

(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

**UTILITY EASEMENT RELOCATION AGREEMENT**

**THIS UTILITY EASEMENT RELOCATION 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 situated in the County of Douglas, State of Nebraska, as 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**, the Hugo Parcel is encumbered by that certain Plat and Dedication of H&H Westroads recorded May 6, 2019 as Instrument No. 2019029858 of the real estate records of Douglas County, Nebraska (the "Hugo Plat");

**WHEREAS**, the Hugo Plat provides for certain utility easements (collectively, the "Hugo Easements") in the area generally depicted in Exhibit C, attached hereto and incorporated herein ("Hugo Easement Area");

**WHEREAS**, the Westroads Parcel is encumbered by that certain Plat and Dedication of Putt'n Place Recorded May 3, 2018 as Instrument No. 2018033180 in the real estate records of Douglas County, Nebraska (the "Westroads Plat");

**WHEREAS**, the Westroads Plat provides for certain utility easement (collectively, the "Westroads Easements") in the area generally depicted in Exhibit C, attached hereto and incorporated herein ("Westroads Easement Area");

**WHEREAS**, Hugo desires the right, but not the obligation, to relocate the Hugo Easement Area for

any one or more of the Hugo Easements;

**WHEREAS**, Westroads desires the right, but not the obligation, to relocate the Westroads Easement Area for any one or more of the Westroads Easements;

**WHEREAS**, the Parties have agreed to grant to each other the foregoing relocation rights 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.** Hugo shall have the right, but not the obligation, at any time at Hugo's sole expense, to relocate the Hugo Easement Area for any or all of the Hugo Easements to another location on the Hugo Parcel so as to reasonably accommodate the development of, use of, or operations on the Hugo Parcel, *provided that*: (i) such relocation does not materially interfere with the utility services to the Westroads Parcel; and (ii) if the applicable easement being relocated provides utility services to the Westroads Parcel, Hugo shall not abandon or remove from service any such utility services until such time as such relocated utility services are materially operational. Hugo shall have the right to reduce the size of the Hugo Easement Area with any such relocation provided such reduction complies with items (i) and (ii) above. Upon such relocation, Hugo shall amend, restate, or replace the applicable Hugo Easements and shall file a notice depicting the new location in the real estate records of Douglas County, Nebraska.

2. **Westroads Easement.** Westroads shall have the right, but not the obligation, at any time at Westroads' sole expense, to relocate the Westroads Easement Area for any or all of the Westroads Easements to another location on the Westroads Parcel so as to reasonably accommodate the development of, use of, or operations on the Westroads Parcel, *provided that*: (i) such relocation does not materially interfere with the utility services to the Hugo Parcel; and (ii) if the applicable easement being relocated provides utility services to the Hugo Parcel, Westroads shall not abandon or remove from service any such utility services until such time as such relocated utility services are materially operational. Westroads shall have the right to reduce the size of the Westroads Easement Area with any such relocation provided such reduction complies with items (i) and (ii) above. Upon such relocation, Westroads shall amend, restate, or replace the applicable Westroads Easements and shall file a notice depicting the new location in the real estate records of Douglas County, Nebraska.

3. **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.

4. **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. 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.

5. **Binding Effect.** 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.

6. **Amendment and Termination.** The provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of the owner of the Hugo Parcel and owner of the Westroads Parcel evidenced by a document that has been fully executed and acknowledged by each and recorded in the official records of the Register of Deeds of the County of Douglas, Nebraska.

7. **Notices.** Any notice or demand given or served pursuant to this Agreement 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. 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 Parties giving ten (10) day written notice to the other.

8. **Recording.** This Agreement shall be recorded in the Register of Deeds of the County of Douglas, Nebraska.

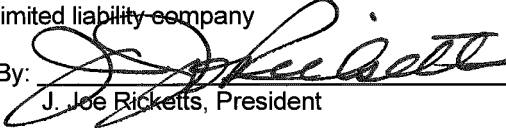
9. **Miscellaneous.** This Agreement contains the entire agreement of the Parties regarding the subject matter of this Agreement. This Agreement shall be construed and governed by the laws of the State of Nebraska. The paragraph headings in this Agreement are for convenience only, shall in no way define 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:

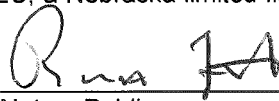
HUGO WESTROADS DEVELOPMENT, LLC, a Nebraska limited liability company

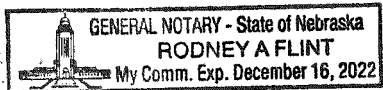
By:   
J. Joe Ricketts, President

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: 9/14/22, 2022

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

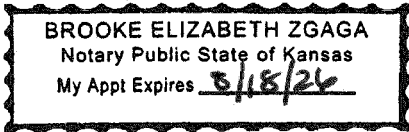
By: DREW SNYDER REAL ESTATE, LLC, a Kansas limited liability company, Manager

[Signature]  
Drew Snyder, Manager

Date: \_\_\_\_\_, 2022

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 \_\_\_\_\_, 2022 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





**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.

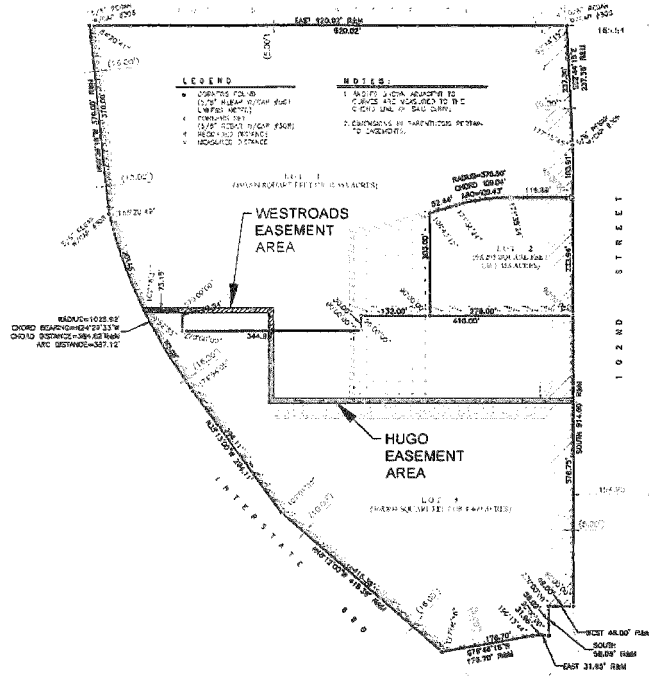
EXHIBIT C



DEPICTION OF HUGO EASEMENT AREA & WESTROADS EASEMENT AREA

PUTT'N PLACE REPLAT TWO

LOTS 1, 2 AND 3

BEING A REPLAT OF LOT 1, PUTT'N PLACE, LOTS 1, 2 AND 3, PUTT'N PLACE REPLAT ONE AND LOTS 1, 2 AND 3, WESTROADS, ALL SUBDIVISIONS IN DAVENPORT COUNTY, NEBRASKA.



-  HUGO EASEMENT AREA
-  WESTROADS EASEMENT AREA

PROPOSED TO BE EASEMENTS, LOTS 1, 2 AND 3, PUTT'N PLACE, LOTS 1, 2 AND 3, WESTROADS, ALL SUBDIVISIONS IN DAVENPORT COUNTY, NEBRASKA. BEING A REPLAT OF LOT 1, PUTT'N PLACE, LOTS 1, 2 AND 3, PUTT'N PLACE REPLAT ONE AND LOTS 1, 2 AND 3, WESTROADS, ALL SUBDIVISIONS IN DAVENPORT COUNTY, NEBRASKA.

BY: [Signature]

DATE: OCTOBER 12, 2022

RECORD AS REPLAT NO. 202209274 OF DAVENPORT COUNTY RECORDS.



PUTT'N PLACE REPLAT TWO  
LOTS 1, 2 AND 3

2

No.	Description	DATE

Job No: 2022-10-12-01 (10/12/22)  
 Drawn By: [Name]  
 Reviewed By: [Name]  
 Date: OCTOBER 12, 2022  
 Book:  
 Page: