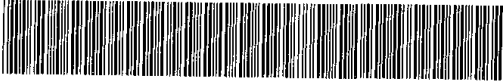




MISC 2006092144



AUG 14 2006 08:02 P 4

WHEN RECORDED RETURN TO:
Michael C. Carter
11506 Nicholas Street
Suite 200
Omaha, NE 68154

Preparer
Information: Michael C. Carter, Esq., 11506 Nicholas Street, Suite 200, Omaha, NE 68154

misc 59-25693
REC-21-00 FB-59-25685

4/2 BK89-493 C/O COMP *[initials]*
DEI: SCAN FV

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
8/14/2006 08:02:43.47

2006092144

EXCLUSIVE PARKING EASEMENT AGREEMENT

THIS EXCLUSIVE PARKING EASEMENT AGREEMENT ("Agreement") is made as of this ____ day of **August, 2006**, by and between **NWE Nicholas, LLC, by and through its Manager, Northwestern Engineering Company, a South Dakota corporation** ("Grantor"), whose address is 1309 West Main, P.O. Box 2624, Rapid City, South Dakota 57709-2624, and **Miracle Hills IV L.P., a Nebraska limited partnership** ("Grantee"), whose address is 11506 Nicholas Street, Suite 200, Omaha, Nebraska 68154, all with respect to the following:

RECITALS

A. Grantor is the owner of that certain real property located in the County of Douglas and State of Nebraska, legally described as:

Miracle Hills Park, Replat 3, Lot 1, County of Douglas, State of Nebraska, according to the recorded plat thereof (the "Grantor Property").

B. Grantee is the owner of certain real estate located in the County of Douglas, State of Nebraska, legally described as follows:

Miracle Hills Park, Lot 4, County of Douglas, State of Nebraska, according to the recorded plat thereof (the "Grantee Property").

C. Grantor desires to grant to Grantee an exclusive easement over and across a strip twenty-seven feet (27') in length and two feet seven inches (2' 7") in width on the western portion of the Grantor Property as cross-hatched on Exhibit "A" attached hereto (the "Easement Area") for purposes of providing vehicular parking spaces for the benefit of the Grantee Property, and Grantee desires to accept such exclusive easement, all pursuant to the terms, covenants and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, the sum of **One and no/100 Dollar (\$1.00)**, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above are hereby incorporated into this Agreement by this reference.

2. Grant of Exclusive Easement. Grantor represents and warrants that it is the owner in fee simple of the Grantor Property, and has the full right and authority to grant the exclusive easement described in this Agreement. Subject to the terms and conditions hereof, Grantor hereby grants, establishes and creates to and for the benefit of Grantee and all future owners of the Grantee Property, as the same may be subdivided, for their use and the use of their agents, tenants, employees, customers, licensees and invitees, and the agents, employees, customers, licensees and invitees of said tenants, a perpetual exclusive easement appurtenant to the Grantee Property over and across the Exclusive Easement Area, all for the purposes of providing vehicular parking spaces for the benefit of the Grantee Property, which Exclusive Easement Area shall be readily accessible to the Building, together with pedestrian and vehicular access, ingress and egress to and from the Exclusive Easement Area from the Grantee Property in connection with the use and enjoyment of such additional vehicular parking spaces. Grantee shall be responsible for, at the sole cost and expense, maintaining, repairing and replacing the Exclusive Easement Area in the condition as originally installed by Grantee.

*Box 29C
605219*

3. **Indemnification.** Grantee, its successors and assigns shall indemnify and hold Grantor, its successors and assigns harmless from all liability for death or injury to persons and damages to property as may result from, arise out of or be attributable to the use and enjoyment of the easement by Grantee and those additional parties benefiting from this easement as above set forth, provided that no indemnification shall apply with respect to losses or liabilities arising by reason of the negligence of Grantor or its successors and assigns.

4. **No Public Dedication.** Nothing contained in this easement shall be deemed to be a conveyance, gift or dedication of the exclusive easement area to the public generally or for any public purpose whatsoever, it being the intention that this easement shall be strictly limited to and for the purposes expressed herein.

5. **Runs With the Land.** The easements, rights and restrictions granted herein and the provisions hereof shall run with the land, shall be appurtenant to the Grantee Property and the Grantor Property, respectively, shall burden and benefit the Grantor Property and the Grantee Property, respectively, and shall be binding upon and inure to the benefit of Grantor and Grantee and the future owners of the Grantee Property and the Grantor Property, respectively.

6. **No Waiver.** The failure of any party to insist upon strict performance of any of the terms, covenants or conditions of this Agreement shall not be deemed to waive any rights or remedies which that party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions.

7. **Retained Rights; Interference with Exclusive Easement.** Grantor and Grantee each understand and agree that the exclusive easements granted hereby are granted and acquired subject to the rights of Grantor and its respective successors and assigns, to use the Exclusive Easement Area for any purpose to the extent that such use does not materially interfere with the rights granted hereunder, and each retains all rights to its respective property which are not inconsistent with this Agreement. The foregoing notwithstanding, Grantor understands, acknowledges and agrees that Grantor shall not be entitled to construct walls, buildings or other structures within the Exclusive Easement Area.

8. **Miscellaneous.** This Agreement represents the entire agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the subject matter of this instrument, unless stated in writing signed by the parties hereto. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any persons not a party to this Agreement except as described herein. The section headings used in this Agreement have been included solely for ease of reference and shall not be considered in the interpretation or construction of this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall be deemed one and the same document. Time is of the essence of each and every term, condition and particular of this Agreement. If any term of this Agreement is determined to be invalid or unenforceable, it will not affect the validity of the remaining terms. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Nebraska. This Agreement is not intended to create a joint venture, partnership or agency relationship between the owner of the Grantor Property and the owner of the Grantee Property. In the event of a dispute as to the terms and conditions of this Agreement, the prevailing party shall be entitled to court costs and reasonable attorneys' fees incurred in enforcing any provisions contained herein.

9. **Term and Termination.** This Agreement shall continue in full force and effect in perpetuity, subject only to termination upon the express mutual written agreement of the respective owners of the Grantee Property and the Grantor Property.

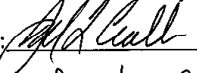
10. **Recordation.** Grantor and Grantee each agree to cause this Agreement to be recorded in the real property records of Douglas County, Nebraska, contemporaneously with the transfer of the Grantee Property described in the recitals hereto.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first written above.

Grantor:

NWE Nicholas, LLC, a Nebraska limited liability company

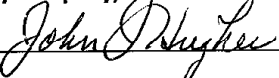
By: Northwestern Engineering Company, a South Dakota corporation, Manager

By: 
Name: David L. Crabb
Its: Secretary

Grantee:

Miracle Hills IV L.P., a Nebraska limited partnership

By: Miracle Hills L.L.C., a Nebraska limited liability company, General Partner

By: 
Name: John J. Hughes
Its: Manager

GRANTOR:

STATE OF South Dakota)
COUNTY OF Pennings)ss.

BEFORE ME the undersigned Notary Public in and for said county personally appeared DAVID L. CRAIG, to me known to be SECRETARY of **Northwestern Engineering Company, a South Dakota corporation**, and whose signature is affixed to the foregoing Easement Agreement as Lessee, and being first duly sworn acknowledged execution of the same to be his voluntary act and deed and the voluntary act and deed of said corporation.

Dated this 7th day of August, 2006.

Kati Jenkins
Notary Public

My Commission Expires
September 30, 2010

My Commission expires: _____



GRANTEE:

STATE OF NEBRASKA)
COUNTY OF DOUGLAS)ss.

BEFORE ME the undersigned Notary Public in and for said county personally appeared **John J. Hughes**, to me known to be President of **Miracle Hills L.L.C.**, a Nebraska limited liability company and general partner to Miracle Hills IV, L.P., and whose signature is affixed to the foregoing Easement Agreement, as Grantee and being first duly sworn acknowledged execution of the same to be his voluntary act and deed and the voluntary act and deed of said company.

Dated this 8 day of August, 2006.

Melinda Munk
Notary Public

My Commission expires: 6-6-10

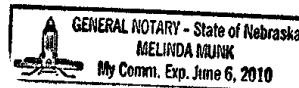


EXHIBIT "A"

