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Received - RICHARD TAKECHI  
 Register of Deeds, Douglas County, NE  
 5/27/2004 09:13:41.57



2004068728

**SUBSIDIARY DECLARATION**

THIS SUBSIDIARY DECLARATION (the "Subsidiary Declaration") is made this 20<sup>th</sup> day of May, 2004, by KVI PROPERTIES, INC., a Nebraska corporation f/k/a KVI Associates, Inc. (referred to hereinafter as the "Declarant").

**RECITALS**

WHEREAS, the Declarant is the owner of the real property generally located at the southwest corner of 180<sup>th</sup> and "Q" Streets in Omaha, Douglas County, Nebraska, as reflected on the site plan attached hereto as Exhibit "A" and incorporated herein by this reference and legally described as follows:

Lots 6 through 8, 180<sup>th</sup> Plaza, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska OC - 28741

Lots 2 and 3, and Outlot "A", 180<sup>th</sup> Plaza Replat One, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska; and OC - 28742

Lots 1 and 2, 180<sup>th</sup> Plaza Replat Two, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska (hereinafter referred to as the "Property"); OC - 28747

WHEREAS, the Declarant and Village Development- 180<sup>th</sup> Street, L.L.C., a Nebraska limited liability company (hereinafter referred to as "Village Development") have entered into a Real Estate Purchase Agreement dated February 24, 2004 (the "Purchase Agreement"), whereunder the Declarant agreed to sell and Village Development agreed to purchase the following legally described real estate, to-wit:

Lot 1, 180<sup>th</sup> Plaza Replat Two, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (the "Benefited Property");

WHEREAS, the Declarant recorded an instrument entitled Declaration of Covenants, Conditions, Restrictions and Easements for 180<sup>th</sup> Plaza with respect to the Property and recorded in the Office of the Register of Deeds of Douglas County, Nebraska on MAY 27, 2004, at Miscellaneous Book \_\_\_\_\_, Page \_\_\_\_\_ (the "Declaration");

INTS # 2004-068727

*return to*  
**Union Title Company**  
**3800 Normal Blvd.**  
**Lincoln NE 68502**  
 10284  
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WHEREAS, Walgreens Co., an Illinois corporation ("Walgreens") has entered into a Purchase Agreement with Village Development, whereunder Walgreens has agreed to purchase the Benefited Property from Village Development upon completion of the construction of the improvements thereon by Village Development; and

WHEREAS, as an accommodation to Walgreens, Village Development has requested that Declarant modify the Declaration, and Declarant hereby agrees to make certain modifications to the Declaration, and Declarant is, pursuant to Section 13.2 of the Declaration, willing to modify the Declaration as set forth herein.

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual promises and covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, Declarant does hereby covenant and agree to modify the Declaration as follows, pursuant to Section 13.2 of the Declaration, and does hereby declare that the Property and all present and future owners and occupants of the Lots therein shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions set forth in the Declaration, as modified by this Subsidiary Declaration, which shall run with the equitable and legal title of such land and shall be for the benefit or burden, as the case may be, of the Owners or Permittees of the Property or any portion thereof, their respective heirs, legal representatives, successors and assigns, and any mortgagees, and that said Lots shall be maintained, kept, sold and used in full compliance with and subject to the Declaration, as modified by this Subsidiary Declaration:

1. Definitions. Unless otherwise defined in this Subsidiary Declaration, all capitalized terms used in this Subsidiary Declaration will have the same meaning set forth for such terms in the Declaration.

2. Development Guidelines and Architectural Control. With respect to the Benefited Property, the Declaration is hereby modified to provide that, except for (i) the initial construction of the Improvements, (ii) any alterations or other work that increases the size of any building such that the total square footage is more than seventeen thousand (17,000) square feet, (iii) general location of any building, (iv) alterations of the size and height of any freestanding sign, (v) alterations to the design of any special community value features set forth in the Mixed Use Development Agreement approved by the City of Omaha, Nebraska, on February 13, 2003, by Ordinance No. 36169, which may be amended from time to time, or (vi) alterations of any driveway accesses to the Common Area road ("R" Plaza and 181<sup>st</sup> Plaza), all of which shall continue to be subject to the Development Guidelines and architectural control of the Committee, the Owner of the Benefited Property may alter any other Improvements without the approval of the Declarant or the Committee, so long as such alterations are made using materials of quality similar to those used in the original construction of the Improvements in full compliance with all laws, rules, orders, ordinances, regulations and requirements of law.

With respect to Subsection 2(i) above, Declarant hereby indicates its approval of the plans for the Improvements to be constructed on the Benefited Property prepared by Davis Design and Olsson Associates, dated April, 2004 and last revised May, 2004 (including the site plan, landscaping plan, exterior elevations, signage, engineering and other plans a part thereof).

3. Notices. Any notice provided to the Owner of Benefited Property under the Declaration (as modified hereunder), shall be provided to Walgreens in writing at the following address or to such other address as Walgreens may specify from time to time in writing (to the Declarant, during the Period of Declarant Control, and the Board thereafter), and no notice or the subject or finding thereof or therein shall be effective as to the Benefited Property absent such notice to Walgreens:

Walgreen Co.  
Attention: Law Department  
Mail Stop No. 2252  
200 Wilmot Road  
Deerfield, Illinois 60015

4. Benefited Property; Common Area Maintenance; Signage.

(a) Notwithstanding anything contained in the Declaration to the contrary (including, but not limited to, the provisions of Articles 3.3.8, 7.3, 7.4, 10 and 14.1.4), the Owner of the Benefited Property shall be solely responsible for causing the Benefited Property to be maintained, repaired, restored and landscaped (including those paved/parking portions of the Improvements on such Lot), at its sole expense; provided, however, that any portions of the Common Area, including any Improvements located therein, shall be maintained by Declarant, during the Period of Declarant Control, the Association and/or the Board thereafter or any other Person or entity as set forth in the Declaration except as provided in this Article 4 below. The Owner of the Benefited Property's pro rata share of the maintenance of the Common Area shall be apportioned in accordance with Article 10 of the Declaration. The Owner of the Benefited Property's pro rata share of such expenses shall be paid when billed by Declarant, during the Period of Declarant Control, the Board thereafter and/or the Association, as applicable, from time to time, but not more often than once each calendar quarter. All such bills shall contain a detailed itemized description of the services performed for which reimbursement is sought. As a prerequisite to the Owner of the Benefited Property's payment obligations for maintenance of the Common Area as provided in Article 7.5 of the Declaration, bills shall be submitted for payment in accordance with the requirements of Article 17.7.1 and 17.7.2 of the Declaration (as modified by Article 3 hereof) or as otherwise directed by the Owner of the Benefited Property. No entry upon the Benefited Property for such purposes or any other purpose (other than as otherwise expressly provided in this Subsidiary Declaration) shall be made without the requisite consent of the Owner of the Benefited Property. Also notwithstanding anything contained in the Declaration to the contrary (including, but not limited to, the provisions of Articles 3.3.8, 7.3, 7.4, 10 and 14.1.4), the Owner of the Benefited Property shall not be responsible for any portion of any other costs incurred by Declarant, during the Period of Declarant Control, the Association and/or the Board thereafter or any other Person or entity under the Declaration except as provided in Article 7.5 and Article 12.2 of the Declaration and any administrative or management fees not to exceed ten (10%) percent of the annual Common Area maintenance costs, excluding taxes and insurance.

(b) Notwithstanding anything to the contrary set forth herein or in the Declaration, the Owner of the Benefited Property shall not be responsible for (by way of illustration and not by way of limitation) any costs incurred in connection or related to (i) the original construction of "R" Plaza, 181<sup>st</sup> Plaza or any other Improvement to the Common Area (except for any landscaping located on the Benefited Property that may be within the Common Area), or any expansion thereof, (ii) interest on payments related to any financing for any part of "R" Plaza, 181<sup>st</sup> Plaza or any other improvement to the Common Area, or any expansion thereof, (iii) the cost of correcting defects in or an inadequacy of the initial design or construction of "R" Plaza, 181<sup>st</sup> Plaza or any other improvement to the Common Area, or any expansion thereof, or the repair or replacement of any of the original materials or equipment required as a result of such defect or inadequacy, (iv) reserves for anticipated future expenses, (v) the replacement of any parking areas (other than any parking stalls located within the Benefited Property), (vi) the repair and/or replacement of any roof of any building within the Property (other than the Benefited Property), (vii) repairs and/or replacements to the exterior and structural portions of any buildings (including attached canopies) within the Property (other than the Benefited Property), (viii) legal and other fees, leasing commissions, advertising expenses and other costs incurred in connection with the development, leasing and re-leasing of any portion of any Lot (other than the Benefited Property), (ix) any item for which Declarant, during the Period of Declarant Control, the Board thereafter and/or the Association, as applicable, is reimbursed by insurance or otherwise compensated, (x) any bad debt loss, rent loss or reserves for bad debt or rent loss for any Property (other than the Benefited Property), (xi) any interest or penalties incurred as a result of Declarant's (during the Period of Declarant Control), the Board's thereafter and/or the Association's (as applicable) failure to pay a bill as the same shall become due, (xii) the cost of renting or leasing any item if the purchase price would not properly be included as a reimbursable expense hereunder, (xiii) the cost of removing or remediating any hazardous substance unless such removal or remediation is caused by the Owner of the Benefited Property or its Permittees, (xiv) any and all costs associated with the operation of Declarant's (during the Period of Declarant Control), the Board's thereafter and/or the Association's (as applicable) entity as opposed to the cost of maintaining the Common Area or any other improvements to the Property (other than the Benefited Property), or any expansion thereof, including, but not limited to, management and/or administrative fees in excess of ten (10%) percent of the maintenance costs of the Common Area (excluding taxes and insurance), (xv) any expenses due to the fault or negligence of Declarant, during the Period of Declarant Control, the Board thereafter and/or the Association, as applicable, and/or any other occupant of the Property unless caused by the negligence or willful misconduct of the Owner of the Benefited Property or its Permittees; and (xvi) any items which are solely the obligation of Declarant, during the Period of Declarant Control, the Board thereafter and/or the Association, as applicable, under the Declaration (as modified hereunder).

(c) If Declarant erects or allows to be erected any freestanding signs within the Common Area identifying any other occupants of 180<sup>th</sup> Plaza other than Walgreens, Walgreens shall have the right to mount a sign panel thereon of the same size as the largest sign panel permitted by any other occupant. In such event, Walgreens shall be responsible for the fabrication, installation and maintenance of said sign panel faces.

(d) For the purposes of lighting the Shopping Center pursuant to Article 8.12 of the Declaration, the normal business hours of 180<sup>th</sup> Plaza shall remain 7 o'clock a.m. through 10 o'clock p.m., and for one (1) hour thereafter, unless otherwise agreed to by Walgreens. In addition thereto, the Association shall be responsible for adequately lighting "R" Plaza and 181<sup>st</sup> Plaza at all hours of darkness as reasonably determined by the Association.

5. Common Area Alterations. Article 15.10 is hereby amended to provide that Declarant, during the Period of Declarant Control, the Board thereafter and/or the Association, as applicable, may alter, modify, reconfigure and/or relocate the Common Area, subject to the following additional conditions: (i) as to the Benefited Property, the express written consent of the Owner of the Benefited Property shall be required; and (ii) "R" Plaza and 181<sup>st</sup> Plaza and ingress and egress thereto, and to and from the Benefited Property and adjacent streets and roads, shall not be so altered, modified, relocated, blocked and/or removed without the express written consent of the Owner of the Benefited Property.

6. Duration of Subsidiary Declaration and Conflict. This Subsidiary Declaration is for the sole benefit of Walgreens and its subsidiaries, affiliates and Permittees. The easements, covenants, conditions and restrictions contained in this Subsidiary Declaration shall be effective commencing on the date of recordation hereof in the office of the Douglas County Recorder and shall remain in full force and effect thereafter so long as Walgreens or its subsidiary, affiliate or Permittee owns any portion of the Benefited Property, unless this Subsidiary Declaration is modified, amended, canceled or terminated in accordance with the Declaration, as amended hereby.

During the term of this Subsidiary Declaration, in the event of a conflict between any provision(s) of this Subsidiary Declaration and any provision(s) of the Declaration, the provisions of this Subsidiary Declaration shall control.

7. Governing Law. This Subsidiary Declaration is declared to have been made under the laws of the State of Nebraska.

8. Amendment; Voting Consent. The provisions of the Declaration and this Subsidiary Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of the Declarant, during the Period of Declarant Control and the Association through its Board of Directors thereafter, and the Owner of Benefited Property, as evidenced by a document that has been fully executed and acknowledged by such parties and recorded in the office of the Register of Deeds of Douglas County, Nebraska. In furtherance thereof, no adoption, repealing or amendment of any rules and regulations or of any of the Development Guidelines and/or the provisions of the Declaration in Article 7 thereof setting forth the basis and procedure for such approval, shall be effective as to the Benefited Property absent such consent of the Owner of Benefited Property.

9. Use of the Benefited Property. Subject to the use restrictions set forth in Articles 9.2 and 9.3 of the Declaration, the Benefited Property may be used for any lawful purpose, but in conformance with applicable law.

10. Term of the Declaration. As Article 13.1 of the Declaration provides that after a firm term of thirty (30) years, the term of the Declaration is to be automatically extended for a period of ten (10) years at a time, subject to early termination under Article 13.2, it is hereby acknowledged that such early termination rights are subject to and modified by the provision of Article 8 hereinabove, and such case, Walgreen can deny its consent therefore in its sole discretion. Any termination of the Declaration or this Subsidiary Declaration absent such consent of Walgreens in accordance with said Article 8 hereof shall be null and void and of no force and effect.

11. Condemnation. Notwithstanding the provision of Article 12.3 of the Declaration, in the event of any eminent domain or condemnation resulting in (1) the taking of any portion of the Benefited Property or the Common Area, (2) the ability to operate the business then being operated on the Benefited Property and/or the visibility of any buildings thereon from the roadways adjacent to said parcel being impaired, (3) the Benefited Property or any business then operating thereon being otherwise damaged/impaired, and/or (4) the value of the Benefited Property and/or any improvements thereto being diminished, then the handling of such condemnation proceedings shall be handled in accordance with applicable Nebraska Law and the awards for such condemnation shall be made to extent that under such law an Owner, Walgreens or any occupant of the Benefited Property may be entitled to certain damages (i.e. the award in connection with any condemnation insofar as the same represents compensation for or damage to fixtures, equipment, leasehold improvements or other property, moving expenses as well as the loss of leasehold estate (i.e. the unexpired balance of the lease term as of the date of such taking). For the purposes of this Article, the term "condemnation or under eminent domain proceedings" shall include conveyances and grants made in anticipation of or in lieu of such proceedings.

12. No Further Modifications. Except for such modifications to the Declaration set forth in this Subsidiary Declaration, there shall be no further modifications to the Declaration or to this Subsidiary Declaration (and no adoption, repealing or amendment of any rules and regulations) except in accordance with the procedures provided therefore in Section 7 hereinabove.

13. Miscellaneous. The paragraph headings or captions appearing in this Subsidiary Declaration are for convenience only, are not a part of this Subsidiary Declaration, and are not to be considered in interpreting this Subsidiary Declaration. This written Subsidiary Declaration constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Benefited Property, except the remaining and existing provisions of the Declaration of Covenants, Conditions, Restrictions and Easements for 180<sup>th</sup> Plaza and the Declaration of Restriction recorded or to be recorded in the office of the Douglas County Register of Deeds, which shall remain in full force and effect in accordance with their terms. There are no oral agreements that change this Subsidiary Declaration, and no waiver or amendment of any of its terms will be effective unless such waiver of amendment is in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the undersigned have executed this Subsidiary Declaration on the day and year first above written.

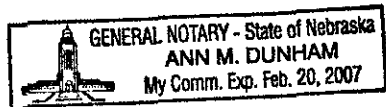
DECLARANT:

KVI PROPERTIES, INC.,  
a Nebraska corporation

By: *George W. Venteicher*  
George W. Venteicher, President

STATE OF NEBRASKA    )  
                                  )ss.  
COUNTY OF DOUGLAS    )

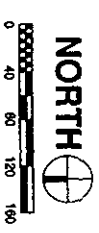
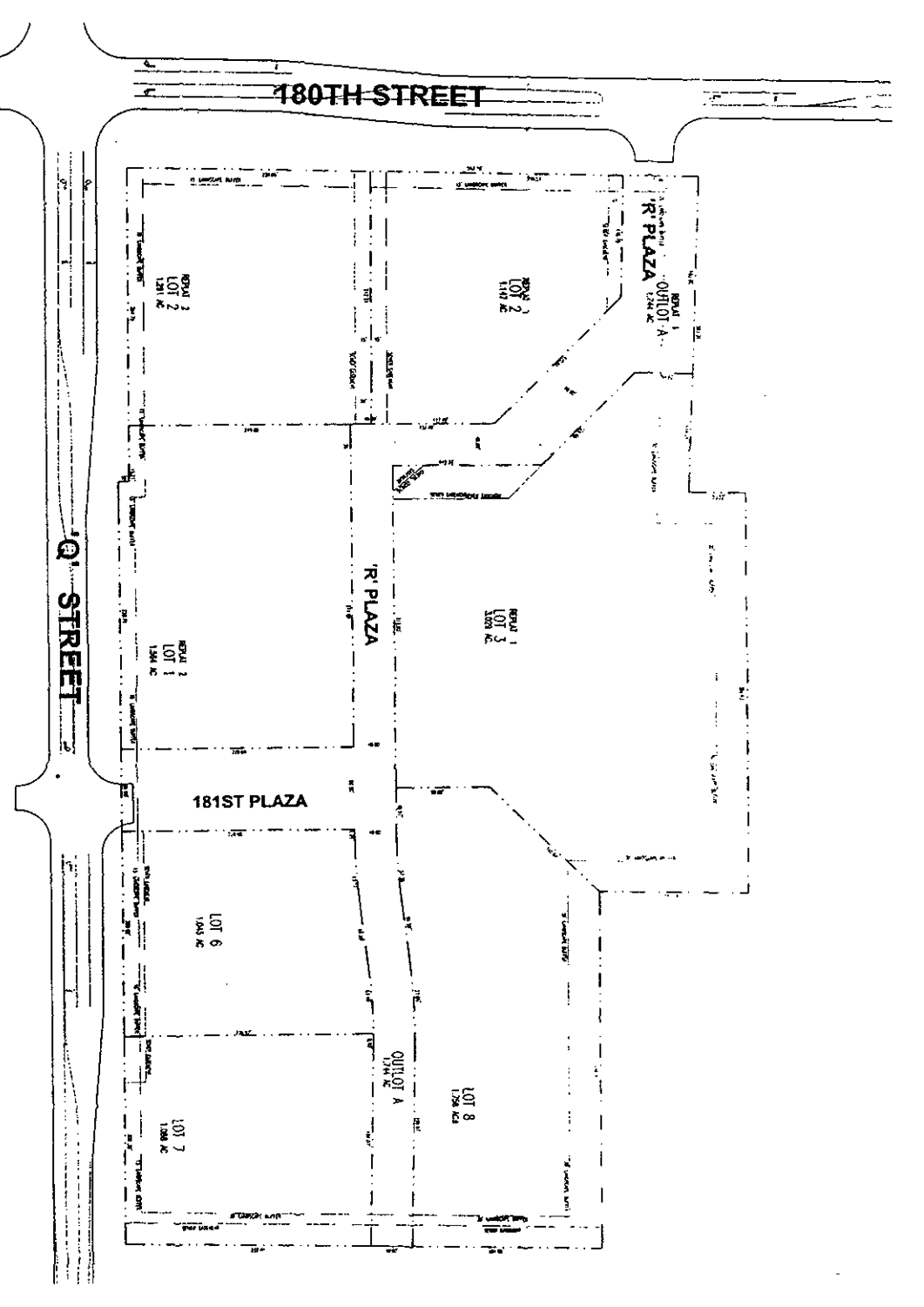
The foregoing instrument was acknowledged before me on this 20<sup>th</sup> day of May, 2004, by George W. Venteicher, President of KVI Properties, Inc., a Nebraska corporation, on behalf of said corporation.




*Ann M. Dunham*  
Notary Public

# 180TH PLAZA REPLAT TWO

LOT 1 TRACT 2 REQUIRES LOT 11  
 REQUIRING A REPLAT OF LOTS 11 AND 12 OF TRACT 2  
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PLAN FILE PREPARED BY  
  
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