

**POST CONSTRUCTION STORMWATER MANAGEMENT PLAN
MAINTENANCE AGREEMENT**

WHEREAS, Westroad Investors, LLC., recognizes that stormwater management facilities (hereinafter referred to as “the facility” or “facilities”) must be maintained for the development called **Topgolf**, located in the jurisdiction of the City of Omaha, Douglas County, Nebraska; and,

WHEREAS, Westroad Investors, LLC., is the owner (hereinafter referred to as “the Owner”) of the property described on Exhibit A and Exhibit A-1, attached hereto and made a part hereof (hereinafter referred to as “the Property”), and,

WHEREAS, the City of Omaha (hereinafter referred to as “the City”) requires and the Property Owner, or its administrators, executors, successors, heirs, or assigns, agree that the health, safety and welfare of the citizens of the City require that the facilities be constructed and maintained on the property, and,

WHEREAS, the Post Construction Stormwater Management Plan, **OMA-20170330-4018-P**, (hereinafter referred to as “PCSMP”), be constructed and maintained by the Property Owner, its administrators, executors, successors, heirs, or assigns, and

NOW, THEREFORE, in consideration of the foregoing premises, the covenants contained herein, and the following terms and conditions, the property owner agrees as follows:

1. The facility shall be constructed by the Owner in accordance with the PCSMP, which has been reviewed and accepted by the City of Omaha or its designee.
2. The Owner must develop and provide the “BMP Maintenance Requirements”, per the attached Exhibit “B”, which have been reviewed and accepted by the City of Omaha or its designee. The BMP Maintenance Requirements shall describe the specific maintenance practices to be performed for the facilities and include a schedule for implementation of these practices. The Plan shall indicate that the facility or facilities shall be inspected by a professional qualified in stormwater BMP function and maintenance at least annually to ensure that it is operating properly. A written record of inspection results and any maintenance work shall be maintained and available for review by the City.

3. The Owner, its administrators, executors, successors, heirs, or assigns, shall construct, and perpetually operate and maintain, at its sole expense, the facilities in strict accordance with the attached BMP Maintenance Requirements accepted by the City of Omaha or its designee.
4. During construction of the facilities, the Owner, its administrators, executors, successors, heirs, or assigns hereby grants permission to the City, its authorized agents and employees, to enter upon the property and to inspect the facilities whenever the City deems necessary. The City shall provide the Owner copies of the inspection findings and a directive to commence with the repairs if necessary. The City will require the Owner to provide, within 7 calendar days, a written response addressing what actions will be taken to correct any deficiencies and provide a schedule of repairs within a reasonable time frame. Whenever possible, the City shall provide notice prior to entry. The City shall indemnify and hold the Owner harmless from any damage by reason of the City's or its employees, contractors or agents negligent acts during such entry upon the property.
5. The Owner its administrators, executors, successors, heirs, or assigns, agrees that should it fail to correct any defects in the facility or facilities within reasonable time frame agreed to in the response by the Owner for corrective actions, or shall fail after 30 days' notice from City of Omaha to Owner, to maintain the structure in accordance with the attached BMP Maintenance Requirements and with the law and applicable executive regulation or, in the event of an emergency as determined by the City of Omaha or its designee in its sole discretion, the City of Omaha or its designee is authorized to enter the property to make all reasonable repairs, and to perform all reasonable maintenance, construction and reconstruction. Notwithstanding the foregoing, the City shall indemnify and hold the Owner harmless from any damage by reason of the City's or its employees, contractors or agents negligence during such entry upon the property.
6. The City of Omaha or its designee shall have the right to recover from the Owner any and all reasonable costs the City of Omaha expends to maintain or repair the facility or facilities or to correct any operational deficiencies subject to the provisions of the immediately preceding sentence relating to negligent acts of the City. Failure to pay the City of Omaha or its designee all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. The City of Omaha or its designee shall thereafter be entitled to bring an action against the Owner to pay, or foreclose upon the lien hereby authorized by this agreement against the property, or both. Interest, collection costs, and reasonable attorney fees shall be added to the recovery to the successful party.
7. The Owner shall not obligate the City of Omaha to maintain or repair the facility or facilities, and the City of Omaha shall not be liable to any person for the condition or operation of the facility or facilities, unless caused by the City of Omaha or its employees, contractors or agents.
8. The Owner, its administrators, executors, successors, heirs, or assigns, hereby indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims that may arise or be asserted against the City from the construction, presence, existence or maintenance of the facility or facilities by the Owner unless caused by the City of Omaha or its employees, contractors or agents. In the event a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Owner and the Owner shall defend at its own expense any suit unless caused by the City of Omaha or its employees, contractors or agents.

- 9. Based on such claim unless due solely to the negligence or wrongful act of the City in which event the City shall be required to defend any such suit at its own expense. Notwithstanding the foregoing, if any claims are made against both the City of Omaha and the Owner, each will be required to defend any such suit or claim against it at its own expense. Each shall be responsible for payment of any recovery to the extent determined in such suit. If any judgment or claims against the City, its authorized agents or employees shall be allowed, the Owner shall pay for all costs and expenses in connection herewith except to the extent of the negligent or wrongful act of the City.
- 10. The Owner shall not in any way diminish, limit, or restrict the right of the City of Omaha to enforce any of its ordinances as authorized by law.
- 11. This Agreement shall be recorded with the Register of Deeds of Douglas County, Nebraska and shall constitute a covenant running with the land and shall be binding on the Owner, its administrators, executors, successors, heirs, or assigns, including any homeowners or business association and any other successors in interest.

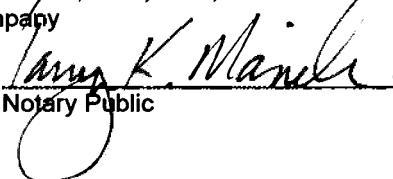
Dated this 1 day of Oct, 2019.

Westroad Investors, LLC

By: 
Drew Snyder, Managing Member

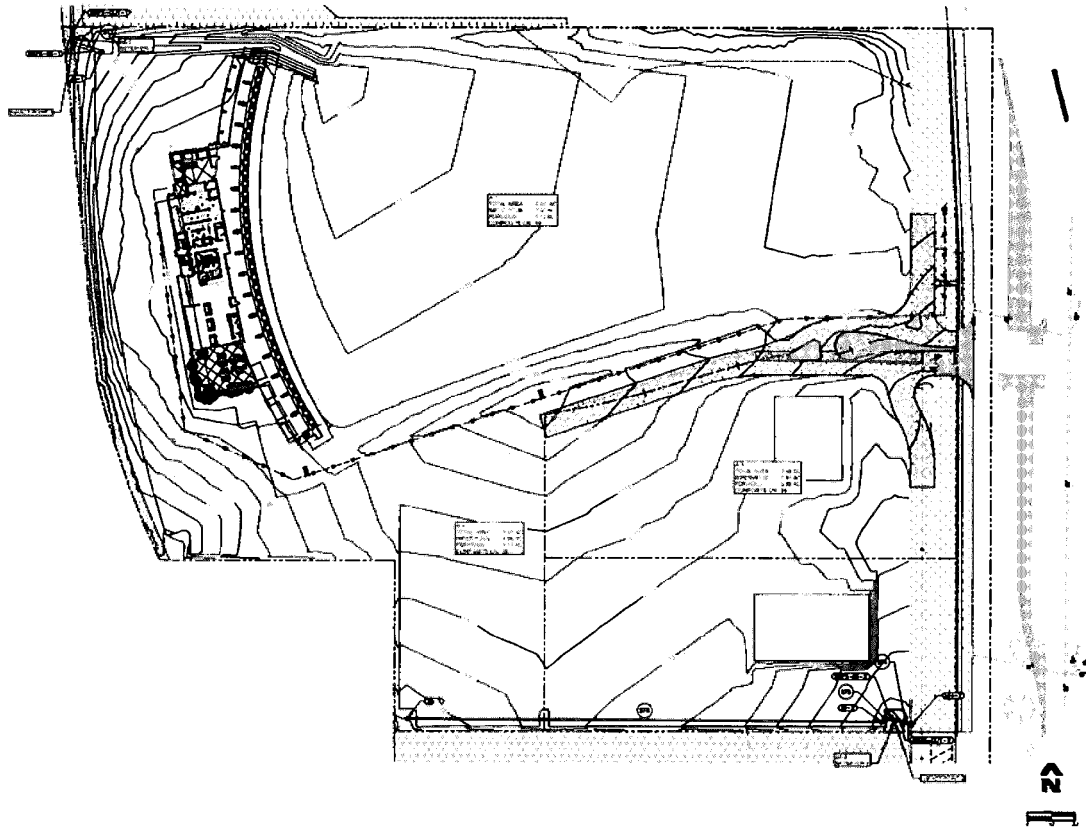
State of Nebraska)
)ss.
County of Douglas)

The foregoing agreement was acknowledged before me this 1 day of Oct, 2019 by **Drew Snyder, Managing Member of Westroad Investors, LLC**, a Nebraska Limited Liability Company, on behalf of said Limited Liability Company


Notary Public

State of Nebraska – General Notary
TANYA K MADRELL
My Commission Expires
March 21, 2023

EXHIBIT 'A'



PROJECT INFORMATION

Legal Description:

Lot 1, Putt n Place and Lots 1 and 2 Putt n Place replat one in Douglas County, Nebraska,

Property Address:

908 N 102 Street
Omaha, NE 68114

Subdivision Name:

Puttn Place

Section:

SW 16-15-12

APPLICANT INFORMATION

Business Name:

Westroad Investors, LLC

Business Address:

17007 Marcy Street, Suite 2
Omaha, NE 68118

Representatives Name:

Drew Snyder

Representative's Email:

drew@woodsonia.net

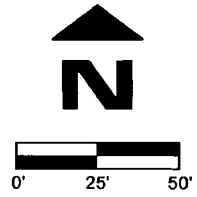
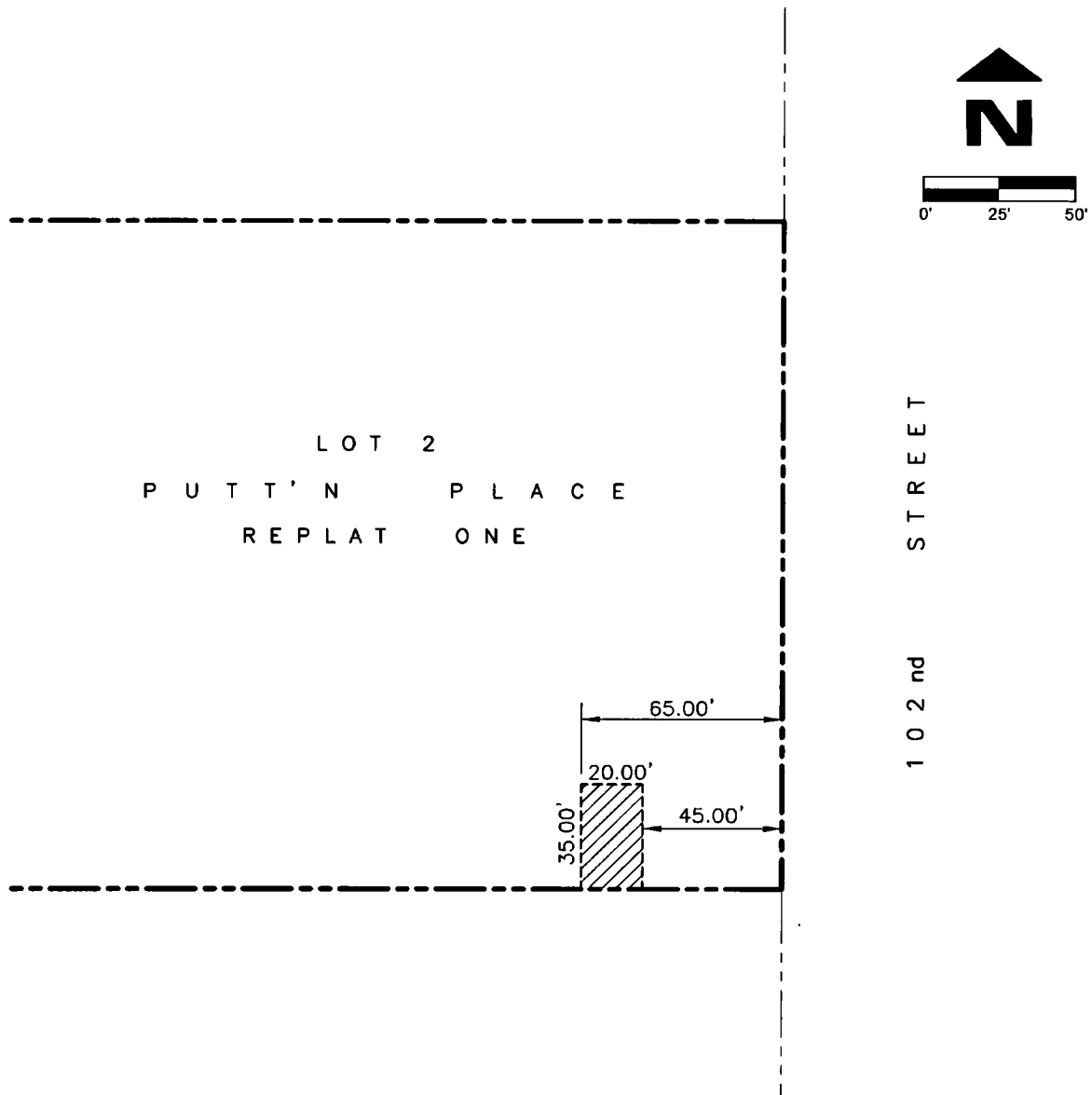
Representative's Phone:

(402) 513-9003

BMP INFORMATION

Name	Description	Latitude/Longitude
BS-1	Baysaver (ADS, INC.) (Model 120K)	N41.268126°, W96.015794°
BS-2	Baysaver (ADS, INC.) (Model 5K)	N41.266135°, W96.072170°

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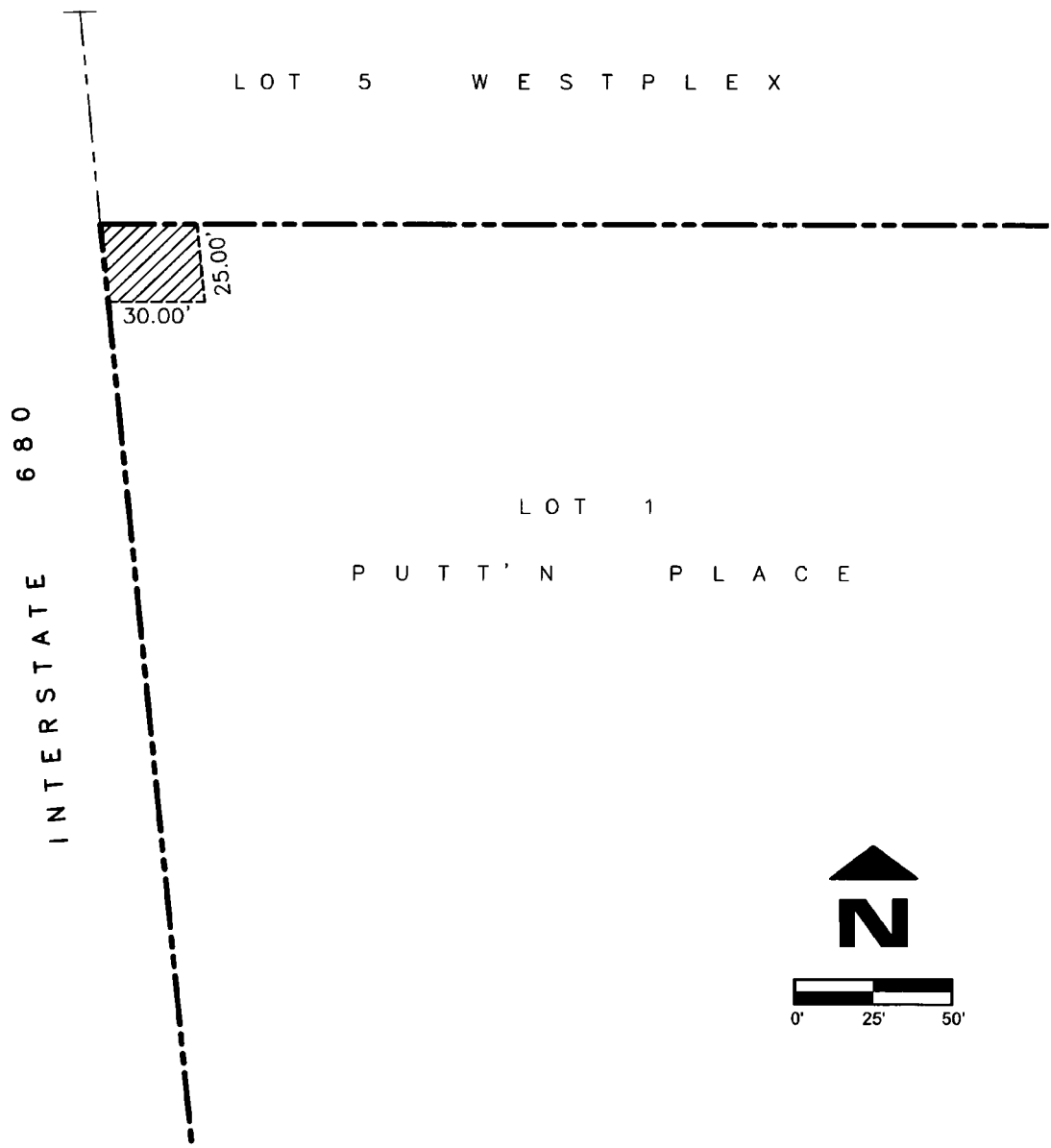


LEGAL DESCRIPTION

THE WEST 20.00 FEET OF THE EAST 65.00 FEET OF THE SOUTH 35.00 FEET OF LOT 2, PUTT'N PLACE REPLAT ONE, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA

	Job Number: 2069-101-EX2	Date: JUNE 26, 2019	EXHIBIT "A-1"
	thompson, dreessen & dorner, 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: 10/25/2019	

7/1/2019 1:33 PM DAVE NEEF H:\2000\2069 Woodsonia Real Estate\2069-101 Woodsonia Real Estate Top Golf\Survey\Drawings\2069-101-EX1.dwg



LEGAL DESCRIPTION

THE NORTH 25.00 FEET OF THE WEST 30.00 FEET OF LOT 1, PUTT'N PLACE,
A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA



Job Number: 2069-101-EX1
thompson, dreessen & dorner, inc.
10836 Old Mill Rd
Omaha, NE 68154
p.402.330.8860 f.402.330.5866
td2co.com

Date: JUNE 26, 2019
Drawn By: RJR
Reviewed By: DHN
Revision Date:

EXHIBIT " A-2 "

Book
Page

Exhibit "B"
BMP Maintenance Plan
Westroad Investors, LLC
Topgolf
 Oma-20170330-4018-P

I. GENERAL BMP INFORMATION

BMP ID	Type of BMP	Location	Legal Description
BS-1	BaySaver (ADS, INC.) (Model 120K)	See Exhibit "A"	See Exhibit "A-1"
BS-2	BaySaver (ADS, INC.) (Model 5K)		

II. BMP SITE LOCATION MAP
 See Exhibit 'A'

III. ROUTINE MAINTENANCE TASKS AND SCHEDULE

- BS-1:** BaySaver (ADS, INC.) (Model 120K)
- BS-2:** BaySaver (ADS, INC.) (Model 5K)

Inspection and Cleaning Cycle:

Inspections shall begin as soon as construction is completed and thereafter on a quarterly basis. Inspections shall include the removal of the primary and storage manhole covers to visually inspect the amount of accumulated sediment, oil, and debris. The sediment depth in each manhole shall be measured by lowering a pole into the manhole until it hits the sediment and measuring the distance from the bottom of the pole to the water line mark on the pole. If this distance is less than 6 feet, the system will need to be cleaned or when visual inspection shows a large accumulation of debris or oil.

Maintenance Instructions:

Note: For each Baysaver System, there are 2 manholes to clean; the primary manhole and storage manhole.

1. Remove the manhole covers to provide access to the pollutant storage.
2. **Storage Manhole:** Use a vacuum truck or other similar equipment to remove all water, debris, oils, and sediment.
3. **Storage Manhole:** Use a high-pressure hose to clean the manhole of all remaining sediment and debris. Then, use the vacuum truck to remove the water.
4. **Primary Manhole:** Use a submersible pump to pump the bulk of the water from the primary manhole into the clean storage manhole:
 - a. Keep the pump below the water surface.
 - b. Stop pumping when the water surface is one (1) foot above the accumulated sediments.
5. **Primary Manhole:** Use a vacuum truck or other similar equipment to remove all water, debris, oils, and sediment.
6. **Primary Manhole:** Use a high-pressure hose to clean the manhole of all remaining sediment and debris. Then, use the vacuum truck to remove the water.
7. **Primary Manhole:** Fill the cleaned primary manhole with water until you have a depth of 8 feet.
8. **Storage Manhole:** Top off the storage manhole with water until you have a depth of 8 feet.
9. Replace the two manhole covers.
10. Dispose of the polluted water, oils, sediment, and trash at an approved facility.
 - Local regulations prohibit the discharge of solid material into the sanitary sewer system.

- It is the responsibility of the person providing the maintenance to the Baysaver to dispose of the pollutants in accordance with local, state, and federal regulations.
11. The maintenance and inspection reports shall at a minimum include the following information;
- a. Date and time inspection was performed.
 - b. Visual inspection descriptions of the primary and storage manholes.
 - c. Sediment depths of the primary and storage manholes.
 - d. Date and time routine maintenance was performed on 3K BaySaver® Separation System.

Note: If any variations occur between the maintenance tasks and schedule noted above and the current BaySaver® Separation System Maintenance Manual, the current BaySaver® Separation System Maintenance Manual (www.baysaver.com) shall govern.

Note: Per City of Omaha requirements, annual maintenance inspection reports shall be performed by a registered Nebraska professional engineer, architect, or qualified professional.