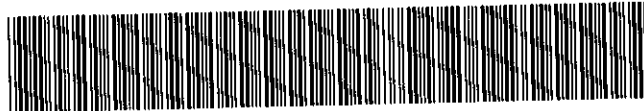


MISC 2004068729



MAY 27 2004 09:13 P 9

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FEE 4900 FB *see below*
9/8 BKP _____ C/O _____ *BW*
DEL _____ SCAN _____ FV _____

Received - RICHARD TAKECHI
Register of Deeds, Douglas County, NE
5/27/2004 09:13:51.59



2004068729

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (the "Declaration") is made this 20th 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 180th 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 (hereinafter referred to as the "Property"):

Lots 6 through 8, 180th Plaza, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska; and *OC - 28741*

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

Lots 1 and 2, 180th Plaza Replat Two, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska; *OC - 28747*

WHEREAS, the Declarant and Village Development - 180th 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, 180th Plaza Replat Two, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska (the "Benefited Property");

WHEREAS, pursuant to the terms of the Purchase Agreement, the Declarant agreed to grant certain use restrictions against the Property as covenants running with the land (the Property (other than the Benefited Property) is hereinafter referred to as the "Restricted Property");

Union Title Company
3800 Normal Blvd.
Lincoln NE 68502

Return to
10254
4900
17

WHEREAS, the term "Walgreen" or "Walgreens" shall mean Walgreen Co., an Illinois corporation (or any of its affiliates, subsidiaries, successors or assigns), who shall be deemed a third party beneficiary to this Agreement; and

WHEREAS, the Declarant has executed a Declaration of Covenants, Conditions, Restrictions and Easements for 180th Plaza with respect to the Property and recorded the same in the Office of the Register of Deeds of Douglas County, Nebraska on MAY 27, 2004, at Miscellaneous Book _____, Page _____, as amended by a Subsidiary Declaration to be recorded in the Office of the Douglas County Register of Deeds (as amended, the "Declaration").

JUST # 2004-068727

NOW THEREFORE, for and in consideration of the recitals set forth above and the mutual representations, warranties 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 agrees as follows:

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

2. Use Restrictions. No portion of the Restricted Property (which by definition specifically excludes the Benefited Property) shall be used for:

- a. the operation of a drug store or a so-called prescription pharmacy or prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, or for any other purpose requiring 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 in conjunction with medical, dental, veterinarian or other services;
- b. the operation of a medical diagnostic lab and/or the provision of treatment services (other than as part of a medical, dental, physician, surgical or chiropractic office[s], which office[s] shall not be restricted by this subsection [b]);
- c. the sale of so-called health and/or beauty aids and/or drug sundries, except to the extent that the sales area with respect to such use does not exceed one hundred (100) square feet;
- d. the operation of a business in which photo finishing services (including, without limitation, digital photographic processing or printing, or the sale of any other imaging services, processes or goods) and/or photographic film are offered for sale, except as may be incidental to any merchant whose primary business is printing, photocopying or the sale of business machines or supplies;
- e. the operation of a business in which greeting cards and/or gift wrap are offered for sale, except to the extent that the sales area with respect to such use does not exceed one hundred (100) square feet; and/or

- f. the operation of a business in which prepackaged food items for off premises consumption are offered for sale, except to the extent that the sales area with respect to such use does not exceed fifty (50) square feet; provided, however, that in no event shall such exception permit the operation of a convenience store on the Restricted Property. Notwithstanding the forgoing, the use restrictions contained in this Subparagraph (f) above shall not apply to: (i) a delicatessen or restaurant including, without limitation, a take-out or fast food restaurant; (ii) a bakery, pastry, bagel or similar shop selling bread products; (iii) a butcher or meat shop, (iv) the sale of such items from vending machines; (v) the sale of such items by a business on the Restricted Property solely to its employees.

Notwithstanding the forgoing, none of the exclusive use restrictions contained in subparagraphs (b) through (f) above shall apply to one user occupying at least forty thousand (40,000) square feet of building improvements on the Restricted Property or any portion thereof.

Notwithstanding any provision to the contrary contained herein, no gas station within the Restricted Property may sell prepackaged foods or groceries for consumption off premises; provided, however, that nothing contained herein shall prohibit a gas station from selling (A) non-food items; (B) non-alcoholic and alcoholic beverages (other than milk); (C) prepared foods such as hot dogs, hamburgers, hero, submarine or deli sandwiches and all other types of fast foods that are customarily served for consumption on or off premises, including desserts, beverages and drinks sold in connection therewith; and (D) fountain drinks, and hot pretzels, and the incidental sale of snack items such as candy, chips, snack cakes, and similar items customarily sold in connection therewith so long as such items are wrapped and offered for sale in single portions (i.e. sold in quantities or amounts for consumption by a single person at a single sitting), provided the combined sales area with respect to the sale of such fountain drinks and snack items does not exceed fifty (50) square feet.

In addition to the foregoing, it is expressly agreed that neither all nor any portion of the Restricted Property shall be used, directly or indirectly, for purposes of the operation of a disco, bowling alley, pool hall, billiard parlor, skating rink, roller rink, amusement arcade, a theater of any kind, children's play or party facility, adult book store, adult theatre, adult amusement facility, any facility selling or displaying pornographic materials or having such displays, closeout or liquidation store, auction house, flea market, gymnasium, sport or health club or spa, blood bank, massage parlor, funeral home, sleeping quarters or lodging, the outdoor housing or raising of animals, the sale, leasing or storage of automobiles, boats or other vehicles, any industrial use (including, without limitation, any manufacturing, smelting, rendering, refining, chemical manufacturing or processing, or other manufacturing uses), any mining or mineral exploration or development except by non-surface means, a carnival, amusement park or circus, an assembly hall, banquet hall, auditorium or other place of public assembly, off track betting establishment, bingo hall, a church, temple, synagogue, mosque, or the like, any facility for the sale of paraphernalia for use with illicit drugs, or office use in excess of thirty percent (30%) of the total floor area of all improvements now or hereafter constructed on the Property.

3. Signage. No freestanding, monument or pylon signs erected with the Restricted Property shall: (i) prevent or restrict Walgreen from maintaining its freestanding sign on the Benefited Property in the location(s) shown on the Site Plan; (ii) reduce the signage allocated to

the Benefited Property pursuant to the Development Agreement approved by the City of Omaha on February 11, 2003, by Ordinance No. 36169; or (iii) materially obstructs the visibility of said Walgreens' freestanding sign(s) from adjacent streets and roads.

4. Drive-Through Restriction. No facility on the Restricted Property for vehicular drive-up or drive-through in which the stopping or standing of motor vehicles in line at a location for dropoff and/or pickup is intended (as, for example, at a restaurant, car wash or bank) shall be assigned, constructed, used or operated in any manner such that motor vehicles in line at such facility stop or stand onto the Benefited Property and/or any common driveway/roadway connecting the Lots to one another and to public roadways adjacent thereto, or otherwise interfere with the normal pattern and flow of pedestrian or vehicular traffic on and across the Benefited Property and/or such common driveway/roadway connecting the Lots to one another and to public roadways adjacent thereto. Nothing contained herein shall be deemed to affect the drive-through serving the building for Walgreen to be initially constructed on the Benefited Property by Village Development, which is hereby expressly approved.

5. Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

6. Enforcement of Covenant & Remedies and Enforcement.

(a) No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any party to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any portion of the Restricted Property made in good faith for value. The covenants, conditions and restrictions hereof shall be binding upon and effective against any owner of any portion of the Restricted Property whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

(b) All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner, or such owner's tenants or their employees, agents, contractors, customers, invitees, or licensees, of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) and Walgreen shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance. The Declarant shall insure that this restrictive covenant is properly recorded in the Register of Deeds Office for Douglas County, Nebraska, and shall not assume nor be responsible for the enforcement of this restrictive covenant or the payment of any costs and expenses incurred with respect thereto. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

(c) In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following written notice thereof by another Owner or Walgreen (unless, with respect to any such breach the nature

of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), Walgreen or any other Owner shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by Bank One, N.A. (its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of an emergency, an Owner or Walgreen may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described.

In the event of a violation or threat thereof of any of the provisions of Section 2 of this Declaration, each Owner agrees that such violation or threat thereof shall cause the nondefaulting Owner and/or its employees, agents, contractors, customers, invitees, or licensees to suffer irreparable harm and such nondefaulting Owner and its employees, agents, contractors, customers, invitees, or licensees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of Section 2 of this Declaration, the nondefaulting Owner and Walgreen, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of Section 2 of this Declaration.

(d) Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner (or to Walgreen in connection with the exercise of its rights set forth in Subsections 6(a) and/or 6(b) above) in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Lot of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Office of the County Recorder of Douglas County, Nebraska; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Office of the County Recorder of Douglas County, Nebraska prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien.

(e) In the event a party (including Walgreen) institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

7. Term and Governing Law. This Declaration is declared to have been made under the laws of the State of Nebraska. This Declaration is for the sole benefit of the Owner of the Benefited Property, Walgreens and its subsidiaries, affiliates, employees, agents, contractors, customers, invitees, or licensees. The covenants, conditions and restrictions contained in this

Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the Recorder of Douglas County, Nebraska, and shall remain in full force and effect thereafter, unless this Subsidiary Declaration is modified, amended, canceled or terminated in accordance herewith.

8. Amendment & Consent.

(a) The provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of the Owner of Benefited Property, evidenced by a document that has been fully executed and acknowledged by such party and recorded in the office of the Register of Deeds of Douglas County, Nebraska.

(b) Wherever in this Declaration of Restrictions the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner or Walgreen under this Declaration, to be effective, must be given, denied or conditioned expressly and in writing.

9. No Waiver. No waiver of any default of any obligation by any party shall be implied from any omission by the other party to take any action with respect to such default.

10. Severability. Each provision of this Declaration and the application thereof are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of all of the Parcels by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.

11. Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party and Walgreen may change from time to time their respective address for notice hereunder by like notice to the other party and Walgreen. Notice given by any Owner hereunder to be effective shall also simultaneously be delivered to Walgreen. The notice addresses of the Declarant, Village Development and Walgreen are as follows:

Walgreen:

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

KVI Associates, Inc.: Frank Kulig
KVI Properties, Inc.
13330 Fort Street
Omaha, Nebraska 68164

Village Development: Tamas R. Allan, Manager
Village Development – 180th Street, L.L.C.
1045 Lincoln Mall, Suite 300
Lincoln, Nebraska 68508

12. Miscellaneous. The paragraph headings or captions appearing in this Declaration are for convenience only, are not a part of this Declaration, and are not to be considered in interpreting this Declaration. This written Declaration constitutes the complete agreement between the parties and supersedes any prior oral or written agreements between the parties regarding the Restricted Property and the Benefited Property, except the Declaration of Covenants, Conditions, Restrictions and Easements for 180th Plaza recorded simultaneously herewith, as supplemented by the Subsidiary Declaration recorded simultaneously herewith. There are no oral agreements that change this Declaration, and no waiver of any of its terms will be effective unless in a writing executed by the parties.

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

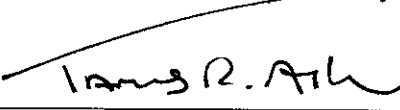
DECLARANT:

KVI PROPERTIES, INC.,
a Nebraska corporation

By: 
George W. Venteicher, President

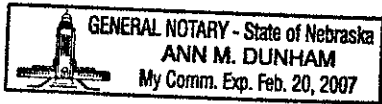
OWNER OF THE BENEFITED PROPERTY:

VILLAGE DEVELOPMENT– 180th STREET,
L.L.C., a Nebraska limited liability company

By: 
Tamas R. Allan, Manager

STATE OF NEBRASKA)
)ss.
COUNTY OF DOUGLAS)

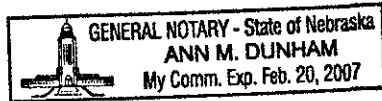
The foregoing instrument was acknowledged before me on this 20th day of May, 2004, by George W. Venteicher, President of KVI Properties, Inc., a Nebraska corporation, on behalf of said corporation.



Ann M. Dunham
Notary Public

STATE OF NEBRASKA)
)ss.
COUNTY OF Douglas)

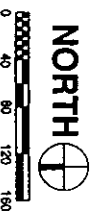
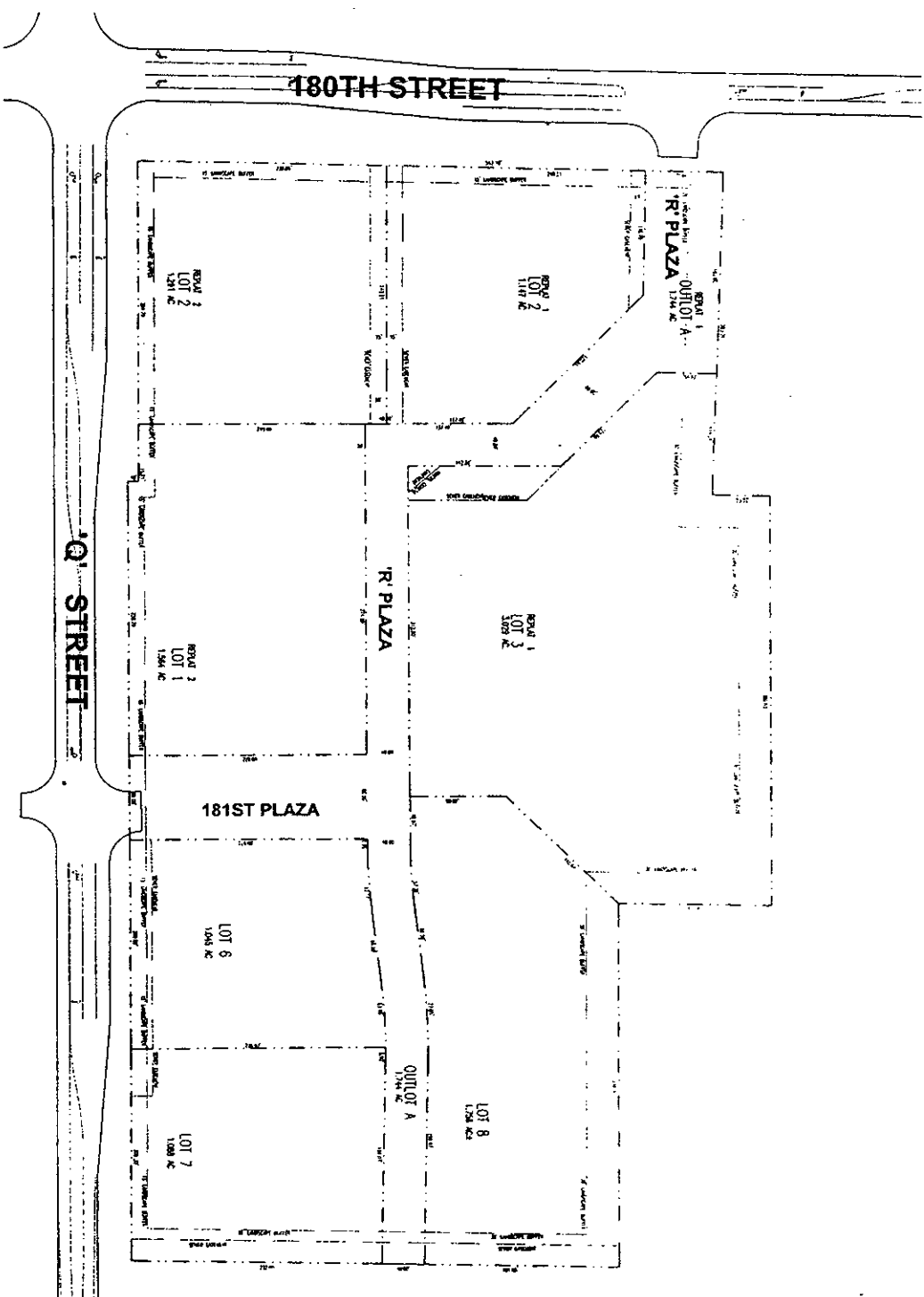
The foregoing instrument was acknowledged before me on this 20th day of May, 2004, by Tamas R. Allan, Manager of Village Development – 180th Street, L.L.C., a Nebraska limited liability company, on behalf of said limited liability company.




Ann M. Dunham
Notary Public

180TH PLAZA REPLAT TWO

LOT 1 (REPLAT 1) INCLUDES & OULLOT "A"
 REPLAT 1
 LOT 1
 1,244 AC
 LOT 2
 1,244 AC
 LOT 3
 1,244 AC
 LOT 4
 1,244 AC
 LOT 5
 1,244 AC
 LOT 6
 1,244 AC
 LOT 7
 1,244 AC
 LOT 8
 1,244 AC
 OULLOT "A"
 1,244 AC



PHIL PLATT PREPARED BY



E&A CONSULTING GROUP, INC.
 ENGINEERS • PLANNERS • SURVEYORS