

---

**COVER SHEET FOR RECORDING**

Title of Document: TEMPORARY CONSTRUCTION EASEMENT AND TEMPORARY  
STORM SEWER EASEMENT AGREEMENT

Date of Document: December 16, 2022

Grantor: HUGO WESTROADS DEVELOPMENT, LLC,  
a Nebraska Limited Liability Company

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 and Exhibit B

Reference: N/A

**AFTER RECORDING RETURN TO:**

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

**TEMPORARY CONSTRUCTION EASEMENT AND TEMPORARY STORM SEWER  
EASEMENT AGREEMENT**

THIS TEMPORARY CONSTRUCTION EASEMENT AND TEMPORARY STORM SEWER EASEMENT AGREEMENT (this “**Agreement**”) is made as of the 16<sup>th</sup> day of December, 2022, by and between HUGO WESTROADS DEVELOPMENT, LLC, a Nebraska limited liability company (“**Grantor**”), and WESTROADS INVESTORS, LLC, a Nebraska limited liability company (“**Grantee**”).

RECITALS:

- A. Grantor 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 “**Grantor Parcel**”).
- B. Grantee is the owner of that certain real property situated in the County of Douglas, State of Nebraska, adjacent to the Grantor Parcel, as more particularly described on Exhibit “B” attached hereto and incorporated herein (the “**Grantee Parcel**”).
- C. Grantor desires to grant and Grantee desires to obtain a nonexclusive temporary construction easement over Grantor’s Parcel, as further described herein.
- D. Grantor desires to grant and Grantee desires to obtain a nonexclusive temporary storm sewer easement over and through Grantor’s Parcel, as further described herein.

NOW, THEREFORE, in consideration of mutual covenants and other consideration, the receipt of which is acknowledged, the parties agree as follows:

- 1. **Grant of Temporary Construction Easement.** Grantor hereby grants to Grantee and Grantee hereby accepts from Grantor a nonexclusive temporary construction easement (“**Temporary Construction Easement**”) within, upon, over and on the portions of Grantor’s Parcel designated as the “**Easement Area**” on Exhibit “C” attached hereto and incorporated herein, for the purposes described in Paragraph 2 hereof.
- 2. **Character, Use and Description of Temporary Construction Easement.** The Temporary Construction Easement consists of a temporary right to enter upon the Easement Area in connection with and to the extent necessary for the performance of certain construction work (the “**Temporary Construction Easement**”) which shall include: (i) construction of parking stalls and related parking lot striping on the Grantee Parcel; (ii) construction of paved vehicular ingress and egress lanes on the Grantee Parcel and Grantor Parcel in connection with that certain Cross Access Easement Agreement by and between Grantor and Grantee, of even date herewith; (iii) construction of new stormwater sewer facilities on the Grantee Parcel and the installation of stormwater sewer collection and connection facilities on the Grantee Parcel; (iv) the abandonment of the Storm Sewer (as hereinafter defined) located on the Grantor Parcel located as depicted on Exhibit “C”; and (v) all other reasonably related ancillary activities related to items (i) through (iv) (collectively the “**Construction Work**”). Grantee shall diligently proceed with the Construction Work in compliance with applicable laws, regulations, codes, rules, and specifications of any governmental or quasi-governmental entities. Grantee shall not exercise its rights under this Agreement in any way, or take any action, or allow any action to be taken, whether temporary or permanent, which

shall unreasonably restrict access to, or visibility of, that (i) portion of Lot 2 (as described in Exhibit "B") occupied by Chipotle Mexican Grill, Inc. ("CMG") or its signs, materially impair or interfere in any way the operation of CMG's business, or affect in any way the number of parking spaces or location thereof or the ingress or egress including any driveways which are adjacent to or in the proximity of the CMG premises, without CMG's prior written consent, or (ii) Lot 1 (as described in Exhibit B) occupied by TopGolf USA Omaha, LLC ("TopGolf") or its signs, materially impair or interfere in any way the operation of TopGolf's business, or affect in any way the number of parking spaces or location thereof or the ingress or egress including any driveways which are adjacent to or in the proximity of the TopGolf's premises, without TopGolf's prior written consent. Clause (i) in the foregoing sentence shall become null and void upon the expiration or earlier termination of that certain Lease Agreement dated June 12, 2019, by and between Grantee (as "Landlord") and CMG, as same may be amended, extended, or modified; prior to such expiration or termination, the parties hereunder acknowledge that CMG is an intended, third-party beneficiary of this Agreement and may enforce the foregoing provisions by all available remedies at law or in equity and clause (ii) in the foregoing sentence shall become null and void upon the expiration or earlier termination of that certain Lease Agreement dated October 20, 2017, by and between Landlord and TopGolf, as same may be amended, extended, or modified; prior to such expiration or termination, the parties hereunder acknowledge that TopGolf is an intended, third-party beneficiary of this Agreement and may enforce the foregoing provisions by all available remedies at law or in equity. Prior to commencing the Construction Work, Grantee shall erect fencing to prohibit pedestrian and vehicular traffic onto the Grantor Parcel (excepting the Easement Area) during construction. Upon completion of the Construction Work, Grantee shall remove said fencing, except as otherwise provided in that certain Cross Access Easement Agreement by and between Grantee and Grantor, of approximately even date herewith.

3. **Grant of Temporary Storm Sewer Easement.** Grantor hereby grants and conveys for the benefit of the Grantee Parcel (and its tenants, including CMG and TopGolf), a temporary, non-exclusive easement, privilege, and right of use in, to, over, and across the paved portions of the Grantor Parcel to allow the surface flow of stormwater outflow from the Grantee Parcel into the private storm water collection and drainage system located on and under the Grantor Parcel as depicted on Exhibit "C" attached hereto (the "Storm System"), and a temporary, non-exclusive easement, privilege, and right of use in said Storm System for the collection and distribution of stormwater outflow from the Grantee Parcel under and through the Grantor Parcel (the "**Temporary Storm Sewer Easement**"; collectively with the Temporary Construction Easement the "**Easements**"). Grantor shall at all times maintain the Storm System at Grantor's sole cost and expense in good condition and repair. Grantor shall have the right to use the Storm System described herein in a manner which is consistent with the rights granted herein to Grantee. Grantor and Grantee shall, at all times, use the Storm Sewer described herein in a manner so as not to obstruct the free flow of stormwater from the Grantee Parcel and the Grantor Parcel.
4. **Term.** The Easements shall automatically terminate effective as of that date (the "**Termination Date**") which is the earliest to occur of the following events: (i) one (1) year after the date of this Agreement or (ii) (a) thirty (30) days after the full and final completion of the Construction Work and (b) TopGolf acceptance of the completion and delivery of the Construction Work (which acceptance not to be unreasonably withheld, conditioned, or delayed, and shall be deemed given in

the event that TopGolf does not notify Grantee of its objections to or non-acceptance of the Construction Work within fourteen (14) days after Grantee notifies TopGolf of completion of same). Following the Termination Date, upon request of Grantor, Grantee shall execute and deliver a written agreement confirming that the Easements have terminated and confirming the Termination Date. Following the Termination Date, Grantee shall have no further obligations in relation to the Storm Sewer, and Grantor shall be entitled, at Grantor's sole cost and expense to remove or relocate the Storm Sewer.

5. **Liability Insurance.** Grantee shall maintain or cause its general contractor to maintain a policy or policies of commercial general liability insurance against claims and liability on account of bodily injury, death and property damage incurred upon the Grantor's Parcel arising out of the exercise of the easement rights herein granted or caused by Grantee, its contractors or subcontractors or their respective agents or employees. Such insurance shall be carried in a financially responsible company or companies authorized to do business in Nebraska, shall have a combined single limit of not less than \$2,000,000.00 per occurrence, and shall designate Grantor as an additional insured. Upon written request from Grantor, Grantee shall provide Grantor a certificate of insurance evidencing compliance with the insuring obligations set forth in this Section 5.
6. **Indemnification.** Except to the extent arising from the negligence or willful misconduct of Grantor, Grantee shall indemnify and hold Grantor harmless from and against any and all claims or suits for damages, liability, loss, expenses, causes of action, and judgments (including, but not limited to, reasonable attorneys' fees and legal expenses in connection with defending against any such action, suit, or claim) arising from injury to or death of any person or loss of or damage to property arising out of the Grantee's or the Grantee's employees, agents, contractors, invitee's use of the Easement Area, the Storm Sewer, or exercise of Grantee's easement rights granted under this Agreement.
7. **Representations.** Grantor represents and warrants that it owns the Grantor Parcel in fee simple, subject to easements, covenants, and restrictions of record. Grantor and Grantee each represent that there is no conflict with another instrument or agreement or consent needed (which has not been obtained) for either party to enter into this Agreement. Grantor and Grantee each represent that the individual executing this Agreement has been duly authorized to enter into this Agreement.
8. **Entire Agreement.** This Agreement 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.
9. **Governing Law.** The laws of the state of Nebraska shall govern the interpretation, validity, performance, and enforcement of this Agreement.
10. **Restrictive Covenants to Run with Land.** It is intended that the easements, 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 for the term hereof 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.
11. **No Termination for Breach.** No breach hereunder shall entitle any party to cancel, rescind, or otherwise terminate this Agreement. The covenants, conditions and restrictions hereof shall be

binding upon and effective against any and all present and future owners and occupants of Grantor Parcel and Grantee Parcel for the term hereof whether title thereto is acquired by foreclosure, trustee's sale, conveyance or otherwise.

12. **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 Grantor Parcel and owner of the Grantee 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 except that: (i) any amendments to Sections 2, 3 or 4 shall require the prior consent of TopGolf, and (ii) any amendments to Section 2 or 3 shall require the prior consent of CMG.
13. **Notices.** All notices or other communications required or permitted hereunder shall be in writing and shall be effective upon receipt whether delivered by personal delivery, prepaid certified mail, return receipt requested, or prepaid overnight delivery service, addressed to the respective parties as follows:

Notices to Grantor:                   Hugo Westroads Development, LLC  
  Attention: Amy L. Lawrenson  
  Baird Holm LLP  
  1700 Farnam Street, Suite 1500  
  Omaha, Nebraska 68102  
  Tel: 402-636-8261  
  E-mail: alawrenson@bairdholm.com

Notices to Grantee:                   Westroads Investors, LLC  
  Attention: Drew Snyder  
  20010 Manderson Street, Suite 101  
  Elkhorn, Nebraska 68022  
  Phone: 402-513-9003  
  E-mail: drew@woodsonia.net

With a copy to:                       Levy Craig Law Firm  
  4520 Main Street, Ste. 1600  
  Kansas City, Missouri 64112  
  Attn: Jeffrey Bauer  
  Phone: 816-460-1832  
  Email: jbauer@levycraig.com

Notices shall be deemed received if personally delivered, or via certified U.S. mail, return receipt requested, or overnight delivery on the date of delivery to the address of the person to receive such notice. Notice of change of address shall be given in the manner detailed in this paragraph. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

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

*[Signatures appear on following page]*



By: WOODSONIA 730-908 N. 102<sup>ND</sup>, 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*  
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.


*Tanya K Mainelli*  
Notary Public  
My Commission expires on March 21, 2023

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

[Grantor signature on following page]

**GRANTOR:**

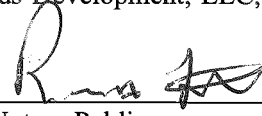
HUGO WESTROADS DEVELOPMENT, LLC, a  
Nebraska limited liability company

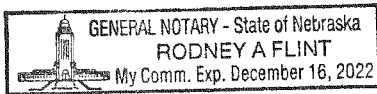
By:   
J. Joe Ricketts, President

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





**Grantee Lienholder Consent**

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

**LIENHOLDER:**

**Enterprise Bank**

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

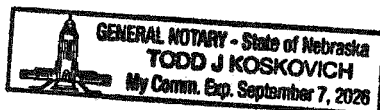
STATE OF Nebraska  
COUNTY OF Douglas

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

GIVEN under my hand and official seal this 15<sup>th</sup> day of December, 2022.

*Todd J Koskovich*  
Notary Public

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



**EXHIBIT A**

**Legal Description of the Grantor Property**

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.

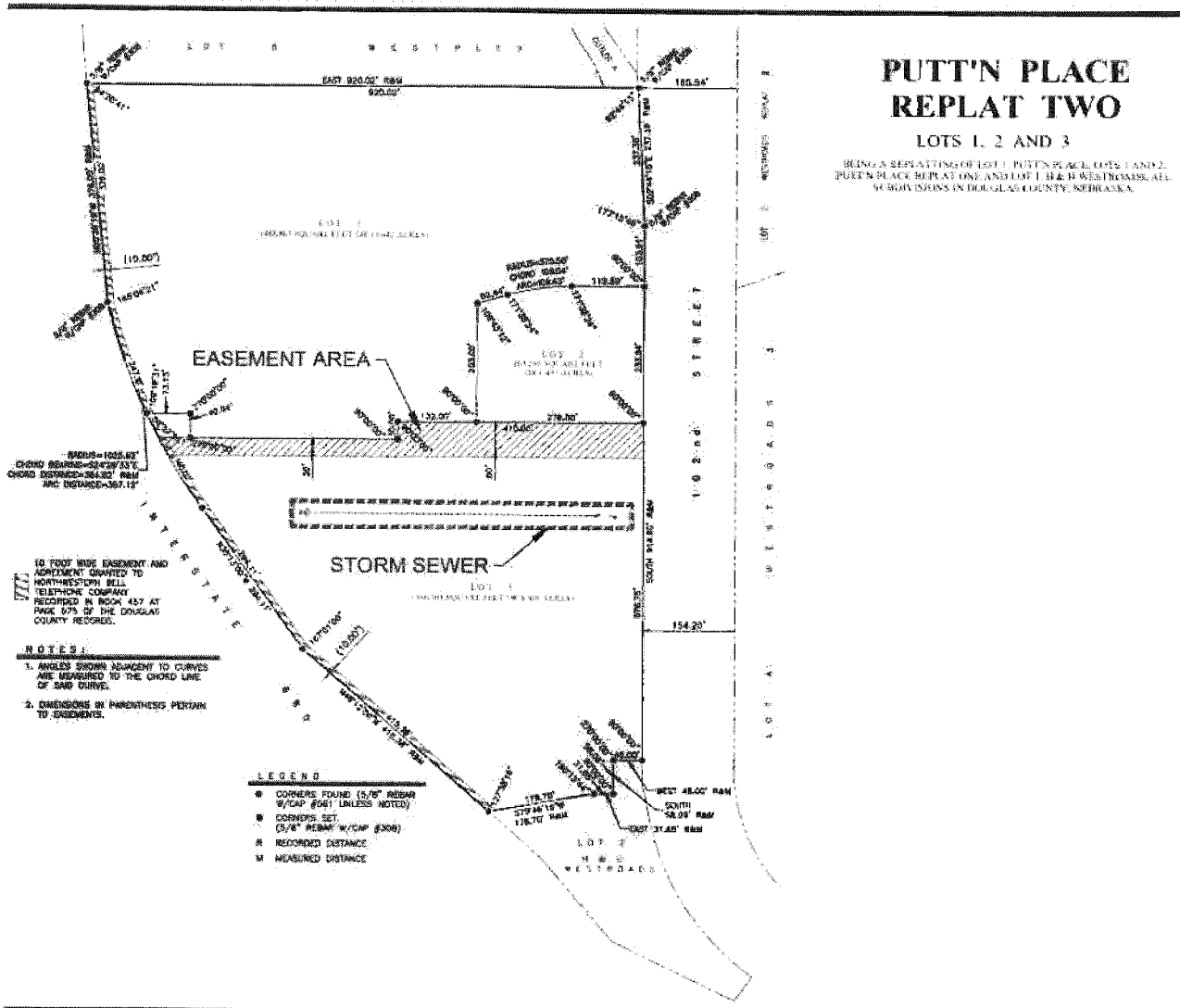
**EXHIBIT B**

**Legal Description of the Grantee 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 Easement Area(s)**



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

**TDS**

Job No.: 2022-04-ADM  
 Drawn By: JEP  
 Reviewed By: JON  
 Date: JULY 27, 2022  
 Book:  
 Page:

EASEMENT AREA

EXHIBIT "C"