

FILED SARPY CO. NE.
INSTRUMENT NUMBER
2007-21169

2007 JUL 16 P 1:12

Shawn J. Slusky
REGISTER OF DEEDS

COUNTER 10 C.E. lls
VERIFY lls D.E. lls
PROOF lls
FEES \$ 31.00
CHECK # _____
CHG. STS CASH _____
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SHORT _____ NCR _____

After recording, return to: Shaun James, Slusky Law, LLC, Suite 300, 17445 Arbor Street, Omaha, NE 68130

**FIRST AMENDMENT TO
DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS
FOR LOTS 1 AND 2, SOUTHPORT EAST REPLAT TWO
AND FOR LOT 3 SOUTHPORT EAST REPLAT TWO
REPLATTED AS LOTS 1 THROUGH 10, SOUTHPORT EAST REPLAT SIX**

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR LOTS 1 AND 2, SOUTHPORT EAST REPLAT TWO AND FOR LOT 3 SOUTHPORT EAST REPLAT TWO REPLATTED AS LOTS 1 THROUGH 10, SOUTHPORT EAST REPLAT SIX (herein "Amendment"), amends the above described Declaration of Easements, Covenants and Restrictions dated May 3, 2007 and recorded on May 4, 2007 in the office of the Register of Deeds, Sarpy County, Nebraska as Instrument Number 2007-13018 (the "Declaration") is made effective as of July 13, 2007, by JOE MCDERMOTT ASSOCIATES, INC, a Nebraska corporation ("McDermott"), JOHN L. HOICH, an unmarried person ("Hoich"), SIMMONDS PROPERTIES, LTD., a Nebraska limited partnership ("Simmonds"), LAVISTA LODGING INVESTORS, LLC, a Wisconsin limited liability company ("Hotel Owner"), and DES MOINES LODGING INVESTORS III, LLC, a Wisconsin limited liability company ("Restaurant Owner"). Individually McDermott, Hoich, Simmonds, Hotel Owner and Restaurant Owner may be referred to as a Grantor or Declarant herein, and jointly or collectively as Grantors or Declarants.

RECITALS:

WHEREAS, Declarants Hoich and McDermott desire to convey title to Lot 9, Southport East Replat Six ("Lot 9") to Security National Bank; and

WHEREAS, Security National Bank has requested certain revisions to the Declaration be made as a condition of closing on the purchase of Lot 9; and

WHEREAS, Declarants are each willing to grant the revisions requested.

NOW, THEREFORE, in exchange for the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party, the Declarants hereby amend the Declaration as follows:

- Section 1.3 is hereby deleted in its entirety, and the following inserted in its place: "'Common Areas' means those portions of the Lots, and any improvements thereon, designated from time to time by a Declarant, its successors or assigns, to be used for the common benefit of all or certain Owners and/or Occupants of the Lots, *provided, however,* that any Owner that may be adversely affected by such designation shall have consented in writing prior to such designation becoming effective."
- Section 2.7 is hereby deleted in its entirety.
- In Section 5.5(b), the sentence "The policies of insurance must each name the other Owners as additional insureds," is hereby deleted in its entirety.

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4. The following sentence shall be added to end of Section 6.1(c), "Each Owner shall provide adequate employee parking on such Owner's Lot, and shall make reasonable efforts to ensure that employees of Owner or Owner's tenants do not park on other Lots."

5. In Section 9.3(d), the phrase "promotional and advertising activities," is hereby deleted.

6. In Section 9.7, the phrase "service charge of no more than 10%" is deleted, and is replaced with "service charge of no more than 5%."

7. In Section 9.7, the last sentence in the first paragraph is deleted in its entirety, and the following inserted in its place: "The proportionate share of the total Common Facilities' expenses to be borne by each Owner for any year shall be that percentage equal to the ratio such Owner's Lot or Lots represents in relation to the land area of the Development, as adjusted from time to time."

8. The second paragraph in Section 9.7 is hereby deleted in its entirety.

9. To the extent that this Amendment is inconsistent with a provision in the Declaration, the terms of this Amendment shall control. Except as amended herein, all other provisions of the Declaration are hereby ratified and confirmed and shall remain in full force and effect against all Lots and be and shall remain enforceable in accordance with its terms.

10. If any term, provision or covenant of this Amendment shall to any extent be deemed invalid and unenforceable by judgment or court order, the remainder of this Amendment shall not be affected thereby and such other terms, provisions and covenants of this Amendment shall be valid and shall be enforced to the extent permitted by law.

IN WITNESS WHEREOF, the undersigned has caused these presents to be effective on the day and year set forth above.

(Signatures and Acknowledges on following 3 pages)

B

DECLARANTS:

JOHN L. HOICH

John L Hoich

JOE MCDERMOTT ASSOCIATES, INC.

By *Joe McDermott*
Joseph McDermott, President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 3rd day of July 2007, by JOHN L. HOICH, who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing this instrument above.

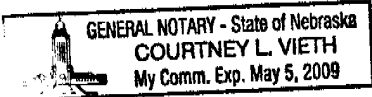


Courtney L Vieth
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)



The foregoing instrument was acknowledged before me this 3rd day of July 2007, by JOE MCDERMOTT, the President of JOE MCDERMOTT ASSOCIATES, INC., who is either personally known to me or was identified to me through satisfactory evidence to be the identical person executing this instrument above, and upon oath states that his execution hereof is his authorized act on behalf of said corporation.



Courtney L Vieth
Notary Public

C

SIMMONDS PROPERTIES, LTD., a Nebraska limited partnership,

By: Simmonds Restaurant Management, Inc., a Nebraska corporation, general partner

By: *Paula Glissman*

STATE OF NEBRASKA)
COUNTY OF *Douglas*) ss.

On this *19* day of *JUNE*, 2007, before me a Notary Public, duly commissioned and qualified in and for said County, appeared *Paula Glissman* general partner of Simmonds Properties, Ltd., personally known by me to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his/her voluntary act and deed, and the voluntary act and deed of said partnership.

WITNESS my hand and Notarial Seal the day and year last above written.

Lexey Sorensen
Notary Public



2007-21169 D

LAVISTA LODGING INVESTORS, LLC

By: Omaha SW Lodging Investors, LLC, sole member

By: David A. Lenz Investments, LLC, managing member

By *David A. Lenz*
David A. Lenz, sole member

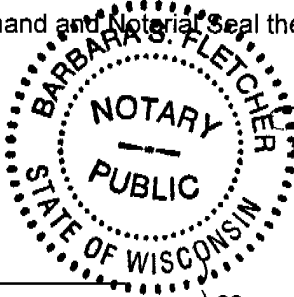
DES MOINES LODGING INVESTORS III, LLC

By *David A. Lenz*
David A. Lenz, Managing Member

STATE OF WI)
COUNTY OF Dane) ss.

On this 13th day of June, 2007, before me a Notary Public, duly commissioned and qualified in and for said County, appeared David A. Lenz, the sole member of David A. Lenz Investments, LLC, a managing member of Omaha SW Lodging Investors, LLC, the sole member of Lavista Lodging Investors, LLC, personally known by me to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his/her voluntary act and deed, and the voluntary act and deed of said partnership.

WITNESS my hand and Notarial Seal the day and year last above written.

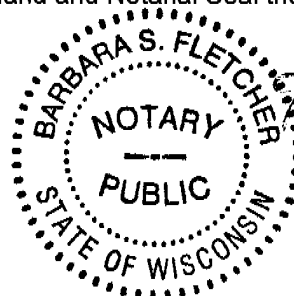


Barbara S. Fletcher
Notary Public *my commission expires March 1, 2009*

STATE OF WI)
COUNTY OF Dane) ss.

On this 13th day of June, 2007, before me a Notary Public, duly commissioned and qualified in and for said County, appeared David A. Lenz, the managing member of Des Moines Lodging Investors III, LLC, personally known by me to be the identical person whose name is affixed to the foregoing instrument, and acknowledged the execution thereof to be his/her voluntary act and deed, and the voluntary act and deed of said partnership.

WITNESS my hand and Notarial Seal the day and year last above written.



Barbara S. Fletcher
Notary Public *my commission expires March 1, 2009*