

FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

LTC 96 66823 383

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS is dated as of January 30, 1997 (this "First Amendment"), is made by and among, American National Can Company, a Delaware Corporation ("American"), State Street Bank and Trust Company, not in its individual capacity, but solely as Trustee under a Declaration of Trust dated November 13, 1995 ("the Trustee") and Aldi Inc., an Illinois Corporation ("Aldi") and amends the Declaration of Covenants, Conditions, Restrictions and Easements dated as of September 20, 1996 the ("Declaration").

WITNESSETH:

WHEREAS, the Trustee is the successor in interest to and legal owner of that certain parcel of real property identified as Lot 1 in the Declaration.

WHEREAS, Aldi is the successor in interest to and legal owner of that certain parcel of real property identified as Lot 2 in the Declaration.

WHEREAS, American is the legal owner of that certain parcel of real property identified as Lot 3 in the Declaration.

WHEREAS, American intends to convey legal title to a portion of Lot 3, which is legally described on First Amendment Exhibit A hereto ("Lot 3 - South").

WHEREAS, American intends to retain legal title to the remainder of Lot 3, which is legally described on First Amendment Exhibit B hereto ("Lot 3 - North").

WHEREAS, the parties hereto wish to amend the rights and responsibilities of the Owners of the Lots with regard to the construction and maintenance of the Roadway and the Pylon Sign.

LAWYERS TITLE INSURANCE CORPORATION

NOW THEREFORE, the Trustee and Aldi, as successors in interest to the Owners of Lot 1 and 2, and American, as the Owner of Lot 3, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby amend the Declaration as follows:

1. Paragraph 4(b) of the Declaration shall be deleted in its entirety and the following shall be substituted:

"(b) The cost of maintaining, repaving and replacing the Roadway in accordance with plans and specifications prepared by a licensed civil engineer, shall be paid by the Owners in the following percentages: the Owner of Lot 1 shall bear 33.33% of the cost thereof, the Owner of Lot 2 shall bear 33.33% of the cost

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4/6/97
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thereof, and, from and after the date of the completion of construction of commercial building improvements in excess of five hundred (500) square feet on Lot 3, the Owner of Lot 3-North Parcel shall bear 16.67% of the cost thereof and the Owner of Lot 3-South Parcel shall bear 16.67% of the cost thereof. Until such date, the Owners of Lots 1 and 2 shall divide such cost evenly. The Owner of Lot 1 shall have the responsibility to maintain, repave and replace the Roadway until such date that commercial building improvements in excess of five hundred (500) square feet have been completed on Lot 3. From and after that date, the Owner of Lot 3-South Parcel shall have the responsibility to maintain, repave and replace the Roadway. The responsible Owner shall charge the other participating Owners their proportionate share of such cost by a written, itemized statement with appropriate support documentation separately itemized by contractor or vendor. The other Owners shall make their payments within thirty (30) days following receipt of that statement. Notwithstanding the foregoing, any maintenance to the Roadway required as a result of use by any Owner or its tenants, contractors, invitees or licensees other than ordinary vehicular and pedestrian traffic, shall be the sole cost of such Owner. Damage resulting from construction vehicles shall be the sole cost of the Owner for whom such construction is performed. The obligation to maintain, repave and repair the Roadway shall be performed in a manner consistent with the standard of first class shopping centers in Chicago, Illinois."

2. Paragraph 5 of the Declaration shall be deleted in its entirety and the following shall be substituted:

"5. Pylon Sign.

(a) The predecessor in interest to the Trustee gave notice to the other Owners of its intention to construct the Pylon Sign.

(b) All the other Owners agreed to participate in the design, construction and cost of operating the Pylon Sign by giving their respective acceptance notices (the "Acceptance Notice"). The Owners agreed upon the design and construction of the Pylon Sign. The cost of the design and construction of the Pylon Sign (except the sign panels which shall be paid for by the Owners of such panels) including the steel superstructure, steel erection, foundations, electrical, and all permits and associated landscaping shall be apportioned twenty percent (20%) to the Owner of Lot 1, twenty percent (20%) to the Owner of Lot 2, twenty percent (20%) to the Owner of Lot 3-North Parcel and forty percent (40%) to the Owner of Lot 3-South Parcel.

DEPT-01 RECORDING \$43.50
T40009 TRAN 7219 02/20/97 10456100
5484 BK * - 97 - 116437
COOK COUNTY RECORDER
DEPT-01 PENALTY \$40.00

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(c) The Pylon Sign shall be constructed in basic conformity with the schematic plan accepted by all of the Owners as shown on First Amendment Exhibit "C" attached hereto and by this reference made a part hereof.

(d) The Owner of Lot 1 shall have ownership of Sign Panel No. 2, the Owner of Lot 2 shall have ownership of Sign Panel No. 3, the Owner of Lot 3-North Parcel shall have ownership of Sign Panel No. 1 and the Owner of Lot 3-South Parcel shall have ownership of Sign Panels Nos. 4 and 5 (as such sign panels are shown on First Amendment Exhibit "C"). In addition to their ownership of their respective panels, and excepting the sign panels owned by the other Owners, (i) the Owner of Lot 1 shall have a nineteen percent (19%) undivided ownership of the Pylon Sign; (ii) the Owner of Lot 2 shall have a nineteen percent (19%) undivided ownership of the Pylon Sign; (iii) the Owner of Lot 3-North Parcel shall have ownership of a nineteen percent (19%) undivided ownership of the Pylon Sign; and (iv) the Owner of Lot 3-South Parcel shall have a forty-three percent (43%) undivided ownership of the Pylon Sign. The expense of all utility and operating costs, maintenance, insurance, including applicable deductibles, permits and other costs of owning and operating the Pylon Sign shall be apportioned 19% to the Owner of Lot 1, 19% to the Owner of Lot 2, 19% to the Owner of Lot 3-North Parcel and 43% to the Owner of Lot 3-South Parcel. The Owners shall pay for their proportionate share of all utility operating costs, maintenance, insurance, including applicable deductibles, permits and other normal and customary costs of owning and operating the Pylon Sign. In the event any Owner does not utilize its panel, it may enter into agreements with the other Owners for the use of such panel by such Owners only on such terms as are agreed upon, subject to the terms and conditions of this Declaration. Any Owner which elects not to use or make its panels available to another Owner shall not pay the cost of electricity to its panels, provided that no service is consumed by them. All other costs of maintenance and operation shall be paid in accordance with this Section. The Owners which own and use the Pylon Sign shall pay the Owner of Lot 1 the cost of all electrical service provided to the Pylon Sign, not more frequently than monthly when billed, based upon that Owner's good faith estimate of consumption and charges. The Owners of the Pylon Sign may install a submeter within the building from which electrical service is provided, at any time, at their own cost, and all electrical payments shall be based upon the consumption reported by such meter at the then current rates charged to the Owner of Lot 1. Provided it is utilizing the Pylon Sign, the Owner of Lot 3 - South shall have the responsibility to obtain and maintain all required permits and insurance and maintain and repair the Pylon Sign. Otherwise, the Owner of Lot 1 shall have such responsibility. The responsible Owner shall charge the other Owners their proportionate

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share of such cost by a written, itemized statement with appropriate support documentation separately itemized by contractor or vendor. The Owner of Lot 2 has exercised its right to separately meter and control its sign panel, at its sole cost and expense. Accordingly the Owner of Lot 2 shall not be obligated to pay for utility operating costs as provided in this Section 5(d) but shall pay such charges directly to the utility. All other costs sharings described in this Section 5(d) shall continue unaffected."

3. Exhibit F of the Declaration shall be amended to delete the word "SOUTHERLY" from the twelfth line of the legal description and substitute therefor "NORTHERLY."

4. Defined Terms. Are capitalized terms which are not specifically defined herein shall have the meanings give to them in the Declaration.

5. Conflict or Inconsistency; Reaffirmation of Declaration. In the event of any conflict or inconsistency between the provisions of this First Amendment and the provisions of the Declaration, the provisions of this first Amendment shall govern and control. Except as expressly amended hereby, the parties hereby ratify and reaffirm the terms and provisions of the Declaration.

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

Attest: _____

John A. Bevan

American National Can
Company

By: _____

Clayton P. Hunk

State Street Bank & Trust
Company, Declaration of Trust
dated November 13, 1996

Attest: _____

By: _____

Aldi, Inc.

Attest: _____

By: _____

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

**American National Can
Company**

Attest: _____

By: _____

State Street Bank and Trust Company,
not in its Individual Capacity but
Solely as Trustee under a Declaration
of Trust dated November 13, 1985

Attest: *Glenn Habrich*

By: *[Signature]*

Aldi, Inc.

Attest: _____

By: _____

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

Attest: _____

Attest: _____

Attest: Michael P. [Signature]

American National Can
Company

By: _____

State Street Bank & Trust
Company, Declaration of Trust
dated November 13, 1996

By: _____

Aldi, Inc.

By: Michael J. [Signature]

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FIRST AMENDMENT EXHIBIT A

Lot 3 of Tony, Mike, Cristina and Jims' Resubdivision of part of the Southwest Quarter of Section 18, Township 38 North, Range 14 East of the Third Principal Meridian in Cook County, Illinois.

20-18-300-026
20-18-303-035
20-18-304-023
20-18-312-003

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FIRST AMENDMENT EXHIBIT B

Lot 2 of Tony, Mike, Cristina and Jims' Resubdivision of part of the Southwest Quarter of Section 18, Township 38 North, Range 14 East of the Third Principal Meridian in Cook County, Illinois.

PIN 20-18-300-006-0000

20-18-300-007-0000

20-18-300-026-0000

20-18-302-040-0000

Mail To

TODD A. LEETH

P. O. Box 2357

Vulpersville, MD 21784



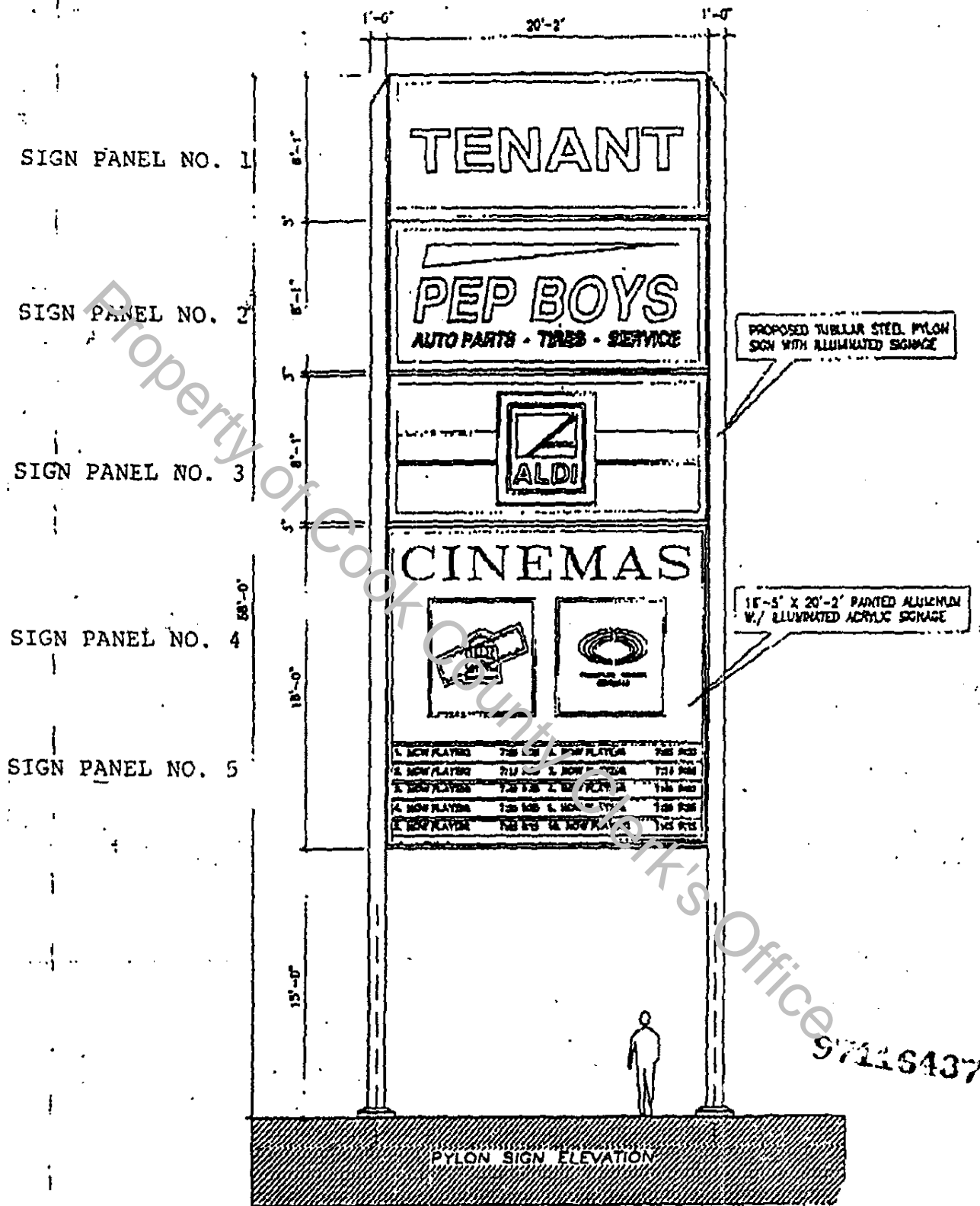
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FIRST AMENDMENT EXHIBIT

C



INNER CITY ENTERTAINMENT / CINEPLEX ODEON
 PROPOSED 10 SCREEN CINEMA COMPLEX
 WEST 60th STREET AND WESTERN AVE.
 CHICAGO, ILLINOIS
 SIGNAGE
 SCALE 1/8" = 1'-0"
 DECEMBER 4, 1988

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