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Glenn J. Hawley
REGISTER OF DEEDS

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RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

The Katz Law Firm
Attn: Mark J. Musson
435 Nichols Road, Second Floor
Kansas City, MO 64112

DECLARATION OF RESTRICTIVE COVENANT(S)

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration"), made and entered into this 26th day of August, 2008, which shall be the last date of execution of this Declaration (as set forth on the signature page), by and between Village Development – 72nd & Cornhusker, L.L.C., a Nebraska limited liability company, having a mailing address of 1045 Lincoln Mall, Suite 300, Lincoln, NE 68508 ("**Owner**"), and Papillion Development Settler's Creek, LLC, a Nebraska limited liability company, having a mailing address c/o RED Development, Attn: Director of Legal/Leasing, 6263 N. Scottsdale Road, Suite 330, Scottsdale, AZ 85250 ("**Developer**").

WITNESSETH:

WHEREAS, under the Real Estate Purchase Agreement dated October 10, 2007, as amended by that First Amendment to Real Estate Purchase Agreement dated March 6, 2008, as further amended by that Second Amendment to Real Estate Purchase Agreement dated April 29, 2008, as further amended by that Third Amendment to Real Estate Purchase Agreement dated May 29, 2008, and as further amended by that Fourth Amendment to Real Estate Purchase Agreement dated July 8, 2008 (collectively referred to as the "**Agreement**"), Developer has agreed to sell to Owner the premises (hereafter, the "**Premises**") described in the Agreement, which Premises are legally described on **Exhibit A** attached hereto (Legal Description of Premises) and located at Settler's Creek Shopping Center in Papillion, Sarpy County, Nebraska ("**Shopping Center**"), as depicted on the site plan of the Settler's Creek Shopping Center attached hereto as **Exhibit B ("Site Plan")**;

WHEREAS, Owner has entered into a Lease with Walgreen Co., an Illinois corporation ("**Walgreens**"), with respect to the Premises, and intends to develop the Premises for use by Walgreens; and

WHEREAS, the Agreement provides that Developer shall restrict the permitted uses of certain real property, which is legally described on **Exhibit C** hereof ("**Restricted**

Return to
PROFESSIONAL TITLE AND ESCROW CO.
8535 EXECUTIVE WOODS DRIVE, # 300
LINCOLN, NE 68512

K:\RED Settler's Creek Papillion 72nd & Cornhusker\0-Outlot Sales\0-Walgreens\Declaration of Restrictive

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Property") which Restricted Property is owned by Developer.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Owner covenant and agree as follows:

1. **Owner's Exclusive Use.** Developer will not lease, sublease or otherwise operate or contract, by conveyance or otherwise, on the Restricted Property, as and for the operation of a drug store or a so-called prescription pharmacy of prescription ordering, processing or delivery facility whether or not a pharmacist is present at such facility, or for any other purpose requiring the presence of a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind, except as may be incidentally sold or dispensed within the Restricted Property in conjunction with medical, dental, veterinarian or other services (hereinafter "**Owner's Exclusive Use**"). Notwithstanding the foregoing, the Owner's Exclusive Use shall terminate two (2) years following the date the building constructed on the Premises is no longer utilized as a pharmacy, at which time such restriction shall be of no force and affect or binding upon the Owner of the Restricted Property. In the event of a "Willful Violator" (as defined in this Section), Owner shall not have any remedy against Developer for the actions of such Willful Violator. For purposes of this Section, a "**Willful Violator**" shall mean and refer to any tenant or owner of property within the Shopping Center not otherwise excluded from the provisions of this Section that operates its premises in violation of an express prohibition in its lease or an express prohibition in a deed restriction or Restrictive Covenant, against operating for Owner's Exclusive Use hereunder. Furthermore, in the event a Willful Violator is violating Owner's Exclusive Use, Developer agrees that Owner shall have the right to seek "Judicial Relief" (as defined in this Section) for the actions of the Willful Violator, in which event, Developer agrees to execute any and all documents reasonably necessary for Owner to seek Judicial Relief against the Willful Violator and Owner agrees to indemnify and hold Developer harmless from and against any all costs and expenses of any kind incurred by Developer in reviewing and executing documents reasonably necessary for Owner to seek Judicial Relief. The term "**Judicial Relief**" shall mean a temporary restraining order, preliminary injunction, order of eviction, or other court order enjoining the Willful Violator from violating Owner's Exclusive Use. In the event a court of competent jurisdiction determines that the Owner does not have standing to seek Judicial Relief against the Willful Violator for violations of Owner's Exclusive Use, Developer agrees to promptly seek Judicial Relief against the Willful Violator and Owner hereby agrees to indemnify and hold Developer harmless from and against any and all costs and expenses of any kind incurred by Developer in seeking Judicial Relief. Walgreens shall have the right, but not the obligation, to enforce this Declaration on behalf of the Owner of the Premises.

Notwithstanding the forgoing, the Owner's Exclusive Use shall not apply to one (1) additional tenant or owner occupying at least twenty-five thousand (25,000) square feet of building improvements on the Developer's Restricted Property, provided that the primary purpose of such tenant or owner is not a drug store or prescription pharmacy such as CVS, Osco or Rite-Aid.

2. Trade Name. Owner agrees that the Premises shall initially be constructed and operated under the trade name "Walgreens" ("**Trade Name**"). Nothing contained herein, either expressly or by implication, shall be construed to obligate Owner

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or any tenant of the Premises to open for business (other than for one (1) day as a fully staffed, fixturized and merchandised Walgreens drug store, nor to obligate any tenant (or its successors or assigns) to occupy, operate or to continue to operate any business on the Premises. The parties acknowledge that the Premises is subject to a Developer Repurchase Agreement, by and between Developer and Owner, pursuant to which Developer shall have the option to repurchase the Premises in the event that Owner does not cause the substantial completion of a Walgreens Drug Store and open for business within twenty-four (24) months from the Effective Date of the Developer Repurchase Agreement.

3. Continued Use and Indemnification. Owner expressly covenants and agrees that it shall not operate or permit any operation in the Premises so as to violate or permit the violation of any of the prohibited uses set forth in **Exhibit D** attached hereto and incorporated herein by this reference (collectively, the "**Prohibited Uses for the Premises**"). In the event that Owner's use conflicts with any use prohibited by the Prohibited Uses for the Premises, or Owner fails to initially operate under the aforementioned Trade Name, Developer shall give Owner written notice of same and Owner shall immediately cease the use of the Premises for such prohibited use within five (5) days thereafter. In the event Owner fails to cease such prohibited use, or fails to commence operating under the aforesated Trade Name, then Owner agrees to indemnify, defend, and hold harmless Developer from and against any and all claims, demands, actions, causes of action, losses (including, but not limited to, loss of rents resulting from the termination by a tenant of its lease), damages, costs, and expenses, including court costs and attorneys' fees, including any cost or legal expenses of Developer in enforcing the restriction as and against Owner, and including any cost or legal expenses of Developer arising from or related to wholly or in part, the use of the Premises for any purpose prohibited in **Exhibit D**. In the event Owner violates any of the provisions of this Section, Developer shall have all rights and remedies provided herein and in the Agreement, in addition to all rights and remedies available to Developer at law or in equity, including, but not limited to, injunctive relief.

4. This Declaration and the restrictions contained herein constitute covenants running with the land which shall bind subsequent owners, users and assigns of the Premises.

EXHIBIT LISTS:

- Exhibit A Legal Description of Premises**
- Exhibit B Site Plan**
- Exhibit C Legal Description of Restricted Property**
- Exhibit D Prohibited Uses for the Premises**

[Signature Page to Follow]

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IN WITNESS WHEREOF, Owner and Developer have caused this Declaration to be executed effective as of the latest date executed, as shown below.

OWNER:

VILLAGE DEVELOPMENT - 72nd & CORNHUSKER, L.L.C., a Nebraska limited liability company

By: Tamas R. Allan
Tamas R. Allan, Manager

Date: August 15, 2008

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

Now on this 15th day of August, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Tamas R. Allan, Manager of Village Development - 72nd & Cornhusker, L.L.C., a Nebraska limited liability company, personally known to me to be the same person who executed the within instrument on behalf of said company and who duly acknowledged the execution of the same to be his free act and deed of said company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.



Jill D. Fiddler
Notary Public

My Commission Expires: _____

D

DEVELOPER:

PAPILLION DEVELOPMENT SETTLER'S CREEK, LLC, a Nebraska limited liability company

By: RED Papillion Settler's Creek, LLC, a Missouri limited liability company, Manager

By: E&R HOLDINGS, LLC, an Arizona limited liability company, Manager

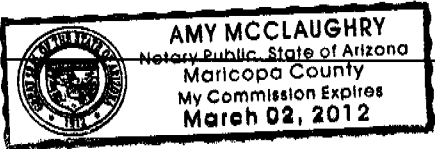
By: Michael L. Ebert
Michael L. Ebert, Manager

STATE OF ARIZONA)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me, a Notary Public duly commissioned and qualified in and for said county and state, on this 14 day of August, 2008, by Michael L. Ebert, who is the Manager of E&R Holding, LLC, which entity is the Manager of RED Papillion Settler's Creek, LLC, which entity is the Manager of Papillion Development Settler's Creek, LLC, a Nebraska limited liability company, and acknowledges that this is his voluntary act and deed and the voluntary act and deed of Papillion Development, LLC.

[Signature]
Notary Public

Commission Expires:



E

**EXHIBIT A
to Declaration of Restrictive Covenants**

THE PREMISES

LOT 2, SETTLERS CREEK REPLAT 2, A SUBDIVISION IN SARPY COUNTY,
NEBRASKA.

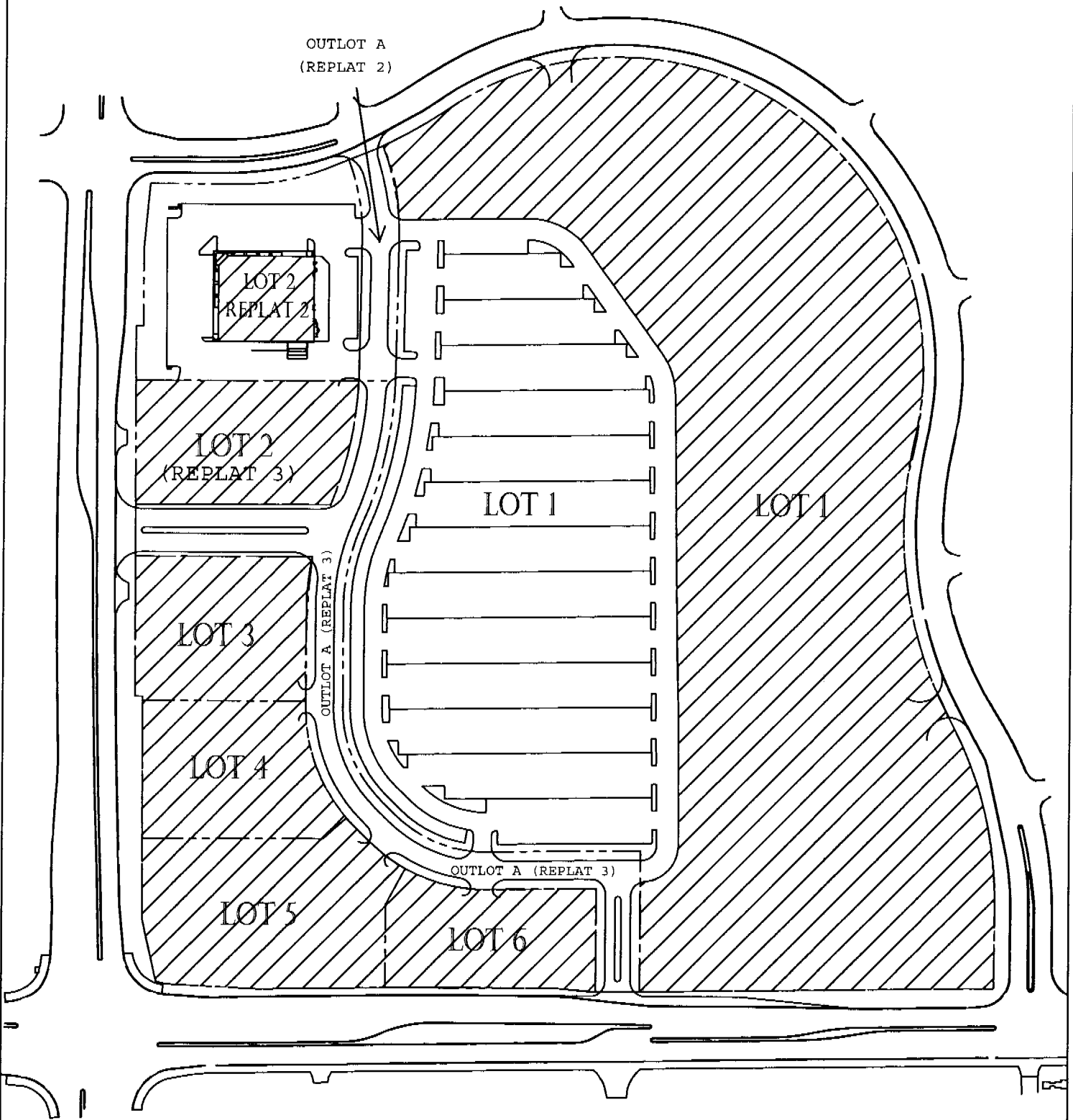
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EXHIBIT B
to Declaration of Restrictive Covenants

SITE PLAN

EXHIBIT B
SITE PLAN

G



RED Development
4717 Central
Avenue, Omaha, NE 68131
(402) 733-2000 Fax

Project Designer:



LEGEND



BUILDING AREAS

SETTLER'S CREEK

PAPILLION, NE

JUNE 17, 2008

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EXHIBIT C
to Declaration of Restrictive Covenants

LEGAL DESCRIPTION OF THE RESTRICTED PROPERTY

OUTLOT A, SETTLERS CREEK REPLAT 2, A SUBDIVISION IN SARPY COUNTY, NEBRASKA.

LOTS 1, 2, 3, 4, 5, 6 AND OUTLOT A, SETTLERS CREEK REPLAT 3, A SUBDIVISION IN SARPY COUNTY, NEBRASKA.

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EXHIBIT D
to Declaration of Restrictive Covenant(s)

PROHIBITED USES FOR THE PREMISES

1. Owner shall not conduct or permit to be conducted on or with respect to all or any part of the Premises, any of the following uses:

1.1. Any public or private nuisance.

1.2. Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness.

1.3. Any use which emits or results in strong, unusual or offensive odors (but not such odors as shall normally emit from restaurants) fumes, dust or vapors, is a public or private nuisance, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse, other than in enclosed receptacles intended for such purpose.

1.4. Any use which emits excessive quantities of dust, dirt, or fly ash; provided however, this prohibition shall not preclude the sale of soils, fertilizers, or other garden materials or building materials in containers if incident to the operation of a home improvement or other similar store.

1.5. Any use which could result in, or cause, any fire, explosion or other damaging or dangerous hazard, including without limitation the storage, display or sale of explosives or fireworks.

1.6. Any operation primarily used as a storage facility, or for assembling, manufacturing, distillating, refining, smelting, agriculture or mining operations.

1.7. Any mobile home or trailer court, auction house, labor camp, junkyard, mortuary, funeral home, stock yard, veterinary hospital or animal raising facility (except that, notwithstanding the foregoing, the provisions of this paragraph shall not prohibit the temporary use of construction trailers as approved by Developer during periods of construction, reconstruction, or maintenance). Notwithstanding the foregoing, the operation of a "PetSmart" or "Petco" (or any similar regional or national pet store) as such stores are operated from time to time (which may include, without limitation, veterinary, grooming and/or boarding services) shall be a permitted use within the Shopping Center.

1.8. Any drilling for and/or removal of subsurface substances (such as minerals, oil, etc.).

1.9. Any automobile, truck, trailer or recreational vehicle sales, rental, leasing or body and fender repair operation.

1.10. Any flea market and/or swap meet or second hand or surplus store.

1.11. Any adult book shop, movie house or other establishment selling or exhibiting pornographic materials or other pornographic use; provided, however, that such restrictions shall not preclude (i) the showing of films in any first rate motion picture theater operated in the Shopping Center, so long as such motion picture theater does not show any picture that has received an "X-rating" from the Motion Picture Association of America or any successor to the Motion Picture Association of America which rates motion pictures, or any other pictures that are considered pornographic, and (ii) the sale or rental of adult books, magazines or videos as an incidental part of the business of a general purpose bookstore or video store such as, by way of example only and not of limitation, Blockbuster, which is normally found in a first class shopping center.

1.12. Any gas or service station or automobile service facility or car-washing establishment.

1.13. Any tattoo parlor or any establishment selling drug related paraphernalia or any facility the use of which is unlawful, immoral, obscene, pornographic, or which tends to create or maintain a nuisance or do any act tending to injure the reputation of the Shopping Center.

1.14. Except as permitted by Developer (in the exercise of its sole and absolute discretion), any residential use, hotel, motel, or other forms of short-term temporary living quarters, sleeping apartments or lodging rooms.

1.15. Any bar, tavern, cocktail lounge or nightclub, unless a comedy club; provided, however, the foregoing shall not prohibit the operation of a bar, tavern, or nightclub as a part of any hotel or casino being operated in the Shopping Center or any restaurant being operated in the Shopping Center, provided that the sale of alcohol from such bar, tavern or nightclub does not exceed sixty percent (60%) of such restaurant's gross sales.

1.16. Any abortion clinic, blood bank or drug rehabilitation clinic.

1.17. Intentionally deleted.

1.18. Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pick up and delivery by the ultimate consumer as the same may be found in a first class shopping center.

1.19. Any bowling alley, pool or billiards hall, or skating rink.

1.20. Any health club/spa, gymnasium, karate center or studio.

1.21. Intentionally deleted.

1.22. Any amusement or video arcade (defined as any store containing more than five (5) electronic games) unless approved by Developer (in its sole and absolute discretion).

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1.23. Any discotheque or dance hall.

1.24. Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers.

1.25. Any check cashing company or a pawn shop.

1.26. Any carnival, circus or amusement park.

1.27. Any banquet hall; auditorium or other place of public assembly.

1.28. No auction, fire or going out of business sales shall be conducted in the Shopping Center except a going out of business sale conducted during the last thirty (30) days of an existing retail operation or as otherwise conducted pursuant to court order.

1.29. Any movie theater or cinema.

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