

*This document is being re-recorded to correct the legal description in that certain Reciprocal Easement Agreement with Covenants, Conditions and Restrictions, which was recorded on October 29, 2002 in Instrument #20021029000534150 in the Probate Office of Shelby County, Alabama.*

**CORRECTIVE**  
**RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS,**  
**CONDITIONS AND RESTRICTIONS**

**THIS CORRECTIVE RECIPROCAL EASEMENT AGREEMENT WITH COVENANTS, CONDITIONS AND RESTRICTIONS** (the "Agreement") is made and entered into this 28th day of February, 2003, by and between Mark-Point Properties, Inc., an Alabama corporation (the "Parcel A Owner"), and Caldwell-Valley, LLC, an Alabama limited liability company (the "Parcel B Owner").

**RECITALS**

A. The Parcel A Owner is the owner of that certain real property situated in the County of Shelby, State of Alabama, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("Parcel A").

B. The Parcel B Owner is the owner of that certain real property situated in the County of Shelby, State of Alabama, more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference, which real property is adjacent and contiguous to Parcel A and which shall hereinafter be referred to as "Parcel B." Collectively, Parcels A and B shall be referred to as the Parcels.

C. The Parcel B Owner intends to develop Parcel B for use by Walgreen (hereinafter defined).

D. The Parcel A Owner intends to continue to utilize Parcel A as a developed retail/commercial/shopping center site.

E. The parties hereto desire 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 and Parcel B 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 Parcel A Owner and the Parcel B Owner hereby covenant and agree 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 Agreement, so that said Parcels shall be maintained, kept, sold and used in full compliance with and subject to this Agreement and, in connection therewith, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

## **AGREEMENTS**

1. Definitions. For purposes hereof:

(a) The term "Owner" or "Owners" shall mean the Parcel A Owner (as to Parcel A) and the Parcel B Owner (as to Parcel B) 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 Agreement as described on Exhibits "A" and "B", that is, Parcel A and Parcel B, 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 and Parcel B 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 Agreement.

(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 "C" and by reference made a part hereof. Except as may be otherwise provided in this Agreement, the Site Plan is for identification purposes only.

(h) The term "Driveways" shall mean the driveways and related driveway improvements, paving, curbing, entrances and exits, in the location on the Parcels as shown on the Site Plan.

## 2. Easements.

2.1 Grant of Reciprocal Easements. Subject to any express conditions, limitations or reservations contained herein, and subject to any easements, restrictions, covenants or other matters of record, the Owners hereby grant, establish, covenant and agree that the Parcels, and all Owners and Permittees of the Parcels, shall be benefitted and burdened by the following nonexclusive, perpetual and reciprocal easements which are hereby imposed upon the Parcels (or the Parcel hereinafter designated, as applicable) and all present and future Owners 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 and the Common Area of Parcel A including, without limitation, the Driveways, 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) A non-exclusive easement for the benefit of Parcel B for the parking of customer's vehicles on Parcel A in the parking areas indicated on the Site Plan (the "Parking Easement"). Notwithstanding anything contained in this Agreement to the contrary, the parking areas of Parcel A located in the Parking Easement shall be for the use of the Parcels, and such parking areas shall not be modified or removed without the consent of the Owner of Parcel B (and Walgreen during the continuance of the Walgreen Lease or if Walgreen shall become an Owner of Parcel B). The Parking Easement is for customer parking in connection only with the businesses operated from time to time at the Parcels. In no event shall the Parking Easement be used for delivery or truck parking, employee parking, overnight parking, storage or other similar parking purposes that shall constitute an unreasonable prolonged use of the Parking Easement.

(c) 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, or as currently existing across the Parcels, and to install, maintain, repair and replace storm water collection, retention, detention and distribution lines, conduits, pipes and other apparatus under and across the Common Areas. 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 any applicable law or regulation 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 modified, altered, relocated or otherwise changed, without the prior written consent of the Owners of the Parcels 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.

(d) 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, guy wires, 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 Owner of Parcel B pursuant to the Walgreen Lease, thereafter no additional utility easements affecting Parcel B shall be installed without the consent of the Parcel B Owner (and Walgreen during the continuance of the Walgreen Lease), and thereafter no additional utility easements affecting Parcel A shall be installed without the consent of the Parcel A Owner.

(e) An easement for the benefit of Parcel B upon a portion of Parcel A abutting the property line between the Parcels and a width of ten (10) feet on Parcel A (the "Grading Easement Area") for the tying in of any Driveways between the respective Parcels at such portions where the Parcels meet, as shown on the Site Plan,

and for any construction, maintenance and repair required incident thereto. The Grading Easement is temporary in character and shall be automatically released when the construction on Parcel B shall have been completed and the driveways have been connected.

(f) An easement for the benefit of Parcel B upon, over and across Parcel A for the purposes of access, construction, maintenance, and repair required and incident thereto and related activities arising out of or pertaining to the construction and improvements to be made on Parcel B during the initial development of the Walgreen's improvements on Parcel B (the "Construction Easement"). The Construction Easement is temporary in character and shall be automatically released when the construction of Parcel B shall have been completed and the driveways and all contiguous portions of Parcel A and B have been connected.

(g) Except for the rights of the customers of the Owners, tenants and occupants of Parcel A and Parcel B to park in the Parking Easement located on Parcel A, the employees, licensees, and invitees of the Owner of a Parcel or of a tenant or occupant on any Parcel shall not have any right to park their automobiles on the other Parcel and the Owners shall designate such parking areas on the perimeter of the parking lot abutting Valleydale Road for employee parking. The Owners shall cooperate with each other to assure that such employee parking shall be controlled and restricted as aforesaid.

(h) An easement for the benefit of Parcel B upon a portion of Parcel A in the areas shown on the Site Plan to construct and maintain a directional sign for the benefit of the Owner of Parcel B and, during the continuance of the Walgreen Lease, Walgreen. This easement shall include the right to access the directional sign for any applicable maintenance and repairs.

(i) An easement for the mutual benefit of Parcel A and Parcel B upon, over, above and across those portions of Parcel A and Parcel B identified on the Site Plan as the area of the canopy encroachment easement. The purpose of the easement granted in this paragraph 2.1(i), is to allow the encroachment on the applicable Parcel for the canopy and awnings servicing each Parcel which abuts and encroaches onto the adjacent Parcel. The easement granted herein shall include the right to access the awning and canopy for the maintenance and repair of the same.

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 arising from or relating to the use of such easements 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 Driveways are shown on the Site Plan and such opening(s) and access point(s) between the Parcels for use of the Driveways, as contemplated pursuant to paragraph 2.1 (a) above, are hereinafter called the "Access Openings." Unless required by law or governmental authority, 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 Driveways 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 hereinabove 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 Owners 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. 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 in a good and workmanlike manner, 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 Owners 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 Agreement to the contrary, except for the initial construction of the Walgreens on Parcel B which shall be permitted to occur during the months of November and December, any Owner 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 other Owner and its Permittees) which is not of an emergency nature during the months of November or December unless the other Owner (and Walgreen, during the continuance of the Walgreen Lease) shall consent thereto.

2.5 Approval of Initial Site Plan Easements. The Parcel A Owner and Parcel B Owner hereby consent to and approve of the Driveways, Water Detention and Drainage Facilities, utility lines and other easements reflected on the Site Plan, and agree that the owner of Parcel B (and Walgreens during the continuance of the Walgreen Lease) shall not be required to modify or relocate any such easements or improvements once the same are constructed incident to the initial construction of improvements on Parcel B unless required by any applicable law or regulation. The foregoing provisions of this Section 2.5 shall not, however, limit the ability of the Parcel A Owner or Parcel B Owner to relocate various of the easements in accordance with the provisions of and as contemplated in Section 2.4(b) above. Furthermore, the Parcel A Owner hereby acknowledges, agrees and confirms that the Parcel B Owner shall be permitted to demolish the building located on Parcel B up to the property line between the two Parcels, following which the Parcel B Owner shall construct a new wall for the building located on Parcel A directly abutting the property line, and further the Parcel B Owner shall be responsible to repair any damage to said wall located on Parcel A arising out of the construction of improvements made to Parcel B.

### 3. Maintenance.

3.1 General. The Owner of a Parcel 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 Agreement), 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. As provided in Section 2.1(b) above, Parcel B shall be entitled to non-exclusive use of all parking areas located in the Parking Easement, and all such parking shall be allocated solely to Parcel B in determining the compliance of Parcel B with applicable governmental parking requirements. Except as provided in the immediately preceding sentence, each Parcel shall comply with applicable governmental parking ratio requirements without taking into account the parking provided on the other Owner's Parcel.

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 Agreement, 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 agreement). 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 any alterations to Parcel B, during the continuance of the Walgreen Lease, the express written consent of Walgreen shall be required; (ii) the reciprocal easements between the Parcels pursuant to paragraph 2.1 (a) shall not be closed or materially impaired; (iii) the Driveways and ingress and egress thereto, and to and from the Parcels and adjacent streets and roads as shown on the Site Plan, shall not be materially 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) the requirements of paragraph 3.2 of this Agreement shall be complied with.

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. In accordance with the easement granted pursuant to paragraph 2.1(d) above, the Owner of Parcel B shall reimburse the Owner of Parcel A its prorata share based upon the total square footage of all buildings utilizing the sanitary sewer facility (initially 37.7%) of the cost to maintain and repair the lift station located on Parcel A as a component of the sanitary sewer facility serving both Parcels.

4. Construction of Improvements. Every building (including its appurtenant Common Area improvements), now or in the future constructed on the Parcels shall be constructed, operated and maintained so that the same is in compliance with all applicable governmental requirements. To the extent the same are not currently in existence, the Driveways, curb cuts, curbing, parking configuration and striping, and parking islands as reflected on the Site Plan shall be constructed and completed by the Owner of Parcel B for those areas located on Parcel B and by the Owner of Parcel A for those areas located on Parcel A at the same time as the Owner of Parcel B 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 Agreement, it is expressly agreed that neither all nor any portion of a Parcel shall be used, directly or indirectly, for purposes of a cocktail lounge, bar, disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade, children's play or party facility, adult book store, adult theater, 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, blood bank, 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, a car wash, an assembly hall, off track betting establishment, bingo parlor, any use involving the use, storage, disposal or handling of hazardous materials or underground storage tanks, a restaurant (except that, notwithstanding the restriction herein contained, the Owner of Parcel B and/or Walgreen's in accordance with the Walgreen Lease may use Parcel B

to operate a restaurant and the space in Parcel A currently occupied by Justin's Restaurant may be used as a restaurant), or any use which creates a nuisance.

5.2 Additional Parcel A Restrictions. Throughout the term of this Agreement, it is expressly agreed that neither all nor any portion of Parcel A shall be used, directly or indirectly, for the operation of a drugstore or a so called prescription pharmacy 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.

5.3 Drive-Throughs. No facility on the Parcels for vehicular drive-up or drive-through in which the stopping or standing of motor vehicle in line at a location for drop off and/or pickup is intended (as, for example, at a restaurant, car wash, bank, or drive-through pharmacy) shall be constructed, used or operated in any manner such that motor vehicles in line at such facility stop or stand onto the other Parcel and/or the Driveways, or otherwise interfere with the normal pattern and flow of pedestrian or vehicular traffic on and across the Parcels and/or the Driveways. 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. Further, nothing contained herein shall be deemed to effect the drive-through serving the building located on Parcel A to be constructed on Parcel A by the Owner thereof, which drive-through is located on the Site Plan attached hereto, which is hereby expressly approved, subject to the terms and restrictions on drive-throughs set forth in this paragraph 5.3.

6. Insurance. Throughout the term of this Agreement, each Owner (or their lessees) shall procure and maintain general and/or comprehensive public 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. 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.

7. Taxes and Assessments. Each Owner shall pay or cause to be paid 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 or Parcel B. No easements, except (i) those expressly set



forth in paragraph 2, and/or (ii) an easement over Parcel A so as to enable the construction of the Driveways and other improvements required for the initial development for Walgreens by the Owner of Parcel B, shall be implied by this Agreement.

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, including but not limited to the obligation of construction of improvements as set forth in paragraph 4 above, the other Owner(s) and Walgreen 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. Walgreen shall have the right, but not the obligation, to enforce this Agreement 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 Agreement within thirty (30) days following written notice thereof by an Owner or 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), Walgreen or any Owner shall have the right to perform such obligation contained in this Agreement 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). The curing Owner shall reasonably document the cure expenses to the defaulting Owner in writing. Notwithstanding the foregoing, in the event of (i) an emergency, (ii) blockage or material impairment of the easement rights, and/or (iii) the unauthorized parking of vehicles on a Parcel, an Owner or 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 Agreement 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 Shelby County, Alabama;

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 Shelby County, Alabama 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 Agreement. 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 Agreement, each Owner agrees that such violation or threat thereof shall cause the non-defaulting Owner and/or its Permittees to suffer irreparable harm and such non-defaulting 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 Agreement, the non-defaulting Owner and Walgreen, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of paragraphs 2 and/or 5 of this Agreement.

10. Term. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the Office of the Probate Judge of Shelby County, Alabama and shall remain in full force and effect for a period of seventy-five (75) years thereafter (such seventy-five (75) year period may be referred to as the "Initial Term"), subject to automatic extension as hereinafter provided, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then record Owners of Parcel A and Parcel B (and Walgreen during the continuance of the Walgreen Lease) in accordance with paragraph 11.2 hereof. The term of this Agreement shall be automatically extended for an additional seventy-five (75) years from and after the expiration of the Initial Term unless the record Owner of Parcel A or the record Owner of Parcel B files a Notice of Termination of this Agreement in the Office of the Probate Judge of Shelby County, Alabama no earlier than the date that is six (6) months prior to



the expiration of the Initial Term and no later than the scheduled expiration date of the Initial Term, electing to terminate this Agreement and all of its terms and provisions (it being expressly agreed that a Notice of Termination filed before or after the aforementioned applicable dates shall not be effective for any purpose, and shall not result in a termination of this Agreement, unless executed by all applicable parties as provided in paragraph 11.2 hereinafter). Upon the filing of a Notice of Termination by the then record Owner of Parcel A or the then record Owner of Parcel B within the applicable time frames herein above established in this Section 10, all of the easements, covenants, conditions and restrictions contained in this Agreement shall terminate as of the expiration of the Initial Term.

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) Except as otherwise provided in paragraph 10 of this Agreement, the parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of Parcel A and Parcel B, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the Probate Judge of Shelby County, Alabama.

(b) Notwithstanding subparagraph 11.2(a) above to the contrary, no termination of this Agreement, and no modification or amendment of this Agreement 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 Agreement the consent or approval of an Owner or Walgreen 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 Agreement, 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.

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 Agreement 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 benefitted 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 Release From Liability. Notwithstanding Walgreens being subject to this Declaration during the term of the Walgreen Lease, any person ("Person" meaning any individual, corporation, partnership or other entity) acquiring fee title to either Parcel or any portion thereof shall be bound by this Declaration only as to the Property or portion thereof acquired by such person. Such person shall be bound by this Declaration only during the period that such person is the fee owner of such property or any portion thereof. Any person selling or transferring its interest in a Parcel or any portion thereof shall be automatically discharged and released as to the Parcel or portion thereof so transferred; provided, however, notwithstanding anything contained in this Section 11.7 to the contrary, all such Owners, lessees, and occupants of a Parcel or portion thereof shall be bound by the terms and provisions of this Agreement during their period of ownership, lease or occupation, and all Owners shall remain liable for all costs, claims, damages and obligations arising or accruing during their period of ownership of a Parcel or portion thereof pursuant to the terms and provisions of this Agreement or any breach or default thereof by such Owner.

11.8 Effect of Violation on Mortgage Lien. No violation of any provision of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Parcels; provided, however, that any mortgagee shall be bound by and subject to any provision of this Declaration as fully as any other Owner of any portion of the Parcels.

11.9 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.

11.10 Separability. Each provision of this Agreement and the application thereof to Parcel A and Parcel B are hereby declared to be independent of and severable from the remainder of this Agreement. 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 Agreement. In the event the validity or enforceability of any provision of this Agreement 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 both Parcels by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

11.11 Time of Essence. Time is of the essence of this Agreement.

11.12 Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

11.13 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 Owner, the Parcel B Owner and Walgreen are as follows:

<u>Walgreen:</u>	Walgreen Co. Attention: Law Department Mail Stop No. 2252 200 Wilmot Road Deerfield, Illinois 60015
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<u>Parcel A Owner:</u>	Mark-Point Properties, Inc. R. Shan Paden 5 Riverchase Ridge Hoover, Alabama 35244
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Parcel B Owner: Caldwell-Valley, LLC  
William C. Lloyd, Manager  
100 Second Avenue South, Suite 204N  
St. Petersburg, FL 33701

11.14 Governing Law. The laws of the State in which the Parcels are located shall govern the interpretation, validity, performance, and enforcement of this Agreement.

11.15 Estoppel Certificates. Each Owner, within twenty (20) days 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 Agreement is in default or violation of this Agreement and if so identifying such default or violation; and (b) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

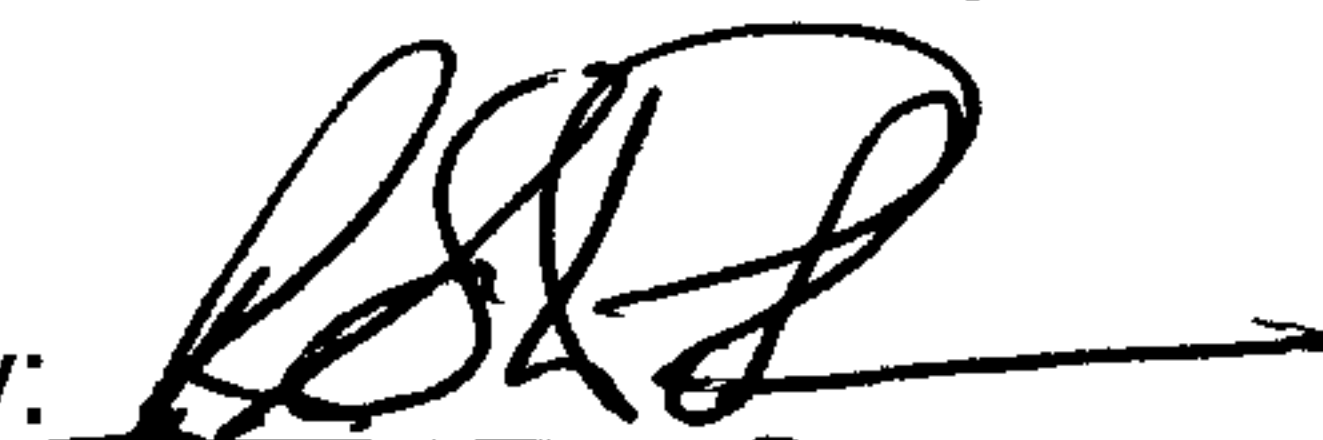
11.16 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

11.17 Joinder By Mortgagees. The Owners of each Parcel, as to their respective Parcel, agree to cause any lender possessing a mortgage on a Parcel at the time of execution and recording of this Agreement to execute the Joinder attached hereto as Exhibit "D" solely to evidence their consent to the terms and provisions of this Agreement and their agreement that the terms and provisions of this Agreement shall survive and continue upon and after any foreclosure of their mortgage on a Parcel or the acquisition of title to a Parcel by such lender or another third party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

Mark-Point Properties, Inc.,  
an Alabama corporation

By:

  
R. Shan Paden

, Its \_\_\_\_\_ President

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness



STATE OF ALABAMA                    )  
COUNTY OF JEFFERSON            )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that R. SHAN PADEN, whose name as President of Mark-Point Properties, Inc., an Alabama corporation, is signed to the foregoing Reciprocal Easement Agreement with Covenants, Conditions and Restrictions, who is known to me, acknowledged before me on this day that, being informed of the contents of the Reciprocal Easement Agreement with Covenants, Conditions and Restrictions, he, in his capacity as such President and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this 13<sup>th</sup> day of <sup>February</sup>~~January~~, 2003.

Carla M Hill  
Notary Public

My Commission Expires: 03/23/07

{NOTARIAL SEAL}

Caldwell-Valley, LLC, an Alabama  
limited liability company

Carla M Hill  
Witness

By: William C Lloyd, Managing Member  
William C. Lloyd, Its Managing Member


Witness

STATE OF ALABAMA                    )  
COUNTY OF JEFFERSON            )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that William C. Lloyd, whose name as Managing Member of Caldwell-Valley, LLC, a limited liability company formed under the laws of the State of Alabama,

is signed to the foregoing Reciprocal Easement Agreement with Covenants, Conditions and Restrictions, who is known to me, acknowledged before me on this day that, being informed of the contents of the Reciprocal Easement Agreement with Covenants, Conditions and Restrictions, he, in his capacity as such Managing Member and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand this 29th day of January, 2003.

  
\_\_\_\_\_  
Notary Public  
John L. Hartman, III  
My Commission Expires: 08/04/05

{NOTARIAL SEAL}



- Exhibit "A" - Legal Description of Parcel A.
- Exhibit "B" - Legal Description of Parcel B.
- Exhibit "C" - Site Plan. Identify Parcels A and B, the Driveways, Parking Easement, Sign Easement, parking, drainage or utility easement areas (if required).
- Exhibit "D" - Joinder and Consent of Mortgagees.

RECIPROCAL EASEMENT AGREEMENT WITH  
COVENANTS, CONDITIONS AND RESTRICTIONS

Exhibit "A"

Legal Description of Parcel A

LEGAL DESCRIPTION

A TRACT OF LAND SITUATED IN THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 19 SOUTH, RANGE 2 WEST, SHELBY COUNTY, ALABAMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF SAID 1/4 - 1/4 SECTION AND RUN N00°00'32"W ALONG THE WEST LINE OF SAID 1/4 - 1/4 SECTION FOR 517.05 FT.; THENCE RUN N89°31'43"E FOR 261.18 FT. TO THE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED; THENCE RUN S00°28'18"E FOR 109.88 FT.; THENCE RUN S89°31'42"E FOR 0.58 FT.; THENCE RUN S00°28'18"E FOR 115.29 FT.; THENCE RUN S29°05'16"E FOR 76.06 FT. TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF VALLEYDALE ROAD, SAID POINT BEING ON A CURVE TO THE RIGHT HAVING A RADIUS OF 723.85 FT.; THENCE RUN ALONG SAID CURVE AND SAID ROAD RIGHT OF WAY LINE A CHORD BEARING OF N74°30'42"E FOR 340.57 FT.; THENCE RUN N00°01'03"W FOR 204.51 FT.; THENCE RUN S89°31'43"W FOR 364.54 FT. TO THE POINT OF BEGINNING.

SAID TRACT OF LAND HAVING AN AREA OF 86,048 SQ. FT. OR 1.97 ACRES.



RECIPROCAL EASEMENT AGREEMENT WITH  
COVENANTS, CONDITIONS AND RESTRICTIONS

Exhibit "B"

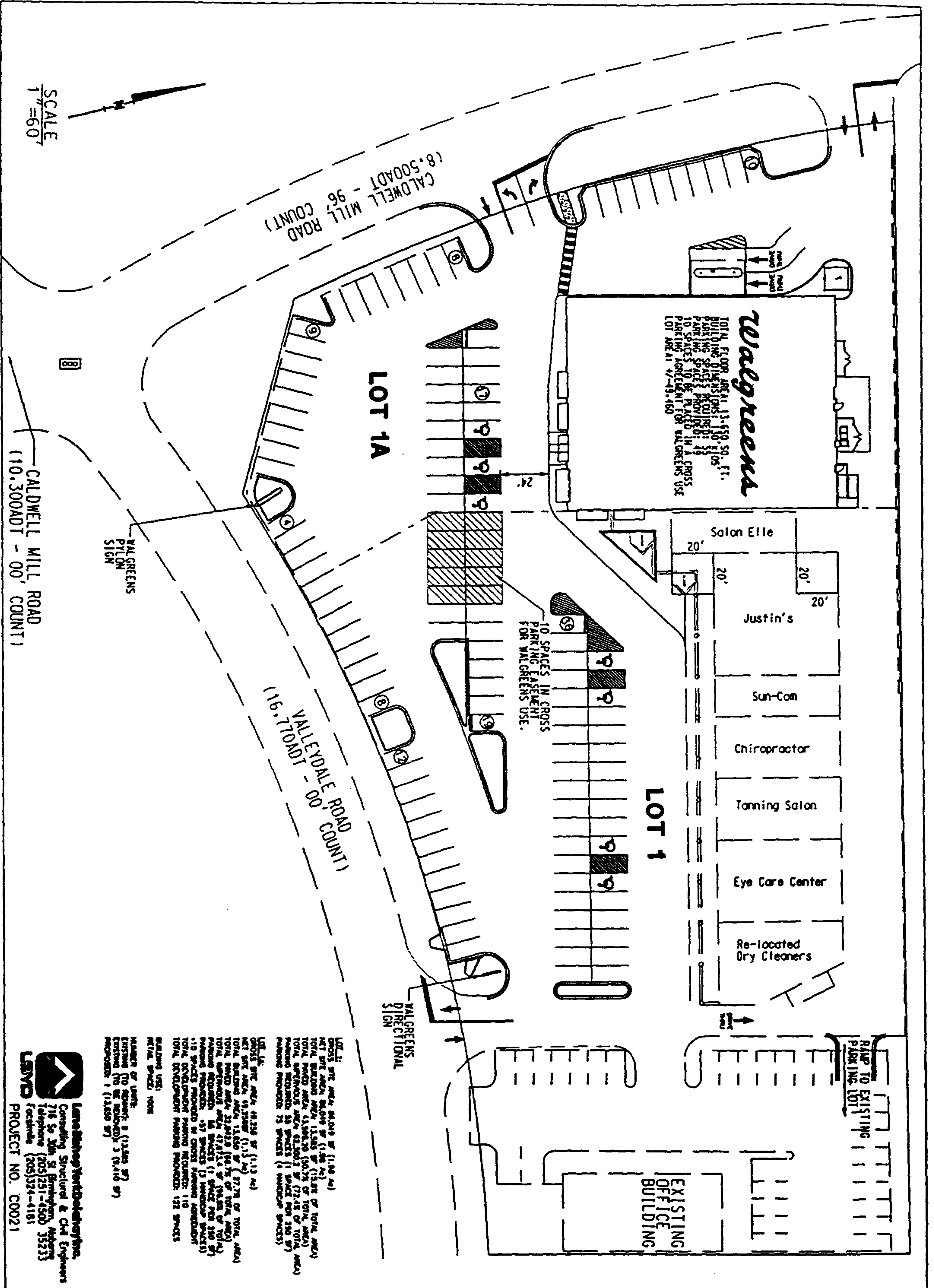
Legal Description of Parcel B

LEGAL DESCRIPTION

A tract of land situated in the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 15, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of said quarter-quarter section and run North  $00^{\circ} 00' 32''$  West along the West line of said quarter-quarter section for a distance of 517.05 feet; thence run North  $89^{\circ} 31' 43''$  East for 69.33 feet to the point of beginning of the tract of land herein described; thence continue along the last described course for 191.85 feet; thence run South  $00^{\circ} 28' 18''$  East for 109.88 feet; thence run North  $89^{\circ} 31' 42''$  East for 0.58 feet; thence run South  $00^{\circ} 28' 18''$  East for 115.29 feet; thence run South  $29^{\circ} 05' 16''$  East for 76.06 feet to a point on the Northerly right of way line of Valleydale Road; said point being on a curve to the left, having a radius of 723.85 feet; thence run along said curve and said road right of way line a chord bearing of South  $58^{\circ} 54' 28''$  West for 53.67 feet; thence run North  $75^{\circ} 08' 14''$  West for 100.00 feet to a point on the Easterly right of way line of Caldwell Mill Road and the Point of Beginning of a curve to the right, said curve having a radius of 954.93 feet; thence run along said curve and said right of way line a chord bearing of North  $16^{\circ} 52' 52''$  West for 306.58 feet to the point of beginning.

EXHIBIT "C"  
Site Plan





RECIPROCAL EASEMENT AGREEMENT WITH  
COVENANTS, CONDITIONS AND RESTRICTIONS

Exhibit "D"

JOINDER AND CONSENT OF MORTGAGEE

AmSouth Bank, an Alabama state chartered bank, ("Mortgagee" or "Bank"), being the owner and holder of that certain Mortgage and Security Agreement executed by Caldwell-Valley, LLC, an Alabama limited liability company (the "LLC") recorded in Instrument #20021029000534170, amended by Instrument #20021114000569870 and amended by Instrument # \_\_\_\_\_, the Assignment of Rents, Leases and Contract Rights recorded in Instrument #20021029000534180 and amended by Instrument # \_\_\_\_\_, and the UCC-I Financing Statement recorded in Instrument #20021029000534190 and amended by Instrument # \_\_\_\_\_, all in the Probate Office of Shelby County, Alabama (collectively, the "Loan Documents"), does hereby join in and consent to the Reciprocal Easement Agreement with Covenants, Conditions and Restrictions (the "Declaration") dated on or about the date hereof by and between Mark-Point Properties, Inc., a Florida corporation ("Mark-Point") and the LLC and in connection therewith, the Bank hereby agrees that (1) in the event any proceedings are brought by Bank, its nominees, successors or assigns (collectively, the "Secured Party") in connection with or arising out of the Loan Documents, including, but not limited to, any foreclosure or other action to enforce payment of any amounts due to Bank as secured by the Loan Documents, or any part thereof, Bank agrees that the Secured Party shall not join Mark-Point, Walgreens (as defined in the Declaration) or any other Owner of Parcel A (as defined in the Declaration) as a party to any such action or proceedings and the Secured Party will not foreclose, terminate or alter, or attempt to foreclose, terminate or alter the Declaration or any provision thereof in connection therewith; and (2) in the event Bank, its nominees, successors or assigns or any other party (collectively, the "Successor Owner") acquires title to or right of possession of all or any portion of the property described in and the subject of the Declaration pursuant to or in connection with the Loan Documents, including, but not limited to, through foreclosure, deed in lieu of foreclosure or otherwise, the Declaration and all of its terms, provisions, covenants and conditions shall remain in full force and effect, and each of the Owners of Parcel A and Parcel B (and Walgreens during the period of the Walgreens Lease) (all as defined in the Declaration) shall continue to have the benefit of all rights and be burdened by all obligations provided in the Declaration, it being expressly agreed that all of the terms, provisions, covenants and conditions of the Declaration shall survive and continue in full force and effect upon and after any foreclosure or other acquisition of title to a Parcel (as defined in the Declaration) by Bank, its nominees, successors, assigns or any other party.

IN WITNESS WHEREOF, the Bank has executed this Joinder And Consent of Mortgagee on this 15<sup>th</sup> day of August 2003.

Witnesses:

AmSouth Bank, an Alabama state chartered bank

Lisa M. Murphy  
Lisa M. Murphy  
Printed Name

By: David S. Kern  
[Signature], Senior Vice President

Witnesses:

Irene S. Porcello  
IRENE S. PORCELLO  
Printed Name

STATE OF FLORIDA     )  
COUNTY OF PINELLAS    )

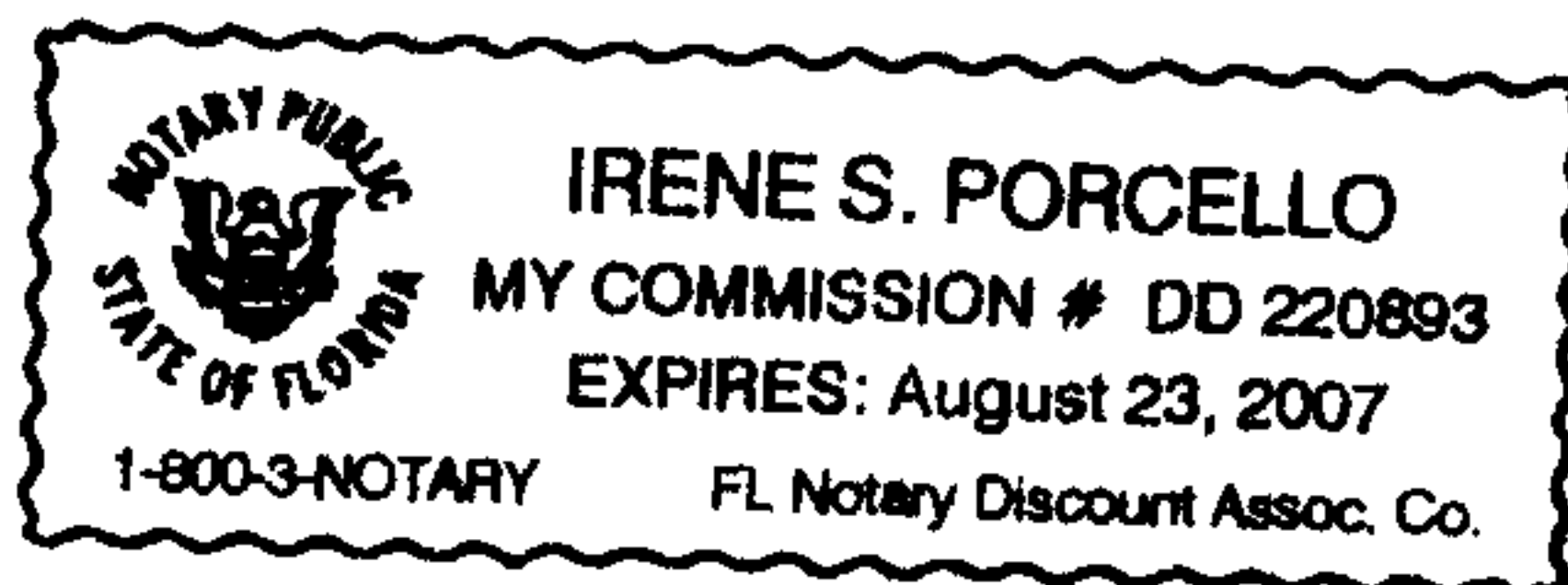
I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that David S. Kern whose name as Senior Vice President of AmSouth Bank, an Alabama state chartered bank, is signed to the Joinder and Consent of Mortgagee, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Joinder and Consent of Mortgagee, he, in his capacity as such Senior Vice President and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this 15<sup>th</sup> day of August, 2003.

Irene S. Porcello  
Notary Public  
State Of FLORIDA

My Commission Expires: August 23, 2007

{NOTARIAL SEAL}





RECIPROCAL EASEMENT AGREEMENT WITH  
COVENANTS, CONDITIONS AND RESTRICTIONS

EXHIBIT "D"

JOINDER AND CONSENT OF MORTGAGEE

First Financial Bank f/k/a First Federal Savings Bank ("Mortgagee" or "Bank"), being the owner and holder of that certain Mortgage executed by Mark-Point Properties, Inc., an Alabama corporation ("Mark-Point") in favor of Bank recorded in Instrument No. 1999-13712 on April 1, 1999, in the Probate Office of Shelby County, Alabama (the "Mortgage"), does hereby join in and consent to the Reciprocal Easement Agreement with Covenants, Conditions and Restrictions (the "Declaration") dated on or about the date hereof by and between Mark-Point and Caldwell-Valley, LCC, an Alabama limited liability company (the "LLC") to which this Joinder and Consent of Mortgagee is attached, and in connection therewith, the Bank hereby agrees that (1) in the event any proceedings are brought by Bank, its nominees, successors or assigns (collectively, the "Secured Party") in connection with or arising out of the Mortgage, including, but not limited to, any foreclosure or other action to enforce payment of any amounts due to Bank as secured by the Mortgage referenced above, or any part thereof, Bank agrees that the Secured Party shall not join LLC, Walgreens (as defined in the Declaration) or any other Owner of Parcel B (as defined in the Declaration) as a party to any such action or proceedings and the Secured Party will not foreclose, terminate or alter, or attempt to foreclose, terminate or alter the Declaration or any provision thereof in connection therewith; and (2) in the event Bank, its nominees, successors or assigns or any other party (collectively, the "Successor Owner") acquires title to or right of possession of all or any portion of the property described in and the subject of the Declaration pursuant to or in connection with the Mortgage, including, but not limited to, through foreclosure, deed in lieu of foreclosure or otherwise, the Declaration and all of its terms, provisions, covenants and conditions shall remain in full force and effect, and each of the Owners of Parcel A and Parcel B (and Walgreens during the period of the Walgreens Agreement) (all as defined in the Declaration) shall continue to have the benefit of all rights and be burdened by all obligations provided in the Declaration, it being expressly agreed that all of the terms, provisions, covenants and conditions of the Declaration shall survive and continue in full force and effect upon and after any foreclosure or other acquisition of title to a Parcel (as defined in the Declaration) by Bank, its nominees, successors, assigns or any other party.

IN WITNESS WHEREOF, the Bank has executed this Joinder And Consent of Mortgagee on this 28<sup>th</sup> day of February, 2003

Witnesses:

FIRST FINANCIAL BANK  
f/k/a FIRST FEDERAL SAVINGS BANK

\_\_\_\_\_  
\_\_\_\_\_  
Printed Name

By:

[Signature], Vice President

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_  
Printed Name

STATE OF ALABAMA     )  
COUNTY OF SHELBY    )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Jeff Williams, whose name as Vice President of First Financial Bank f/k/a First Federal Savings Bank, an Alabama Corporation is signed to the Joinder and Consent of Mortgagee, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Joinder and Consent of Mortgagee, he, in his capacity as such Vice President and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand this 28<sup>th</sup> day of February, 2003.

[Signature]  
Notary Public  
State Of Alabama

My Commission Expires: 1-6-04

{NOTARIAL SEAL}