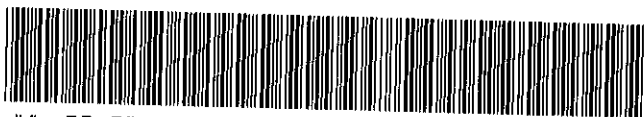


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Register of Deeds, Douglas County, NE
7/23/2007 11:38:22.80



2007083400

ROADWAY EASEMENT AGREEMENT

This is an Agreement dated as of June 20, 2007, between VILLAGE DEVELOPMENT – 180TH & BURKE, L.L.C., a Nebraska Limited Liability Company ("Village Development"), and VILLAGE WEST LLC, a Nebraska limited liability company ("Developer").

PRELIMINARY STATEMENT

Contemporaneously with the execution of this Agreement, Village Development acquired from Developer ownership of Lot 1, West Village Pointe Replat 4, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded (the "Walgreens Parcel").

Developer is the owner of Lot 2, West Village Pointe Replat 4, a Subdivision in Douglas County, Nebraska, as surveyed, platted and recorded (the "Developer's Parcel") which adjoins and is situated to the east of the Walgreens Parcel.

To provide the Walgreens Parcel access to Burke Street, Developer has agreed to grant to Village Development a non-exclusive easement over a designated area of Developer's Parcel for vehicular access and ingress and egress on and over the roadway as depicted and legally described on the Site Plan annexed as Exhibit A.

For the purpose of evidencing their understanding with respect to the establishment of the roadway easements benefiting the Walgreens Parcel, the Parties have entered into this Agreement.

TERMS AND CONDITIONS

1. Roadway Easement.

A. Definitions.

(i) Owner shall mean any individual, partnership, joint venture, limited liability company, corporation, trust, unincorporated association, government agency or other business entity now or hereafter holding of record a

After recording, please return to:
John Q. Bachman
Pansing Hogan Ernst & Bachman LLP
10250 Regency Circle, Suite 300
Omaha, NE 68114

return to

PROFESSIONAL TITLE & ESCROW CO.
5617 THOMPSON CREEK BLVD #12
LINCOLN NEBRASKA 68516

1213

5102

Pro Title / ad

fee interest in a portion or all of either the Walgreens Parcel or the Developer's Parcel.

(ii) Permittees shall mean (i) the respective record owners of any portion or all of the Walgreens Parcel and their respective successors, assignees, heirs and personal representatives, (ii) such owners' agents, customers, invitees, licensees, employees, servants and contractors, (iii) such owners' tenants and subtenants and their respective customers, invitees, employees, servants, licensees, contractors and agents, and (iv) such owners' land contract purchasers, mortgagees and beneficiaries under deeds of trust.

(iii) Roadway shall mean the roadway situated on the Developer's Parcel depicted and legally described on Exhibit A annexed and incorporated herein (the "Roadway"), including any alterations, relocations or reconfigurations thereof consistent with the terms of this Agreement.

B. Easement Grant. Developer hereby grants to the Permittees a non-exclusive perpetual easement over and upon the Roadway depicted and legally described on Exhibit A annexed to this Agreement for vehicular ingress, egress, passage and traffic upon, over and across the Roadway for the purpose of furnishing access and ingress and egress to and from Burke Street, which easement rights shall be exercised only in connection with the use of the Walgreens Parcel.

C. Construction of Roadway. Within sixty (60) days of the date of this Agreement, the Developer agrees that it will complete the construction of the Roadway. The Roadway shall be constructed twenty-five (25) feet in width with heavy duty asphalt or concrete. The Roadway shall be constructed in the location depicted and legally described on Exhibit A annexed to this Agreement.

Notwithstanding the foregoing, the Developer shall have the right to construct a temporary Roadway until the Developer's Parcel is developed and the parking lot thereon installed at which time such temporary Roadway will be replaced with a permanent Roadway as described in the immediately preceding paragraph.

In no event shall this Agreement be construed as creating parking easements in favor of the Walgreens Parcel or the Developer's Parcel or any other easements except as specifically granted in this Agreement.

D. Use of Roadway. The Permittees (i) shall use the Roadway with due regard to the rights of other Permittees and the Owner of the Developer's Parcel and its occupants, tenants, subtenants, licensees, customers, agents, and their respective employees and contractors; (ii) shall not use the Roadway in any manner which will impair or impede the rights of other Permittees and the Owner of the Developer's Parcel and its occupants, tenants, subtenants, licensees, customers, agents, and their respective employees and contractors; and (iii) shall not obstruct or impede passage on the Roadway. Developer agrees that it will not construct any fence or any other type of

barrier or obstruction on the Roadway except (x) curbing installed and intended to assist reasonably with traffic direction and control, (y) speed bumps reasonably designed and located to reduce the speed of travel on the Roadway, and (z) temporary closing not to exceed twenty-four (24) hours in any calendar year excluding the months of May, June, July, October, November and December, only if legally necessary to preclude the creation of a prescriptive easement or public dedication of the Roadway or any portion thereof, provided that the Owner of the Developer's Parcel shall grant a temporary access easement to the Owner of the Walgreens Parcel for alternate access to insure that the Walgreens Parcel shall at all times have ingress and egress to and from Burke Street.

In no event shall the Owner of the Developer's Parcel impose a charge or toll for the use of the Roadway.

E. Maintenance of Roadway. The repair, replacement and maintenance of the Roadway situated on the Developer's Parcel (i) shall be performed by the Owner of the Developer's Parcel, (ii) shall be conducted in a manner consistent with maintenance practices prevailing in first-class shopping centers in the metropolitan area of Omaha, and (iii) shall include, but not be limited to:

(a) Maintenance, repair and replacement of the surface and subsurface of the Roadway so as to maintain a level, smooth, evenly covered Roadway with the type of materials originally used or such substitutes as will in all material respects equal or be superior to such materials in quality, appearance, use and durability;

(b) Removal from the Roadway of debris, ice, snow and other objects or hazards to persons and vehicles using the Roadway, and sweeping the Roadway as required;

(c) Installation, maintenance and replacement of exit and directional signs and markers as may be reasonably required from time to time as determined in the sole discretion of the Owner of the Developer's Parcel; and

(d) Such painting and striping as may be required to maintain any painted and striped portions of the Roadway.

2. Nature of Easements.

A. Each and all of the easements and rights granted or created herein are appurtenances to the Walgreens Parcel and none of the easements and rights may be transferred, assigned or encumbered, except as an appurtenance to the Walgreens Parcel. Under no circumstances may the Owner of the Walgreens Parcel, with respect to the Developer's Parcel and the Roadway, grant any license, permission, authority or easement of any kind or duration. For the purpose of such easements and rights, the Walgreens Parcel which is benefited shall constitute the dominant estate and the area of

the Developer's Parcel which is burdened by such easements and rights shall constitute the servient estate.

B. Each and all of the easements, covenants, restrictions and provisions contained in this Agreement:

(i) are made for the direct, mutual and reciprocal non-exclusive benefit of the Permittees of the Walgreens Parcel and no other person or entity;

(ii) constitute covenants running with the land; and

(iii) shall bind every person or entity having any fee, leasehold or other interest in any portion of the Developer's Parcel or the Walgreens Parcel at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction or provisions in question, or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

C. The acceptance of any transfer or conveyance of title from any Party to this Agreement or its respective heirs, personal representatives, successors or assigns of all or any portion of its interest in any of its property subject to this Agreement shall be deemed to:

(i) require the prospective grantee to agree not to use, occupy or allow any lessee, sublessee or occupant of the transferred property to use or occupy such transferred property in any manner which would constitute a violation or breach of any of the easements, restrictions and covenants contained herein; and

(ii) require the prospective grantee to assume and agree to perform and be bound by each and all of the obligations of such conveying party under this Agreement with respect to the property to be conveyed.

Upon recordation of such conveyance, the conveying party shall thereupon be released from any future obligation under this Agreement with respect to the property so conveyed, but shall not be relieved from past obligations. When a grantee is a mortgagee, no personal liability or responsibility shall be deemed to be assumed by such mortgagee until and unless such mortgagee actually takes title to any property which is subject to this Agreement in connection with a mortgagee foreclosure action or deed in lieu of foreclosure or the exercise of the power of sale under a deed of trust.

3. **Enforcement.** In the event of any violation by any Party to this Agreement or by any Permittee of any of the terms, restrictions, covenants and conditions provided herein, any of the Parties, or their respective heirs, personal representatives, successors or assigns shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction and/or all such other available equitable remedies from the consequences of such breach, including but not limited to specific performance.

In addition to all other remedies available in equity, upon the failure of a defaulting Party to cure a breach of this Agreement within thirty (30) days following written notice thereof by a Party (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Party commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), a Party (or Permittee) shall have the right to perform such obligation contained in this Agreement on behalf of such defaulting Party and be reimbursed by such defaulting Party upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by Bank of America (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 (i) an emergency or (ii) blockage or material impairment of the easement rights, a Party may immediately cure the same and be reimbursed by the other Party upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described.

Except as set forth above, a Party will not be in default under this Section 3 unless such Party shall have been served with a written notice specifying the default and shall fail to cure such default within thirty (30) days after receipt of such notice, or shall fail to commence to cure the default within such period of time if the default cannot be cured within such thirty (30) day period, and thereafter, to proceed diligently to complete the curing of the default.

The remedies specified herein shall be all inclusive.

It is expressly agreed that no breach of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement.

The successful party in any litigation to enforce the provisions of this Agreement shall be entitled additionally to recover reasonable attorney's fees as approved and ordered by the court.

4. **Duration and Termination.** Except as otherwise provided herein, the easements, covenants, restrictions and other provisions of this Agreement shall be of perpetual duration.

This Agreement, or any easement, covenant, restriction or undertaking contained herein may be terminated or amended as to any portion or all of the Developer's Parcel or the Walgreens Parcel only by the recording of the appropriate document in the Office of the Douglas County Register of Deeds (a) only by the mutual agreement of (i) Developer as long as it is the Owner of any portion of the Developer's Parcel, and (ii) Village Development as long as it is the Owner of any portion of the Walgreens Parcel, or (b) if either subparagraph (i) or (ii) of Subsection (a) immediately above is inapplicable, then in the case where subparagraph (i) of Subsection (a) is inapplicable, by all of the Owners of the Developer's Parcel, and in the case where subparagraph (ii) of Subsection (a) is inapplicable by all of the Owners of the Walgreens Parcel. Subject to the foregoing, no consent to the amendment or termination of this Agreement shall be required from any occupant or tenant of the properties of the Parties or any other person having an interest or claim in such properties.

5. **Not a Public Dedication.** Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication of any portion of the Developer's Parcel to the general public or for the benefit of the general public or for any public purpose whatsoever, it being the intention of the Parties that this Agreement will be strictly limited to and for the purposes expressed herein.

6. **Benefit.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their respective heirs, personal representatives, successors and assigns.

7. **Waiver.** No waiver of any breach of any of the easements and covenants herein contained shall be construed as or constitute a waiver of any breach or waiver, acquiescence in or consent to any further or succeeding breach of the same or any other covenant.

8. **Separability.** If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the extent permitted by law.

9. **Negation of Partnership.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

10. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Nebraska.

11. **Counterparts.** This Agreement shall be executed in several counterparts, each of which shall be deemed an original constituting a single agreement.

12. **Notice.** All notices under this Agreement must be in writing and shall be effective if (i) mailed certified mail, return receipt requested, postage prepaid, in which case such notice shall be deemed delivered on the third business day following the mailing of such notice, or (ii) delivered by a nationally recognized courier service, in which case such notice shall be deemed delivered on the next business day following delivery to such courier service, as follows (unless notice of a change of address is given pursuant hereto):

(a)	If to Developer:	Village West LLC c/o The Lerner Company 10855 West Dodge Road, Suite 270 Omaha, NE 68154
	With a copy to:	John Q. Bachman Pansing Hogan Ernst & Bachman LLP 10250 Regency Circle, Suite 300 Omaha, NE 68114

(b) If to Walgreens: Village Development – 180th & Burke, L.L.C.
1045 Lincoln Mall, Ste.300
Lincoln, NE 68508
Attention: Tamas R. Allan, Manager

and: Walgreen Co.
104 Wilmot Road, MS#1420
Deerfield, Illinois 60015-4616
Attention: Real Estate Law Department
Store 11203

With a copy to: Jennifer J. Strand, Esq.
Woods & Aitken L.L.P.
301 So. 13th Street, Ste. 500
Lincoln, NE 68508

Such notices shall be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then designated address of the Party intended, or (iii) rejected at the then designated address of the Party intended.

13. **Force Majeure.** Whenever performance is required of any Party under this Agreement, such Party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, if completion of performance shall be delayed by reason of acts of God, war, civil commotion, riots, strikes or other labor disputes, unavailability of labor or materials, or any other cause beyond the reasonable control of such Party, then the time for performance required under this Agreement shall be extended by the amount of the delay actually so caused. The provisions of this Section shall not operate to excuse any Party from the prompt payment of any monies required under this Agreement nor shall the lack of funds be deemed a cause beyond the control of such Party.

VILLAGE DEVELOPMENT :

VILLAGE DEVELOPMENT –
180TH & BURKE, L.L.C., a
a Nebraska Limited Liability Company

By: 
Tamas R. Allan, Manager

DEVELOPER:

VILLAGE WEST LLC, a Nebraska Limited
Liability Company

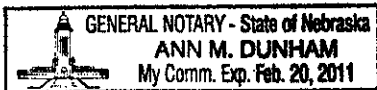
By: 
Jay R. Lerner, Manager

ACKNOWLEDGMENTS

STATE OF NEBRASKA)
) ss.
COUNTY OF ~~DOUGLAS~~)

Lancaster

The foregoing instrument was acknowledged before me this 19th day of ~~June~~^{July}, 2007, by Tamas R. Allan, Manager of Village Development – 180th & Burke, L.L.C., a Nebraska Limited Liability Company, on behalf of such limited liability company.



Ann M. Dunham

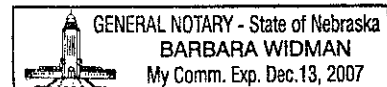
Notary Public

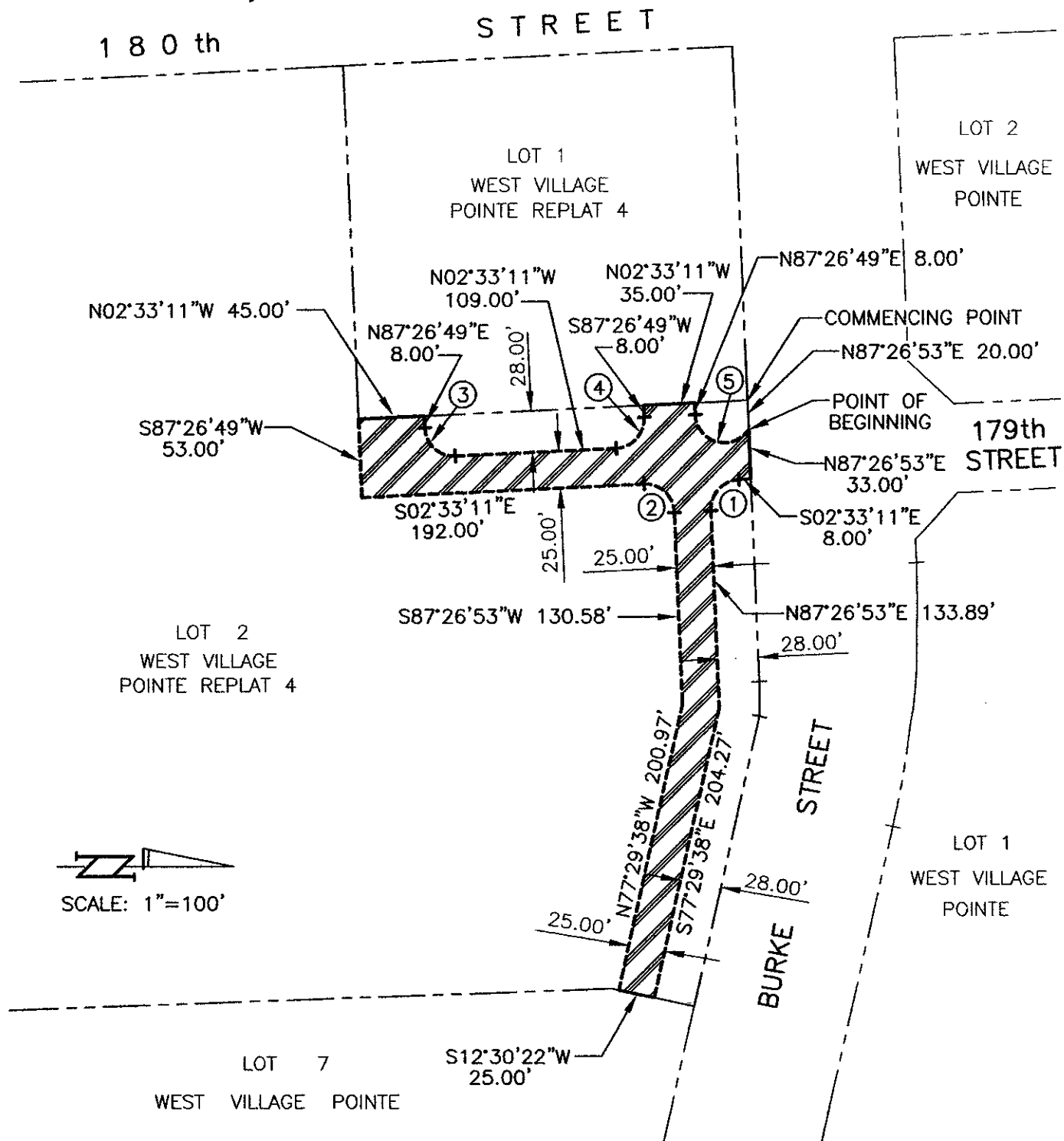
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 18th day of June, 2007, by Jay R. Lerner, Manager of Village West LLC, a Nebraska limited liability company, on behalf of such limited liability company.

Barbara Widman

Notary Public





① RADIUS=20.00'
CHORD BEARING=S47°33'09"E
CHORD DISTANCE=28.28'
ARC DISTANCE=31.42'

② RADIUS=20.00'
CHORD BEARING=S42°26'51"W
CHORD DISTANCE=28.28'
ARC DISTANCE=31.42'

③ RADIUS=20.00'
CHORD BEARING=N27°26'49"E
CHORD DISTANCE=28.28'
ARC DISTANCE=31.42'

④ RADIUS=20.00'
CHORD BEARING=N47°33'11"W
CHORD DISTANCE=28.28'
ARC DISTANCE=31.42'

⑤ RADIUS=20.00'
CHORD BEARING=N15°52'59"E
CHORD DISTANCE=37.95'
ARC DISTANCE=49.96'

SHEET 1 OF 2 EXHIBIT "A"

LEGAL DESCRIPTION

THAT PART OF LOT 2, WEST VILLAGE POINTE REPLAT 4, SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS, COMMENCING AT THE NW CORNER OF SAID LOT 2;

THENCE N87°26'53"E (ASSUMED BEARING) 20.00 FEET ON THE NORTH LINE OF SAID LOT 2 TO THE POINT OF BEGINNING;

THENCE CONTINUING N87°26'53"E 33.00 FEET ON THE NORTH LINE OF SAID LOT 2;

THENCE S02°33'11"E 8.00 FEET;

THENCE SOUTHEASTERLY ON A 20.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING S47°33'09"E, CHORD DISTANCE 28.28 FEET, AN ARC DISTANCE OF 31.42 FEET;

THENCE N87°26'53"E 133.89 FEET;

THENCE S77°29'38"E 204.27 FEET TO THE EAST LINE OF SAID LOT 2;

THENCE S12°30'22"W 25.00 FEET ON THE EAST LINE OF SAID LOT 2;

THENCE N77°29'38"W 200.97 FEET;

THENCE S87°26'53"W 130.58 FEET;

THENCE SOUTHWESTERLY ON A 20.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING S42°26'51"W, CHORD DISTANCE 28.28 FEET, AN ARC DISTANCE OF 31.42 FEET;

THENCE S02°33'11"E 192.00 FEET;

THENCE S87°26'49"W 53.00 FEET TO THE SE CORNER OF LOT 1 SAID VILLAGE POINTE REPLAT 4;

THENCE N02°33'11"W 45.00 FEET ON THE WEST LINE OF SAID LOT 2;

THENCE N87°26'49"E 8.00 FEET;

THENCE NORTHEASTERLY ON A 20.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING N27°26'49"E, CHORD DISTANCE 28.28 FEET, AN ARC DISTANCE OF 31.42 FEET;

THENCE N02°33'11"W 109.00 FEET;

THENCE NORTHWESTERLY ON A 20.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING N47°33'11"W, CHORD DISTANCE 28.28 FEET, AN ARC DISTANCE OF 31.42 FEET;

THENCE S87°26'49"W 8.00 FEET TO THE WEST LINE OF SAID LOT 2;

THENCE N02°33'11"W 35.00 FEET ON THE WEST LINE OF SAID LOT 2;

THENCE N87°26'49"E 8.00 FEET;

THENCE NORTHEASTERLY ON A 20.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING N15°52'59"E, CHORD DISTANCE 37.95 FEET, AN ARC DISTANCE OF 49.96 FEET TO THE POINT OF BEGINNING.

SHEET 2 OF 2 EXHIBIT " A "

THE LERNER COMPANY TD2 FILE NO.: 738-162-4(ESMTREV) DATE: MAY 9, 2007
THOMPSON. DREESSEN & DORNER. INC.. 10836 OLD MILL ROAD. OMAHA. NEBRASKA 68154. 402-330-8860