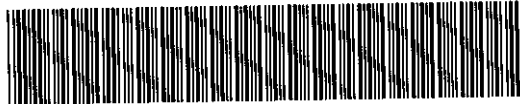




BK 1467 PG 334-339



MISC 2002 24642

RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

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**SUBSIDIARY DECLARATION**

THIS SUBSIDIARY DECLARATION (the "Subsidiary Declaration") is made this 15<sup>th</sup> day of October, 2002, by The Venteicher Limited Liability Company, a Nebraska limited liability company ("Venteicher LLC"), and KVT No. 2 Limited Partnership, a Nebraska limited partnership ("KVT No. 2"). The Venteicher Limited Liability Company and KVT No. 2 Limited Partnership are sometimes referred to hereinafter collectively as "Declarant").

**RECITALS**

WHEREAS, Venteicher LLC is the owner of the real property generally located at the northeast corner of 156th Street and West Maple Road in Omaha, Douglas County, Nebraska, and legally described as follows:

Lots 9 through 11, inclusive, West Point Replat 1, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (hereinafter referred to as "Venteicher LLC Property"); and

WHEREAS, KVT No. 2 Limited Partnership is the owner of the real property generally located at the northeast corner of 156th Street and West Maple Road in Omaha, Douglas County, Nebraska, and legally described as follows:

Lots 1 through 8, inclusive, all in West Point Replat 1, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, and Outlots "A" and "B" West Point, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (hereinafter collectively referred to as "KVT No. 2 Property"); and

WHEREAS, Venteicher LLC and Village Development- Maple Street, L.L.C., a Nebraska limited liability company (hereinafter referred to as "Village Development") have entered into a Real Estate Purchase Agreement dated April 29, 1999, as amended (the "Purchase Agreement"), whereunder Venteicher LLC agreed to sell and Village Development agreed to purchase the following legally described real estate; to-wit:

Lot 11, West Point South Replat 1, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (the "Benefited Property"); and

WHEREAS, KVT No. 2 and Venteicher LLC have entered into a Declaration of Covenants, Conditions, Restrictions and Easements for West Point (South) with respect to the Venteicher LLC Property and the KVT No. 2 Property and recorded in the Office of the Register of Deeds of Douglas County, Nebraska on October 15, 2002, at Misc. Book 1467, Page 296 (the "Declaration"); and

WHEREAS, Walgreens Co., an Illinois corporation ("Walgreens") has entered into a Lease Agreement with Village Development, whereunder Walgreens has agreed to lease the Benefited Property from Village Development (the "Walgreens Lease"); 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.

ITW  
PO Box 6234  
Lincoln, NE 68506

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 site lighting within a Common Area, or (vi) alterations of any driveway accesses to the Common Area road (including the Private Drive), all of which shall continue to be subject to the Development Guidelines and architectural control of the Committee, the Owner of the Benefited Property or Walgreens 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 8/02 and last revised 9/02 (including the site plan, landscaping plan, exterior elevations, signage, engineering and other plans a part thereof).

3. Notices. Any notice provided to Village Development or other Owner of Benefited Property under the Declaration (as modified hereunder), shall also 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 Private Drive within the Benefited Property (in addition to certain other Common Areas within the Benefited Property) 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 Private Drive and such other Common Areas 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 Private Drive and such other Common Areas as provided in Article 7.5 of the Declaration, bills shall be submitted for payment in accordance with the requirements of Articles 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 thereof), 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 Articles 7.5 and 12.2 of the Declaration and except for any administrative or management fees not to exceed ten (10%) percent of the annual Common Area maintenance costs (not to include expenses arising from the payment of real estate taxes or insurance premiums).

(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 the Private Drive or any other Improvement to the Venteicher LLC Property or any expansion thereof (including the Common Areas (except for any landscaping located on the Benefited Property that may be within the Common Area) or any expansion thereof), or to the KVT No. 2 Property or any expansion thereof, (ii) interest on payments related to any financing for any part of the Private Drive or any other Improvement to the Venteicher LLC Property or any expansion thereof (including the Common Areas or any expansion thereof), or to the KVT No. 2 Property or any expansion thereof, (iii) the cost of correcting defects in or an inadequacy of the initial design or construction of the Private Drive or any other Improvement to the Venteicher LLC Property or any expansion thereof (including the Common Areas or any expansion thereof), or to the KVT No. 2 Property 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 those within the Benefited Property, which shall be the responsibility of the Owner of the Benefited Property under the Declaration), (vi) the repair and/or replacement of any roof of any building (other than within the Benefited Property, which shall be the responsibility of the Owner of the Benefited Property under the Declaration), (vii) repairs and/or replacements to the exterior and structural portions of any buildings (including attached canopies) (other than buildings within the Benefited Property, which shall be the responsibility of the Owner of the Benefited Property under the Declaration), (viii) legal and other fees, leasing commissions, advertising expenses and other costs incurred in connection with the development, leasing and releasing of any portion of any Lot (other than as related to the Benefited Property, which shall be the responsibility of the Owner of 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 with respect to the Benefited Property, which shall be the responsibility of the Owner of 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 thereof 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 Walgreens or their respective 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 Private Drive or any other Improvement to Common Areas or any expansion thereof (such costs to include management and/or administrative fees described in Section 4(a) above), (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 Venteicher LLC Property or any expansion thereof, or to the KVT No. 2 Property or any expansion thereof unless caused by the negligence or willful misconduct of the Owner of the Benefited Property or Walgreens or their respective 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 Areas identifying any other occupants of West Point South 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, during the continuance of the Walgreen Lease the normal business hours of West Point South 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.

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, relocate and/or remove the Common Areas, subject to the following additional conditions: (i) as to the Benefited Property, during the continuance of the Walgreen Lease, the express written consent of Walgreen shall be required; and (ii) the Private Drive 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 Walgreen (during the continuance of the Walgreen Lease).

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 during the continuance of the term of the Walgreens Lease, or if applicable, 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, the owner of Benefited Property, and also Walgreens (during the continuance of the Walgreen Lease), 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, and also Walgreens (during the continuance of the Walgreen Lease). To the extent that under the Declaration (as modified hereunder), the owner of Benefited Property has the right and opportunity to cast a vote regarding any matter, no such vote cast by the owner of Benefited Property shall be effective without the consent of Walgreen. Any consent of the owner of Benefited Property under the Declaration (as modified hereunder) given absent Walgreens' express consent shall be null and void and of no force and effect.

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 Private Drive, (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. Remedies and Enforcement. Notwithstanding anything contained in the Declaration to the contrary, Walgreen shall have the right, but not the obligation, to enforce the Declaration and this Subsidiary Declaration on behalf of the Owner of the Benefited Property, and/or to cure a breach or default hereunder by the Owner of the Benefited Property, which enforcement or cure shall be accepted by the other Owner(s) as if effected by the Owner of the Benefited Property.

Walgreen shall be entitled to exercise all remedies and shall have all rights and benefits available to the Owner of the Benefited Property under the Declaration.

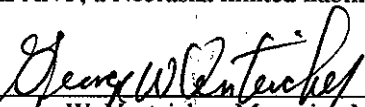
13. No Further Modifications. Except for such modifications to the Declaration set forth in this Subsidiary Declaration, there shall be no further modifications to the Declaration or to this Subsidiary Declaration (and no adoption, repealing or amendment of any rules and regulations) except in accordance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

14. 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 West Point (South), the Declaration of Restriction, and the Reciprocal Permanent Access Easement and Maintenance agreement 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 or 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:

THE VENTEICHER LIMITED LIABILITY  
COMPANY, a Nebraska limited liability company,

By:   
George W. Venteicher, Managing Member

And

KVT NO. 2 LIMITED PARTNERSHIP,  
a Nebraska limited partnership,

By: *George W. Venteicher*  
George W. Venteicher, General Partner

STATE OF NEBRASKA )  
                                  )ss.  
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 15 day of October, 2002, by George W. Venteicher, Managing Member of The Venteicher Limited Liability Company, a Nebraska limited liability company, on behalf of said limited liability company.



*Tiffany May*  
Notary Public

STATE OF NEBRASKA )  
                                  )ss.  
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on this 15 day of October, 2002, by George W. Venteicher, General Partner of KVT No. 2 Limited Partnership, a Nebraska limited partnership, on behalf of said limited partnership.



*Tiffany May*  
Notary Public