

MISC 2016021615



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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
3/28/2016 13:28:30.61



2016021615

When filed return to:

Michael Shramek
Loreto LLC
8930 S 137th Circle, Suite 2
Omaha, NE 68138
(402) 510-2291

RIGHT OF ACCESS AGREEMENT

This Right of Access Agreement ("Agreement") is made this 29 day of January, 2016, by Loreto, LLC, a Nebraska limited liability company ("Loreto"), as the owner of the servient estate and the dominant estate.

RECITALS

A. Loreto owns real property commonly known as 2334 North 90th Street, Omaha, Nebraska, and legally described as:

The Shoppes at Loreto, Lot 2, Omaha, Douglas County, Nebraska (the "Property").

B. Loreto is undergoing a lot split to subdivide the Property into two (2) lots, to be known as:

Lot 1, The Shoppes at Loreto Replat 1, Omaha, Douglas County, Nebraska ("Lot 1"), and

Lot 2, The Shoppes at Loreto Replat 1, Omaha, Douglas County, Nebraska ("Lot 2").

C. Loreto desires to establish a permanent right of access across a portion of Lot 2 for the benefit of Lot 1.

D. The right of access shall be established on and across the area generally depicted and legally described on Exhibit A attached hereto and incorporated by this reference (the "Access Drive").

E. Loreto, as the owner of Lot 2, and any successors or assigns as the owner of Lot 2 (the owner of Lot 2 referred to herein as the "Grantor") grants the right of access over the Access Drive as set forth herein to Loreto, as the Owner of Lot

402-510-2291

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1, and any successors or assigns as the owner of Lot 1 (the owner of Lot 1 referred to herein as the "Grantee").

NOW THEREFORE, in consideration of the benefits described herein and other good and valuable consideration, the receipt of which is hereby acknowledged, and other valuable consideration, Grantor and Grantee agree as follows:

1. Grant of Right of Access. Grantor hereby declares, creates, grants and establishes a perpetual nonexclusive access license (the "Access License") for the benefit of Grantee and its employees, customers, agents, invitees, and guests, for access by vehicles and pedestrians, together with a perpetual nonexclusive license for ingress and egress over and across the Access Drive.

2. Maintenance. Grantor, at its sole expense, shall construct, maintain, replace and repair the driveway and all improvements located on the Access Drive, which shall be kept and maintained in good condition and repair to allow commercially reasonable access to Grantee's property. Grantor shall be responsible for operating, maintaining, repairing and replacing (including removal of snow and ice from) the Access Drive.

3. Defaults and Remedies. If Grantor fails to comply with any provision herein, then Grantee may, upon ten (10) days' prior written notice to Grantor, cure the default by the payment of money or performance of other action for the account of the Grantor. The foregoing right to cure shall not be exercised if within ten (10) days' notice (i) Grantor cures the default, or (ii) if the default is curable, but cannot reasonably be cured within that time period, Grantor begins to cure such default within such time period and thereafter diligently pursues such cure to completion. The ten (10) day notice period shall not be required if, using reasonable judgment, Grantee deems that an emergency exists. In the event of such an emergency, Grantee shall give reasonable notice under the circumstances to Grantor. Within ten (10) days following written demand, including copies of paid invoices, Grantor shall reimburse Grantee for any sum reasonably expended by Grantee to cure the default. Grantee shall also have the right to restrain by injunction any violation or threatened violation by Grantor hereto of any of the terms, covenants, or conditions hereof, or to obtain a decree to compel performance if any such term, covenant, or condition is not adequate. All remedies are cumulative and shall be deemed additional to any and all other remedies to which any owner or tenant may have at law or in equity.

4. Rights and Restrictions to Run with the Land. The benefits, burdens, licenses, and restrictions created by this Agreement shall constitute covenants running with the land and shall benefit and be binding upon all present and future owners, and their respective successors and assigns, of any portion of the Properties and upon each person having any interest therein derived through any owner thereof.

5. Modification or Termination. This Agreement and the rights and restrictions declared, granted, established, and conveyed herein are permanent in nature and may be modified, amended or terminated only by an agreement in

writing signed by Grantor and Grantee. As and to the extent required for any reason, Grantor and Grantee agree to execute a recordable document to memorialize, record, or effect any such modification, amendment or termination.

6. Further Actions. Grantor and Grantee shall execute and deliver all further documents and take all further actions reasonably necessary or appropriate to effectuate the purposes of this Agreement.

7. Governing Law. This Agreement is entered into in and shall be governed by and construed in accordance with the internal laws of the State of Nebraska.

8. Severability. If any term or provision of this Agreement is ever determined to be invalid or unenforceable for any reason, such term or provision shall be severed from this Agreement without affecting the validity or enforceability of the remainder of this Agreement.

9. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Grantor, Grantee, and their successors and assigns. Notwithstanding the foregoing, a party shall only be liable for the performance of the obligations arising under and pursuant to this Agreement to the extent such obligations arose during the time such party had an interest in one of the Properties.

10. Waiver. No waiver of any provision of this Agreement shall be binding unless executed in writing by the party making the waiver. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver unless the written waiver so specifies.

11. No Partnership or Third Party Beneficiary. This Agreement and any further documents or actions executed by the Parties in connection herewith shall not create nor be deemed under any circumstances to create any joint venture or partnership between the Parties or render them joint venturers or partners. This Agreement is made solely for the benefit of the Parties and their respective successors and permitted assigns. No other person or entity shall have or acquire any rights or remedies under this Agreement.

12. No Public Dedication. Nothing contained in this Agreement shall, or shall be deemed to, constitute a gift or dedication 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.

13. Nonmerger. Loreto, as Grantor and Grantee, has executed this Agreement with the specific intention of establishing an easement appurtenant to the land enforceable against itself and all future owners of Lot 1 and Lot 2. The easement shall not merge with and into the fee estate due to common ownership of the Property

and the easement shall not terminate except as provided in paragraph 5 of this Agreement.

14. Time of the Essence. Time is of the essence in this Agreement.

Dated as of the day first above written.

“GRANTOR”

“GRANTEE”

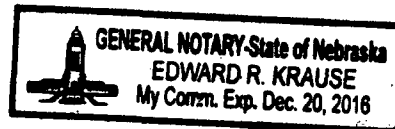
LORETO, LLC, a Nebraska limited liability company, as owner of Lot 2

LORETO, LLC, a Nebraska limited liability company, as owner of Lot 1

By: [Signature]
Name: John T. Sparstat
Title: Managing Partner

By: [Signature]
Name: John T. Sparstat
Title: Managing Partner

STATE OF NEBRASKA)
) ss.
COUNTY OF Douglas)



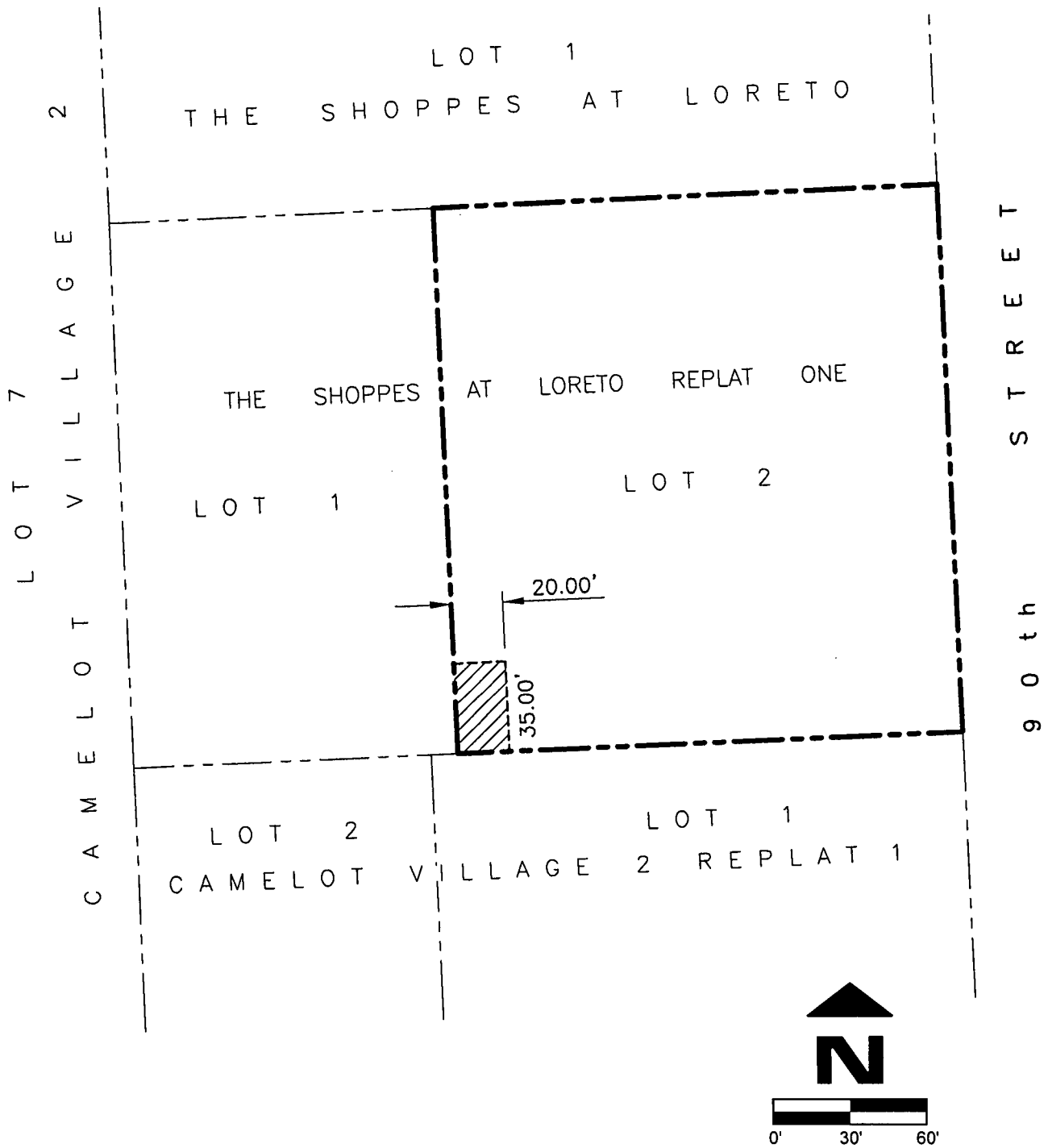
The foregoing instrument was acknowledged before me this 29th day of January, 2016, by John T. Sparstat, Manager of Loreto, LLC, a Nebraska limited liability company, on behalf of the company, as both Grantor and Grantee.

[Signature]
Notary Public

EXHIBIT "A"
ACCESS DRIVE

4813-6914-4877, v. 1

Exhibit "A"



LEGAL DESCRIPTION

THE WEST 20.00 FEET OF THE SOUTH 35.00 FEET OF LOT 2, THE SHOPPES AT LORETO REPLAT ONE, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA.

	Job Number: 1970-147-EX7	Date: JANUARY 22, 2016	<h1>EXHIBIT " A "</h1>
	thompson, dreessen & dornier, inc. 10836 Old Mill Rd Omaha, NE 68154 p.402.330.8860 f.402.330.5866 td2co.com	Drawn By: RJR Reviewed By: DHN Revision Date:	