
COVER SHEET FOR RECORDING

Title of Document: DECLARATION OF RESTRICTIVE COVENANTS
Date of Document: December 16, 2022
Grantor: WESTROADS INVESTORS, LLC,
a Nebraska Limited Liability Company
Grantor's Address: 20010 Manderson Street, Suite 101
Elkhorn, Nebraska 68022
Grantee: WESTROADS INVESTORS, LLC,
a Nebraska Limited Liability Company
Grantee's Address: 20010 Manderson Street, Suite 101
Elkhorn, Nebraska 68022
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

DECLARATION OF RESTRICTIVE COVENANTS

This DECLARATION OF RESTRICTIVE COVENANTS (this “**Declaration**”) is made this 16th day of December 2022, 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 (the “**Property**”).
- B. Declarant is the owner of that certain real property situated in the County of Douglas, State of Nebraska, adjacent to the Property, as more particularly described on Exhibit “B” attached hereto and incorporated herein (the “**Topgolf Parcel**”).
- C. 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, as amended by that certain Second Amendment to Lease dated July 31, 2018, as amended by that certain Third Amendment to Lease dated February 25, 2019, as amended by that certain Fourth Amendment to Lease dated June 1, 2020, and as further amended by that certain Fifth Amendment to Lease, dated December 16, 2022 (including any replacement or reinstatement thereof pursuant to its terms, the “**Topgolf Lease**”), whereby Declarant has leased the Topgolf Parcel to Topgolf, and Topgolf has leased the same from Declarant.
- D. Topgolf operates a golf entertainment center containing approximately 55,000 square feet located on the Topgolf Parcel (the “**Topgolf Facility**”).
- E. Declarant intends to convey the Property to Hugo Westroads Development, LLC (“**Hugo**”) and Declarant desires to subject and burden the Property with the restrictive covenants as set forth herein for the sole benefit of Topgolf.

NOW, THEREFORE, in consideration of the covenants herein contained, Declarant declares that the Property and all present and future owners and occupants of the Property shall be and hereby are subject to and burdened with the restrictive covenants set forth herein, so that the Property shall be maintained, kept, sold and used in full compliance with and subject to this Declaration for the sole benefit of Topgolf.

1. **Definitions**. For purposes hereof:

- a. The term “**City**” means the City of Omaha, Nebraska.
- b. The term “**Development**” shall mean Topgolf Parcel and the Property, collectively.
- c. The term “**Laws**” shall mean 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.
- d. The term “**Lot**” or “**Lots**” shall mean each separately identified parcel of real property now constituting a part of the Property.

- e. 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 Property as an Owner, or under any lease, license or concession agreement, or other similar agreement with an Owner.
 - f. The term “**Owner**” means the fee owner or owners of each Lot within the Property, or any part thereof, and their respective heirs, assigns, grantees, and successors in interest (including, but not limited to, Hugo).
2. **Design Standards.** To achieve uniformity in the Development, the following rules, regulations, restrictions, architectural standards, and construction guidelines for the Property are hereby established:
- a. 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.
 - a. 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.
 - b. 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 Property 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.
 - c. Traffic Signs and Control Devices. All traffic signs, road markings, and signalization will be designed and installed in accordance with City regulations.
 - d. 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.
 - e. 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 Property shall comply with all Laws. Streets, roadways, and aisleways connecting the Lots or used for ingress and egress to and from the Lots shall be constructed of the same materials so as to create a uniform paved surface between the Lots.
 - f. Sanitary and Storm Sewers. All sanitary sewers shall comply with all Laws and the requirements of the applicable sewer district.
 - g. 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.

- h. 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.
 - i. Curbs and 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 around parking end islands and traffic islands.
 - j. Landscaping. Landscaping shall be installed and maintained on each Lot in accordance with all Laws including, without limitation, applicable City ordinances.
- 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 thirty (30) days' written notice. The Declarant shall have the right, after thirty (30) days' written notice to the Occupant of any Lot (during which time if Occupant commences such maintenance and diligently pursues completion, Declarant shall have no right to perform such obligation on behalf of Occupant), 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 following ten (10) days' written notice to the Occupant of such Lot (delivered with a copy of the notification of violation received from the City), during which time if Occupant commences such maintenance and diligently pursues completion, Declarant shall have no right to perform such obligation on behalf of the Occupant. 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 Property shall be maintained as first-class property. Once a Lot within the Property 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. Use Restrictions. The types of uses permitted in the Property 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 Property. This restriction shall be a servitude upon the entire Property and shall be binding upon any person, Owner, or Occupant acquiring any interest in any part of the Property. The following described uses shall be prohibited within the Property:
 - a. Deep discount, bargain, fire sale, or thrift businesses.
 - b. Businesses of a sexually-oriented nature.
 - c. Funeral homes.

- d. Any production, manufacturing, industrial, or storage use of any kind or nature, except for storage incidental to the retail sale thereof from the Property.
- e. Veterinary hospital, mobile home sales or service facility, or automobile or truck dealership, or sales facility.
- f. 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 any 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 4.

- 5. **Topgolf Exclusive.** For the term of the Topgolf Lease, so long as Topgolf is operating the Topgolf Facility as a family entertainment golf center on the Topgolf Parcel, no portion of the Property shall be used as a family entertainment center having more than ten thousand (10,000) square feet of improvements thereon.
- 6. **Height Restriction.** For the term of the Topgolf Lease, construction within the Property shall be restricted to a building elevation, including fascia height, not to exceed sixty feet (60') 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 sixty-five feet (65') in height, then Topgolf may unilaterally withhold consent in Topgolf's sole and absolute discretion, for any reason or no reason at all.
- 7. **All Legal and Equitable Remedies Available.** Declarant acknowledges that Topgolf is an intended, third-party beneficiary of this Declaration and Declarant and/or Topgolf may enforce the provisions contained herein by all available remedies at law or in equity, including, but not limited to, full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of a breach of this Declaration, including, but not limited to, specific performance.
- 8. **No Termination for Breach.** No breach hereunder shall entitle any Owner or Occupant to cancel, rescind, or otherwise terminate this Declaration. The covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner and Occupant whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.
- 9. **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.
- 10. **Amendment and Termination.** The provisions of this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of both the owner of the Topgolf Parcel and Topgolf as evidenced by a document that has been fully executed and acknowledged by and recorded in the official records of the Register of Deeds of the County of Douglas, Nebraska.
- 11. **Assignment.** Declarant shall not assign its rights or obligations under this Declaration to any party who is not an Owner.
- 12. **No Waiver.** No waiver of any default of any obligation by any party obligated hereunder shall be

implied from any omission by any party to take any action with respect to such default.

13. **Restrictive Covenants to Run with Land.** It is intended that the 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.
14. **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 the Property and the Topgolf Parcel 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.
15. **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.
16. **Notices.** Any notice or demand given or served 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 owns the Topgolf Parcel. 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 Declarant or Topgolf giving ten (10) day written notice to the other.

If intended for Declarant:	C/o Drake Development, LLC Attn: Matthew Pennington 7200 W. 132nd Street, Suite 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 20010 Manderson Street, Suite 101 Elkhorn, Nebraska 68022 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
8750 N. Central Expressway, Suite 1200
Dallas, Texas 75231
Attn: Legal Department
E-mail: DL-RELegal@topgolf.com

With a copy to:

Hunton Andrews Kurth LLP
1445 Ross Avenue, Suite 3700
Dallas, Texas 75202
Attention: Fawaz A. Bham
Tel: (214) 468-3364
Facsimile: (214) 740-7126
E-mail: fbham@hunton.com

17. **Governing Law.** The laws of the state of Nebraska shall govern the interpretation, validity, performance, and enforcement of this Declaration.
18. **Estoppel Certificates.** The owner of the Property or the Topgolf Parcel, shall within twenty (20) business days of its receipt of a written request from the other or TopGolf, from time to time provide the requesting owner or TopGolf, an estoppel certificate in such form as the requesting owner or TopGolf may reasonably require, but stating no less than: (a) to-the best of such owner's knowledge, whether any default or violation of this Declaration exists, 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.
19. **Bankruptcy.** In the event of any bankruptcy affecting any Owner and 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]

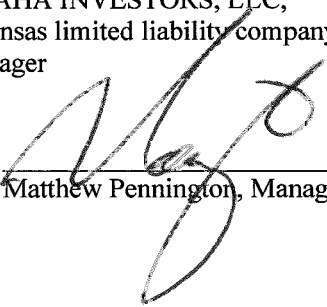
IN WITNESS WHEREOF, Declarant has caused this Declaration of Restrictive Covenants to be duly executed as of the day and year first above written.

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 KS)
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this 14 day of DECEMBER, 2022 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 8/18/26



[Signatures continue on following page]


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 16 day of December, 2022 by Drew Snyder, Manager of Drew Snyder Real Estate, LLC, a Kansas limited liability company, the Manager of Woodsonia, 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 March 21, 2023

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

EXHIBIT A

Legal Description of the Property

THAT PART OF LOT 3, PUTT'N PLACE REPLAT TWO, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 3; THENCE WEST 410.00 FEET ON THE NORTH LINE OF SAID LOT 3; THENCE SOUTH 30.00 FEET ON THE NORTH LINE OF SAID LOT 3; THENCE WEST 18.00 FEET ON THE NORTH LINE OF SAID LOT 3 TO THE POINT OF BEGINNING; THENCE CONTINUING WEST 155.00 FEET ON THE NORTH LINE OF SAID LOT 3; THENCE SOUTH 139.06 FEET; THENCE EAST 155.00 FEET ON A LINE 139.06 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 3; THENCE NORTH 139.06 FEET TO THE POINT OF BEGINNING.

CONTAINING 21,554 SQUARE FEET

AND

THAT PART OF LOT 3, PUTT'N PLACE REPLAT TWO, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 3; THENCE WEST 410.00 FEET ON THE NORTH LINE OF SAID LOT 3; THENCE SOUTH 30.00 FEET ON THE NORTH LINE OF SAID LOT 3; THENCE WEST 18.00 FEET ON THE NORTH LINE OF SAID LOT 3; THENCE SOUTH 139.06 FEET; THENCE EAST 428.00 FEET ON A LINE 169.06 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF SAID LOT 3 TO THE EAST LINE THEREOF; THENCE NORTH 169.06 FEET ON THE EAST LINE OF SAID LOT 3 TO THE POINT OF BEGINNING.

CONTAINING 71,818 SQUARE FEET

EXHIBIT B

Legal Description of the Topgolf Parcel

LOT 1, 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, EXCEPT THAT PART OF SAID THAT PART OF LOT 1, PUTT'N PLACE REPLAT TWO, A SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: BEGINNING AT THE NE CORNER OF SAID LOT 1; THENCE S 02°44'15"E (ASSUMED BEARING) 237.36 FEET ON THE EAST LINE OF SAID LOT 1; THENCE SOUTH 103.91 FEET ON THE EAST LINE OF SAID LOT 1 TO THE SE CORNER THEREOF; THENCE WEST 54.00 FEET ON THE SOUTH LINE OF SAID LOT 1; THENCE NORTH 277.61 FEET ON A LINE 54.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF SAID LOT 1; THENCE NORTHWESTERLY ON A 231.50 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING N 07°56'56"W, CHORD DISTANCE 64.00 FEET, AN ARC DISTANCE OF 64.21 FEET TO THE NORTH LINE OF SAID LOT 1; THENCE EAST 51.52 FEET ON THE NORTH LINE OF SAID LOT 1 TO THE POINT OF BEGINNING.