

Prepared by and when recorded return to:

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Boston, MA 02111

RESTRICTIVE COVENANT AGREEMENT

TAX ID No. 11-689-0002  
11-794-0004  
11-794-0005  
11-794-0006  
11-794-0008

THIS RESTRICTIVE COVENANT AGREEMENT (this "Agreement") is made as of this <sup>7<sup>th</sup></sup> day of February, 2017, by and between FORT LANE VILLAGE, L.C., a Utah limited liability company ("Fort Lane"), and UTAH CVS PHARMACY, L.L.C., a Utah limited liability company ("CVS") (Fort Lane and CVS are sometimes hereinafter referred to singularly as a "Party" and collectively as the "Parties").

WITNESSETH

WHEREAS, Fort Lane is the owner of the land more particularly described on Exhibit A attached hereto and shown on Exhibit B attached hereto (the "Seller's Remaining Property"); and

WHEREAS, CVS is the owner of the land more particularly described on Exhibit C attached hereto and shown on Exhibit B (the "Drug Store Parcel"); and

WHEREAS, subject to the terms and conditions hereof, the Parties desire to subject the Seller's Remaining Property to certain restrictions by which the Seller's Remaining Property shall be held, improved and conveyed.

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged, and in consideration of the mutual promises contained herein, the Parties hereby agree as follows:

1. Agreement. The Seller's Remaining Property shall be held, conveyed, mortgaged, encumbered, leased, used, occupied and improved subject to all applicable provisions of this Agreement, which shall run with the land and shall be binding upon all persons having, or who acquire any right, title or interest in and to any or all of the Seller's Remaining Property.

2. Restrictions. Fort Lane hereby imposes a restrictive covenant upon the Seller's Remaining Property for the benefit of the owner of the Drug Store Parcel and all parties hereafter acquiring or having any right, title or interest in any portion of the Drug Store Parcel, as follows:

(a) No portion of the Seller's Remaining Property shall be leased or used for the purpose of a retail Drug Store, as defined below, pharmacy mail order facility, pharmacy prescription department, cigarette or smoke shop, printing and/or mailing services center, a greeting card or gift store, a vitamin store, a convenience store (a

“Convenience Store”), and/or a discount, 99 cents store or “dollar store” which sells general merchandise (a “Dollar Store”), or for the sale of any of the following:

- (i) alcoholic beverages for off-premises consumption;
- (ii) greeting cards and/or party goods (provided, however, this restriction shall not preclude the sale of greeting cards and/or party goods incidental to other primary store purposes which are not precluded herein, so long as the area used for the display or sale of greeting cards and/or party goods shall not exceed 50 square feet of retail floor area in any such store);
- (iii) photo printing or processing, including, without limitation, one-hour or less photo processing;
- (iv) health and beauty aids (provided, however, this restriction shall not apply to any business having not more than 1,500 square feet of floor area);
- (v) Urgent Care Clinics;
- (vi) vitamins and health supplements (provided, however, that this restriction shall not apply to any business having not more than 1,300 square feet of floor area); or
- (vii) pharmaceutical products requiring the services of a registered pharmacist, including a pharmacy mail order facility.

“Drug Store” means a retail store for the sale and/or compounding of prescription drugs, or a location wherein a licensed pharmacist is employed in connection with the sale of prescription drugs.

Examples of a Dollar Store (without limiting such Dollar Stores only to those listed) are stores such as Fred’s, Big Lots, 99 Cent Only, Dollar Store, Dollar General, or Family Dollar. Examples of a Convenience Store (without limiting such Convenience Stores only to those listed) are stores such as 7-Eleven, Circle K and ABC Stores.

Notwithstanding anything to the contrary herein, in the event that the Drug Store Parcel is not used as a CVS drug store, or any other Drug Store, for a period of twelve (12) months or longer, all of the use restrictions set forth in this Section 2(a) shall automatically terminate and have no further force or effect, and Seller’s Remaining Property shall no longer be subject to such restrictions. Either party, acting alone, shall have the right to record a notice of such termination in the real property records of Davis County.

(b) With respect to the property located immediately south of and adjacent to the Drug Store Parcel, the distance between any building constructed thereon and the existing Fort Lane right-of-way shall not be less (however a difference of up to twelve inches shall be permitted) than the distance between the CVS building and the existing Fort Lane right-of-way (see Exhibit B).

3. **Enforcement of Agreement.** In the event of any violation of this Agreement, an appropriate action in law or in equity may be pursued by either Fort Lane, CVS or the then owner of the Drug Store Parcel, or the Drug Store Parcel occupant, to enforce specific compliance by such violating party of the applicable restrictions of this Agreement.

4. **No Third-Party Beneficiaries.** This Agreement is not intended, and shall not be deemed or construed, to confer any rights, powers or privileges on any other person or entity except as otherwise expressly stated herein.

5. **Amendment.** No provision of this Agreement may be changed, waived, discharged or terminated except by a written instrument executed by Fort Lane and CVS or the then owner of the Drug Store Parcel, and consented to by any occupant of the Drug Store Parcel.

6. **Successors and Assigns.** This Agreement shall run with the land and be binding upon and inure to the benefit of the Parties and their successors and assigns.

7. **Effect of Invalidity.** If any one provision of this Agreement is held invalid by judgment or court order, the remaining provisions shall nevertheless be in full force and effect.

8. **Governing Law.** This Agreement shall be governed by the laws of the State of Utah.

9. **Notices.** Whenever, pursuant to this Agreement, notice or demand shall or may be given to any of the Parties or their assignees by another, and whenever any of the Parties shall desire to give to the other any notice or demand with respect to this Agreement, each such notice or demand shall be in writing, and any laws to the contrary notwithstanding, shall not be effective for any purpose unless the same shall be given or served by mailing the same to the other party by certified mail, return receipt requested, or by overnight nationally-recognized courier service provided a receipt is required, at its notice address set forth below, or at such other address as either party may from time to time designate by notice given to the other. The date of receipt of the notice or demand shall be deemed the date of the service thereof (unless the notice or demand is not accepted in the ordinary course of business, in which case the date of mailing shall be deemed the date of service thereof).

Notices shall be sent:

If to Fort Lane, to: Fort Lane Village, L.C.  
748 W. Heritage Park Blvd., Ste. 203  
Layton, UT 84041  
Attn: Kevin Garn

with a copy to: The Thackeray Garn Company  
1165 E. Wilmington Ave., Ste. 275  
Salt Lake City, UT 84106  
Attn: Dean Smith, Attorney

If to CVS to: Utah CVS Pharmacy, L.L.C.



UTAH CVS PHARMACY, L.L.C.

By:   
Name: Cheryl A. Green  
Title: Assistant Secretary

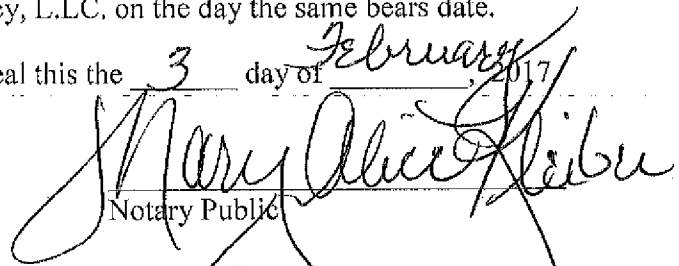
CVS Legal Approval: Maryann Civitello, Esq.  
Mintz Levin

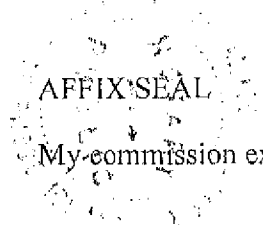
STATE OF RHODE ISLAND )

COUNTY OF PROVIDENCE )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Cheryl A. Green, whose name is signed to the foregoing instrument as Assistant Secretary of Utah CVS Pharmacy, L.L.C. and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, she executed the same voluntarily on behalf of Utah CVS Pharmacy, L.L.C. on the day the same bears date.

Given under my hand and official seal this the 3 day of February, 2017

  
Notary Public  
Mary Alice Kleiber  
Notary Public  
State of Rhode Island  
My Commission Expires 03/13/2020



AFFIX SEAL

My commission expires: \_\_\_\_\_

EXHIBIT A

**Seller's Remaining Property Legal Description**

All those certain parcels of land located in the City of Layton, County of Davis, State of Utah, described as follows:

PARCEL 2 OF THE FORT LANE VILLAGE SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED DECEMBER 11, 2007, AS ENTRY NO. 2631115, IN BOOK 5412 AT PAGE 1117, IN THE RECORDS OF THE DAVIS COUNTY RECORDER.

AND

PARCEL 4-B

BEING A PORTION OF PARCEL 4, FORT LANE VILLAGE AMENDED SUBDIVISION, ALSO BEING LOCATED IN THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, CITY OF LAYTON, STATE OF UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF PARCEL 4, OF THE FORT LANE VILLAGE AMENDED SUBDIVISION PLAT, SAID POINT BEING SOUTH 0°32'40" WEST 73.00 FEET TO THE SOUTH RIGHT OF WAY LINE OF GENTILE STREET AS SHOWN ON THE FORT LANE VILLAGE AMENDED PLAT RECORDED AT BOOK 6568 AT PAGE 338 IN THE DAVIS COUNTY RECORDERS OFFICE; SOUTH 89°27'20" EAST 401.04 FEET ALONG THE RIGHT OF WAY LINE TO THE WEST RIGHT OF WAY LINE OF FORT LANE; THENCE ALONG SAID RIGHT OF WAY SOUTH 0°47'13" WEST 377.79 FEET FROM THE NORTH 1/4 CORNER OF SAID SECTION 28, AND RUNNING THENCE NORTH 89°12'47" WEST 123.73 FEET; THENCE NORTH 75°43'33" WEST 32.16 FEET; THENCE NORTH 89°12'47" WEST 23.47 FEET; THENCE NORTH 0°32'59" EAST 154.75 FEET; THENCE SOUTH 89°27'20" EAST 179.11 FEET TO THE WEST RIGHT OF WAY LINE OF FORT LANE; THENCE ALONG SAID RIGHT OF WAY SOUTH 0°47'13" WEST 163.01 FEET TO THE POINT OF BEGINNING.

AND

PARCEL 4-C

BEING A PORTION OF PARCEL 4, FORT LANE VILLAGE AMENDED SUBDIVISION, ALSO BEING LOCATED IN THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, CITY OF LAYTON, STATE OF UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF PARCEL 4, OF THE FORT LANE VILLAGE AMENDED SUBDIVISION PLAT, SAID POINT BEING SOUTH 0°32'40" WEST 73.00 FEET TO THE SOUTH RIGHT OF WAY LINE OF GENTILE STREET AS SHOWN

ON THE FORT LANE VILLAGE AMENDED PLAT RECORDED AT BOOK 6568 AT PAGE 338 IN THE DAVIS COUNTY RECORDER'S OFFICE; AND SOUTH 89°27'20" EAST 76.45 FEET ALONG THE SAID RIGHT OF WAY LINE; THENCE LEAVING SAID RIGHT OF WAY SOUTH 0°32'40" WEST 337.92 FEET FROM THE NORTH 1/4 CORNER OF SAID SECTION 28, AND RUNNING THENCE SOUTH 89°12'47" EAST 99.16 FEET; THENCE SOUTH 0°47'13" WEST 31.00 FEET; THENCE SOUTH 89°12'47" EAST 45.53 FEET; THENCE NORTH 0°32'59" EAST 154.75 FEET; THENCE NORTH 89°27'20" WEST 144.57 FEET; THENCE SOUTH 0°32'40" WEST 123.14 FEET TO THE POINT OF BEGINNING.

AND

PARCEL 5 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER.

AND

PARCEL 6 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER.

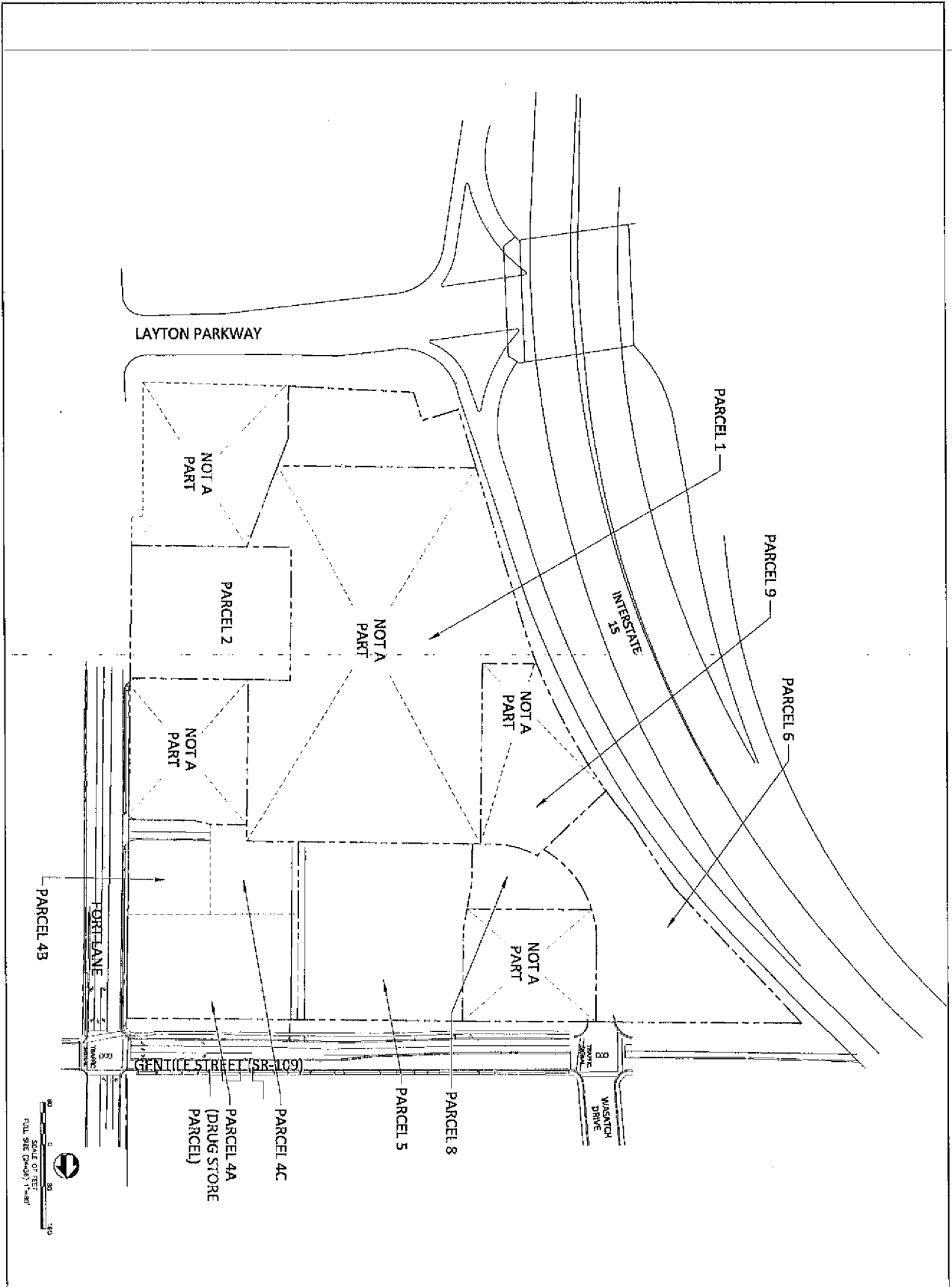
AND

PARCEL 8 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION, ACCORDING TO THE PLAT THEREOF AS RECORDED IN THE RECORDS OF THE DAVIS COUNTY RECORDER.

**EXHIBIT B**

**Site Plan of Seller's Remaining Property  
and Drug Store Parcel Showing Boundary  
Lines of Parcels**





<p>CVS Pharmacy</p> <p>NORTH-SEN 14,600 RIGHT CHAMBER DRIVE - THRU STORE NUMBER: 30662 GENTILE STREET &amp; FORE LANE LAYTON, UT 84041 PROJECT TIME DEC. 17/18</p> <p>CS PROJECT NUMBER: 82907</p>	<p>OWNER: ENGINEER</p>
	<p>CONSULTANT:</p>
<p>DEVELOPER:</p> <p> ES BOOS 2020 LAYTON PARKWAY, SUITE 200 LAYTON, UT 84041 (801) 370-5177 (801) 328-5182 (TXN)</p>	<p>SEAL:</p>
<p>REVISIONS:</p>	<p>DATE: January 26, 2017</p> <p>428 NUMBER: BCD00146</p> <p>TITLE: EXHIBIT B</p> <p>SHEET NUMBER: EX-B</p>
<p>COMMENTS:</p> <p>NOT RELEASED FOR CONSTRUCTION</p>	

**EXHIBIT C**

**Drug Store Parcel Legal Description**

All that certain parcel of land located in the City of Layton, County of Davis, State of Utah, described as follows:

**LEGAL DESCRIPTION PARCEL 4-A**

**BEING A PORTION OF PARCEL 4, FORT LANE VILLAGE AMENDED SUBDIVISION, ALSO BEING LOCATED IN THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, CITY OF LAYTON, STATE OF UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

BEGINNING AT THE NORTHWEST CORNER OF PARCEL 4 OF THE FORT LANE VILLAGE AMENDED SUBDIVISION PLAT, SAID POINT BEING SOUTH 0°32'40" WEST 73.00 FEET TO THE SOUTH RIGHT OF WAY LINE OF GENTILE STREET AS SHOWN ON THE FORT LANE VILLAGE AMENDED PLAT RECORDED AT BOOK 6568 AT PAGE 338 IN THE DAVIS COUNTY RECORDER'S OFFICE; SOUTH 89°27'20" EAST 76.45 FEET FROM THE NORTH 1/4 CORNER OF SAID SECTION 28, AND RUNNING THENCE SOUTH 0°32'40" WEST 214.78 FEET; THENCE SOUTH 89°27'20" EAST 323.68 FEET TO THE WEST RIGHT OF WAY LINE OF FORT LANE; THENCE ALONG SAID RIGHT OF WAY NORTH 0°47'13" EAST 214.78 FEET TO THE SOUTH RIGHT OF WAY LINE OF GENTILE STREET; THENCE ALONG SAID RIGHT OF WAY NORTH 89°27'20" WEST 324.59 FEET TO THE POINT OF BEGINNING.