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## MEMORANDUM OF LEASE TERMINATION

## AND USE RESTRICTION AGREEMENT

5619 (62627) – Milwaukee & Touhy  
Niles, IL

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5619 (62627) – Milwaukee & Touhy  
Niles, IL

**MEMORANDUM OF LEASE TERMINATION  
AND USE RESTRICTION AGREEMENT**

THIS MEMORANDUM OF LEASE TERMINATION AND USE RESTRICTION AGREEMENT ("**Agreement**") is made as of the 11<sup>th</sup> day of September 2007, by and PARKWAY BANK AND TRUST COMPANY, as Trustee under that certain Trust Agreement dated October 20, 1997 and known as Trust No. 11817 ("**Landlord**"), and AMERICAN DRUG STORES, LLC, a Delaware limited liability company ("**Tenant**"), individually a "**Party**" or collectively the "**Parties**".

1. Landlord and Tenant, as successor in interest to American Drug Stores, Inc., an Illinois corporation are parties to that certain Ground Lease dated March 29, 2001, a memorandum of which was recorded April 12, 2001 in the Official Records of Cook County, Illinois, as Instrument No. 0010298103 (the "**Lease**").

2. Under the Lease, Landlord leased to Tenant that certain real property located in the City of Niles, County of Cook, State of Illinois, and more particularly described on Exhibit "A" attached hereto and incorporated herein (the "**Premises**").

3. Pursuant to the Lease Termination Agreement dated September 11, 2007 ("**Termination Agreement**"), Landlord and Tenant have agreed to terminate the Lease as of September 30, 2007 ("**Termination Date**"). On and after the Termination Date (i) all of Tenant's rights to possession of the Premises shall cease, and (ii) neither Party shall have any further obligations under the Lease.

4. Other provisions regarding the termination of the Lease shall be as provided in the Termination Agreement. In the event of a conflict between the terms hereof and the terms of the Termination Agreement, the Termination Agreement shall control.

**5. Use Restriction:**

(a) In consideration for the termination of the Lease, the Parties agree that no part of the Premises shall be used or occupied as a supermarket (which shall be defined as any store or department containing more than 3,000 square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-

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premises consumption); as a bakery or delicatessen; or for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption ("**Restriction**"). Notwithstanding the preceding Restriction, the Parties agree that nothing herein shall prohibit the operation on the Premises of a typical Walgreen's Drug Store or similar type national chain drug store operation that includes the incidental retail sale of food for off-premises consumption. If in any judicial proceeding a court shall hold that the duration and/or scope of the Restriction are unreasonable under circumstances then existing, the Parties, and their respective successors, assigns and affiliates, agree that the maximum allowable duration and/or scope reasonable under the circumstances shall be substituted for the duration and/or scope stated in this Restriction. "**Affiliates**" shall mean a branch, division, parent or subsidiary of a Party, its successors or assigns, or any company in which a Party, its successors or assigns own (directly or indirectly) five percent (5%) or more of the voting stock or interest or which is a company that owns (directly or indirectly) five percent (5%) or more of the voting stock or interest of a Party, its successors or assigns.

(b) The Restriction created hereby shall inure to the benefit of Tenant's property more particularly described on Exhibit "B" attached hereto and incorporated herein by reference ("**Benefited Property**") and Tenant and its heirs, successors, assigns, affiliates and personal representatives. The Restriction shall be a burden on the Leased Premises and shall run with the land until the September 30, 2027. The Restriction solely benefits Tenant and may be waived in writing by Tenant in its sole and absolute discretion. The Restriction created hereby shall be binding upon Landlord, and any successor, assign, affiliates or subtenant by, through and/or under Landlord.

(c) In the event of any violation or threatened violation by any person of the Restriction, each Party 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 as provided by law.

(d) The failure of Tenant or Tenant successors or assigns to insist upon strict performance of the Restriction shall not be deemed a waiver of any rights or remedies that Tenant, its successors or assigns, may have and shall not be deemed a waiver of any subsequent breach.

(e) Landlord represents and warrants that it owns the Leased Premises in fee simple and has full right and authority to restrict the Leased Premises and that no third parties (including, without limitation, any lender or mortgagee) have or will have any right to prevent, approve or control in any manner the terms of this restriction.

6. This Memorandum of Lease Termination and Use Restriction Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute a single instrument. All the terms, conditions and covenants of the Termination Agreement, which may be inspected at the offices of the Tenant at 250 Parkcenter Blvd., P.O. Box 20, Boise, Idaho 83726, are incorporated herein by this reference.

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IN WITNESS WHEREOF, the Parties have executed this Memorandum of Lease Termination and Use Restriction Agreement, as of the date first above written.

**LANDLORD:**

PARKWAY BANK AND TRUST COMPANY, as Trustee under that certain Trust Agreement dated October 20, 1997 and known as Trust No. 11817

By: *Chrisoula Vazonis*  
Name: CHRISOULA VAZONIS  
Title: BENEFICIARY

**TENANT:**

AMERICAN DRUG STORES, LLC, a Delaware limited liability company

By: American Stores Company, LLC  
its sole member

By: New Albertson's, Inc.  
a Delaware corporation  
its sole member

By: *[Signature]*  
Name: John P. Breedlove  
Title: Vice President

*ZB*

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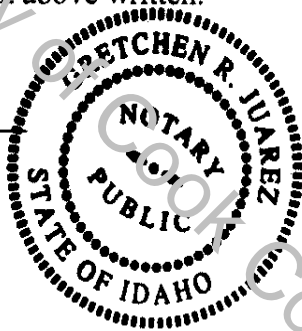
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STATE OF Idaho )  
County of Ada ) ss.

On this 13 day of September 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared John P. Breedlove, to me known to be the Vice President of New Albertson's, Inc., a Delaware corporation and sole member of American Stores Company, LLC, the sole member of AMERICAN DRUG STORES, LLC, a Delaware limited liability company, the company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said 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 commission expires: 11/11/2011



Gretchen R. Juarez  
Notary Public in and for the  
State of Idaho  
Residing at Mendon

STATE OF ILLINOIS )  
County of Cook ) ss.

On this 11th day of September, 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Chrisoula Kozonis, to me known to be the beneficiary, of PARKWAY BANK AND TRUST COMPANY, as Trustee under that certain Trust Agreement dated October 20, 1997 and known as Trust No. 11817, that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said 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 commission expires: APRIL 10, 2011



Shirley B. Polinski  
Notary Public in and for the  
State of ILLINOIS  
Residing at 4849 N. MILWAUKEE  
CHICAGO, IL 60630

**UNOFFICIAL COPY****EXHIBIT A****LEGAL DESCRIPTION OF PREMISES****PARCEL 1:**

LOT 1 (EXCEPTING THE WEST 15 FEET THEREOF) IN NICHOLAS ROH'S SUBDIVISION OF PART OF LOT 2 IN ASSESSOR'S DIVISION OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 31, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF OF SAID SUBDIVISION RECORDED FEBRUARY 9, 1921 AS DOCUMENT NO. 7057493, IN COOK COUNTY, ILLINOIS.

**PARCEL 2;**

A TRACT OF LAND DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A STONE AT THE INTERSECTION OF THE SOUTHWEST LINE OF MIRANDA'S RESERVATION AND SECTION LINE BETWEEN SECTIONS 30 AND 31, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTH ALONG LINE BETWEEN LOTS 6 AND 7 OF SUBDIVISION BY WILLIAM WEST AND OTHERS AS RECORDED FEBRUARY 12, 1861 IN BOOK 161 OF MAPS, PAGE 20, 167.7 FEET MORE OR LESS TO CENTER OF ROAD, THENCE SOUTHWESTERLY ALONG CENTER OF ROAD 100 FEET; THENCE SOUTHEASTERLY AT RIGHT ANGLES TO SAID ROAD 173.60 FEET MORE OR LESS TO THE NORTHWESTERLY LINE OF THAT PART OF LOT 2 IN ASSESSOR'S DIVISION AS PER PLAT RECORDED AUGUST 15, 1955, IN BOOK 85 PAGES 147 AND 148, WHICH WAS CONVEYED TO NICHOLAS ROH BY DEED RECORDED MAY 14, 1873 AS DOCUMENT NUMBER 102264, THENCE NORTHEASTERLY 59.5 FEET TO THE POINT OF BEGINNING.

(EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHWEST LINE OF JANE MIRANDA'S RESERVATION AND THAT SECTION LINE BETWEEN SECTION 30 AND SECTION 31, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTH ALONG THE LINE BETWEEN LOTS 6 AND 7 OF SUBDIVISION BY WILLIAM WEST AND OTHER RECORDED FEBRUARY 12, 1861 TO A POINT ON THE SOUTH LINE OF SCHOOL STREET (TOUHY AVENUE) AS PER PLAT OF DEDICATION DOCUMENT NO. 11068761 RECORDED IN THE BOOK OF PLATS 296 OF RECORDS 46-48 OF APRIL 4, 1932, BEING THE POINT OF BEGINNING; THENCE SOUTHWESTERLY ALONG SAID SOUTH LINE OF SCHOOL STREET TO A POINT ON THE EAST LINE OF LOT 'A' OF KESSEL'S CONSOLIDATION OF PART OF SECTIONS, 30, 31, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE SOUTHERLY ALONG SAID EAST LINE OF LOT 'A' A DISTANCE OF 13 FEET TO A POINT; THENCE NORTHEASTERLY ALONG A STRAIGHT LINE TO

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A POINT ON THE SAID LINE BETWEEN LOTS 6 AND 7 IN THE SUBDIVISION BY WILLIAM WEST AND OTHERS SAID POINT LYING DISTANT 5 FEET SOUTH OF SAID DEDICATED SOUTH LINE OF SCHOOL STREET (TOUHY AVENUE) (AS MEASURED ALONG SAID LINE BETWEEN LOTS 6 AND 7); THENCE NORTHERLY ALONG SAID LINE BETWEEN LOTS 6 AND 7; A DISTANCE OF 5 FEET TO THE POINT OF BEGINNING), ALL IN COOK COUNTY, ILLINOIS.

PARCEL 3:

LOT 2 (EXCEPT THAT PART LYING WESTERLY OF A LINE DISTANT 15 FEET EASTERLY OF AND PARALLEL TO THE WESTERLY LINE OF SAID LOT 2) IN NOCHOLAS ROH'S SUBDIVISION OF PART OF LOT 2 IN ASSESSOR'S DIVISION OF THE NORTHWEST FRACTIONAL QUARTER OF SECTION 31, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 9, 1921 AS DOCUMENT NO. 7057493, IN COOK COUNTY, ILLINOIS.

PARCEL 4:

LOT "A" OF KESSEL'S CONSOLIDATION, (EXCEPT THEREFROM THAT PART THEREOF DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWESTERLY CORNER OF SAID LOT "A", THENCE NORTHEASTERLY ALONG THE SOUTHEASTERLY LINE OF SAID LOT, 49.90 FEET TO THE SOUTHEAST CORNER OF SAID LOT; THENCE NORTHERLY ALONG THE EASTERLY LINE OF SAID LOT, 2 FEET; THENCE SOUTHWESTERLY TO A POINT ON THE CENTER LINE OF MILWAUKEE AVENUE, 74.10 FEET SOUTHEASTERLY TO THE POINT OF INTERSECTION OF SAID CENTER LINE WITH THE LINE BETWEEN SAID SECTIONS 30 AND 31; THENCE SOUTHEASTERLY ALONG SAID CENTER LINE OF MILWAUKEE AVENUE 7.08 FEET TO THE POINT OF BEGINNING;

ALSO EXCEPT THEREFROM THAT PART THEREOF DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF LOT "A" (BEING THE INTERSECTION OF THE CENTER LINE OF MILWAUKEE AVENUE, AND THE CENTER LINE OF SCHOOL STREET (TOUHY AVENUE); THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY LINE OF LOT "A" (BEING THE CENTERLINE OF MILWAUKEE AVENUE) TO ITS INTERSECTION WITH THE SOUTH LINE OF SECTION 30 AND THE NORTH LINE OF SECTION 31, AFORESAID; THENCE SOUTHEASTERLY ALONG THE SOUTHWESTERLY LINE OF LOT "A" (BEING THE CENTER LINE OF MILWAUKEE AVENUE) A DISTANCE OF 74.10 FEET TO A POINT; THENCE EASTERLY ALONG A LINE WHICH INTERSECTS THE EASTERLY LINE OF LOT "A" 2.0 FEET NORTH OF THE SOUTHEAST CORNER THEREOF, A DISTANCE OF 31.50 FEET TO A POINT ON THE EASTERLY LINE OF MILWAUKEE AVENUE; THENCE NORTHWESTERLY ALONG THE EASTERLY LINE OF MILWAUKEE AVENUE TO ITS INTERSECTION WITH THE SOUTH LINE OF SECTION 30 AND THE NORTH LINE OF SECTION 31, AFORESAID; THENCE NORTHWESTERLY ALONG THE EASTERLY LINE OF MILWAUKEE AVENUE, A DISTANCE OF 37.87 FEET TO A POINT; THENCE

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NORTHEASTERLY ALONG A LINE WHICH FORMS AN ANGLE OF 86 DEGREES 28 MINUTES 00 SECONDS WITH THE LAST DESCRIBED COURSE MEASURED FROM SOUTHEAST TO NORTHEAST, A DISTANCE OF 144.95 FEET TO A POINT; THENCE EASTERLY ALONG A LINE (BEING THE PRESENT SOUTH LINE OF SCHOOL STREET (TOUHY AVENUE) WHICH FORMS AN ANGLE OF 162 DEGREES 17 MINUTES 00 SECONDS WITH THE LAST DESCRIBED COURSE, MEASURED FROM SOUTHWEST TO NORTHEAST TO THE EASTERLY LINE OF LOT "A"; THENCE NORTHERLY ALONG THE EASTERLY LINE OF LOT "A" TO THE NORTHEAST CORNER THEREOF; THENCE SOUTHWESTERLY ALONG THE NORTHERLY LINE OF LOT "A" (BEING THE CENTER LINE OF SCHOOL STREET (TOUHY AVENUE) TO THE POINT OF BEGINNING, BEING THE NORTHEAST CORNER OF LOT "A";

ALSO EXCEPTING THEREFROM THOSE PARTS THEREOF DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT "A"; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF LOT "A" (BEING THE CENTER LINE OF MILWAUKEE AVENUE) A DISTANCE OF 7.08 FEET TO A POINT; THENCE EASTERLY ALONG A LINE WHICH INTERSECTS THE EASTERLY LINE OF LOT "A" 2.0 FEET NORTH OF THE SOUTHEAST CORNER THEREOF A DISTANCE OF 31.5 FEET TO A POINT ON THE EASTERLY LINE OF MILWAUKEE AVENUE, BEING THE POINT OF BEGINNING; THENCE CONTINUING EASTERLY ALONG SAID LINE TO A POINT NORMALLY DISTANT 15 FEET EAST OF THE EASTERLY LINE OF MILWAUKEE AVENUE; THENCE NORTHWESTERLY ALONG A LINE PARALLEL AND DISTANT 15 FEET NORTHEASTERLY OF SAID EASTERLY LINE OF MILWAUKEE AVENUE TO A POINT NORMALLY DISTANT 30 FEET SOUTH OF THE SOUTHERLY LINE OF TRACT OF LAND CONVEYED TO THE COUNTY OF COOK PER TORRENS DOCUMENT 710712, REGISTERED BY THE REGISTRAR OF TITLES IN VOLUME 627b, PAGE 75, ON THE TENTH DAY OF JANUARY, 1936; THENCE NORTHWESTERLY ALONG A LINE TO A POINT ON SAID SOUTHERLY LINE OF LANDS CONVEYED TO THE COUNTY OF COOK AT A POINT NORMALLY DISTANT 58 FEET EAST OF SAID WESTERLY LINE OF LOT "A" (BEING THE CENTER LINE OF MILWAUKEE AVENUE); THENCE SOUTHWESTERLY ALONG SAID SOUTHERLY LINE OF LANDS CONVEYED TO THE COUNTY OF COOK A DISTANCE OF 28 FEET TO A POINT ON THE SAID EASTERLY LINE OF MILWAUKEE AVENUE; THENCE SOUTHEASTERLY ALONG THE SAID EASTERLY LINE OF MILWAUKEE AVENUE TO THE POINT OF BEGINNING, ALSO COMMENCING AT THE POINT OF INTERSECTION OF THE SAME EXISTING EASTERLY RIGHT OF WAY LINE OF MILWAUKEE AVENUE AND THE SOUTH LINE OF SAID SECTION 30; THENCE NORTHWESTERLY ALONG THE EASTERLY LINE OF MILWAUKEE AVENUE, A DISTANCE OF 37.87 FEET TO A POINT; THENCE NORTHEASTERLY ALONG A LINE WHICH FORMS AN ANGLE OF 87 DEGREES 28 MINUTES 00 SECONDS WITH THE LAST DESCRIBED COURSE, MEASURED FROM SOUTHEAST TO NORTHEAST, A DISTANCE OF 84.95 FEET TO THE POINT OF BEGINNING; THENCE NORTHEASTERLY ALONG A STRAIGHT LINE A DISTANCE OF 75.94 FEET MORE OR LESS TO A POINT ON THE EAST LINE OF SAID LOT "A", SAID POINT LYING 13 FEET SOUTH OF THE EXISTING SOUTH RIGHT OF WAY LINE OF SCHOOL STREET (TOUHY AVENUE) AS MEASURED ALONG THE SAID EAST LINE OF LOT "A"; THENCE NORTHERLY ALONG THE SAID EAST LINE



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OF LOT "A", A DISTANCE OF 13.0 FEET TO ITS INTERSECTION WITH THE SAID SOUTH LINE OF SCHOOL STREET (TOUHY AVENUE); THENCE WESTERLY ALONG THE SOUTH LINE OF LANDS CONVEYED TO THE COUNTY OF COOK PER TORRENS DOCUMENT NUMBER 710712, REGISTERED BY THE REGISTRAR OF TITLES IN VOLUME 672b, PAGE 75, ON THE TENTH DAY OF JANUARY, 1936; THENCE SOUTHWESTERLY ALONG THE SOUTHERLY LINE OF LANDS CONVEYED TO THE COUNTY OF COOK, TO THE POINT OF BEGINNING;

ALL IN THE SOUTHWEST 1/4 OF SECTION 30 AND THE NORTHWEST 1/4 OF THE SECTION 31, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT RECORDED MAY 8, 1917, AS DOCUMENT 9106402.

PARCEL 5:

LOT 3 IN NICHOLAS POHS SUBDIVISION OF PART OF LOT 2 IN ASSESSOR'S DIVISION OF THE FRACTIONAL NORTH 1/2 (EXCEPT THE FRACTIONAL NORTHEAST 1/4 OF THE FRACTIONAL NORTHEAST 1/4 OF SECTION 31, TOWNSHIP 41 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: SOUTHEAST CORNER OF MILWAUKEE AND TOUHY AVENUE, NILES, ILLINOIS

P.I.N.: 10-30-323-001  
10-30-323-002  
10-30-323-003  
10-31-102-001  
10-31-102-002  
10-31-102-003  
10-31-102-004

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## EXHIBIT B

### LEGAL DESCRIPTION OF BENEFITED PROPERTY

[3484 – 5667 W. Touhy, Niles, IL]

That Part of the North 1/2 of the East 1/2 of the Northeast 1/4 of Fractional Section 32, Township 41 North, Range 13, East of the Third Principal Meridian which Lies East of a Line Described as follows: Beginning at a Point on the North Line of said 1/4 Section, 612.46 feet West of the Northeast Corner of Said 1/4 Section; Thence Running Southerly to a Point on the South Line of Said North 1/2 of the East 1/2 of the Northeast 1/4, 593.51 Feet West of the Southeast Corner of Said North 1/2 of the East 1/2 of the Northeast 1/4 (Except that portion taken for streets and highways), in Cook County, Illinois, in the Village of Niles.

Office of Cook County Clerk's Office