

**Declaration of Restrictive Covenants and  
Easement Agreement for Reciprocal Access**

Date: August 11, 2000

First Party: Edd Powell of New Mexico, Inc.

First Party's Mailing Address: 1480-A George Dieter Drive  
El Paso, El Paso County, Texas 79936

Second Party: Family Dollar Stores of New Mexico, Inc.

Second Party's Mailing Address: P. O. Box 1017  
Charlotte, NC 28201-1017

First Party's Property: Lot 1C, Replat C, Block 6, Lawrence's Addition, Alamogordo, Otero  
County, New Mexico.

Second Party's Property: Lot 2C, Replat C, Block 6, Lawrence's Addition, Alamogordo,  
Otero County, New Mexico.

Easement Purpose: For providing free and uninterrupted pedestrian and vehicular ingress to,  
egress from, and access across and between First Party's Property and Second Party's Property  
and portions thereof.

Consideration: The sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable  
consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties.

Grants of Easements:

First Party, for the Consideration and subject to the Reservations from Conveyance of First  
Party's Property and Exceptions to Warranty of First Party's Property, grants, sells, and conveys  
to Second Party and Second Party's heirs, successors, and assigns an easement to, over, and  
across First Party's Property for the Easement Purpose and for the benefit of all or any portion of  
Second Party's Property, together with all and singular the rights and appurtenances thereto in  
any way belonging, to have and to hold the easement, rights, and appurtenances to Second Party  
and Second Party's heirs, successors, and assigns forever. First Party binds First Party and First  
Party's heirs, successors, and assigns to warrant and forever defend the title to the easement,  
rights, and appurtenances in Second Party and Second Party's heirs, successors, and assigns  
against every person whomsoever lawfully claiming or to claim the easement, rights, or  
appurtenances, or any part thereof, except as to the Reservations from Conveyance of First  
Party's Property and Exceptions to Warranty of First Party's Property to the extent that such

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claim arises by, through, or under First Party but not otherwise.

Second Party, for the Consideration and subject to the Reservations from Conveyance of Second Party's Property and Exceptions to Warranty of Second Party's Property, grants, sells, and conveys to First Party and First Party's heirs, successors, and assigns an easement to, over, and across Second Party's Property for the Easement Purpose and for the benefit of all or any portion of First Party's Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold the easement, rights, and appurtenances to First Party and First Party's heirs, successors, and assigns forever. Second Party binds Second Party and Second Party's heirs, successors, and assigns to warrant and forever defend the title to the easement, rights, and appurtenances in First Party and First Party's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the easement, rights, or appurtenances, or any part thereof, except as to the Reservations from Conveyance of Second Party's Property and Exceptions to Warranty of Second Party's Property to the extent that such claim arises by, through, or under Second Party but not otherwise.

The easements, rights, and appurtenances hereby granted by and between First Party and Second Party are referred to herein as the "Easements." First Party's Property and Second Party's Property are sometimes referred to herein collectively as the "Properties." First Party and Second Party are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

Terms and Conditions: The following terms and conditions apply to the Easements and Restrictive Covenants created by this agreement:

1. *Character of Easements and Restrictive Covenants.* The Easements and Restrictive Covenants are appurtenant to and run with the Properties, and portions thereof, whether or not the Easements and Restrictive Covenants are referenced or described in any conveyance of the Properties, or any portion thereof. The Easements and Restrictive Covenants are for the benefit of the Parties and the heirs, successors, and assigns of the Parties who at any time own the Properties or any interest therein (as applicable, the "Holders").
2. *Duration of Easements and Restrictive Covenants.* The duration of the Easements and Restrictive Covenants is perpetual.
3. *Nonexclusiveness of Easements.* The Easements are nonexclusive, and each of the Parties reserves for itself and its heirs, successors, and assigns the right to use all or part of the Easements in conjunction with any other Holder and the right to convey to others the right to use all or part of the Easements in conjunction with the Holders, as long as such further conveyance is subject to the terms of this agreement.
4. *Use and Location of Easements.* The Parties and other Holders will be entitled to exercise direct access to and between the Properties without interference except as set forth in this agreement and to use all access areas, driveways, and parking lots located on any portion of the Properties in exercising the Easements. A Holder may erect curbs or other barriers to traffic

between the Properties owned by that Holder and adjacent portions of the Properties, including but not limited to differences in grade levels, only to the extent that such curbs or other barriers will not unreasonably interfere with or restrict direct access to and between the Properties by the Holders of other portions of the Properties and their employees, customers, and other invitees. A Holder may erect buildings and other improvements on the portion of the Properties owned by that Holder only to the extent that the buildings and other improvements will not unreasonably interfere with the use of and access to the access areas, driveways, and parking lots on such portion of the Properties by the other Holders and their employees, customers, and other invitees. A Holder's employees, customers, and other invitees will not be entitled to park on the other Holder's Properties but will be permitted to walk or drive across and otherwise traverse the Properties to obtain ingress to or egress from the other Properties.

5. *Maintenance of Easement Property.* All access ways, driveways, and parking lots located on the Properties must be maintained at a level of appearance and utility consistent with the highest industry standards then prevailing for similarly used properties in the market in which the Properties are located. Each Holder will be solely responsible for the costs of maintaining the access ways, driveways, and parking lots located on that Holder's Property. If a Holder does not perform the required maintenance then any other Holder, after giving the nonperforming Holder thirty days' written notice, will have the right to perform the maintenance and receive reimbursement from the nonperforming Holder. Reimbursement will be payable on demand and include the reasonable costs of the maintenance, plus interest at the Bank of America prime rate plus two percent (P+2%).

6. *Rights Reserved.* Each Party reserves for that Party and that Party's heirs, successors, and assigns the right to continue to use and enjoy the surface of the Properties for all purposes that do not unreasonably interfere with or interrupt the use or enjoyment of the Easements.

7. *Restrictive Covenants.* Each party agrees that it shall not construct any building or any portion of a building within the eastern 240 feet of its property and that no building shall have a metal front. Second Party agrees that, so long as First Party's Property is used as a supermarket or grocery store, the Second Party's Property shall not be used in whole or in part for the operation of a supermarket or grocery store, but Second Party and any lessee of Second Party may sell food products as an incidental part of its business. This restriction shall cease if, at any time, the First Party's Property ceases to be used as supermarket or grocery store for a period of more than one (1) year. First Party agrees that, so long as Second Party's Property is used as a variety discount store, First Party's Property shall not be used in whole or in part for the operation of a variety discount store or dollar store (such as, for example, Family Dollar, Dollar General or Dollar Tree), or the like; provided that Second Party agrees that this restriction shall not prohibit First Party's Property from being used as a drug store or a discount department store such as, for example, Target, K-Mart, or Wal-Mart, or the like, or other business whose merchandise may include items which are offered for sale on Second Party's Property provided that such merchandise is sold as an incidental part of such other business' activities. This restriction on the First Party's Property shall cease if, at any time, the Second Party's Property ceases to be used as a variety discount store or dollar store for a period of more than one (1) year.

8. *Equitable Rights of Enforcement.* These Easements and Restrictive Covenants may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the Parties to or those benefitted by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

9. *Attorney's Fees.* If either Party retains an attorney to enforce this agreement, the Party prevailing in litigation is entitled to recover reasonable attorney's fees and court costs and other costs as awarded by the court.

10. *Binding Effect.* This agreement binds and inures to the benefit of the Parties and their respective heirs, successors, and permitted assigns.

11. *Choice of Law.* This agreement will be construed under the laws of the state of New Mexico, without regard to choice-of-law rules of any other jurisdiction. Venue is in the county or counties in which the Properties are located.

12. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory Parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

13. *Waiver of Default.* It is not a waiver of or consent to default if the nondefaulting Party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

14. *Further Assurances.* Each signatory Party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

15. *Insurance and Indemnity.* Each Party agrees to indemnify, defend, and hold harmless the other Party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this agreement by the indemnifying Party unless such breach or default arises from the acts or omissions of the other Party.

First Party shall indemnify and hold harmless Second Party, and all lessees, employees, servants and agents of Second Party from all suits, actions, losses, damages, claims, or liability of any character, type, or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorney's fees for injury or death to any person,

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including invitees, licensees, and trespassers, or injury to any property, received or sustained by any person or persons, or property arising out of, or occasioned by, any condition, occurrence or event that now exists or that may arise on the First Party's Property or that may arise out of, or be occasioned by, the acts of the First Party or its agents or employees.

Second Party shall indemnify and hold harmless First Party, and all lessees, employees, servants and agents of First Party from all suits, actions, losses, damages, claims, or liability of any character, type, or description, including without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorney's fees for injury or death to any person, including invitees, licensees, and trespassers, or injury to any property, received or sustained by any person or persons, or property arising out of, or occasioned by, any condition, occurrence or event that now exists or that may arise on the Second Party's Property or that may arise out of, or be occasioned by, the acts of the Second Party or its agents or employees.

If any improvements on either Party's property are destroyed or damaged by fire or other casualty, the owner of that Parcel shall elect to rebuild or not to rebuild the damaged improvements. If the owner elects not to rebuild, it shall promptly demolish the damaged improvements, remove or clean up all rubbish and debris, grade and landscape or pave the area or otherwise stabilize the soil, and thereafter maintain its property in accordance with applicable City Ordinance.

Each Party at all times shall maintain comprehensive public liability insurance with a combined single limit of at least \$2,000,000.00 with respect to bodily injury, death or property damage arising out of one occurrence, on its property.

Any policy of insurance required to be carried by the parties hereto shall be carried with a reputable insurance company licensed to do business in the State of New Mexico on an admitted basis, and may be provided as part of a so-called blanket policy of insurance covering other locations, as long as the coverage limits set forth in this Section are satisfied as to its Property. Each party hereto shall deliver to each other, within thirty (30) days after written request therefor, a certificate of insurance evidencing that the policies of insurance required to be maintained by it hereunder are in full force and effect.

Any Party may elect to self-insure all or any portion of the risks required to be insured hereunder so long as: (a) such party has a tangible net worth, determined in accordance with generally accepted accounting principles, consistently applied, in excess of Fifty Million and No/100 Dollars (\$50,000,000.00); and (b) such party delivers to each other party, within thirty (30) days after written request therefor, a written notice of self-insurance, specifying the risks it has elected to self-insure, accompanied by a current audited financial statement evidencing its compliance with the net worth requirement set forth above.

16. *Integration.* This agreement contains the complete agreement of the Parties and cannot be varied except by written agreement of the Parties. The Parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this agreement.

17. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the Parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the Parties by reason of authorship or origin of language.

18. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement, and either received or refused. Notice may also be given by personal delivery or courier delivery capable of providing written proof of delivery and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

19. *Recitals.* Any recitals in this agreement are represented by the Parties to be accurate, and constitute a part of the substantive agreement.

20. *Time.* Unless otherwise specified, all references to "days" mean calendar days. Business days exclude Saturdays, Sundays, and legal public holidays. If the date for performance of any obligation falls on a Saturday, Sunday, or legal public holiday, the date for performance will be the next following regular business day.

FIRST PARTY:  
Edd Powell of New Mexico, Inc.

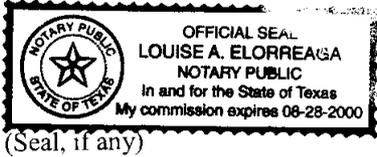
By: Ronald S. Powell  
Printed Name: Ronald S. Powell  
Title: Vice President

SECOND PARTY:  
Family Dollar Stores of New Mexico, Inc.

By: Gilbert A. LaFare  
Printed Name: Gilbert A. LaFare  
Title: Vice President

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

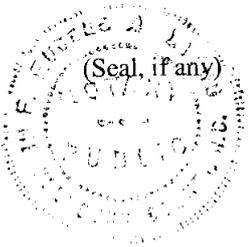
This instrument was acknowledged before me on August 15, 2000, by Ronald S. Powell, Vice President of Edd Powell of New Mexico, Inc., a New Mexico corporation, on behalf of said corporation.



Louise A. Elorrea  
(NOTARY PUBLIC SIGNATURE)  
Notary Public In and for the State of Texas  
My commission expires: August 28, 2000

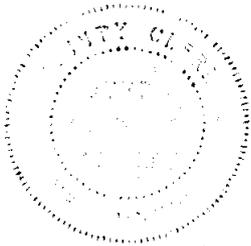
STATE OF NORTH CAROLINA )  
 )  
COUNTY OF MECKLENBURG )

This instrument was acknowledged before me on August 11, 2000, by Gilbert A. LaFare, Vice President of Family Dollar Stores of New Mexico, Inc.



J. Eugene Allister  
(NOTARY PUBLIC SIGNATURE)  
Notary Public for Mecklenburg County, NC  
My commission expires: 02-03-02

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STATE OF NEW MEXICO } s.s.  
OTERO COUNTY

FILED FOR RECORD IN MY OFFICE  
This 16th day of August 20 00  
At 3:20 o'clock P M and duly recorded  
in Book No. 959 Page 305-311

The records of Otero County, New Mexico  
Mary D. Amstutz  
County Clerk, Otero County, New Mexico  
By John Silva Deputy

# 7446