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EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 08/14/2020 03:18 PM PG: 1 OF 31

New Albertsons L.P.  
250 Parkcenter Boulevard  
Boise, Idaho 83726  
Jewel #3053 Palos Heights (outlot)

DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") is entered into as of the 7<sup>th</sup> day of August, 2020, by and between NEW ALBERTSONS L.P., a Delaware limited partnership and successor in interest to New Albertson's, Inc. ("Jewel"), R2M PROPERTIES LLC, a Kansas limited liability company ("R2M"), and Harlem Shake, LLC, an Ohio limited liability company ("Developer"), collectively, the "Declarants" and individually, a "Declarant".

1. PRELIMINARY

1.1 Purpose. R2M owns, and Jewel as the Prime Lessee (as defined below) leases from R2M, certain property improved with a building of approximately 55,000 square feet and described on Exhibit A attached hereto and incorporated herein by this reference ("Jewel Property") pursuant to a lease dated October 31, 2017 (as amended, the "Lease"), and Developer is the owner of the "Developer Property" ("Developer Property"), as described on Exhibit B attached hereto and incorporated herein by this reference, which properties are adjacent and located at the intersection of Harlem Avenue and 127<sup>th</sup> Street in the City of Palos Heights, Cook County, Illinois. In order to preserve the most beneficial and orderly development and use of the Jewel Property and the Developer Property, Declarants hereby establish the Restrictions (as defined below).

Notwithstanding anything to the contrary contained in this Declaration, (a) R2M hereby joins in granting the Easements provided for in Section 2.2 and Section 2.3 of this Declaration, and (b) it is expressly agreed that for so long as a Prime Lessee holds the leasehold interest in the Jewel Property, the Owner (as defined below) of the Developer Property shall look solely to said Prime Lessee for the performance of the obligations of Consenting Owner (as defined below) or Prime Lessee under this Declaration and said Prime Lessee shall be solely liable therefor.

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**1.2 Definitions.** The following terms shall have the definitions ascribed to them below.

(a) **"Common Area"**: All of those areas on the Developer Property and the Jewel Property which are not from time to time actually covered by a building or other commercial structure or which cannot under the terms of this Declaration be used for buildings. Canopies which extend over the Common Area, together with any columns or posts supporting the same, and drive-up or drive through customer facilities shall be deemed to be a part of the building to which they are attached and not a part of the Common Area.

(b) **"Consenting Owner"**: Jewel, as Prime Lessee of the Jewel Property. At such time that Jewel no longer holds a fee or leasehold interest in the Jewel Property, the Consenting Owner shall be the Owner of the Jewel Property.

(c) **"Developer Property"**: That certain real property located in the City of Palos Heights, Cook County, Illinois described on **Exhibit B** attached hereto and incorporated herein by this reference.

(d) **"Jewel Property"**: That certain real property located in the City of Palos Heights, Cook County, Illinois described on **Exhibit A** attached hereto and incorporated herein by this reference.

(e) **"Lienholder"**: Any mortgagee under a mortgage, or a trustee or beneficiary under a deed of trust, constituting a lien on any Lot. A Lienholder shall not be deemed to be an Owner for purposes of this Declaration until such time as said Lienholder acquires fee simple title to its Lot(s) by foreclosure, trustee's sale or otherwise.

(f) **"Lot(s)"**: The Developer Property and/or the Jewel Property.

(g) **"National Chain"**: A business organization which uses standard uniform building exterior image designs and signs and/or standard uniform free-standing sign panel designs for at least thirty (30) stores or retail restaurants operating or franchising under the same trade name serving the public across the United States, or in at least twenty (20) such locations in up to three (3) contiguous states that includes the State of Illinois.

(h) **"Owner"**: The record holder of fee simple title to a Lot (including its heirs, personal representatives, successors and assigns).

(i) **"Person"**: Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

(j) **"Prime Lessee"**: Jewel, as the former owner of the Jewel Property who sold the Jewel Property to R2M's predecessor in interest and thereafter entered into the Lease for the Jewel Property with R2M's predecessor in interest. Prime Lessee includes the successors and assigns of Jewel under the Lease, but does not include the sublessees, licensees or concessionaires of Jewel.

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(k) **"Restrictions"**: The easements, covenants, restrictions, liens and encumbrances contained in this Declaration, including, without limitation, the Developer Property Use Restrictions described in Section 5.1 hereof.

(l) **"Shopping Center"**: The Jewel Property and the Developer Property.

(m) **"Term of the Lease"**: The term of the Lease, including any amendments, modifications, extensions, renewals, or assignments thereof.

## 2. REASONABLE PROPERTY ACCESS EASEMENTS

Declarants hereby declare that the Lots shall be forever occupied, held, sold and conveyed subject to and together with the private perpetual and non-exclusive easements described in Section 2.1, Section 2.2, Section 2.3, and Section 2.4 (collectively, **"Easements"**), which Easements shall run with the Lots as appurtenant thereto, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in the Lots, or any part thereof, including, without limitation the Prime Lessee, the respective Owner of each of the Lots, and their heirs, administrators, legal representatives, successors, devisees and assigns:

**2.1 Reasonable Access to Developer Property.** The Owner of the Developer Property, subject to the rights of third parties of record existing prior to the date of this Declaration, hereby grants to the Owner of the Jewel Property and Prime Lessee, and their tenants, subtenants, contractors, employees, agents, licensees and invitees on the Jewel Property, permanent non-exclusive easements for reasonable non-exclusive pedestrian and customer vehicular traffic access (but no right to parking) across the portions of the Developer Property that are from time-to-time unimproved with structures (such structures shall include canopies which extend over the Common Area, together with any columns or posts supporting the same, and drive-up or drive through customer facilities) and otherwise made available for common vehicular and pedestrian access use by Owner of the Developer Property and its tenants, subtenants, contractors, employees, agents, licensees and invitees on the Developer Property. No portion of the Developer Property may be used by the Owner of the Jewel Property and Prime Lessee for construction or other heavy vehicles servicing the Jewel Property without the prior written consent of the Owner of the Developer Property. Notwithstanding the foregoing or the depiction of buildings and other improvements on the Site Plan, the Owner of the Developer Property expressly reserves the following rights with respect to the Developer Property; provided, however, that any material impairment of access to and from the Shopping Center or any part thereof shall require the prior written consent of the Owner of the Jewel Property and Prime Lessee, which consent shall not be unreasonably withheld conditioned or delayed:

(a) The right to construct, relocate and remove new or existing buildings (including canopies which extend over the Common Area, together with any columns or posts supporting the same, and drive-up or drive through customer facilities) and other improvements, including but not limited to, the right to construct, relocate and/or remove new or existing curb cuts, driveways and sidewalks on any portion of the Developer Property;

(b) The right to temporarily barricade any portion of the Developer Property as shall be reasonably necessary for purposes of installing, maintaining, relocating and repairing curb cuts, driveways and sidewalks therein and for installing, maintaining, repairing or replacing any utility lines and facilities therein; and

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(c) The right to use such portion of the Developer Property for any purposes consistent with the terms of this Agreement, including but not limited to the conduct of outdoor sales.

The Owner of the Jewel Property acknowledges and agrees that all portions of the Developer Property that are subject to the easements granted hereunder are provided in an "As Is" condition with all faults, including both latent and patent defects and subject to all easements and encumbrances of record. The Owner of the Jewel Property shall not in the exercise of the rights granted herein unreasonably interfere with any business of the Owner of the Developer Property nor obstruct the use by the Owner of the Developer Property, its employees, agents, invitees or contractors including but not limited to the Owner of the Developer Property's location, construction or maintenance of any buildings or improvements (including canopies which extend over the Common Area, together with any columns or posts supporting the same, and drive-up or drive through customer facilities).

**2.2 Reasonable Access to Jewel Property and Adjacent Streets.** The Owner of the Jewel Property, subject to the rights of third parties of record existing prior to the date of this Declaration, hereby grants to the Owner of the Developer Property and its tenants, subtenants, contractors, employees, agents, licensees and invitees on the Developer Property permanent non-exclusive and appurtenant easements for reasonable non-exclusive pedestrian and customer vehicular traffic access (but no right to parking) to and from the Developer Property across the portions of the Jewel Property that are from time-to-time unimproved with structures (such structures shall include canopies which extend over the Common Area, together with any columns or posts supporting the same, and drive-up or drive through customer facilities) and otherwise made available for common vehicular and pedestrian access use by the Owner of the Jewel Property and Prime Lessee, and their tenants, subtenants, contractors, employees, agents, licensees and invitees on the Jewel Property, which shall include without limitation continuous ingress and egress for pedestrian and customer vehicular traffic to and from (i) W. 127<sup>th</sup> Street and the Developer Property and (ii) S. Harlem Avenue and the Developer Property. The Prime Lessee of the Jewel Property shall provide the Owner of the Developer Property and its tenants, subtenants, contractors, employees, agents, licensees and invitees on the Developer Property with non-exclusive easements for reasonable non-exclusive pedestrian and customer vehicular traffic access (but no right to parking) to and from the Developer Property across the portions of the Jewel Property that are from time-to-time unimproved with structures (such structures shall include canopies which extend over the Common Area, together with any columns or posts supporting the same, and drive-up or drive through customer facilities) and otherwise made available for common vehicular and pedestrian access use by the Owner of the Jewel Property and Prime Lessee, and their tenants, subtenants, contractors, employees, agents, licensees and invitees on the Jewel Property, and (i) so long as the Prime Lessee of the Jewel Property has pedestrian and customer vehicular traffic access to W. 127<sup>th</sup> Street, such non-exclusive easements provided by Prime Lessee shall include a means of pedestrian and customer vehicular traffic access across the Jewel Property to W. 127<sup>th</sup> Street, and (ii) so long as the Jewel Property has pedestrian and customer vehicular traffic access to S. Harlem Avenue, such non-exclusive easements provided by Prime Lessee shall include a means of pedestrian and customer vehicular traffic access across the Jewel Property to S. Harlem Avenue. Use of such portions of the Jewel Property by construction or other heavy vehicles servicing the Developer Property shall be subject to (a) prior written notice to, and prior written consent of, the Owner and Prime Lessee of the Jewel Property identifying the access route(s) to be utilized, which shall be the route(s) that will

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cause the least disruption to the adjacent parcels, including the Jewel Property, and (b) the agreement of the Owner of the Developer Property, at its sole cost and expense, to keep such portions of the Jewel property washed clean and free of debris on a daily basis, and promptly to repair, restore to original condition and otherwise accept sole responsibility for any and all repair or maintenance of the such portions of the Jewel Property necessitated by such use. The Owner and Prime Lessee of the Jewel Property shall not unreasonably withhold, condition, or delay their consent to the access route(s) identified by Developer for use by construction or other heavy vehicles, and once an access route is identified and approved in connection with the initial development of the Developer Property, no further consent to use such access route during such initial development work shall be required. Necessary staging outside of the Developer Property for the construction, replacement, alteration or expansion of any building, sign or other improvements located on the Developer Property shall be limited to that portion of the Shopping Center identified in the Development Agreement executed simultaneously herewith. Notwithstanding the foregoing or the depiction of buildings and other improvements on the Site Plan, the Owner of the Jewel Property and Prime Lessee expressly reserve the following rights with respect to the Jewel Property; provided, however, that any material impairment of access to and from the Shopping Center or any part thereof shall require the prior written consent of the Owner of the Developer Property, which consent shall not be unreasonably withheld conditioned or delayed:

(a) The right to construct, relocate and remove new or existing buildings (including canopies which extend over the Common Area, together with any columns or posts supporting the same, and drive-up or drive through customer facilities) and other improvements, including but not limited to, the right to construct, relocate and/or remove new or existing curb cuts, driveways and sidewalks on any portion of the Jewel Property;

(b) The right to temporarily barricade any portion of the Jewel Property as shall be reasonably necessary for purposes of installing, maintaining, relocating and repairing curb cuts, driveways and sidewalks therein and for installing, maintaining, repairing or replacing any utility lines and facilities therein; and

(c) The right to use such portion of the Jewel Property for any purposes consistent with the terms of this Agreement, including but not limited to the conduct of outdoor sales.

The Owner of the Developer Property acknowledges and agrees that all portions of the Jewel Property that are subject to the easements granted hereunder are provided in an "As Is" condition with all faults, including both latent and patent defects and subject to all easements and encumbrances of record. The Owner of the Developer Property shall not in the exercise of the rights granted herein unreasonably interfere with any business of the Owner or Prime Lessee of the Jewel Property nor obstruct the use by the Owner or Prime Lessee of the Jewel Property, its employees, agents, invitees or contractors, including but not limited to the location, construction or maintenance by the Owner of the Jewel Property or Prime Lessee of any buildings or improvements (including canopies which extend over the Common Area, together with any columns or posts supporting the same, and drive-up or drive through customer facilities).



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## 2.3 Utility Easements.

(a) **Utility Easements.** Each Owner, as grantor, subject to the rights of third parties of record existing prior to the date of this Declaration, hereby grants to the other Owner, for the benefit of the Lot belonging to the other Owner, as grantee, a permanent non-exclusive easement under, through and across the Common Area of the grantor's Lot for the installation, operation, maintenance, repair and replacement of water mains, sanitary sewers, water sprinkler system lines, telephones, communication lines, pneumatic tube systems, electrical conduits or systems, gas mains and other public or private utilities or underground systems as necessary, other than for stormwater drainage. Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the utility lines and facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration. Subject to the prior written approval of Prime Lessee and the Owner of the Jewel Property of the locations of such easements on the Jewel Property, which approval shall not be unreasonably withheld, conditioned or delayed, Prime Lessee consents to the grant of such easements burdening the Jewel Property. Notwithstanding anything to the contrary contained herein, a grant of easement rights by the Owner of the Jewel Property shall be ineffective to the extent that such easement areas are not then owned in fee by the Owner of the Jewel Property. The costs of operation of such utilities shall be borne by the party using such utilities.

Developer anticipates that the electrical, telecommunication and cable lines necessary to bring services to the Developer Property will be located on that portion of the Jewel Property as depicted on **Exhibit C**, attached hereto and made a part hereof. The Owner of the Jewel Property and the Prime Lessee hereby approve the location of the lines depicted on **Exhibit C**, and the Owner of the Jewel Property agrees to execute such easements as are reasonably required by the public or private utilities in connection with such lines, provided the same are not otherwise inconsistent with the provisions of this Declaration. Notwithstanding the foregoing, no relocations, enlargements, developments or changes whatsoever to such utilities, including but not limited to any material deviations from the location and depiction of the utilities on **Exhibit C**, shall be undertaken without the prior written consent of the Prime Lessee and Owner of the Jewel Property, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) **Drainage Easement.** The Owner of the Jewel Property hereby grants to the Owner of the Developer Property a permanent, non-exclusive stormwater drainage easement in, over, under, through and across the Jewel Property for the benefit of the Developer Property, pursuant to which the Developer Property may connect into, and allow stormwater runoff from the Developer Property to flow into, the stormwater drainage facilities and the detention pond on the Jewel Property. Prime Lessee consents to the grant of this stormwater drainage easement burdening the Jewel Property.

The Owner of the Jewel Property and the Prime Lessee hereby approve the location of the drainage lines depicted on **Exhibit C**, attached hereto and made a part hereof. Notwithstanding the foregoing, no relocations, enlargements, developments or changes whatsoever to such drainage lines, including but not limited to any deviations from the location and depiction of the drainage lines on **Exhibit C**, shall be undertaken without the prior written consent of the Prime Lessee and Owner of the Jewel Property, which consent shall not be unreasonably withheld, conditioned or delayed.

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(c) **Construction Requirements.** All such systems, structures, mains, sewers, conduits, lines, stormwater drainage lines, and other utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including, without limitation, temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings, signs or Common Area improvements located in the Shopping Center). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business in the Shopping Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall provide as-built plans for all such facilities to the Owner of the other Lot upon which such utility lines and facilities are located within thirty (30) days after the date of completion of construction of same.

Prior to construction of any utilities or stormwater drainage lines pursuant to this Section, other than those utilities constructed in material conformance with **Exhibit C**, plans showing the location of the proposed utility lines and facilities ("Plans") shall be submitted by the proposed grantee to the proposed grantor of such utility easement or easements for such grantor's written approval, not to be unreasonably withheld, conditioned, or delayed so long as the Plans otherwise conform to the requirements of this Declaration and applicable laws and regulations. In the event that the Owner of the Developer Property is the party submitting the Plans, the Owner of the Developer Property shall submit the Plans to both Prime Lessee and the Owner of the Jewel Property. The proposed grantor of the easement shall respond with its approval or disapproval (with reasonable grounds for disapproval noted) within thirty (30) days after the date such Plans were submitted; provided, however, that such thirty (30) day period may be extended for an additional period of thirty (30) days as necessary upon request by the proposed grantor. Upon the issuance of any disapproval or recommendation for change by the proposed grantor, the Owners shall consult to establish approved Plans for the proposed construction. Approval of the Plans by any Owner shall not constitute assumption of responsibility for the accuracy, sufficiency, or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with applicable laws. Construction shall not be commenced until the Plans shall have been approved in writing by the proposed grantor. No material deviation shall be made from the approved Plans. All Plans shall be prepared by licensed engineers, require suitable materials and be completed in a good and workmanlike manner. The grantee of such easement shall obtain all necessary permits and complete the construction in conformance with all applicable laws and regulations.

(d) **Relocation.** At any time and from time to time the Prime Lessee or the Owner of the Jewel Property shall have the right to reasonably require the Owner of the Developer Property, at the sole expense of the Owner of the Developer Property, to relocate any utility line or facility installed pursuant to the foregoing grant of easement or easements which is then located on the Jewel Property, to the extent that such utility lines or facilities, in the reasonable judgment of the Prime Lessee or the Owner of the Jewel Property, interfere with any future development plans on the Jewel Property in any way; provided, however, that (i) any such relocation shall not unreasonably interfere with or diminish utility service to the Developer Property or other adjacent properties served by the utility line or facility, (ii) any such relocation shall not reduce or unreasonably impair the usefulness or function of the utility line or facility and

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(iii) the Prime Lessee shall have approved the location for the relocated utility line or facility, which approval shall not be unreasonably withheld, conditioned or delayed. Any such relocation shall provide for the original and relocated area to be restored to their original specifications. The Owner of the Developer Property shall provide as-built plans for all such relocated utility lines and facilities to the Owner of the Jewel Property within thirty (30) days after the date of completion of such relocation.

At any time and from time to time the Owner of the Developer Property shall have the right to reasonably require the Owner of the Jewel Property, at the sole expense of the Owner of the Jewel Property, to relocate any utility line or facility installed pursuant to the foregoing grant of easement or easements which is then located on the Developer Property, to the extent that such utility lines or facilities, in the reasonable judgment of the Owner of the Developer Property, interfere in any way with any future development plans on the Developer Property; provided, however, that (i) any such relocation shall not unreasonably interfere with or diminish utility service to the Jewel Property or other adjacent properties served by the utility line or facility, and (ii) any such relocation shall not reduce or unreasonably impair the usefulness or function of the utility line or facility. Any such relocation shall provide for the original and relocated area to be restored to their original specifications. The Owner of the Jewel Property shall provide as-built plans for all such relocated utility lines and facilities to the Owner of the Developer Property within thirty (30) days after the date of completion of such relocation.

**2.4 Curb Encroachment Easement.** The Owner of the Jewel Property hereby grants to the Owner of the Developer Property a permanent, non-exclusive easement ("Curb Encroachment Easement") over those portions of the Jewel Property depicted on **Exhibit C** and labeled as "Curb Encroachments" (the "Curb Encroachment Areas"), for the purpose of maintaining the curbs, curb cuts, parking spaces, and landscaping on the Curb Encroachment Areas. The Curb Encroachment Areas shall under no circumstances be deemed to be owned in fee by the Owner of the Developer Property. The Owner of the Developer Property shall maintain, repair, and insure said Curb Encroachment Areas as Common Area pursuant to Section 4.1 as if the Curb Encroachment Areas were located on the Developer Property. The Prime Lessee hereby consents to the grant of the Curb Encroachment Easement.

### **3. PERMISSIBLE SIGNAGE ON DEVELOPER PROPERTY.**

**3.1 Permissible Building Signage on Developer Property.** The Owner of the Developer Property agrees at all times to comply with all applicable laws, rules and regulations applicable to signs and signage on the Developer Property. All exterior signage (other than the prototypical signs of a National Chain) on any building(s) constructed on the Developer Property shall require the prior written approval of the Consenting Owner and, during the Term of the Lease, of the Owner of the Jewel Property, which approval shall not be unreasonably withheld, conditioned or delayed. All signs located on the exterior of the building or buildings constructed on the Developer Property shall be restricted to identification of the business(es) or service(s) located or provided therein that do not violate Section 5.1. No exterior building sign on any building(s) constructed on the Developer Property shall be placed on penthouse walls, extend above the building roof or be painted on the exterior building surface, and no exterior building or freestanding sign on the Developer Property shall utilize flashing, moving or audible lights or appurtenances; provided, however that subject to compliance with all applicable laws, rules and regulations and the prior written approval by Consenting Owner and, during the Term of the



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Lease, the Owner of the Jewel Property, of its location and dimensions, which approval shall not be unreasonably withheld, conditioned or delayed, there shall be permitted on the Developer Property one (1) reader board that is restricted to the identification and offerings of the business(es) or service(s) located or provided in the building(s) on the Developer Property that do not violate Section 5.1.

**3.2 Freestanding Signage.** The Owner of the Developer Property may at its sole cost and expense install one (1) freestanding sign at a location on the Developer Property along Harlem Avenue to be approved in writing by Consenting Owner and, during the Term of the Lease, by the Owner of the Jewel Property, which approval shall not be unreasonably withheld, conditioned or delayed, subject to each of the following: (i) the size and design of such freestanding sign shall be subject to the approval of Consenting Owner and, during the Term of the Lease, the Owner of the Jewel Property, not to be unreasonably withheld, conditioned or delayed, (ii) the Owner of the Developer Property shall be responsible for securing at its sole cost and expense all necessary governmental approvals and third party consents in connection with such freestanding sign, (iii) the size and design of such freestanding sign shall be subject to the approval of the Consenting Owner and, during the Term of the Lease, the Owner of the Jewel Property, not to be unreasonably withheld, conditioned or delayed, and, if required, any third party consents, (iv) all work in connection with the installation of such freestanding sign shall be performed in a good and workmanlike manner, without disrupting any business within the Jewel Property, and Developer shall not permit any liens to stand against the Shopping Center or any portion thereof for any work done or materials furnished in connection with the installation of such freestanding sign, and the area in which it is located cleared and any damage to the surrounding property promptly repaired and restored, at the sole cost and expense of the Owner of the Developer Property, (v) the Owner of the Developer Property shall supply and maintain its own sign panel on such freestanding sign at its sole cost and expense, (vi) such freestanding sign shall display only the designation of a use and user that does not violate Section 5.1, and (vii) the Owner of the Developer Property shall be responsible, at its sole cost and expense, for the maintenance and repair of such freestanding sign in good condition, and for compliance with all applicable laws, rules, regulations and ordinances. Notwithstanding the foregoing, the Owner of the Jewel Property and the Prime Lessee hereby consent to the size and design of the freestanding signage depicted on **Exhibit D**, attached hereto and made a part thereof, and agree that the same may be constructed on the Developer Property without any further approvals of the Owner of the Jewel Property and the Prime Lessee.

In conjunction with the initial grand opening of a portion of the Developer Property for use as an Andy's Frozen Custard retail establishment, the Owner of the Developer Property may place temporary banners along Harlem Avenue frontage, subject to each of the following: (a) the Owner of the Developer Property shall provide the Owner of the Jewel Property and Prime Lessee written notice of such initial grand opening at least five (5) business days prior to such initial grand opening, (b) such temporary banners shall only be located in the area(s) depicted on **Exhibit D** attached hereto, (c) the size and design and number of such temporary banners shall be as depicted on **Exhibit E** attached hereto, (d) the Owner of the Developer Property shall be responsible for securing at its sole cost and expense all necessary governmental approvals and any required third party consents, and compliance with all applicable laws, rules, regulations and ordinance, in connection with such temporary banners, and (e) all such temporary banners shall be removed, and the area in which such banners are located promptly repaired and restored, on or before the date three (3) weeks following such initial grand opening.

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## 4. COMMON AREA MAINTENANCE

**4.1 Performance.** Developer and Prime Lessee shall maintain, repair and replace, or cause to be maintained, repaired and replaced, as necessary, (i) those portions of the utility lines and facilities serving such party's Lot and not the other Lot, and (ii) those portions of the Common Area located on such party's Lot, except for the maintenance, repair, and replacement of the following items which cannot be practicably segregated or allocated between the Lots ("**Nonsegregable Items**"): the shared access drives, the portions of the utilities situated in the Common Area serving both Lots, and the stormwater drainage facilities. During the Term of the Lease, the Prime Lessee shall be responsible for performing and paying for the maintenance, repair and replacement of all Nonsegregable Items, and the Owner of the Developer Property shall, on or before January 1st of each calendar year, pay to the Prime Lessee in advance Three Thousand Dollars (\$3,000.00), increased annually by two percent (2%) commencing with the second such annual payment, as the entire required contribution from the Owner of the Developer Property for the maintenance, repair, replacement and insurance of all Nonsegregable Items ("**Nonsegregable Contribution**"). The Nonsegregable Contribution for any partial calendar year immediately following the date of this Declaration shall be prorated and shall be payable concurrently with the execution and delivery of this Declaration by the Owner of the Developer Property. The Nonsegregable Contribution shall accrue interest from the date due until paid, at the lesser of (i) the highest applicable rate allowed by law or (ii) fifteen percent (15%) per annum. Except for the specific Nonsegregable Items enumerated above, the Prime Lessee and the Owner or any lessee of the Developer Property, shall maintain, repair and replace the Common Area on its Lot at its sole cost and expense in a manner and at a level of quality at least comparable to other similar retail shopping centers in the geographic area where the Jewel Property and the Developer Property are located (the "**Maintenance Standard**").

Notwithstanding anything to the contrary contained herein, but subject solely to the obligation of the Owner of the Jewel Property to maintain the stormwater drainage facilities under Section 10.3(b) in the event the Lease is no longer in effect, the Owner of the Jewel Property shall have no obligation whatsoever under this Declaration to maintain, repair, replace, or insure, or cause to be maintained, repaired, replaced, or insured, or to pay any sums for the maintenance, repair, replacement, or insurance, of any part of the Shopping Center, during the Term of the Lease or otherwise, nor any right to receive the Nonsegregable Contribution.

**4.2 Lien for Nonsegregable Contribution.** The Consenting Owner shall have a lien on the Developer Property for the failure to timely pay the Nonsegregable Contribution, plus interest thereon as provided above. A lien provided in this Section 4.2 shall only be effective when filed of record in the real estate records of Cook County, Illinois, signed and verified, which shall contain at least: (i) an itemized statement of all amounts due and payable pursuant hereto; (ii) a description sufficient for identification of that portion of the real property which is the subject of the lien; (iii) the name of the Owner or reputed Owner of the Developer Property; and (iv) the name and address of the Consenting Owner. The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the

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lien, but not before. The lien shall be for the use and benefit of the Consenting Owner and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

## 5. RESTRICTIONS ON USE OF DEVELOPER PROPERTY.

**5.1 Restrictions on Use of Developer Property.** For a period of twenty (20) years from the date hereof or for so long as there is an operating grocery store in the Shopping Center that has not ceased conducting business with the public for at least one (1) year (excluding any periods during which business is not being conducted due to casualty, repair, restoration, remodeling, strike or other labor disturbance, governmental or judicial order, or force majeure), whichever is longer, the Developer Property shall not be used or occupied, in whole or in part (the following are, collectively, the "**Developer Property Use Restrictions**"): (a) as a supermarket, which shall be defined as any store or department containing more than 2,000 square feet of floor space, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption; (b) as a bakery or delicatessen; (c) as a cigarette or smoke shop or any other store the primary business of which is to sell tobacco products and/or accessories; (d) for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; (e) for the sale of alcoholic beverages for off-premises consumption; (f) for the sale of greeting cards and/or party goods; (g) for photo printing or processing, including, without limitation, one hour or less processing, and printing of digital photographs; (h) for the sale of health and beauty aids; (i) for the sale of vitamins and health supplements; (j) as a dollar store (which shall be defined as any store primarily devoted to the deep-discount retail sale of general merchandise and/or food for off-premises consumption including, without limitation, single price point retailers such as "All-a-Dollar," "99 Cents Only," "Family Dollar," "Greenbacks," "Dollar General" and "Big Lots"); (k) as a printing and/or mailing services center such as "Kinko's," "Mail boxes Etc." or similar operation the primary business of which is to provide printing, packaging and/or mailing services; (l) for the sale or offer for sale of any pharmaceutical products requiring the services of a registered pharmacist; (m) for a "Convenience Store," as hereinafter defined, (n) for the sale of gasoline, motor fuel and/or other non-packaged petroleum products (collectively, "**Petroleum**"), or (o) for the parking of motor vehicles in connection with the sale or storage of any of the uses identified in (a) through (n) above. A "**Convenience Store**" is herein defined as a self-contained area or building primarily devoted to the sale of any combination of the following items: food, beverages, grocery items, Petroleum, tobacco and/or carwashes, as they may be operated from time to time. By way of example only, stores such as "7-Eleven" and "Circle K" are considered to be "Convenience Stores" under the foregoing definition. Notwithstanding the foregoing, the Developer Property may be used or occupied for a national or regional fast food restaurant, quick service restaurant or fast casual restaurant (i.e., the fast food restaurant, quick service restaurant or fast casual restaurant of a company operating or franchising the same retail restaurant business under the same tradename in at least thirty [30] business locations serving the public across the United States, or in at least twenty [20] such locations in up to three [3] contiguous states that includes the State of Illinois) (each, a "**Fast Food Restaurant**"), such as Andy's Frozen Custard, Dunkin' Donuts, McDonald's, Wendy's, Wing Stop, Five Guys or Culvers, and such use or occupation shall not constitute a violation of the Developer Property Use Restrictions (the "**Safe Harbor**"). The Safe Harbor does not preclude other uses of the Developer Property that do not violate the Developer Property Use Restrictions or, other uses that violate the Developer Property Use Restrictions but are expressly consented to in advance in writing by the Prime Lessee, its successors and assigns, which consent may be granted or withheld in the sole and absolute discretion of the Prime Lessee, its successors and assigns. The Developer Property Use Restrictions

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shall run with the Developer Property and shall be for the benefit of the Prime Lessee and the Owner of the Jewel Property, their successors, assigns and affiliated entities.

## 6. PARKING ON DEVELOPER PROPERTY.

**6.1 Parking on Developer Property.** The parking area on the Developer Property shall at all times contain (a) sufficient ground level parking spaces, without reliance on the benefit or availability of any offsite parking (including parking spaces that may be available on the Jewel Property or any other property), in order to comply with all applicable laws, statutes, ordinances, codes, rules and regulations, as presently existing and hereafter amended, relating to the uses and improvements on the Developer Property, and (b) a minimum parking ratio at the rate of five (5) parking spaces per one thousand (1,000) square feet of retail use on the Developer Property and ten (10) parking spaces per one thousand (1,000) square feet of Fast Food Restaurant use on the Developer Property, whichever is greater.

## 7. REDEVELOPMENT AGREEMENT

**7.1 Redevelopment Agreement.** The Jewel Property and the Developer Property are subject to that certain Agreement Pertaining to the Development and Redevelopment of the Jewel Project in the City of Palos Heights, Illinois (as amended, the "Redevelopment Agreement") by and between Jewel and the City of Palos Heights ("City") dated \_\_\_\_\_, as modified by the City's finding that the terms of the Agreement of Purchase and Sale dated \_\_\_\_\_, 2019 by and between Jewel and Developer are in conformity with the terms of the Redevelopment Agreement. The Owner of the Developer Property shall comply with and not cause any breach or violation of any of the terms of the Redevelopment Agreement, as the same may be modified, including (but not limited to) by failing to pay timely or by contesting any real estate taxes or special assessments in respect to the Developer Property, and the Owner of the Developer Property shall not be entitled to exercise or enforce any rights or receive any benefits of "Developer" pursuant to the terms of the Redevelopment Agreement; provided, however, that the terms of the Redevelopment Agreement that establish the required size of the building on the Developer Property shall not be amended without the consent of the Owner of the Developer Property.

## 8. INSURANCE; INDEMNIFICATION

**8.1 Insurance.** The Owner and any lessee of the Developer Property, the Owner and Prime Lessee of the Jewel Property, and any subsequent lessee of the Jewel Property will each obtain and maintain commercial or comprehensive general liability insurance, including coverage for contractual liability. The limits of liability of such insurance will be not less than Two Million Dollars (\$2,000,000.00) covering claims for injury to person, loss of life and damage to property arising out of any single occurrence and not less than Four Million Dollars (\$4,000,000.00) covering such claims in the aggregate during any policy year. The above limits may be met by a combination of underlying and excess or umbrella policies. The Prime Lessee and, to the extent this Declaration may require the Owner of the Jewel Property to obtain insurance, the Owner of the Jewel Property, may maintain such insurance under a master or blanket policy (or policies). All or any part of such insurance may be maintained by Prime Lessee under a program of self-insurance.



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Notwithstanding the above paragraph, the Owner of the Jewel Property shall have no obligation to maintain the insurance required by this Section 8.1 unless and until such time as the Owner of the Jewel Property enters the Developer Property to exercise the easement rights or self-help rights granted by this Declaration to the Owner of the Jewel Property. In such event, the Owner of the Jewel Property shall maintain the policies of insurance required by this Section 8.1 solely during any period of time in which the Owner of the Jewel Property elects to exercise the easement rights or self-help rights granted to it by this Declaration.

**8.2 Indemnification.** The Owner and any lessee of the Developer Property, and the Owner and Prime Lessee of the Jewel Property, and any subsequent lessee of the Jewel Property shall each indemnify, defend and hold harmless the other and the occupants of the Jewel Property and the Developer Property from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings, and causes of action of any kind whatsoever for injury to or death of any person or damage to any property resulting from the willful misconduct or negligent act or omission of the indemnifying Owner and/or lessee.

Notwithstanding the above paragraph, the Owner of the Jewel Property shall have no obligation to provide the indemnifications required by this Section 8.2 unless and until such time as the Owner of the Jewel Property enters the Developer Property to exercise the easement rights or self-help rights granted by this Declaration to the Owner of the Jewel Property. In such event, the indemnification obligations of Owner of the Jewel Property set forth in this Section 8.2 shall be enforceable obligations of the Owner of the Jewel Property solely during any period of time in which the Owner of the Jewel Property elects to exercise the easement rights or self-help rights granted to it by this Declaration.

## 9. CASUALTY

**9.1 Casualty.** If all or any portion of any building on the Developer Property or the Jewel Property is damaged or destroyed by fire or other casualty, the Owner of the Developer Property or the Prime Lessee, as the case may be (the "Repairing Party"), shall promptly restore or cause to be restored the remaining portion of such building on such Repairing Party's respective Lot or, in lieu thereof, shall remove the damaged portion of such building together with all rubble and debris related thereto. All areas on which buildings are not reconstructed following a casualty shall be graded or caused to be graded by the Repairing Party to the level of the adjoining property, shall be covered by a one inch asphalt dust cap and shall be kept weed free and clean at the Repairing Party's sole cost and expense until buildings are reconstructed thereon.

## 10. GENERAL PROVISIONS

**10.1 Covenants Run With the Land.** Each Restriction on each Lot shall be a burden on that Lot, shall be appurtenant to and for the benefit of the other Lot and each part thereof and shall run with the land.

**10.2 Successors and Assigns.** This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon Prime Lessee and the Owners, their heirs, successors, assigns and personal representatives, and upon any person acquiring a Lot, or any portion thereof, or any interest therein, whether by operation of law or otherwise. Notwithstanding the foregoing, if either Owner sells or transfers all of its interest in its Lot, such



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Owner shall, upon the sale and conveyance of title, be released and discharged from all of its obligations as Owner in connection with said Lot arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Lot (including, without limitation, any Owner or Lienholder who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Lot after the date of sale and conveyance of title.

## 10.3 Duration.

(a) Subject to the provisions of Section 10.3(b), below, and except as otherwise provided herein, the term of this Declaration shall be for a period of sixty-five (65) years ("Primary Period") from the date hereof. Notwithstanding the foregoing, the terms of Section 2.1, Section 2.2, Section 2.3, Section 4 (solely to the extent that Section 4 obligates any party to maintain, repair, and replace those portions of utilities serving such party's Lot and not the other Lot), and Section 10.3(a) and (b) are perpetual (collectively, the "Perpetual Provisions") and shall run with the land and shall not terminate upon termination of the balance of this Agreement. Upon the expiration of the Primary Period, the term of this Declaration shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "Extension Period") unless, at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, the Owner of a Lot or the Prime Lessee delivers to the Owner of the other Lot written notice of termination, in which event, the Declaration (other than the Perpetual Provisions) shall automatically expire at the end of the Primary Period or Extension Period then in effect. Notwithstanding the foregoing, following expiration or termination of this Declaration (other than the Perpetual Provisions), if the Common Area curb cuts, driveways or sidewalks on a Lot cease to be maintained to the standard that would otherwise be prescribed by this Declaration, the Owner of the other Lot or Prime Lessee shall have the right, upon giving not less than thirty (30) days' written notice to the other (and the Prime Lessee if the unmaintained Lot is the Jewel Property) (provided, however, in the event of an emergency, notice given concurrent with the exercise of the rights set forth herein shall be sufficient), and at its sole cost and expense without contribution from the Owner of the Unmaintained Lot (hereafter defined) or Prime Lessee, as the case may be, to take-over and assume the maintenance of some or all of the Common Area curb cuts, driveways and sidewalks on the unmaintained Lot, unless during such notice period the other Owner (or, if the unmaintained Lot is the Jewel Property, the Prime Lessee) resumes maintenance of the Common Area curb cuts, driveways and sidewalks to the standard that would otherwise be prescribed by this Declaration.

(b) **Rights and Obligations Following Expiration or Termination of the Lease.** Notwithstanding anything contained herein to the contrary, following expiration or earlier termination of the Lease, the following provisions of this Declaration shall be, from and after the date of such expiration or termination, null, void, and of no further force and effect: Section 4 (except to the extent that Section 4 obligates any party to maintain, repair, and replace those portions of utilities serving such party's Lot and not the other Lot) and Section 9.1. If, from and after such expiration or termination, the Common Area (including the access drives), or the utilities for which the easement of this Declaration is granted, including the Nonsegregable Items (the "Unmaintained Elements"), on either Lot (the "Unmaintained Lot") cease to be maintained to the Maintenance Standard, the Owner or lessee of the other Lot, as the case may be ("Maintaining Party") shall have the right, at its sole cost and expense without contribution from

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the Owner of the Unmaintained Lot, and upon giving not less than thirty (30) days' written notice to the Owner or lessee of the Unmaintained Lot (provided, however, in the event of an emergency, notice given concurrent with the exercise of the rights set forth herein shall be sufficient), to take-over and assume the maintenance of some or all of the Unmaintained Elements on the Unmaintained Lot, unless during such notice period the Owner or lessee of the Unmaintained Lot resumes maintenance of the Unmaintained Elements on the Unmaintained Lot to the Maintenance Standard. Following the effective date of any such take-over and assumption, the Maintaining Party may maintain some or all of the Unmaintained Elements on the Unmaintained Lot, and to the extent it chooses to maintain the Unmaintained Elements, the Maintaining Party shall pay all costs and expenses incurred in connection therewith without contribution from the Owner of the Unmaintained Lot, shall promptly repair any damage to the Unmaintained Lot arising from or in connection with such maintenance and shall not permit any liens to stand against the Unmaintained Lot or any portion thereof for any maintenance work done or materials furnished in connection therewith. The Owner or lessee of the Unmaintained Lot shall have the right to resume the maintenance of the Unmaintained Elements on the Unmaintained Lot upon giving not less than sixty (60) days' written notice to the Maintaining Party. Any such maintenance shall be completed in a good and workmanlike manner, in conformance with all applicable laws and regulations, using suitable materials. The Maintaining Party shall obtain all necessary permits and complete the maintenance, if any.

Without limiting the foregoing, following expiration or earlier termination of the Lease, the Owner of the Jewel Property, or its lessee under a subsequent lease on the Jewel Property, shall have the right, in such party's sole and absolute discretion, to elect to maintain, repair, replace, or insure the Nonsegregable Items or any portion thereof (other than the stormwater drainage system and related facilities) following the expiration or earlier termination of the Lease. In the event of such election, the Owner of the Developer Property shall reimburse the Owner of the Jewel Property or its lessee, as the case may be, seven percent (7%) of the actual reasonable costs and expenses incurred by the Owner of the Jewel Property or its lessee, as the case may be, in providing such maintenance, repair, replacement, or insurance (the "Post-Lease Contribution"), within thirty (30) days of receipt by the Owner of the Developer Property of a statement of the Post-Lease Contribution issued by the Owner of the Jewel Property or its lessee. The Owner of the Developer Property shall have, upon the giving of twenty (20) days' prior written notice, the right to reasonably review the records of the Owner of the Jewel Property or its lessee pertaining to any such costs and expenses so incurred and for which reimbursement from the Owner of the Developer Property is sought, during the regular business hours of the Owner of the Developer Property or its lessee, as the case may be; provided, however, that such review may not take place more than once in any twelve (12) month period, and shall occur within ninety (90) days after receipt by the Owner of the Developer Property of the statement of the Post-Lease Contribution from the Owner of the Jewel Property.

Notwithstanding the foregoing, following expiration or earlier termination of the Lease, the Owner of the Jewel Property, or its lessee under a subsequent lease on the Jewel Property, shall maintain, repair, replace, or cause to be maintained, repaired, and replaced, the stormwater drainage system and related facilities serving the Jewel Property and the Developer Property following the expiration or earlier termination of the Lease. The Owner of the Developer Property shall reimburse the Owner of the Jewel Property or its lessee, as the case may be, ten percent (10%) of the actual reasonable costs and expenses incurred by the Owner of the Jewel Property or its lessee, as the case may be, in providing such maintenance, repair, replacement, or insurance

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(the "Post-Lease Stormwater Contribution"), within thirty (30) days of receipt by the Owner of the Developer Property of a statement of the Post-Lease Stormwater Contribution issued by the Owner of the Jewel Property or its lessee. The Owner of the Developer Property shall have, upon the giving of twenty (20) days' prior written notice, the right to reasonably review the records of the Owner of the Jewel Property or its lessee pertaining to any such costs and expenses so incurred and for which reimbursement from the Owner of the Developer Property is sought, during the regular business hours of the Owner of the Developer Property or its lessee, as the case may be; provided, however, that such review may not take place more than once in any twelve (12) month period, and shall occur within ninety (90) days after receipt by the Owner of the Developer Property of the statement of the Post-Lease Contribution from the Owner of the Jewel Property.

The Owner of the Jewel Property or its lessee, as the case may be, shall have a lien on the Developer Property for the failure to timely pay the Post-Lease Contribution or the Post-Lease Stormwater Contribution, plus interest thereon as provided above. A lien provided in this Section 10.3(b) shall only be effective when filed of record in the real estate records of Cook County, Illinois, signed and verified, which shall contain at least: (i) an itemized statement of all amounts due and payable pursuant hereto; (ii) a description sufficient for identification of that portion of the real property which is the subject of the lien; (iii) the name of the Owner or reputed Owner of the Developer Property; and (iv) the name and address of the party filing such lien. The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien, but not before. The lien shall be for the use and benefit of the party filing such lien and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

**10.4 Injunctive Relief.** In the event of any violation or threatened violation by any person of any of the Restrictions, any or all of the Owners and the Prime Lessee shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

**10.5 Modification and Termination.** This Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners of the Lots and the Prime Lessee, and then only by written instrument duly executed and acknowledged by such Owners and the Prime Lessee and recorded in the office of the recorder of Cook County, Illinois. No modification or termination of this Declaration shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination.

**10.6 Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Jewel Property or the Developer Property to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Declarants that this Declaration shall be strictly limited to and for the purposes herein expressed.

**10.7 Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Declaration shall entitle any Owner or the Prime Lessee to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner or Prime Lessee may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in

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good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

**10.8 Default.** A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from any Owner or Prime Lessee specifying the particulars in which such person has failed to perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) days (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such person is using good faith and its best efforts to rectify the particulars specified in the notice of default.

## 10.9 Notices.

**(a) Delivery.** All notices given pursuant to this Declaration shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below. If a notice must be given to a person other than those designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of Cook County, Illinois. All notices to Declarants shall be sent to:

To Jewel:                   c/o New Albertsons L.P.  
P.O. Box 20, Boise, Idaho 83726 (*mailing address*)  
250 Parkcenter Blvd., Boise, Idaho 83726 (*street address*)  
Attn: Legal Dept. Jewel #5073 Palos Heights

To R2M:                     R2M PROPERTIES LLC  
13800 Outlook Street  
Overland Park, Kansas 66223  
Attn: \_\_\_\_\_

To Developer:           Harlem Shake, LLC  
4270 Morse Road  
Columbus, Ohio 43230  
Attn: Isaac Gold

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Declaration shall be deemed given upon receipt.

**(b) Receipt.** For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or

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refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

**10.10 Waiver.** The failure of a person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions contained herein by the same or any other person.

**10.11 Attorney's Fees.** In the event a party initiates or defends any legal action or proceeding in any way connected with this Declaration, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

**10.12 Severability.** If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

**10.13 No Third Party Beneficiary Rights; No Modification of Lease.** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto. No part of this Declaration shall be deemed to modify or amend any provision of the Lease.

**10.14 Captions and Headings.** The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

**10.15 Construction.** In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

**10.16 Recordation.** This Declaration shall be recorded in the office of the recorder of Cook County, Illinois.

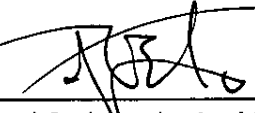
[Signature blocks on following three pages]



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EXECUTED as of the date first set forth above.

**NEW ALBERTSONS L.P.**, a Delaware limited partnership

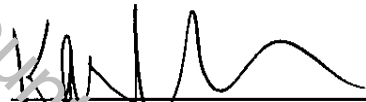
By:   
Joel Guth, Authorized Signatory

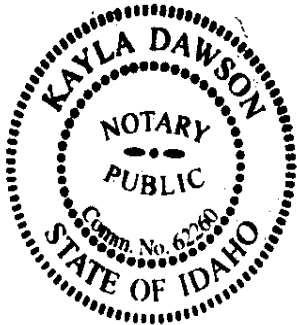
STATE OF IDAHO     )  
                                  : ss.  
County of Ada        )

On this 05th day of August, 2020 before me, the undersigned Notary Public in and for said State, personally appeared Joel Guth, known to me to be the Authorized Signatory of New Albertsons L.P., the limited partnership that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My certificate expires:  
12/14/2022

  
Notary Public for Idaho  
Residing at Boise, Idaho



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EXECUTED as of the date first set forth above.

R2M PROPERTIES LLC, a Kansas limited liability company

By: [Signature]  
Name: SRINIVAS NALAMACHU  
Title: Partner

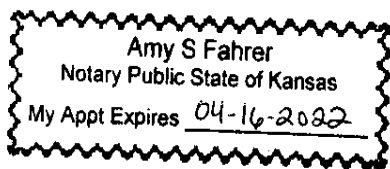
STATE OF KANSAS  
: ss.  
County of JUHARS

On this 8<sup>th</sup> day of April, 2020, before me, the undersigned Notary Public in and for said State, personally appeared SRINIVAS NALAMACHU, known to me to be Partner, of R2M Properties LLC, the limited liability company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My certificate expires:  
04-16-2022

Amy S. Fahrer  
Notary Public for State of Kansas  
Residing at Osawatomie, KS



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EXECUTED as of the date first set forth above.

HARLEM SHAKE, LLC, an Ohio limited liability company

By: [Signature]  
Name: Robert C. Mason  
Title: Sec. & Tres.

STATE OF Ohio )  
County of Franklin ss.

On this 30<sup>th</sup> day of July, 2020, before me, the undersigned Notary Public in and for said State, personally appeared Robert C. Mason, known to me to be Sec + Treasurer, of Harlem Shake, LLC, the limited liability company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My certificate expires:  
03/23/24

[Signature]  
Notary Public for \_\_\_\_\_  
Residing at Columbus, OH



KAREN L. BAKER  
Notary Public, State of Ohio  
My Commission Expires 3-23-24

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## MORTGAGEE CONSENT AND SUBORDINATION

The undersigned, JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.), a Michigan corporation ("Mortgagee"), with an address at 197 Clarendon Street, C-2, Boston, Massachusetts 02116, for valuable consideration paid, hereby consents to the foregoing Declaration of Restrictions and Grant of Easements and waives and subordinates the priority of that certain Mortgage, Assignment of Leases and Rents and Security Agreement dated July 20, 2018, and recorded as Instrument Number 1820545054 with the Cook County, Illinois Recorder of Deeds (the "Mortgage"), which is a lien upon the Jewel Property, in favor of this Declaration of Restrictions and Grant of Easements, in the same manner and with the same effect as though this Declaration of Restrictions and Grant of Easements had been executed and recorded prior to the filing for record of the Mortgage, but without otherwise affecting the lien, priority or other provisions of the Mortgage.

Nothing contained herein shall be deemed to constitute consent by Mortgagee to any document, easement or agreement except the Declaration of Restrictions and Grant of Easements to which this Consent and Subordination is attached, nor shall Mortgagee's consent provided herein create any liability on the part of Mortgagee, nor shall Mortgagee be liable for any of the covenants, agreements or obligations of the parties to the subject Declaration of Restrictions and Grant of Easements.

JOHN HANCOCK LIFE INSURANCE COMPANY  
(U.S.A.), a Michigan corporation

By: 

Print Name: Kimberly R. Highfield

Its: Assistant Vice President

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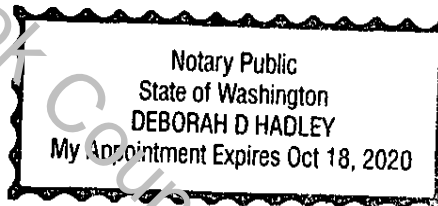
STATE OF WASHINGTON )  
 )  
 ) : ss.  
 )  
County of Clark )

On this 7<sup>th</sup> day of APRIL, 2020, before me, the undersigned Notary Public in and for said State, personally appeared KIMBERLY R. HIGHFIELD, known to me to be an ASSISTANT VICE PRESIDENT, of John Hancock Life Insurance Company (U.S.A.), the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My certificate expires:  
10/18/2020

Deborah D. Hadley  
Notary Public for Clark County, WA  
Residing at Vancouver, WA





# UNOFFICIAL COPY

## Exhibit A

### Jewel Property

LOTS 1, 2 AND 3 IN JEWEL SUBDIVISION, BEING A RESUBDIVISION OF LOT 2 IN OWNER'S SUBDIVISION OF PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 4, 1959 AS DOCUMENT NUMBER 17471843, LOT 4 AND PART OF LOTS 1 AND 3 IN PALOS PROPERTIES SUBDIVISION, A SUBDIVISION OF THE NORTH 300 FEET OF THE SOUTH 647 FEET OF THE WEST 650 FEET OF THE NORTH 32.52 ACRES OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 20, 1985 AS DOCUMENT NUMBER 85333638 AND PART OF THE NORTH 32.52 ACRES OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, ALL IN TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 6, 2011 AS DOCUMENT NUMBER 1118731016, IN COOK COUNTY, ILLINOIS.

12755 S Herkm  
Palos Hts IL  
24-31-100-049  
-050  
-051

# UNOFFICIAL COPY

## Exhibit B

### Developer Property

LOT 5 IN JEWEL SUBDIVISION, BEING A RESUBDIVISION OF LOT 2 IN OWNER'S SUBDIVISION OF PART OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 4, 1959 AS DOCUMENT NUMBER 17471843, LOT 4 AND PART OF LOTS 1 AND 3 IN PALOS PROPERTIES SUBDIVISION, A SUBDIVISION OF THE NORTH 300 FEET OF THE SOUTH 647 FEET OF THE WEST 650 FEET OF THE NORTH 32.52 ACRES OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 20, 1985 AS DOCUMENT NUMBER 85333638 AND PART OF THE NORTH 32.52 ACRES OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 31, ALL IN TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JULY 6, 2011 AS DOCUMENT NUMBER 1118731016, IN COOK COUNTY, ILLINOIS.

12755 S Harlem

Palos Hts IL

24-31-100-053

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Exhibit C

Utility Locations

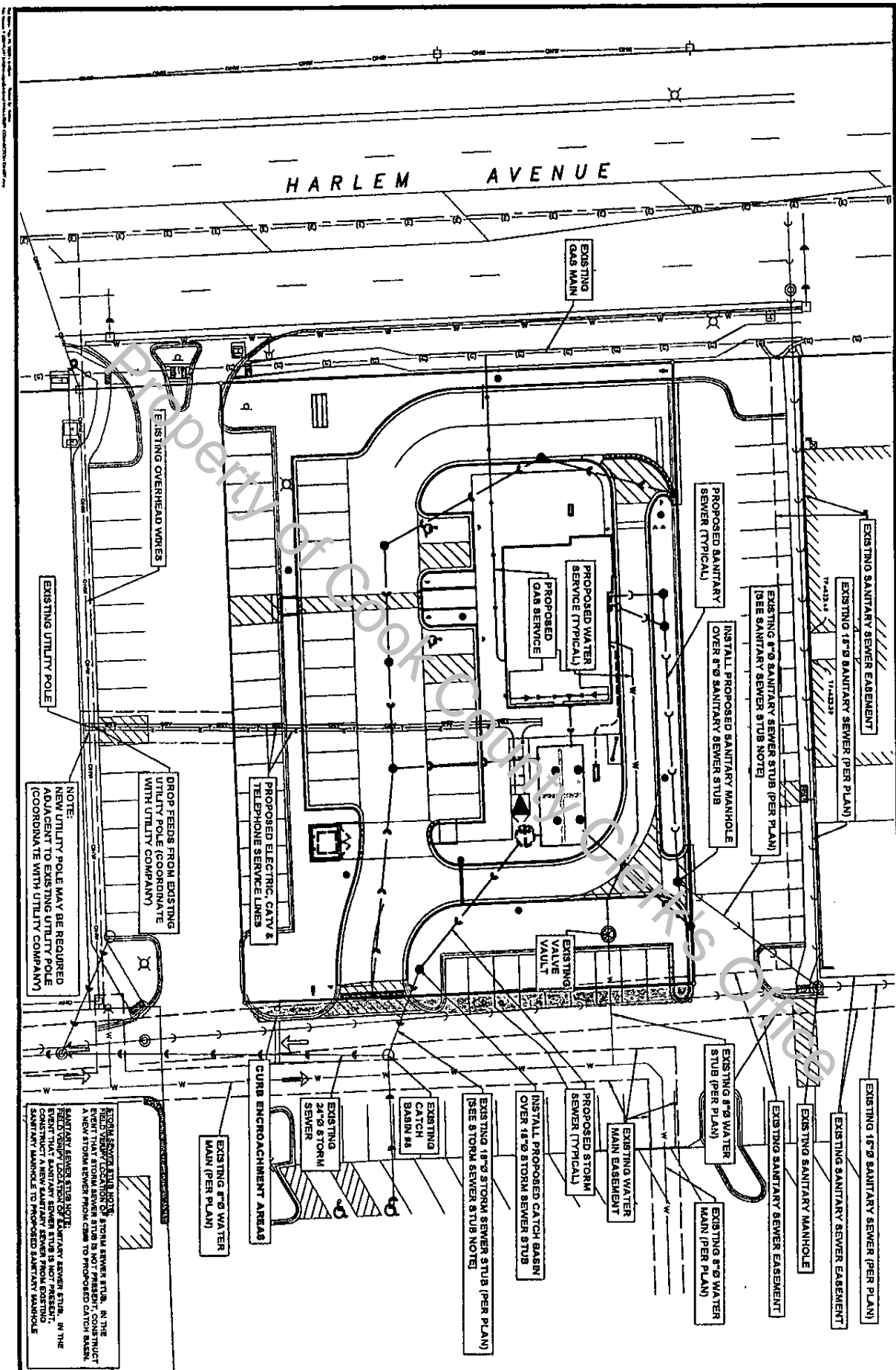
(attached)

Property of Cook County Clerk's Office

COOK COUNTY  
RECORDER OF DEEDS

COOK COUNTY  
RECORDER OF DEEDS

# UNOFFICIAL COPY

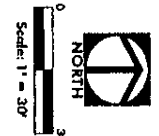


NOTE:  
NEW UTILITY POLE MAY BE REQUIRED  
ADVANCE TO EXISTING UTILITY POLE  
(COORDINATE WITH UTILITY COMPANY)

EXISTING SANITARY SEWER STUB (PER PLAN)  
EXISTING 15\"/>

**UTILITY CONNECTION EXHIBIT**  
**ANDY'S FROZEN CUSTARD**

**HAEGER ENGINEERING**  
consulting engineers • land surveyors  
100 First Steps Parkway, Schaumburg, IL 60173 • Tel: 847.394.6600 Fax: 847.394.6608  
Illinois Professional Design Firm License No. 184-003152  
www.haegerengineering.com



Project Address: P.A.C.  
Engineer: 02/19/2020  
Printed No. 19-184  
Sheet 1

12755 S. HARLEM AVENUE, PALOS HEIGHTS, ILLINOIS

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**Exhibit D**

**Freestanding Signage**

(attached)

Property of Cook County Clerk's Office

**COOK COUNTY  
RECORDER OF DEEDS**

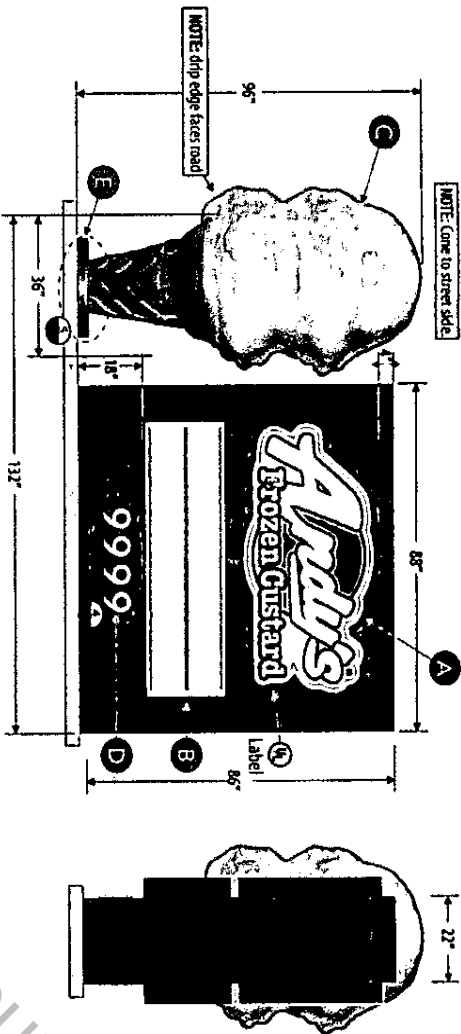
**COOK COUNTY  
RECORDER OF DEEDS**

D-1

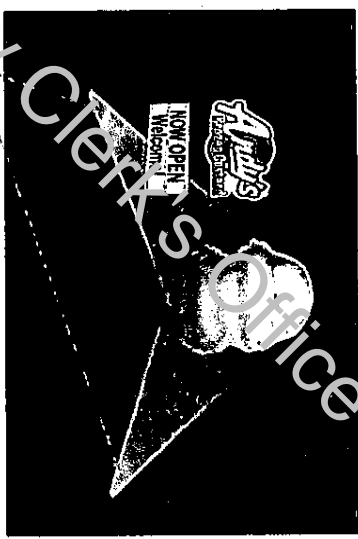


# UNOFFICIAL COPY

1) Orthographic Views - scale: 3/8" = 1"



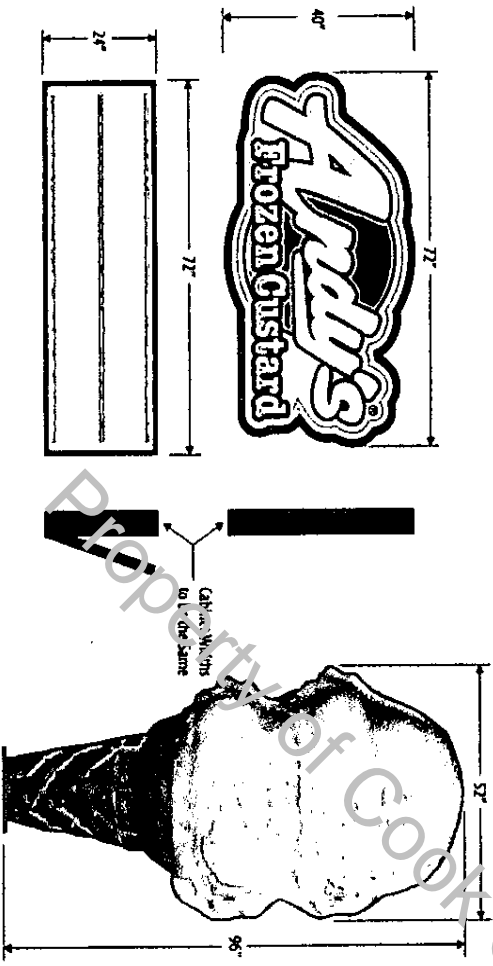
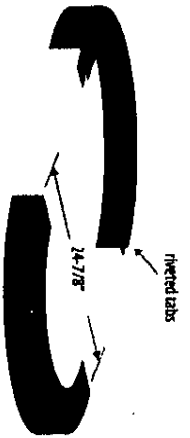
2) Illuminated View - scale: NTS



3) FCO Address - scale: 3/4" = 1"



4) Bolt/Flange Cover - scale: NTS



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**PINNACLE DESIGN**

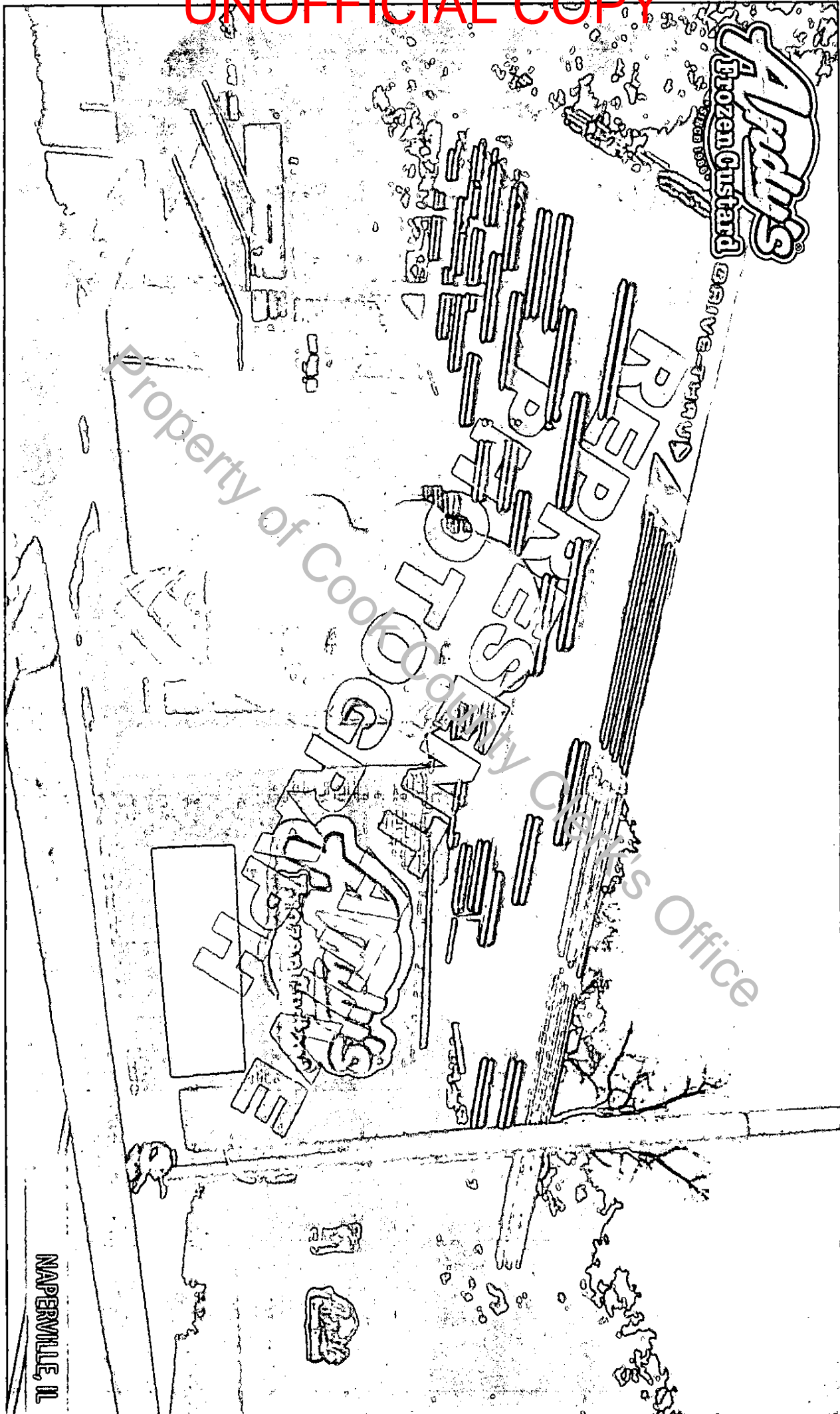
2-Sided Monument w/ Full Cone

- A** LED Illuminated Contoured Aluminum Cabinet with Full Embossed Backdrop Painted Face
  - Sign
  - See Copy Chart for Color Spec.
- B** Flush Mounted 1-Sided LED Illuminated Cabinets
  - Flat Face with 2-Line Letter Face,
  - 2 Thumb Screws, Washers per Retainer (4 Total) and Vandal Cover
  - Sign
- C** 3-D Fiberglass Cone Mounted to Monument Pedestal
- D** Painted 1/2" Aluminum FCO Address; Flush Mounted Flush to Monument Face
  - Sign
- E** Aluminum Bolt/Flange Covers
  - Sign
- F** Qty: 2, 100 pc. 8 on 9 Sid Conit. Font Letters; Qty: 1, 50 pc. 8 on 9 Sid Conit. Font Punctuation Set
- G** Changeable Copy Letter Storage Cabinet
- H** Cool Lighting
  - Qty. 4 Features by Others

\*See Cone Chart for Available Options

AFC-STND-MONU-1

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NAPERVILLE, IL

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**Exhibit E**

Temporary Banners

(attached)

*NA*

Property of Cook County Clerk's Office

**COOK COUNTY  
RECORDER OF DEEDS**

**COOK COUNTY  
RECORDER OF DEEDS**