

SPONSOR: E. Brown / E. Brown

ORDINANCE NO. 24-08

AN ORDINANCE AUTHORIZING THE CITY TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF JACKSON, OHIO, AND INTERRA JACKSON LLC, FOR AN EASEMENT AGREEMENT, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JACKSON, STATE OF OHIO, as follows:

Section One. The Mayor is authorized to enter into an Agreement between the City of Jackson, Ohio, and Interra Jackson LLC, an Ohio limited liability company, for an easement agreement concerning the proposed Walgreens Project on the corner of South Street and Main Street in the City of Jackson, Ohio. The agreement to be executed by the Mayor shall be substantially similar to the copy of the Easement Agreement which is attached hereto as Exhibit "A".

Section Two. This Ordinance is hereby declared to be an emergency Ordinance necessary for the immediate preservation of the public peace, health, or safety of the City of Jackson, in that it is necessary to enter into this agreement as soon as possible in order that the Walgreens project may proceed in a timely manner and meet all pending deadlines. Therefore, this Ordinance shall go into effect upon passage and approval by the Mayor, as provided in Ohio Revised Code Section 731.30.

Section Three. In the event this Ordinance receives a majority vote for passage but fails to receive the required number of votes to pass as an emergency, then this Ordinance shall be deemed to have passed but with no emergency clause and shall take effect at the earliest time permitted by law.

Section Four. It is hereby found and determined that all formal actions of this Council relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that the deliberations of this Council that resulted in such formal actions, were in a meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Date: 2-11-08

Russell A. Scarborough
PRESIDENT OF COUNCIL

Alla Brown
CLERK OF COUNCIL

Approved:

Date: 2-12-08

Randy R. Hecht
MAYOR

Exhibit “A”

THIS DOCUMENT PREPARED BY AND
THE RECORDED DOCUMENT SHOULD
BE RETURNED TO:

Levick, Timm & Garfinkel, LLC
770 Lake Cook Road, Suite 150
Deerfield, IL 60015
Attn: Seth L. Halpern

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 2008, by and between **INTERRA JACKSON, LLC**, an Ohio limited liability company (“**Interra**”), and the **CITY OF JACKSON**, an Ohio municipal entity (“**City**”).

RECITALS:

A. Interra is the owner in fee simple of the property (the “**Interra Parcel**”), as more particularly described on **Exhibit “A-1”**, attached hereto and by this reference made a part hereof, and as shown on the Site Plan, attached hereto as **Exhibit “B”** and by this reference made a part hereof.

B. Interra intends to lease (“**Walgreen’s Lease**”) the Interra Parcel to Walgreen Co., an Illinois corporation (“**Walgreen**”).

C. City is the fee simple owner of the real property adjacent to the southern boundary of the Interra parcel (the “**City Parcel**”), as more particularly described on **Exhibit “A-2”**, attached hereto and by this reference made a part hereof. The City is also the fee simple owner of the public right of way/alley/roadway (the “**Alley**”) located adjacent to the western boundary of the Interra Parcel as more particularly described on **Exhibit “A-3”**, attached hereto and by this reference made a part hereof.

D. Interra and City desire to grant each other certain easements for the operation, maintenance, repair and replacement of a driveway and related improvements, for vehicular and pedestrian ingress and egress and parking, on and over and across the Alley, certain portions of the City Parcel (the “**City Easement Parcel**”) and certain portions of the Interra Parcel (the “**Interra Easement Parcel**”), and for the construction, installation and maintenance of drainage and storm water systems in the areas as shown cross-hatched on the Site Plan attached hereto. The Interra Parcel, the Alley and the City Parcel are sometimes collectively referred to herein as the “**Parcels**”. The Interra Parcel, the Interra Easement Parcel, the City Parcel, the City Easement Parcel, and the Alley are each identified on the Site Plan.

NOW, THEREFORE, in consideration of the premises, mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals are true and correct and are expressly incorporated herein by this reference.

2. **Grants of Easements.**

A. Interra hereby grants to City and to the general public a perpetual, non-exclusive vehicular and pedestrian ingress, egress and access easement (the use and scope of which is limited to the rights and uses expressly set forth herein) on, over and across the Interra Easement Parcel for access to and from all adjoining public streets, roads and right-of-ways abutting the Interra Easement Parcel for access to and from the City Parcel. The easements granted herewith shall not include any right to park or parking rights of any kind on the Interra Easement Parcel or the Interra Parcel. The non-exclusive access easements granted herein shall be for the use of the general public and the respective employees, contractors, agents, invitees and licensees of the City in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of any business conducted on the Interra Parcel, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith

B. City hereby grants to Interra, its successors and assigns, a non-exclusive temporary construction easement for ingress and egress, on, over, and across the City Parcel for the purpose of constructing and installing (i) a landscaped area as shown on the Site Plan, (ii) the Water Detention and Drainage Facilities and related improvements in the locations as shown on the Site Plan, and (iii) the roadway and parking area located on the City Easement Parcel, as shown on the Site Plan, to provide for the smooth and level grade transition between the City Easement Parcel and the Interra Easement Parcel (the work described in this Section 2(B)(i)–(iii) shall be collectively referred to as the “**Improvements**”). The temporary construction easements granted herein shall include the staging of equipment and materials on the City Parcel. The foregoing temporary construction easements shall expire on the date upon which the construction on both the Interra Parcel and City Parcel have been completed to the satisfaction of both Interra and the City.

C. City hereby grants to Interra, its successors and assigns, a non-exclusive temporary construction easement for ingress and egress, on, over, and across the Alley for the purpose of installing and replacing the existing roadway and related improvements and re-grading of the roadway area to provide for the smooth and level grade transition between the Alley and the Interra Parcel, including, but not limited to, the temporary closing of the Alley and the staging of equipment and materials on the Alley. In addition, City authorizes Interra to construct within the Alley, along with the construction of, at Interra’s sole cost and expense, a permanent roadway and related improvements sufficient to permit and facilitate pedestrian and two-way vehicular traffic within the Alley as shown on the Site Plan. The foregoing temporary construction easements shall expire on the date upon which the construction on the both Interra Parcel and Alley have been completed to the satisfaction of both Interra and City.

D. City hereby grants to Interra, its tenants, permittees, and invitees a perpetual, non-exclusive easement on, over and across the City Easement Parcel and Alley for vehicular and pedestrian ingress, egress and access purposes to and from any adjoining public streets, roads, and right of ways abutting the City Easement Parcel and Alley. The non-exclusive access easements granted herein shall be for the use of the general public and the occupants, licensees, employees, contractors, agents, tenants, lessees, subtenants, customers, invitees and licensees of Interra and its tenants, permittees, successors and assigns.

E. City hereby grants an easement to Interra upon, under, over, above and across the City Parcel for the discharge, drainage, use, detention and retention of storm water runoff in the manner and in the location indicated on the Site Plan, and to install, maintain, repair and replace storm water collection, retention, detention and distribution lines, conduits, pipes and other apparatus under and across those portions of the City Parcel as indicated on the Site Plan. 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. Once constructed (i) the Water Detention and Drainage Facilities shall not be modified, altered, relocated or otherwise changed, without the prior written consent of Interra 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.

3. **Maintenance of the City Easement Parcel and Interra Easement Area.**

A. The City, at its sole cost and expense shall be responsible for operating, maintaining and repairing the Alley and the City Easement Parcel. Maintenance of the Alley and City Easement Parcel shall include, without limitation, maintaining and repairing the surface of the roadway areas, removal of snow and ice from the Alley and City Easement Parcel, removing all papers, debris and other refuse from and periodically sweeping all road areas to the extent necessary to maintain the same in a clean, safe and orderly condition, maintaining appropriate lighting fixtures for the roadways, maintaining marking, directional signs, lines and striping as needed, and performing any and all such other duties as are necessary to maintain the Alley and City Easement Parcel in a clean, safe and orderly condition. In the event of any damage to or destruction of all or a portion of the Alley and/or City Easement Parcel, City shall, at its sole cost and expense, with due diligence repair, restore and rebuild the Alley and/or City Easement Parcel to its respective condition prior to such damage or destruction. Nothing contained in this Agreement shall permit the City to alter, close, block, or renovate access to or from the Alley, the City Easement Parcel or the Interra Parcel without the consent of Interra, its successors or assigns, and Walgreens (during the term of the Walgreens Lease).

B. Interra shall be responsible for operating, maintaining and repairing the Interra Easement Parcel. Maintenance of the Interra Easement Parcel shall include, without limitation, maintaining and repairing the surface of the roadway areas, removal of snow and ice from the Interra Easement Parcel, removing all papers, debris and other refuse from and

with a copy to:

As to Interra: Interra Jackson, LLC
Interra Development Partners, LLC
737 North Michigan Avenue, Suite 1050
Chicago, IL 60611
Attn: Chief Financial Officer

with a copy to: Walgreen Co.
104 Wilmot Road, MS#1420
Deerfield, Illinois 60015
Attention: Law Department – Store 12476

9. **Severability**. If any provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provisions which are not invalid to persons or circumstances shall not be affected thereby but rather this Agreement shall be enforced to the greatest extent permitted by law.

10. **Attorneys' Fees**. In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the prevailing party shall be entitled to recover its reasonable costs, fees and expenses, including but not limited to witness fees, expert fees, consultant fees, attorney, paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses, whether suit be brought or not and whether in any bankruptcy action, in any declaratory action, at trial or on appeal.

11. **Caption and Paragraph Headings**. The captions and paragraph headings set forth herein are for convenience only and are not intended to affect the provisions of this Agreement.

12. **Walgreen Approval**. So long as Walgreen is the tenant or occupant of the Interra Parcel, this Agreement shall not be modified without the written consent of Walgreen.

13. **No Interference**. All easements granted herein shall be used in such a manner so as not to unreasonably interfere with business operations on the Interra Parcel.

14. **Law and Venue**. THIS AGREEMENT, ITS ENFORCEABILITY AND INTERPRETATIONS SHALL BE CONSTRUED IN ACCORDANCE WITH THE APPLICABLE LAWS OF THE STATE OF OHIO (WITHOUT REGARD TO ANY CONFLICT OF LAW PRINCIPLES) AND THE LAWS OF THE UNITED STATES OF AMERICA APPLICABLE TO TRANSACTIONS IN OHIO. TIME SHALL BE OF THE ESSENCE IN THIS AGREEMENT WITH RESPECT TO ALL MATTERS OF PERFORMANCE SET FORTH HEREIN. ANY ACTION OR PROCEEDING BROUGHT TO ENFORCE, INTERPRET OR CONSTRUE THIS AGREEMENT OR ANY PROVISION SET FORTH

HEREIN SHALL BE BROUGHT IN A COURT OF COMPETENT JURISDICTION IN JACKSON COUNTY, OHIO.

15. **Waiver**. The waiver of, or failure to enforce, any breach of or violation of any of the foregoing obligations or easements shall not be deemed to be a waiver of the right to enforce, or be deemed an abandonment of, the particular obligation violated or any of the obligations; nor shall it be deemed to be a waiver of the right to enforce any subsequent breach or violation of this Agreement or any of the provisions hereinabove set forth. The foregoing shall apply regardless of whether or not any party has knowledge of the breach or the violation.

16. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

17. **Consents**. Whenever the consent of a Parcel owner or other party is required hereunder, such consent cannot be unreasonably withheld, conditioned or delayed and must be tendered or denied in good faith, with specificity as to the reasons for any denial. All consents or denials must be in writing given by written notice pursuant to Paragraph 9 above.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

INTERRA JACKSON, LLC, an Ohio limited liability company

BY:

By: _____
Name: _____
Title: _____

STATE OF ILLINOIS
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by _____, the _____ of Interra Jackson, LLC, an Ohio limited liability company.

(NOTARY SEAL)

Notary Public Signature

(Name typed, printed or stamped)
Notary Public, State of _____
My Commission Expires: _____

CITY OF JACKSON

By: _____
Printed Name: _____
Title: _____

(SEAL)

STATE OF OHIO
COUNTY OF JACKSON

The foregoing instrument was acknowledged before me this ____ day of _____,
20__, by _____, the _____ of
_____, a _____, as _____ of _____, a
_____.

(NOTARY SEAL)

Notary Public Signature

(Name typed, printed or stamped)
Notary Public, State of _____
My Commission Expires: _____

MORTGAGEE CONSENT

, a national banking association (""), is the holder of that certain and related security instruments (collectively the "Loan Documents"), between _____ and Interra Jackson, LLC, an Ohio limited liability company ("Interra"), dated __, 200__, recorded on __, 200__, as Instrument No. _____ in the Official Records of Jackson County, State of Ohio, and encumbering the real property and improvements ("Property") described in the Easement Agreement (the "Easement Agreement"). Interra presently owns fee title to Property subject to, among other things, the Loan Documents. _____, on behalf of itself and its successor and assigns, hereby consents to the terms and provisions of the Easement Agreement to which this consent is attached, and to Interra's execution and delivery of the same, and agrees that in the event that _____ shall succeed to all or a portion of Interra's interest as the fee owner of the Property by foreclosure, deed in lieu thereof, or otherwise pursuant to the Loan Documents, the Easement Agreement shall remain in full force and effect.

In Witness Whereof, _____ has executed this Consent as of this ____ day of _____, 200__.

a national banking association

By: _____
Its: _____
Print Name: _____
Dated: ____, 200__.

STATE OF _____ §
 §
COUNTY OF _____ §

On this ____ day of _____ 200__, before me appeared _____, to me personally known, who, being by me duly sworn, did say that he is the _____ of _____, and that said instrument was signed in behalf of said corporation by authority of its board of directors, and said _____ acknowledged said instrument to be the free act and deed of said _____.
(Seal)

Notary Public

My term expires:

CONSENTED TO BY:

WALGREEN CO., an Illinois corporation

By: _____

Name: _____

Title: _____

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 _____ day of _____, 200_.

a. My commission expires:

Notary Public

EXHIBITS ATTACHED:

- Exhibit A-1 - Legal Description of Interra Parcel
- Exhibit A-2 – Legal Description of City Parcel
- Exhibit A-3 – Legal Description of Alley
- Exhibit B -- Site Plan

EXHIBIT A
LEGAL DESCRIPTION OF INTERRA PARCEL

EXHIBIT A-2
LEGAL DESCRIPTION OF CITY PARCEL

EXHIBIT A-3
LEGAL DESCRIPTION OF ALLEY

EXHIBIT B

SITE PLAN