

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2006-11177

2006 APR 14 A 10:26

*Shirley J. Dowling*  
REGISTER OF DEEDS

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VERIFY        D.E.         
PROOF       

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REFUND        CREDIT       

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*Stamped copy*

**WHEN RECORDED, RETURN TO:**

Harvey L. Temkin, Esq.  
Reinhart Boerner Van Deuren s.c.  
22 East Mifflin Street, Suite 600  
P. O. Box 2018  
Madison, WI 53701-2018

**CROSS-ACCESS EASEMENT AND RESTRICTIONS AGREEMENT**

This Cross-Access Easement and Restrictions Agreement ("Agreement") is executed as of March 27, 2006 (the "Effective Date"), by and between JOE MCDERMOTT ASSOCIATES, INC., a Nebraska corporation, and JOHN L. HOICH, an adult resident of the State of Nebraska (collectively, "McDermott and Hoich"), and DES MOINES LODGING INVESTORS III, LLC, a Wisconsin limited liability company ("Lot 2 Owner"), and NANAIMO BAY, LLC, a Nebraska limited liability company ("Lot 1 Owner," and together with the Lot 2 Owner, the "Lot Owners").

**RECITALS**

A. As of the Effective Date, McDermott and Hoich are the owners of the real property (the "McDermott and Hoich Property") located in Sarpy County, Nebraska that is more particularly described on the attached Exhibit A.

B. As of the Effective Date, Lot Owners are the owners of the real property (the "Lot Owners Property") located in Sarpy County, Nebraska, that is more particularly described on the attached Exhibit B and which is adjacent to the McDermott and Hoich Property. The McDermott and Hoich Property and the Lot Owners Property are each an integral part of the real estate development herein defined as "Southport East Replat Two".

C. McDermott and Hoich and Lot Owners (collectively, the "Parties" or individually, a "Party") desire to establish the easements and restrictions provided for in this Agreement to facilitate the integrated operation of their respective properties until such time as more comprehensive easements, covenants and restrictions can be established for the complete development of the surrounding properties including the McDermott and Hoich Property and Southport East Replat Two.

AGREEMENT

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Construction and Purposes.

1.1 Accuracy of Recitals. The Parties acknowledge and confirm the accuracy of the Recitals, which are incorporated into and made a part of this Agreement.

1.2 Temporary Pending Final ECRs. The Parties acknowledge that the provisions of this Agreement are meant to be temporary, pending sufficient development planning for the adjoining properties in Southport East Replat Two providing for integrated and equitable easements, covenants and restrictions ("ECRs") granting easements and cross easements for parking, ingress and egress, providing for maintenance of easements and common areas, and similar benefits, rights and burdens on all of the properties in Southport East Replat Two. The Parties acknowledge that the ECRs shall also include provisions for a Southport East Replat Two property owner's association vested with authority for the collection of dues and assessments for maintenance of common areas, architectural and design control and review rights, and similar governance matters. The ECRs will, among other matters, provide restrictions or covenants regarding the drainage of storm water; signage rules and allotments; exterior lighting requirements; landscaping controls; and similar restrictions, rights, obligations, and duties necessary for an integrated high quality commercial development; and may include use restrictions for one or more lots within Southport East Replat Two, including the Lot Owners Property.

1.3 Covenant to Execute. The Parties, each on behalf of itself and its successors, heirs and assigns, covenant and warrant to one another that each shall work cooperatively and in good faith to establish the terms of the ECRs and each shall duly execute and record the ECRs on each Party's respective property within Southport East Replat Two.

2. Grant of Easements.

2.1 For the Benefit of the Lot Owners Property. McDermott and Hoich grant to Lot Owners and Lot Owners' tenants, guests, agents, contractors, employees and invitees a perpetual, nonexclusive easement over and across the joint drive aisles and street access points of the McDermott and Hoich Property, as may from time to time be constructed and maintained for such use, for the purpose of vehicular and pedestrian ingress and

egress from the Lot Owners Property, such joint drive aisles and street access points being depicted on the attached Exhibit C. Subject to the limitations of Section 3 below, McDermott and Hoich shall not obstruct or impair Lot Owners' use of the nonexclusive easements granted hereunder.

2.2 For the Benefit of the McDermott and Hoich Property. Lot Owners grant to McDermott and Hoich and McDermott and Hoich's tenants, guests, agents, contractors, employees and invitees a perpetual, nonexclusive easement over and across the joint drive aisles and street access points of the Lot Owners Property, as may from time to time be constructed and maintained for such use, for the purpose of vehicular and pedestrian ingress and egress from the McDermott and Hoich Property, such joint drive aisles and street access points being depicted on the attached Exhibit C. Subject to the limitations of Section 3 below, Lot Owners shall not obstruct or impair McDermott and Hoich's use of the nonexclusive easements granted hereunder.

3. Limitations. The easement rights described in Sections 2.1 and 2.2 comprise all of the easements created hereunder (collectively, the "Easements"). The portions of the McDermott and Hoich Property and the Lot Owners Property that are or may become subject to the Easements (collectively, the "Easement Parcels" or individually, the "Easement Parcel") are subject to the rights of any Party to close off its portion of the Easement Parcels for a reasonable period of time as may be necessary to prevent the acquisition of prescriptive rights; provided, however, that no Party shall close off such portions of the Easement Parcels to the extent that either vehicular ingress and egress access and access to or the availability of any utilities to the benefited parcel would be cut off.

4. Improvement of Easement Parcels.

4.1 Improvement. Lot Owners shall be responsible for construction of the joint drive aisles and access points located within the Easement Parcels described in paragraphs 2.1 and 2.2 with Lot Owners and McDermott and Hoich sharing in the costs of constructing such joint drive aisles and access points, with Lot Owners being responsible for payment of a percentage of such costs based on the percentage of the square footage of the Lot Owners Property as it relates to the total square footage of Southport East Replat Two (the "Lot Owners Percentage") and McDermott and Hoich being responsible for payment of the remainder of all such costs. Such amounts shall include all costs of construction, including, without limitation, all engineering costs, costs of all permits and approvals and any attorneys' fees incurred in connection therewith.

4.2 Reimbursement. Periodically, but no more frequently than monthly, Lot Owners shall provide McDermott and Hoich with invoices covering work performed by Lot Owners in accordance with this Section 4 for which McDermott and Hoich are responsible for sharing costs, including with such invoice a calculation of the total expenditures and a calculation of the proportionate shares of McDermott and Hoich and Lot Owners of such expenditures. Within thirty (30) days after receipt of such invoice, McDermott and Hoich shall pay their proportionate share to Lot Owners. Any amounts

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not paid by McDermott and Hoich by such due date shall bear interest as set forth in Section 5.3.

5. Operation, Maintenance and Repair.

5.1 Operation, Maintenance and Repair of Easement Parcels. Lot Owners shall be solely responsible for the operation, maintenance and repair of the Easement Parcels; however, Lot Owners and McDermott and Hoich shall share in the costs to operate, maintain and repair the Easement Parcels, with Lot Owners being responsible for payment of the Lot Owners Percentage and McDermott and Hoich being responsible for payment of the remainder of such costs. The provisions of Section 4.1 shall apply with respect to the manner of billing and reimbursing for such expenses. The Easement Parcels shall be kept in good condition and repair at all times.

5.2 Damage to Easement Parcels. To the extent that any of the Easement Parcels are damaged as the result of the negligent or willful and wrongful actions or omissions of a Party ("Damaging Party") or the Damaging Party's agents, contractors or employees, the Damaging Party shall promptly repair such damage at its sole cost and expense. To the extent that the Easement Parcels are damaged in any other manner (including, without limitation, the failure to keep the Easement Parcels in good repair as provided herein), the Party or Parties responsible for maintaining the damaged Easement Parcels in good condition and repair, as provided in this Agreement, shall promptly repair such damage with the costs to be paid as provided in Sections 5.1 or 5.2, as the case may be.

5.3 Remedies. If Lot Owners shall fail to fulfill their obligations with respect to maintenance and repair as set forth in this Section 5, McDermott and Hoich shall have the right, but not the obligation, to provide notice of such failure and, in the event that the failure is not cured within thirty (30) days following the receipt of such notice (in accordance with Section 14 below), enter onto the Lot Owners Property for the purpose of completing the necessary maintenance or repairs. All reasonable amounts expended by McDermott and Hoich pursuant to the preceding sentence shall be reimbursed by Lot Owners within ten (10) days of receipt of a valid invoice for such amounts. If either Party fails to pay amounts owing by it pursuant to this Agreement, such amounts shall accrue interest at the rate of twelve percent (12%) per annum from the date originally due until paid, but in no event at a rate greater than that permitted by law. If either party is required to commence an action to enforce this Agreement or collect any amounts owing hereunder, the prevailing party shall be entitled to collect from the nonprevailing party all costs, expenses and disbursements, including attorneys' fees, it incurs in connection with collecting amounts owing hereunder and pursuing the enforcement action.

6. Mutual Indemnities. The Parties covenant and agree with each other, on behalf of each of their successors and assigns, as the case may be, to indemnify, hold harmless and defend (with legal counsel reasonably acceptable to each Party) the respective owner of an Easement Parcel for, from and against any and all claims, liabilities, expenses and reasonable attorneys' fees and court costs which may be claimed or asserted against an owner of an Easement Parcel, its successors and assigns, arising out of the use of an

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Easement Parcel, as provided in this Agreement, by any Party to this Agreement, or its tenants, guests, agents, contractors, employees and invitees, including, but without limitation, claims for property damage and bodily injury and any mechanics' or materialmen's liens or claims of lien which may be asserted against any of them, their successors or assigns. Such indemnification shall only apply, however, to the extent the Easement Parcel owner does not recover its loss through the proceeds of any insurance it may have in force (or may be required to have in force as provided in Section 7 below).

7. Insurance. Upon the last to occur of (i) commencement of use of the initial improvements to the Easement Parcels, or (ii) the Effective Date, the Party owning such Easement Parcel shall deliver to the other Party benefiting from such Easement Parcel a currently effective certificate of commercial general liability insurance written on an "occurrences" basis with a minimum combined single limit of One Million Dollars (\$1,000,000) with coverage for owned and non-owned motor vehicles and contractual liability coverage and with a reasonable deductible amount as determined by the applicable owner of such Easement Parcel. All policies of insurance required by the terms of this Agreement shall contain an endorsement or agreement by the insurer that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of the insured which might otherwise result in forfeiture of said insurance and the further agreement of the insurer waiving all rights of subrogation, setoff, counterclaim or deductions against the insured. The policies of insurance must each name the other Party benefiting from such Easement Parcel as an additional insured. Such insurance coverage may be included in blanket insurance policies. The issuer of such certificates shall commit to give all insured Parties thirty (30) days' prior notice before cancellation of the policies or reduction in coverage, except in case of nonpayment of premiums, in which case the insurer(s) shall commit to give the insured Parties ten (10) days' prior notice before cancellation or reduction in coverage. Each Party may request from time to time that the insurance amounts be mutually increased to reflect commercially reasonable amounts in Sarpy County, Nebraska, and each Party shall promptly secure such increased coverage and provide the other Party benefiting from such Easement Parcel with a certificate of insurance evidencing such coverage.

8. Liens. Each Party shall retain the right to encumber their respective property, but any such encumbrance shall be subject to this Agreement. No Party to this Agreement shall permit any claim, lien or other encumbrance arising from any Party's use of the Easement Parcels to accrue against or attach to the property of the other Party to this Agreement except that such Party may include in any such encumbrance such Party's rights to the Easements created herein.

9. Use Restrictions. No hotel, motel or other transient lodging facility of any type providing for lodging of guests for a period of less than thirty (30) days at a time (collectively, a "Lodging Facility") shall be constructed or operated on any portion of the McDermott and Hoich Property, unless prior written consent is obtained from Lot Owners, or its successors in title to the real estate described on the attached Exhibit B. The provisions contained in this Paragraph 9 shall survive and be deemed part of the ECRs regardless of whether expressly stated therein.

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10. Recordation. This Agreement shall be recorded in the office of the Register of Deeds of Sarpy County, Nebraska.

11. Run With The Land. All provisions of this Agreement shall run with the land, shall be binding upon any owner of any portion of any of the Easement Parcels and shall inure to the benefit of any owner of any portion of the McDermott and Hoich Property or the Lot Owners Property. The extent of usage of the Easements granted hereunder may be increased or decreased from time to time depending upon the current or future uses or development of the Easement Parcels owned by the Parties without affecting the validity of the Easements granted hereby or the current or future uses thereof. Notwithstanding that this Agreement runs with the land, the Parties covenant to restate and replace this Agreement by a written instrument signed by the Parties, or their successors, heirs or assigns (as appropriate) at such time as the ECRs are recorded.

12. Remedies. In the event of a breach of any of the terms or conditions of this Agreement, those affected shall be entitled to full and adequate relief by all available legal and equitable remedies, including, without limitation, specific performance.

13. Governing Law. This Agreement shall be interpreted according to, and governed by, the procedural and substantive laws of the State of Nebraska. The Parties and their respective tenants, guests, agents, contractors, employees or invitees irrevocably consent to jurisdiction and venue in the State of Nebraska and agree that they will not attempt to remove or transfer any action properly commenced in the State of Nebraska.

14. Notices. All notices or other communications required or permitted to be provided pursuant to this Agreement shall be in writing and shall be hand delivered, sent by United States Postal Service, postage prepaid, or sent prepaid by a nationally recognized courier service to the parties at the following addresses, or to such other address that the addressee may designate by written notice to the sending party:

If to Lot Owners: Des Moines Lodging Investors, LLC  
c/o The North Central Group  
1600 Aspen Commons, Suite 200  
Middleton, WI 53562  
ATTN: Jeff Lenz

Nanaimo Bay, LLC  
8101 E. Prentice Ave., Suite 510  
Greenwood Village, CO 80111  
ATTN: Michael Eloranto

With a copy to: Attorney Harvey L. Temkin  
Reinhart Boerner Van Deuren s.c.  
22 E. Mifflin Street, Suite 600  
Madison, WI 53703

F

If to McDermott and  
Hoich:

John L. Hoich  
4428 South 180<sup>th</sup>  
Omaha, NE 68135

With a copy to:

Attorney Jerry Slusky  
Slusky Law, LLC  
Suite 300  
17445 Arbor Street  
Omaha, NE 68130

All notices shall be deemed to have been given when delivered if hand delivered, when received if sent by courier, or forty-eight (48) hours following deposit with the United States Postal Service.

15. Invalidity. Every provision of this Agreement shall be enforceable to the fullest extent permitted by law. If any provision of this Agreement is determined to be to any extent unenforceable, that provision will be deemed modified in the most minimal manner so as to make it enforceable, and the remainder of this Agreement shall not be affected.

16. General. No waiver of any provision of this Agreement shall be deemed to be a continuing waiver of that provision or a waiver of any other provision of this Agreement. Time is of the essence in the performance of each and every provision of this Agreement. Each person executing this Agreement on behalf of a Party personally represents and warrants that he or she is duly authorized to execute this Agreement in the capacity shown. This Agreement may be executed in any number of counterparts, each of which taken together shall constitute one and the same original Agreement.

17. Authority of the City of La Vista. No provision within this document shall be interpreted, construed or have the effect of abolishing, suspending, abating or diminishing City of La Vista's ability to, at its sole option, exercise its rights and authority to invoke and exercise its right of entry and full access to the property within Southport East Replat Two and exercise the other rights herein reserved to the City under Section 12(f) of the Commercial Subdivision Agreement originally entered into by and between the City of La Vista, R.S. Land, Inc. and Southpointe Partners I, LLC, and as later amended by that Second Amendment to Subdivision Agreement executed by the City of La Vista, Joe McDermott Associates, Inc., and John L. Hoich.

18. City of La Vista Approval Required. This Agreement may not be modified, terminated, or amended in any manner without the prior approval of the City of La Vista so as to ensure the continued access to and maintenance of the improvements located on the property within Southport East Replat Two.

19. Entire Agreement. This Agreement sets forth the entire understanding of the Parties and may not be amended except by a written document executed and

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acknowledged by all Parties to this Agreement and duly recorded in the office of the Register of Deeds of Sarpy County, Nebraska.

Executed under seal as of the Effective Date.

DES MOINES LODGING INVESTORS III, JOE MCDERMOTT ASSOCIATES, INC.  
LLC

By: *David A. Lenz* (SEAL)  
David A. Lenz, Managing Member

By: \_\_\_\_\_ (SEAL)  
Its: \_\_\_\_\_

NANAIMO BAY, LLC

By: *C. J. Raymond* (SEAL)  
Name: *C. J. Raymond*  
Title: *Member of C. J. Raymond*

\_\_\_\_\_ (SEAL)  
John L. Hoich

*Investments, L.L.C., sole  
Member of Nanaimo Bay, LLC*

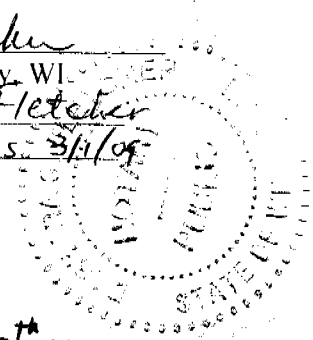


M

STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

The foregoing instrument was acknowledged before me on March 16, 2006, by David A. Lenz, who acknowledged being the Managing Member of Des Moines Lodging Investors III, LLC, a Wisconsin limited liability company, and who acknowledged executing the foregoing instrument on behalf of the company, being authorized to do so for the purposes therein contained.

Barbara S. Fletcher  
Notary Public, Dane County, WI  
Name: Barbara S. Fletcher  
My Commission: Expires: 3/1/09

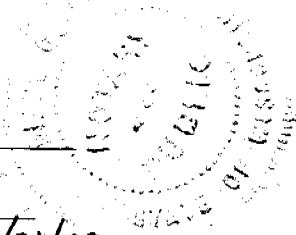


STATE OF WISCONSIN )  
 ) ss.  
COUNTY OF DANE )

The foregoing instrument was acknowledged before me on March 20<sup>th</sup>, 2006, by C.J. Raymond, who acknowledged being the member of C.J. Raymond of Nanaimo Bay, LLC, a Nebraska limited liability company, and who acknowledged executing the foregoing instrument on behalf of the company, being authorized to do so for the purposes therein contained.

X Investments, L.L.C., Sole  
member

Diane Quinn  
Notary Public, Dane County, WI  
Name: DIANE QUINN  
My Commission: Expires 7/26/09



I

acknowledged by all Parties to this Agreement and duly recorded in the office of the Register of Deeds of Sarpy County, Nebraska.

Executed under seal as of the Effective Date.

DES MOINES LODGING INVESTORS III, JOE MCDERMOTT ASSOCIATES, INC.  
LLC

By: \_\_\_\_\_ (SEAL)  
David A. Lenz, Managing Member

By: Joe McDermott <sup>associate</sup> (SEAL)  
Its: President

NANAIMO BAY, LLC

By: \_\_\_\_\_ (SEAL)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

John L. Hoich (SEAL)  
John L. Hoich

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STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

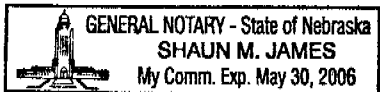
The foregoing instrument was acknowledged before me on MARCH 16, 2006, by Joe McDermott, who acknowledged being the president of Joe McDermott Associates, Inc., a Nebraska corporation, and who acknowledged executing the foregoing instrument on behalf of the corporation, being authorized to do so for the purposes therein contained.



Shaun James  
Notary Public, DOUGLAS County, NE  
Name: SHAUN JAMES  
My Commission: \_\_\_\_\_

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me on MARCH 16, 2006, by John L. Hoich, who acknowledged executing the foregoing instrument.



Shaun James  
Notary Public, DOUGLAS County, NE  
Name: SHAUN JAMES  
My Commission: \_\_\_\_\_

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**EXHIBIT A**

**LEGAL DESCRIPTION OF MCDERMOTT AND HOICH PROPERTY**

All of the property located within Lot 3, Southport East Replat Two, a subdivision in Sarpy County, Nebraska.

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**EXHIBIT B**

**LEGAL DESCRIPTION OF LOT OWNERS PROPERTY**

Lots 1 and 2, Southport East Replat Two, a subdivision in Sarpy County, Nebraska.

M

EXHIBIT C

DEPICTION OF EASEMENT PARCELS

