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INSTRUMENT NUMBER

2002-09151

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[Signature]

DEVELOPMENT AND USE AGREEMENT REGISTER OF DEEDS

THIS AGREEMENT is made as of the 12 day of March, 2002, among Magnum Development Corp., a Nebraska corporation, of 3023 South 83rd Street, Omaha, Nebraska 68124 ("Magnum") and Aldi Inc. (Kansas), a Kansas corporation, 10505 South K-7 Highway, Olathe, Kansas, 66061 ("Aldi").

WITNESSETH:

WHEREAS, Magnum is the owner of the property identified as the "Magnum Property" on the property description attached hereto as Exhibit "A"; and

WHEREAS, Aldi is the owner of the property identified as the "Aldi Property" on the property description attached hereto as Exhibit "A"; and

WHEREAS, the Magnum Property and the Aldi Property are sometimes referred to in this Agreement collectively as the "Shopping Center" and singularly as a "Property" and plurally as "Properties"; and

WHEREAS, Magnum and Aldi desire that the Shopping Center be developed pursuant to a general plan of improvement to form a commercial shopping center, and further desire that the Shopping Center be subject to the covenants, conditions and restrictions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein, the sufficiency of which is hereby acknowledged, Magnum and Aldi, as the current owners of the Shopping Center, do hereby agree as follows:

1. Use. Buildings in the Shopping Center shall generally be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, grocery store, restaurants, offices, service stores and retail stores. The Aldi Property shall be initially developed and used for a grocery store. The following uses are prohibited on the Aldi Property for a period of 20 years after the date of this Agreement: restaurant, bank or other financial institution accepting deposits or making loans, convenience store, gas station, car wash, school, church, health spa, night club, bar, tavern, bowling alley, billiard parlor, or other place of recreation or amusement, or other use which customarily creates an extraordinarily high need for parking. The following uses are prohibited on the Magnum Property for a period of 20 years after the date of this Agreement: grocery store. Notwithstanding the foregoing, the restriction on the Magnum Property provided in this paragraph shall not apply to a convenience store.

2. Building Design and Construction. All improvements constructed on the Aldi Property shall present an appearance on all sides consistent with that of a first-class business center. Exterior materials (other than roof) of the building on the Aldi Property shall be glass, brick, marble,

202-09151A

granite, other natural stone, architectural concrete, stucco, or other materials having the appearances of these materials. No building on the Aldi Property shall have a wood or metal exterior, and shall not exceed 22 feet in height above finished grade.

3. Development Restrictions. The Aldi Property shall be developed only under the following restrictions:

(a) Only one building may be constructed on the Property. The total floor area of the building on the Property shall not be less than 14,000 square feet.

(b) All trash receptacles, antennae and exterior mechanical equipment, including rooftop equipment, shall be screened when viewed from adjacent streets and at ground level from other areas in the Shopping Center.

(c) No rooftop sign shall be erected on a building.

(d) No freestanding pylon-type sign may be erected on the Aldi Property, except a freestanding pylon-type business identification sign, which does not exceed 24 feet in height above finished grade, and which does not materially block the visibility of any other building in the Shopping Center.

(e) In developing and using the Aldi Property, the owner of the Property shall continuously provide and maintain a parking ratio on the Aldi Property equal to 5 spaces for every 1,000 square feet, or any part thereof, of building floor area. In addition, the owner of the Aldi Property shall cause landscaping areas to be added and maintained in conjunction with any building or other improvement constructed on the Property, and landscaped areas adjacent to public streets shall be irrigated.

(f) The Aldi Property shall be kept neat and orderly, until improved and constructed.

4. Maintenance Standards. Following completion of the improvements on a Property, the respective owner thereof, shall maintain the improvements in good condition and repair. The maintenance is to include, without limitation, the following:

(a) Maintaining the surfaces of driveways, parking areas and sidewalks in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability.

(b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition.

(c) Placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines.

2002-07-11

- (d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required.
- (e) Maintaining all perimeter and exterior building walls, including but not limited to all retaining walls, in a good condition and state of repair.
- (f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

5. Release from Liability. Any person acquiring fee or leasehold title to any portion of the Shopping Center shall be bound by this Agreement only as to the portion of the Shopping Center acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such property, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon the Shopping Center running with the land.

6. Breach. In the event of breach or threatened breach of this Agreement, any record owner or tenant of a Property shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, expended in enforcing this Agreement.

7. Rights of Successors. The restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns.

8. Modification and Cancellation. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of the owner or owners of a majority in area of the Magnum Property and the owner of any other Property, except, so long as the Aldi Property is being used for a grocery store, no modification or cancelation affecting the provisions herein prohibiting a grocery store use on the Magnum Property shall be valid unless made with the mutual agreement of the owner of the Aldi Property, and (b) no modification or cancelation affecting rights or any other right or interest herein granted in favor of a Property shall be valid unless made with the mutual agreement of the owner of the affected Property.

9. Duration. Except as otherwise specifically provided herein, this Agreement shall automatically terminate and be of no further force and effect after 50 years from the date of this Agreement.

10. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

2002-07-10

11. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed.

12. Nebraska Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

13. No Partnership. Nothing in this Agreement shall create a partnership or joint venture between the parties.

14. No Public Dedication. Nothing in this Agreement shall be deemed to be a donation or dedication of any portion of the Shopping Center to the general public, for any public use or purpose. Except as expressly provided herein, no right, privilege or immunity of an owner shall inure to the benefit of any third party nor shall any third party be deemed to be a beneficiary of any other provision herein.

15. Estoppel Certificates. An owner of a Property shall, from time to time, upon written notice from another owner, execute and deliver to the person or entity designated by the requesting owner a certificate in recordable form stating that the Agreement is unmodified and in full force and effect or, if appropriate, state the modifications, and stating, whether to the best of its knowledge, any other owner is in default in any respect under this Agreement, and if in default, specifying the nature of the default.

16. Notices. All notices, statements, demands, approvals or other communications required or permitted under this Agreement shall be in writing and shall be delivered by mail, courier, facsimile or similar commercially recognized form of delivery to a party at its last known address.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

MAGNUM DEVELOPMENT CORP., a  
Nebraska corporation

BY: 

John Hughes, Jr. President

ALDI INC. (Kansas), a Kansas corporation

BY: 

G. Mark Bersted, Vice President

2002-03511

STATE OF NEBRASKA )  
 )  
COUNTY OF DOUGLAS ) SS.

The foregoing instrument was acknowledged before me this 11 day of March, 2002, by John Hughes, Jr., President of Magnurn Development Corp., a Nebraska corporation, on behalf of the corporation.

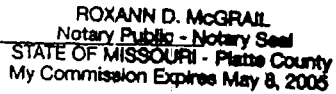
Janet J. Clark  
Notary Public

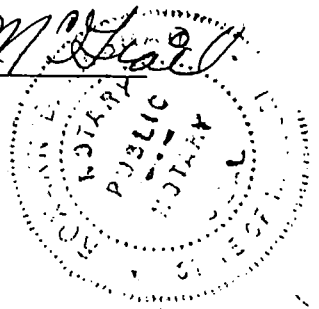
My Commission Expires: 

STATE OF MISSOURI )  
 )  
COUNTY OF JACKSON ) SS.

The foregoing instrument was acknowledged before me this 4th day of March, 2002, by G. Mark Bersted, Vice President of Aldi Inc. (Kansas), a Kansas corporation, on behalf of the corporation.

Roxann D. McGrail  
Notary Public

My Commission Expires: 



2002-07151E

**CONSENT OF MORTGAGEE**

FIRST NATIONAL BANK OF OMAHA, hereby joins in the execution of the above and foregoing Development And Use Agreement for the purpose of consenting thereto and agrees that its interest in the Shopping Center as mortgagee shall be subject and subordinate to the terms and provisions therein contained.

FIRST NATIONAL BANK OF OMAHA

BY:

*[Handwritten Signature]*

Joel C. Jensen, 2<sup>nd</sup> VP.  
(Printed Name and Title)

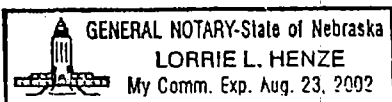
STATE OF NEBRASKA )  
                                  )  
COUNTY OF DOUGLAS )

ss.

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of March, 2002, by Joel C. Jensen, 2<sup>nd</sup> Vice President of First National Bank of Omaha, on behalf of the corporation.

*[Handwritten Signature]*  
Notary Public

My Commission Expires: \_\_\_\_\_



2007-05/15/F

**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**

**THE MAGNUM PROPERTY:**

Lots 2, 3 and 4, in Cornhusker Retail Center, a Subdivision, as surveyed, platted and recorded, in Sarpy County, Nebraska.

**THE ALDI PROPERTY:**

Lot 1, in Cornhusker Retail Center, a Subdivision, as surveyed, platted and recorded, in Sarpy County, Nebraska.