
COVER SHEET FOR RECORDING

Title of Document: DECLARATION OF EASEMENTS, COVENANTS,
RESTRICTIONS AND CONDITIONS

Date of Document: February 28, 2019

Grantor: WESTROADS INVESTORS, LLC,
a Nebraska Limited Liability Company

Grantor's Address: 17007 Marcy Street, Suite 2,
Omaha, NE 68118

Grantee: WESTROADS INVESTORS, LLC,
a Nebraska Limited Liability Company

Grantee's Address: 17007 Marcy Street, Suite 2,
Omaha, NE 68118

Legal Description/Address: See Exhibit A

Reference: N/A

AFTER RECORDING RETURN TO:

Levy Craig Law Firm
Attn: Jeff Bauer
4520 Main Street, Suite 1600
Kansas City, Missouri 64111

{1028/005/REA/01256715;16 } *320BIC-13*

**DECLARATION OF
EASEMENTS, COVENANTS, RESTRICTIONS AND CONDITIONS**

This DECLARATION OF EASEMENTS, COVENANTS, RESTRICTIONS AND CONDITIONS (this “**Declaration**”) is made this 28 day of February 2019, by WESTROADS INVESTORS, LLC, a Nebraska limited liability company (“**Declarant**”), its successors and assigns.

RECITALS:

- A. Declarant is the owner of that certain real property situated in the County of Douglas, State of Nebraska, as more particularly described on Exhibit “A” attached hereto and incorporated herein, and as depicted in the Site Plan attached hereto as Exhibit “B” and incorporated herein (the “**Site Plan**”), which real property is herein referred to as the “**Development**”.
- B. Declarant and TopGolf USA Omaha LLC, a Delaware limited liability company (“**Topgolf**”) have entered into that certain Ground Lease, dated October 20, 2017, as amended by that certain First Amendment to Lease, dated November 16, 2017 (including any replacement or reinstatement thereof pursuant to its terms, the “**Topgolf Lease**”), whereby Declarant has leased a portion of the Development, as more particularly described in Exhibit “C” attached hereto and incorporated herein (the “**Topgolf Premises**”), to Topgolf, and Topgolf has leased the same from Declarant.
- C. Declarant desires the Development be developed and operated in a manner mutually advantageous to all Lots (as hereinafter defined). Accordingly, Declarant hereby establishes a general plan for the improvement, protection, development, maintenance and use of the Lots for commercial purposes, and does hereby establish covenants, easements, restrictions, and conditions (collectively the “**Restrictions**”). The Development shall be improved, held, exchanged, leased, sold or conveyed subject to the Restrictions, and each of the Restrictions is imposed upon each Lot in the Development as a mutual equitable servitude in favor of the other Lots and every part thereof.
- D. Declarant desires to impose certain easements upon the Lots, and to establish certain covenants, conditions and restrictions with respect to said Lots, all for the mutual and reciprocal benefit and complement of the Lots and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the covenants herein contained, Declarant hereby declares that the Lots and all present and future owners and occupants of the Lots shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Declaration so that said Lots shall be maintained, kept, sold and used in full compliance with and subject to this Declaration and, in connection therewith.

AGREEMENTS:

- 1. **DEFINITIONS.** For purposes hereof:
 - a. The term “**Business Center ID Sign**” means the shared pylon sign which Declarant shall construct and maintain in the location depicted on the Site Plan for the use of the Occupants. The Business Center ID Sign shall be constructed and maintained by Declarant in compliance with all Laws. Topgolf shall have the use of the top panel of the advertising/display area on the Business Center ID Sign. Each Occupant utilizing a portion of the Business Center ID Sign shall pay its annual pro rata share of the costs incurred by Declarant in connection with both the

{1028/005/REA/01256715;16 }

initial construction and installation of the Business Center ID Sign and the ongoing maintenance of the Business Center ID Sign, by no later than thirty (30) days after receipt of an invoice from Declarant with reasonable supporting documentation to evidence the costs for all applicable parties. For clarity, Declarant shall only invoice Topgolf for its pro rata share of the costs incurred by Declarant in connection with the initial construction and installation of the Business Center ID Sign and the ongoing maintenance of the Business Center ID Sign one time per year. Any invoiced amount not paid within such thirty (30) day period shall accrue interest at the Default Rate of Interest, as defined herein. For purposes hereof, each such Occupant's pro rata share shall be calculated by dividing the total size of the advertising display area on the Business Center ID Sign by the total size of the advertising display area on the Business Center ID Sign made available by Declarant to each such Occupant. Topgolf shall have the use of forty percent (40%) of the total advertising/display area on the Business Center ID Sign and, accordingly, Topgolf's pro rata share of the construction, installation and maintenance costs described in this Section shall be forty percent (40%).

- b. The term "**City**" means the City of Omaha, Nebraska.
- c. The term "**Common Facilities**" means the shared drives and grass areas identified as Common Facilities on the Site Plan including, without limitation, lighting, irrigation, landscaping of the Common Facilities.
- d. The term "**Common Facilities Expense**" means all actual and reasonable fees and costs in connection with maintaining, repairing and replacing the Common Facilities, including, without limitation, all utility expenses for lighting, landscaping expenses, and maintenance expenses for grass areas located within the Common Facilities, and in connection with any commercial general public liability insurance policy maintained by Declarant for the Development.
- e. The term "**Default Rate of Interest**" means 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 to the party then required to pay interest under this Declaration at the Default Rate. If Citibank, N.A. should cease to publicly announce its base rate, the Prime Rate hereunder shall be the prime, base or reference rate of the largest bank (based on assets) in the United States which announces such rate.
- f. The term "**Design Standards**" means the rules, regulations, restrictions, architectural standards, and construction guidelines described in Article 2 of this Declaration, as may be amended from time to time.
- g. "**Law**" or "**Laws**" means any and all applicable laws, statutes, codes, ordinances, rules or regulations as may be promulgated by each local, state or federal governmental agency having jurisdiction over the Development, as the same may be amended from time to time, subject to all variances to such applicable laws, statutes, codes, ordinances, rules or regulations approved for the Development by the applicable local, state or federal governmental agency.
- h. The term "**Lot**" or "**Lots**" shall mean each separately identified parcel of real property now constituting a part of the Development.
- i. The term "**Occupant**" means any party from time to time entitled to the use and occupancy of any Lot or portion of a Lot in the Development as an Owner, or under any lease, license or

{1028/005/REA/01256715;16 }

concession agreement, or other similar agreement with an Owner.

- j. The term “**Owner**” means the fee owner or owners of each Lot within the Development, or any part thereof, and their respective heirs, assigns, grantees, and successors in interest.
- k. The term “**Parking Areas**” shall mean all portions of the Development designated and shown as parking areas, spaces or lots on the Site Plan.
- l. The term “**Restricted Building Area**” shall mean that portion of the Development referred to as the Restricted Building Area on the Site Plan, upon which (i) no building, structure, sign, or advertising device shall be constructed; and (ii) no other landscaping or other obstructions may be constructed or installed which would block the view of the Topgolf Facility, the Business Center ID Sign, or any signage at the Topgolf Facility.
- m. The term “**Topgolf Facility**” shall mean the golf entertainment center containing approximately 55,000 square feet located on the Topgolf Premises.

2. DEVELOPMENT STANDARDS.

- a. **Design Standards.** To achieve uniformity and coordination within the Development, the following Design Standards for the Development are hereby established:
 - 1. Exterior Equipment and Signs. All exterior equipment, if any, shall be screened so as to obscure, to the extent reasonably possible, the viewing of such equipment from any street or parking area. Exterior signs shall comply with all Laws.
 - 2. Construction, Location, and Size Limitations. All buildings and other improvements shall be located on each Lot in full compliance with all applicable set back lines or restrictions and all applicable Laws. When such improvement is completed, all exposed excavations and openings will be back filled and graded. Once commenced, construction of an improvement will be diligently pursued to completion.
 - 3. Construction Period Requirements. During the period that construction is being undertaken on a Lot, no dumping of construction materials, waste or trash shall occur in the Development except in a commercially standard dumpster located on such Lot, and each Lot shall be maintained in a clean and orderly manner. Erosion shall be controlled as reasonably necessary on each Lot while it is in a disturbed condition.
 - 4. Traffic Signs and Control Devices. All traffic signs, road markings and signalization will be designed and installed in accordance with City regulations.
 - 5. Irrigation Systems. An irrigation system to maintain all landscaping and planted areas, including grass areas located on adjacent City right-of-way areas, shall be installed on each Lot upon completion of construction of a building upon each such Lot.
 - 6. Paved Surfaces: Striping and Painting. All paved surfaces shall be of high-quality finish such as asphalt, concrete or other permanent material, and designed in accordance with all Laws. Streets, roadways, aisles and entrance/exit ways within the Development shall be substantially as shown on the Site Plan and shall comply with all Laws. Streets, roadways, and aisleways connecting the Lots or used for ingress and egress to and from the Lots shall

{1028/005/REA/01256715;16 }

be constructed of the same materials so as to create a uniform paved surface between the Lots.

7. Sanitary and Storm Sewers. All sanitary sewers shall comply with all Laws and the requirements of the applicable sewer district.
8. Utilities. All utilities shall be placed underground, provided, however, that nothing in this Declaration shall require temporary utilities to be placed underground. Trenches for underground utility lines shall be backfilled with suitable material. Domestic water service shall comply with all Laws. Nothing in this Declaration shall require Declarant to provide utility service of any kind, to any Lot, except as otherwise expressly agreed upon.
9. Electric Service. Electric service shall consist of conduit and properly sized cable, as required by the public or private utility service company supplying electricity and the Occupant requesting such electrical service. Electrical service shall be provided at such Occupant's expense.
10. Curbs, Gutters. Continuous raised concrete curbs and gutters shall be installed on both sides of all roads, for parking buffers, along the outside edge of all paving, and to the extent shown on the Site Plan, around parking end islands and traffic islands.
11. Landscaping. Landscaping shall be installed and maintained on each Lot in accordance with all Laws including, without limitation, applicable City ordinances.

b. **Limitations.**

1. The establishment of these Design Standards shall not be construed as impairing the obligation of any Occupant to maintain or repair its Lot as may otherwise be specified in this Declaration, by separate written instrument, or as required by law.
2. Declarant, solely in its role as the Declarant under this Declaration, shall not be liable to any Occupant or other person or entity for any damage, loss or prejudice suffered or claimed on account of the Design Standards, the type or manner of development of any property within the Development, or otherwise. Declarant, its successors and assigns shall have no responsibility to construct any building or other improvement on any Lot, except as expressly set forth herein or in a separate agreement between an Occupant and Declarant or its successors and assigns.

c. **Public Approvals.** All requirements of public agencies shall be complied with in the development or improvement of each Lot including, without limitation, all requirements and obligations imposed by the Occupational Safety and Health Administration, and other applicable life safety requirements and obligations. All necessary government approvals shall be obtained prior to commencing development or improvement of each Lot.

d. **Variances.** Declarant may seek a variance to any applicable Law from any governmental unit or agency having jurisdiction over the Development as Declarant deems necessary, in Declarant's discretion. Each Occupant agrees to cooperate with such request or application for a variance as reasonably necessary, however, Topgolf's cooperation with such request shall be granted at Topgolf's sole discretion. Notwithstanding the foregoing, no change of zoning in regard to any of the Lots may be pursued by Declarant without the prior written approval of

{1028/005/REA/01256715;16 }

Topgolf, which shall not be unreasonably withheld or delayed.

- e. **Coordination.** In the event that any Occupant is performing construction work simultaneously with another Occupant the parties shall in good faith and with commercially reasonable efforts coordinate their respective work to allow each to complete such work in a timely and efficient manner.
3. **MAINTENANCE.** Each Occupant shall maintain its respective Lot and the improvements thereon in good condition and repair at such party's sole expense and shall take such measures as are necessary to control grass, weeds, blowing dust, dirt, litter and debris, all in a manner and with such frequency as is consistent with safety and good property management. Declarant hereby reserves for itself, its agents, successors, designees and/or assigns a "maintenance easement" on the property lying between the foundation of any building on any Lot and the property line of said Lot to permit the Declarant, its agents, successors or assigns, at its election, to maintain said property upon not less than 48 hours' prior written notice to the Occupant of such Lot (except in regard to Topgolf, for which Declarant shall provide not less than thirty (30) days' written notice). The Declarant shall have the right, after 48 hours' prior written notice (thirty (30) days' written notice in regard to the Lot on which the Topgolf Facility is located or is to be located, during which time if Topgolf commences such maintenance and diligently pursues completion, Declarant shall have no right to perform such obligation on behalf of Topgolf), to enter upon such Lot to remove trash or rubbish and to cut grass, weeds, and vegetation, and to trim or prune any hedge or other planting that, in the reasonable opinion of the Declarant is detrimental to an adjoining Lot or is unattractive in appearance. Notwithstanding anything herein to the contrary, if Declarant is notified by the City that any Lot is in violation of City codes or ordinances regulating maintenance of such Lot, then Declarant may exercise the rights granted in this Section without notice of any kind to the Occupant of such Lot (except in regard to Topgolf, for which Declarant shall provide not less than ten (10) days' written notice delivered with a copy of the notification of violation received from the City, during which time if Topgolf commences such maintenance and diligently pursues completion, Declarant shall have no right to perform such obligation on behalf of Topgolf). The costs and expenses incurred by the Declarant in performing such maintenance shall be paid by the Occupant of such Lot upon demand. Notwithstanding the foregoing, all properties within the Development shall be maintained as first-class property. Once a Lot within the Development is developed, such Lot shall be kept in a first-class condition including mowing and irrigation of grass, upkeep of drives, lighting, signage, parking areas and general landscaping, all in accordance with Laws including without limitation, applicable City ordinances.
 4. **COMMON FACILITIES.**
 - a. **Common Facilities Use.** The Common Facilities shall be used for vehicular access, circulation and the comfort and convenience of the customers, invitees, licensees, agents and employees of the Occupants and Owners of the Development, and for the servicing and supplying of the Occupants' and Owners' businesses. In addition, the Common Facilities may be used (i) in connection with the construction and maintenance of utility lines so long as such activity is undertaken in strict compliance with the requirements of this Declaration; and (ii) for any other use required by Law. Storage of construction materials and vehicles used in connection with construction may only occur on the constructing Occupant's or Owner's Lot. Except as otherwise specifically allowed by this Declaration, no permanent building, barricade, fence, or structure may be placed, erected or constructed within the Common Facilities on any Lot without Declarant's prior written approval.

{1028/005/REA/01256715;16 }

- b. **Limitations on use of Common Facilities.** The Owner and/or Occupant of each Lot shall use and cause to be used the Common Facilities on its Lot in such manner as will not unreasonably interfere with the primary purpose of the Common Facilities which is to provide access for the Owners and Occupants and their customers, invitees, employees, agents and licensees of the Development and for the servicing and supplying of such Owners and Occupants. Owners or Occupants shall not maintain on such Lot, other than within a building or buildings on such Lot, vending machines and other conveniences including, without limitation, mailboxes, public telephones, or public transportation shelters, without the prior written consent of the Declarant.
- c. **Common Facilities Maintenance and Repair.** Declarant shall maintain or cause to be maintained the Common Facilities at all times in first-class condition and repair, subject to Section 4(d) below. Declarant shall cause timely removal of snow and ice from the Common Facilities and shall cause the Common Facilities to be continually open for use by Owners and/or Occupants, subject to temporary closures so that Declarant may perform its maintenance and/or repair obligations set forth herein.
- d. **Common Facilities Expense.** Subject to any applicable separate written agreement between any Occupant and the Declarant, each Occupant shall pay its annual pro rata share of the Common Facilities Expense by no later than thirty (30) days after receipt of an invoice from Declarant. Each Occupant's Pro Rata Share shall be calculated by dividing the actual square footage of such Occupant's Lot by the total square footage of the Development. Any invoiced amount not paid within such thirty (30) day period shall accrue interest at the Default Rate of Interest. Within thirty (30) days after the end of each calendar year, Declarant will provide each Occupant, with an invoice detailing the actual Common Facilities Expense for the previous calendar year, together with a calculation of each such party's pro rata share, the pro rata share and calculation for all other Occupants in the Development, and reasonable supporting documentation to evidence the costs for all applicable parties. Declarant may also charge a service fee equal to no more than three percent (3%) of the total Common Facilities Expense payable for each calendar year, which total fee amount shall be allocated by Declarant among each Occupant pursuant to such Occupant's pro rata share of the Common Facilities Expense.
- e. **Common Facilities Expense Audit.** Any Owner or Topgolf, at its own expense, shall have the right, no more frequently than once per calendar year, following thirty (30) days' prior written notice (such written notice to be given within ninety (90) days following receipt of an invoice detailing the actual Common Facilities Expense for the previous calendar year), to audit Declarant's books and records relating to Common Facilities Expense for the immediately preceding calendar year only. Notwithstanding the foregoing, such auditing party shall not be allowed to have such audit performed by any third-party firm to be paid on a contingency basis or percentage of savings basis. In the event Declarant in good faith disputes the results of any such audit, the parties shall in good faith attempt to resolve any disputed items. If any such audit discloses that the Common Facilities Expense (or its applicable pro rata share) reflected on Declarant's invoice were overstated or understated, and Declarant does not dispute the results, then the owing party shall pay the amount due within ten (10) days following the final conclusion of the audit and the parties' agreement with respect thereto.

5. EASEMENTS.

- a. **Grant of Reciprocal Easements.** Subject to any express conditions, limitations or reservations contained herein, Declarant hereby declares that the Lots, and all Occupants of the Lots, their successors and assigns, shall be benefited and burdened by the following nonexclusive,

{1028/005/REA/01256715;16 }

perpetual and reciprocal easements which are hereby imposed upon the Lots and all present and future Occupants of the Lots:

1. Access Easement. Declarant hereby dedicates, grants, and conveys to itself and each Occupant, for the benefit of the Declarant and each Occupant, and their respective tenants, employees, agents, customers and invitees, a non-exclusive easement appurtenant to each Lot or Lots owned or occupied by such respective Occupant, for the purpose of ingress and egress by vehicular and pedestrian traffic, upon, over, across and through the Common Facilities and each Lot and for the improvement, maintenance and repair of the Common Facilities. The easements granted in this Sub-Section 5(a)(1) shall be for the purposes of two-way vehicular traffic (passenger vehicles and trucks) and pedestrian access among the Lots and to the public or private roads or highways abutting or adjacent to the Development.
2. Utility Easement. Declarant hereby dedicates, grants, and conveys to each Occupant, for the benefit of each Occupant, and their respective Lot or Lots, a non-exclusive easement appurtenant to the Lot or Lots owned or occupied by such respective Occupant, under, through and across the Common Facilities and Parking Areas for the installation, maintenance, repair and replacement of water drainage systems or structures, water mains, storm drains, sewers, fire protection installations, telephone or electrical conduits or systems, gas mains, cable television cables or systems, and any other utility facilities (for purposes of this Section, referred to collectively as the “**Utilities**”) necessary for the orderly development and operation of the Common Facilities and Parking Areas and each building erected or to be erected in the Development, subject, however, to each of the following conditions:
 - i. Notwithstanding any other provision in this Declaration, except in regard to: (a) any access rights to and from the Common Facilities, (b) any easement(s) located within the areas on which the Common Facilities are located, (c) any easement(s) for utilities appearing in the subdivision plat of the Development recorded pursuant to the terms of the Topgolf Lease, or (d) any easement(s) required for the installation, repair, maintenance and operation of utility facilities appearing in the civil engineering plans approved by Declarant and Topgolf pursuant to the terms of the Topgolf Lease, no party shall have access to or benefit of an easement over any portion of the Lot on which the Topgolf Facility is located, without the prior written consent of Topgolf, which shall not be unreasonably withheld, delayed, or conditioned.
 - ii. The rights granted pursuant to such easement shall at all times be exercised in such manner as not to interfere unreasonably with the normal operation of the Development.
 - iii. All such Utilities shall be installed and maintained below the ground level or surface of such easements.
 - iv. Notwithstanding anything in this Declaration to the contrary, in the event that an Occupant deems it necessary to cause the installation or relocation of one or more of the Utilities, the other Occupants agree not to unreasonably withhold the granting of any necessary additional consent or easements; provided (a) in no event will such installation or relocation be permitted if it would interfere with, or increase the cost of, utility service to any other part of the Development, or unreasonably interfere with the

{1028/005/REA/01256715;16 }

normal operation of any business of the Development; (b) the Occupant making or causing such installation or relocation shall, at its expense, completely restore all improvements and surfaces disrupted as a result of such installation; (c) the Occupant making such installation or relocation shall bear the entire cost thereof; and (d) the materials and design standards used shall be equal to or exceed those originally used.

- v. In the event it should be necessary to transfer or assign any of the foregoing easements and rights to governmental units, public bodies, and/or utility companies as a condition of their providing or continuing service, each Occupant shall, upon request, agree to transfer or assign any or all of such easements and rights (except in regard to Topgolf, who shall have the right to determine in its reasonable discretion whether to transfer or assign any or all of such easements and rights, if such easements and/or rights affect only the Topgolf Premises and not any other Lot). Except as may otherwise be required by utility companies or the City, any nonexclusive easement granted pursuant to this Declaration shall be limited to the term of this Declaration and, upon expiration or earlier termination of this Declaration, said easements shall automatically terminate and each Occupant shall execute and deliver such documents as may be requested and as are reasonably necessary to terminate such nonexclusive easements.
3. Temporary Construction Easement. Declarant hereby dedicates, grants and conveys to each Occupant, for the benefit of each Occupant, and their respective Lot or Lots, a non-exclusive temporary easement for the benefit of such Occupant and anyone else while engaged in constructing any building or other improvement within the Development, and such party shall have the right during such construction, and during any total or partial reconstruction of such building or improvement or expansion thereof, to use all necessary or appropriate means of access, ingress and egress to and from the site of said improvement over and across any part of the Common Facilities but such use shall not unreasonably interfere with the performance of other construction work being lawfully undertaken within the Development, the operation of business by any other Occupants in the Development, or with the orderly flow of traffic or access to any building thereon.
- b. Reasonable Use of Easements. The easements herein above granted shall be used and enjoyed by each Occupant in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Occupant at any time conducted on its Lot, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.
 - c. Modification and Use of Common Facilities. Declarant shall not cause or allow the Common Facilities to be modified, altered, obstructed, or closed without Topgolf's prior written consent. The Occupant of each Lot shall use and cause to be used the Common Facilities located on its Lot in such manner as will not unreasonably interfere with the primary purpose of the Common Facilities which is to provide access for ingress and egress for the Occupants and their customers, invitees, employees, agents and licensees of the Development and for the servicing and supplying of such Occupants.

6. RESTRICTIONS.

- a. General. Each Lot shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or

{1028/005/REA/01256715;16 }

operation shall be made, conducted or permitted on or with respect to all or any portion of a Lot which is illegal. Every improvement now or in the future constructed within the Development, shall be constructed, operated and maintained so that the same is in compliance with all Laws.

- b. **Use Restrictions.** The types of uses permitted in the Development shall be of a retail and/or commercial nature (specifically including, restaurant or entertainment purposes) found in developments of a similar size and quality that are located in the metropolitan marketing area in which the Development is located; provided, however, that in no event shall a use be conducted that violates the zoning approved for the Development. This restriction shall be a servitude upon the entire Development and shall be binding upon any person, Owner, or Occupant acquiring any interest in any part of the Development. The following described uses shall be prohibited within the Development:
1. Deep discount, bargain, fire sale or thrift businesses.
 2. Businesses of a sexually oriented nature.
 3. Funeral homes.
 4. Any production, manufacturing, industrial, or storage use of any kind or nature, except for storage incidental to the retail sale thereof from the Development.
 5. Veterinary hospital, mobile home sales or service facility, or automobile or truck dealership or sales facility.
 6. Any use which creates a nuisance or materially increases noise or the emission of dust, odor, smoke, gases, or materially increases fire, explosion or radioactive hazards on adjacent Lots.

Notwithstanding any other provision of the Declaration, operation of the Topgolf Facility as an entertainment golf center shall be deemed approved and such operation in its ordinary course is hereby deemed to not be a violation of any restrictions or covenants set forth in this Section 6(b).

- c. **Hours of Operation.** So long as Topgolf is operating the Topgolf Facility as a family entertainment golf center, no portion of the Development, other than the Topgolf Facility, shall be operated or open for business past the hour of midnight without the prior, written consent of Topgolf and Declarant.
- d. **Topgolf Exclusive.** So long as Topgolf is operating the Topgolf Facility as a family entertainment golf center, no Lot other than the Topgolf Premises shall be used as a family entertainment center having more than ten thousand (10,000) square feet of improvements thereon.
- e. **Height Restriction.** So long as Topgolf is operating the Topgolf Facility as a family entertainment golf center, with the exception of the Topgolf Premises, construction within the Development shall be restricted to a building elevation, including fascia height, not to exceed thirty-five feet (35') tall above the finished floor elevation of the Topgolf Facility, absent the prior written consent of Topgolf, which consent Topgolf agrees shall not be unreasonably withheld, conditioned or delayed; provided, however, that if a request is made to exceed thirty-

eight feet (38") in height, then Topgolf may unilaterally withhold consent in Topgolf's sole and absolute discretion, for any reason or no reason at all. Additionally, all pylon signs located within the Development, if any, shall not exceed the height of the Business Center ID Sign.

- f. **Location and Type of Signs.** As permitted by all Laws and with Declarant's prior written approval which may be withheld in Declarant's sole reasonable discretion, each Occupant shall have the right to install and maintain monument signs no larger than 6' x 10', on such Occupant's Lot, at such Occupant's sole cost and expense (notwithstanding the foregoing, such size restriction shall not apply to the Topgolf Premises) and each Occupant shall have the right to utilize a panel area on the Business Center ID Sign designated by Declarant in Declarant's sole discretion, subject to the provisions of Section 1(a) hereof. Notwithstanding the foregoing, Topgolf shall have the use of the top panel of the advertising/display area on the Business Center ID Sign. Each Occupant shall be responsible for obtaining all necessary government approvals in connection with the installation and maintenance of any and all signs installed or constructed by such Occupant, on such Occupant's Lot. No Occupant shall have any right to use a monument sign which is not located on such Occupant's Lot. In addition to the foregoing, Topgolf shall have the right to (i) a maximum elevated sign along the top level of the Topgolf Facility, and (ii) panel signage on any future shared monument, pylon, billboard or other signs within the Development to which Declarant has access and rights to erect signage, if any, except that Topgolf shall have no rights to any monument sign not located on the Topgolf Premises that is no larger than 6' x 10'. Notwithstanding the foregoing, under no circumstance will Declarant be required to erect or construct any monument, pylon, billboard or other sign for or on behalf of any Occupant.
- g. **Protection of View Corridor and Sign Visibility.** No building, structure, sign or advertising device, nor any landscaping, signs or other obstructions shall be erected within the Restricted Building Area. No sign or advertising device shall be erected on the Development which exceeds the height of the Business Center ID Sign.
- h. **Parking.** The number of parking spaces maintained on each Lot and the configuration thereof shall comply with all Laws. No Occupant (or any of their guests or invitees) shall have the right to use the parking facilities located on any other Lot and each Occupant of such Lot shall have the right to enforce such Occupant's exclusive use of the parking facilities located on such Occupant's Lot by installation of signage and removal of vehicles from the Lot. Each Occupant will comply with all Laws relating to such Occupant's parking facilities including, without limitation, those Laws relating to installation of signage and removal of vehicles from such Occupant's Lot.

7. **INDEMNIFICATION AND INSURANCE.**

- a. **Indemnification of Owners and Occupants.** Subject to any indemnification and hold harmless provisions to the contrary contained in a separate written agreement between any Owner, Occupant, and the Declarant, each Occupant and Owner agrees to indemnify, hold harmless and defend Declarant and all other Owners and Occupants from all claims, actions, liabilities, damages, expenses and judgments, including but not limited to reasonable attorneys' fees, reasonable investigative and discovery costs, court costs and all other sums on account of any injury to persons, loss of life or damage to property, labor disputes, and similar controversies, occurring on, in, upon or about the indemnifying Owner's or Occupant's Lot (including within any building located thereon) or arising from or connected with the use, non-use, condition or occupation of such Lot, right-of-ways or sidewalks, which are not caused, in whole or in part,

{1028/005/REA/01256715;16 }

by the gross negligence of the Owner or Occupant (or its agents, contractors or employees) claiming such indemnification.

Subject to any indemnification and hold harmless provisions to the contrary contained in a separate written agreement between any Owner, Occupant, and the Declarant, Declarant agrees to indemnify, hold harmless and defend each Owner and Occupant from all claims, actions, liabilities, damages, expenses and judgments, including but not limited to reasonable attorneys' fees, reasonable investigative and discovery costs, court costs and all other sums on account of any injury to persons, loss of life or damage to property, labor disputes, and similar controversies, occurring on, in, upon or about the Development arising from or connected with the gross negligence or intentional misconduct of Declarant (or its agents, contractors or employees).

The Declarant or any Owner or Occupant (for purposes of this Article 7, the "**Indemnified Owner/Occupant**") shall promptly notify the Declarant or any other Owner or Occupant (for purposes of this Article 7, the "**Indemnifying Owner/Occupant**") against whom the Indemnified Owner/Occupant asserts a right of indemnification with respect to any claim asserted against the Indemnified Owner/Occupant, and the Indemnified Owner/Occupant shall promptly deliver to the Indemnifying Owner/Occupant the original or a true copy of any summons or other process, pleading, or notice issued or served in any suit or other proceeding to assert or enforce any such claim.

- b. **Insurance Coverage and Limits.** Subject to any insurance, indemnification and hold harmless provisions to the contrary contained in a separate written agreement between any Owner or Occupant and Declarant, each Occupant agrees to maintain or cause to be maintained insurance against claims for bodily injury, death or property damage occurring on, in, upon or about its Lot (including within the buildings thereon) and the Common Areas, right-of-ways and sidewalks adjacent thereto or arising from or connected with the use, non-use, condition or occupation thereof, with a "Combined Single Limit" (covering bodily injury liability, death and property damage) in any one occurrence of not less than Two Million Dollars (\$2,000,000). Such insurance may be in the form of blanket liability coverage applicable to the Occupant's Lot and other property owned or occupied by the Occupant or the party carrying such insurance so long as such blanket policy does not reduce the limits or diminish the coverage required herein.
- c. **Self-Insurance.** Subject to any insurance provisions to the contrary set forth in a separate written agreement between any Owner or Occupant and Declarant, the insurance obligations imposed by this Article 7 may be satisfied by means of self-insurance, provided, however, that an Occupant self-insuring shall have a net worth of at least One Hundred Million Dollars (\$100,000,000.00). Such minimum net worth shall be increased each five (5) years by the same percentage amount as the Consumer Price Index, All Urban Consumers, 1982-1984 equals 100, shall have increased during such five (5) years.
- d. **Performance of Indemnity Declarations.** Subject to any indemnification and hold harmless provisions to the contrary contained in a separate written agreement between any Owner and Declarant, all policies of insurance required under this Article 7 shall insure the Occupant's indemnity agreements contained in this Declaration. Upon request, each Occupant shall deliver to the other Occupants and Declarant a certificate from the applicable insurer that such insurance coverage is in full force and effect. Each Occupant shall promptly notify the other Occupants and Declarant of any asserted claim with respect to which such Occupants are or

{1028/005/REA/01256715;16 }

may be indemnified, and shall deliver to such Occupants and Declarant copies of process and pleadings.

8. **REMEDIES AND ENFORCEMENT.**

- a. **All Legal and Equitable Remedies Available.** In the event of a breach or threatened breach by any Owner, Occupant or Declarant of any of the terms, covenants, restrictions or conditions hereof, and such failure or breach continues for thirty (30) days following written notice thereof to the defaulting party (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting party commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), the Owners shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.
- b. **Self-Help.** In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner, Occupant or Declarant to cure a breach of this Declaration within thirty (30) days following written notice thereof by Declarant or an Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner or Occupant commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), Declarant or Owner shall have the right to perform such obligation contained in this Declaration on behalf of such defaulting party and be reimbursed by such defaulting party upon demand for the reasonable costs thereof together with interest at the Default Rate.
- c. **Lien Rights.** Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "**Assessment Lien**") against the Lot of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Office of the Register of Deeds of the County of Douglas, Nebraska prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment lien.
- d. **Remedies Cumulative.** The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.
- e. **No Termination for Breach.** No breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration, except as otherwise provided herein. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Lot made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Lot covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

9. **TERM.** The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the office of the Register of Deeds of the County of Douglas, Nebraska and shall remain in full force and effect thereafter in perpetuity, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners.
10. **TOPGOLF APPROVAL.** Any provision or term hereof which requires that Declarant or any Owner or Occupant obtain the approval or consent of Topgolf shall be null and void and of no further effect upon the occurrence of the expiration or termination of the Topgolf Lease.
11. **INCENTIVES.** Subject to any provisions to the contrary contained in a separate written agreement between any Owner or Occupant and Declarant, each Owner and Occupant shall take all steps necessary to ensure that the Development is and remains in compliance with any and all obligations, conditions or requirements imposed by any governmental entity in connection with the approval of any development incentives benefitting the Development, which shall include without limitation, collecting approved incentive taxes or assessments in the same manner as standard sales tax and complying with reporting obligations.
12. **NO RIGHTS IN PUBLIC; NO IMPLIED EASEMENTS.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Development. No easements, except those expressly set forth herein shall be implied by this Declaration.
13. **MISCELLANEOUS.**
 - a. **Attorneys' Fees.** In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.
 - b. **Amendment.** The provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the Register of Deeds of the County of Douglas, Nebraska.
 - c. **No Waiver.** No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.
 - d. **No Agency.** Nothing in this Declaration shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.
 - e. **Covenants to Run with Land.** It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.
 - f. **Assignment.** Declarant may, at its option, assign any or all of its rights and obligations under

{1028/005/REA/01256715;16 }

this Declaration, in its sole discretion, provided such assignment is memorialized in writing.

- g. **Separability.** Each provision of this Declaration is hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. Ownership of both Lots by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.
- h. **Time of Essence.** Time is of the essence of this Declaration.
- i. **Entire Declaration.** This Declaration contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.
- j. **Notices.** Any notice or demand given or served by any Owner or Occupant to another Owner or Occupant pursuant to this Declaration must be in writing and personally delivered or forwarded by certified mail, postage prepaid, return receipt requested, or by another commercially recognized means of delivery with a copy of each such notice to Declarant as long as Declarant shall be an Owner or Occupant of any Lot within the Development. With the exception of the Declarant and Topgolf, the address of such Owner's or Occupant's Lot address shall be considered the notice address of such Owner or Occupant for purposes hereof. The Declarant's notice address for purposes hereof shall be as set forth below. Notices and demands shall be deemed effective upon receipt. The person and place to which notices are to be given may be changed from time to time by the Owners or Occupants giving ten (10) day written notice to the other Owners and Occupants.

If intended for Declarant: C/o Drake Development, LLC
Attn: Matthew Pennington
7200 W. 132nd Street, Ste. 150
Overland Park, Kansas 66213
Telephone: (913) 662-2630
Facsimile: (913) 766-3749
E-mail: Matt@drakekc.com

And to: C/o Woodsonia Westroads, LLC
Attn: Drew Snyder
17007 Marcy Street, Suite 2,
Omaha, Nebraska 68118
Telephone: (402) 513-9003
E-mail: drew@woodsonia.net

With a copy to: Levy Craig Law Firm
Attn: Jeff Bauer
4520 Main Street, Suite 1600
Kansas City, Missouri 64111
Telephone: 816-460-1832
Facsimile: 816-382-6632

E-mail: jbauer@levycraig.com

If intended for Topgolf:

Topgolf USA Omaha, LLC.
Attention: Elizabeth Bonesio, Deputy General
Counsel
8750 N. Central Expressway, Suite 1200
Dallas, Texas 75231
Telephone: (214) 377-0622
Facsimile: (214) 754-5927
E-mail: liz.bonesio@topgolf.com

E-mail:

With a copy to:

Dentons US LLP
Attention: Donald A. Hammett, Jr.
2000 McKinney Avenue, Suite 1900
Dallas, Texas 75201
Telephone: (214) 259-0917
Facsimile: (214) 259-0910
E-mail: donald.hammett@dentons.com

E-mail:

- k. **Governing Law.** The laws of the state of Nebraska shall govern the interpretation, validity, performance, and enforcement of this Declaration.
- l. **Liability.** No member, director or owner of the Declarant shall be personally liable to any Owner or Occupant or to any other party for any damage, loss or prejudice suffered or claimed on account of any act (including any oral representation regarding any aspect of a Lot whatsoever), omission, error, failure to act, or negligence of any such member, director or owner of the Declarant. Such limitation of liability shall apply in all cases, provided that such person has, on the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.
- m. **Estoppel Certificates.** Each Owner or Occupant, within twenty (20) business days of its receipt of a written request from another Owner or Occupant, shall from time to time provide the requesting Owner or Occupant, a certificate binding upon such Owner or Occupant stating at the minimum: (a) to-the best of such Owner's or Occupant's knowledge, whether any party to this Declaration is in default or violation of this Declaration and if so identifying such default or violation; and (b) that this Declaration is in full force and effect and identifying any amendments to the Declaration as of the date of such certificate.

Declarant, within twenty (20) business days of its receipt of a written request from an Owner or Occupant, shall from time to time provide the requesting Owner or Occupant, a certificate binding upon Declarant stating at the minimum: (a) whether improvements constructed on the Lot of the requesting Owner or Occupant have been constructed in compliance with the Declaration; (b) whether such requesting Owner or Occupant is in default or violation of this Declaration and if so identifying such default or violation; (c) that this Declaration is in full force and effect and identifying any amendments to the Declaration as of the date of such certificate; (d) the pro rata share applicable to the requesting Owner or Occupant's Lot; and (e) the amount of requesting Owner or Occupants pro rata share of Common Facilities Expenses for the then applicable year and confirmation of any outstanding payments of the rata share of Common Facilities Expense applicable to the requesting Owner or Occupant.

{1028/005/REA/01256715;16 }

- n. **Bankruptcy.** In the event of any bankruptcy affecting any Owner or Occupant, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

[Signatures appear on following page]

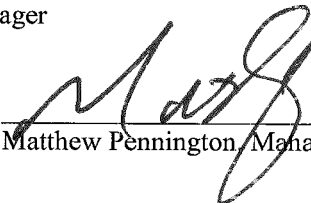
IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the day and year first above written.

DECLARANT:

WESTROADS INVESTORS, LLC,
a Nebraska limited liability company

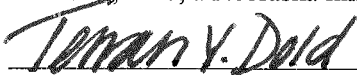
By: DRAKE WESTROADS, LLC,
a Kansas limited liability company
Its: Co-Manager

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

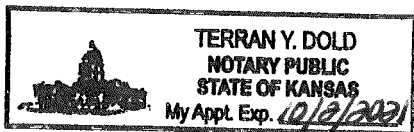
By: 
Matthew Pennington, Manager

STATE OF Kansas)
)
COUNTY OF Johnson)

The foregoing instrument was acknowledged before me this 8th day of February, 2019 by Matthew Pennington, Manager of Omaha Investors, LLC, a Kansas limited liability company, the Manager of Drake Westroads, LLC, a Kansas limited liability company, the co-manager of Westroads Investors, LLC, a Nebraska limited liability company, on behalf of said limited liability company.

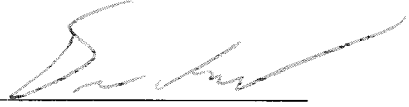


Notary Public
My Commission expires on 10/2/2021




By: WOODSONIA 730-908 N. 102ND, LLC,
a Nebraska limited liability company
Its: Co-Manager

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

By: 
Drew Snyder, Manager

STATE OF Nebraska)
)
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 5 day of February, 2019 by Drew Snyder, Manager of Drew Snyder Real Estate, LLC, a Kansas limited liability company, the Manager of Woodsonia 730-908 N. 102nd, LLC, a Nebraska limited liability company, the co-manager of Westroads Investors, LLC, a Nebraska limited liability company, on behalf of said limited liability company.


Notary Public
My Commission expires on 6-14-21

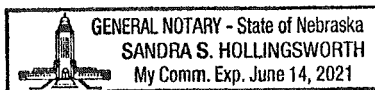


EXHIBIT A

Legal Description of the Development

LOTS 1, 2, 3 AND OUTLOT "A" PUTT'N N PLACE, A SUBDIVISION IN DOUGLAS COUNTY,
NEBRASKA

EXHIBIT B

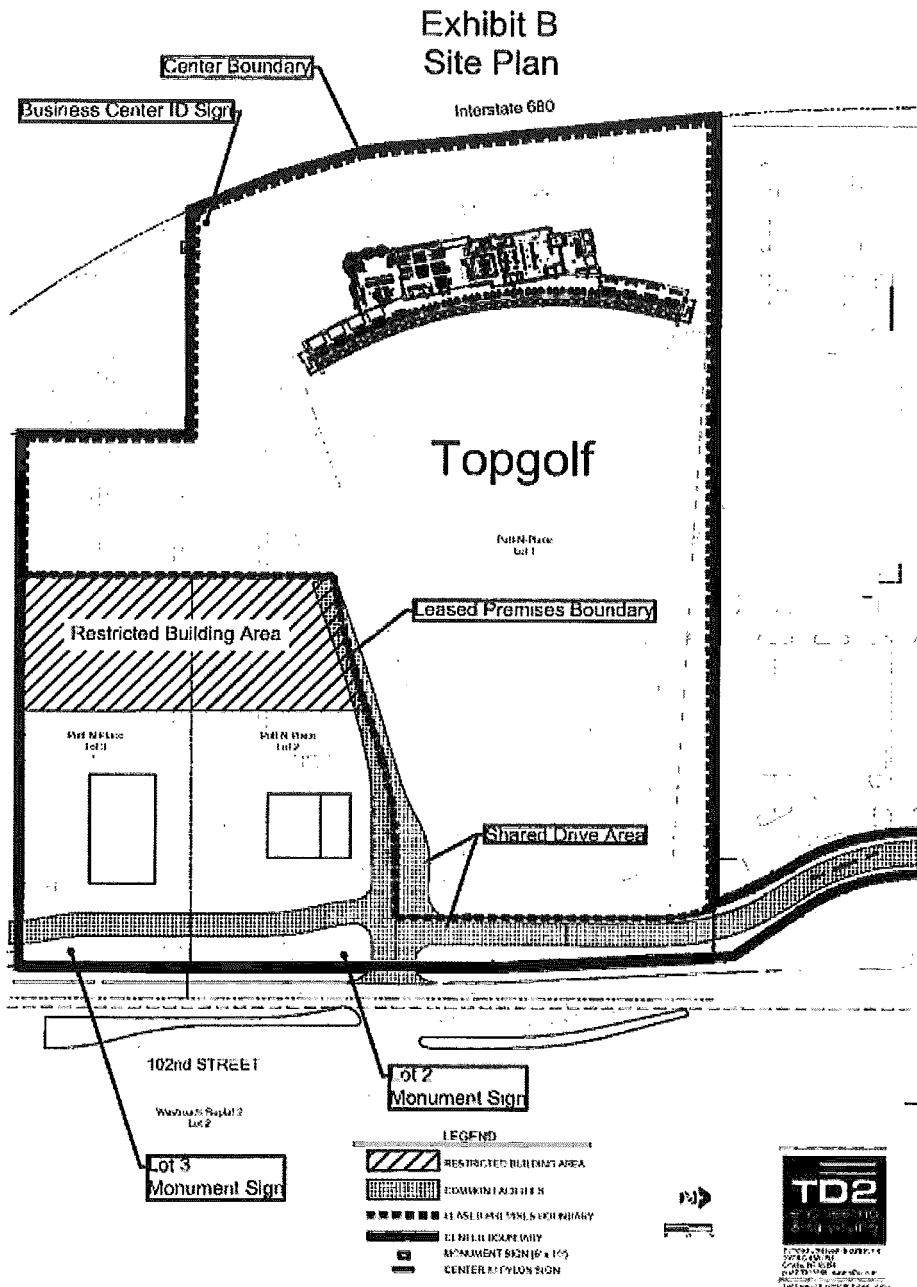


EXHIBIT C

Legal Description of the Topgolf Premises

THAT PART OF LOT 1, PUTT'N PLACE, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1;
THENCE WEST (ASSUMED BEARING) 51.51 FEET ON THE NORTH LINE OF SAID LOT 1 TO THE POINT OF BEGINNING;
THENCE CONTINUING WEST 868.51 FEET ON THE NORTH LINE OF SAID LOT 1 TO THE NORTHWEST CORNER THEREOF;
THENCE S05°39'19"E 376.00 FEET ON THE WEST LINE OF SAID LOT 1;
THENCE SOUTHEASTERLY ON THE WEST LINE OF SAID LOT 1 ON A 1025.92 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING S19°18'30"E, CHORD DISTANCE 201.14 FEET AN ARC DISTANCE OF 201.46 FEET;
THENCE EASTERLY ON THE SOUTH LINES OF SAID LOT 1 ON THE FOLLOWING DESCRIBED EIGHT COURSES;
THENCE EAST 244.80 FEET;
THENCE SOUTH 180.00 FEET;
THENCE EAST 155.00 FEET;
THENCE NORTH 334.89 FEET;
THENCE NORTHEASTERLY ON A 746.96 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING N77°21'33"E, CHORD DISTANCE 106.27 FEET, AN ARC DISTANCE OF 106.36 FEET;
THENCE N73°16'48"E 100.79 FEET;
THENCE NORTHEASTERLY ON A 375.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING N81°38'24"E, CHORD DISTANCE 109.04 FEET, AN ARC DISTANCE OF 109.43 FEET;
THENCE EAST 65.89 FEET TO A POINT 54.00 FEET FROM THE SOUTHEAST CORNER OF SAID LOT 1;
THENCE NORTH 277.61 FEET;
THENCE NORTHWESTERLY ON A 231.50 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING N07°56'45"W, CHORD DISTANCE 64.00 FEET AN ARC DISTANCE OF 64.21 FEET TO THE POINT OF BEGINNING.

CONTAINING 427,670 SQUARE FEET MORE OR LESS.