

This instrument was prepared by
and should be returned to:
Stephen M. Hudoba, Esq., of
Hill, Ward & Henderson, P.A.
Barnett Plaza, Suite 3700
101 East Kennedy Boulevard
Tampa, Florida 33602

DEPT 115 50.00
DEPT 291 6.50
DEPT 251 0.70
779 #
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6219A

06/04/97

DECLARATION OF EASEMENT AND RESTRICTION

THIS DECLARATION OF EASEMENT AND RESTRICTION (the "Declaration") is made and entered into as of the 27th day of May, 1997, by and between CHARLOTTE T. BALLENGER, BETTY BALLENGER, MARTHA BALLENGER DOYLE and HELEN BALLENGER, whose address is 3015 Buckingham Avenue, Lakeland, Florida 33803 (collectively, "Ballenger"), and BARCLAY GROUP NO. 3, LTD., a Florida limited partnership, whose address is 1123 Overcash Drive, Dunedin, Florida 34698 ("Barclay").

WITNESSETH:

^{.90} WHEREAS, Ballenger is the owner of that certain real property lying and situate in Polk County, Florida, and more particularly described on Exhibit A attached hereto and incorporated by reference herein (the "Ballenger Parcel"); and

WHEREAS, Barclay is the owner of that certain real property lying and situate in Polk County, Florida, and more particularly described on Exhibit B attached hereto and incorporated by reference herein (the "Barclay Parcel"); and

WHEREAS, it is the intent that Barclay is to develop the Barclay Parcel for a Walgreens retail store pursuant to a lease previously entered into by and between Barclay, as landlord thereunder, and Walgreen Co., an Illinois corporation, as tenant thereunder (hereinafter Walgreen Co. or any affiliate or subsidiary or any successor or assign of Walgreen Co. or any of its affiliates or subsidiaries shall be referred to as "Walgreens"); and

WHEREAS, Ballenger and Barclay desire to declare certain cross-easements for vehicular and pedestrian ingress and egress over and across their respective properties and to further impose certain use restrictions on the Ballenger Parcel.

NOW, THEREFORE, in consideration of the foregoing, Ten and No/100ths Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Documentary Tax Pd. \$ 20
Intangible Tax Pd. \$
E.D. "Bud" Dixon, Clerk, Polk Co.
By: Deputy Clerk

1997 JUN -4 PM 3:11

075383

A/d
sw

1. Recitals. The foregoing recitals are incorporated herein by reference as true and correct and not mere recitals hereto.

2. Easement. Ballenger hereby grants to Barclay and Barclay hereby grants to Ballenger a perpetual, non-exclusive easement for reasonable access, ingress and egress, over and across all paved driveways, roadways and walkways as presently or hereafter constructed and constituting a part of any common areas of the Ballenger Parcel and the Barclay Parcel, so as to provide for the passage of motor vehicles and pedestrians between all portions of such common areas of the respective properties to and from all abutting streets or rights-of-way furnishing access to such properties.

Without limiting the foregoing, Barclay agrees that it shall preserve and keep open the two (2) access points lying on the southerly boundary of the Ballenger Parcel and more particularly depicted on the Site Plan attached hereto as Exhibit C and incorporated by reference herein so that the Ballenger Parcel shall have access through the foregoing access points to enable the Ballenger Parcel to have ultimate access to the adjoining right-of-way, i.e., Eastside Drive. No other access points between the parcels shall be permitted.

No changes or alterations shall be made to the portion of the common area indicated on the Site Plan. In all other respects, each party reserves its right to construct, alter and modify their parcel, and the easement provided in this paragraph 2 shall apply to the common area of the parcel as so constructed, altered or modified.

3. Restriction. Ballenger agrees on behalf of themselves and their respective successors and assigns and any succeeding owners and occupants of the Ballenger Parcel, that neither all nor any portion of the Ballenger Parcel 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.

4. Beneficiaries. It is expressly agreed that the easements and restrictions granted herein shall run in favor of Ballenger and Barclay and each of their respective successors and assigns and all tenants or occupants of their respective properties and the respective employees, agents, contractors, customers, invitees and licensees of either owner of such properties or the tenants or occupants of such properties (collectively, "Permittees").

5. Indemnification. Each owner having rights with respect to an easement granted hereunder shall indemnify and hold the owner of the other property that is subject to the easement (including Walgreens, in the case of the owner of the Barclay Parcel) harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss or damage of or to any person or property arising from or in any manner related to the use by the indemnifying owner or its Permittees of an easement granted hereunder except as

may result from the gross negligence or intentional misconduct of the owner of the property that is subject to the easement.

6. No Rights in Public. Nothing contained herein shall be construed as creating any rights in the general public or in dedicating for public use any portion of the Ballenger Parcel or the Barclay Parcel. No easements shall be implied by this Declaration, without limiting the foregoing, no easements for parking, signage, utilities or drainage are created or implied in this Declaration.

7. 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, the other owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. In addition, Walgreens shall have the right, but not the obligation, to enforce this Declaration on behalf of the owner of the Barclay Parcel, and/or to cure a breach or default hereunder by the owner of the Barclay Parcel, which enforcement or cure shall be accepted by the other owner of the Ballenger Parcel, for so long as the lease by and between Barclay and Walgreens is in full force and effect. Walgreens shall be deemed a third party beneficiary of this Declaration.

8. No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage upon either property made in good faith for value, but the easements and restrictions hereof shall be binding upon and effective against any owner of either property covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

9. Term. The covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the official records of the County Recorder of Polk County, Florida, and shall remain in full force and effect for a period of sixty-five (65) years from and after said date of recordation, and the easements granted herein shall continue in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record owners of the Ballenger Parcel and the Barclay Parcel in accordance with paragraph 10(b) below.

10. Miscellaneous.

(a) Attorneys' Fees. In the event a party and/or Walgreens institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

(b) Amendment.

(i) The parties agree that the provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record owners of the Ballenger Parcel and the Barclay Parcel, evidenced by a document that has been fully executed and acknowledged by all such record owners and recorded in the official records of the County Recorder of Polk County, Florida.

(ii) Notwithstanding subparagraph 10(b)(i) above to the contrary, no termination of this Declaration, and no modification or amendment of this Declaration which directly or indirectly has or may reasonably have the effect of terminating, impairing, diminishing or otherwise adversely affecting the rights, benefits and/or protections accruing to Walgreens under this Declaration as originally recorded, including, without limitation, the provisions hereof relating to easement rights and use restrictions, or which has or may reasonably have an adverse effect on Walgreens' business, shall be effective nor shall the same be entered into unless consented to in writing by Walgreens; absent such consent, any such modification, amendment or termination shall be of no effect.

(c) 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.

(d) No Agency. Nothing in this Declaration 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.

(e) Covenants to Run with Land. It is intended that each of the easements, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited 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.

(f) Grantee's Acceptance. The grantee of any property 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, 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.

(g) Severability. Each provision of this Declaration and the application thereof to the Ballenger Parcel and the Barclay Parcel is hereby declared to be independent of and severable from the remainder of this Declaration. 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 Declaration. In the event the validity or enforceability of any provision of this Declaration 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.

(h) Time of Essence. Time is of the essence of this Declaration.

(i) Entire Agreement. This Declaration 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.

(j) Governing Law. The laws of the State of Florida shall govern the interpretation, validity, performance, and enforcement of this Declaration.

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

Signed, sealed and delivered
in the presence of:

Mary A. Ackerman Charlotte T. Ballenger
Name: MARY A. ACKERMAN Charlotte T. Ballenger
(Print or Type Name)

Jill H. Randall
Name: Jill H. Randall
(Print or Type Name)

Mary A. Ackerman Betty Ballenger
Name: MARY A. ACKERMAN Betty Ballenger
(Print or Type Name)

Jill H. Randall
Name: Jill H. Randall
(Print or Type Name)

Mary A. Ackerman Martha Ballenger Doyle
Name: MARY A. ACKERMAN Martha Ballenger Doyle
(Print or Type Name)

Jill H. Randall
Name: Jill H. Randall
(Print or Type Name)

Mary A. Ackerman Helen Ballenger
Name: MARY A. ACKERMAN Helen Ballenger
(Print or Type Name)

Jill H. Randall
Name: Jill H. Randall
(Print or Type Name)

"Ballenger"

BARCLAY GROUP NO. 3, LTD., a
Florida limited partnership

By: Oregon Properties, Inc., a Florida
corporation, its sole general partner

Stephen M. Hurlbaker
Name: Stephen M. Hurlbaker
(Print or Type Name)

By: David S. Coia
David S. Coia, President
(Corporate Seal)

Sherrill Villanueva
Name: Sherrill Villanueva
(Print or Type Name)

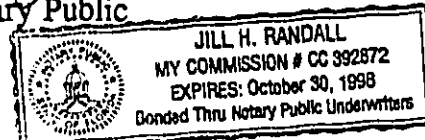
"Barclay"

STATE OF FLORIDA

COUNTY OF POLK

The foregoing instrument was acknowledged before me this 20th day of May, 1997, by Charlotte T. Ballenger, who is personally known to me ~~or who has produced _____~~ as identification.

Jill H. Randall
Notary Public



(Print, Type or Stamp Name)

My Commission Expires:

STATE OF FLORIDA

COUNTY OF POLK

The foregoing instrument was acknowledged before me this 20th day of May, 1997, by Betty Ballenger, who is personally known to me ~~or who has produced _____~~ as identification.

Jill H. Randall
Notary Public



(Print, Type or Stamp Name)

My Commission Expires:

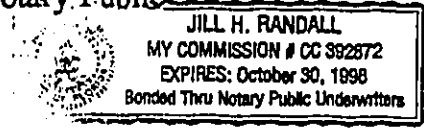
STATE OF FLORIDA

COUNTY OF POLK

The foregoing instrument was acknowledged before me this 27th day of May, 1997, by Martha Ballenger Doyle, who is personally known to me ~~or who has produced~~ _____ as identification.

Jill H. Randall

Notary Public



(Print, Type or Stamp Name)

My Commission Expires:

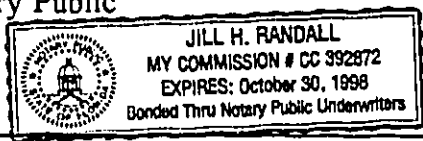
STATE OF FLORIDA

COUNTY OF POLK

The foregoing instrument was acknowledged before me this 27th day of May, 1997, by Helen Ballenger, who is personally known to me ~~or who has produced~~ _____ as identification.

Jill H. Randall

Notary Public



(Print, Type or Stamp Name)

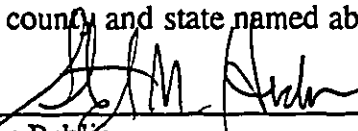
My Commission Expires:

STATE OF FLORIDA

COUNTY OF HILLSBOROUGH

I hereby certify that on this day, before me, a notary public duly authorized in the state and county named above to take acknowledgments, personally appeared David S. Coia, to me known to be the person described as President of Oregon Properties, Inc., a Florida corporation, and who executed the foregoing instrument, and he acknowledged before me that he executed it in the name and on behalf of the aforesaid corporation as a general partner of Barclay Group No. 3, Ltd., a Florida limited partnership, and that he was duly authorized by the aforesaid corporation to do so on behalf of the aforesaid partnership. He is personally known to me ~~or has produced~~ as identification:

WITNESS my hand and official seal in the county and state named above this 23rd day of May, 1997.



Notary Public

(Type, Print or Stamp Name)

My Commission Expires:

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EXHIBIT A

BALLENGER REMAINDER PARCEL

Begin at the Southwest corner of Block A of BALLENGERS RESUBDIVISION of parts of Country Club Estates, according to plat thereof recorded in Plat Book 30, page 19, Public Records of Polk County, Florida, and run Northeasterly along the westerly line 172.38 feet, thence Northeasterly along State Road 600 right-of-way line 26.33 feet to the North line of Block A, run thence Easterly along the North line, being South right-of-way of State Road 600, 152.00 feet, thence South 209 feet, thence Northwesterly 188.27 feet to the point of beginning, subject to a water main easement on the North side of said lot.

AND

Commence at the Southwest corner of Block A, Ballenger's Re-Subdivision as recorded in Plat Book 30, Page 19, Public Records of Polk County, Florida; run thence N06°35'14"E along the East right-of-way line of N. Eastside Drive a distance of 40.03 feet; thence S85°29'35"E a distance of 183.37 feet for a Point of Beginning; continue thence S85°29'35"E a distance of 60.22 feet; thence N00°25'12"W to the South right-of-way line of S.R. 600 (U.S. Highway # 92) a distance of 172.65 feet; thence S89°50'14"W along said South right-of-way line a distance of 60.00 feet; thence S00°25'12"E a distance of 167.75 feet to the Point of Beginning.

LESS AND EXCEPT:

Begin at the Southwest Corner of Block A, Ballenger's Re-Subdivision as recorded in Plat Book 30, Page 19, Public Records of Polk County, Florida; run thence N06°35'14" E along the East right-of-way line of N. Eastside Drive a distance of 40.03 feet; thence S85°29'35" E a distance of 183.37 feet; thence S00°25'12" E a distance of 40.15 feet to the North right-of-way line of the A.C.L. Railroad; thence N85°29'35"W along said North right-of-way line a distance of 188.27 feet to the Point of Beginning.

EXHIBIT B

WALGREEN'S PARCEL

Begin at the Southwest corner of Block A, Ballenger's Re-Subdivision as recorded in Plat Book 30, Page 19, Public Records of Polk County, Florida; run thence $N06^{\circ}35'14''E$ along the East right-of-way line of N. Eastside Drive a distance of 40.03 feet; thence $S85^{\circ}29'35''E$ a distance of 243.59 feet; thence $N00^{\circ}25'12''W$ to the South right-of-way line of S.R. 600 (U.S. Highway # 92) a distance of 172.65 feet; thence $N89^{\circ}50'14''E$ along said South right-of-way line a distance of 198.63 feet; thence $S00^{\circ}09'46''E$ along said South right-of-way line a distance of 36.00 feet to a point on a non-tangent curve concave Southwesterly, having a radius of 11391.16 feet, a chord bearing of $S89^{\circ}43'31''E$, a chord distance of 183.85 feet; run thence Southeasterly along the arc of said curve and along said South right-of-way line, through a central angle of $00^{\circ}55'29''$, a distance of 183.85 feet; thence $S44^{\circ}04'42''E$ along said South right-of-way line a distance of 63.75 feet to the West right-of-way line of Combee Road; thence $S00^{\circ}24'46''E$ along said West right-of-way line a distance of 164.31 feet to the North right-of-way line of the A.C.L. Railroad; thence $N85^{\circ}29'35''W$ along said North right-of-way line a distance of 676.36 feet to the Point of Beginning.

