

RETURN RECORDED DOCUMENT TO:

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RETURN TO: FIRST AMERICAN TITLE
LISA ORTEGA GF: 1387868

DECLARATION OF RECIPROCAL EASEMENTS WITH COVENANTS,
CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF RECIPROCAL EASEMENTS WITH COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made as of this 10th day of December, 2009, by UNSER & MCMAHON-SOUTHWEST LLC, a Delaware limited liability company (the "Declarant").

RECITALS

- A. Declarant is the owner of that certain real property situated in the City of Albuquerque, County of Bernalillo, State of New Mexico, described as Tracts 1, 2 and 3 on the Plat of Paradise Plaza and shown as " Parcel A" , " Parcel B" and " Parcel C" respectively on the Site Plan attached hereto as Exhibit " B" (hereinafter referred to individually as a "Parcel" and collectively as the "Parcels") and more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.
- B. Declarant intends to develop Parcel B for use by Walgreen (hereinafter defined).
- C. Declarant intends to develop or allow or cause the development of Parcel A and Parcel C as retail/commercial sites.
- F. The Declarant desires 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 A, Parcel B and Parcel C and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Declarant hereby covenants 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 Declaration, so that said Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Declaration and, in connection therewith, the Declarant on behalf of itself and its successors and assigns covenants as follows:

COURTESY RECORDING ONLY NO TITLE LIABILITY ASSUMED

AGREEMENTS

1. Definitions. For purposes hereof:

(a) The term "Owner" or "Owners" shall mean the fee owner of Parcel A (as to Parcel A), the fee owner of Parcel B (as to Parcel B) and the fee owner of Parcel C (as to Parcel C) 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 Declaration as described on Exhibit " A" , that is, Parcel A, Parcel B and Parcel C, 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 A, Parcel B, and Parcel C 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 Declaration.

(f) The term " Walgreen Lease" or " Walgreens Lease" shall mean that Lease of Parcel B from the Parcel B Owner as landlord to Walgreen as tenant, and any amendments, extensions or replacements thereof.

(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 Declaration, 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 cross-hatched or otherwise marked on the Site Plan.

2. Easements.

2.1 Grant of Reciprocal Easements. Subject to any express conditions, limitations or reservations contained herein, the Declarant hereby declares, grants, establishes, and covenants 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 Owner' s 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 B, the Common Area of Parcel C and the Common Area of Parcel A 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 upon, under, over, above and across the Common Areas of the Parcels for the discharge, drainage, use, detention and retention of storm water runoff in the manner and in the location indicated on the Site Plan, and to install, maintain, repair and replace storm water collection, retention, detention and distribution lines, conduits, pipes and other apparatus under and across those portions of the Common Areas indicated on the Site Plan. The storm water detention areas, if any, indicated on the Site Plan, and all lines, conduits, pipes and other apparatus for water drainage, and all storage systems necessary in connection therewith, shall be hereinafter called the " Water Detention and Drainage Facilities" . The easement granted herein shall include the right of reasonable ingress and egress with respect to the Water Detention and Drainage Facilities as may be required to maintain and operate the same. The Water Detention and Drainage Facilities required for Parcel B shall initially be constructed by the Parcel B Owner in accordance with the Site Plan and pursuant to Plans approved by Walgreen under the Walgreen Lease, as a part of the initial development of the Walgreens improvements on Parcel B under the Walgreen Lease. Once constructed by the Parcel B Owner, (i) the Water Detention and Drainage Facilities shall not be materially modified, altered, relocated or otherwise changed, without the prior written consent of all Owners and Walgreen (during the continuance of the Walgreen Lease); and, (ii) each Owner shall operate and maintain, or cause to be operated and maintained, in good order, condition and repair, the Water Detention and Drainage Facilities located upon its Parcel and make any and all repairs and replacements that may from time to time be required with respect thereto.

(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 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 B 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 B 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 B). Once the initial construction of Parcel B shall be completed by the Parcel B Owner pursuant to the Walgreen Lease, thereafter no additional utility easements affecting Parcel B 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 B) 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 Access Opening. The opening(s) and access point(s) contemplated between the Parcels for use of the Driveway, is/are shown on the Site Plan and such opening(s) and access point(s) between the Parcels for use of the Driveway, as contemplated pursuant to paragraph 2.1(a) above, are hereinafter called the " Access Openings." The Access Openings shall in no event be blocked, closed, altered, changed or removed and shall at all times remain in place as shown on the Site Plan. There shall be maintained between the Access Openings a smooth and level grade transition to allow the use of the Driveway for pedestrian and vehicular ingress and egress as set forth in paragraph 2.1

above. Except with respect to the Access Openings, each Owner shall be permitted to maintain a fence, curbing, landscaping or other improvements along the boundary line of its Parcel.

2.4 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 Water Detention and Drainage Facilities are installed pursuant to the easements granted in paragraph 2.1(c) hereof, and/or utility lines, systems and equipment are installed pursuant to the easements granted in paragraph 2.1(d) 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 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 2.4 are complied with from time to time. No such relocation affecting Parcel B or the water detention and drainage services or 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 Declaration to the contrary, the Owner of Parcel A and its Permittees and the Owner of Parcel C 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 B and its Permittees) which is not of an emergency nature during the months of November or December unless the Parcel B Owner (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 changes as shall not conflict with this Declaration), 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. All buildings on Parcel A and Parcel C shall be one story in height, and shall not exceed a maximum height of twenty four (24) feet from grade level on the respective parcel. No building on Parcel A shall be constructed closer to Unser Boulevard and no building on Parcel C shall be constructed closer to McMahon Boulevard than the southernmost corner of the building on Parcel B. Each Parcel shall comply with applicable governmental parking ratio requirements without taking into account the parking provided on the other Owner's Parcel, such that each Parcel shall be self sufficient for vehicular parking.

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 Declaration, 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 Declaration). 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 B, during the continuance of the Walgreen Lease, the express written consent of Walgreen shall be required which shall not be unreasonably withheld, conditioned or delayed; (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 A and Parcel C, the requirements of paragraph 3.2 of this Declaration shall be complied with from time to time.

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.

- 4. Construction of Improvements.** Every building (including its appurtenant Common Area improvements), now or in the future constructed on Parcel A and Parcel C shall be constructed, operated and maintained so that the same is in compliance with all applicable governmental requirements. The Driveway shall be constructed and completed by the Owner of Parcel B at the same time as such Owner develops Parcel B for Walgreen under the Walgreen Lease (in accordance with plans approved by Walgreen under the Walgreen Lease).

5. Restrictions.

5.1 General. Each Parcel shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of a Parcel which is illegal. In addition to the foregoing, throughout the term of this Declaration, it is

expressly agreed that neither all nor any portion of any Parcel shall be used, directly or indirectly, for purposes of a cocktail lounge, bar, any other establishment that sells alcoholic beverages for on-premises consumption (other than a restaurant where the sale of alcoholic drinks is estimated to account for less than forty percent (40%) of the annual gross revenues for the restaurant), disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade, a theater of any kind, children's play or party facility, adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays, second hand store, odd lot, closeout or liquidation store, auction house, flea market, educational or training facility (including, without limitation, a beauty school, barber college, school or other facility catering primarily to students or trainees rather than customers), gymnasium, sport or health club or spa, blood bank, massage parlor, funeral home, sleeping quarters or lodging, the outdoor housing or raising of animals, the sale, leasing or storage of automobiles, boats or other vehicles, any industrial use (including, without limitation, any manufacturing, smelting, rendering, brewing, refining, chemical manufacturing or processing, or other manufacturing uses), any mining or mineral exploration or development except by non-surface means, a car wash, a carnival, amusement park or circus, an assembly hall, off track betting establishment, bingo hall, any use involving the use, storage, disposal or handling of hazardous materials (except in compliance with all laws and regulations) or underground storage tanks, any use which may require water and sewer services in excess of the capacities allocated to the Leased Premises by any governmental authority, a church, temple, synagogue, mosque, or other house of worship, any facility for the sale of paraphernalia for use with illicit drugs, or any use which creates a nuisance; provided that: (a) any restaurant use (whether quick service restaurant or table service restaurant) with over 2,500 square feet of floor area shall provide at least ten (10) parking spaces for each 1,000 square feet of floor area; and (b) office use shall be limited to (i) business offices incidental to an otherwise permitted retail use, (ii) office uses described in Section 8(a)(ii) above, (iii) retail offices as commonly found in first class shopping centers providing services directly to customers or clients (such as brokerages, travel agents, dental and optician offices) with no single use larger than 4,000 square feet of floor area, and (iv) banks or financial institutions.

5.2 Additional Parcel A and Parcel C Restrictions. Throughout the term of the Walgreen' s Lease or if Walgreen becomes the Tract 2 Owner, it is expressly agreed that neither all nor any portion of Parcel A or Parcel C 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 prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, 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 (other than as part of a medical, dental, physician, surgical or chiropractic office[s]), which office[s] shall not be restricted by this subsection [(ii)]; (iii) the sale of so-called health and/or beauty aids and/or drug sundries; (iv) the operation of a business in which alcoholic

beverages shall be sold for consumption off the premises; (v) the operation of a business in which photofinishing services (including, without limitation, digital photographic processing or printing, or the sale of any other imaging services, processes or goods provided that such prohibition shall not exclude office supply stores or copy shops such as Kinko' s, the UPS Store, Mailboxes Etc., or Alphagraphics, provided in no event shall any business operated on Parcel A and/or Parcel C offer digital photographic processing or printing, or the sale of any other imaging services in the same manner as that offered on Parcel B) or photographic film are offered for sale; (vi) the operation of a business in which greeting cards and/or gift wrap are offered for sale; and/or (vii) the operation of a business in which prepackaged food items for off premises consumption are offered for sale. The foregoing restrictions shall not prohibit the incidental sale of the items described in subsections (iii), (vi) or (vii) by an otherwise permitted business where such incidental sales are less than five percent (5%) of the total gross sales for such business.

5.3 Drive-Throughs. No facility on Parcel A or Parcel C 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 B and/or the Driveway, or otherwise interfere with the normal pattern and flow of pedestrian or vehicular traffic on and across Parcel B and/or the Driveway. The Parties' hereby approve of the drive through and/or drive up facilities shown on the Site Plan. Nothing contained herein shall be deemed to affect the drive-through serving the building for Walgreen to be initially constructed on Parcel B by the Owner thereof, which is hereby expressly approved. In addition, valet parking on Parcel A and/or Parcel C, in which the stopping or standing of motor vehicles at a location for drop off and/or pick up of passengers is intended, shall not be operated in any manner such that motor vehicles shall stop or stand on Parcel A and/or Parcel C and/or the Driveway so as to interfere with the normal pattern and flow of pedestrian or vehicular traffic on and across Parcel B and/or the Driveway.

6. Insurance. Throughout the term of this Declaration, each Owner shall procure and maintain general and/or commercial 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. Any Owner and 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 provided that Owner and/or

Walgreen have a net worth of \$100,000,000 during the time such Owner and/or Walgreen satisfy the above requirements through self 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 A, Parcel B and Parcel C. No easements, except (i) those expressly set forth in paragraph 2, and/or (ii) an easement over Parcel A and Parcel C so as to enable the construction of the Driveway and other improvements required for the initial development for Walgreens by the Owner of Parcel B, shall be implied by this Declaration; in that regard, and without limiting the foregoing, no easements for signage 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 during the continuance of the Walgreen' s Lease, 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. During the continuance of the Walgreen' s Lease, Walgreen shall have the right, but not the obligation, to enforce this Declaration on behalf of the Owner of Parcel B, and/or to cure a breach or default hereunder by the Owner of Parcel B, which enforcement or cure shall be accepted by the other Owner(s) as if effected by the Owner of Parcel B.

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 Declaration within thirty (30) days following written notice thereof by an Owner or, during the continuance of the Walgreens Lease, 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) or any Owner shall have the right to perform such obligation contained in this Declaration 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 Bank One (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, or (ii) blockage or material impairment of the easement rights, an Owner or, during the continuance of the Walgreens Lease, 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 Declaration 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 Bernalillo County, New Mexico; 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 Bernalillo County, New Mexico 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 Declaration. 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.

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 Declaration, 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 Declaration, the nondefaulting Owner and, during the continuance of the Walgreens Lease, Walgreen, in addition to all remedies available at law or otherwise under this Declaration, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of paragraphs 2 and/or 5 of this Declaration.

10. Term. The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the Bernalillo County Recorder and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners of Parcel A, Parcel B and Parcel C 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 Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of Parcel A, Parcel B and Parcel C, 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 Bernalillo County, New Mexico.

(b) Notwithstanding subparagraph 11.2(a) above to the contrary, no termination of this Declaration, and no modification or amendment of this Declaration 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 Declaration 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 Owner or Walgreen under this Declaration, 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 B, 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 Declaration 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 Declaration and the application thereof to Parcel A, Parcel B and Parcel C are hereby declared to be independent of and severable from the remainder of this Declaration. 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 Declaration. In the event the validity or enforceability of any provision of this Declaration 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 all Parcels by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration. The doctrine of merger of estates shall not apply to terminate the easements, covenants, conditions and restrictions established in this Declaration.

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

11.10 Entire Document. This Declaration contains the complete terms 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 A & C Owner and the Parcel B Owner and Walgreen are as follows:

Walgreen: Walgreens
Attention: Real Estate Law Department
Mail Stop No. 1420
104 Wilmot Road
Deerfield, Illinois 60015
Re: Store #12407

Parcel A & C Owner: Unser & McMahon-Southwest LLC
175 East 400 South, Suite 402
Salt Lake City, Utah 84111
Attn: James P. Shipman

Parcel B Owner: Unser & McMahon-Southwest LLC
175 East 400 South, Suite 402
Salt Lake City, Utah 84111
Attn: James P. Shipman

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 Declaration.

11.13 Estoppel Certificates. Each Owner, within thirty (30) 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 Declaration is in default or violation of this Declaration and if so identifying such default or violation; and (b) that this Declaration is in full force and effect and identifying any amendments to the Declaration as of the date of such certificate.

11.14 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, this Declaration 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.

11.15 Mortgage Subordination. Any mortgage or deed of trust affecting any portion of any Parcel shall at all times be subject and subordinate to the terms of this Declaration, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee sale, shall acquire title subject to all the terms and conditions of this Declaration.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first written above.

Unser & McMahon-Southwest LLC

By: 

James P. Shipman

Its: Vice President

STATE OF UTAH

COUNTY OF SALT LAKE

)
) ss.
)

ON THIS 10th day of December, 2009, before me, the undersigned, a Notary Public in and for said County and State, personally appeared James P. Shipman, to me personally known to be the person described in and who executed the foregoing instrument, who, being by me first duly sworn, stated that he/she is the Vice President of Unser & McMahon-Southwest LLC, a Delaware limited liability company, and that he/she executed such instrument on behalf of said company by authority of its articles of organization, and said person acknowledged to me that he/she executed such instrument as the act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public
Printed Name:

Lorna Kimball

My Commission Expires:

5-1-2012

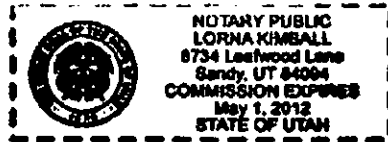


Exhibit "A"

Legal Descriptions of Parcels A, B and C.

**Tracts 1, 2 and 3 of the Plat of Paradise Plaza, Projected Section 2, T. 11 N., R. 2 E.,
N.M.P.M., Town of Alameda Grant, City of Albuquerque, Bernalillo County, New Mexico
as recorded December 7, 2009 in Book 2009C at Page 0170 as Document
#2009132927.**

Exhibit B

