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Cash
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Kind: EASEMENT
Recorded: 05/19/2015 at 11:57:04 AM
Fee Amt: \$57.00 Page 1 of 11
Revenue Tax: \$0.00
Polk County Iowa
JULIE M. HAGGERTY RECORDER
File# 2015-00098908

BK 15580 PG 325-335

Type of Document: Amendment to Easement

Stephen M Sabo 800 Nicollet Mall BC-MN-HZ1R ^{Minneapolis MN} 55402

Preparer Information: (Individual's Name, Street Address, City, Zip, Phone) (612) 303-7820

Raccoon Valley Investment Co 4521 Fleuv Dr Ste C ^{Desm} 50321

Taxpayer Information: (Individual/Company Name, Street Address, City, Zip)

RETURN TO:

Scott McMurray Raccoon Valley 4521 Fleuv Dr Ste C

Return Document to: (Individual/Company Name, Street Address, City, Zip) ^{Desm} 50321

Grantors:

us Bank National Association

Grantees:

Raccoon Valley Investment Company, LC

Legal Description:

See page 6, 7

Book & Page Reference:

5664

543

FIRST AMENDMENT TO JOINT EASEMENT AGREEMENT

This FIRST AMENDMENT TO JOINT EASEMENT AGREEMENT (the "Amendment") is made as of May 1, 2015, between U.S. BANK NATIONAL ASSOCIATION, a national banking association ("Bank"), successor-in-interest to United Federal Savings Bank of Iowa, and RACCOON VALLEY INVESTMENT COMPANY L.C., an Iowa limited liability company, ("Raccoon Valley") successor-in-interest to Raccoon Valley Investment Company, an Iowa general partnership.

RECITALS

- A. Bank owns certain real property (the "**Bank Property**") located at 4515 Fleur Drive, Des Moines, Iowa, as identified on the attached Exhibit C and legally described on the attached Exhibit A. Raccoon Valley owns two parcels (collectively, the "**RV Property**") located at 4413 and 4503 Fleur Drive, Des Moines, Iowa, as identified on the attached Exhibit C.
- B. Bank's and Raccoon Valley's respective predecessors entered into that certain Joint Easement Agreement dated December 22, 1986 (the "**Joint Agreement**") granting certain access easement rights over the Bank Property and the RV Property.
- C. Raccoon Valley also owns each of the properties situated on the east side of Fleur Drive that abuts the Bank Property, including the retail strip center located at 4521 Fleur Drive ("4521 Fleur") and the approximately 5.9-acre parcel that is identified as "6" on the attached Exhibit C (the latter shall be referred to herein as "Parcel 6"). 4521 Fleur and Parcel 6 are legally described on the attached Exhibit B. 4521 Fleur and that portion of Parcel 6 that is improved as a parking lot as of the Effective Date are collectively referred to herein as the "**Additional RV Property**". The Additional RV Property is depicted on the attached Exhibit C. It is the specific intent of the parties that the term "Additional RV Property" does not include any of the unimproved portions of Parcel 6, as the same is depicted on Exhibit C.
- D. In 2013, Raccoon Valley constructed an access road between the Additional RV Property and the Bank Property. Bank has agreed to extend the scope of the easement grant under the Joint Agreement over the same east-west access road on the Bank Property (referred to herein as the "Bank Easement Area"), so that such easement grant also benefits the Additional RV Property.
- E. Accordingly, Bank and Raccoon Valley desire to amend the Agreement to alter certain provisions thereof on the terms and conditions hereinafter set forth.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Bank and Raccoon Valley agree as follows:

1. Easement Grant. Subject to the restrictions set forth in the Agreement as amended by this Amendment, Bank hereby quitclaims to Raccoon Valley a nonexclusive perpetual easement over the Bank Easement Area solely for the purpose of vehicular and pedestrian access. The Bank Easement Area is depicted on the attached Exhibit C. This easement shall benefit the Additional RV Property and burden the Bank Property. Except as set forth in this Amendment, this easement grant shall be on the same terms and conditions that apply to the easement grants set forth in the Agreement.
2. Use of Easement Areas. The parties may use their respective properties for any purpose that is not inconsistent with the easements granted under the Joint Agreement, as amended by this Amendment.
3. Notice. All notices, demands and requests (“notice”) required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served either on the date of hand delivery or the date such notice is deposited with a national parcel service (e.g., UPS or Fed Ex), or with the United States Mail, addressed to Bank or Raccoon Valley, as the case may be, prepaid and registered or certified mail or delivery charges prepaid, return receipt requested, at the following addresses:

To Raccoon Valley: Raccoon Valley Investment Company, L.C.
 Michael A. Coppola, Manager
 4521 Fleur Drive, Suite C
 Des Moines, Iowa 50321

To Bank: U.S. Bank National Association
 Corporate Real Estate
 4480 Emerald Avenue
 CN-OH-PROP
 Cincinnati, Ohio 45242
 Attn: Marsha Ward Lane

with a copy to: U.S. Bank National Association
 800 Nicollet Mall
 BC-MN-H21R
 Minneapolis, Minnesota 55402
 Attn: Corporate Real Estate – Corporate Counsel

Rejection or refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request. Either party may change its notice address so long as it notifies the other party in writing.

4. Miscellaneous.

(a) Generally. The Agreement, as amended by this Amendment shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto and shall run with the land. No third party beneficiary rights are created by this Agreement.

(b) Entire Agreement. The Agreement, as amended by this Amendment, contains the entire agreement between the parties and may be amended only by an instrument in writing signed by both parties. All of the terms of the Agreement, as amended hereby, are hereby ratified and confirmed.

(c) Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute one and the same instrument.

(d) Costs and Attorney's Fees. In the event that any action is brought by either party to enforce the terms and provisions of the Agreement, then the prevailing party in such action shall be entitled to recover reasonable costs and expenses (including court costs and reasonable attorney's fees).

(e) Neutral Interpretation. Bank and Raccoon Valley have each had the opportunity to consult with their respective, independent legal counsel before signing this Amendment. Both parties participated in drafting the Amendment and have freely negotiated the same. If any provision of the Amendment or the Agreement requires judicial interpretation, then the parties agree that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document should be more strictly construed against the party who itself or through its agents prepared the same.

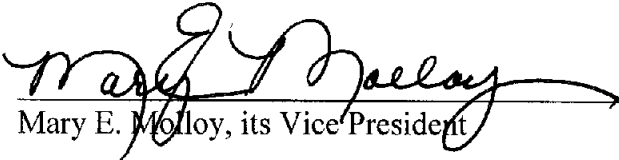
(f) Use of Name and/or Trademark. Neither party may use the name or trademarks of the other in connection with any advertisement, electronic or print publication, metatag, news release or release to any professional or trade publications without the prior written consent of the other.

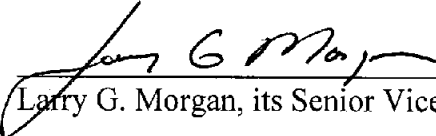
*[Remainder of page intentionally left blank.
Signature and acknowledgment pages follow.]*

WHEREFORE, Bank and Grantee have executed this Agreement as of the date first above written.

BANK:

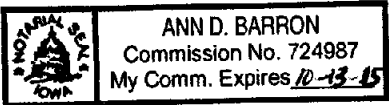
U.S. BANK NATIONAL ASSOCIATION,
a national banking association


Mary E. Molloy, its Vice President


Larry G. Morgan, its Senior Vice President

STATE OF IOWA)
)
COUNTY OF Polk) ss.

On this 30th day of April, in the year 2015, before me, a Notary Public in and for said State, personally appeared Mary E. Molloy, known or identified to me to be the Vice President of U.S. Bank National Association, who executed the instrument, on behalf of said national banking association.



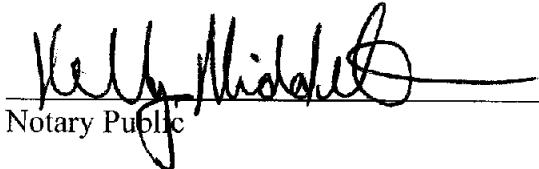

Notary Public

STATE OF OHIO)
)
COUNTY OF Butler) ss.

On this 1st day of May, in the year 2015, before me, a Notary Public in and for said State, personally appeared Larry G. Morgan, known or identified to me to be the Senior Vice President of U.S. Bank National Association, who executed the instrument, on behalf of said national banking association.



KELLY MIDDLETHON
NOTARY PUBLIC
STATE OF OHIO
My Commission Expires
May 18, 2019


Notary Public

RACCOON VALLEY:

RACCOON VALLEY INVESTMENT
COMPANY L.C. ("RVIC")

By: [Signature]
Its: Managing Member

STATE OF Iowa)
COUNTY OF Polk) ss.

On this 19th day of November, 2014, before me, the undersigned, a Notary Public in and for the State of Iowa, duly commissioned and sworn, personally appeared Michael Coppola, to me known to be the person who signed as managing member, of RVIC the entity that executed the within and foregoing instrument, and acknowledged said instrument to be his/her free and voluntary act and deed and the free and voluntary act and deed of RVIC, for the uses and purposes therein mentioned; and on oath stated that he was authorized to execute the said instrument on behalf of said RVIC.

IN WITNESS WHEREOF I have hereunto set my hand and official seal this 19th day of November, 2014.



[Signature]
Notary Public

INSTRUMENT WAS DRAFTED BY

U.S. Bank National Association
Attn: Stephen M. Sabo, Sr. Corporate Counsel
800 Nicollet Mall
BC-MN-H21R
Minneapolis, Minnesota 55402

WHEN RECORDED RETURN TO:

U.S. Bank National Association
Corporate Real Estate
4480 Emerald Avenue
CN-OH-PROP
Cincinnati, Ohio 45242
Attn: Marsha Ward Lane

EXHIBIT A

Legal Description of the Bank Property

As described in deed recorded in Book 7085 Page 676.

The North 322.2 feet of the West 451 feet (except the North 173.61 feet and except street) in the Southwest Quarter (S.W. 1/4) of the Southeast Quarter (S.E. 1/4) of Section 20, Township 78, Range 24, West of the 5th P.M., now included in and forming a part of the City of Des Moines, Iowa.

EXHIBIT B

Legal Description of 4521 Fleur and Parcel 6

4521 Fleur:

As described in deed recorded in Book 7875, Page 379.

A parcel of land located in the Southwest 1/4 of the Southeast 1/4 of Section 20, Township 78 North, Range 24 West of the 5th P.M., now included in and forming a part of the City of Des Moines, Polk County, Iowa, that is more particularly described as follows: Commencing at a point of reference at the South 1/4 corner of said Section 20, thence North 00°01'51" West, 817.95 feet along the West line of the Southeast quarter of said Section 20 to a point, thence North 89°27'05" East, 285.95 feet to the point of beginning, thence North 00°01'20" West 179.10 feet to a point, thence North 89°42'41" East, 211.74 feet to a point, thence South 00°23'49" West, 117.20 feet to a point, thence North 89°36'11" East, 25.00 feet to a point, thence South 00°23'49" West, 61.50 feet to a point, thence South 89°36'11" West, 235.50 feet to the point of beginning.

Parcel 6:

As described in County Auditor's description.

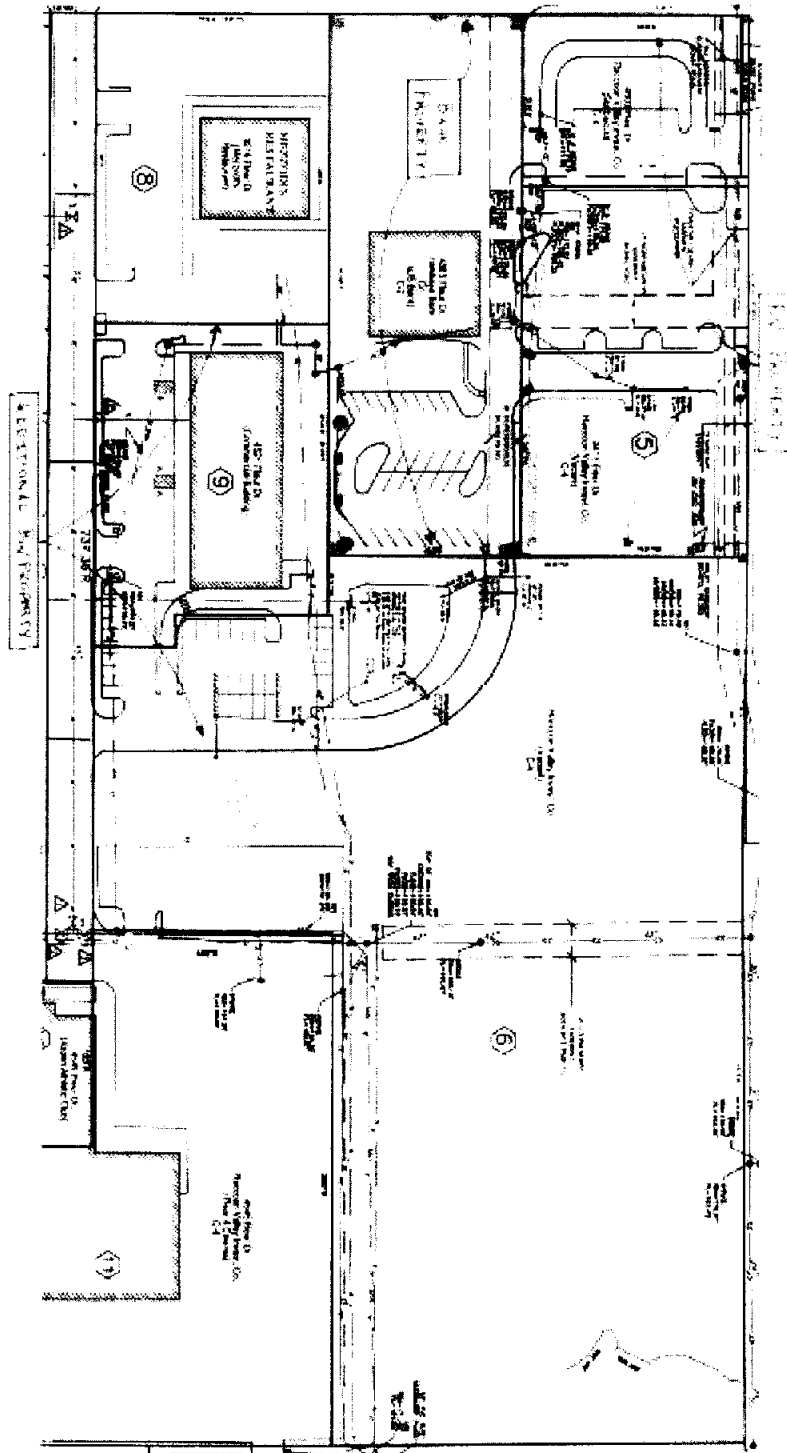
A part of the North 1/2 of the Southwest 1/4 of the Southeast 1/4 of Section 20, Township 78 North, Range 24 West of the 5th P.M, City of Des Moines, Polk County, Iowa; Beginning 451 feet East of the Northwest corner thereof; thence South 322.2 feet; thence East 45.74 feet; thence South 117.2 feet; thence East 25 feet; thence South 61.5 feet; thence East 216.85 feet; thence North 185 feet; thence East 390 feet; thence North 316 feet to the North line thereof; thence West to the Point of Beginning;

EXHIBIT C

Depiction of Bank Property, RV Property and Additional RV Property

[See following two pages.]

Depiction



Close-Up of Affected Properties

