

Prepared by and when recorded return to:

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Tax ID No. 12-865-0001
12-865-0002

DECLARATION OF EASEMENTS AND RESTRICTIONS

This DECLARATION OF EASEMENTS AND RESTRICTIONS (this "Declaration") is made as of this 8TH day of SEPTEMBER, 2016, by Utah CVS Pharmacy, L.L.C., a Utah limited liability company, with its principal place of business at One CVS Drive, Woonsocket, Rhode Island 02895, Attention: Property Administration, Store No. 10927 ("Declarant" or "CVS").

WHEREAS, Declarant is the owner of two (2) certain parcels of real property located at 1982 and 1900 West 1700 South, in the City of Syracuse, County of Davis, State of Utah, respectively referred to herein as the "CVS Parcel" and the "Adjacent Parcel" and described on Exhibit A and Exhibit B. The CVS Parcel and the Adjacent Parcel are herein sometimes collectively referred to as the "Parcels"; and

WHEREAS, Declarant desires to impose certain easements and restrictions on the Parcels, as hereinafter set forth.

NOW, THEREFORE, for and in consideration of the mutual rights and obligations set forth herein, the parties hereby covenant and agree as follows:

1. Grant of Easements; Term.

(a) Declarant GRANTS and CONVEYS for the benefit of the CVS Parcel (including its tenants, employees, vendors, customers and other invitees), a non-exclusive, irrevocable and perpetual easement ("CVS Parcel Access Easement"), appurtenant to the CVS Parcel, for pedestrian and vehicular ingress and egress, but not for parking, between the CVS Parcel and the adjoining streets over and across driveways, roadways, walkways, sidewalks and all similar facilities located on the Adjacent Parcel, as they may exist from time to time. No gate, barrier or other obstruction shall be erected or permitted to remain over any portion of the CVS Parcel Access Easement, and no use shall be made of the CVS Parcel Access Easement which is inconsistent with or detrimental to the use of the CVS Parcel Access Easement for the benefit of the CVS Parcel as described herein. Any changes to the layout of the Adjacent Parcel shall require the consent of the owner and any lessee of the CVS Parcel (so long as such lessee is owned or controlled by CVS Health Corporation, a Delaware corporation).

(b) Declarant hereby GRANTS and CONVEYS for the benefit of the Adjacent Parcel (including its tenants, employees, vendors, customers and other invitees), a non-exclusive,

irrevocable and perpetual easement (“Adjacent Parcel Access Easement”), appurtenant to the Adjacent Parcel for pedestrian and vehicular ingress and egress, but not for parking, between the Adjacent Parcel and the adjoining streets over and across such driveways, roadways, walkways, sidewalks and all similar facilities located on the CVS Parcel, as they may exist from time to time. The CVS Parcel Access Easement and the Adjacent Parcel Access Easement are sometimes referred to herein as the “Access Easement Areas.”

(c) Declarant hereby GRANTS and CONVEYS for the benefit of the CVS Parcel and the Adjacent Parcel, a non-exclusive, irrevocable and perpetual easement (the “Utility Easement”) for the purpose of installing, repairing, maintaining and replacing all utilities, including but not limited to gas, cable, electricity, water, fire suppression systems, sanitary sewer, stormwater drainage pipes and systems (and detention as may be required), and telecommunications and other utility facilities (collectively the “Utilities”) in, under, upon, over and across the Parcels in accordance with utility plans approved by the Declarant. Any future material change in the Utilities from the utility plans which relates to the CVS Parcel, including but not limited to any relocation of Utilities on the CVS Parcel, or any change that affects the use of the Utilities by the CVS Parcel shall require the consent of the owner and any lessee of the CVS Parcel (so long as such lessee is owned or controlled by CVS Health Corporation). The Utility Easement and Utilities shall be for the sole benefit of the Parcels, and no further connections or use thereof shall be made for the benefit of any other parcel of land, except the Parcels, and in no event shall the Utilities be overburdened or cause any interruption to or adversely affect the use, adequacy and enjoyment of the CVS Parcel.

(d) Any consent required hereunder shall not be unreasonably withheld or delayed. It shall not be unreasonable for consent to be withheld if any change (i) will cause the Utilities to be located under any existing or planned improvements on the CVS Parcel, including but not limited to any building footprints, sidewalks adjacent to any building, drive-thrus, dumpster pads and/or near any building entranceways, but excluding parking areas, (ii) will impose any new liabilities or obligations on the owner of the CVS Parcel or any lessee thereof or otherwise adversely impact any Utilities serving the CVS Parcel, (iii) will interfere with any parking spaces, (iv) will cause the Utility Easement area to be larger than what the Declarant determines is reasonably necessary, or (v) will cause the Utilities to be located aboveground or to interfere with traffic flow.

(e) The easements granted above (collectively, the “Easements”) shall be effective as of the date hereof and shall be perpetual (the “Term”).

2. Maintenance of Easements.

(a) Each Parcel owner or its designee shall at all times during the Term, separately maintain or cause to be maintained in good order, condition and repair the Access Easement Areas located on their respective Parcel. Such maintenance shall include, but will not be limited to (i) repairing, resurfacing, repaving, re-striping, and resealing of the easement areas; (ii) removing all papers, debris and other refuse from and periodically sweeping the easement areas to the extent reasonably necessary to maintain the same in a clean, safe and orderly condition; and (iii) maintaining marking, directional signs, lines and striping.

(b) Each Parcel owner or its designee shall at all times during the Term, separately maintain or cause to be maintained in good order, condition and repair any and all Utilities serving its respective Parcel pursuant to the terms and conditions of the Utility Easement. Any installation, repair, maintenance and replacement of the Utilities shall be performed (i) after two (2) weeks prior written notice to the owner of the burdened Parcel (except in an emergency the work may be initiated with reasonable notice); (ii) after normal business hours whenever possible; (iii) in such a manner as to cause as little disturbance in the use, occupancy or enjoyment of the burdened Parcel as is practicable under the circumstances; (iv) at the sole cost and expense of the owner of the benefitting Parcel; (v) diligently so as to complete such work as quickly as possible; and (vi) with an obligation to promptly clean and restore the affected portion of the burdened Parcel to a condition equal to or better than the condition which existed prior to the commencement of such work. In the event that any of the Utilities are shared by the CVS Parcel and the Adjacent Parcel, the owner of the Adjacent Parcel shall, commencing upon its use of the shared Utilities, pay to the owner of the CVS Parcel, or its designee that is performing the maintenance of the shared Utilities, its pro rata share of the maintenance costs associated therewith. For purposes hereof, the term “pro rata share” shall mean that proportion of the applicable costs described above which the land area of the Adjacent Parcel bears to the combined land area of the Adjacent Parcel and the CVS Parcel. The owner of the Adjacent Parcel shall pay its pro rata share within thirty (30) days of receipt of an invoice therefor.

3. UDOT Future Access Easements. Declarant has entered into an Agreement for Future Cross-Access Easements with the Utah Department of Transportation (“UDOT”) recorded simultaneously herewith (the “UDOT Agreement”). At such time as the UDOT Access Drive as defined in the UDOT Agreement is constructed, the CVS Parcel shall have the benefit of the UDOT Cross Access Easement to be recorded in connection therewith.

4. Insurance. The owner(s) of the Parcels shall carry, or cause to be carried, commercial general liability insurance with limits of not less than \$2,000,000 (increasing to a commercially reasonable amount on the request of the Declarant) combined single limit bodily injury and property damage per occurrence. Such policies shall include premises-operations and contractual liability coverage.

The following provisions shall be included in the insurance described above:

- (a) The owner(s) of the Parcels, their respective “Mortgagee(s),” as hereinafter defined, and any tenants of such owner(s) shall be named as additional insureds under such policies.
- (b) An agreement that such owner(s), their respective Mortgagees, and any tenants of such owner(s) which are additional insureds, shall each be provided with thirty (30) days prior written notice of cancellation or material modification of such insurance policies. If despite commercially reasonable efforts an insurer will not provide the foregoing agreement, then, such owner shall be obligated to provide the additional insureds with thirty (30) days prior written notice of cancellation or material modification of such insurance policies.

All insurers must be licensed to do business in the State of Utah and shall be rated A- or higher under the most current edition of A.M. Best's Key Rating Guide, a Lloyds of London underwriter, or otherwise approved by the party hereto who constitutes an additional insured. Each owner shall provide the other(s) with a copy of the required policies or, at the option of the party who constitutes the insured, a certificate evidencing the required coverage at least thirty (30) days prior to commencing the use of any easement created hereunder, and thereafter, at least thirty (30) days before the expiration of each policy. The owner of the CVS Parcel shall have the right to provide such certificate of insurance by providing access to an internet website containing the insurance information. The owners of the Parcels each agree to cause their respective insurance policies to contain waivers of subrogation, to the extent such waivers can be reasonably obtained using commercially reasonable efforts. Notwithstanding anything in this Declaration to the contrary, during such time as the net worth of CVS or its parent company, as determined in accordance with generally accepted accounting principles consistently applied, shall be at least Twenty-Five Million Dollars (\$25,000,000), CVS may self-insure any or all of the coverage required to be maintained by CVS hereunder.

“Mortgagee” means any party or parties, from time to time, that (i) hold a deed of trust or mortgage lien on the CVS Parcel or the Adjacent Parcel, and (ii) have provided written notice (in the manner provided below) of such lien to the other owner.

5. Restrictions. No portion of the Adjacent Parcel may be sold, leased or used for, or in support of a pinball, video game, or any form of entertainment arcade, except for video games which are incidental to another use not restricted herein; a gambling or betting office, other than for the sale of lottery tickets; a massage parlor; a cinema, theater, video store or bookstore selling, renting, or exhibiting primarily material of a pornographic or adult nature; an adult entertainment bar or club; a bowling alley; a roller skating or ice skating rink; a billiards parlor or pool hall; a firearms shooting range or any other use which creates or causes excessive noise; a cinema or theater; a health club or exercise salon; any type of educational or vocational institution; a flea market; a warehouse; a facility which performs on-site dry cleaning, a gas station, a facility which performs on-site auto repair or for the outdoor display of merchandise. No portion of the Adjacent Parcel may be sold, leased or used for, or in support of (except in support of the CVS Parcel pursuant to the Easements) a health and beauty aids store (defined as a store which devotes more than five percent (5%) of its retail selling space to the display and sale of health and beauty aids), a greeting card and gift store; a candy store; a store which provides on-site or other photo processing, including, without limitation, digital photo processing; a vitamin store, a pharmacy mail order facility, a drug store, a pharmacy prescription department (which shall include the dispensing, distribution or furnishing of prescription drugs by physicians, dentists, other health care practitioners, or a facility which accepts prescriptions from customers which are filled elsewhere and delivered to the customer, or entities such as clinics, dispensaries, or health maintenance organizations, where such dispensing is for a fee or a profit), a retail health center (which shall include such operations as a “Minute Clinic” or other similar use providing walk-in, non-traumatic medical services, but specifically excluding physician, dentistry, or other health care offices or practitioners that are separately owned and operated, are not located inside any retail store or establishment, and otherwise comply with the other requirements of this Section), the sale of alcoholic beverages, including, without limitation, beer, wine and distilled spirits, for off-premises consumption, and/or a discount, 99 cents store or “dollar” store which sells general

merchandise (a “Dollar Store”). A “pharmacy prescription department” shall not include the distribution or furnishing of free samples of prescription drugs by physicians, dentists, other health care practitioners or entities such as clinics or health maintenance organizations. Examples of a Dollar Store (without limiting such Dollar Stores only to those listed) are stores such as Fred’s, Dollar Store, Dollar General, or Family Dollar. The owner of the CVS Parcel, with the prior written consent of the lessee of the CVS Parcel, so long as such lessee is owned or controlled by CVS Health Corporation, shall have the right, at any time and from time to time, to grant variances to these restrictions with respect to the Adjacent Parcel. Notwithstanding the foregoing, if CVS no longer owns the CVS Parcel but the lessee of the CVS Parcel is owned or controlled by CVS Health Corporation, the restrictions set forth in this Section shall run solely for the benefit of, be solely enforceable by, and may be solely waived, amended or terminated in writing by the lessee of the CVS Parcel.

6. Default. In the event that the owner of any Parcel (a “defaulting party”) shall fail, at any time during the Term of this Declaration, to perform any obligation of such owner hereunder, then any other party entitled hereunder to the benefit of such owner’s performance (the “non-defaulting party”), in addition to all other applicable remedies available to such party at law or in equity, shall have the right (but not the obligation), upon the fifteenth (15th) day following the date on which written notice of such non-performance is given or deemed given to the defaulting party, pursuant to the provisions of Section 8 below, to perform, or cause to be performed, the obligations of the defaulting party, which may include the right to enter the Parcel of the defaulting party as needed, in which event the defaulting party shall reimburse the non-defaulting party for all costs and expenses, including reasonable attorneys’ fees and costs, incurred by the non-defaulting party in connection with its efforts to perform or cause to be performed the obligations of the defaulting party, within thirty (30) days following written demand by the non-defaulting party accompanied by copies of invoices supporting such demand.

Any sums expended by the non-defaulting party pursuant to this section shall bear interest from the thirtieth (30th) day following the date on which demand therefor is given (or deemed given) pursuant to the provisions of Section 8, below, at the lesser of (i) eighteen percent (18%) per annum, or (ii) the maximum rate permitted by applicable law.

Any sums expended by the non-defaulting party pursuant to this section, if not reimbursed by the defaulting party within thirty (30) days following written demand by the non-defaulting party accompanied by copies of invoices supporting such demand shall become a lien on the Parcel of the defaulting party when notice of such lien is recorded in the Office of the Davis County, Utah Recorder.

7. Indemnity. **THE OWNERS OF EACH PARCEL (EACH HEREIN AN “INDEMNIFYING PARTY”) SHALL EACH INDEMNIFY AND AGREE TO HOLD THE OTHER OWNER(S) AND SAID OTHER OWNER’S OR OWNERS’ RESPECTIVE MORTGAGEE AND THE LESSEE OF THE CVS PARCEL (HEREIN THE “INDEMNIFIED PARTIES”) HARMLESS FROM ANY AND ALL CLAIMS ARISING OUT OF OR MADE AS A RESULT OF THE NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNIFYING PARTY, OR ITS AGENTS, EMPLOYEES, CONTRACTORS OR LESSEES IN THE USE OF THE EASEMENTS HEREIN GRANTED. NOTWITHSTANDING THE FOREGOING OR**

ANYTHING TO THE CONTRARY HEREIN, EACH PARCEL OWNER HEREBY WAIVES ALL CLAIMS AGAINST ANY OTHER OWNER FOR PROPERTY DAMAGE OR PERSONAL INJURY OCCURRING IN CONNECTION WITH THE USE, OPERATION, MAINTENANCE OR OWNERSHIP OF THE EASEMENTS GRANTED HEREIN TO THE EXTENT SUCH CLAIM IS COVERED BY INSURANCE.

8. Consent Required to Amend and Right of Enforcement. So long as any such lessee of the CVS Parcel is owned or controlled by CVS Health Corporation, (i) no amendment of this Declaration shall be binding upon any lessee of the CVS Parcel whose leasehold interest in the CVS Parcel has been properly recorded in the appropriate recording office, unless such lessee shall have given its written consent thereto; and (ii) CVS or its affiliates, as a beneficiary under this Declaration, shall have the right to enforce any of the terms and conditions of this Declaration, including but not limited to those of a “non-defaulting party” as defined under Section 5 of this Declaration, as if CVS remained the owner of the CVS Parcel.

9. Notices. All notices provided for or permitted herein shall be in writing and shall be personally delivered, sent by registered or certified mail, return receipt requested, or sent by overnight courier to Declarant at the address listed in the introductory paragraph. All such notices shall be deemed to have been given forty-eight (48) hours after mailing or upon receipt if delivered in person or by overnight courier. Should any party other than Declarant be entitled to notice hereunder, then notice to such party shall be delivered or sent to such party at the address provided by such party to Declarant and the other parties entitled to notice hereunder in accordance with the terms hereof. Any party entitled to notice hereunder may change the address for notice to such party by written notice to the other parties entitled to notice hereunder in accordance with the terms hereof.

10. No Other Rights Created. No provision of this instrument shall ever constitute or be construed as a dedication of any interest herein described to the public or give any member of the public any right whatsoever.

11. Partial Invalidity. If any provision of this instrument shall, for any reason, be held violative of any applicable law and/or unenforceable, such provision shall be reformed only to the extent necessary to render such provision non-violative and/or enforceable. The invalidity of any provision herein shall not be held to invalidate any other provision herein, all of which such other provisions shall remain in full force and effect.

12. Successors and Assigns. All of the easements and other rights, covenants and conditions herein shall run with the land and shall be binding upon and inure to the benefit of the owners of the Parcels and their respective successors and assigns. Upon the conveyance by the owner of any Parcel of its interest in any Parcel, such owner shall be relieved from any unaccrued liability which such owner may have hereunder.

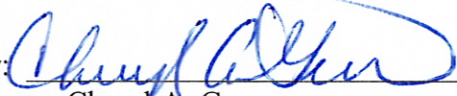
13. Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.

14. Costs of Enforcement. If an action or proceeding is brought to enforce this Declaration, the prevailing party in such action or proceeding shall be entitled to collect from the losing party any and all costs and expenses, including legal fees, incurred by the prevailing party in connection therewith.

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EXECUTED as of the date set forth above.

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)

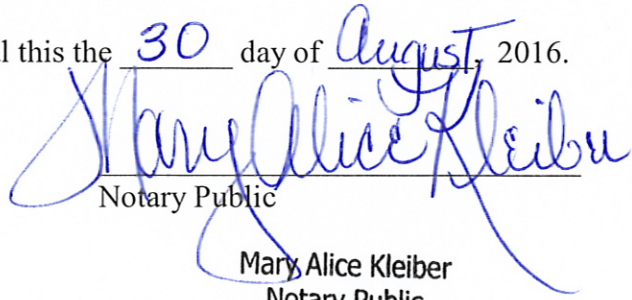
I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Cheryl A. Green, whose name is signed to the foregoing instrument as Assistant Secretary of Utah CVS Pharmacy, L.L.C. and who is known to me, acknowledged before me on this day that, being informed 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 30 day of August, 2016.



AFFIX SEAL

My commission expires: _____


Notary Public

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

EXHIBIT A

CVS Parcel

All that certain property situated in the City of Syracuse, Davis County, Utah described as follows:

Lot 1 of CVS Plaza Subdivision according to the official plat thereof, filed for record September 15, 2016 as Entry No. 2966246 in Book 6601 at Page 187, in the office of the Davis County Recorder.

Tax ID No. 12-865-0001

EXHIBIT B

Adjacent Parcel

All that certain property situated in the City of Syracuse, Davis County, Utah described as follows:

Lot 2 of CVS Plaza Subdivision according to the official plat thereof, filed for record September 15, 2016 as Entry No. 2966246 in Book 6601 at Page 187, in the office of the Davis County Recorder.

Tax ID No. 12-865-0002