

276

RETURN RECORDED DOCUMENT TO:

**WALGREEN CO.**  
104 Wilmot Road, Dept. #1420  
Deerfield, Illinois 60015  
Attn: Wendy A. Simms

*This Instrument Prepared by:*  
Giancarlo A. Jimenez  
104 Wilmot Road, Deerfield, Illinois 60015

495120 MEMORANDUM  
BOOK 459 PAGE 0276  
RECORDED 12/14/2004 AT 03:50 PM  
AUDREY KOLTISKA, SHERIDAN COUNTY CLERK

**MEMORANDUM OF LEASE**

By this Memorandum of Lease, made the 9<sup>th</sup> day of December, 2004, between BENCOR/SHERIDAN LIMITED PARTNERSHIP, a Wyoming limited partnership, hereinafter called "Landlord", and WALGREEN CO., an Illinois corporation, hereinafter called "Tenant";

Landlord hereby leases to Tenant, and Tenant hereby rents from Landlord, for an Initial Term (as defined in Article 3 hereof) and a term commencing October 1, 2005, and continuing to and including September 30, 2080, as such dates shall be adjusted pursuant to Article 3 herein and subject to prior termination as hereinafter provided, the premises to include both the real property and a building and other improvements located at the northwest corner of Coffeen Avenue and Sugar Lane, in the City of Sheridan, County of Sheridan, State of Wyoming, together with all improvements, appurtenances, easements, and privileges belonging thereto. The building to be erected and completed by Landlord shall include not less than 97 feet of frontage along Coffeen Avenue and not less than 150 feet of depth, being an area containing 14,550 square feet of first floor area (the "Building"). All of the foregoing shall be as shown on the site plan attached hereto and made a part hereof as Exhibit "A" (the "Site Plan") and as legally described in Exhibit "B" attached hereto and made a part hereof. The Building, real estate, and other improvements to be constructed thereon, are hereinafter collectively referred to as the "Leased Premises."

For purposes of this Memorandum of Lease, Tenant shall pay a rent of One Dollar (\$1.00) per year.

Provisions for additional rent and the other terms, covenants and conditions of said letting, including the options on the part of Tenant for prior termination, are set forth at length in the Lease and all of said provisions, terms, covenants and conditions are, by reference thereto, hereby incorporated in and made a part of this Memorandum of Lease.

The Lease, among other things, contains the following provision(s).

EXCLUSIVES

(a) Landlord covenants and agrees that, during the Term and any extensions or renewals thereof, no additional property which Landlord, directly or indirectly, may now or hereafter own or control, and which is contiguous to, or which is within five hundred (500) feet of any boundary of, the Leased Premises ("Landlord's Property"), will be used for any one or combination of the following: (i) the operation of a drug store or a so-called prescription pharmacy or prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind; (ii) the operation of a medical diagnostic lab or the provision of treatment services (other than as part of a medical, dental, physician, surgical or chiropractic office[s], which office[s] shall not be restricted by this subsection [ii]); (iii) the sale of so-called health and beauty aids and/or drug sundries; (iv) the operation of a business in which alcoholic beverages shall be sold for consumption off the premises; (v) the operation of a business in which photofinishing services (including, without limitation, digital photographic processing or printing, or the sale of any other imaging services, processes or goods) or photographic film are offered for sale; (vi) the operation of a business in which greeting cards and/or gift wrap are offered for sale; and (vii) the operation of a business in which prepackaged food items for off premises consumption are offered for sale. In the event that Tenant files suit against any party to enforce the foregoing restrictions, Landlord agrees to cooperate fully with Tenant in the prosecution of any such suit, and reimburse Tenant for all of attorneys' fees and court costs incurred by Tenant in connection with such suit, notwithstanding its resolution. For purposes hereof "contiguous" shall mean property that is either adjoining the Leased Premises or separated from the Leased Premises only by a public or private street, alley or right-of-way.

(b) In addition, Landlord shall not permit or suffer any other occupant of Landlord's Property to use any premises or any portion thereof for purposes of a cocktail lounge, bar, any other establishment that sells alcoholic beverages for on-premises consumption, disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade, a theater of any kind, children's play or party facility, adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays, second hand store, odd lot, closeout or liquidation store, auction house, flea market, educational or training facility (including, without limitation, a beauty school, barber college, school or other facility catering primarily to students or trainees rather than customers), gymnasium, sport or health club or spa, blood bank, massage parlor, funeral home, sleeping quarters or lodging, the outdoor housing or raising of animals, the sale, leasing or storage of automobiles, boats or other vehicles, any industrial use (including, without limitation, any manufacturing, smelting, rendering, brewing, refining, chemical manufacturing or

processing, or other manufacturing uses), any mining or mineral exploration or development except by non-surface means, a car wash, a carnival, amusement park or circus, an assembly hall, off track betting establishment, bingo hall, any use involving the use, storage, disposal or handling of hazardous materials or underground storage tanks, any use which may require water and sewer services in excess of the capacities allocated to the Leased Premises by any governmental authority, a church, temple, synagogue, mosque, or other house of worship, any facility for the sale of paraphernalia for use with illicit drugs, office use (except incidental to a retail use and as permitted by Section 8(a)(ii) above), a restaurant, or any use which creates a nuisance.

(c) In the event that any action, claim or suit is brought by any party against Tenant alleging that Tenant's operations on the Leased Premises are in violation of any use restriction contained in any instrument, Landlord shall defend (by counsel reasonably satisfactory to Tenant), indemnify and hold Tenant harmless from any damages, loss, or cost (including, without limitation, attorneys' fees and costs) suffered by Tenant thereby, or from the enforcement of said restriction against Tenant. No encumbrance, lien, or restriction recorded against or otherwise imposed upon the Leased Premises shall be binding upon or otherwise enforceable against Tenant or its successors and assigns unless Tenant has expressly and in writing, consented to said recordation or imposition; any such purported encumbrance, lien or restriction to which Tenant has not consented shall be void. The foregoing restriction against the imposition or recordation of other liens, encumbrances or restrictions shall be deemed a covenant running with the land in addition to any contractual obligation of Landlord.

#### PARKING

(a) Landlord, at Landlord's cost and expense, shall repair and replace (but shall not be obligated to maintain, which shall be Tenant's responsibility) the parking areas of the Leased Premises ("Parking Areas") for one (1) year after Tenant's acceptance of possession. Subject to the immediately preceding sentence, Tenant, at Tenant's cost and expense, commencing when the Term commences or when Tenant may open for business at the Leased Premises (if at all), whichever is earlier, and in addition to Tenant's maintenance and repair obligations under Section (a) of Article 10, shall maintain, repair (including pothole repair, patching, sealing and striping), landscape, illuminate when necessary during such hours and days as Tenant may determine, clean and replace said Parking Areas. However, Tenant shall have no obligation to perform nor pay any costs in connection with the following: (i) any damages caused by the act or omission of Landlord; (ii) any "latent defects" in the construction of the Leased Premises by Landlord (for purposes hereof, defined as those defects which are not discovered by Tenant and brought to Landlord's attention within one (1) year after Tenant's acceptance of possession of the Leased Premises hereunder and which were not reasonably discoverable in the normal course); provided, however, that to the extent Landlord's construction of the Leased Premises was performed in full compliance with the Criteria and Plans referenced in Article 5, then

such construction so required of and performed by Landlord shall not be considered a defect for purposes of this subsection [ii], and furthermore, no item of a nature that could be classified as a Punchlist Item under Article 4(a)(ii) above shall be deemed a latent defect under this subsection [ii]; and/or (iii) any item which is Landlord's obligation under this Lease. The foregoing items (i) through and including (iii) shall remain Landlord's responsibility to perform at Landlord's sole cost and expense and in addition to Landlord's obligations hereunder. The Parking Areas shall be for the exclusive use of Tenant and Tenant's customers, employees, invitees, successors, assigns and sublessees.

(b) In order that Tenant have full use and enjoyment of the Leased Premises, Tenant requires rights over and upon the adjacent parcel. To provide for such easement rights between the parcels, Landlord is required to enter into and record a valid, binding, and enforceable Easement Agreement in the form acceptable to Tenant (hereinafter called the "Access Agreement") binding upon both parcels and all present and future owners, occupants, and lien holders of said parcels. To the extent Landlord's consent is required or sought with respect to any item governed by the Access Agreement, Landlord shall not grant its consent unless Landlord first notifies Tenant and provides Tenant not less than fifteen (15) days to also consent (or refuse to) to such request or item for which Landlord's consent is sought. If Tenant shall not expressly and in writing consent, Landlord shall not consent and Landlord shall object in the manner and within the time required under the Access Agreement. Any consent of Landlord under the Access Agreement given absent Tenant's express consent shall be of no effect and deemed invalid. It is understood and agreed that Landlord shall not enter into any agreements modifying or terminating the Access Agreement without first obtaining the express written consent of Tenant and such modification or termination without first obtaining Tenant's express written consent shall be of no effect. If the Access Agreement is subject to any mortgage, deed of trust or other encumbrance in the nature thereof, Landlord, prior to delivering possession of the Leased Premises to Tenant and as a condition precedent thereto shall obtain a recordable agreement from the lender, mortgagee or beneficiary shall subordinate its interest to the Access Agreement.

#### RIGHT OF FIRST REFUSAL

(a) In the event that Landlord shall receive a Bona Fide Offer to purchase the Leased Premises at any time and from time to time on or after the date hereof and during the Initial Term and Term of this Lease or any extensions thereof from any person or entity, Landlord shall so notify Tenant (Attn.: Law Department) together with a true and correct copy of said Bona Fide Offer. For purposes hereof, a "Bona Fide Offer" shall be deemed to be one made in writing by a person or entity that is not related or affiliated with Landlord which Landlord intends to accept (subject to this Article). In submitting the Bona Fide Offer to Tenant, Landlord shall segregate the price and the terms of the offer for the Leased Premises from the price and other terms

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connected with any additional property or properties that such person or entity is offering to purchase from Landlord. Tenant may, at Tenant's option and within fifteen (15) days after receipt of Landlord's notice of said Bona Fide Offer and receipt of a copy thereof, offer to purchase the Leased Premises at the price and upon the terms and conditions as are contained in said Bona Fide Offer, in which event, Landlord shall sell the Leased Premises to Tenant upon said terms and conditions and said price; furthermore, in such event, Landlord shall convey the Leased Premises to Tenant by warranty deed. Notwithstanding the foregoing, the price that Tenant shall pay for the Leased Premises shall be reduced by (i) an amount equal to broker's fees or commissions that would have been payable by either the purchaser or Landlord if the Leased Premises were sold pursuant to a Bona Fide Offer; and (ii) the amount of any payment(s) to be made by the proposed purchaser to any entity owned or controlled by, or affiliated with, the proposed purchaser. Landlord shall provide Tenant evidence of the amount of broker's fees or commissions payable in connection with any such Bona Fide Offer. Landlord covenants that it shall accept no such Bona Fide Offer or convey the premises until it has complied with the terms of this Article. Any conveyance of the Leased Premises made in the absence of full satisfaction of this Article shall be void. Tenant may enforce this Article, without limitation, by injunction, specific performance or other equitable relief.

(b) Tenant's election not to exercise its Right of First Refusal shall not prejudice Tenant's rights hereunder as to any further Bona Fide Offer. The terms and conditions contained in this Article shall be binding upon the heirs, successors and assigns of Landlord.

This instrument shall also bind and benefit, as the case may require, the heirs, legal representatives, assigns and successors of the respective parties, and all covenants, conditions and agreements herein contained shall be construed as covenants running with the land. This instrument shall not become binding upon the parties until it shall have been executed and delivered by both Landlord and Tenant.

This Memorandum of Lease is made and executed by the parties hereto for the purpose of recording the same in the office of the public records of Sheridan County, Wyoming, and is subject in each and every respect, to the rents and other terms, covenants and conditions of the Lease, bearing even date herein, between the parties hereto and this Memorandum of Lease is executed and delivered with the understanding and agreement that the same shall not in any manner or form whatsoever, alter, modify or vary the rents and other terms, covenants and conditions of the Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum of Lease, under seal, as of the day and year first above written.

Tenant:

Landlord:

WALGREEN CO.,  
An Illinois corporation

BENCOR/SHERIDAN LIMITED PARTNERSHIP  
BY: BENCOR DEVELOPMENT, LLC  
ITS GENERAL PARTNER

By: 

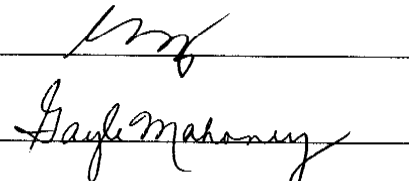
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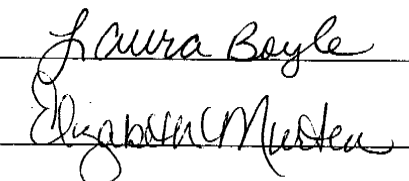
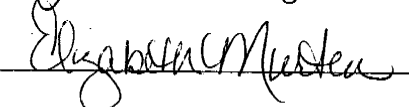
Robert M. Silverman,  
Divisional Vice President

Print Name: Ray Walkowski  
Its: MANAGER

WITNESSES:

WITNESSES:

  
Gayle Mahoney


  
Laura Boyle  
  
Elizabeth M. Mesteau

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STATE OF ILLINOIS     )  
                                  ) SS  
COUNTY OF LAKE        )

I, the undersigned, a Notary Public, do hereby certify that Robert M. Silverman, personally known to me to be the Divisional Vice President of WALGREEN CO., an Illinois corporation, and personally known to me to be the person whose name is subscribed in the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as such Divisional Vice President of said corporation, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, and as the free and voluntary act and deed of said corporation, for the purposes therein set forth.

Given under my hand and notarial seal this 8<sup>th</sup> day of December, 2004.

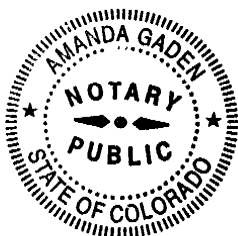
My commission expires:  Wendy A. Simms  
Notary Public

STATE OF Colorado )  
                                  ) SS  
COUNTY OF 94 Paso )

Before me, Amanda Gaden, a notary public in and for said state, personally appeared Ray Walkowski, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its MANAGER and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such limited liability company for the uses and purposes therein set forth.

Given under my hand and notarial seal this 9<sup>th</sup> day of December, 2004.

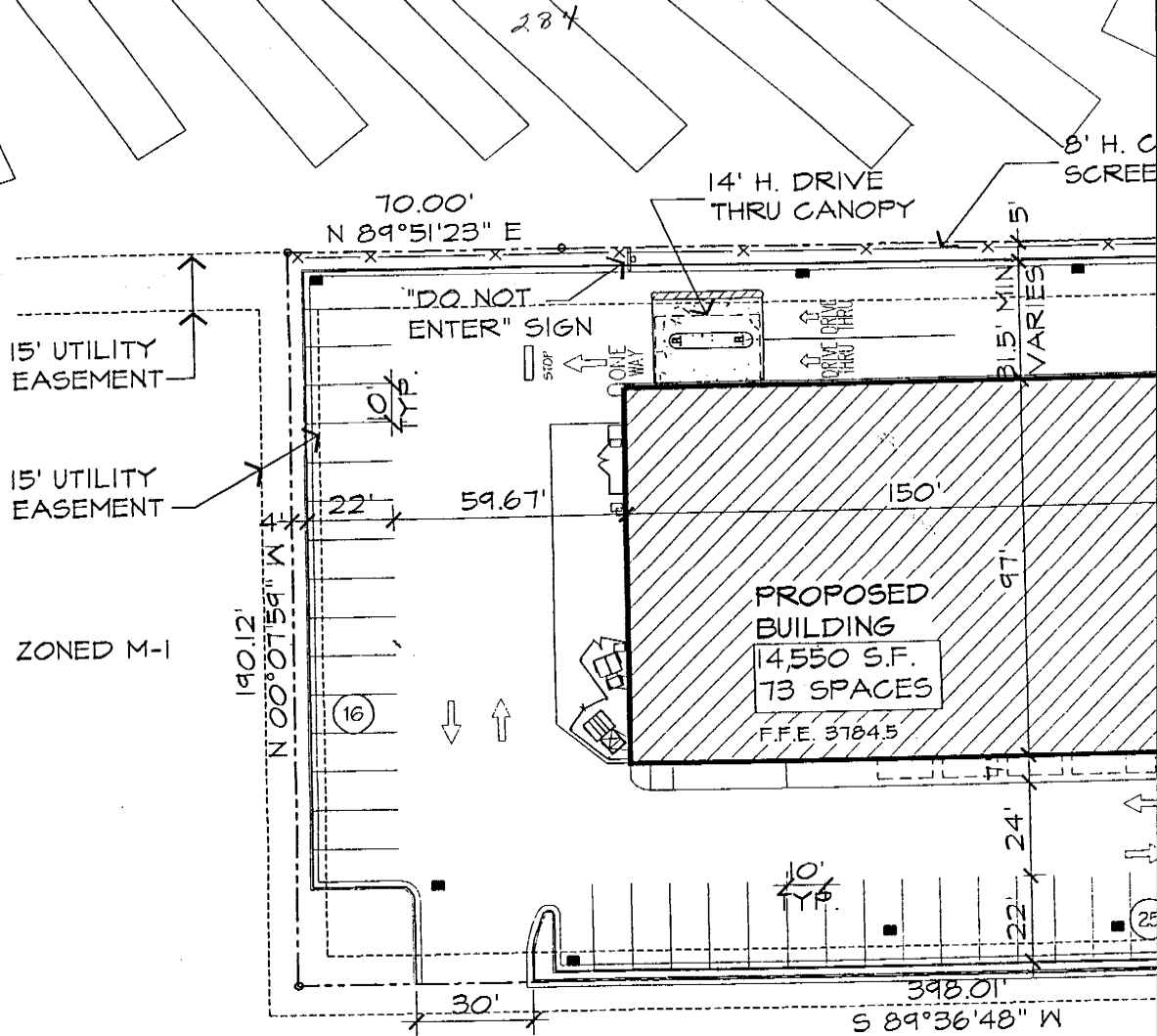
My commission expires: 8/31/05   
Notary Public



**EXHIBIT "A"**

**SITE PLAN**





# **SITE DATA**

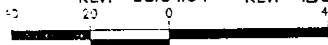
LOT AREA:  
 ORIGINAL: 55,757± S.F., OR 1.28 ACRES  
 ADDED: 19,499± S.F., OR 0.45 ACRES  
 TOTAL LOT AREA: 75,256± S.F., OR 1.73 ACRES  
 LANDSCAPE: 7572± S.F. (10% OF LOT)

PARKING REQUIRED: 73 SPACES @ 1:200  
 PARKING PROPOSED: 73 SPACES



NORTH

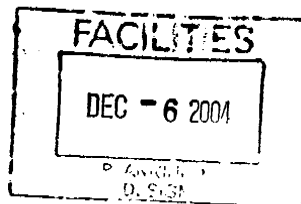
PROJECT NO. 1N203  
 DATE: 04/19/04 REV: 06/15/04  
 REV: 02/25/04 REV: 06/17/04  
 REV: 02/26/04 REV: 08/04/04  
 REV: 03/18/04 REV: 08/17/04  
 REV: 04/16/04 REV: 08/26/04  
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 REV: 05/26/04 REV: 09/29/04  
 REV: 06/04/04 REV: 12/01/04



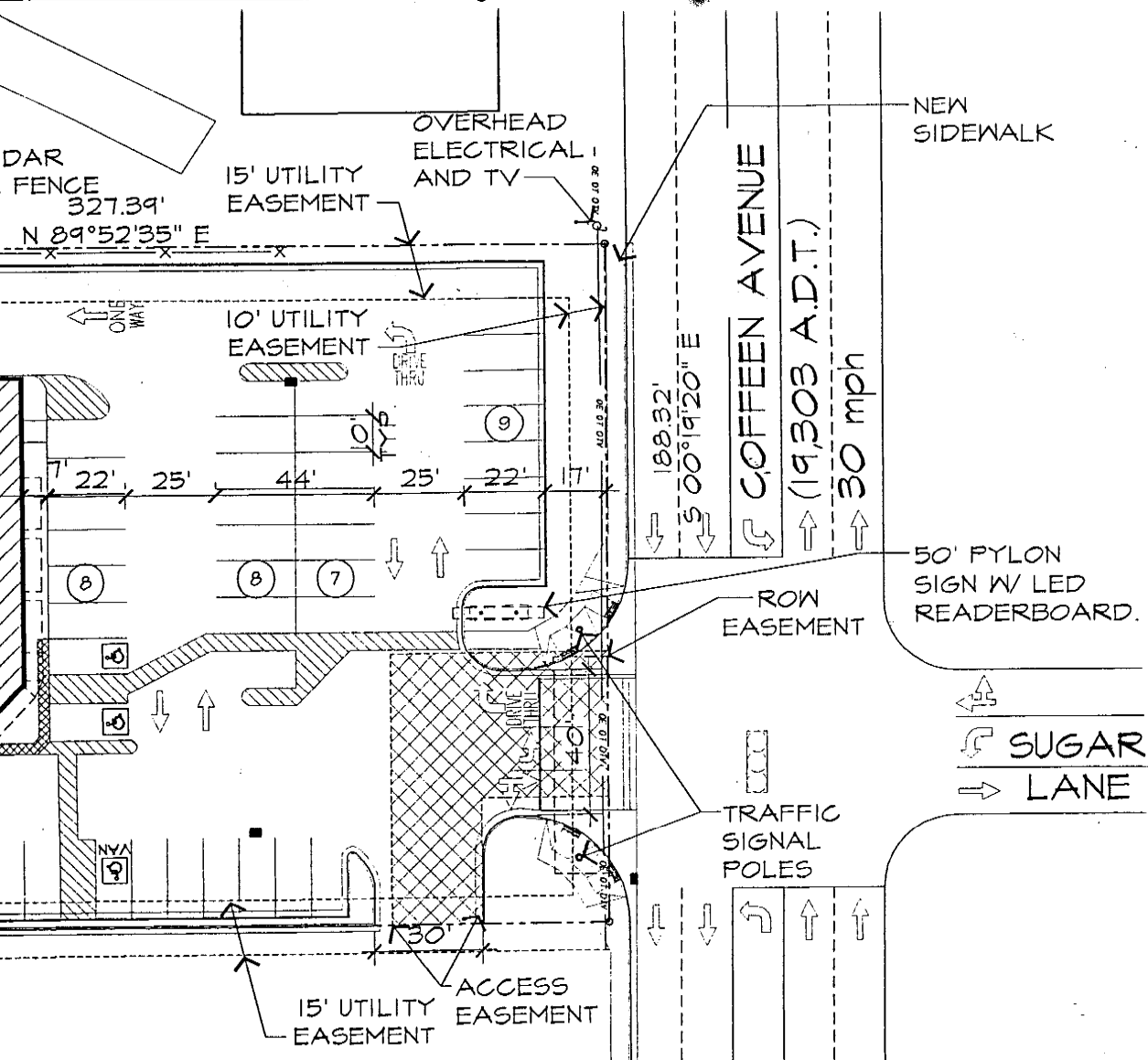
SCALE IN FEET

**BENCOR, LLC**  
 COLORADO SPRINGS, CO.

\*NOTE  
 ALL ASPHALT TO BE HEAVY DUTY



PR  
 (NW)



#### General Notes

1. Site grading is subject to Walgreens approval. Site shall be graded to drain water away from building and shall not be allowed to pond anywhere on site. Grades shall not exceed 2% at handicapped parking stalls.
2. Provide poured-in-place concrete barrier type curbs throughout.
3. Provide new asphalt pavement throughout, heavy duty at all truck travel areas.
4. Provide concrete filled pipe bollards as required by Walgreens to protect buildings and improvements.
5. Landscaping is subject to Walgreens approval.
6. Provide landscape irrigation system at all landscaped areas. Coordinate location of controls with Walgreens.
7. Site lighting shall conform to Walgreens criteria and is subject to Walgreens approval.
8. Retaining walls shall be articulated, cast-in-place concrete with a pre-finished railing at top of wall. Masonry screen wall shall be articulated and complement materials used in the retail building in color, texture and quality.
- 9.

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OPEN 24 HOURS  
STORE # 09547

**PROPOSED SITE PLAN**  
COFFEEN AVE & SUGAR LANE  
SHERIDAN, WY

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**CALLAHAN · GALLUP & C.**  
Architecture · Planning · Interior Design  
9 East 4th Street · Suite 1000 · Tulsa, Oklahoma 74103  
(918) 584-8855 (918) 584-2880 FAX

*T. J. Singson*  
12.6.09

**EXHIBIT "B"****LEGAL DESCRIPTION**

A tract of land situated in Lot 1 and Lot 2 of the King-Neighbors Addition to the City of Sheridan, and the SE¼SW¼ of Section 35, Township 56 North, Range 84 West, 6<sup>th</sup> Principal Meridian, City of Sheridan, Sheridan County, Wyoming; said tract being more particularly described as follows:

**BEGINNING** at the northeast corner of a tract of land described in Book 457 of Deeds, Page 354 (monumented with a 2" aluminum cap per LS 2615), said point lying on the west right of way line of Coffeen Avenue (AKA State Highway 14, 87 & I-90 Business Loop); thence S00°19'20"E, 188.32 feet along the east line of said tract and said west right of way line to a point (monumented with a 1-½" aluminum cap per PLS 2615); thence S89°36'48"W, 398.01 feet to a point (monumented with a 1-½" aluminum cap per PLS 2615); thence N00°07'59"W, 190.12 feet to a point (monumented with a 1-½" aluminum cap per PLS 2615), said point lying on the north line of said Lot 1; thence N89°51'23"E, 70.00 feet along said north line of said Lot 1 to a point (monumented with a 1-½" aluminum cap per PE & LS 3864), said point being the northeast corner of said Lot 1; thence N89°52'35"E, 327.39 feet to the **POINT OF BEGINNING**.

Said tract contains 1.73 acres of land more or less.

Basis of Bearings is Wyoming State Plane (East Central Zone).

To be known in the future as Lot 1 of the Final Plat of the JMK Subdivision to the City of Sheridan, Wyoming, a Lot Line Adjustment of Lot 1 and Lot 2, King-Neighbors Addition to the City of Sheridan, Sheridan County, Wyoming.