

# UNOFFICIAL COPY

*Prepared By +*

RECORDING REQUESTED BY AND WHEN  
RECORDED RETURN TO:

Arnold Weinberg  
Much Shelist  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606  
(312) 521-2681

File No. 2711784.0030



Doc#: 1412818048 Fee: \$68.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 05/08/2014 01:14 PM Pg: 1 of 16

*8935646 0078 KCD*

Property of Cook County Clerk's Office

## MEMORANDUM OF LEASE

This Memorandum of Lease is made as of the 1<sup>st</sup> day of April, 2014, by and between PR II Willow/Sanders Road JV, LLC, as landlord ("**Landlord**"), and Roundy's Supermarkets, Inc., as tenant ("**Tenant**").

Landlord and Tenant are parties to that certain Lease, dated as of February 4, 2013 and that certain First Amendment to Lease dated as of April 1, 2014 (as so amended and as may be further amended or modified, the "**Lease**"), and incorporated herein by this reference. Any initially capitalized terms not otherwise defined in this Memorandum of Lease shall have the meaning ascribed to such term in the Lease.

Pursuant to the terms of the Lease, Landlord has leased to Tenant, commencing on the date set forth in Section 1(b) of the Lease ("**Commencement Date**") and ending at the expiration of the 20<sup>th</sup> Lease Year following the Commencement Date, the Leased Premises located in the Village of Glenview, Cook County, Illinois, which Leased Premises is described as set forth in Exhibit A attached hereto and made a part hereof. Landlord has also granted to Tenant the option to extend the term of the Lease for three (3) consecutive terms of five (5) years each upon the expiration of the initial term thereof.

Pursuant to Section 4(a) of the Lease, Tenant may use the Building for a retail grocery supermarket with a liquor department having as its principal purpose the sale of food and related items, including, but not limited to, groceries, meats, produce, frozen foods, dairy products, fruit, liquor, beer, wine, soda, tobacco products, bakery goods or delicatessen items, pharmaceutical items, flowers and floral products, prepared foods, snack bar, and general merchandise now or hereafter offered for sale in competing retail grocery supermarkets (the "**Core Use**"); and any other lawful retail use; provided, however, with respect to any other lawful retail use (i) Tenant shall have received any and all required or necessary municipal and other governmental permits, approvals, licenses, and authorizations under all applicable federal, state and local laws, ordinances, building codes, rules, and regulations of all governmental units or agencies having

**Box 400-CTCC**

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jurisdiction over the Leased Premises (collectively, “**Authorizations**”), and (ii) Tenant's proposed use shall not violate any terms, provisions, or conditions in the Declaration or in any Development Approvals. Tenant further agrees that the Core Use shall not include offices of a pharmaceutical company, and that Tenant shall not use the Leased Premises for any of the following: a nuisance; any use prohibited by Section 12.1 of the Declaration or other provisions therein; any use causing loud noises or offensive odors (including any business using exterior loud speakers but excluding customary restaurant or grocery odors); a manufacturing facility; a dry cleaner (except facilities for drop off and pick up of clothing cleaned at another location); an automobile repair shop or service station or any facility selling gasoline or diesel fuel in or from tanks; a used clothing or thrift store or liquidation outlet; a flea market; a massage parlor; a beauty day spa; a health or fitness club, sports facility or rehabilitation center; an adult book shop (except as incidental to the sale of general books and other forms of media by a national or local retailer) or adult movie house; a mortuary or funeral parlor; a coin operated laundry; a cocktail lounge, bar or tavern or the sale of alcoholic beverages, whether or not packaged, except in conjunction with a restaurant permitted hereunder or a grocery store; a night club; a cinema or theater; a place of recreation (including but not limited to a bowling alley, skating rink, carnival or a game arcade not part of a restaurant); tattoo parlor/shop; unemployment agency; government office open to the general public; food stamp center; check cashing/pay day loan business; call center/phone bank; bingo or similar games of chance (but lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of business); second-hand store (provided, however, the foregoing restriction shall not prohibit antique shops or stores selling high quality used merchandise such as *Play it Again Sports* and *Game Stop*); or auction house.

Pursuant to Section 6(d) of the Lease, title to the entire Leased Premises shall at all times remain vested in a single owner whether Landlord, or a successor in interest to Landlord.

Pursuant to Section 31 of the Lease, Landlord has agreed that the real property described on **Exhibit B** attached hereto (the “**Outlot Portion of the Project**”) shall be subject to a restriction (“**Tenant’s Exclusive Use Restriction**”) prohibiting any tenant or other occupant in the Outlot Portion of the Project from operating a retail grocery supermarket with a liquor department in violation of Section 31(a) of the Lease. Tenant’s Exclusive Use Restriction shall prohibit any tenant or occupant of the Outlot Portion of the Project to use its premises as a retail grocery supermarket, packaged liquor store or for the sale of any food products, including, but not limited to, groceries, meats, produce, frozen foods, dairy products, fruit, liquor, beer, wine, soda, bakery goods, delicatessen items, or tobacco products. Notwithstanding the foregoing, use of the Outlot Portion of the Project s by an occupant or tenant shall be permitted for (i) the sale of groceries, prepared food, and food products from an “incidental” portion of the premises, (ii) the sale of food and/or alcoholic beverages as part of a full service or limited service restaurant (fast food, casual, sit down, or otherwise), (iii) the sale of food products ancillary to the sale of coffee or tea or a combination thereof, e.g., Starbucks, Caribou Coffee, Seattle’s Best, Argo Tea and the like, (iv) operation of stores similar to a typical Walgreen's or CVS drug store not to exceed fifteen thousand (15,000) square feet of building area, and (v) incidental sales of packaged liquor and food products, including, without limitation, groceries, meats, produce, frozen foods, dairy products, fruit, liquor, beer, wine, soda, bakery goods, delicatessen items, tobacco products, so-called health and natural foods, donuts, cookies and sandwiches. For

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purposes of the foregoing restriction, the term "incidental" shall mean the lesser of (i) ten percent (10%) of the ground floor area within an occupant's premises or (ii) 1,000 square feet within an occupant's premises and in calculating such area one-half of all adjacent aisle space shall be included in such calculation. Notwithstanding anything to the contrary contained in Section 31(a) of the Lease, the exclusive rights granted to Tenant shall be null and void in the event (i) the Leased Premises are not being used for a retail grocery store of at least sixty five thousand (65,000) square feet or (ii) Tenant vacates the Leased Premises and no business is being conducted thereon for a period of one hundred eighty (180) days (excluding closures for casualty, condemnation, strikes or other labor disputes, governmental orders or regulations or other matters beyond the reasonable control of Tenant) or (iii) Tenant's right of possession has been terminated as permitted pursuant to the terms of Section 23(b) of the Lease.

It is understood that the purpose of this instrument is to create of record a leasehold estate, the terms and conditions of which, other than as the same are set forth herein, are contained in the Lease, which Lease made a part hereof by this reference as if the same were fully rewritten herein. In the event of any inconsistency between the terms of the Lease and the term of this Memorandum of Lease, the terms of the Lease shall prevail and control.

This Memorandum of Lease may be executed in counterparts, all of which evidence only one agreement and only one of which need be produced for any purpose, which, when assembled and taken together, is to be regarded as a single agreement.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, this Memorandum of Lease has been executed as of the day and year first above written.

**LANDLORD**

**PR II WILLOW/SANDERS ROAD JV, LLC**, a Delaware limited liability company

By: PR II Willow/Sanders Road, LLC, a Delaware limited liability company, its Member

By: The Prudential Insurance Company of America, a New Jersey corporation, its sole Member

By: Amy Ziegler  
Name: Amy Ziegler  
Its: Vice President

By: GlenStar Willow/Sanders Road, LLC, an Illinois limited liability company, its Member

By: GlenStar Partners, LLC, an Illinois Limited liability company, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, this Memorandum of Lease has been executed as of the day and year first above written.

## LANDLORD

**PR II WILLOW/SANDERS ROAD JV, LLC**, a Delaware limited liability company

By: PR II Willow/Sanders Road, LLC, a Delaware limited liability company, its Member

By: The Prudential Insurance Company of America, a New Jersey corporation, its sole Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: GlenStar Willow/Sanders Road, LLC, an Illinois limited liability company, its Member

By: GlenStar Partners, LLC, an Illinois Limited liability company, its Manager

By: *[Signature]*  
Name: RAED DIAMOND  
Its: MEMBER Manager

Property of Cook County Clerk's Office

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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STATE OF New Jersey  
COUNTY OF Morris

On April 28, 2014, before me, the undersigned, a notary public in and for said State, personally appeared Amy Ziegler, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that, by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Maria A. Dasilva, Notary Public

My Commission Expires:  
MARCH 22, 2018

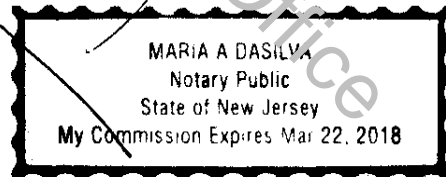


STATE OF New Jersey  
COUNTY OF MORRIS

On April 28, 2014, before me, the undersigned, a notary public in and for said State, personally appeared Amy Ziegler, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that, by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Maria A. Dasilva, Notary Public

My Commission Expires:  
MARCH 22, 2018



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

# UNOFFICIAL COPY

STATE OF \_\_\_\_\_ §

COUNTY OF \_\_\_\_\_ §

On April \_\_, 2014, before me, the undersigned, a notary public in and for said State, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that, by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

\_\_\_\_\_, Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF Illinois §

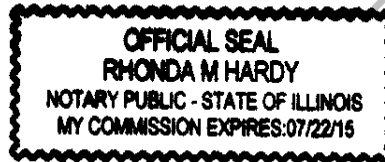
COUNTY OF COOK §

On April 27<sup>th</sup>, 2014, before me, the undersigned, a notary public in and for said State, personally appeared RAND DIAMOND, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that, by his/her/their signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Rhonda M Hardy, Notary Public

My Commission Expires:

7/22/15



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

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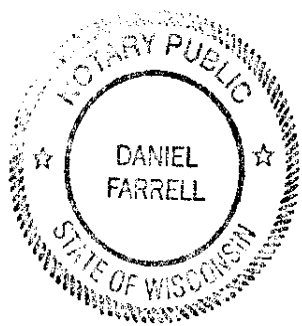
TENANT

ROUNDY'S SUPERMARKETS, INC.

By: *Edward B. Kitz*  
Name: Edward B. Kitz  
Title: Group V.P. - Legal, Risk + Treasury

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF MILWAUKEE )

Personally came before me this 28 day of April, 2014, the above-named Edward B. Kitz to me known to be the Group V.P. of ROUNDY'S SUPERMARKETS, INC. and to me known to be the officer of said Corporation who executed the foregoing instrument and acknowledged the same as the deed of said Corporation.



*Daniel Farrell*  
Daniel Farrell  
Notary Public, State of Wisconsin  
My Commission: 1-10-2016

[END OF SIGNATURES]



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## EXHIBIT A

### LEGAL DESCRIPTION OF LEASED PREMISES

LOTS 5A, AND 5B IN THE FINAL PLAT OF WILLOW-SANDERS DEVELOPMENT FIRST RESUBDIVISION RECORDED JUNE 18, 2013 AS DOCUMENT 1316929051, BEING A RESUBDIVISION OF LOT 2 IN WILLOW-SANDERS DEVELOPMENT SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF SECTION 18 AND THE NORTHEAST 1/4 OF SECTION 19, TOWNSHIP 42 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBERS: A portion of  
04-18-401-031-0000

ADDRESS: 2323 Capital Drive, <sup>Northbrook</sup>~~Northbrook~~, Illinois 60062



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Exhibit

## FIRST AMENDMENT TO LEASE

**THIS FIRST AMENDMENT TO LEASE** (this "Amendment") is made as of April 1, 2014 by and between **PR II WILLOW/SANDERS ROAD JV, LLC**, a Delaware limited liability company ("Landlord"), and **ROUNDY'S SUPERMARKETS, INC.**, a Wisconsin corporation ("Tenant").

### RECITALS

**WHEREAS**, Landlord and Tenant are parties to that certain Lease, dated as of February 4, 2013 (as the same may be amended or modified from time to time, the "Lease"). Pursuant to the Lease, Landlord has leased to Tenant certain premises located in the Willow & Sanders Subdivision, as more particularly described in the Lease (the "Leased Premises"). Any initially capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Lease; and

**WHEREAS**, Landlord and Tenant desire to amend the Lease in accordance with the terms of this Amendment.

**NOW, THEREFORE**, in consideration of the above recitals which by this reference are incorporated herein, the mutual covenants and conditions contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. **Limitation on Landlord's Waiver Right.** In addition to the restrictions set forth in Section 3(c) of the Lease, Landlord agrees that it shall not waive any provision of the Declaration, the Development Approvals or the Property Development Approvals if waiving such provision (i) would be in conflict with any of Tenant's rights under this Lease, (ii) increases any of Tenant's financial or other obligations under this Lease, or (iii) adversely affects Tenant's signage or vehicular or pedestrian access to the Leased Premises, without in each such instance first obtaining Tenant's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

2. **Permitted Lot 2 User.** The last line of Section 3(d) of the Lease is amended by deleting "forty one thousand (41,000)" and replacing the same with "forty two thousand (42,000)".

3. **Obligations under Parking Parcel Easement Agreement.** Pursuant to the terms of Section 6(c) of the Lease, Tenant has agreed to maintain the Parking Parcel pursuant to the terms of the Parking Parcel Easement Agreement. Notwithstanding the generality of such provision, Landlord acknowledges and agrees that as provided in Section 9 of the Lease, Landlord, and not Tenant, shall be responsible for making replacement or repairs necessary to the improvements on the Parking Parcel as a result of any extraordinary or abnormal settling, shifting or sinking of the same, to the extent Landlord is otherwise responsible for the same pursuant to Section 9 of the Lease.

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4. **Title Evidence.** Tenant acknowledges that (a) Tenant has received a copy of a Pro Forma Loan Policy covering Lots 2, 3, 4, 5A and 5B identified under Order No. 008935646 and with a print date of April 15, 2014 (the "Pro Form Policy") and a survey for the Leased Premises dated November 13, 2013, (b) Tenant does not object to any matters set forth on the Pro Forma Policy and survey, and (c) as a result of the foregoing, all of the matters disclosed by the Pro Forma Policy and survey shall be deemed Permitted Exceptions as provided in Section 18(a) of the Lease.

5. **Exclusive Use.** Section 31(a) of the Lease is amended by adding the phrase "within an occupant's premises" after the reference to "1,000 square feet" in the second clause (ii) of that Section.

6. **Satisfaction or Waiver of Conditions.** Tenant hereby acknowledges and agrees as follows:

(a) Tenant has waived the Liquor License Contingency as set forth in Section 45(a) of the Lease.

(b) Tenant has heretofore reviewed and approved the Property Development Approvals and, as a result, the Property Development Approval Contingency set forth in Section 45(b) of the Lease has been timely fulfilled.

(c) Tenant has heretofore reviewed and approved that certain First Amendment to Declaration of Covenants, Conditions, Restrictions, Reciprocal Rights and Easements, dated as of June 14, 2013, recorded with the Cook County Recorder of Deeds as Document No. 1316929052 and re-recorded as Document No. 1322412046, and, as a result, the condition set forth in Section 45(c) of the Lease has been timely fulfilled.

(d) Tenant has heretofore reviewed and approved that certain Declaration of Parking Easement, dated as of July 31, 2013, recorded with the Cook County Recorder of Deeds as Document No. 1323901009, and, as a result, the condition set forth in Section 45(d) of the Lease has been timely fulfilled.

(e) Tenant has waived the Sanders Road Access Contingency set forth in Section 45(e) of the Lease.

7. **Definition of "Restoration Conditions".** Clause (i) of the definition of "Restoration Conditions" set forth in Section 17(b) of the Lease is amended by deleting the word "an" at the beginning of such clause and replacing the same with the word "no".

8. **Left Turn Entrance.** In addition to the construction obligations set forth in Section 5 of the Lease, Landlord agrees that it shall construct a left turn entrance into the Project from southbound Sanders Road, with the location of such entrance being located at the Project entrance currently shown on the Site Plan. The construction of such left turn entrance shall be completed by the date required for Landlord to complete Landlord's Site Work pursuant to Section 5(a) of the Lease.

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9. **Definitions.** From and after the date hereof, all references to the term "Lease" or words of similar import that are contained in the Lease and any amendments or modifications thereto, shall hereinafter refer to the Lease and this Amendment.

10. **Full Force and Effect, Inconsistency.** Except as set forth in this Amendment, the terms, covenants, conditions and agreements of the Lease shall remain unmodified and otherwise in full force and effect. In the event of any inconsistency between the terms of the Lease and the terms of this Amendment, the terms of this Amendment shall control.

11. **Miscellaneous.**

(a) This Amendment sets forth the entire agreement between the parties with respect to the matters set forth herein. The mutual obligations of the parties as provided herein are the sole consideration for this Amendment.

(b) The recitals to this Amendment are incorporated into the body of this Amendment as if restated herein.

(c) Interpretation of this Amendment shall be governed by the laws of the State of Illinois.

(d) Each party to this Amendment represents that the respective signatory hereto has the authority to execute and deliver the same on behalf of the party for which such signatory is acting.

(e) This Amendment shall not be binding until executed and delivered by both parties. This Amendment may not be amended except in writing signed by both parties.

(f) Signatures to this Amendment transmitted by electronic means shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver an execution original to this Amendment with its actual signature to the other party, but a failure to do so shall not affect the enforceability of this Amendment, it being expressly agreed that each party to this Amendment shall be bound by its own electronically transmitted signature and shall accept the electronically transmitted signature of the other party to this Amendment.

(g) This Amendment may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same agreement.

*[remainder of page intentionally blank]*

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first written above.

**LANDLORD:**

**PR II WILLOW/SANDERS ROAD JV, LLC**, a Delaware limited liability company

By: PR II Willow/Sanders Road, LLC, a Delaware limited liability company, its Member

By: The Prudential Insurance Company of America, a New Jersey corporation, acting solely on behalf of and for the benefit of, and with its liability limited to the assets of, PRISA II, its Member

By: *Amy Ziegler*  
Name: Amy Ziegler  
Title: Vice President

By: GlenStar Willow/Sanders Road, LLC, an Illinois limited liability, its Member

By: GlenStar Partners, LLC, an Illinois limited liability company, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

**ROUNDY'S SUPERMARKETS, INC.**, a Wisconsin corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: GlenStar Willow/Sanders Road, LLC, an Illinois limited liability, its Member

By: GlenStar Partners, LLC, an Illinois limited liability company, its Manager

By:   
Name: RAND DIAMOND  
Title: Member Manager

**TENANT:**

**ROUNDY'S SUPERMARKETS, INC.**, a Wisconsin corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: GlenStar Willow/Sanders Road, LLC, an Illinois limited liability, its Member

By: GlenStar Partners, LLC, an Illinois limited liability company, its Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TENANT:**

**ROUNDY'S SUPERMARKETS, INC.**, a Wisconsin corporation

By: Edward G. Kite  
Name: Edward G. Kite  
Title: Group VP - Legal, Risk & Treasury