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Register of Deeds, Douglas County, NE  
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## **ACCESS DRIVE DECLARATION**

This ACCESS DRIVE DECLARATION is made as of September 6, 2016, by VILLAGE WEST LLC, a Nebraska limited liability company ("Declarant").

### **PRELIMINARY STATEMENT**

Declarant is the owner of Lots 1, 2, and 3 West Village Pointe Replat 9, a subdivision in Douglas County, Nebraska, as surveyed, platted and recorded (collectively the "Declarant's Parcels" and referred to individually by their respective lot numbers).

To provide the Declarant's Parcels access to Burke Street, Declarant hereby establishes, creates, and grants a non-exclusive easement for vehicles access and ingress and egress over a certain designated portion of Lot 3 depicted and legally described on the Site Plan annexed as Exhibit A and incorporated herein.

### **TERMS AND CONDITIONS**

For the purpose of evidencing the easements described in the foregoing Preliminary Statement which is repeated and incorporated in this portion of this Declaration, Declarant has executed and recorded this Declaration.

#### **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 fee interest in any or all of the Declarant's Parcels.

(ii) Permittees shall mean (i) the respective record owners of any or all of the Declarant's Parcels and their respective successors, assignees, heirs and

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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 within and on that portion of Lot 3 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 Declaration.

B. Easement Grant. Declarant hereby grants to the Permittees a non-exclusive perpetual easement over and upon the Roadway for vehicular ingress, egress, passage and traffic upon, over and across the Roadway for the purpose of providing Declarant's Parcels access and ingress and egress to and from Burke Street, which easement rights shall be exercised only in connection with the use of the Declarant's Parcels.

C. Construction of Roadway. Within one hundred twenty (120) days of the date of this Declaration, the Declarant agrees that it will use its reasonable best efforts to complete the construction of the Roadway. The Roadway shall be constructed with concrete sufficient in design and construction so as to qualify the Roadway for dedication as a public street should the Declarant or the owner of Lot 3 elect to do so in its sole discretion.

In no event shall this Declaration be construed as creating parking easements or any other easements upon or within the Roadway in favor of any of the Declarant's Parcels or the Permittees.

D. Use of Roadway. The Permittees (i) shall use the Roadway with due regard to the rights of other Permittees and the respective Owners of the Declarant's Parcels and their respective occupants, tenants, subtenants, licensees, customers, agents, employees and contractors; (ii) shall not use the Roadway in any manner which will impair or impede the rights of other Permittees and the respective Owners of the Declarant's Parcels and their respective occupants, tenants, subtenants, licensees, customers, agents, employees and contractors; and (iii) shall not obstruct or impede passage on the Roadway. The owner of Lot 3 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 on a Sunday 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.

Except as provided in Section 14 of this Declaration, in no event shall the Owner of Lot 3 impose a charge or toll for the use of the Roadway.

2. **Nature of Easements.**

A. Each and all of the easements and rights granted or created herein are appurtenances to the Declarant's Parcels and none of the easements and rights may be transferred, assigned or encumbered, except as an appurtenance to each of the Declarant's Parcels. For the purpose of such easements and rights, each of the Declarant's Parcels which is benefited shall constitute the dominant estate and the portion of Lot 3 described on Exhibit A attached to this Declaration 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 Declaration:

(i) Are made for the direct, mutual and reciprocal non-exclusive benefit of the Permittees of each of the Declarant's Parcels 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 Declarant's Parcels 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 the Declarant or its respective heirs, personal representatives, successors or assigns of all or any portion of its interest in any of the Declarant's Parcels shall be deemed, without the need of a written affirmation or agreement, 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 Declaration 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 Declaration with respect to the property so conveyed which accrues from and after the date of conveyance but shall remain liable for

any such obligations occurring before such conveyance. 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 Declaration 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 Owner of any of the Declarant's Parcels or by any Permittee of any of the terms, restrictions, covenants and conditions provided herein, the Declarant or any Owner of any of the Declarant's Parcels, or their respective heirs, personal representatives, successors or assigns shall have as its exclusive remedy, the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, thirty (30) days prior written notice of the violation will be given to the Owners of all of the Declarant's Parcels and to the persons or entity guilty of such violation or threatened violation. Notwithstanding the foregoing, the Declarant and any Owner of Lot 3 shall have the right to maintain an action at law for the collection of any unpaid Maintenance Contributions as defined in Section 14 of this Declaration. 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.

A breach of this Declaration by an Owner of any of the Declarant's Parcels or by any Permittee shall not entitle the Owner of Lot 3 to cancel, rescind or otherwise terminate this Declaration.

The successful party in any litigation to enforce the provisions of this Declaration shall be indemnified from and against its reasonable attorney's fees and other costs and expenses incurred the successful party in connection with the preparation for and conduct of such litigation including appeals.

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

This Declaration, or any easement, covenant, restriction or undertaking contained herein may be terminated or amended as to any or all of the Declarant's Parcels only by the recording of the appropriate document in the Office of the Douglas County Register of Deeds (a) only by the Declarant as long as it is the Owner of all of the Declarant's Parcels, or (b) by all of the Owners of the Declarant's Parcels if the Declarant is not the Owner of all of Declarant's Parcels. Subject to the foregoing, no consent to the amendment or termination of this Declaration shall be required from any occupant or tenant of any of the Declarant's Parcels or any other person having an interest or claim in such parcels.

5. **Not a Public Dedication.** Nothing contained in this Declaration shall, or shall be deemed to, constitute a gift or dedication of any portion of the Declarant's Parcels 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 Declaration will be strictly limited to and for the purposes expressed herein.

6. **Benefit.** This Declaration shall inure to the benefit of, and shall be binding upon, the Owners of the Declarant's Parcels 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 Declaration shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Declaration 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 Declaration shall be deemed to create a partnership between or among the Owners of the Declarant's Parcels nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Owner of any or all of the Declarant's Parcels shall be considered a separate owner and shall not have the right to act as an agent for another Owner, unless expressly authorized to do so by separate written instrument signed by the party to be charged.

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

11. **Notice.** All notices under this Declaration 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 Declarant: Village West LLC  
c/o The Lerner Company  
10855 West Dodge Road, Suite 270  
Omaha, NE 68154

(b) If to an Owner: To the address of the Owner to which real estate tax statements are mailed by the Douglas County Treasurer.

12. **Force Majeure.** Whenever performance is required of the Owner of Lot 3 under this Declaration, such Owner 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 Owner, then the time for performance required under this Declaration shall be extended by the amount of the delay actually so caused. The provisions of this Section shall not operate to excuse an Owner of any of the Declarant's Parcels from the prompt payment of any monies required under this Declaration nor shall the lack of funds be deemed a cause beyond the control of such Owner.

13. **Roadway Maintenance** . Declarant shall cause the West Village Pointe Business Association, a Nebraska nonprofit corporation (the "Association") to repair, replace and maintain the Roadway as described in this Section 14 except those areas of which are green areas, trees, sidewalks, and other landscaped portions within the Roadway which are the responsibility of the respective property owners of property adjoining such excluded portions. Such maintenance, repair, and replacement shall be conducted in a manner consistent with maintenance practices prevailing in Class A office parks within the greater metropolitan area of Omaha, and shall include, but not be limited to:

- (i) Maintenance, repair and replacement of the surface and subsurface of the Roadway including curb and gutter, if any, 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;
- (ii) 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;
- (iii) Installation, maintenance and replacement of street signs, traffic calming devices, and exit and directional signs and markers as may be reasonably required from time to time as determined in the sole discretion of the Declarant or the Association;
- (iv) Such painting and striping as may be required to install and maintain any painted and striped portions of the Roadway; and
- (v) Maintenance and replacement of street lights within the Roadway, including poles, fixture heads, and bulbs.

All repair, replacement and maintenance costs and expenses included in this Section 13. are referred to collectively as the "Maintenance Costs".

14. **Roadway Maintenance Cost Sharing.** A. Each of the Owners of the Declarant's Parcels shall pay the Village West Business Association, a Nebraska nonprofit corporation, its proportionate share of the Maintenance Costs. The Association shall account for any and all dollar amounts required to be contributed by other parties to the maintenance of the Roadway, if any, under other agreements, whether such other agreements currently exist or are executed in the future, in calculating any Owner's proportionate share as hereafter defined.

B. The term "proportionate share" as used in this Section 14. shall mean that ratio the numerator of which is the aggregate land area size of the lot in question and the denominator of which is the aggregate land area size of all of the Declarant's Parcels. Upon request of the Association or the Owner, the Owner and Association shall certify Owner's proportionate share in writing in recordable form.

Each Owner of the Declarant's Parcels shall pay its proportionate share of such costs within thirty (30) days of (i) its receipt of an invoice for the same, or, at the election of the Association, shall make advanced annual payments as reasonably estimated by the Association and invoiced to Owner which annual estimated amount will be due and payable within thirty (30) days of the date of such invoice and reconciled on an annual basis against the actual expenses paid for the period relating to such annual payment with Owner agreeing to pay any deficiency within thirty (30) days of the date of such invoice for same or entitled to a credit against future estimated payments until exhausted in the event of an overpayment.

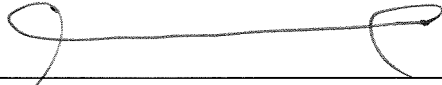
C. In the event an Owner's proportionate share is not paid within thirty (30) days after the date of the invoice for same, it shall be deemed delinquent and shall bear interest at the rate of sixteen percent (16%) per annum from and after the date of such invoice. Should any such proportionate share remain unpaid more than thirty (30) days after the due date, the Association may declare the entire unpaid portion to be immediately due and payable and delinquent. The Association may bring an action at law against the Owner personally obligated to pay the same, or may foreclose the lien (as described immediately hereafter) of such proportionate share against the property in question through proceedings in any court having jurisdiction for the enforcement of such liens. No Owner may escape personal liability for its proportionate share of the Maintenance Costs by abandonment or title transfer of such property.

D. The Association shall have a lien upon the Property for the collection of any delinquent proportionate share of the Owner which shall be subordinate to the lien of any first mortgage, first deed of trust, or other initial purchase money security device, and the holder of any first mortgage, first deed of trust, or other initial purchase money security device may rely on this provision without the necessity of the execution of any further subordination agreement. Sale or transfer of the Property shall not affect the status or priority of any such lien. The Owner shall indemnify and hold harmless the Association and the Declarant from and against any attorneys' fees and court costs incurred by the Association and/or the Declarant in connection with or as a result of their enforcement of the provisions of this Section 14. or the foreclosure of any lien provided herein or any action for collection of any delinquent payment of Maintenance Costs.

15. **Merger.** This Declaration and the easements and rights created herein shall not be subject to the doctrine of merger.

**Declarant:**

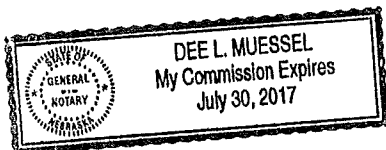
VILLAGE WEST LLC, a Nebraska Limited Liability Company


By:   
Salvadore Carta, Member

**ACKNOWLEDGMENT**

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF DOUGLAS        )

The foregoing instrument was acknowledged before me this 1st day of September, 2016, by Salvadore Carta, Member of Village West LLC, a Nebraska limited liability company, on behalf of such limited liability company.

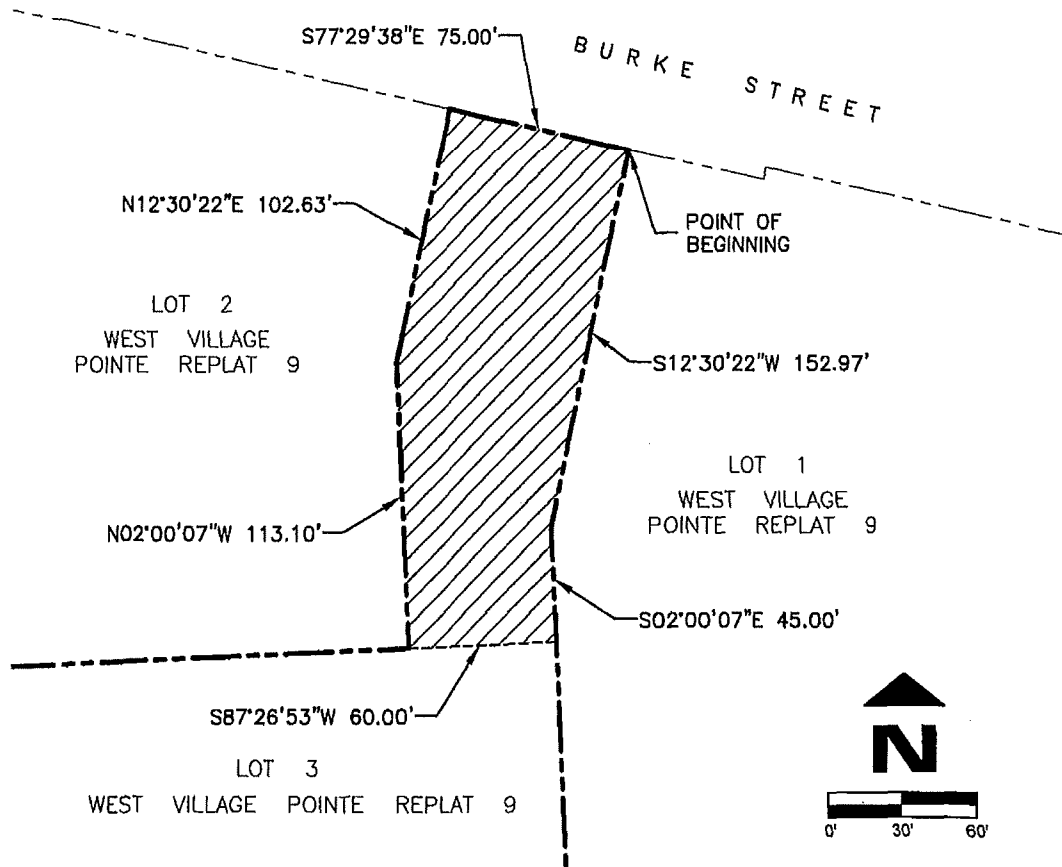


  
Notary Public



## EXHIBIT A

### Site Plan



### LEGAL DESCRIPTION

THAT PART OF LOT 3, WEST VILLAGE POINT REPLAT 9, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS, BEGINNING AT THE NE CORNER OF SAID LOT 3;

THENCE S12°30'22"W (ASSUMED BEARING) 152.97 FEET ON THE EAST LINE OF SAID LOT 3;

THENCE S02°00'07"E 45.00 FEET ON THE EAST LINE OF SAID LOT 3;

THENCE S87°26'53"W 60.00 FEET TO AN ANGLE POINT ON THE NORTHERN LINE OF SAID LOT 3;

THENCE N02°00'07"W 113.10 FEET ON THE NORTH LINE OF SAID LOT 3;

THENCE N12°30'22"E 102.63 FEET ON THE NORTH LINE OF SAID LOT 3;

THENCE S77°29'38"E 75.00 FEET ON THE NORTH LINE OF SAID LOT 3 TO THE POINT OF BEGINNING.



Job Number: 738-198-1(EXA)  
thompson, dreessen & dornier, inc.  
10836 Old Mill Rd  
Omaha, NE 68154  
p.402.330.8860 f.402.330.5866  
td2co.com

Date: MAY 25, 2016  
Drawn By: RJR  
Reviewed By: JDW  
Revision Date:

## EXHIBIT "A"

THE LERNER COMPANY

Book  
Page