

RESTRICTION AGREEMENT

Recording Requested By And When Recorded Mail To:

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SPACE ABOVE FOR RECORDER'S USE ONLY

RESTRICTION AGREEMENT

THIS RESTRICTION AGREEMENT (this "**Agreement**") is executed, delivered and made effective as of this 11th day of March , 2025 (the "**Effective Date**"), by and between _____ ("**In-Line Parcel Owner**") and _____ ("**Grocery Parcel Owner**").

BACKGROUND INFORMATION

- A. The Parties; General Location of the Properties. In-Line Parcel Owner and Grocery Parcel Owner each own certain parcels of real property located near the intersection of Interstate 29 and Highway 14 in Brookings, South Dakota.
- B. The In-Line Parcel. In-Line Parcel Owner's parcel is legally described on Exhibit A, attached hereto and made a part hereof (said real property, together with all appurtenances and hereditaments thereto, shall be referred to as the "**In-Line Parcel**").
- C. The Grocery Parcel. Grocery Parcel Owner is the owner of a parcel adjacent to the In-Line Parcel, as legally described on Exhibit B, attached hereto and made a part hereof (collectively, the "**Grocery Parcel**"). Collectively, the In-Line Parcel and the Grocery Parcel are sometimes referred to as the "**Properties**" and individually sometimes as a "**Property**".
- D. The Aldi Lease. The Parties acknowledge that the Grocery Parcel is subject to that certain Aldi Ground Lease Agreement between Grocery Parcel Owner, as landlord, and Aldi Inc. (Minnesota), a Minnesota corporation, and its successors and assigns (collectively, "**Aldi**"), as tenant, dated _____, 2025 (the "**Aldi Lease**").
- E. General Description of the Restrictions. Pursuant to the Aldi Lease, and in order to provide for, among other things, the coordinated development and operation of the Properties, the Parties have agreed to subject the In-Line Parcel to certain restrictions on use and development, as more particularly set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Background Information, the mutual promises herein set forth, and for \$10.00 and other good and valuable consideration paid, the Parties do hereby agree as follows:

ARTICLE I Restrictions

1.01. Use Restrictions on the Property. During the term of the Aldi Lease, as may be earlier terminated, renewed, or extended, In-Line Parcel Owner hereby covenants and agrees, for the benefit of the Grocery Parcel, that it will not lease, rent, sell or otherwise permit to be owned, controlled, leased, used or occupied any portion of the In-Line Parcel for any of the uses set forth on **Exhibit C** (the “**Restricted Uses**”), attached hereto and made a part hereof. Notwithstanding anything to the contrary contained herein, the Parties acknowledge and agree that waiver of any restriction set forth in this Agreement shall be at the sole election of Aldi (i.e., neither of the Parties shall have the right to waive all or any portion of the Restricted Uses), and that such election shall be at Aldi’s sole and absolute discretion.

ARTICLE II Miscellaneous Provisions

2.01. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the respective successors and assigns (including successive, as well as immediate, successors and assigns) of the Parties.

2.02. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. For all litigation, disputes and controversies which may arise out of or in connection with this Agreement, the undersigned hereby waive the right to trial by jury and consent to the jurisdiction of the courts of the State of South Dakota.

2.03. Counterpart Originals. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall constitute a single instrument. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document.

2.04. Article and Section Captions. The Article and Section captions contained in this Agreement are included only for convenience of reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement.

2.05. Severability. If any provision of this Agreement or the application of any provision to any entity or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Agreement or the application of said provision to any other entity or circumstance, all of which other provision shall remain in full force and effect.

2.06. Amendments in Writing. No change, amendment, termination or attempted waiver

of any of the provisions of this Agreement shall be binding upon any Party unless in writing and signed by the Parties. The Parties acknowledge, covenant and agree that they will not modify, amend, terminate, or waive any provision of this Agreement without the express prior written consent of Aldi, which may be withheld in Aldi's sole discretion.

2.07. Covenants Run With the Land. It is intended that the covenants, agreements, promises and duties of In-Line Parcel Owner, as set forth in this Agreement, shall be construed as covenants and not as conditions and that all such covenants shall be enforceable against In-Line Parcel Owner and shall also run with the land or constitute equitable servitudes as against the In-Line Parcel . The In-Line Parcel Owner represents and warrants that no mortgages or other similar liens affect the In-Line Parcel as of the Effective Date hereof. The In-Line Parcel Owner shall not agree to subordinate this Agreement to any mortgages or other similar liens without the prior written consent of the Grocery Parcel Owner, which consent may be granted or denied in the sole discretion of the Grocery Parcel Owner.

2.08. Definition of Certain Terms. The term "**Party**" means In-Line Parcel Owner or Grocery Parcel Owner individually (or "**Parties**" shall mean In-Line Parcel Owner and Grocery Parcel Owner collectively) and their respective successors and assigns.

2.09 Third-Party Beneficiary. The Parties hereby acknowledge and agree that Aldi is a third-party beneficiary of this Agreement.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[Signature and Acknowledgment Pages Follow]

[Insert signature and acknowledgement pages, as well as Exhibits A and B]

Exhibit C

- (a) a Grocery Use. The term "Grocery Use" means a supermarket, a meat market, a grocery store, a fruit and vegetable store or stand, a frozen or otherwise processed food store, and any other store where more than 1,500 square feet, including adjacent aisle space, is used for the sale or display of grocery items. "Grocery Use" shall also include the operation of a grocery pick-up or delivery service anywhere within the In-Line Parcel, whether or not the premises from which the service is offered is also used for the sale and display of grocery items. "Grocery Use" does not include any restaurant wherein prepared food is sold for on-premises or "take-out" consumption or any convenience store ancillary to the primary operation of a gas station and/or car wash (including, but not limited to, Kwik Trip, Holiday, Maverik, Kum & Go, and other similar operators); provided, however, in no event shall such restaurant and/or convenience store use more than 1,500 square feet, including adjacent aisle space, for the sale or display of grocery items. Further, no advertisements (including, but not limited to, any advertisements on electric charging stations) on the In-Line Parcel shall advertise, promote or identify a Grocery Use other than Aldi;
- (b) a business selling alcoholic beverages for on-premises consumption except for a restaurant in which the sale of alcoholic beverages does not exceed 50% of its gross sales;
- (b) any establishment which stocks, displays, sells, rents, or offers for sale or rent any merchandise or material commonly used or intended for the use with or in consumption of any narcotic, dangerous drug, or other controlled substance (provided that the foregoing is not intended and shall not be construed to prohibit a drug store); any store or operation where the sale of cannabis (including marijuana) or cannabis derivatives and related products exceeds 50% of such store or operation's gross sales;
- (c) adult bookstore, an establishment selling or exhibiting pornographic materials (provided that this restriction shall not prohibit sales by national book retailers such as Barnes and Noble) or any form of adult entertainment or an operation whose principal use is an exotic dancing and/or massage parlor (provided this restriction shall not prohibit massages in connection with a beauty salon, health club or athletic facility, or a national massage chain such as Massage Envy);
- (d) a pool or billiard hall; arcade;
- (e) night club or dance club;
- (f) children's play or party center; trampoline center; laser tag operation; skating rink; bowling alley; race track; go-karting track;
- (g) telemarketing; polling and surveying center; office use (other than office uses within and ancillary to a permitted retail use);
- (h) an abortion clinic; Planned Parenthood;
- (i) a pet store; except, however, a national pet store (e.g., Petsmart or Petco) shall be permitted if the location of such use is no less than 100 feet from the Building;

- (j) an auto repair and/or tire shop is permitted so long as the concept has a minimum of 30 locations (provided, however, a retail auto supply store that does not perform repairs shall be permitted); the sale of used automobiles;
- (k) a mobile home park; trailer court (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance); mobile home sales; living quarters; hotel; apartment building;
- (l) off-track betting establishment, bingo parlor or any gambling use (other than the ancillary operations of state sponsored lottery);
- (m) a use or operation which would emit or produce noxious or harmful, fumes, contaminants, gases, excessive dust, dirt or loud noises;
- (n) dry cleaner/laundry operation performing cleaning on-site, except for environmentally safe cleaning;
- (o) an assembly, manufacturing, distilling, refining, smelting, industrial, agricultural, drilling or mining operation;
- (p) a junk yard, stock yard, animal raising operation, a dump or disposal or any operation for the incineration or reduction of garbage or refuse;
- (q) a gun/firearms shop or gun/firearms range;
- (r) a pawn shop, tattoo parlor or flea market;
- (s) a thrift store, consignment shop or "re-sell" shop, a "Good Will" or "Salvation Army" type store, or any "drop box" or similar collection facility for donated goods;
- (t) a store dedicated to the sale of tobacco products;
- (u) a mortuary or funeral home;
- (v) a church or other place of worship; banquet hall; auditorium or meeting hall;
- (w) the outdoor display, sale or storage of merchandise (Christmas trees, pumpkins, produce, flowers, artwork, fireworks, novelties, clothing, etc.); and/or
- (x) carnival, amusement park, car show, festival, political event/rally, circus or other similar public event.