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Office of the County Recorder
Hennepin County, Minnesota
Martin McCormick, County Recorder
Mark Chapin, County Auditor and Treasurer

Deputy 84

Pkg ID 1155450E

Doc Name: Amendment

Document Recording Fee \$46.00

Document Total \$46.00



Doc No **T05201445**

Certified, filed and/or recorded on
Sep 22, 2014 3:04 PM

Office of the Registrar of Titles
Hennepin County, Minnesota
Martin McCormick, Registrar of Titles
Mark Chapin, County Auditor and Treasurer

Deputy 84

Pkg ID 1155125E

Doc Name: Amendment

Document Recording Fee	\$46.00
Multiple Certificates Affected Fee	\$40.00
<i>Document Total</i>	\$86.00

Existing Certs

New Certs

1348653

1348700

1351279

(Reserved for recording)

**FOURTH AMENDMENT
TO
DEVELOPMENT AGREEMENT**

***CRYSTAL BAY BUSINESS CENTER
(INCLUDING PROPERTY WITHIN CRYSTAL BAY BUSINESS CENTER 2ND ADDITION)***

THIS FOURTH AMENDMENT TO DEVELOPMENT AGREEMENT (“Amendment”) dated September 9, 2014, is by and between the **CITY OF ORONO**, a Minnesota municipal corporation (“City”), **RYAN COMPANIES US, INC.**, a Minnesota corporation (“Developer”) and **PINE CORNER PROPERTIES, LLC** a Minnesota limited liability company (“Pine Corner”) and **ORONO MINI STORAGE, LLC**, a Minnesota limited liability company (“Orono Mini Storage”).

RECITALS

A. The City and Developer entered into a Development Agreement for platting and development of *Crystal Bay Business Center* dated December 5, 2007, filed December 27, 2007, with the Office of the Registrar of Titles for Hennepin County, Minnesota as Document No. 4457476 and recorded December 27, 2007 with the Office of the County Recorder for Hennepin County, Minnesota as Document No. 9079458, as amended by a Second Amendment to Development Agreement dated September 26, 2011, filed December 30, 2011, with the Office of the Registrar of Titles for Hennepin County, Minnesota as Document No. T4914548 and recorded December 30, 2011 with the Office of the County Recorder for Hennepin County, Minnesota as Document No. A9732423, and as amended by an Amendment to Development Agreement dated March 6, 2014, filed March 28, 2014 with the Office of the Registrar of Titles for Hennepin County, Minnesota as Document No. T05161145 and recorded April 24, 2014 with the Office of the County Recorder for Hennepin County, Minnesota, as Document No. A10073102 (collectively, as amended, “Development Agreement”);

B. A First Amendment to Development Agreement was never fully executed or recorded;

C. Lots 1 and 2, Block 1, Crystal Bay Business Center, Hennepin County, Minnesota were subsequently replatted as Lots 1 and 2, Block 1, Crystal Bay Business Center 2nd Addition, Hennepin County, Minnesota;

D. On December 22, 2011, Developer conveyed to Pine Corner, Lot 2, Block 1, Crystal Bay Business Center 2nd Addition, Hennepin County, Minnesota, according to the recorded plat thereof, pursuant to a Limited Warranty Deed recorded December 30, 2011 with the Office of the Registrar of Titles for Hennepin County, Minnesota, as Document No. T4914554;

E. On May 30, 2012, Developer conveyed to Pine Corner, Lot 1, Block 1, Crystal Bay Business Center 2nd Addition, Hennepin County, Minnesota, according to the recorded plat thereof, pursuant to a Limited Warranty Deed recorded June 5, 2012 with the Office of the Registrar of Titles for Hennepin County, Minnesota, as Document No. T4960953 and recorded June 5, 2012 with the Office of the County Recorder for Hennepin County, Minnesota, as Document No. A9797647;

F. On March 29, 2012, Developer conveyed to Orono Mini Storage a portion of the property within the development legally described as Lot 3, Block 2, Crystal Bay Business Center, according to the recorded plat thereof, Hennepin County, Minnesota, pursuant to a Limited Warranty Deed recorded April 2, 2012 with the Office of the Registrar of Titles for Hennepin County, Minnesota as Document No. T4941005;

G. The Developer, Pine Corner and Orono Mini Storage have requested that the City undertake the construction, installation and maintenance of a public trail proposed under the terms of the Development Agreement and the City is willing to assume the obligation. Pine Corner and Orono Mini Storage shall provide to the City a 10 foot trail easement pursuant to the terms of this Contract and the approved Easements;

H. Pine Corner has agreed to share in certain costs of the construction of Orono Industrial Boulevard abutting Lot 1, Block 1 Crystal Bay Business Center 2nd Addition, Lot 1, Block Crystal Bay Business Center and Lot 3, Block 2 Crystal Bay Business Center, and to provide a portion of the security therefor required by the City.

NOW, THEREFORE, in consideration of the covenants and undertakings contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. AMENDMENT OF PARAGRAPH 7A OF THE DEVELOPMENT AGREEMENT. Paragraph 7A of the Development Agreement is hereby amended to provide that Developer and Pine Corner shall be responsible for installation and payment of all costs for Orono Industrial Boulevard based on the following pro-rations: (i) Developer at 75% and (ii) Pine Corner at 25%. Orono Mini Storage shall not be responsible for costs associated with the

initial installation and construction of Orono Industrial Boulevard.

2. AMENDMENT OF PARAGRAPH 16 OF THE DEVELOPMENT AGREEMENT. Paragraph 16 of the Development Agreement is deleted in its entirety and restated to read as follows:

16. SUMMARY OF SECURITY REQUIREMENTS. To guarantee compliance with the terms of this Development Agreement, payment of the costs of all Public Improvements and construction of all remaining Public Improvements, the Developer and Pine Corner shall each furnish the City with a Letter of Credit, in substantially the form attached hereto, from a bank ("security"). The Letter of Credit required for each entity shall be based on updated costs of Public Improvements from the original Development Agreement with contingency amounts and the appropriate pro rata shares for the cost of Orono Industrial Boulevard pursuant to Paragraph 1 as follows:

<u>Public Improvements</u>	<u>Developer</u>	<u>Pine Corner</u>
Lot 1, Block 1	\$ 73,137.50	
Lot 1, Block 2		\$ 40,870.00
Orono Industrial Boulevard (75% Developer and 25% Pine Corner)	<u>\$247,051.88</u>	<u>\$ 82,350.63</u>
TOTAL COST	<u>\$320,189.38</u>	<u>\$123,220.63</u>
SECURITY AMOUNT (x125%)	\$ 400,346.73	\$154,025.79

The construction of Orono Industrial Boulevard shall be constructed in a manner consistent with applicable law.

The Letters of Credit for Developer and Pine Corner currently held by the City shall be replaced with new Letters of Credit in the amounts provided this Paragraph.

The breakdown provided above is for historical reference; it is not a restriction on the use of the security. The bank and the form of security shall be subject to the approval of the City Administrator. In the event Developer or Pine Corner default under their respective obligations under the Development Agreement, as hereby amended, the City may draw down the security, after notice, for any violation of the terms of the Development Agreement, subject to the cure periods provided in this Development Agreement. If the required Public Improvements are not completed at least thirty (30) days prior to the expiration of the security, or the City receives a notice of non-renewal of a letter of credit from the issuer thereof, the City may also draw it down and hold the funds as a cash escrow to secure compliance by the Developer or Pine Corner. With City approval, which shall not be unreasonably withheld, conditioned or delayed, the security may be reduced from time to time as financial obligations are paid, but in no case shall the security be reduced to a point less than 10% of the original amount until (1) all improvements

have been completed, (2) all financial obligations to the City satisfied, (3) the required "record" plans have been received by the City, and (4) a warranty security is provided, and (5) the public improvements are accepted by the City. The warranty bond shall have a duration of twenty-four (24) months.

3. AMENDMENT OF PARAGRAPH 20(I) OF THE DEVELOPMENT AGREEMENT. Paragraph 20(I) of the Development Agreement is deleted in its entirety and restated to read as follows:

- I. Contemporaneously with this Amendment, Pine Corner and Orono Mini Storage shall execute the Permanent Easement Agreements attached hereto as Exhibits A and B granting the City a 10 foot wide public trail easement along Wayzata Boulevard. The City, at its sole cost and expense, will construct, install, and maintain a bituminous trail within the easements located on the Pine Corner and Orono Mini Storage properties, built to City specifications at a time determined by the City. The City shall indemnify and hold Pine Corner and Orono Mini Storage harmless from any and all liability of whatever nature, arising from the maintenance and use of such trail, excluding willful or negligent actions by Pine Corner or Orono Mini Storage, their officers, employees, agents, invitees and assigns.

4. REPRESENTATIONS OF DEVELOPER. Developer hereby represents and warrants that (a) the Development Agreement is in full force and effect, (b) there are no known defaults by the Developer or the City under the Development Agreement, (c) Developer has performed all of its obligations, has provided all letters of credit, cash deposits, surety bonds and other security required by the Development Agreement, and has paid all sums due under the Development Agreement which are required to be performed or paid as of the date hereof, and (d) Developer has obtained all consents and approvals of the City under the Development Agreement, required prior to the date hereof.

5. INCORPORATION OF RECITALS. The above Recitals are hereby incorporated as a material part of this Amendment with the same force and effect as if restated in full in this Paragraph.

6. RATIFICATION. Except as provided herein, all terms and provisions of the Development Agreement, as amended, shall remain in full force and effect.

7. COUNTERPARTS. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original and together which shall constitute one and the same Amendment.

[Remainder of Page Intentionally Left Blank.]
[Signature Pages Follow.]

PINE CORNER:
PINE CORNER PROPERTIES, LLC

By: Andrea J. Tysdal
Its President

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 30th day of July, 2014, by Andrea J. Tysdal, the Guarantor / President of Pine Corner Properties, LLC, a Minnesota limited liability company, on its behalf.

Donna J. Foss
Notary Public



ORONO MINI STORAGE LLC

By: 
Michael J. Seeland, Its Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 30th day of July, 2014, by **Michael J. Seeland**, the Manager of **Orono Mini Storage LLC**, a Minnesota limited liability company, on behalf of the company.




Notary Public

DRAFTED BY:
Campbell Knutson
Professional Association
317 Eagandale Office Center
1380 Corporate Center Curve
Eagan, Minnesota 55121
Telephone: (651) 452-5000
[SMM/AMP]

**EXHIBIT A
TO FOURTH AMENDMENT**

(reserved for recording information)

**GRANT OF PERMANENT EASEMENT
FOR PUBLIC TRAIL PURPOSES**

PINE CORNER PROPERTIES, LLC, a Minnesota limited liability company, hereinafter referred to as “Grantor”, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant unto the **CITY OF ORONO**, a municipal corporation organized under the laws of the State of Minnesota, the Grantee, hereinafter referred to as the “City”, its successors and assigns, forever, a permanent easement for public trail purposes over, across, on, under, and through land situated within the County of Hennepin, State of Minnesota, as described on the attached Exhibit “A” and depicted on the attached Exhibit “B”.

INCLUDING the rights of the City, its contractors, agents, servants, and assigns, to enter upon the easement premises at all reasonable times to construct, reconstruct, inspect, repair, and maintain said public trail system over, across, on, under, and through the easement premises, together with the right to grade, level, fill, drain, excavate and pave the easement premises, and the

further right to remove trees, bushes, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said public trail systems. In addition, the City agrees to the following:

1. The City shall defend, indemnify and hold harmless Grantor, its directors, officer, employees and agents from and against any and all claims, demands, judgment, lawsuits, costs and expenses arising from or growing out of the entry upon, construction, use or occupancy of the property subject to the Easement, excluding intentional or negligent acts by Grantor, its officers, employees, agents invitees and assigns; and
2. The City will be responsible for construction, replacement, maintenance and upkeep of the public trail it places in or upon the easement premises. The City will install landscaping within the easement premises consistent with the approved plans and specifications for the public trail.

The above named Grantor, its successors and assigns, does covenant with the City, its successors and assigns, that it is well seized in fee title of the above described easement premises; that it has the sole right to grant and convey the easement to the City; that there are no unrecorded interests in the easement premises; and that it will indemnify and hold the City harmless for any breach of the foregoing covenants.

IN TESTIMONY WHEREOF, the Grantor hereto has signed this easement this _____ day of _____, 2014

GRANTOR:
PINE CORNER PROPERTIES, LLC

By: _____
Its _____

EXHIBIT "A"
to
GRANT OF PERMANENT EASEMENT

A permanent easement for public trail purposes over, under, on and across the northerly ten (10') feet of the following described property:

Lot 2, Block 1, Crystal Bay Business Center 2nd Addition, except that part embraced within Lot 4, Block 1, Van Dale Addition, Hennepin County, Minnesota.

[Abstract Property]

Lot 2, Block 1, Crystal Bay Business Center 2nd Addition, embraced within Lot 4, Block 1, Van Dale Addition, Hennepin County, Minnesota.

[Torrens Property]

EXHIBIT "B"
to
GRANT OF PERMANENT EASEMENT

ATTACH EASEMENT SKETCH HERE

**MORTGAGE HOLDER
CONSENT TO EASEMENT**

BREMER BANK, N.A., a national banking association, which holds two mortgages on all or part of the property more particularly described in the foregoing Grant of Permanent Easement for Public Trail Purposes, which first mortgage was dated December 30, 2011 and recorded December 30, 2011 as Document No. A9732430 with the office of the County Recorder for Hennepin County, Minnesota, and as Document No. T4914555 with the office of the Registrar of Titles for Hennepin County, Minnesota, and which second mortgage was dated December 30, 2011 and recorded December 30, 2011 as Document No. A9732431 with the office of the County Recorder for Hennepin County, Minnesota, and as Document No. T4914556 with the office of the Registrar of Titles for Hennepin County, Minnesota, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby join in, consents, and is subject to the above referenced Grant of Permanent Easement.

Bremer Bank, N.A.

By: _____
Chris Bohl, Its Senior Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by **Chris Bohl**, the Senior Vice-President of **Bremer Bank, N.A.**, a national banking association, on its behalf.

Notary Public

DRAFTED BY:
CAMPBELL KNUTSON
Professional Association
317 Eagandale Office Center
1380 Corporate Center Curve
Eagan, Minnesota 55121
Telephone: (651) 452-5000
SMM/jmo

**EXHIBIT B
TO FOURTH AMENDMENT**

(reserved for recording information)

**GRANT OF PERMANENT EASEMENT
FOR PUBLIC TRAIL PURPOSES**

ORONO MINI STORAGE LLC, a Minnesota limited liability company, hereinafter referred to as “Grantor”, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby grant unto the **CITY OF ORONO**, a municipal corporation organized under the laws of the State of Minnesota, the Grantee, hereinafter referred to as the “City”, its successors and assigns, forever, a permanent easement for public trail purposes over, across, on, under, and through land situated within the County of Hennepin, State of Minnesota, as described on the attached Exhibit “A” and depicted on the attached Exhibit “B”.

INCLUDING the rights of the City, its contractors, agents, servants, and assigns, to enter upon the easement premises at all reasonable times to construct, reconstruct, inspect, repair, and maintain said public trail system over, across, on, under, and through the easement premises, together with the right to grade, level, fill, drain, excavate and pave the easement premises, and the further right to remove trees, bushes, undergrowth, and other obstructions interfering with the

location, construction, and maintenance of said public trail systems. In addition, the City agrees to the following:

1. The City shall defend, indemnify and hold harmless Grantor, its directors, officer, employees and agents from and against any and all claims, demands, judgment, lawsuits, costs and expenses arising from or growing out of the entry upon, construction, use or occupancy of the property subject to the Easement, excluding intentional or negligent acts by Grantor, its officers, employees, agents invitees and assigns; and
2. The City will be responsible for construction, replacement, maintenance and upkeep of the public trail it places in or upon the easement premises. The City will install landscaping within the easement premises consistent with the approved plans and specifications for the public trail.

The above named Grantor, its successors and assigns, does covenant with the City, its successors and assigns, that it is well seized in fee title of the above described easement premises; that it has the sole right to grant and convey the easement to the City; that there are no unrecorded interests in the easement premises; and that it will indemnify and hold the City harmless for any breach of the foregoing covenants.

IN TESTIMONY WHEREOF, the Grantor hereto has signed this easement this _____ day of _____, 2014

**GRANTOR:
ORONO MINI STORAGE LLC**

By: _____
Michael J. Seeland, Its Manager

GRANTEE:
CITY OF ORONO

By: _____
Lili Tod McMillan, Mayor

And _____
Rachel Dodge, City Clerk

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by **Lili Tod McMillan** and by **Rachel Dodge**, the Mayor and City Clerk of the **City of Orono**, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

Notary Public

DRAFTED BY:
CAMPBELL KNUTSON, P.A.
Professional Association
317 Eagandale Office Center
1380 Corporate Center Curve
Eagan, Minnesota 55121
Telephone: (651) 452-5000

EXHIBIT "A"
to
GRANT OF PERMANENT EASEMENT

A permanent easement for public trail purposes over, under, on and across the northerly ten (10') feet of the following described property:

Lot 3, Block 2, Crystal Bay Business Center, Hennepin County, Minnesota, described as that part of the East 128 feet thereof which lies Northerly and Easterly of the following described line: Beginning at the Southeast corner of the West Half of the Southwest Quarter of the Northeast Quarter of Section 33, Township 118, Range 23; thence North along the East line thereof 1074.9 feet, which is the point of beginning of the line to be described; thence deflecting to the left 89 degrees 20 minutes to an intersection with the West line of the East 128 feet of said West Half of the Southwest Quarter of the Northeast Quarter; thence North along said West line to the North line of said West Half of the Southwest Quarter of the Northeast Quarter and said line there terminating.

[Abstract Property]

Lot 3, Block 2, except that part of the East 128 feet thereof which lies Northerly and Easterly of the following described line: Beginning at the Southeast corner of the West Half of the Southwest Quarter of the Northeast Quarter of Section 33, Township 118, Range 23; thence North along the East line thereof 1074.9 feet, which is the point of beginning of the line to be described; thence deflecting to the left 89 degrees 20 minutes to an intersection with the West line of the East 128 feet of said West Half of the Southwest Quarter of the Northeast Quarter; thence North along said West line to the North line of said West Half of the Southwest Quarter of the Northeast Quarter and said line there terminating, all in Crystal Bay Business Center, Hennepin County, Minnesota.

[Torrens Property]

EXHIBIT "B"
to
GRANT OF PERMANENT EASEMENT

ATTACH EASEMENT SKETCH HERE

State of California)

County of Fresno)

On AUG 20 2014 before me, Sandra Winters, a Notary Public, personally appeared Raymond A. Kullina who proved to me on the basis of satisfactory evidence to be the person(s) whose name (s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument, the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sandra Winters



