

# UNOFFICIAL COPY

RETURN RECORDED DOCUMENT TO:

GEORGE E. BROGAN  
2400 West 95th Street, #402  
Evergreen Park, Illinois 60805

*This Instrument Prepared by:*

GEORGE E. BROGAN  
2400 West 95th Street, #402  
Evergreen Park, Illinois 60805



Doc#: 0332908314  
Eugene "Gene" Moore Fee: \$62.50  
Cook County Recorder of Deeds  
Date: 11/25/2003 02:56 PM Pg: 1 of 20

RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS,  
CONDITIONS AND RESTRICTIONS

THIS RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS (the "Agreement") is made and entered into this 13 day of November, 2003, by and between The Standard Bank and Trust Company, not individually, but as Trustee under Trust Agreement dated September 12, 1985 and known as Trust No. 9852 (the "Parcel 1 Owner"), and The Marquette Bank, not individually, but as Trustee under Trust Agreement dated August 10, 2002 and known as Trust No. 16293 (the "Parcel 2 Owner").

RECITALS

- A. The Parcel 1 Owner is the owner of that certain real property situated in the City of Hometown, County of Cook, State Illinois, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("Parcel 1")
- B. The Parcel 2 Owner is the owner of that certain real property situated in the City of Hometown, County of Cook, State of Illinois, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("Parcel 2").
- C. The Parcel 2 Owner has developed Parcel 2 for use by Walgreen .
- D. The Parcel 1 Owner has developed Parcel 1 as a retail/commercial site.
- E. The parties hereto desire to impose certain easements upon the Parcels, and to establish certain covenants, conditions and restrictions with respect to said Parcels, for the mutual and reciprocal benefit and complement of Parcel 1 and Parcel 2 and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

**UNOFFICIAL COPY**

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Parcel 1 Owner and the Parcel 2 Owner hereby covenant and agree that the Parcels and all present and future owners and occupants of the Parcels shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Agreement, so that said Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Agreement and, in connection therewith, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

AGREEMENTS

1. Definitions. For purposes hereof:

- (a) The term "Owner" or "Owners" shall mean the Parcel 1 Owner (as to Parcel 1) and the Parcel 2 Owner (as to Parcel 2) and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the real property covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.
- (b) The term "Parcel" or "Parcels" shall mean each separately identified parcel of real property now constituting a part of the real property subjected to this Agreement as described on Exhibit "A", that is, Parcel 1 and Parcel 2, and any future subdivisions thereof.
- (c) The term "Permittees" shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).
- (d) The term "Common Area" shall mean those portions of Parcel 1 and Parcel 2 that are outside of exterior walls of buildings or other structures from time to time located on the Parcels, and which are either unimproved, or are improved as (without limitation) parking areas, landscaped areas, driveways, roadways, walkways, light standards, curbing, paving, entrances, exits and other similar exterior site improvements.
- (e) The term "Walgreen" or "Walgreens" shall mean Walgreen Co., an Illinois corporation (or any of its affiliates, subsidiaries, successors or assigns). Walgreen shall be deemed a third party beneficiary to this Agreement during its tenancy under the Walgreen Lease.
- (f) The term "Walgreen Lease" or "Walgreens Lease" shall mean that Lease of Parcel 2 from the Parcel 2 Owner as landlord to Walgreen as tenant, and any amendments, extensions or replacements thereof.

**UNOFFICIAL COPY**

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

(g) The term "Site Plan" shall mean that site plan of the Parcels attached hereto as Exhibit "B" and by reference made a part hereof. Except as may be otherwise provided in this Agreement, the Site Plan is for identification purposes only.

(h) The term "Driveway" shall mean that driveway and related driveway improvements, paving, curbing, entrances and exits, in the location on the Parcels as shown on the Site Plan.

## 2. Easements.

2.1 Grant of Reciprocal Easements. Subject to any express conditions, limitations or reservations contained herein, the Owners hereby grant, establish, covenant and agree that the Parcels, and all Owners and Permittees of the Parcels, shall be benefited and burdened by the following nonexclusive, perpetual and reciprocal easements which are hereby imposed upon the Parcels and all present and future Owners and Permittees of the Parcels.

(a) An easement for reasonable access, ingress and egress over all paved driveways, roadways and walkways as presently or hereafter constructed and constituting a part of the Common Area of Parcel 2 and the Common Area of Parcel 1 including, without limitation, the Driveway, so as to provide for the passage of motor vehicles and pedestrians between all portions of the Common Area of such Parcels intended for such purposes, and to and from all abutting streets or rights of way furnishing access to such Parcels;

(b) An easement for the parking of vehicles in the parking areas designated as part of the Common Areas of the Parcels, as such parking areas are indicated on the Site Plan and as the same may be modified or removed from time to time by the Owner of the Parcel upon which the parking areas are located (the "Parking Easement"), provided that the parking areas of the Parcels shall not be modified or removed without the consent of Walgreen during the continuance of the Walgreen Lease or if Walgreen shall become an Owner of Parcel 2. The Parking Easement is for customer parking in connection only with the businesses operated from time to time at the Parcels. In no event shall the Parking Easement be used for delivery or truck parking, employee parking, overnight parking, storage or other similar parking purposes that shall constitute an unreasonably prolonged use of the Parking Easement.

(c) An easement under and across those parts of the Common Areas that are not within any permissible building areas shown on the Site Plan, for the installation, maintenance, repair and replacement of water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas mains and other utility facilities necessary for the orderly development and operation of the Common Areas and each building from time to time located

**UNOFFICIAL COPY**

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

within the Parcels; provided that (i) the rights granted pursuant to such easements shall at all times be exercised in such a manner as not to interfere materially with the normal operation of a Parcel and the businesses conducted therein, (ii) the exact location of any utilities shall be subject to the approval of the Owner(s) of the burdened Parcel(s) (and, as to Parcel 2 during the continuance of the Walgreen Lease, Walgreen), and (iii) except in an emergency, the right of any Owner to enter upon the Parcel of another Owner for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner (and, as to any entry upon Parcel 2 during the continuance of the Walgreen Lease, Walgreen) as to the time and manner of entry. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the ground level or surface of the Parcel (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the affected Parcel and Walgreen (as to Parcel 2). No additional utility easements affecting Parcel 2 shall be installed without Walgreen's consent (during the continuance of the Walgreen Lease).

2.2 Indemnification. Each Owner having rights with respect to an easement granted hereunder shall indemnify and hold the Owner whose Parcel is subject to the easement (including Walgreen, in the case of the Owner of Parcel 2) harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of such Owner, its contractors, employees, agents, or others acting on behalf of such Owner.

2.3 Reasonable Use of Easements.

(a) The easements herein above granted shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Parcel, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.

(b) Once the utility lines, systems and equipment are installed pursuant to the easements granted in paragraph 2.1(c) hereof, no permanent building, structures, trees or other improvements inconsistent with the use and enjoyment of such easements (excluding improvements typically found in common areas of shopping centers) shall be placed over or permitted to encroach upon such water detention, drainage and utility installations. The Owner of the Parcel served by such installations shall not unreasonably withhold its consent to the reasonable relocation of such installations requested by the Owner of a Parcel where such installations are located, at such requesting Owner's sole cost and expense, so

**UNOFFICIAL COPY**

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

long as water detention and drainage services or utility services, as applicable, to the other Owner's Parcel are not unreasonably interrupted and the remaining provisions of this paragraph 2.3 are complied with. No such relocation affecting Parcel 2 or the utility service(s) thereto shall be performed without the consent of Walgreen (during the continuance of the Walgreen Lease).

(c) Once commenced, any construction undertaken in reliance upon an easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with the business of any other Owner and its Permittees. Except in cases of emergency, the right of any Owner to enter upon a Parcel of another Owner for the exercise of any right pursuant to the easements set forth, or to prosecute work on such Owner's own Parcel if the same interferes with utility or drainage easements or easements of ingress, egress or access to or in favor of another Owner's Parcel, shall be undertaken only in such a manner so as to minimize any interference with the business of the other Owner and its Permittees. In such case, no affirmative monetary obligation shall be imposed upon the other Owner (and/or, during the continuance of the Walgreen Lease, Walgreen), and the Owner undertaking such work shall with due diligence repair at its sole cost and expense any and all damage caused by such work and restore the affected portion of the Parcel upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the commencement of such work. In addition, the Owner undertaking such work shall pay all costs and expenses associated therewith and shall indemnify and hold harmless the other Owner(s) and its Permittees from all damages, losses, liens or claims attributable to the performance of such work. Notwithstanding the foregoing or anything contained in this Agreement to the contrary, the Owner of Parcel 1 and its Permittees shall in no event undertake any work described in this paragraph (except normal minor repairs in the ordinary course which do not interfere with the business of the Owner of Parcel 2 and its Permittees) which is not of an emergency nature during the months of November or December unless the Owner of Parcel 2 (and Walgreen, during the continuance of the Walgreen Lease) shall consent thereto.

### 3. Maintenance.

3.1 General. Until such time as improvements are constructed on a Parcel, the Owner thereof shall maintain the same in a clean and neat condition and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter or debris.

3.2 Buildings and Appurtenances Thereto. Each Owner covenants to keep and maintain, at its sole cost and expense, the building(s) located from time to time on its respective Parcel in good order, condition and repair. Once constructed, in the event of any damage to or destruction of a building on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence either (a) repair, restore and rebuild such building to its condition prior to such damage or destruction (or with such

**UNOFFICIAL COPY**

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

changes as shall not conflict with this Agreement), or (b) demolish and remove all portions of such damaged or destroyed building then remaining, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level, graded condition. Nothing contained in subparagraph 3.2(b) shall be deemed to allow an Owner to avoid a more stringent obligation for repair, restoration and rebuilding contained in a lease or other written agreement between an Owner and such Owner's Permittee. No buildings hereafter modified or constructed on Parcel 1 as a result of remodeling, repair, restoration, and rebuilding, shall be greater than one story in height and exceed a maximum height of 28 feet from grade level on Parcel 1 or reduce the parking ratio for Parcel 1 and Parcel 2 in effect as of the date of this Agreement.

3.3 Common Area. Each Owner of a Parcel covenants at all times during the term hereof to operate and maintain or cause to be operated and maintained at its expense all Common Area located on its Parcel in good order, condition and repair. Following the construction of improvements thereon, maintenance of Common Area shall include, without limitation, maintaining and repairing all sidewalks and the surface of the parking and roadway areas, removing all papers, debris and other refuse from and periodically sweeping all parking and road areas to the extent necessary to maintain the same in a clean, safe and orderly condition, maintaining appropriate lighting fixtures for the parking areas and roadways, maintaining marking, directional signs, lines and striping as needed, maintaining landscaping, maintaining signage in good condition and repair, and performing any and all such other duties as are necessary to maintain such Common Area in a clean, safe and orderly condition. Except as otherwise expressly provided in this Agreement, once constructed, in the event of any damage to or destruction of all or a portion of the Common Area on any Parcel, the Owner of such Parcel shall, at its sole cost and expense, with due diligence repair, restore and rebuild such Common Area to its condition prior to such damage or destruction (or with such changes as shall not conflict with this Agreement). Each Owner reserves the right to alter, modify, reconfigure, relocate and/or remove the Common Areas or building areas on its Parcel, subject to the following conditions: (i) as to Parcel 2, during the continuance of the Walgreen Lease, the express written consent of Walgreen shall be required; (ii) the reciprocal easements between the Parcels pursuant to paragraph 2.1(a) shall not be closed or materially impaired; (iii) the Driveway and ingress and egress thereto, and to and from the Parcels and adjacent streets and roads, shall not be so altered, modified, relocated, blocked and/or removed without the express written consent of all Owners and Walgreen (during the continuance of the Walgreen Lease); (iv) the same shall not violate any of the provisions and easements granted in paragraph 2; and (v) as to Parcel 1, the requirements of paragraph 3.2 of this Agreement shall be complied with.

3.4 Utilities. Each Owner shall at all times during the term hereof construct, operate and maintain or cause to be constructed, operated and maintained, in good order, condition and repair, at its sole expense, any utility or other installations serving the Parcel of such Owner and from time to time existing on the Parcel of another Owner pursuant to an easement described herein.

**UNOFFICIAL COPY**

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

4. Construction of Improvements. Every building (including its appurtenant Common Area improvements), now or in the future constructed on Parcel 1, shall be constructed, operated and maintained so that the same is in compliance with all applicable governmental requirements

5. Restrictions.

5.1 General. Throughout the term of the Walgreen Lease or at any time that Walgreens is the owner of Parcel 2, it is expressly agreed that neither all nor any portion of Parcel 1 shall be used directly or indirectly for any one or more of the following purposes: (i) the operation of a drug store or a so-called prescription pharmacy or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind; (ii) the operation of a medical diagnostic lab and/or the provision of treatment services; (iii) the sale of so-called health and/or beauty aids and/or drug sundries; (iv) the operation of a business in which photo finishing services and/or photographic film are offered for sale; (v) the operation of a business in which greeting cards and/or gift wrap are offered for sale; and/or (vi) the operation of a business in which food items for off premises consumption are offered for sale (provided, however, that the use restriction contained in this subparagraph (vi) shall not apply to a carry-out pizzeria, carry-out Chinese restaurant, carry-out sandwich shop, carry-out hamburger restaurant or other carry out restaurant provided that the number of seats contained therein shall not exceed ten (10); or the sale of prepared food items for off-premises consumption by a so-called "accommodation" food user, i.e., a use that does not offer full meals, but rather offers a limited product line such as coffee, cookies, bagels, cinnamon rolls, donuts, pastries (i.e. a bakery), candy, ice cream, frozen yogurt, juice drinks or the like; and, provided further, a so-called "accommodation" food user shall in no event include a so-called "food mart" that sells convenience foods, a service station that includes a food mart or the operation of a so-called "convenience store").

- 5.2 Additional Restrictions. Throughout the term of the Walgreen Lease or at any time that Walgreens is the Owner of Parcel 2, no portion of Parcel 1 shall be used for the following purposes: a cocktail lounge, bar, disco, theater, bowling alley, pool hall, billiard parlor, automobile sales or leasing facility, skating rink, roller rink, amusement arcade, children's play or party facility, adult book store, adult theatre, adult amusement facility, or any facility selling or displaying pornographic materials or having such displays, second hand store, odd lot, closeout or liquidation store, auction house, flea market, office (except incidental to a retail business or the following office uses: banks or similar financial institutions, brokerage offices, real estate offices, travel and/or insurance agencies, doctor, dental, surgical, chiropractic or other medical or treatment offices), educational or training facility, restaurant (except for a carry-out pizzeria, carry-out Chinese restaurant, carry-out sandwich shop, carry-out hamburger restaurant or other carryout restaurant provided that the number of seats contained therein shall not exceed ten (10)), exercise or health club, gym or any use which creates a nuisance.

**UNOFFICIAL COPY**

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

- 5.3 Drive-Throughs. No facility on Parcel 1 for vehicular drive-up or drive-through in which the stopping or standing of motor vehicles in line at a location for dropoff and/or pickup is intended (as, for example, at a restaurant, car wash or bank) shall be assigned, constructed, used or operated in any manner such that motor vehicles in line at such facility stop or stand onto Parcel 2 and/or the Driveway, or otherwise interfere with the normal pattern and flow of pedestrian or vehicular traffic on and across Parcel 2 and/or the Driveway. Nothing contained herein shall be deemed to affect the drive-through serving the building for Walgreen to be initially constructed on Parcel 2 by the Owner thereof, which is hereby expressly approved.
6. Insurance. Throughout the term of this Agreement, each Owner shall procure and maintain general and/or comprehensive public liability and property damage insurance against claims for personal injury (including contractual liability arising under the indemnity contained in paragraph 2.2 above), death, or property damage occurring upon such Owner's Parcel, with single limit coverage of not less than an aggregate of Two Million Dollars (\$2,000,000.00) including umbrella coverage, if any, and naming each other Owner and Walgreen during the continuance of the Walgreen Lease (provided the Owner obtaining such insurance has been supplied with the name of such other Owner in the event of a change thereof) as additional insureds. Walgreen (whether as tenant under the Walgreen Lease or in the event Walgreen becomes an Owner of a Parcel) may elect to self insure and/or carry insurance required hereunder under master or blanket policies of insurance.
7. Taxes and Assessments. Each Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Parcel.
8. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of Parcel 1 or Parcel 2. No easements, except those expressly set forth in paragraph 2, shall be implied by this Agreement; in that regard, and without limiting the foregoing, no easements for drainage are granted or implied
9. Remedies and Enforcement.
- 9.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) and Walgreen shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. Walgreen shall have the right, but not the obligation, to enforce this Agreement on behalf of the Owner of Parcel 2, and/or to cure a breach or default hereunder by the Owner of Parcel 2, which enforcement or cure shall be accepted by the other Owner(s) as if effected by the Owner of Parcel 2.



# UNOFFICIAL COPY

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

9.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Agreement within thirty (30) days following written notice thereof by an Owner or Walgreen (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), Walgreen or any Owner shall have the right to perform such obligation contained in this Agreement on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by First Chicago NBD (its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of (i) an emergency, (ii) blockage or material impairment of the easement rights, and/or (iii) the unauthorized parking of vehicles on Parcel 2, an Owner or Walgreen may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described.

9.3 Lien Rights. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner (or to Walgreen in connection with the exercise of its rights set forth in paragraphs 9.1 and/or 9.2 above) in enforcing any payment in any suit or proceeding under this Agreement shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Office of the County Recorder of Cook County, Illinois; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Office of the County Recorder of Cook County, Illinois prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien.

9.4 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

9.5 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

**UNOFFICIAL COPY**

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

9.6 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of paragraphs 2 and/or 5 of this Agreement, each Owner agrees that such violation or threat thereof shall cause the nondefaulting Owner and/or its Permittees to suffer irreparable harm and such nondefaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of paragraphs 2 and/or 5 of this Agreement, the nondefaulting Owner and Walgreen, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of paragraphs 2 and/or 5 of this Agreement.

10. Term. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Cook County Recorder and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners of Parcel 1 and Parcel 2 in accordance with paragraph 11.2 hereof.

11. Miscellaneous.

11.1 Attorneys' Fees. In the event a party (including Walgreen) institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

11.2 Amendment.

(a) The parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of Parcel 1 and Parcel 2, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the County Recorder of Cook County, Illinois.

(b) Notwithstanding subparagraph 11.2(a) above to the contrary, no termination of this Agreement, and no modification or amendment of this Agreement shall be made nor shall the same be effective unless the same has been expressly consented to in writing by Walgreen (during the continuance of the Walgreen Lease).

11.3 Consents. Wherever in this Agreement the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an

**UNOFFICIAL COPY**

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

Owner or Walgreen under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing. During the continuance of the Walgreen Lease, any consent by the Owner of Parcel 2, to be effective, shall also require the consent of Walgreen. Any consent of Walgreen may be given, denied or conditioned by Walgreen in Walgreen's sole and absolute discretion.

11.4 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

11.5 No Agency. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

11.6 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

11.7 Grantee's Acceptance. The grantee of any Parcel or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of such Parcel, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

11.8 Separability. Each provision of this Agreement and the application thereof to Parcel 1 and Parcel 2 are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of both Parcels by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

11.9 Time of Essence. Time is of the essence of this Agreement.

**UNOFFICIAL COPY**

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

11.10 Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

11.11 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party and Walgreen may change from time to time their respective address for notice hereunder by like notice to the other party and Walgreen. Notice given by any Owner hereunder to be effective shall also simultaneously be delivered to Walgreen (during the continuance of the Walgreen Lease). The notice addresses of the Parcel 1 Owner, the Parcel 2 Owner and Walgreen are as follows:

Walgreen:

Walgreens  
Attention: Law Department  
Mail Stop No. 2252  
200 Wilmot Road  
Deerfield, Illinois 60015

Parcel 1 Owner:

THE STANDARD BANK AND TRUST COMPANY,  
NOT INDIVIDUALLY, BUT AS TRUSTEE UNDER  
TRUST AGREEMENT DATED SEPTEMBER 12, 1985  
AND KNOWN AS TRUST NO. 9852

Parcel 2 Owner:

THE MARQUETTE BANK, NOT INDIVIDUALLY,  
BUT AS TRUSTEE UNDER TRUST AGREEMENT  
DATED AUGUST 10, 2002 AND KNOWN AS  
TRUST NO. 16293

11.12 Governing Law. The laws of the State in which the Parcels are located shall govern the interpretation, validity, performance, and enforcement of this Agreement.

11.13 Estoppel Certificates. Each Owner, within twenty (20) day of its receipt of a written request from the other Owner(s) or Walgreen, shall from time to time provide the requesting Owner or Walgreen, a certificate binding upon such Owner stating: (a) to the best of such Owner's knowledge, whether any party to this Agreement is in default or violation of this Agreement and if so identifying such default or violation; and (b) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

11.14 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

# UNOFFICIAL COPY

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

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

THE STANDARD BANK AND TRUST COMPANY, NOT INDIVIDUALLY, BUT AS TRUSTEE UNDER TRUST AGREEMENT DATED SEPTEMBER 12, 1985 AND KNOWN AS TRUST NO. 9852  
[Parcel 1 Owner]

By: *Patricia Ralohson*  
Name: Patricia Ralohson, T.O.  
Its: \_\_\_\_\_

Attest: *Donna Diviero*  
Donna Diviero, A.T.O.

Witnesses:  
\_\_\_\_\_  
\_\_\_\_\_

THE MARQUETTE BANK, NOT INDIVIDUALLY, BUT AS TRUSTEE UNDER TRUST AGREEMENT DATED AUGUST 10, 2002 AND KNOWN AS TRUST NO. 16293  
[Parcel 2 Owner]

By: *Henry A. Summer Jr*  
Name: Henry A. Summer Jr  
Its: ASSOCIATE VICE PRESIDENT

Attest: *H. Simmons*

Witnesses:  
\_\_\_\_\_  
\_\_\_\_\_

This instrument is executed by the Marquette Bank, not personally, but only as Trustee, and no personal liability is assumed by or shall be enforced against said Marquette Bank because of or on account of the making of this instrument.

This instrument is signed, sealed and delivered by STANDARD BANK AND TRUST COMPANY, solely in its capacity as Trustee as aforesaid. Any and all duties, obligations and liabilities of the Trustee hereunder are to be performed by said STANDARD BANK AND TRUST COMPANY only as such Trustee. Any claims, demands and liabilities which may at any time be asserted against the Trustee hereunder shall be paid, collected or satisfied against only the property or assets in the possession of STANDARD BANK AND TRUST COMPANY as Trustee as aforesaid, and the STANDARD BANK AND TRUST COMPANY does not undertake, nor shall it be under any personal or legal liability or obligation of any nature whatsoever by virtue of the execution and delivery hereof, nor shall STANDARD BANK AND TRUST COMPANY, either individually or as Trustees, be under any duty or obligation to request the rents, issues and profits arising from the property described or any other property which it may hold under the terms and conditions of said Trust Agreement.

- Exhibit "A" - Legal Descriptions of Parcels 1 and 2.
- Exhibit "B" - Site Plan. Identify Parcels 1 and 2, the Driveways, and drainage or utility easement areas (If required).

**UNOFFICIAL COPY**

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

## EXHIBIT "A"

LEGAL DESCRIPTIONS OF PARCELSPARCEL 1

THAT PART OF LOT 1651 IN J.E. MERRION AND COMPANY'S HOMETOWN UNIT NO. 10, BEING A SUBDIVISION OF LOT "H" (EXCEPT THE EAST 590.47 FEET THEREOF) IN J.E. MERRION AND COMPANY'S HOMETOWN UNIT NO. 7, A SUBDIVISION OF LOT "F" IN J.E. MERRION AND COMPANY'S HOMETOWN UNIT NO. 5, A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS ON JUNE 11, 1954, AS DOCUMENT NUMBER 1528599, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1651; THENCE ON AN ASSUMED BEARING NORTH 0 DEGREES 0 MINUTES 23 SECONDS WEST, ALONG THE EAST LINE OF SAID LOT 1651, 72.00 FEET TO A POINT 178.16 FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT 1651; THENCE: NORTH 89 DEGREES 59 MINUTES 37 SECONDS EAST 42.84 FEET; THENCE NORTH 44 DEGREES 51 MINUTES 8 SECONDS WEST 45.05 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 37 SECONDS WEST 125.13 FEET TO A POINT ON A CURVE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE NORTH LINE OF SAID LOT 1651, A DISTANT 5.10 FEET EAST OF THE NORTHWEST CORNER THEREOF; THENCE SOUTHERLY ALONG A CURVED LINE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 5674.70 FEET AND PARALLEL WITH THE WESTERLY LINE OF SAID LOT 1651, A DISTANCE OF 251.00 FEET TO A POINT IN THE SOUTH LINE OF SAID LOT 1651 DISTANT 5.10 FEET EAST OF THE SOUTHWEST CORNER THEREOF); THENCE SOUTHERLY, ALONG SAID CURVE, AN ARC DISTANCE OF 104.26 FEET TO A POINT ON THE SOUTH LINE OF SAID LOT 1651; THENCE SOUTH 89 DEGREES 59 MINUTES 37 SECONDS EAST, ALONG SAID SOUTH LINE, 208.01 FEET TO THE POINT OF BEGINNING; ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2

THAT PART OF LOT 1652, LYING EASTERLY OF A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF LOT 1652 AFORESAID 69.67 FEET WEST OF THE NORTHEAST CORNER THEREOF; THENCE SOUTHWESTERLY TO A POINT 165 FEET WEST OF AND 23 FEET SOUTH OF SAID NORTHEAST CORNER (AS MEASURED ON SAID NORTH LINE AND ON A LINE AT RIGHT ANGLES THERETO); THENCE SOUTHWESTERLY TO A POINT ON THE SOUTH LINE OF LOT 1652 AFORESAID 5.1 FEET EAST OF THE SOUTHWEST CORNER THEREOF AND EXCEPTING THEREFROM THAT PART ACQUIRED BY CONDEMNATION IN CIRCUIT COURT OF COOK COUNTY PROCEEDING NUMBER 85L50169, NAMELY THAT PART

**UNOFFICIAL COPY**

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

OF LOT 1652 DESCRIBED AS FOLLOWS: BEGINNING ON THE SOUTH LINE OF SAID LOT 5.1 FEET EAST OF THE SOUTHWEST CORNER THEREOF; THENCE ON AN ASSUMED BEARING OF SOUTH 89 DEGREES, 59 MINUTES 37 SECONDS EAST ALONG THE SOUTH LINE 9.06 FEET; THENCE NORTH 6 DEGREES, 55 MINUTES, 53 SECONDS EAST 77.57 FEET TO A POINT 165.0 FEET WEST AND 23.0 FEET SOUTH OF THE NORTHEAST CORNER (AS MEASURED ON SAID NORTH LINE AND ON A LINE AT RIGHT ANGLES THERETO); THENCE SOUTH 13 DEGREES, 27 MINUTES, 13 SECONDS WEST 79.14 FEET TO THE POINT OF BEGINNING IN J.E. MERRION AND COMPANY'S HOMETOWN UNIT NO. 10, BEING A SUBDIVISION OF LOT "H" (EXCEPT THE EAST 590.47 FEET THEREOF) IN J.E. MERRION AND COMPANY'S HOMETOWN UNIT NO. 7, A SUBDIVISION OF LOT "F" IN J.E. MERRION AND COMPANY'S HOMETOWN UNIT NO. 5, A SUBDIVISION OF PART OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF REGISTERED IN THE OFFICE OF THE REGISTRAR OF TITLES OF COOK COUNTY, ILLINOIS ON JUNE 11, 1954 AS DOCUMENT NUMBER 1528599; AND THAT PART OF LOT 1651 (EXCEPT THAT PART THEREOF LYING WESTERLY OF THE FOLLOWING DESCRIBED CURVED LINE; BEGINNING AT A POINT IN THE NORTH LINE OF SAID LOT 1651, A DISTANT 5.10 FEET EAST OF THE NORTHWEST CORNER THEREOF; THENCE SOUTHERLY ALONG A CURVED LINE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 5674.70 FEET AND PARALLEL WITH THE WESTERLY LINE OF SAID LOT 1651, A DISTANCE OF 251.00 FEET TO A POINT IN THE SOUTH LINE OF SAID LOT 1651 DISTANT 5.10 FEET EAST OF THE SOUTHWEST CORNER THEREOF) (ALSO EXCEPTING THAT PART OF LOT 1651 DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 5.1 FEET EAST OF THE NORTHWEST CORNER; THENCE ON AN ASSUMED BEARING OF SOUTH 89 DEGREES 59 MINUTES 37 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 8.83 FEET; THENCE SOUTH 6 DEGREES, 55 MINUTES, 53 SECONDS WEST 15.46 FEET; THENCE SOUTH 5 DEGREES, 54 MINUTES, 36 SECONDS WEST 120.0 FEET TO A POINT THAT IS 5.0 FEET EASTERLY AS MEASURED RADIAL TO THE WEST LINE OF SAID LOT, SAID POINT BEING ON A 5674.7 FOOT RADIUS CURVE, THE CENTER OF CIRCLE OF SAID CURVE BEARS SOUTH 88 DEGREES, 23 MINUTES, 21 SECONDS EAST FROM SAID POINT; THENCE NORTHEASTERLY ALONG SAID CURVE 134.8 FEET CENTRAL ANGLE 1 DEGREE, 21 MINUTES, 40 SECONDS, TO THE POINT OF BEGINNING) IN J.E. MERRION AND COMPANY'S HOMETOWN UNIT NO. 10, A SUBDIVISION OF LOT "H" (EXCEPT THE EAST 590.47 FEET THEREOF) IN SAID J.E. MERRION AND COMPANY'S HOMETOWN UNIT NO. 7; TOGETHER WITH THAT PART OF THE PUBLIC ALLEY VACATED BY THE CITY OF HOMETOWN PER ORDINANCE 3-2001, RECORDED AS DOCUMENT NO. 1528599 AND AS CORRECTED PER DOCUMENT NO. 0020970620, LYING EAST OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT A POINT 14.16 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT 1652; THENCE SOUTHWEST 20.17 FEET TO A POINT OF THE NORTH LINE OF AFORESAID LOT 1651; SAID POINT BEING 13.86 FEET EAST OF THE NORTHWEST CORNER OF SAID LOT 1651; ALL IN COOK COUNTY, ILLINOIS.

# UNOFFICIAL COPY

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero REA FINAL  
11/10/03

EXHIBIT B

SITE PLAN

[See Attached]

Property of Cook County Clerk's Office





NOV 13 03 01:22P

George E. Brogan

**UNOFFICIAL COPY**

Permanent Tax Index Numbers: 24-03-133-001-0000 and 24-03-133-019-0000

Common Street Address: 8701 S. Cicero and 8727 to 8735 S. Cicero Avenue, Hometown, IL.

Document prepared by: George E. Brogan, 2400 W. 95<sup>th</sup> St., #402, Evergreen Park, IL 60805

After recording, please forward this document to George E. Brogan, 2400 West 95th Street, #402  
Evergreen Park, Illinois 60805

May 22, 2003

# UNOFFICIAL COPY

## CONSENT OF MORTGAGEE

Marquette Bank, a bank organized and existing under the laws of the State of Illinois, a holder of a Trust Deed dated November \_\_\_\_, 2002, and recorded \_\_\_\_\_, 2002, in the Office of the Recorder of Deeds, Cook County, Illinois as Document Number \_\_\_\_\_, covering the parcel identified as Parcel B in the foregoing Reciprocal Easement Agreement with Covenants, Conditions and Restrictions, hereby consents to the execution and recording of such easement grant and agrees that said Trust Deed is subject and subordinate thereto.

IN WITNESS WHEREOF, the Marquette Bank has caused this instrument to be signed by its duly authorized officers on its behalf at Bridgeview, Illinois, on this 12 day of November, 2003.

MARQUETTE BANK

BY: *Christine Korman, V.P.*  
 ITS: *Vice President*

ATTEST:

BY: *Conna J. Kelly*  
 ITS: *Documentation Officer*

Property of Cook County Clerk's Office

**UNOFFICIAL COPY**

8701 S. Cicero  
Hometown, Illinois  
Store # 6629

8701 Cicero Consent of Lessee  
11/10/03

CONSENT OF LESSEE

Walgreen Co., an Illinois Corporation, Lessee under a Lease Agreement dated February 15, 2001 and amended by First Amendment dated November 16, 2001 and Second Amendment dated November 11th, 2003, between Standard Bank and Trust Company, not personally but as Trustee under that certain Trust Agreement dated September 12, 1985 and known as Trust No. 9852 as "Landlord" of that parcel described as Parcel E in the foregoing document captioned Reciprocal Easement Agreement with Covenants, Conditions and Restrictions, hereby consents to the execution and recording of such easement grant and agrees that said Lease Agreement is subject and subordinate thereto.

IN WITNESS WHEREOF, Walgreen Co. has caused this instrument to be signed by its duly authorized officers on its behalf at Deerfield, Illinois, on this 11th day of November, 2003.

WALGREEN CO., an Illinois Corporation

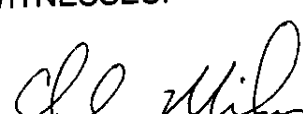
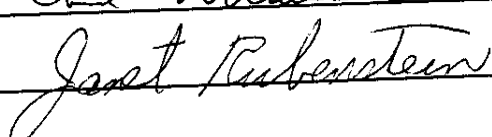
CM

By: 

Name: Robert M. Silverman

Its: Director of Real Estate Law

WITNESSES:

  
\_\_\_\_\_  
  
\_\_\_\_\_