

*(reserved for recording information)*

**MASTER  
 PLANNED UNIT DEVELOPMENT AMENDMENT  
 AND PHASE 2 – FINAL PLANNED UNIT DEVELOPMENT  
 LEXINGTON STATION  
 (PC# 17-008)**

**THIS MASTER PLANNED UNIT DEVELOPMENT AMENDMENT AND PHASE 2 – FINAL PLANNED UNIT DEVELOPMENT** (“Agreement”) is dated effective May \_\_\_\_, 2017, and is entered into by and between the **CITY OF ARDEN HILLS**, a Minnesota statutory city (“City”); and **LEXINGTON STATION, LLC**, a Minnesota limited liability company (“Lexington Station”) and **ROBERTS COMMERCIAL PROPERTIES, LLC**, a Minnesota limited liability company (“Roberts”) (Lexington Station, LLC and Roberts Commercial Properties, LLC collectively “Developer”).

**1. RECITALS.**

A. In 2013, the City approved a Master Planned Unit Development Agreement for the Lexington Station redevelopment project at the southwest corner of Lexington Avenue and Red Fox Road. Phase 1 of the redevelopment was completed in 2013-2014 and included the construction of a 15,340 square foot multi-tenant commercial building. The Master Planned Unit

Development Agreement and Phase 1 Final Plan was recorded June 26, 2014 as document number A04512856. On September 30, 2013, the City Council approved an Amendment to the Phase 1 Sign Plan. The First Amendment to Phase 1 - Final Plan and Master Planned Unit Development Agreement was recorded on June 26, 2014 as document number A04512857. On the 5<sup>th</sup> day of March, 2014, the City Council approved an Amendment to Phase I revised Building Plan. The Second Amendment to Phase 1 - Final Plan and Master Planned Unit Development Agreement was recorded on June 26, 2014 as document number A04512858.

B. On the 6<sup>th</sup> day of March, 2017, the Developer submitted an application requesting the approval of a Master Planned Unit Development Amendment (“PUD-Master Plan”) and approval of a Phase 2 Final Planned Unit Development (Phase 2-Final Plan), for the property located at 3771 and 3833 Lexington Avenue, and 1120 Red Fox Road, Arden Hills, legally described as:

***Lots 1, 2, and 3, Block 1, Roberts Addition to Arden Hills***

- i. Roberts is the fee owner of Lots 1 and 3, Block 1;
- ii. Lexington Station is the owner of Lot 2, Block 1

(the “Property”).

C. The redevelopment plan is illustrated and described on the following documents (“Redevelopment Plan Documents”). The Plans shall not be attached to this Agreement. The Plans will be prepared and submitted to the City for approval.

1. Master and Final PUD Plan Set, consisting of:
  - a. Title sheet dated 03/06/17, as revised on 04/12/17
  - b. Master PUD Site Plan dated 03/06/17, as revised on 04/17/17
  - c. ALTA/ACSM Land Title Survey dated 06/19/09

- d. Demolition Plan – Phase 2 dated 03/06/17, as revised on 04/12/17
- e. Paving Plan – Phase 2 dated 03/06/17, as revised on 04/12/17
- f. Floor Plan – Phase 2 dated 03/06/17
- g. Building Elevations and Sign Exhibit – Phase 2 dated 03/06/17
- h. Elevations – Phase 2 dated 03/06/17
- i. Tree Preservation Plan– Phase 2 dated 03/02/17, as revised on 04/17/17
- j. Tree Mitigation Plan – Phase 2 dated 03/02/17, as revised on 04/17/17
- k. Landscape Plan – Phase 2 dated 03/02/17, as revised on 04/17/17
- l. Landscape Details – Phase 2 dated 03/02/17, as revised on 04/17/17
- m. Site Plan – Electrical – Phase 2 dated 03/27/17
- n. Fire Truck Turning Display – Phase 2 dated 03/06/17, as revised on 04/12/17
- o. Vehicle Turning Display – Phase 2 dated 03/06/17, as revised on 04/12/17
- p. Grading Plan – Phase 2 dated 03/06/17, as revised on 04/12/17
- q. Utility Plan – Phase 2 dated 03/06/17, as revised on 04/12/17
- r. Details – Phase 2 dated 03/06/17, as revised on 04/12/17

E. Subject to the conditions and modifications contained herein, the Redevelopment Plan Documents represent the nature, scope and configuration of the Project which the Developer is requesting the City to approve.

F. The PUD-Master Plan and the Redevelopment Plan Documents indicate that the Property will be redeveloped in multiple phases:

- i. Phase 1 consisted of the demolition of the existing structure and the construction of a multi-tenant commercial building on Lot 2, Block 1, Roberts Addition to Arden Hills, which has been completed.
- ii. Phase 2 will include the demolition of the existing building on Lot 1, Block 1, Roberts Addition to Arden Hills and the construction of a new 16,922 square foot building.
- iii. Phase 3 will include the demolition of the existing structure and the construction of one multi-tenant commercial building and one retail building on Lot 3, Block 1, Roberts Addition to Arden Hills.

**2. CITY PLANNING COMMISSION REVIEW AND RECOMMENDATION.**

On the 5<sup>th</sup> day of April, 2017, the City Planning Commission reviewed the application at a public hearing and after considering the application, the reports and comments of the City's staff and consultants, reports and comments of the Developer, and other public comments; and, subject to conditions, recommended approval of the PUD Master Plan Amendment and the Phase 2-Final Plan.

**3. CITY COUNCIL REVIEW.** On the 24<sup>th</sup> day of April, 2017, the City Council reviewed the application, the reports and recommendations of the City's staff and consultants; the reports and requests of the Developer; and the recommendations of the City Planning Commission; and has approved the PUD Master Plan Amendment and the Phase 2 – Final Plan, all subject to the terms and conditions contained herein.

**4. TERMS AND CONDITIONS.** In consideration of the City's development approvals; in compliance with the City's development regulations; and in consideration of the undertakings expressed herein, the parties agree:

- A. **PUD – Master Plan.** The PUD-Master Plan is issued subject to the following conditions:
  1. The Developer shall continue to abide by the conditions of all previous Master PUD Agreements, permits, and reviews, except as hereinafter amended.

2. The Project shall be completed in accordance with the submitted plans as amended by the conditions of approval. Any significant changes to these plans, as determined by the City Planner, shall require review and approval by the Planning Commission and the City Council.
3. The Developer shall obtain a permit for Phase 2 within one year of the approval date or the approval shall expire, unless extended by the City Council prior to the approval's expiration date. Extension requests must be submitted in writing to the City at least 45 days prior to the expiration date.
4. This PUD-Master Plan and Phase 2-Final Plan shall be executed prior to the issuance of any development permits.
5. The Developer shall provide the City with a copy of the Rice Creek Watershed District permit for the Project prior to the issuance of any development permits.
6. Final grading, drainage, utility, and site plans shall be subject to approval by the City Engineer, Building Official, City Planner, and Fire Marshall prior to the issuance of a Grading and Erosion Control Permit or other development permits.
7. The Developer shall obtain a Right-of-Way Permit from the City for any construction work required for the development within the Red Fox Road right-of-way.
8. Developer shall screen all roof-mounted mechanical equipment from ground-level view of public streets. Wood screening shall not be permitted.
9. The Rock Face CMU-2 building material shall have a color consistent with the Brick building material, as shown on Sheet A3.1.
10. The Developer shall provide the City with a copy of the Shared Parking Agreement that provides for shared parking between 3833 Lexington Avenue and 1120 Red Fox Road prior to the issuance of a building permit for Phase 2.
11. Wall signage for the Phase 2 building shall be limited to no more than 40 square feet for the ten central tenant bays and no more than 80 square feet for the two end tenant bays at the north and south sides of the building with a maximum of 40 square feet of signage per building side

12. The west building elevation of the Phase 2 building shall be adjusted to have a similar roofline articulation to the east building elevation at the southern, middle, and northern sections of the building.
13. Except as otherwise modified herein, the development of Phase 2 and subsequent Phases shall comply with all applicable City Regulations.

**B. Phase 2 – Final Plan.**

1. The Developer shall submit a financial surety in the amount of 125 percent of the estimated costs of site improvements including grading, utilities, and paving, prior to the issuance of any development permits. The financial surety shall be in the form of a letter of credit issued by a FDIC-insured bank, and be in a form acceptable to the City. The purpose of the letter of credit is to ensure that site improvements are completed in the event that the developer defaults on the development agreement
2. The Developer shall submit a cash escrow for site improvements, including grading, utilities, and paving, in the amount of \$20,000 or 25 percent of the total estimated costs of the site improvements, whichever amount is less prior to the issuance of any development permits. The escrow will be used for City costs related to review, approval, and inspection of site improvements or any costs incurred by the City in the event of a developer default.
3. The Developer shall submit a financial surety in the amount of 125 percent of the estimated costs of landscaping prior to the issuance of a building permit. The financial surety shall be in the form of a letter of credit issued by a FDIC-insured bank. The purpose of the letter of credit is to ensure that landscaping is completed in the event that the developer defaults on the development agreement. The City will hold the letter of credit for two years after the installation of landscaping. The letter of credit should not expire during the two-year period.
4. The Developer shall submit a cash escrow for landscaping improvements in the amount of \$15,000 or 25 percent of the estimated costs of landscaping, whichever amount is less, prior to the issuance of a building permit. The escrow will be held by the City for two years after installation of landscaping and used for City costs related to review, approval, and inspection of landscaping, or developer default.

**5. RELATIONSHIP OF PARTIES.** No partnership or joint ventures established between the parties hereto by or under this Agreement or any agreement referenced herein.

**6. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including without limitation, any and all future and present owners, tenants, occupants, licensee, mortgagee and any other parties with any interest in the Property. Should the Developer convey any lot or lots in the Project to a third party, the City and the owner of that lot or those lots may amend the Master Plan or other city approvals for development or use of those lots without the approval or consent of the Developer or other lot owners in the Project. Private agreements between the owners of lots within the Project for shared service or access and related matters necessary for the efficient use of the Project shall be the responsibility of the lot owners and shall not bind or restrict City authority to approve applications from any lot owner in the Project.

**7. LIMITATION OF LIABILITY.** Notwithstanding in this Agreement to the contrary, the liability of the Developer shall be limited to its ownership of the Property. Upon sale or conveyance of any portion of the Property, the transferee shall be liable for all obligations of the Developer which relates to the portions of the Property so transferred and the transferor shall be automatically released from any further obligation, liability, right or responsibility in respect to such transfer. Moreover, nothing herein shall be construed to create a cause of action on behalf of the City against the Developer with respect to its business operations beyond the obligations set forth herein relating to the development and maintenance of the Property.

**8. RECORDING OF DOCUMENT.** This Agreement shall run with the Property and shall be recorded in the office of the Ramsey County Recorder or Registrar of Titles with proof thereof shown to the City prior to the issuance of any permits there under.

**9. GOVERNING LAW.** The City and the Developer agree that the laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and

construction of this Agreement and the legal relations between the undersigned parties and performance under it without regard to principals of conflicts of law. The language of this Agreement is and shall be deemed a result of negotiations among the parties and the respective legal council and shall not be strictly extrude for or against any party. Each party agrees that any action arising out of or in connection with this Agreement shall be brought solely in the courts of the State of Minnesota, Second Judicial District, or the United States District Court for the District of Minnesota.

**10. EVENT OF DEFAULT.** The occurrence of any of the following shall be considered an “event of default” and the terms and conditions contained in this Agreement:

1. Failure of the Developer to comply with any of the terms and conditions contained in this Agreement; and
2. Failure of the Developer to comply with any applicable ordinance or statute with respect to the development of the Property.

**11. REMEDIES.** Upon the occurrence of an event of default, the City, in addition to any other remedy which may be available to it, shall be permitted to do any of the following:

1. City may make advances or take other steps to cure the default, and, where necessary, enter the Property for that purpose. The Developer shall pay all sums so advanced, or expenses incurred by the City, upon demand, with interest from the dates of such advances or expenses at the rate of 10% per annum or the maximum amount permitted by law if less than 10%. If no action taken by the City pursuant to this section shall be deemed to relieve the Developer from curing any such defaults to the extent that it is not cured by the City or from any other default hereunder. The City shall not be obligated, by virtue of the existence or exercise of this right, to perform any such act or cure any such default. The Developer shall save, indemnify, and hold harmless, including reasonable attorney’s fees, the City from liability or other damages which may be incurred as a result of the exercise of the City’s rights pursuant to this section.
2. Obtain an order from a Court of Competent Jurisdiction requiring the Developer to specifically perform its obligations pursuant to the terms and provisions of this Agreement.



3. Exercise any other remedies which may be available to it, including an action for damages.
4. Withhold the issuance of any building permits and/or prohibit the occupancy of all building which permits have been issued.
5. In addition to the remedies and amounts payable as set forth herein, upon the occurrence of an event of default, the Developer shall pay the City all fees and expenses, including reasonable attorneys fees, engineering and consultant fees incurred by the City as a result of an event of default, whether or not a lawsuit or action is formally undertaken.

**IN WITNESS WHEREOF**, the City and the Developer have caused this Agreement to be executed as of the date and year first above written.

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

**CITY OF ARDEN HILLS**

By: \_\_\_\_\_  
David Grant, Mayor

(SEAL)

And \_\_\_\_\_  
Julie Hanson, City Clerk

STATE OF MINNESOTA    )  
  ( ss.  
COUNTY OF RAMSEY    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by **David Grant** and by **Julie Hanson**, respectively the Mayor and City Clerk of the City of Arden Hills, a Minnesota statutory city, on behalf of the City and pursuant to the authority granted by its City Council.

\_\_\_\_\_  
Notary Public

**LEXINGTON STATION, LLC**  
A Minnesota Limited Liability Company

By: \_\_\_\_\_  
Nicholas S. Roberts, President

STATE OF MINNESOTA    )  
  ( ss.  
COUNTY OF RAMSEY    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by **Nicholas S. Roberts**, the President of **Lexington Station, LLC**, a Minnesota limited liability company, on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public

