

Upon Recordation Return to:  
Jennifer Sacco Smith, Esq.  
Mintz Levin Cohn Ferris Glovsky and Popeo, PC  
One Financial Center  
Boston, MA 02111

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2/5/2016 12:35:00 PM \$41.00  
Book - 10401 Pg - 416-430  
Gary W. Ott  
Recorder, Salt Lake County, UT  
FOUNDERS TITLE  
BY: eCASH, DEPUTY - EF 15 P.

## EASEMENT AGREEMENT

STATE OF *Utah*

§

COUNTY OF *Salt Lake*

This EASEMENT AGREEMENT (this "Agreement") is made and entered into this 13<sup>th</sup> day of January, 2016, by and between Dee R. Hansen and Adrienne Hansen, individuals with an address of 3445 South Highland Drive, Salt Lake City, Utah 84117 ("Landlord"), and 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 ("Tenant").

WHEREAS, Landlord and Tenant entered into that certain Ground Lease (the "Lease") dated August 17, 2015 with respect to all that certain parcel of land, consisting of approximately 2.25 acres, situated at the southeast corner of 4100 South and 5600 West in the Municipality of West Valley City, County of Salt Lake, State of Utah (the "CVS Leased Premises"), said property being more particularly described on Exhibit A and depicted on Exhibit A-1, a Memorandum of Lease with respect to which will be recorded in the Salt Lake County Clerk's Office ("Official Records"); and

WHEREAS, Landlord is the beneficiary of an easement (the "UDOT Easement") across that certain adjoining real property owned by the Utah Department of Transportation as described in the attached Exhibit AA (the "Adjacent Property") and which UDOT Easement is described in Exhibit B and recorded at Book 10400 Page 7867 in the Salt Lake County Clerk's Office; and

WHEREAS, Tenant desires to have pedestrian and vehicular access over and across the UDOT Easement to enhance access to and from the respective properties and the adjoining streets; and

NOW, THEREFORE, in consideration of the mutual rights and obligations set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby covenant and agree as follows:

1. Grant of Road Easements.

(a) Landlord by these presents hereby grants to Tenant (and all persons claiming under Tenant, including Tenant's employees, vendors, customers and other invitees), all the right and interest Landlord has in the easement, attached hereto as Exhibit B. The parties agree and acknowledge that the UDOT Easement is a nonexclusive easement to use, free of charge, the Protected Driveway and Protected Curbcut located on that certain parcel of land situated to the east

of the Premises depicted in **Exhibit B-1** hereof (the “UDOT Easement Area”), including for pedestrian and vehicular access to and from the Premises and the adjoining streets (but not parking).

(b) Landlord acknowledges and agrees that there will be no change, modification or closure to the Protected Driveway or Protected Curbcut (as shown on **Exhibit B-1**) by Landlord, Landlord’s Affiliates or their agents or assignees, which would adversely affect the accessibility to the Premises from the parking areas or from the public streets and roadways without Tenant’s prior written consent, which consent shall not be unreasonably withheld or delayed. The parties acknowledge that the Adjacent Property is likely to be developed by Landlord or Landlord’s Affiliates in the future (“Future Development”). In connection with this Future Development, the UDOT Easement described in **Exhibit B** may need to be modified. Landlord agrees, for itself and for Landlord’s Affiliates and their agents or assignees that Landlord will not agree to any modification of the UDOT Easement without Tenant’s prior written consent, which consent shall not be unreasonably withheld or delayed.

The term “Landlord’s Affiliates” shall mean and refer to (i) any spouse, ancestor, descendant or sibling of Landlord; (ii) any corporation in which Landlord is or was an officer, director, or shareholder; (iii) any partnership in which Landlord is or was a partner; (iv) any trust which is or was for the benefit of Landlord or any spouse, ancestor, descendant or sibling of Landlord; (v) any limited liability company (“LLC”) in which Landlord is or was a member or manager; (vi) if Landlord is a partnership, any partner of Landlord; (vii) if Landlord is a corporation, any officer, director or controlling shareholder of Landlord; (viii) if Landlord is an LLC, any member or manager of Landlord; and (ix) any other person or entity sharing common ownership with, or having an interest directly or indirectly in, Landlord.

## 2. Term.

The term of the easements and rights granted in Section 1 hereof (collectively, the “Easement Areas”) shall commence on the date of recording hereof, and shall run with the land of the CVS Leased Premises and the UDOT Easement respectively in perpetuity, as appurtenant thereto for so long as the CVS Lease is in effect, including any extensions or renewals thereof, and including, without limitation, any new lease executed with any leasehold mortgagee in substitution of the CVS Lease (“Term”).

## 3. Construction and Maintenance of Easement Areas.

(a) Landlord, at its sole cost and expenses, shall, pursuant to Exhibit D, paragraph 4, of the Lease, construct, pave and open the Protected Driveway and Protected Curbcut. Thereafter, at all times during the Term, Tenant shall maintain the Adjoining Property Easement Area in good order, condition and repair. Such maintenance shall include, but will not be limited to (i) repairing, resurfacing, repaving, re-striping, and resealing of the UDOT Easement Area; (ii) removing all snow, ice, papers, debris and other refuse from and periodically sweeping the UDOT Easement Area 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) If the Landlord or Landlord’s Affiliates construct the Future Development on the

Adjacent Property during the Term, the costs of maintaining the UDOT Easement Area shall be shared pro rata between Tenant and Landlord based upon the gross floor area of the buildings in the Future Development and the gross floor area of the CVS Building. By way of example, (i) Tenant's pro rata share shall be the gross floor area of the CVS building divided by the sum of the gross floor area of all of the buildings located on the Adjacent Property and the CVS Building and (ii) Landlord's pro rata share shall be the gross floor area of all the buildings located on the Adjacent Property divided by the sum of the gross floor area of all buildings located on the Adjacent Property and the CVS Building. Landlord shall reimburse Tenant for Landlord's share of the cost of maintenance of the UDOT Easement Area within thirty (30) days of receipt of an invoice from Tenant with supporting documentation.

(c) In the event that either party (the "non-performing party") shall fail to perform any of its obligations under this Section 3 within thirty (30) days after receipt of notice from the other party (the "performing party") of the need therefor (except that no notice shall be required in the event of an emergency), then the performing party may do so on the non-performing party's behalf and charge the non-performing party for the reasonable cost thereof.

4. Insurance. Landlord and Tenant shall each be required to carry, or cause to be carried, relating to the UDOT Easement and the CVS Leased Premises, respectively, commercial general liability insurance with limits of not less than (\$2,000,000) per occurrence for bodily injury and for property damage. Such policy shall include premises-operations and contractual liability coverage.

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

- (a) Each party, its "Mortgagee," as hereinafter defined, and any tenant of each party shall be named as an additional insured under policies of the other described above.
- (b) An agreement that each party, its Mortgagee, and any tenant which is an additional insured, shall each be provided with thirty (30) days prior written notice of cancellation or material modification of the insurance carried by the other parties.

All insurers must be licensed to do business in the State of Utah and shall be rated A-/VIII 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 the additional insured. Each party hereto shall provide the other with a copy of the required policies or, at the option of the party who constitutes the insured, a certificate evidencing the required coverage contemporaneously with the execution of this Agreement and, thereafter, at least thirty (30) days before the expiration of each policy.

In the event that either party (the "non-performing party") shall fail, at any time during the term of this Agreement, to deliver to the other party (the "performing party") the evidence of insurance required above, then the performing party shall have the right (but not the obligation), upon (i) the thirtieth (30th) day following the date on which written notice of such failure is given or deemed given to the non-performing party, or (ii) if such failure relates to evidence of

insurance for a renewal policy, the expiration date of the applicable policy, whichever is earlier, to purchase the required insurance for the account of the non-performing party, in which event the non-performing party shall reimburse the performing party, within thirty (30) days following written demand by the performing party accompanied by copies of invoices supporting such demand, the premium paid by the performing party for such insurance.

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

Notwithstanding anything in this Agreement to the contrary, during such time as the net worth of Tenant 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), Tenant may self-insure any or all of the coverage required to be maintained by Tenant hereunder.

5. Indemnity. **LANDLORD AND TENANT (HEREIN THE “INDEMNIFYING PARTY”) SHALL EACH INDEMNIFY AND AGREE TO HOLD THE OTHER PARTY HERETO AND SAID OTHER PARTY’S RESPECTIVE MORTGAGEE (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 TENANTS IN THE USE OF THE EASEMENTS HEREIN GRANTED.**

6. Estoppel Certificates. Each party agrees that upon written request (which shall not be more frequent than three (3) times during any calendar year) of the other party, it will issue to such party, or its prospective mortgagee or successor, an estoppel certificate stating to the best of such party’s knowledge that as of such date:

- (1) Whether it knows of any default under this Agreement by the requesting person, and if there are known defaults, specifying the nature thereof;
- (2) Whether this Agreement has been modified or amended in any way by it and, if so, then stating the nature thereof; and
- (3) Whether this Agreement is in full force and effect.

Such statement shall act as a waiver of any claim by the party giving such certificate to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement.

7. Notices. Whenever, pursuant to this Agreement, notice or demand shall or may be given to either of the parties by the other, and whenever either 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 shall not be effective for any purpose unless the same shall be given or served as

follows: by mailing the same to the other party by registered or certified mail, return receipt requested, or by overnight 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 received or 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 Landlord, to:

Dee and Adrienne Hansen  
5445 South Highland Drive  
Salt Lake City, Utah 84117  
Attn: Dee Hansen

With a copy to:

Richard W. Jones, Esq.  
5732 South 1475 East, Suite 200  
South Ogden, Utah 84403

or, if to Tenant, to:

Utah CVS Pharmacy, L.L.C.  
One CVS Drive  
Woonsocket, RI 02895  
Attn: Property Administration Department, Store No. 10424

8. 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.

9. 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.

10. Successors and Assigns. All of the easements and other rights, covenants and conditions herein shall be binding upon and inure to the benefit of Tenant as the lessee of the CVS Leased Premises, its successors and assigns, including, without limitation, any lessee or ground lessee of the CVS Leased Premises, and their employees, vendors, customers and other invitees, and to Landlord as the beneficiary of the UDOT Easement, its successors and assigns, including, without limitation any lessee or ground lessee of the UDOT Easement, and their employees, vendors, customers and other invitees. Upon the conveyance by Landlord of the property owned by such party or the assignment by Tenant of its leasehold interest, it shall be

relieved from any unaccrued liability which such party may have hereunder.

11. Authority. The parties hereto each represent and warrant to the other that the individual(s) executing and delivering this Agreement on its behalf is/are duly authorized to do so without the necessity of obtaining consent hereto from any other individual or party, including but not limited to any lienholder or mortgagee, and that this Agreement is binding upon the parties hereto according to its terms.


12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one instrument.


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

SIGNATURE PAGE FOLLOWS

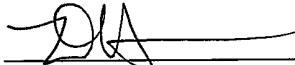
IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Agreement on the day and year first above written.

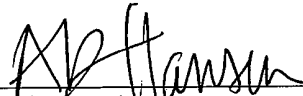
ATTEST/WITNESS:

  
Name: Brady Berryessa

  
Name: Brady Berryessa

LANDLORD

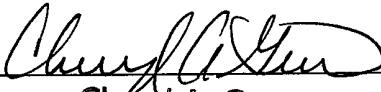
  
Dee R. Hansen

  
Adrienne Hansen

TENANT

Utah CVS Pharmacy, L.L.C.

  
Name: Gail Beaulieu

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

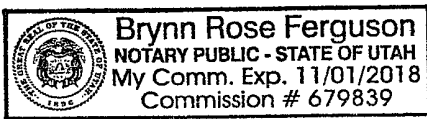
CVS LEGAL APPROVAL:  
Jennifer Sacco Smith, Esq.  
Mintz Levin

STATE OF Utah )

COUNTY OF Salt Lake )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Dee R. Hansen, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she executed the same as his/her free act and deed and as the free act and deed of said limited liability company, on the day the same bears date.

Given under my hand and official seal this the 13<sup>th</sup> day of January, 2016.



[Signature]  
Notary Public

AFFIX SEAL

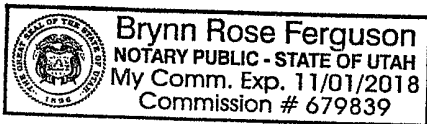
My commission expires: 11/1/18

STATE OF Utah )

COUNTY OF Salt Lake )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Adrienne Hansen, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she executed the same as his/her free act and deed and as the free act and deed of said limited liability company, on the day the same bears date.

Given under my hand and official seal this the 13<sup>th</sup> day of January, 2016.



[Signature]  
Notary Public

AFFIX SEAL

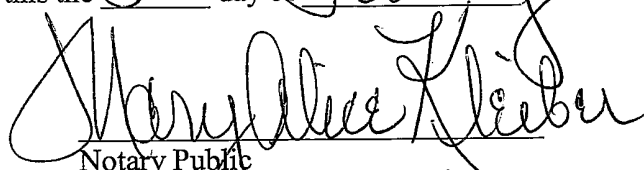
My commission expires: 11/1/18



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, Assistant Secretary of Utah CVS Pharmacy, L.L.C., whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she executed the same as his/her free act and deed and as the free act and deed of said limited liability company, on the day the same bears date.

Given under my hand and official seal this the 3 day of February 2016.

  
Notary Public

Mary Alice Kleiber  
Notary Public  
State of Rhode Island  
My Commission Expires 03/13/2016

AFFIX SEAL

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

MORTGAGEE CONSENT

The undersigned Mountain West Debt Fund, LP, a Delaware limited partnership being the Lender under that certain deed of trust dated April 17, 2015 and recorded April 20, 2015 as Instrument No. 12033325 in Book 10316 and Page 1295 of the Official Records of the Salt Lake County Recorder's Office, hereby consents to the attached Easement Agreement, subordinates said mortgage to the attached Easement Agreement, agrees that such Easement Agreement shall be prior to and paramount to all rights under said mortgage, and that any sale under foreclosure shall be subject to such Easement Agreement.

LENDER

Mountain West Debt Fund, LP,  
a Delaware limited partnership

By: [Signature]  
Print Name: ROCKY DEPRICIC  
Title: Manager

STATE OF Utah )  
COUNTY OF Salt Lake )

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certifies that Rocky Demick, Manager of Mountain West Debt Fund, LP whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she executed the same as his/her free act and deed and as the free act and deed of said Mountain West Debt Fund, LP, on the day the same bears date.

Given under my hand and official seal this the 14<sup>th</sup> day of January, 2016.



Rachel Pike  
Notary Public

AFFIX SEAL

My commission expires: 04/13/2019

## EXHIBIT A

### CVS LEASED PREMISES DESCRIPTION

A parcel of land situate in the Northwest quarter of Section 1, Township 2 South, Range 2 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point on the Southerly right of way line of 4100 South Street as defined by UDOT Project S-0085(5)0, being South 89°46'16" East 120.39 feet along section line and South 77.50 feet from the Northwest corner of said Section 1; thence along said Southerly right of way line South 89°46'16" East 267.99 feet; thence South 00°58'28" East 80.84 feet; thence South 00°07'49" West 197.54 feet; thence North 82°46'16" West 7.88 feet; thence North 00°13'44" East 0.28 feet; thence North 82°46'43" West 78.43 feet; thence North 82°46'40" West 95.68 feet; thence North 83°00'00" West 110.09 feet; thence North 60°00'00" West 17.64 feet to a point on the Easterly right of way line of 5600 West Street as defined by said UDOT project; thence along said Easterly right of way line the following four (4) courses and distances: (1) North 00°07'42" West 17.74 feet; (2) South 89°44'58" West 2.00 feet; (3) North 00°07'42" West 175.99 feet; (4) North 43°45'30" East 55.83 feet to the point of beginning.

Tax ID No. 20-01-101-038

**EXHIBIT AA**

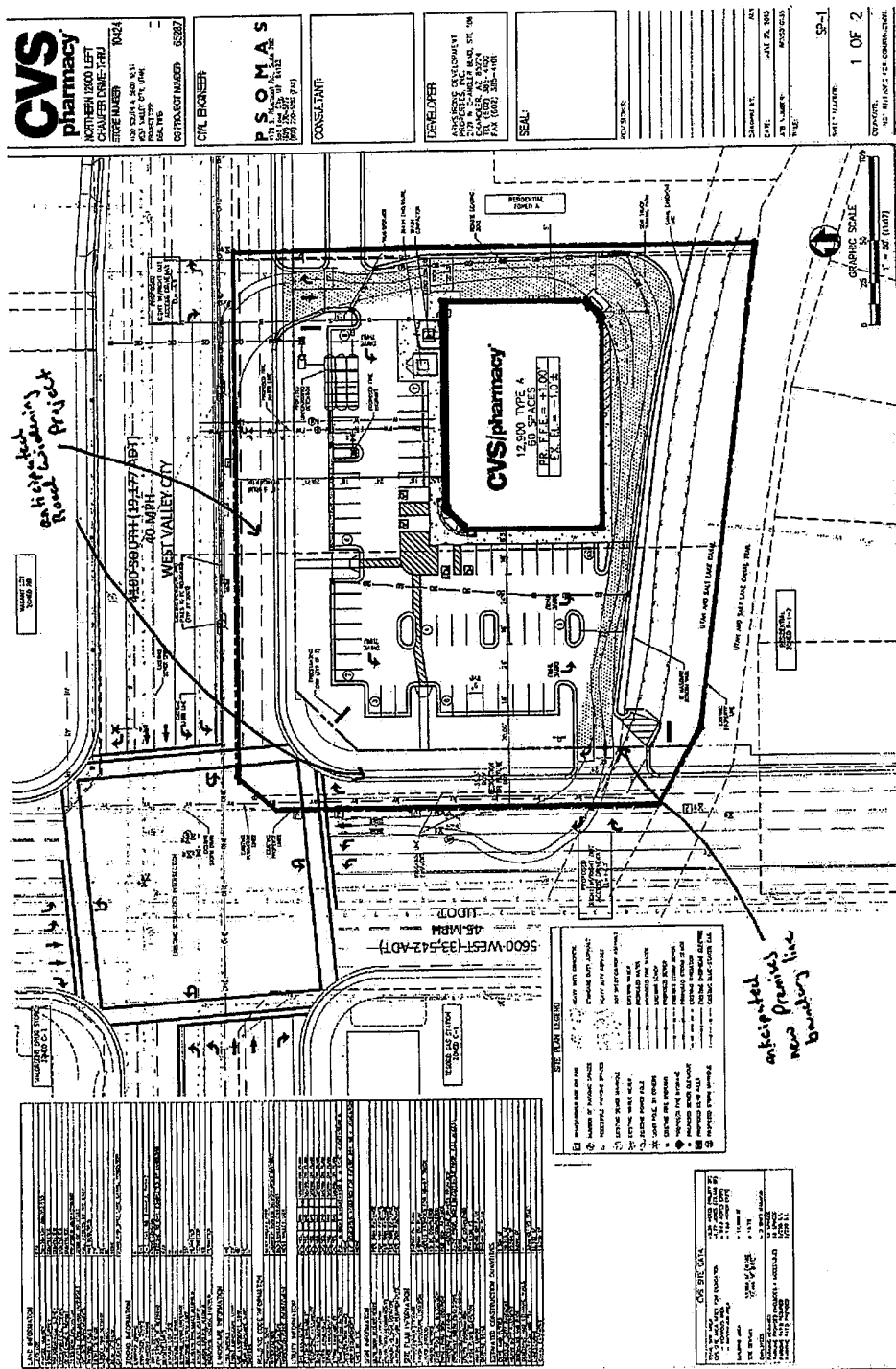
**ADJACENT PROPERTY DESCRIPTION**

A parcel of land situate in Lot 1 and 2, Floyd L. Rushton Subdivision, recorded as Entry No. 5634039 in Book 93-10 at Page 290 in the Office of the Salt Lake County Recorder, a subdivision in the NW 1/4 of Section 1, T.2S., R.2W., S.L.B. & M., in Salt Lake Count, Utah.

Tax ID No. 20-01-101-023  
20-01-101-024  
20-01-101-005

**EXHIBIT A-1**

**SITE PLAN**



## EXHIBIT B

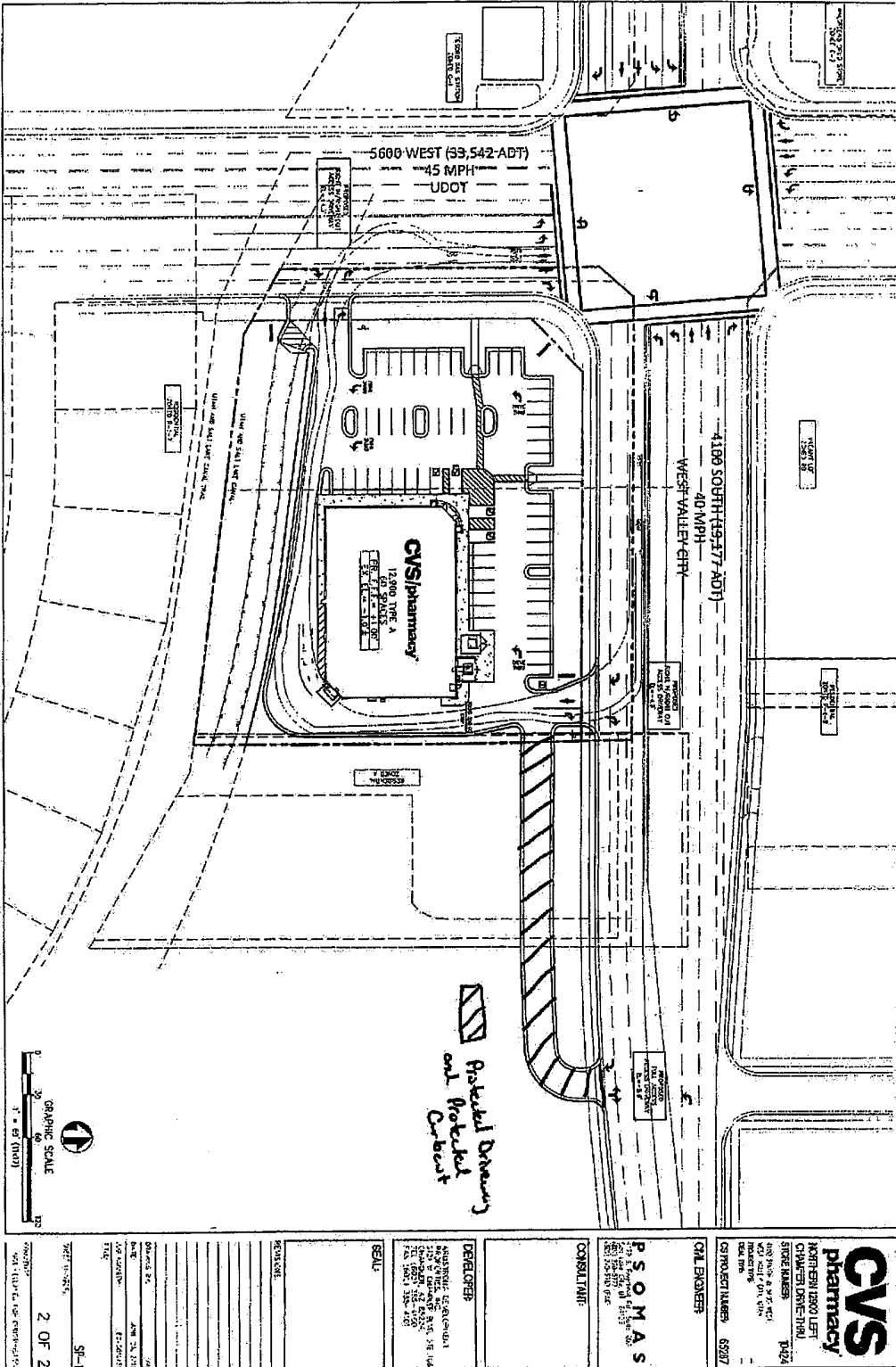
### UDOT EASEMENT DESCRIPTION

A perpetual nonexclusive access easement, upon part of an entire tract of land, situate in Lot 1 and 2; Floyd L. Rushton Subdivision, recorded as Entry No. 5634039 in Book 93-10 at Page 290 in the Office of the Salt Lake County Recorder, a subdivision in the NW1/4NW1/4 of Section 1, T.2S., R.2W., S.L.B. & M., in Salt Lake County, Utah, to construct, maintain an access easement for vehicular and pedestrian ingress and egress to and from Grantee's land. This Easement shall run with the land and shall be assignable by the Grantee. The boundaries of said easement are described as follows:

Beginning at point in the westerly lot line of lot 2, which point is 58.51 feet S.01°12'14"E. from the northwest corner of said Lot 2; and running thence East 106.04 feet to the beginning of a 1151.00-foot radius curve to the left; thence easterly 116.16 feet along the arc of said curve (Note: Chord to said curve bears N.87°06'32"E. for a distance of 116.11 feet) to a point of compound curvature with a radius of 10.00 feet; thence northeasterly 14.78 feet along the arc of said curve (Note: Chord to said curve bears N.41°52'08"E. for a distance of 13.47 feet); thence N.00°28'48"W. 12.03 feet to a point in a 1130.00-foot radius non-tangent curve to the left; thence easterly 27.09 feet along the arc of said curve (Note: Chord to said curve bears N.82°58'11"E. for a distance of 27.09 feet) to the easterly boundary line of Grantor's land of said entire tract; thence South 24.78 feet along said easterly boundary line to the beginning of a 30.00-foot radius curve to the right; thence southwesterly 43.95 feet along the arc of said curve (Note: Chord to said curve bears S.41°57'51"W. for a distance of 40.12 feet) to a point of compound curvature with a radius of 1181.00 feet; thence westerly 125.14 feet along the arc of said curve (Note: Chord to said curve bears S.86°57'52"W. for a distance of 125.08 feet); thence West 105.41 feet to said westerly lot line; thence N.01°12'14"W. 30.01 feet along said westerly lot line to the point of beginning. The above described easement contains 8,174 square feet in area or 0.188 acre, more or less.

Together with and subject to any and all easements, rights of way and restrictions appearing of record or enforceable in law and equity.

Tax ID No. 20-01-101-023  
20-01-101-024  
20-01-101-005



UDOT EASEMENT DEPICTION

EXHIBIT B-1

**CVS**  
Pharmacy  
KORNER 1800 WEST  
CHARLES DRIVE, HULL  
STREET NUMBER 1412  
HULL MISSOURI 64701  
CVS PHARMACY, INC.  
HULL MISSOURI

CONTRACT NUMBER: 68287  
CML EXAMINER

**P S O M A S**  
CONSULTANT  
1000 WEST 10TH STREET  
ST. LOUIS, MISSOURI 63107  
TEL: 314-241-1000  
FAX: 314-241-1001

DEVELOPER  
NATIONAL ECONOMIC DEVELOPMENT CORPORATION  
1200 WEST 10TH STREET  
ST. LOUIS, MISSOURI 63107  
TEL: 314-241-1000  
FAX: 314-241-1001

SEAL:  
PROFESSOR

DATE: 11/11/07  
DRAWN BY: J. L. BROWN  
CHECKED BY: J. L. BROWN  
DATE: 11/11/07  
SCALE: AS SHOWN  
SHEET: 2 OF 2  
PROJECT: 10401