Common Area improvements), now or in the future constructed on a Lot shall be of first quality construction and in conformity with all applicable laws. Responsible Owner shall have the right to approve the site plan of any building to be constructed on a Lot, and accordingly, prior to submission of any zoning or building permit application, an Owner or Permittee shall submit its site plan to Responsible Owner for its approval, which approval shall not be unreasonably withheld or delayed. The foregoing notwithstanding, (a) development on Lot 4 shall not be subject to the Responsible Owner's approval if and so long as Lot 4 is occupied by Chase and (b) development on Lot 1 shall not be subject to Responsible Owner's approval if and so long as Lot 1 is occupied by ALDI, or its successors or assigns.

All work performed by Declarant or Responsible Owner in or on the Common Areas shall be done in a manner that minimizes interference with the business operations of all Owners. Any demolition or construction area which is part of such work shall be fenced and screened from view of Owner's customers, to the extent practical. During any such demolition or construction, Declarant or Responsible Owner shall maintain at all times not less than seventy (70) non-exclusive parking spaces for use by the Owners and their customers and employees.

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. No fence (except approved temporary construction fencing) shall be erected on any Lot in such manner as to inhibit or restrict access to and from any other Lot or the Common Area. In addition to the foregoing, as long as ALDI, Chase or any successors or assign of either is an Occupant, no Occupant of the Shopping Center shall use the Shopping Center for any of the "**Restricted Uses**" set forth in Exhibit C attached hereto, but the foregoing restriction shall not be construed as prohibiting any of Jackson Hewitt, Dairy Queen, Dunkin' Donuts, Subway, El Salitre Restaurant, Jim's Liquors, Fog's #3, BB's Produce, ALDI, and Chase, which are existing tenants of the Shopping Center, from conducting the businesses they are presently conducting at the Shopping Center.

5.2 ALDI Exclusive Use. So long as ALDI, its successors or assigns is an Occupant on Lot 1, no other portion of the Shopping Center shall be used for the operation of a retail food store. The term "**retail food store**" shall include, without limitation, a supermarket, meat market, grocery store, fruit and vegetable store or stand, frozen or otherwise processed food store or any store where (a) more than two thousand (2,000) square feet are used for the sale of groceries in such establishment or (b) the area used for the display of refrigerated or frozen items exceeds two hundred (200) square feet in the aggregate. Further, no portion of the Shopping Center shall be owned, controlled, leased, used or occupied for the conduct of a food market or food department that exceeds two thousand (2,000) square feet in any department store or variety store occupying or using any part of the Shopping Center (collectively, the foregoing referred to as a "**Competing Store**"). Notwithstanding the foregoing, (i) any use in the Shopping Center as of the date of this Declaration (without expansion of use in terms of the space devoted to such

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use or the nature of such use) shall not be prohibited hereunder, and (ii) a delicatessen, drug store, or any restaurant or lunch room wherein prepared food is sold for on-premises consumption or for “take-out” consumption, or Dunkin’ Donuts’ of a doughnut shop shall not be deemed to be a Competing Store.

5.3 Chase Exclusive Use. So long as Chase, its successors or assigns, shall be operating a Chase bank or related financial facility on Lot 4, no other portion of the Shopping Center shall be used for a full service financial institution, including ATMs and/or drive-through facilities, directly or through subsidiaries and affiliates, including without limitation providing banking, mortgage lending, insurance and securities services in the Shopping Center, and no other financial institution (including without limitation, a drive-through facility or ATM) shall be allowed to operate or perform any similar financial services in or on the Shopping Center. The foregoing shall not be deemed to prohibit a brokerage or investment advisory business or the operation of an ATM within any of the inline stores within the Shopping Center or the operation of any banking facility or ATM within the ALDI store premises located in the Shopping Center and further, shall not preclude ALDI’s practice of accepting debit cards and giving cash back to customers; provided, however, that so long as Chase is an Occupant, in no event shall ALDI or any other store in the Shopping Center be entitled to have any exterior signage advertising such ATM or any interior signage visible from the exterior of such store.

5.4 ALDI and Chase Rights. ALDI and Chase shall each have full and complete right to prohibit commercial or charitable solicitation, advertising, dissemination of handbills or picketing in the area designated as “**Controlled Access Property**” (hereinafter the “**CAP**”) on Exhibit D, and ALDI and Chase shall have the right to post the CAP with “no solicitation” signs and/or signs indicating the above described restrictions. If ALDI or Chase is required by law to permit picketing or hand billing on the CAP, such activity will be permitted only in the six-foot by ten-foot area designated on Exhibit D as the “**Hand Bill Area**”. In the event any third party challenges or contests the exercise by ALDI or Chase of the rights set forth in this Section 5.4, ALDI or Chase, as applicable, will be solely responsible, at its cost, for defending or otherwise addressing such challenge or contest, and ALDI or Chase, as applicable, shall defend, indemnify and hold Declarant and the Responsible Owner harmless from and against any cost (including reasonable attorney’s fees), expense or liability of any kind arising from, caused by or relating to any such challenge or contest.

For so long as ALDI is an Occupant of Lot 1, without the specific consent of ALDI, no changes may be made in the number or configuration of the parking spaces located adjacent to the ALDI store as depicted on Exhibit B attached hereto (being the 153 spaces shown on Exhibit B, excluding those located on Lot 4 and any Replacement Parking Spaces that may be designated for the exclusive use of Chase or its successors or assigns pursuant to Section 2.1(d) hereof, but in no event fewer than 125 spaces) (the “**Adjacent Parking**”). Further, as long as ALDI and Chase are Occupants of Lots 1 and 4 respectively, without the specific written consent of ALDI and Chase, no party shall construct or erect any improvements or make any change or alteration to the configuration of the Shopping Center within the “**No-Build Area**” as depicted on Exhibit E attached hereto; provided, however, the foregoing restrictions shall not apply to parking areas, landscape elements, curbing or concrete slabs. Without the written consent of all

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of the Owners and ALDI and Chase (as to each of ALDI and Chase, as long as it is an Occupant), there shall be no alteration of the configuration of the Common Areas, including the parking areas depicted on the Common Areas depicted on the Site Plan, methods of ingress and egress from public roads, direction of traffic on the Common Areas, lighting and curbing on the Common Areas, and building location, as depicted on the Site Plan. In addition, no buildings within the Shopping Center may exceed thirty (30) feet in height (measured from the finished floor) without the written consent of all of the Owners and ALDI and Chase (as long as they are an Occupant). Further, no changes may be made to the Common Areas, including the construction of improvements thereon, which adversely affect the availability of convenient parking for, the ingress to or egress from or visibility of the improvements on any Lot without the prior written consent of the Owner of such affected Lot and ALDI or Chase, as applicable, for so long as they are Occupants of such affected Lot; provided, however, this provision shall not be interpreted to restrict or prohibit the Owner of Lot 4, and its Permittees, including Chase, from using the Replacement Parking Spaces as permitted under Section 2.1(d) above. Notwithstanding the foregoing, for purposes of facilitating construction within the Shopping Center, the installation of temporary structures and/or the making of temporary changes in construction in the Common Areas is permissible, provided that such installations and changes (a) shall not unreasonably negatively affect access to, parking for or visibility of the ALDI store or the Chase bank, and (b) shall not continue for more than one hundred twenty (120) days in the aggregate during any twelve (12) month period.

All rights and obligations of ALDI and Chase as contained in this section 5.4 shall be applicable to, inure to the benefit of, and become the obligations of, any successors or assigns of ALDI and/or Chase.

5.5 No Owner shall interfere with, close off, or reconfigure any portion of "Necessary Access" as shown on **Exhibit B**, and no Owner shall permit its tenant or Occupant to do so. The Responsible Owner and the Owner of the property which includes the "Necessary Access" as shown on **Exhibit B** shall use its best efforts to keep open at all times (other than temporary closures for repairs or to prevent dedication to the public or pursuant to governmental mandate which are herein referred to as a "Temporary Closure") all curb cuts and driveways designated as "Necessary Access" on **Exhibit B**. If any portion of the Necessary Access is closed (other than a Temporary Closure) then the Owner of Lot 4 and Chase for as long as it is an Occupant of Lot 4 and the Owner of Lot 1 and ALDI for as long as it is an Occupant of Lot 1 may use any means necessary, as determined in their sole discretion (without being liable for any claim for damages therefor) to cause such portion of the Necessary Access to be open and free from impediment. In addition, if any portion of the Necessary Access is closed (other than a Temporary Closure), the Owner of the property containing the portion of the Necessary Access which is closed shall indemnify the Owner of Lot 4 and Chase or the Owner of Lot 1 and ALDI, as applicable, for any and all damages resulting from such closure.

6. Insurance. Throughout the term of this Declaration, each Owner of a Lot shall procure and maintain commercial general liability and, if necessary, commercial umbrella liability insurance against claims for personal injury, death, or property damage occurring upon such Owner's Lot, with per occurrence coverage of not less than Two Million Dollars (\$2,000,000.00)

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or such greater amount as may from time to time be reasonable and prudent under the circumstances, and naming each other Owner as additional insureds as their interest may appear. This insurance is to insure against potential liability for losses or damages that might occur on or to any Lot, including, without limitation, the easement areas thereof. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by an Owner which may cover other property in addition to the property described in this Declaration. Such insurance shall provide that should it be cancelled, notice of such cancellation shall be given to the other Owners and the insurer shall endeavor to give such notice not later than 30 days prior to the effective date of such cancellation. The cost of such insurance for Lot 5 shall be part of Operating Costs and shall not be the expense of the Owner of Lot 5.

7. Taxes and Assessments. Each Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Lot and improvements thereon. Each Owner shall also pay its Proportionate Share of Common Area Taxes, together with its Proportionate Share of Operating Costs. Notwithstanding the foregoing, the Owner of Lot 5 shall have no responsibility to pay any share of Common Area Taxes, it being understood that only the Owners of Lots 1, 2, 3 and 4 shall participate in the expense of Common Area Taxes. Prior to the commencement of each calendar year (or partial calendar year for the first year that this Declaration shall be in effect), but not later than the later of (i) October 1st of each calendar year or (ii) thirty days after receipt by Responsible Owner of the proposed assessed valuation for Lot 5 from the county assessor for the following calendar year, the Responsible Owner shall deliver to each Owner an estimate of the Common Area Taxes for the following calendar year, and a calculation of that Owner's Proportionate Share of such Common Area Taxes. The Owner shall pay one twelfth (1/12) of such estimate to the Responsible Owner on the first day of each calendar month, monthly in advance, commencing on January 1<sup>st</sup> of the calendar year to which the estimate pertains. Within ninety (90) days after expiration of each calendar year, the Responsible Owner shall deliver to each Owner a statement, with copies of the tax bill for Lot 5 and proof of payment thereof, showing a calculation of the Owner's Proportionate Share of actual Common Area Taxes, the aggregate amount of estimated payments made by that Owner for such Common Area Taxes for such calendar year, and a calculation of the overpayment or underpayment made by that Owner (a "**Reconciliation Statement**"). Within thirty (30) days following an Owner's receipt of a Reconciliation Statement, the Owner shall pay the Responsible Owner the amount of any underpayment, and in the event that any Owner has overpaid its share of Common Area Taxes for the applicable year, said overpayment shall be credited to that Owner's share of Common Area Taxes for the immediately succeeding calendar year and shall be considered by Responsible Owner in setting the amount of such Owner's monthly payments of estimated Common Area Taxes for the succeeding calendar year. Each Owner shall have the right to contest, or to grant to such Owner's Occupants a right to contest, Common Area Taxes. For purposes hereof, an Owner's obligation to pay Common Area Taxes shall mean Common Area Taxes assessed for the applicable calendar year rather than payable during such calendar year, and shall include an obligation to pay any Owner's reasonable cost to contest said Common Area Taxes, including without limitation, attorneys' fees, provided such cost shall not exceed the savings realized from any such contest. The lien rights afforded under Section 9.3 hereof shall extend to the Responsible Owner against the property of any other

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Owner for amounts not paid by that Owner for that Owner's Proportionate Share of Common Area Taxes as required by this Section 7.

Until such time as a separate permanent index number shall be issued with respect to an Owner's Lot, then such Owner shall pay its proportionate share of general real estate taxes and installments of special assessments for all tax bills that pertain to all or a portion of such Lot. Said Owner's proportionate share shall be, as to land, a fraction of any such bill, the numerator of which is the number of square feet of land in said Owner's Lot, and the denominator of which is the total number of square feet of land covered by said tax bills, and as to improvements, a fraction, the numerator of which is the number of square feet of said Owner's building that existed during the applicable assessment year (prorated for any building existing during only a portion of such year), and the denominator of which is the total number of square feet of all buildings covered by said tax bills. For so long as Declarant or any other Owner (a "**Receiving Owner**") shall receive a real estate tax bill affecting another Owner's Lot, the Receiving Owner shall notify the other affected Owners (the "**Non-Receiving Owners**") of same within thirty (30) days after receipt of said tax bill, together with a copy of the bill, a calculation of the Non-Receiving Owner's share thereof, and reasonable evidence supporting such calculation and the Non-Receiving Owner shall pay the Receiving Owner (which may be by check payable to the taxing authority) its share of said bill no later than five (5) days before the date such taxes must be paid before becoming delinquent. Upon receipt of the Non-Receiving Owner's share of the subject tax bill or bills, the Receiving Owner shall pay same to the taxing authority. Nothing herein shall obligate a Receiving Owner to pay any taxes attributable to a Non-Receiving Owner's Lot unless the Non-Receiving Owner shall have paid its share of taxes to the Receiving Owner. The lien rights afforded under Section 9.3 hereof shall extend to the Receiving Owner for amounts not paid by the Non-Receiving Owner. Within thirty (30) days after the receipt of a received tax bill, the Receiving Owner shall deliver a copy of the received tax bill to each Non-Receiving Owner who has paid its share of said tax bill. All Non-Receiving Owners shall have the right to contest tax bills affecting their Lots and the Receiving Owner shall cooperate in connection therewith.

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 any Lot. No easements, except those expressly set forth herein in Paragraph 2, shall be implied by this Declaration.

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, after written notice and thirty (30) days to cure such breach, any other Owner or Owners shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. All remedies and self-help rights available to an Owner, including those pursuant to Section 9.3 and Section 11 below, shall be



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available to each of ALDI and Chase (and their respective successors, sublessees and assigns) so long as such entity is an Occupant.

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

9.3 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner (a "**Defaulting Owner**") to cure a breach of this Declaration within thirty (30) days following written notice thereof by a Non-Defaulting 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) an Owner (a "**Non-Defaulting Owner**") shall have the right to perform such obligation contained in this Declaration on behalf of the Defaulting Owner and be reimbursed by such Defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate of JPMorgan Chase Bank, N.A. (its successors or assigns) (the "**Prime Rate**"), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law), and shall automatically be deemed to have a lien in such amount on the Defaulting Owner's property which is subject to the terms of this Declaration, which lien shall remain until such amount is paid in full or the Non-Defaulting Owner shall record a release thereof. Notwithstanding the foregoing, in the event of (i) an emergency or (ii) blockage or material impairment of the easement rights granted hereunder and/or (iii) the unauthorized parking of vehicles on a Lot, (collectively, an "**Emergency**") a Non-Defaulting Owner shall be required to give only such notice to the Defaulting Owner as may be reasonable under the circumstances, and said Non-Defaulting Owner may then perform such obligations of the Defaulting Owner as may be necessary to cure the Emergency. In such event, the Defaulting Owner shall pay the Non-Defaulting Owner on demand for the reasonable cost of such cure together with interest at the Prime Rate, plus two percent (2%), and the Non-Defaulting Owner shall automatically be deemed have a lien for such amount as described above. In the event that the Responsible Owner is in default of its obligations with respect to the Common Area, then a Non-Defaulting Owner who performs such obligations may off-set the costs of the cure thereof (including interest as described above) against the amount of the Proportionate Share it would otherwise pay to the Responsible Owner pursuant to the terms of Section 3.3 and Section 7 hereof. A Non-Defaulting Owner having a lien on the property of a Defaulting Owner pursuant to the terms hereof shall have the right to take such action as necessary to perfect or foreclose upon such lien.

10. Term. The 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 for a period of 100 years from and after said date of recordation, and the easements granted herein shall continue in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then

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record Owners of the Lots in accordance with paragraph 11.2 hereof or if any term or provision hereof would otherwise be unlawful and void or voidable for violation of the rule against perpetuities or any other common law or statutory rule pertaining to the duration of such easements and rights, then such term or provision shall be effective only until the date which is twenty-one (21) years after the death of the last surviving descendant, currently living, of Barack Obama, President of United States, alive on the date of this Declaration.

## 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 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. 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 all of the Lots, 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, provided, however, that Declarant shall have the right to amend this Declaration without the consent of any Owner, so long as such amendment shall not increase the obligation of any Owner or diminish the rights of any Owner hereunder. Notwithstanding the foregoing, any amendment of this Declaration that would materially and adversely affect the rights or obligations of any Owner, Chase or ALDI, or successors or assigns thereof, shall require the prior written approval of such affected party.

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 or delayed. Except as otherwise provided herein, if any person having the right of consent or approval hereunder fails to give such consent or approval, or specific grounds for disapproval, within the applicable time period (or if no time period is provided, within fifteen (15) days of receipt of the request therefor), the person shall be deemed to have given its approval or consent. 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; (c) clearly and conspicuously state that the failure to respond to the notice or request within the stated time period shall be deemed the equivalent of the recipient's approval or consent to the subject matter of the notice or request for approval or consent; and (d) be accompanied by such background data as is reasonably necessary to make an informed decision thereon.

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.

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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 benefitted 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. Notwithstanding the foregoing to the contrary, the obligation of holders of leasehold interests (“Tenants”) to pay Operating Costs and Common Area Taxes hereunder, including the timing of payments, shall be subject to the terms of the Tenants’ respective lease(s) with the Owner(s) of the applicable Lot(s), and to the extent any such Tenant does not pay or is not obligated to pay such Operating Costs and/or Common Area Taxes, those obligations shall be the sole responsibility of the holder of the fee interest in the applicable lot, 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 itself 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 the Lots 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.

11.9 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.

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

11.11 Estoppel. Within thirty (30) days after receipt of a request therefor, an Owner shall deliver to the requesting party (another Owner, a Permittee, a mortgagee or a prospective purchaser) an estoppel letter that states that no default exists hereunder and such other matters as the requesting party may reasonably request provided such statements are in fact true. If the Owner from whom an estoppel letter is requested does not respond within said THIRTY (30) day period, then the requesting party may send a second notice stating in bold letters that THIS IS A SECOND NOTICE AND FAILURE TO RESPOND TO THIS REQUEST WITHIN

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TWENTY(20) BUSINESS DAYS AFTER THE RECEIPT HEREOF SHALL BE DEEMED TO MEAN THAT YOU HAVE AGREED WITH THE STATEMENTS SET FORTH IN THE ENCLOSED ESTOPPEL LETTER. If the recipient of said second request shall fail to so respond within the TWENTY (20) day period set forth in the second notice, then the party receiving the second request shall be deemed to have agreed to the statements set forth in said estoppel letter.

11.12 Force Majeure. Any Owner shall be excused from performing any obligation or undertaking provided in this Declaration, except any obligation to pay any sums of money under the applicable provisions hereof, in the event that, and only for as long as, the performance of any such obligation is prevented, delayed, retarded or hindered by Act of God, fire, earthquake, flood, explosion, extraordinary action of the elements, war, invasion, insurrection, terrorism, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strike, lockout, action of labor unions, condemnation, requisition, law, order of government or civil, military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner, (the "**Force Majeure Event**"). Such Owner shall provide notice to the other Owner(s) within five (5) business days following the onset of the Force Majeure Event, specifying the cause which prevents such Owner's performance and estimating the period of expected delay.

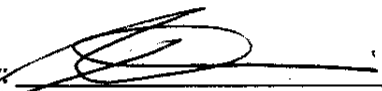
11.13 No Dedication to Public; No Implied Easements. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Real Property to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto that this Declaration be for the exclusive benefit of the Owners and the Occupants and that nothing herein, express or implied, shall confer upon any person, other than the Owners and the Occupants and their respective heirs, administrators, legal representatives, successors and assigns, any rights or remedies under or by reason of this Declaration. No easements, except those expressly set forth herein, shall be implied by this Declaration.

[Signature Page Follows]

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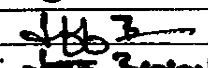
IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first written above.

SCHILLER PARK COMMONS, LLC,

By:   
Name: JOHN THEODOSAKIS  
Its: MANAGER

**Consent of Mortgagee:**

The undersigned, being the holder of the mortgage of record on the subject Real Property, hereby consents to the foregoing Declaration.

Name of Lender: T2 Schiller Park, LLC  
By:   
Name: JEFF BEAMAN  
Its: MANAGER

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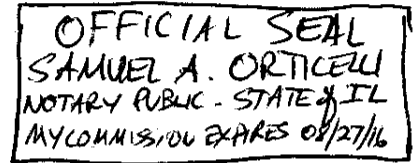
STATE OF ILLINOIS )  
 )  
COUNTY OF KANE ) SS.

I, Samuel A. Orticelli, A Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT JOHN THEODOSAKIS, personally known to me to be the same person whose name is subscribed to the foregoing instrument as the MANAGER of SCHILLER PARK COMMONS, LLC, an Illinois limited liability company, appeared before me this day in person and acknowledged to me that he, being duly authorized, signed and delivered said instrument as his free and voluntary act in his capacity as such Manager of such limited liability company.

Given under my hand and Notarial Seal this 21<sup>st</sup> day of February, 2013

Samuel A. Orticelli  
Notary Public

My Commission expires: 08/27/14



STATE OF ILLINOIS )  
 )  
COUNTY OF DUPAGE ) SS.

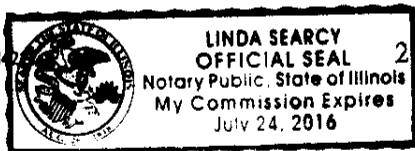
I, LINDA SEARCY, A Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT JEFF BROUEN, personally known to me to be the same person whose name is subscribed to the foregoing instrument as the MANAGER of T2 SCHILLER PARK, LLC, a DELAWARE LLC appeared before me this day in person and acknowledged to me that HE, being duly authorized, signed and delivered said instrument as HIS free and voluntary act in HIS capacity as a MANAGER of T2 SCHILLER PARK, LLC, a DELAWARE LLC.

Given under my hand and Notarial Seal this 8<sup>th</sup> day of February, 2013

Linda Searcy  
Notary Public

My Commission expires: 7/24/16

CH01/2608



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## EXHIBIT A

### PLAT AND LEGAL DESCRIPTION

See Attached

Property of Cook County Clerk's Office



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## OLD GROVE SHOPPING CENTER RESUBDIVISION

**SECTION 11**

**GENERAL NOTES**

1. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

2. ALL CORNERS TO BE BENCHMARKED BY THE SURVEYOR.

3. ALL DISTANCES TO BE MEASURED BY THE SURVEYOR.

4. ALL DISTANCES TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR ALLEY UNLESS OTHERWISE NOTED.

5. ALL DISTANCES TO BE MEASURED TO THE CORNER OF THE LOT UNLESS OTHERWISE NOTED.

6. ALL DISTANCES TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR ALLEY UNLESS OTHERWISE NOTED.

7. ALL DISTANCES TO BE MEASURED TO THE CORNER OF THE LOT UNLESS OTHERWISE NOTED.

8. ALL DISTANCES TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR ALLEY UNLESS OTHERWISE NOTED.

9. ALL DISTANCES TO BE MEASURED TO THE CORNER OF THE LOT UNLESS OTHERWISE NOTED.

10. ALL DISTANCES TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR ALLEY UNLESS OTHERWISE NOTED.

11. ALL DISTANCES TO BE MEASURED TO THE CORNER OF THE LOT UNLESS OTHERWISE NOTED.

12. ALL DISTANCES TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR ALLEY UNLESS OTHERWISE NOTED.

13. ALL DISTANCES TO BE MEASURED TO THE CORNER OF THE LOT UNLESS OTHERWISE NOTED.

14. ALL DISTANCES TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR ALLEY UNLESS OTHERWISE NOTED.

15. ALL DISTANCES TO BE MEASURED TO THE CORNER OF THE LOT UNLESS OTHERWISE NOTED.

16. ALL DISTANCES TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR ALLEY UNLESS OTHERWISE NOTED.

17. ALL DISTANCES TO BE MEASURED TO THE CORNER OF THE LOT UNLESS OTHERWISE NOTED.

18. ALL DISTANCES TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR ALLEY UNLESS OTHERWISE NOTED.

19. ALL DISTANCES TO BE MEASURED TO THE CORNER OF THE LOT UNLESS OTHERWISE NOTED.

20. ALL DISTANCES TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR ALLEY UNLESS OTHERWISE NOTED.

**DES PLAINES RIVER**

**IRVING PARK ROAD**

**PUBLIC ALLEY**

**LOT 1**

**LOT 2**

**LOT 3**

**LOT 4**

**LOT 5**

**SECTION 12**

**GENERAL NOTES**

1. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

2. ALL CORNERS TO BE BENCHMARKED BY THE SURVEYOR.

3. ALL DISTANCES TO BE MEASURED BY THE SURVEYOR.

4. ALL DISTANCES TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR ALLEY UNLESS OTHERWISE NOTED.

5. ALL DISTANCES TO BE MEASURED TO THE CORNER OF THE LOT UNLESS OTHERWISE NOTED.

6. ALL DISTANCES TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR ALLEY UNLESS OTHERWISE NOTED.

7. ALL DISTANCES TO BE MEASURED TO THE CORNER OF THE LOT UNLESS OTHERWISE NOTED.

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9. ALL DISTANCES TO BE MEASURED TO THE CORNER OF THE LOT UNLESS OTHERWISE NOTED.

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20. ALL DISTANCES TO BE MEASURED TO THE CENTERLINE OF THE ROAD OR ALLEY UNLESS OTHERWISE NOTED.

May 24 11

SEAL

**EDWARD J. MOLLOY**

LAND & CONSTRUCTION SURVEYORS

**EDWARD J. MOLLOY & ASSOCIATES, LTD.**

**LAND & CONSTRUCTION SURVEYORS**

1111 N. WASHINGTON ST. CHICAGO, ILL. 60610

TEL: 312.467.1111 FAX: 312.467.1112

WWW.EDWARDJ.MOLLOY.COM

**EDWARD J. MOLLOY**

LAND & CONSTRUCTION SURVEYORS

ORDER NO: 2010-0202  
FILE: 12-40-12



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## Legal Description

LOTS 1 THROUGH 5 IN OLD GROVE SHOPPING CENTER RESUBDIVISION, BEING A RESUBDIVISION OF LOTS 1 TO 13, INCLUSIVE, IN OLD GROVE SHOPPING CENTER SUBDIVISION, BEING A SUBDIVISION OF PART OF LOT 7 IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 15, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ALSO THAT PART OF THE SOUTHEAST 1/4 OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE WISCONSIN CENTRAL RAILROAD RIGHT OF WAY, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 7, 2011 AS DOCUMENT NO. 1124934031, IN COOK COUNTY, ILLINOIS.

### PINS FOR 2011 TAX YEAR:

12-15-314-005-0000  
12-15-314-006-0000  
12-15-314-007-0000  
12-15-314-008-0000  
12-15-314-017-0000

### PINS FOR 2012 TAX YEAR:

12-15-314-020-0000  
12-15-314-021-0000  
12-15-314-022-0000  
12-15-314-023-0000  
12-15-314-024-0000

### PROPERTY ADDRESS:

9310 - 9276 W. Irving Park Road, Schiller Park, Illinois

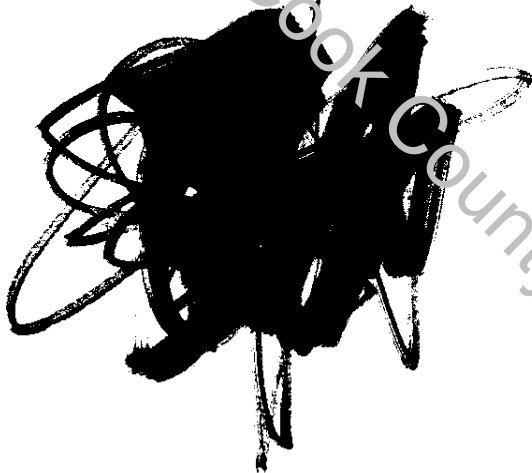
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## EXHIBIT B

### SITE PLAN AND ADJACENT PARKING

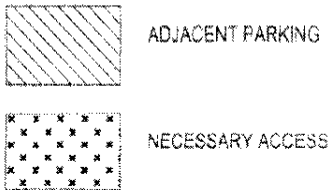
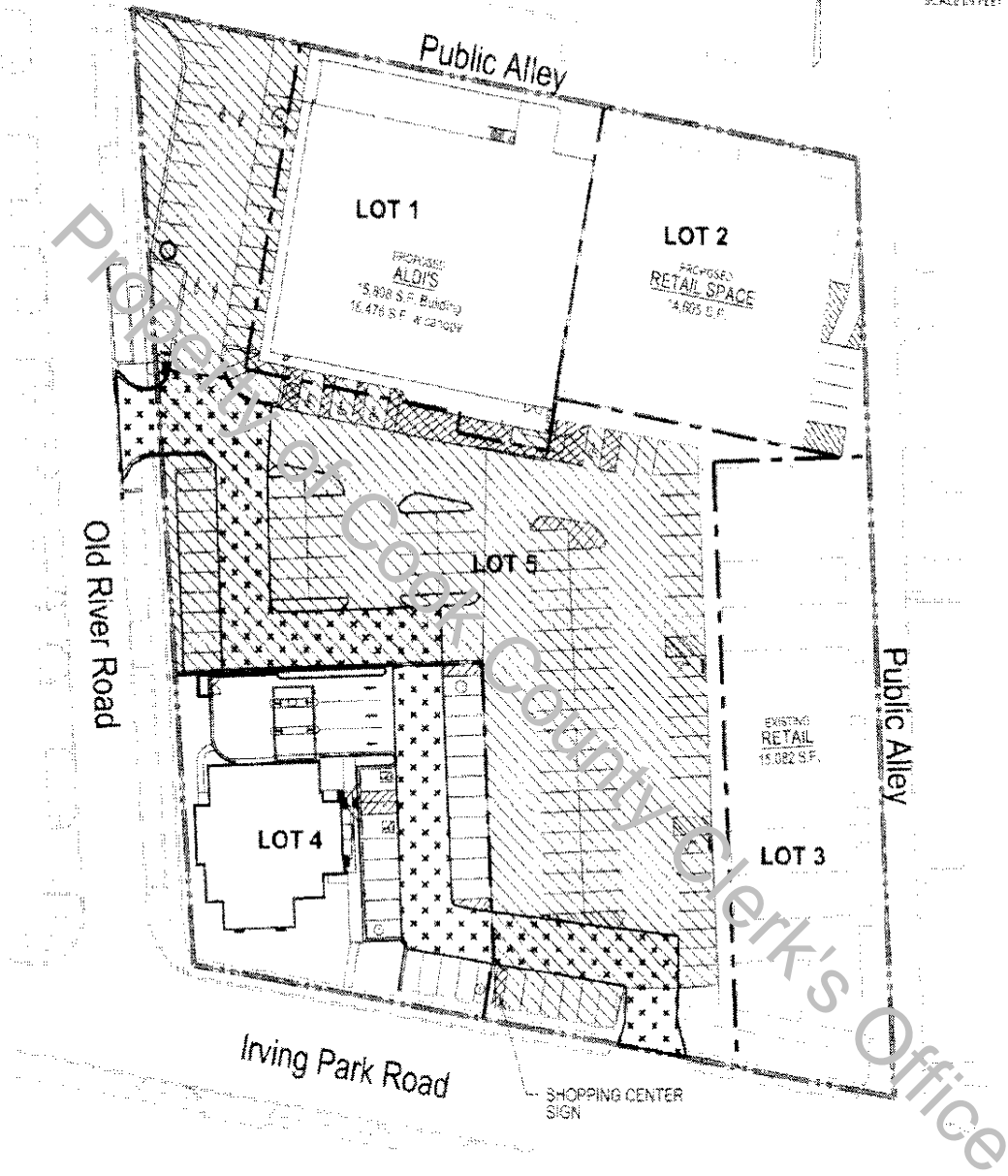
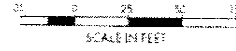
See Attached

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## EXHIBIT "B" SITE PLAN, ADJACENT PARKING AND NECESSARY ACCESS



**Cross**  
**Cross Engineering & Associates, Inc.**  
 1955 Raymond Drive, Suite 116  
 Northbrook, IL 60062  
 Tel: 847-498-7900

Title:	ALDI EXHIBIT "B"		
Project:	Schiller Park Commons Irving Park Road, Schiller Park, IL		
Project #:	Date:	Sheet #:	
1019	10/18/11	1	

Rev. 12/17/12

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## EXHIBIT C RESTRICTED USES

- (1) Any use which is a public or private nuisance.
- (2) Any use which produces noise or sound that is objectionable due to intermittence, high frequency, shrillness or loudness.
- (3) Any use which produces obnoxious odors.
- (4) Any use which produces noxious, toxic, caustic or corrosive fuel or gas.
- (5) Any use which produces dust, dirt or fly ash in excessive quantities.
- (6) Any use which produces fire, explosion or other damaging or dangerous hazard (including the storage or display or sale of explosives or fireworks).
- (7) Living quarters, sleeping apartment or lodging rooms.
- (8) Any establishment selling or exhibiting pornographic materials.
- (9) A massage parlor, or the business of "adult" materials, including, without limitation, magazines, books, movies, videos, and photographs.
- (10) Any movie theater, skating rink, bingo parlor, bowling alley, game room, pool or billiard parlor or room, game arcade or amusement center.
- (11) Any lounge, tavern, nightclub, disco, discotheque, dance hall, strip show, or any business offering live entertainment of any kind.
- (12) Any establishment which sells alcoholic beverages for on-site or off-site consumption, other than in connection with a pharmacy, a restaurant or food store operated by Tenant or its successors or assigns; provided, however, following the date that Jim's Liquors is no longer a tenant of the Shopping Center, one such establishment, not exceeding eight thousand (8,000) square feet in size, shall be permitted at any one time.
- (13) Pawn shops.
- (14) Any flea market.
- (15) Off-track betting sites.
- (16) Any sale of new or used motor vehicles, trailers or mobile homes.
- (17) Any banquet hall, auditorium or other place of public assembly.

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- (18) Any training or educational facility (including, but not limited to, a beauty school, barber college, reading room, school or other facility catering primarily to students or trainees rather than customers).
- (19) Any office use, except ancillary to a retail use conducted from such site, and except for any national insurance or tax service business that does not exceed two thousand (2,000) square feet in size.
- (20) Any governmental body or subdivision or agency of a governmental body.
- (21) Any gymnasium, sport or health club.
- (22) Any warehouse or storage facility.
- (23) Any assembling, manufacturing, industrial, distilling, refining, smelting, agriculture or mining operation.
- (24) Any mortuary, funeral home, crematorium or similar facility.
- (25) Any carnival, amusement park or circus.
- (26) Any gas station, oil lube center, tire store or car wash.

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## EXHIBIT D

### CONTROLLED ACCESS PROPERTY AND HANDBILL AREA

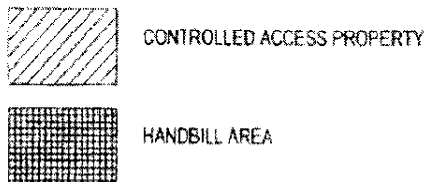
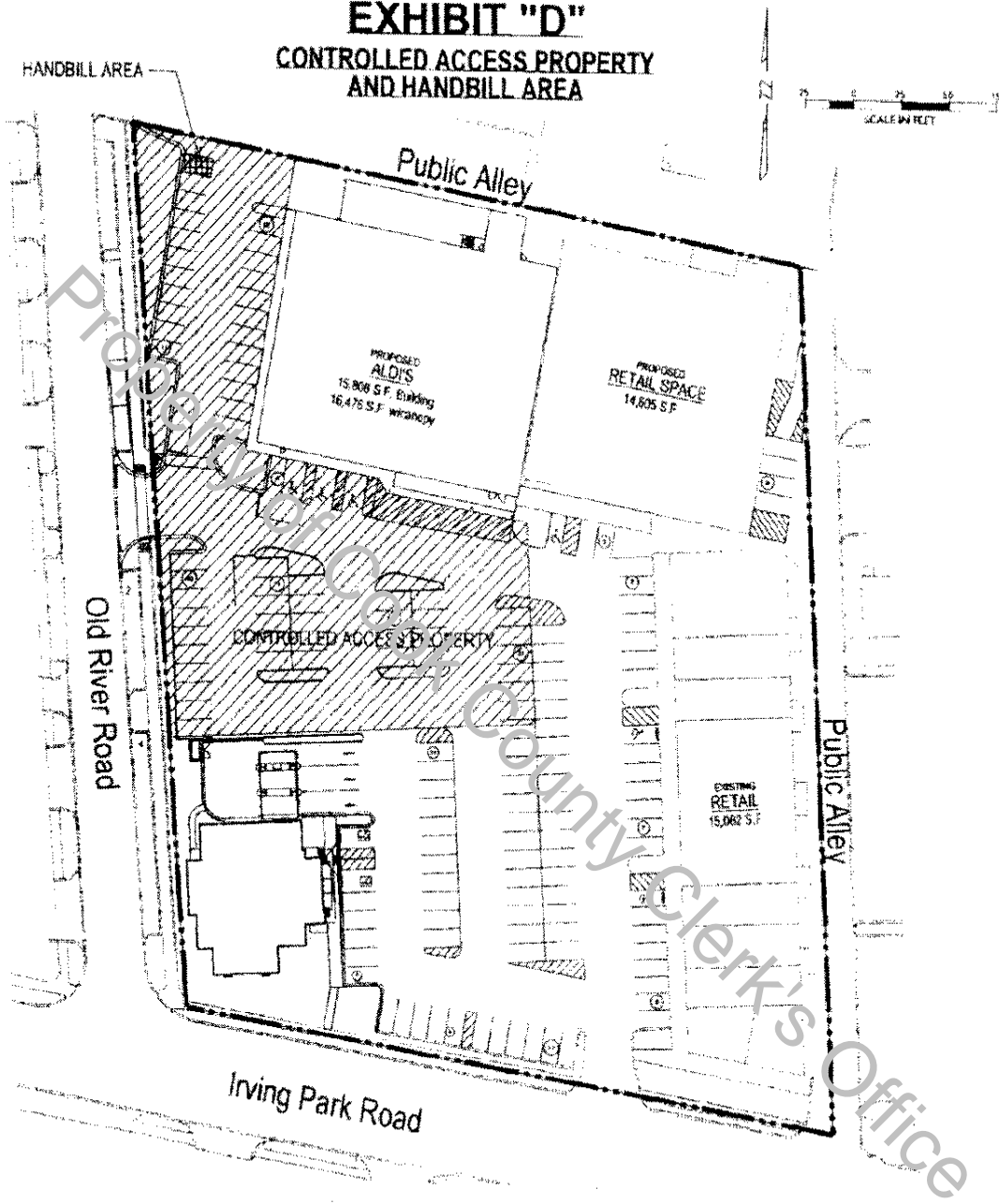
See Attached

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## EXHIBIT "D" CONTROLLED ACCESS PROPERTY AND HANDBILL AREA



**Cross**  
 Cross Engineering & Associates, Inc.  
 1055 Raymond Drive, Suite 119  
 Northbrook, IL 60062  
 Tel: 847489-0800

Title: ALDI EXHIBIT "D"		
Project: Schiller Park Commons Irving Park Road, Schiller Park, IL		
Project #: 1019	Date: 10/18/11	Sheet #: 1

Rev. 2/23/12

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## EXHIBIT E

### NO-BUILD AREA

See Attached

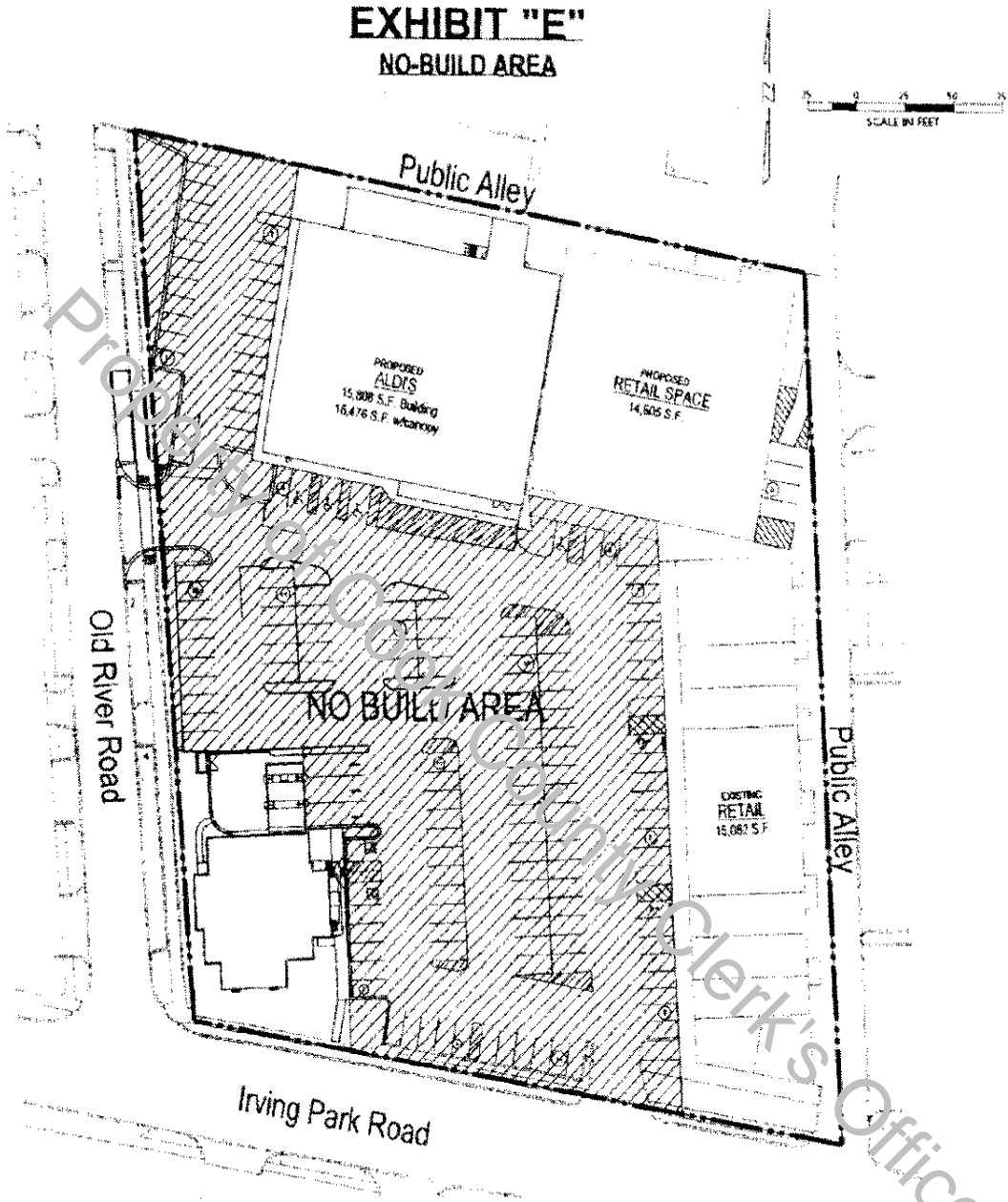
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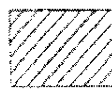




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## EXHIBIT "E" NO-BUILD AREA



 NO-BUILD AREA

**Cross**  
 Cross Engineering & Associates, Inc.  
 1855 Raymond Drive, Suite 119  
 Northbrook, IL 60062  
 Tel: 847/490-0800

Title: ALDI EXHIBIT "E"

Project: Schiller Park Commons  
 Irving Park Road, Schiller Park, IL

Project #:	Date:	Sheet #:
1019	10/18/11	I

Rev. 2/23/12

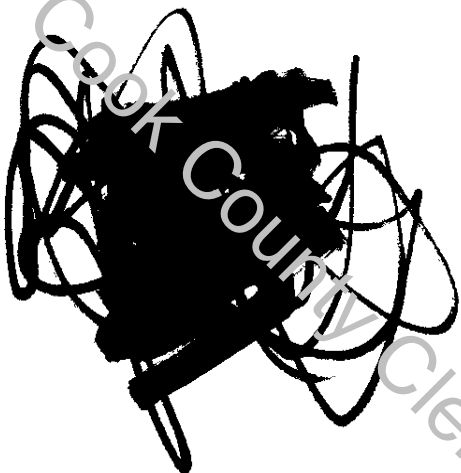
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## EXHIBIT F

### REPLACEMENT PARKING SPACES

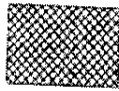
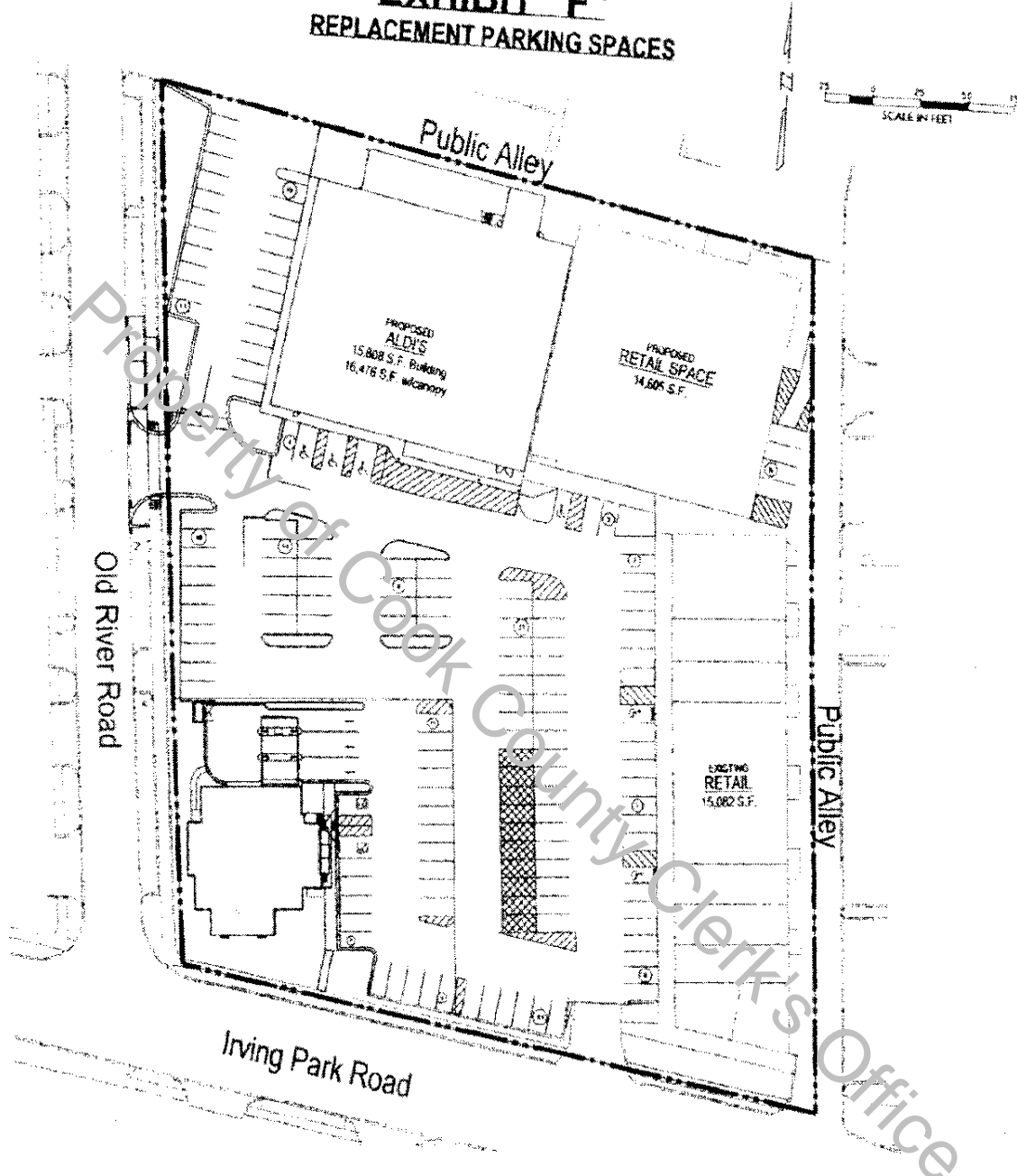
See Attached

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## EXHIBIT "F" REPLACEMENT PARKING SPACES



REPLACEMENT PARKING SPACES

**Cross**  
 Cross Engineering & Associates, Inc.  
 1955 Raymond Drive, Suite 119  
 Northbrook, IL 60062  
 Tel: 847/498-0800

Title: ALDI EXHIBIT "F"		
Project: Schiller Park Commons Irving Park Road, Schiller Park, IL		
Project #: 1019	Date: 10/18/11	Sheet #: 1

Rev. 2/23/12