

---

(The above space for use of Register of Deeds)

Upon recording, return to:  
Amy L. Lawrenson  
Baird Holm LLP  
1700 Farnam Street, Suite 1500  
Omaha, NE 68102

**CROSS ACCESS EASEMENT AGREEMENT**

**THIS CROSS ACCESS EASEMENT AGREEMENT** (this "Agreement") is entered into by and between **HUGO WESTROADS DEVELOPMENT, LLC**, a Nebraska limited liability company ("Hugo"), and **WESTROADS INVESTORS, LLC**, a Nebraska limited liability company ("Westroads"), to be effective as of December 16, 2022 ("Effective Date"). Hugo and Westroads are collectively referred to in this Agreement as the "Parties" and each individually as a "Party."

**RECITALS:**

**WHEREAS**, Hugo owns that certain real property legally described on Exhibit A, attached hereto and incorporated herein by this reference (the "Hugo Parcel");

**WHEREAS**, Westroads owns that certain real property directly adjacent to the Hugo Property and legally described on Exhibit B, attached hereto and incorporated herein by this reference ("Westroads Parcel").

**WHEREAS**, Westroads desires the permanent non-exclusive right of ingress and egress on, over, and across that certain portion of the Hugo Parcel in such location as generally depicted in Exhibit C, attached hereto and incorporated herein ("Hugo Easement Area");

**WHEREAS**, Hugo desires the permanent non-exclusive right of ingress and egress on, over, and across that certain portion of the Westroads Parcel in such location as generally depicted in Exhibit D, attached hereto and incorporated herein ("Westroads Easement Area"); and

**WHEREAS**, the Parties desires to grant to each other a non-exclusive access easement for ingress and egress on, over, and across their respective parcels, pursuant to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Hugo and Westroads agree as follows:

1. **Hugo Easement.** Subject to the terms and conditions of this Agreement, Hugo hereby grants to Westroads, for the use by Westroads and by Westroads' successors, assigns, and tenants, and

their respective employees, contractors, agents, representatives, guests, and invitees (collectively, the "Westroads Benefited Parties"), a non-exclusive perpetual right of access on, over, and across the Hugo Easement Area for the purpose of reasonable ingress and egress by all modes of transportation to public rights of way (collectively, the "Hugo Easement"). Hugo may, at its election, establish reasonable rules and regulations in connection with the use of the Hugo Easement provided Hugo gives Westroads and its tenants advance written notice of any such rules and regulations and provided such rules and regulations do not unreasonably conflict with or impair the ability of the Westroads Benefitted Parties to exercise their rights under the Hugo Easement and are applied uniformly to all users of the Hugo Easement Area.

2. **Westroads Easement.** Subject to the terms and conditions of this Agreement, Westroads hereby grants to Hugo, for the use by Hugo and Hugo's successors, assigns, and tenants, their respective employees, contractors, agents, representatives, guests, and invitees (collectively, the "Hugo Benefited Parties"), a non-exclusive perpetual right of access on, over, and across the Westroads Easement Area for the purpose of reasonable ingress and egress by all modes of transportation to public rights of way (collectively, the "Westroads Easement"). Westroads may, at its election, establish reasonable rules and regulations in connection with the use of the Westroads Easement Area provided Westroads gives Hugo and its tenants advance written notice of any such rules and regulations and provided such rules and regulations do not unreasonably conflict with or impair the ability of the Hugo Benefitted Parties to exercise their rights under the Westroads Easement and are applied uniformly to all users of the Westroads Easement Area.

**Fencing.** Prior to use of the Hugo Easement by the Westroads Benefited Parties, Westroads, at Westroads' expense, shall install fencing on the Westroads Parcel in any area where the Hugo Parcel and Westroads Parcel is not separated by a curb, median, or other barrier, to restrict access on Hugo's Parcel other than across the point(s) of access for the Hugo Easement Area, provided however, that (i) the foregoing requirement shall not apply to the "Premises" as defined in that certain Temporary Leaseback Agreement dated December 16 2022 by and between Grantor (as 'landlord') and Grantee (as 'tenant') during the term of said Temporary Leaseback Agreement and (ii) Hugo shall remove fencing along the boundary between the Hugo Parcel and TopGolf's premises pursuant to any separate agreement in writing between Hugo and TopGolf (e.g., temporary parking easement agreement). Hugo shall remove such fencing, at Hugo's expense, upon completion of development of the Hugo Parcel.

3. **Modifications.** The Parties shall have the right, at their sole expense, to modify the location of the respective easement areas on their respective parcel to any location on the eastern sixty (60) feet of their respective parcels so as to reasonably accommodate the development of, use of, or operations on, their respective parcel. The consent of the other Party shall not be required for any such relocation provided the new location aligns with an access location on the other parcel at the time of such modification. Upon modification of the location of the respective Easement Area, the modifying Party shall file a notice depicting the new location of the respective Easement Area in the real estate records of Douglas County, Nebraska. By way of clarification as to the reasonable expectations of the Parties with regard to potential modifications to the easement areas, the Parties recognize that each Party may determine that the highest and best use of their respective parcel for access and other purposes which may involve: terracing, changes in contour, creation of additional areas where access may be utilized, or the restriction or elimination of portions of the access areas presently called out in this Agreement. The foregoing notwithstanding, neither Party shall exercise its rights under this Agreement in any way, or take any action, or allow any action to be taken, whether temporary or permanent, which shall unreasonably restrict access to, or visibility of, that (i) portion of Lot 2 (as described in Exhibit B) occupied by Chipotle Mexican Grill, Inc. ("CMG") or its signs, materially impair or interfere in any way the operation of CMG's business, or affect in any way the number of parking spaces or location thereof or the ingress or egress including any driveways which are adjacent to or in the proximity of the CMG premises, without CMG's prior written consent or (ii) portion of Lot 1 (as described in Exhibit B) occupied by TopGolf USA Omaha, LLC ("TopGolf") or its signs, materially impair or interfere in any way the operation of TopGolf's business, or affect in any way the number of parking spaces or location thereof or the ingress or egress including any driveways which are adjacent to or in the proximity of the TopGolf's premises, without TopGolf's prior written consent. Clause (i) in the foregoing sentence shall become null and void upon the expiration or earlier termination of that certain Lease Agreement dated June 12, 2019, by and between Westroads and CMG, as same may be amended,

extended, or modified; prior to such expiration or termination, the Parties acknowledge that CMG is an intended, third-party beneficiary of this Agreement and may enforce the foregoing provisions by all available remedies at law or in equity and clause (ii) in the foregoing sentence shall become null and void upon the expiration or earlier termination of that certain Lease Agreement dated October 20, 2017, by and between Westroads and TopGolf, as same may be amended, extended, or modified; prior to such expiration or termination, the Parties acknowledge that TopGolf is an intended, third-party beneficiary of this Agreement and may enforce the foregoing provisions by all available remedies at law or in equity.

4. **Reservation of Right.** Each Party hereby reserves unto itself, and to any successor owner or owners of their respective parcel, the right to utilize the easement area on their respective parcel for such purposes as the Party sees fit in its sole discretion. Notwithstanding the foregoing, each Party agrees that it shall not make any use of the respective easement area in any manner that would unreasonably conflict with or impair the ability of the Hugo Benefited Parties or Westroads Benefitted Parties, as applicable, to exercise their rights as described herein under the Hugo Easement and Westroads Easement, as applicable.

5. **Repair and Maintenance.** Hugo shall be responsible for the expense related to the reasonable repair and maintenance of the Hugo Easement Area on the Hugo Parcel; provided, however, each Party shall be solely responsible for any repairs and maintenance necessary as a result of the gross negligence or willful misconduct of its respective employees, tenants, agents, guests, invitees, contractors, subcontractors, representatives, guests, and invitees. Westroads shall be responsible for the expense related to the reasonable repair and maintenance of the Westroads Easement Area on the Westroads Parcel; provided, however, each Party shall be solely responsible for any repairs and maintenance necessary as a result of the gross negligence or willful misconduct of its respective employees, tenants, agents, guests, invitees, contractors, subcontractors, representatives, guests, and invitees. Each Party shall provide reasonable advance notice to the other Party of any repairs or maintenance of their respective easement areas (except where necessary to respond to an emergency) and shall exercise commercially reasonable good faith efforts not to unreasonably interfere with or impair the use of the respective easements with any such repair or maintenance activities. Notwithstanding anything to the contrary contained in this Agreement, in the event that any Party performs any construction on its respective parcel, such constructing Party shall be solely responsible for the entire cost (and the non-constructing Party shall not be responsible for repair and maintenance of its respective easement area and the constructing Party is not entitled to any reimbursement from the non-constructing Party for such cost) and the prompt performance of all repair and maintenance of the respective easement area (i) arising as a result of any damage to the respective easement area from the use by any construction vehicles and equipment or due to such construction activities and (ii) necessary to restore the respective easement area to substantially the same condition in which it existed immediately prior to the commencement of the use by any construction vehicles and equipment or due to such construction activities by such Party. Each Party agrees that during the term of the performance of any construction activity by any Party any construction vehicles and equipment relating to such work shall at all times use commercially reasonable efforts to utilize the curb cut to the public right of way closest to its parcel to access the applicable parcel to minimize the impact on the non-construction party's respective easement area.

6. **Taxes.** Hugo shall be exclusively responsible for any real property taxes for the Hugo Parcel and shall indemnify Westroads for the same, and Westroads shall be exclusively responsible for any real property taxes for the Westroads Parcel and shall indemnify Hugo for the same.

7. **Indemnity.** Except to the extent arising from the negligence or willful misconduct of Hugo or Hugo's Benefited Parties, Westroads shall indemnify and hold Hugo harmless from and against any and all claims or suits for damages, liability, loss, expenses, causes of action, and judgments (including, but not limited to, reasonable attorneys' fees and legal expenses in connection with defending against any such action, suit, or claim) arising from injury to or death of any person or loss of or damage to property arising out of the Westroads Benefited Parties' use of the Hugo Easement Area or exercise of the Hugo Easement rights granted under this Agreement. Except to the extent arising from the negligence or willful misconduct of Westroads' or Westroads Benefited Parties, Hugo shall indemnify and hold Westroads harmless from and against any and all claims or suits for damages, liability, loss, expenses, causes of action, and

judgments (including, but not limited to, reasonable attorneys' fees and legal expenses in connection with defending against any such action, suit, or claim) arising from injury to or death of any person or loss of or damage to property arising out of the Hugo Benefited Parties' use of the Westroads Easement Area or exercise of the Westroads Easement rights granted under this Agreement.

8. **Representations.** Hugo represents and warrants that it owns the Hugo Parcel in fee simple, subject to easements, covenants, and restrictions of record. Westroads represents that it owns the Westroads Parcel in fee simple, subject to easements, covenants, and restrictions of record. Hugo and Westroads each represent that the individual executing this Agreement has been duly authorized to enter into this Agreement.

9. **Enforcement.** The provisions of this Agreement may be enforced by an action for injunctive relief, as well as by all other available remedies at law or in equity. Additionally, in the event the constructing Party fails to pay or perform its duties described in paragraph 6, the non-constructing Party shall have the right to perform the same if the constructing Party's failure continues for ten (10) days after receiving written notice of such failure from the non-constructing Party. The constructing Party shall on demand reimburse the non-constructing Party for the costs and expenses incurred to cure the failure together with interest thereon at a rate of the lesser of (i) the per annum interest rate from time to time publicly announced by Citibank, N.A., New York, New York as its base rate (i.e., its Prime Rate) plus four percent (4%) or (ii) the highest rate of interest that may lawfully be charged per applicable law. No breach of any provision of this Agreement by any Party shall give the other Party the right to cancel, rescind, or otherwise terminate this Agreement, but this provision shall not be deemed to affect any other rights or remedies which the non-breaching Party may have, or claim to have, by reason of the breach.

10. **Binding Effect.** The Easement granted hereunder and all provisions of this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

11. **Miscellaneous.** This Agreement contains the entire agreement of the Parties regarding the subject matter of this Agreement. This Agreement shall be construed and governed by the laws of the State of Nebraska. The paragraph headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part thereof. The Recitals' provisions of this Agreement are incorporated herein by this reference. If any provision of this Agreement is held invalid, illegal, or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable and if, for any reason, a court finds that any provision of this Agreement is invalid, illegal, or unenforceable as written, but that by limiting such provision it would become valid, legal, and enforceable, then such provision shall be deemed to be written and shall be construed and enforced as so limited. This Agreement may be executed in one or more counterparts, all of which taken together shall be one original.

**[Signatures follow]**

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

HUGO:

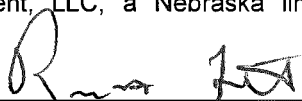
HUGO WESTROADS DEVELOPMENT, LLC, a Nebraska limited liability company

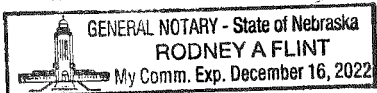
By:   
J. Joe Ricketts, President

Date: December 15, 2022

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS     )

The foregoing instrument was acknowledged before me December 15, 2022 by J. Joe Ricketts, in his capacity as President of Hugo Westroads Development, LLC, a Nebraska limited liability company, on behalf of the company.

  
Notary Public



**WESTROADS:**

WESTROADS INVESTORS, LLC, a Nebraska limited liability company

By: DRAKE WESTROADS, LLC, a Kansas limited liability company, Co-Manager

By: OMAHA INVESTORS, LLC, a Kansas limited liability company, Manager

[Signature]  
Matt Pennington, Manager

Date: 12/14, 2022

By: WOODSONIA 730-908 N. 102<sup>ND</sup>, LLC, a Nebraska limited liability company, Co-Manager

By: DREW SNYDER REAL ESTATE, LLC, a Kansas limited liability company, Manager

[Signature]  
Drew Snyder, Manager

Date: \_\_\_\_\_, 20\_\_\_\_

STATE OF KS )  
 ) ss.  
COUNTY OF JOHNSON )

The foregoing instrument was acknowledged before me 12/14, 2022 by Matt Pennington in his capacity as Manager of Omaha Investors, LLC, a Kansas limited liability company, as Manager of Drake Westroads, LLC, a Kansas limited liability company, as Co-Manager of Westroads Investors, LLC, a Nebraska limited liability company, on behalf of the companies.



[Signature]  
Notary Public

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me \_\_\_\_\_, 20\_\_\_\_ by Drew Snyder in his capacity as Manager of Drew Snyder Real Estate, LLC, a Kansas limited liability company, as Manager of Woodsonia 730-908 N 102<sup>nd</sup>, LLC, a Nebraska limited liability company, as Co-Manager of Westroads Investors, LLC, a Nebraska limited liability company, on behalf of the companies.

\_\_\_\_\_  
Notary Public



**Westroads' Lienholder Consent**

Enterprise Bank ("**Lienholder**") is the holder of those certain Deeds of Trust recorded with the Register of Deeds of Douglas County, Nebraska as Instrument No. 2017018066, Instrument No. 2018056810, Instrument No. 2018056890, Instrument No. 2018056892, Instrument No. 2018056808, Instrument No. 2018056891, and Instrument No. 2019095017 (collectively, the "**Enterprise Deed of Trust**"), encumbering the property of Westroads in the foregoing Cross Access Easement Agreement ("**Agreement**"). Lienholder hereby consents to the Agreement and agrees that the Enterprise Deed of Trust shall be subject and subordinate to the Agreement.

**LIENHOLDER:**

**Enterprise Bank**

By: Jeff E  
Name: Jeff Eikmeier  
Title: Sr. Vice President

STATE OF Nebraska )

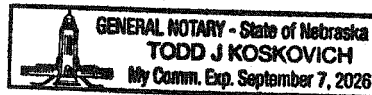
COUNTY OF Douglas )

I, Todd J Koskovich, a notary public in and for said County, in the aforesaid State, do hereby certify that Jeff Eikmeier, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument, pursuant to authority given to him by the governing body of said entity, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 15 day of August, 2022.

Todd J Koskovich  
Notary Public

Commission Expires: \_\_\_\_\_





**EXHIBIT A**

**LEGAL DESCRIPTION OF HUGO PARCEL**

LOT 3, PUTT'N PLACE REPLAT TWO, LOTS 1, 2 AND 3, ALL SUBDIVISIONS IN DOUGLAS COUNTY, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR DOUGLAS COUNTY, NEBRASKA, ON DECEMBER 6, 2022, AS INSTRUMENT NO. 2022116652, BEING A REPLATTING OF LOT 1, PUTT'N PLACE, LOTS 1, 2, 3 AND OUTLOT "A", ALL SUBDIVISIONS IN DOUGLAS COUNTY, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR DOUGLAS COUNTY, NEBRASKA, ON MAY 13, 2018, AS INSTRUMENT NO. 2018033180, LOT 1 AND LOT 2, PUTT'N PLACE REPLAT ONE, LOTS 1 AND 2, ALL SUBDIVISIONS IN DOUGLAS COUNTY, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR DOUGLAS COUNTY, NEBRASKA, ON SEPTEMBER 5, 2019, AS INSTRUMENT NO. 2019072237, A PORTION OF LOT 1, H&H WESTROADS, LOTS 1 AND 2, ALL SUBDIVISIONS IN DOUGLAS COUNTY, NEBRASKA, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR DOUGLAS COUNTY, NEBRASKA, ON MAY 6, 2019, AS INSTRUMENT NO. 201902858.

**EXHIBIT B**

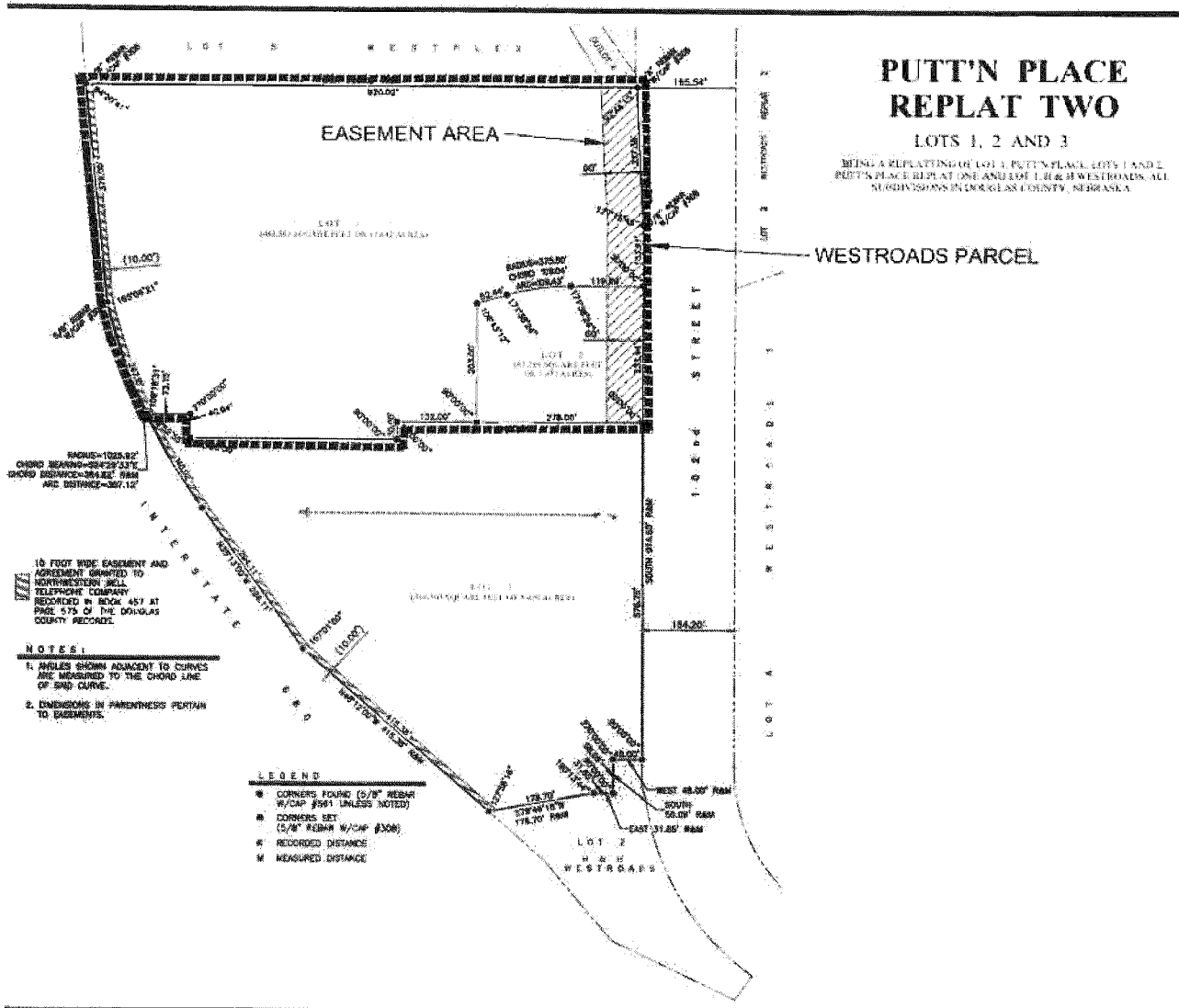
**LEGAL DESCRIPTION OF WESTROADS PARCEL**

LOTS 1 AND 2, PUTT'N PLACE REPLAT TWO, LOTS 1, 2 AND 3, ALL SUBDIVISIONS IN DOUGLAS COUNTY, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR DOUGLAS COUNTY, NEBRASKA, ON DECEMBER 6, 2022, AS INSTRUMENT NO. 2022116652, BEING A REPLATTING OF LOT 1, PUTT'N PLACE, LOTS 1, 2, 3 AND OUTLOT "A", ALL SUBDIVISIONS IN DOUGLAS COUNTY, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR DOUGLAS COUNTY, NEBRASKA, ON MAY 13, 2018, AS INSTRUMENT NO. 2018033180, LOT 1 AND LOT 2, PUTT'N PLACE REPLAT ONE, LOTS 1 AND 2, ALL SUBDIVISIONS IN DOUGLAS COUNTY, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR DOUGLAS COUNTY, NEBRASKA, ON SEPTEMBER 5, 2019, AS INSTRUMENT NO. 2019072237, A PORTION OF LOT 1, H&H WESTROADS, LOTS 1 AND 2, ALL SUBDIVISIONS IN DOUGLAS COUNTY, NEBRASKA, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR DOUGLAS COUNTY, NEBRASKA, ON MAY 6, 2019, AS INSTRUMENT NO. 201902858.



EXHIBIT D

DEPICTION OF WESTROADS EASEMENT AREA



PUTTIN PLACE REPLAT TWO  
 LOTS 1, 2 AND 3



NO.	DESCRIPTION	DATE

Job No.: 2021-144-4E/4  
 Drawn By: EJR  
 Reviewed By: JCV  
 Date: JULY 23, 2021  
 Sheet:  
 Page:

WESTROADS PARCEL  
 EASEMENT AREA

EXHIBIT "D"