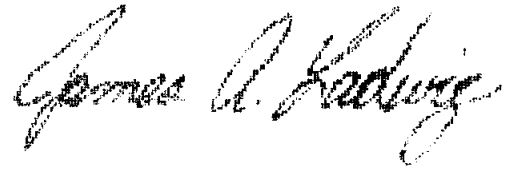


**AMENDMENT NUMBER FOUR TO  
DEVELOPMENT AGREEMENT FOR A  
PLANNED UNIT DEVELOPMENT**

Document Title



JAMES A LADWIG  
RACINE COUNTY  
REGISTER OF DEEDS  
Fee Amount: \$21.00



21-

Recording Data

Name and Return Address  
Kircher Law Office  
P.O. Box 88  
234C Marina Court  
Waterford, WI 53185

206-03-19-22-004-011  
206-03-19-22-004-021  
206-03-19-22-004-032  
206-03-19-22-004-033  
206-03-19-22-004-041  
206-03-19-22-004-002

Parcel Identification Nos.

AMENDMENT NUMBER FOUR TO  
DEVELOPMENT AGREEMENT FOR A PLANNED UNIT DEVELOPMENT

This Agreement is made and entered into by, between and among the following:

The City of Burlington, a Municipal Corporation of the State of Wisconsin located in Racine County and Walworth County (the "City"); and

MRED (Burlington) Associates, a Wisconsin limited partnership ("MRED") and Lynch Ventures, LLC, a Wisconsin Limited Liability Company; and

HIGHWAY 36/W I, LLC; A Wisconsin Limited Liability Company; and

HIGHWAY 36/W II, LLC; A Wisconsin Limited Liability Company

RECITALS

WHEREAS, on September 14, 2004, Lynch Ventures, LLC ("Lynch") and MRED (together hereinafter referred to as the "Developer") and the City entered into a Development Agreement for a Planned Unit Development (the "PUD Agreement") approving and regulating a proposed commercial development of the real estate originally described as follows:

Certified Survey Map No. 2651, being part of the northeast, southeast and southwest 1/4 of the northwest 1/4 and the northeast and northwest 1/4 of the southwest 1/4 of Section 22, Township 3 North, Range 19 East, in the City of Burlington, County of Racine, State of Wisconsin; and

WHEREAS, pursuant to the terms, conditions and provisions of the Development Agreement for a Planned Unit Development as amended (the "PUD Agreement"):

The Developer has proceeded to perform its obligations under and pursuant to the PUD Agreement including the commencement of development of said real estate through subsequent Agreements and land divisions; and

Lynch has developed and improved Lot 1 of Certified Survey Map No. 2742 for use as an automobile sales and service facility, and MRED has developed and improved Lot 4 of Certified Survey Map No. 2742 for use as a Taco Bell and Long John Silver's restaurant; and

MRED (with Menard, Inc.) is developing and improving Lot 2 of Certified Survey Map No. 2742 for use as a Menard's store pursuant to the provisions of Amendment Number Two to the Development Agreement, dated October 20, 2005; and

MRED, and its successor in title, Highway 36/W I, LLC has developed and improved Lot 1 of Certified Survey Map No. 2777 for use as a retail building pursuant to the provisions of Amendment Number Three to Development Agreement for a Planned Unit Development; and

WHEREAS MRED and/or Highway 36/W I, LLC has petitioned the City to rezone a portion of Lot 2 of Certified Survey Map No. 2777 to reflect the deed restrictions executed to protect said lands as Environmental Corridor and current City zoning; and

WHEREAS MRED has conveyed the portion of Outlot 2 of Certified Survey Map No. 2651 that remained after the Certified Survey Map redivisions set forth hereinabove, and its successor in title, Highway 36/W II, LLC, wishes to combine said remainder of the Outlot with additional land and enter into a separate Development Agreement concerning said lands; and

WHEREAS, it is necessary to amend the PUD Agreement to remove Outlot 2 of Certified Survey Map Number 2651 from the provisions of the original Agreement in order to allow the development in the manner requested by the successor in title to MRED, and to confirm that any lands that may be rezoned that lie within the original boundaries of the PUD remain subject to the PUD Agreement, unless specifically removed therefrom, despite any change in zoning, and to provide for the extension of Buckley Street:

## AGREEMENTS

1. Amendment of Existing PUD Agreement. This Agreement constitutes the Fourth Amendment to the PUD Agreement. All of the terms, conditions and provisions of the PUD Agreement are incorporated herein by reference and shall remain in full force and effect to the extent those terms, conditions and provisions are not inconsistent with the terms, conditions and provisions of this Agreement. In the event of an inconsistency between the terms, conditions and provisions of the PUD Agreement and this amending Agreement, the terms, conditions and provisions of this amending Agreement shall control.
2. Conditions. This Agreement is contingent upon the following:
  - A. Approval and recording of a New CSM incorporating the remainder of Outlot 2 of CSM No. 2651, and concomitant approval of a Development Agreement that covers said Outlot.
  - B. Payment of Fees.

If the conditions set forth above are not satisfied on or before February 28, 2007 any party hereto may terminate this Agreement by written notice to the others. Upon termination of this Agreement, the parties shall have no further rights or obligations hereunder and this Agreement shall be deemed null and void and any security deposited hereunder shall thereupon be returned by the City to the party making such deposit.

3. General. All of the terms and conditions of the original PUD Agreement, as amended (the "Agreement"), will continue to apply to the existing and continued development of the property, with the exception of Outlot 2 of CSM No. 2651, and the provisions for the extension of Buckley Street as set forth herein, provided the conditions set forth above are met. Any lands lying within the boundaries of the property originally covered by the Agreement that are rezoned to C-1 Conservancy District shall continue to be governed by the terms of the Agreement.
4. Extension of Buckley Street. Pursuant to section 278-67 of the Code of the City of Burlington, a developer is responsible for the construction of a street to the farthest limits of a parcel for which a building permit will be requested, unless excused by the Common Council. As a condition of the Council's approval of this Agreement and of the separate agreement that includes the portion of Outlot 2 of Certified Survey Map No. 2651, the parties hereto agree as follows:
  - A. Highway 36/W II, LLC shall construct a "T-Turnaround" at the end of Buckley Street, and the end of the pavement shall lie 195 feet southerly of the center of the intersection of Buckley Street and Lynch Way, pursuant to the plans approved by the City Engineer and the Supervisor of the Department of Public Works included in Exhibit C of the Development Agreement for a Planned Unit Development for the New CSM. Within the limits of the dedicated right-of-way of Buckley Street, Highway 36/W II, LLC shall install Type 3 permanent and/or removable barricades at the end of Buckley Street, without a curb, but including concrete gutter and rip-rap to prevent erosion. This construction of a T-Turnaround does not relieve any person of the liability set forth in paragraph B.
  - B. Upon determination by the City that the remainder of Buckley Street is to be constructed as required by the City Code, as set forth hereinabove, the City shall notify Highway 36/W I, LLC (or its successor in interest to Lot 1 of CSM No. 2777) thereof. Highway 36/W I, LLC shall have 60 days from the date of said notification to inform the City whether it will construct said remainder to the City's specifications and by the deadline provided by the City. If Highway 36/W I, LLC notifies the City that it will

perform said construction, it shall do so at its own cost pursuant to plans to be approved by the City Engineer and the Supervisor of the Department of Public Works. If Highway 36/W I, LLC fails to complete the construction to the City's specifications by the established deadline, fails to respond to the City's notice, or notifies the City that it will not perform said construction, the City shall cause said construction to be completed and the cost of the construction of Buckley Street from the end of the pavement constructed and installed pursuant to paragraph A. and extending 286 feet therefrom to a line even with the southerly property line of Parcel 1 of the New CSM as identified on the plans included in Exhibit C of the Development Agreement for a Planned Unit Development for the New CSM, including but not limited to engineering fees, inspection fees, and construction and materials costs (inclusive of sub-base, base, two courses of asphalt and curb and gutter), will be calculated, and the total cost thereof shall be specially assessed to Lot 1 of CSM No. 2777 (currently owned by Highway 36/W I, LLC), and the charge therefore shall be a lien against said property. If the then-owner of Lot 1 of CSM No. 2777 does not pay the bill within 30 days of being invoiced, the City will add said cost to the property tax bill as a special assessment pursuant to Wisconsin Statutes section 66.0703. Any provisions for notice, hearing and/or protest of said special assessment set forth by statute are expressly waived by this Agreement.

Upon the expiration of this Agreement, any assessment for the extension of Buckley Street shall conform with the provisions of the Wisconsin Statutes.

5. Payment of Fees. MRED shall pay all fees, expenses, costs and disbursements related to this Amendment Number Four to Development Agreement for a Planned Unit Development. Unless required to be paid as a condition of the approval of this Agreement, such amount(s) shall be paid within forty-five (45) days after being billed therefor. All billing of fees, expenses, costs and disbursements outlined below shall be forwarded to MRED at the address previously provided to the City for processing. This does not absolve MRED from their financial responsibility for payment to the City.

6. Misc. Provisions

A. Entire Agreement and Amendment. This Agreement constitutes the entire agreement regarding removal of Outlot 2 of CSM No. 2651 from the terms of the Original Agreement, the understanding of the parties concerning the extension of Buckley Street, and the understanding of the parties regarding rezoning of lands as set forth in paragraph 3, and supersedes all prior agreements and understandings between the parties hereto with respect to the subject matter hereof. This Agreement may only be amended by a written agreement of all the parties.

B. Governing Law. This Agreement shall be construed as to both validity and performance and enforced exclusively in accordance with and governed by the internal laws of the State of Wisconsin.

C. Costs of Enforcement. In the event that either party commences litigation relating to this Agreement or any of the terms and conditions contained herein, the non-prevailing party in such litigation shall, upon demand, reimburse to the prevailing party all of the prevailing party's costs, charges, and expenses, including the fees of counsel, agents and others retained by the prevailing party relating to such litigation.

D. Expiration of Amendment. This Amendment shall be in full force and effect for a period of fifteen (15) years from the date on which it was executed by the last party so executing the same, unless terminated by the agreement of the parties hereto. This Amendment shall be deemed extended for five (5) years if the City records in the real estate records of Racine County, prior to any expiration of any term hereof, a statement that the work required hereunder has not been completed; however, such an extension shall not be applicable to the provisions of paragraph 4.B. if the City has not made the notification that the remainder of Buckley Street is to be constructed as provided in said paragraph 4.B.




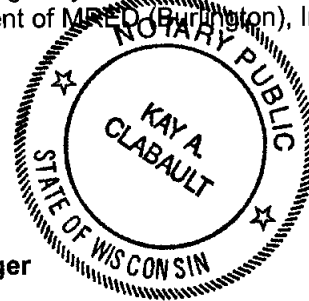
**HIGHWAY 36/W I, LLC; By: MRED (Burlington), Inc., its sole manager**

By:   
Brian Cummings, President

State of Wisconsin )  
                                  ) ss.  
County of Waukesha )

Personally came before me this 8<sup>th</sup> day of February, 2007, the above named Brian Cummings, President of MRED (Burlington), Inc., the sole manager of Highway 36/W I, LLC, to me known to be the person who executed the foregoing instrument as the agreement of MRED (Burlington), Inc. as the sole manager of HIGHWAY 36/W I, LLC by its authority.

  
Notary Public, State of Wisconsin  
My commission 12-7-08




**HIGHWAY 36/W II, LLC; By: MRED (Burlington), Inc., its sole manager**

By:   
Brian Cummings, President

State of Wisconsin )  
                                  ) ss.  
County of Waukesha )

Personally came before me this 8<sup>th</sup> day of February, 2007, the above named Brian Cummings, President of MRED (Burlington), Inc., the sole manager of Highway 36/W II, LLC, to me known to be the person who executed the foregoing instrument as the agreement of MRED (Burlington), Inc. as the sole manager of HIGHWAY 36/W II, LLC by its authority.

  
Notary Public, State of Wisconsin  
My commission 12-7-08

