

NEBRASKA DOCUMENTARY  
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Apr 25, 2019  
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CASS COUNTY, NE.

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*Jana K. Pahlman*  
REGISTER OF DEEDS  
#01394 \$28.00

Pages 4

AFTER RECORDING, RETURN TO: Nicholas F. Sullivan, Erickson & Sederstrom, P.C., 10330 Regency Parkway Drive, Omaha, NE 68114  
(Space Above This Line for Recording Data)

### ENCROACHMENT EASEMENT AGREEMENT

This **Encroachment Easement Agreement** (this "Agreement") is made and entered into effective this 9 day of April, 2019 by and between **WESTSIDE DEVELOPMENT, INC.**, a Nebraska corporation ("Westside"), and **KOMCON REAL ESTATE, LLC**, a Nebraska limited liability company ("Komcon"). Westside and Komcon may be referred to in this Agreement each individually as a "Party," and collectively as the "Parties."

**WHEREAS**, Westside is the current owner of a tract of real estate located in Cass County, Nebraska legally described as follows (hereinafter "Lot 1"):

Lot 1, Westside Commercial Subdivision Replat 2, being an administrative replatting of Lots 4 through 6, Westside Commercial Subdivision, a subdivision located in the SW 1/4 of the NW1/4 of Section 13, Township 12 North, Range 13 East of the 6th P.M., an Addition to the City of Plattsmouth, as surveyed, platted, and recorded in Cass County, Nebraska;

**WHEREAS**, Komcon is the current owner of a tract of real estate located in Cass County, Nebraska legally described as follows (hereinafter "Lot 2"):

Lot 2, Westside Commercial Subdivision Replat 2, being an administrative replatting of Lots 4 through 6, Westside Commercial Subdivision, a subdivision located in the SW 1/4 of the NW1/4 of Section 13, Township 12 North, Range 13 East of the 6th P.M., an Addition to the City of Plattsmouth, as surveyed, platted, and recorded in Cass County, Nebraska;

**WHEREAS**, Westside constructed a portion of a concrete drive (approximately twelve and one-half feet (12.5') wide and eighteen feet (18') long), as well as a stone retaining wall (approximately five feet (5') in length (the concrete drive and stone retaining wall referenced herein are collectively referred to as the "Improvements") on a portion of Lot 2 depicted and legally described on Exhibit "A" attached hereto and incorporated by this reference (the "Easement Area"); and

**WHEREAS**, Komcon is willing to grant an easement to Westside over the Easement Area for the purpose of maintaining the Improvements and using the Easement Area in connection with Westside's use of Lot 1 upon the terms and conditions herein set forth.

**NOW THEREFORE**, in consideration of this Agreement and covenants herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties hereto agree as follows:

1. Komcon hereby consents to the Improvements encroaching onto the Easement Area located on Lot 2 as depicted and legally described in Exhibit "A".

2. The terms and conditions of this Agreement are subject to the terms and conditions of that certain Shared Driveway and Access Easement Agreement entered into between the Parties and dated April 9, 2019, which was recorded on April 24, 2019, in Book 157, Page 625, of the Official Records of

Cass County, Nebraska (the "Shared Driveway Access and Easement Agreement"); in the event the terms and conditions of the Shared Driveway Access and Easement Agreement are inconsistent with or contrary to the terms and conditions of this Agreement, the terms and conditions of the Shared Driveway Access and Easement Agreement shall control.

3. Komcon hereby grants to Westside an exclusive easement over and upon the Easement Area on (the "Easement"), for the purpose of maintaining, repairing, or replacing the Improvements. Westside may also use the Easement Area in connection with Westside's use of Lot 1 adjacent to the Easement Area. Except with respect to the concrete drive located in the Easement Area, the Easement and all rights and obligations under this Agreement as to the stone retaining wall located in the Easement Area shall terminate and be of no further force or effect upon the earlier of: (a) Westside's removal or replacement of all or any portion of the stone retaining wall situated on Lot 2; or (b) the end of the useful life of the portion of the stone retaining wall situated on Lot 2, as determined in Westside's reasonable discretion. Upon such termination, Westside shall forthwith remove the stone retaining wall from the Easement Area.

4. Westside warrants and agrees that Westside will not in any manner interfere with the use of the remainder of Lot 2 either now or in the future. In the event any portion of Lot 2 or any improvement thereon is damaged by Westside in connection with Westside's use of the Easement Area, Westside shall forthwith repair or replace Lot 2 or the improvements thereon, as appropriate, to a condition equal to that which existed prior to the occurrence of said damage.

5. Except as set forth in the Shared Driveway Access and Easement Agreement, Westside agrees that Westside shall at all times hereinafter maintain the Improvements in good order and repair and in compliance with all applicable laws, ordinances, regulations, and codes at Westside's sole cost and expense. Westside shall keep the Easement Area in a clean and neat condition, and shall be solely responsible for maintaining the Easement Area. In the event any of the surface area of the Easement Area or other portion of Lot 2 changes due to any cause associated with the Improvements, Westside shall forthwith restore said surface area to the same condition and contour as existed prior to such change.

6. Komcon hereby grants a license to Westside and Westside's agents, contractors, and assigns to enter Lot 2 or the Easement Area at reasonable times and with reasonable notice, as may be reasonably necessary to maintain, repair, or replace the Improvements. Any entry of Lot 2 under this section shall be undertaken so as to minimize interference with Komcon's use and enjoyment of Lot 2.

7. Westside shall indemnify, defend, and hold harmless Komcon and Komcon's successors and assigns, individually or collectively, from and against any and all demands, claims, causes of action, obligations, damages, liabilities, losses, suits, judgments, costs, and expenses (including reasonable attorneys' fees) of any kind or nature that may be or are incurred by Komcon or Komcon's successors and assigns for any and all personal injuries, death, or property damage in any way arising out of, relating to, or on account of any use or occupation of the Easement Area by Westside or by virtue of Westside's interest therein, provided, however, Westside shall not be liable for any injury, damage, or loss occasioned by the negligence, gross negligence, or willful misconduct of Komcon or its successors or assigns.

8. This Agreement shall not be construed as a conveyance of any portion of the Easement Area to Westside, title to which shall remain with Komcon, nor shall Westside's use of the Easement Area give rise to any claim of right to the Easement Area or any other portion of Lot 2, through adverse possession, prescription, or otherwise.

9. This Agreement shall be governed and construed in accordance with the laws of the State of Nebraska. The agreements, benefits, obligations, covenants and restrictions granted hereunder and all provisions of this Agreement shall run with the land and shall be binding upon and inure to the benefit of the respective owners of Lot 1 and Lot 2 and their respective successors and assigns. Upon any sale of Lot 1 or Lot 2 by Westside or Komcon, as applicable, or by any successor or assign of either of them, the selling party shall have no further liability hereunder other than for claims arising during the selling party's period of ownership. This Agreement may be modified, amended or terminated by an instrument signed by the owners of the Lot 1 and Lot 2 and recorded with the Cass County Register of Deeds.

IN WITNESS WHEREOF, Buyer and Seller have duly executed and delivered this Agreement effective as of the date first written above.

**SELLER:**

**BUYER:**

**WESTSIDE DEVELOPMENT, INC.,**  
a Nebraska corporation,

**KOMCON REAL ESTATE, LLC,**  
a Nebraska limited liability company,

By: [Signature]  
Printed Name: Steven K. Willey

By: [Signature]  
Printed Name: Joel Makovicka

Title: President

Title: Sole Member

STATE OF NEBRASKA )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of April, 2019, by Steven K. Willey, President of Westside Development, Inc., a Nebraska corporation, as his voluntary act and deed on behalf of said company.

WITNESS my hand and Notarial Seal on the date last above written.

[Signature]  
Notary Public

STATE OF NEBRASKA )  
COUNTY OF DOUGLAS ) ss.

State of Nebraska -- General Notary  
CHERYL ROYALTY  
My Commission Expires  
August 30, 2020

The foregoing instrument was acknowledged before me this 12 day of April, 2019, by Joel Makovicka, Sole Member of Komcon Real Estate, LLC, a Nebraska limited liability company, as his voluntary act and deed on behalf of said company.

WITNESS my hand and Notarial Seal on the date last above written.

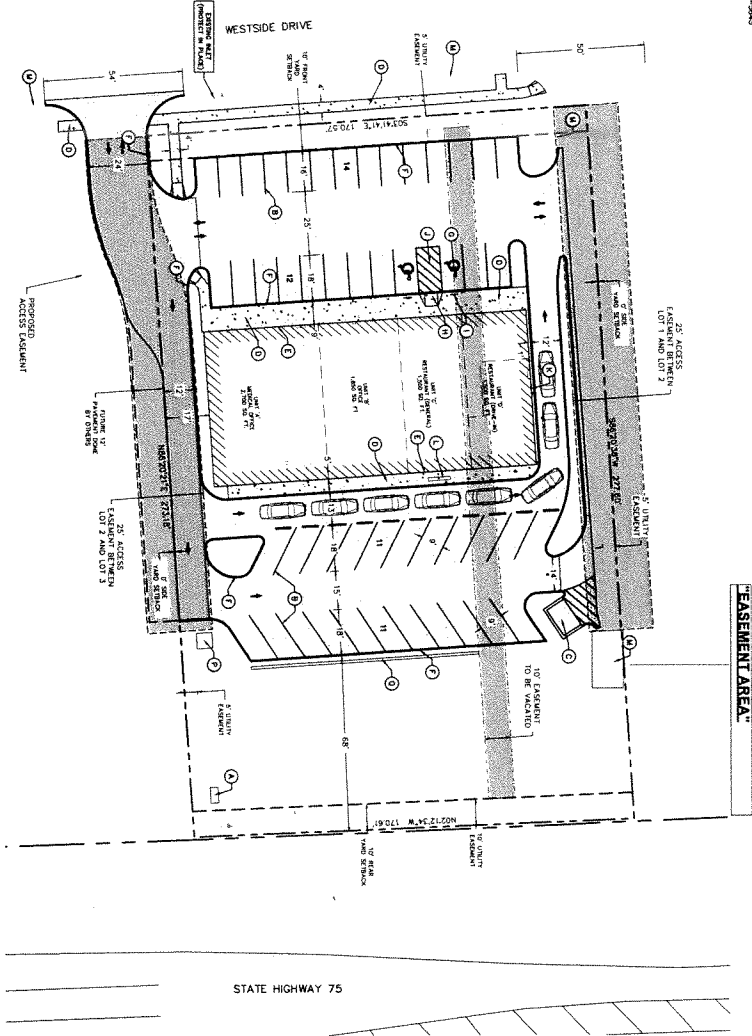
[Signature]  
Notary Public

GENERAL NOTARY - State of Nebraska  
DEBORAH A. HUBBS  
My Comm. Exp. March 18, 2022

# EXHIBIT "A"



ENGINEER  
AYARS & AYARS, INC.  
601 P STREET, SUITE 200  
LINCOLN, NE 68508  
(402) 426-8945



SITE INFORMATION	
EXISTING ZONING	DC - GENERAL COMMERCIAL
LOCAL DISTRICT	LOT 2, WESTSIDE COMMERCIAL DISTRICT
ADDRESS	601 P STREET, SUITE 200 LINCOLN, NE 68508
1/2 ACRES	N/A
1/2 ACRE	1/2 ACRE
PROPOSED	RESTAURANT (3000 SQ. FT.)
REQUIRED	ACCESSIBLE PARKING
PROVIDED	2 STALLS
MANUAL READING CONFORMANCE	100% (70% ALLOWED)
MINIMUM CLEARANCE	6'7" (80% ALLOWED)

SITE PARKING		
UNIT	SQUARE FOOTAGE	USE
A	2,700	MEDICAL OFFICE
B	1,850	OFFICE
C	1,500	RESTAURANT (3000 SQ. FT.)
D	1,500	RESTAURANT (3000 SQ. FT.)
TOTAL	7,550	

UNIT	REQUIREMENT	NEEDED
A	1 PER 3 DOCTORS	3
B	1 PER 300 SF	7
C	1 STALL PER 1,000 SQ. FT. AREA	18
D	1 STALL PER 1,000 SQ. FT. AREA	18
TOTAL		46

LEGEND

PROPERTY LINE

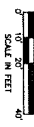
EASEMENT LINE

BLANK STIPPLE LINE

PROPOSED CONTOUR

PROPOSED CURB AND GUTTER

- LEGEND
- ① TENANT SIGN
  - ② WHITE PARALLEL MARKING (17'9")
  - ③ TRUCK ENCLOSURE
  - ④ PROPOSED CONCRETE SIDEWALK
  - ⑤ LIMIT OF BUILDING
  - ⑥ CONSTRUCT "P" CURB
  - ⑦ ADA PARALLEL MARKING, TYPICAL OF 2
  - ⑧ ADA CURB MARK
  - ⑨ ADA ACCESSIBLE SIGN, TYPICAL OF 2
  - ⑩ "P" WHITE PARALLEL MARKING, 2'0" O.C. @ 45°
  - ⑪ "N" WHITE PARALLEL MARKING
  - ⑫ "R" WHITE PARALLEL MARKING
  - ⑬ PROJECT EXISTING CURB AND GUTTER, IN PLACE
  - ⑭ CONSTRUCT "P" P.C.C. PARALLEL DRAINWAY
  - ⑮ CONSTRUCT "N" P.C.C. PARALLEL
  - ⑯ CONSTRUCT "R" P.C.C. PARALLEL
  - ⑰ PROPOSED TRANSPONER
  - ⑱ PROPOSED RETAINING WALL



**olsson**

601 P Street, Suite 200  
P.O. Box 84608  
Lincoln, NE 68508

TEL 402.474.8311 www.olsson.com

<p>AYARS &amp; AYARS, INC.</p> <p>116 North 4th Street Lincoln, NE 68508 TEL 402.474.8945 FAX 402.474.8946 WWW.AYARS-AYARS.COM</p>	<p>ARCHITECTURE ETCETERA</p> <p>2436 North 48th Street Lincoln, NE 68516 TEL 402.474.8000 FAX 402.474.8913</p> <p><b>ARCHI + ETC., LLC</b> ARCHITECTURE ETCETERA</p>
<p>RETAIL SHELL</p> <p>Lot 2, Westside Commercial Subdivision Replat 2 Plattsburgh, NE</p> <p>SITE PLAN</p> <p>DATE SHOWN: 03/17/18</p>	<p>18-395</p> <p>PRELIMINARY NOT FOR CONSTRUCTION</p> <p>C100</p>