

(reserved for recording information)

**MASTER
PLANNED UNIT DEVELOPMENT AGREEMENT
AND PHASE 1 – FINAL PLAN
LEXINGTON STATION
(PC# 13-003)**

THIS MASTER PLANNED UNIT DEVELOPMENT AGREEMENT AND PHASE 1 – FINAL PLAN (“Agreement”) is dated effective July ____, 2013, 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. On the 5th day of June, 2013, the Developer submitted an application requesting the approval of a Planned Unit Development Master Plan (“PUD-Master Plan”) and approval of a Phase 1 Final Plan (Phase 1-Final Plan), and a preliminary plat for its redevelopment plan, to be

known as LEXINGTON STATION; for the property 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

1. Roberts is the fee owner of Lot 1 and 3, Block 1.
2. Lexington Station is the fee owner of Lot 2, Block 1.

B. The Lexington Station 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. Cover sheet dated 4/30/2013, as revised on 6/28/2013
 - b. Concept Color Elevations dated 4/30/2013, as revised on 6/28/2013
 - c. Master Site Plan dated 4/30/2013, as revised on 6/28/13
 - d. ALTA/ACSM Land Title Survey dated 12/20/12
 - e. Site Demo Plan – Phase One dated 4/30/2013, as revised on 6/28/2013
 - f. Site Plan – Phase One dated 4/30/2013, as revised on 7/25/2013
 - g. Floor Plan – Phase One dated 4/30/2013, as revised on 6/28/2013
 - h. Roof Plan – Phase One dated 4/30/2013, as revised on 6/28/2013
 - i. Building Elevations – Phase One (A3.1) dated 4/30/2013, as revised on 6/28/2013
 - j. Building Elevations – Phase One (A3.2) dated 4/30/2013, as revised on 6/28/2013
 - k. Building Sections – Phase One dated 4/30/2013, as revised on 6/28/2013

- l. Wall Sections – Phase One (A4.2) dated 4/30/2013, as revised on 6/28/2013
 - m. Wall Sections – Phase One (A4.3) dated 4/30/2013, as revised on 6/28/2013
 - n. Schedules – Phase One dated 4/30/2013, as revised on 6/28/2013
 - o. Site Plan – Photometrics dated 3/25/2013
 - p. Exterior Building Lighting dated 4/30/2013, as revised on 5/6/2013
 - q. Site Plan (C2.0) dated 5/28/13
 - r. Site Plan (C2.1) dated 5/15/13, as revised on 6/5/2013
 - s. Grading and Erosion Control Plan dated 5/15/2013, as revised on 6/5/2013
 - t. Utility Plan dated 5/15/2013, as revised on 6/5/2013
 - u. Details (C5.0) dated 5/15/2013, as revised on 6/5/2013
 - v. Details (C5.1) dated 5/15/2013, as revised on 6/5/2013
 - w. Details (C5.2) dated 5/15/2013, as revised on 6/5/2013
- 2. Preliminary Plat of Roberts Addition to Arden Hills dated 5/6/2013
 - 3. Materials Board as presented on 7/8/2013 identifying the following Materials and color pallet:
 - a. McNear Sandmold Series Stratford Modular Brick
 - 4. Written Statement consisting of pages 1-2 dated 6/3/2013

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

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

- i. Phase 1 will include 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.
- ii. Phase 2 will include the remodeling of the existing building on Lot 1, Block 1, Roberts Addition to Arden Hills.
- iii. Phase 3 will include the demolition of the existing structure and the construction of a multi-tenant commercial building and two mixed retail-office buildings on Lot 3, Block 1, Roberts Addition to Arden Hills.

2. CITY PLANNING COMMISSION REVIEW AND RECOMMENDATION.

On the 19th day of June, 2013, 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; the Phase 1 – Final Plan; and the preliminary plat of the property.

3. CITY COUNCIL REVIEW. On the 8th day of July, 2013, the City Council reviewed the application, the reports and recommendations of the City's staff and consultants; the reports and requests of Lexington Station; and the recommendations of the City Planning Commission; and has approved the PUD Master Plan; the Phase 1 – Final Plan; and the preliminary plat of the property; 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.

1. Lexington Station is authorized to apply for and obtain building permits consistent with the approved plans for Phase I of the Redevelopment Project in conjunction with or following final plat approval for Phase I.

2. The Redevelopment Project shall be completed in accordance with the Redevelopment Plan Documents as amended by the conditions of approval. Any significant changes to the Redevelopment Plan Documents, as determined by the City Planner, shall require review by the Planning Commission; and review and approval by the City Council.
3. Lexington Station shall apply for and obtain building permits for Phase I of the Redevelopment Project no later than July 8, 2014 or, at least forty-five (45) days prior to such date, shall request an extension of time to obtain building permits for Phase I. Failure to either obtain building permits or request an extension within the required time period means that any redevelopment of the area included in Phase I may require an amendment to the PUD-Master Plan and shall require compliance with the City's then current development regulations.
4. Roberts shall apply for a PUD-Final Plan for Phase II of the Redevelopment Project no later than July 8, 2018 or, at least forty-five (45) days prior to such date, shall request an extension of time to apply for the PUD-Final Plan for Phase II. Failure to apply for either an approval or an extension within the required time period means that any redevelopment of the area included in Phase II may require an amendment to the PUD-Master Plan and the redevelopment of the area included in Phase II shall comply with the then current City regulations.
5. Roberts shall apply for a PUD-Final Plan for Phase III of the Redevelopment Project no later than July 8, 2023 or, at least forty-five (45) days prior to such date, shall request an extension of time to apply for the PUD-Final Plan for Phase III. Failure to apply for either an approval or an extension within the required time period means that any redevelopment of the area included in Phase III may require an amendment to the PUD-Master Plan and the redevelopment of the area included in Phase III shall comply with the then current City regulations.
6. The Developer shall provide yearly updates, on the anniversary date of the City's approval of the PUD-Master Plan, to the City regarding the status of subsequent phases of the Redevelopment Project.
7. Prior to the approval of any PUD-Final Plan for future development phases, the City shall evaluate the existing parking lot circulation and may require alterations if deemed warranted by the City Engineer.
8. Prior to the approval of any PUD-Final Plan for future development phases, the City shall evaluate parking needs and requirements based on the proposed mix of the retail, restaurant, and office uses and the performance of parking in previous phases.

9. The issuance of a Certificate of Occupancy for Phase III shall be contingent on the closure of the existing access on Lexington Avenue and the construction of the southerly access across from the Target Service Road.
10. Except as otherwise modified herein, the development of Phase I and subsequent Phases shall comply with all applicable City Regulations.
11. Construction of Traffic Controls as set forth in (a) and (b) below:
 - a. Full development of the PUD-Master Plan, as illustrated in the Redevelopment Plan Documents, will include a new access driveway at the southern end of the site aligned with the Target Service Road. Ramsey County has approved this as the sole permanent access off of Lexington Avenue and views the existing driveway at 3771 Lexington Avenue as a temporary access point. As a condition of subsequent phases, Developer will be required to close the existing access.
 - b. Ramsey County will condition approval of the new access driveway on the installation of necessary traffic controls at the intersection as determined by a traffic study. The Developer shall be solely responsible for funding any accommodations necessary to provide safe access. As a condition of approval of subsequent phases, the Developer will be required to pay for or accept an assessment against the project property for the cost of the access improvements. The installation of these improvements shall be coordinated with the Ramsey County Department of Public Works.

B. Preliminary and Final Plat.

1. The Developer shall file the Final Plat with Ramsey County for recording within 180 days of the approval from the City. The City will not issue any final occupancy permits until proof of filing the plat is provided by the Developer to the City.
2. Prior to the issuance of a grading and erosion control permit, the Developer shall provide an easement on the south side of Red Fox Road for the purpose of placing a public sidewalk and future right turn lane, as reflected on the Plans, subject to the approval of the City Engineer.

C. Phase 1 – Final Plan.

1. Lexington Station shall submit a financial surety in the amount of 125 percent of the estimated costs of Phase I site improvements including grading, utilities, and paving, prior to the issuance of a grading and erosion control permit. The financial surety shall be in the form of a letter of credit issued by a FDIC-insured Minnesota 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. Lexington Station shall submit a cash escrow in the amount of 25 percent of the estimated costs of Phase I site improvements including grading, utilities, and paving, prior to the issuance of a grading and erosion control permit. 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. Lexington Station shall submit a financial surety in the amount of 125 percent of the estimated costs of Phase I landscaping prior to the issuance of a grading and erosion control permit. The financial surety shall be in the form of a letter of credit issued by a FDIC-insured Minnesota 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. Lexington Station shall submit a cash escrow in the amount of 25 percent of the estimated costs of Phase I landscaping prior to the issuance of a grading and erosion control 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. Lexington Station shall submit a cash escrow in the amount of \$7,350.00 for grading and erosion control prior to the issuance of a grading and erosion control permit. The escrow will be used for City costs related to review, approval, and inspection of grading and erosion control, or developer default.
6. Final grading, drainage, utility, and site plans shall be subject to approval by the Public Works Director, City Engineer, and City Planner prior to the issuance of a grading and erosion control permit.
7. The plans shall be subject to Fire Marshall and Ramsey County Sheriff approval prior to the issuance of a building permit.
8. A lighting and photometric plan shall be reviewed and approved by the City and the Ramsey County Sheriff prior to issuance of a building permit.
9. Upon completion of grading and utility work on the site, a grading as-built and utility as-built shall be provided to the City for review.

10. The Developer shall consult with the County and the City of Shoreview regarding sidewalk placement to ensure that the sidewalk placement will align with the Lexington Avenue and Red Fox Road intersection changes planned for the future.
11. All of the parking stalls located on the three lots shall be shared. The form of agreements that provide shared parking in perpetuity between the properties at 3833 Lexington Avenue, 3771 Lexington Avenue, and 1120 Red Fox Road, as well as shared ingress, egress, and maintenance of these areas, shall be reviewed and approved by the City. Executed copies of shared parking agreements shall be provided to the City prior to the issuance of a building permit.
12. The Developer shall include an additional 25.5 caliper inches of trees on-site for the Phase I development or if tree planting on-site is not practical, a fee in lieu thereof may be paid for the trees required. The fee amount shall be the cost of materials and installation of trees, plus ten percent, and shall be provided by the applicant and approved by the City.
13. The Developer shall submit a Planned Unit Development Amendment at a later date for approval of monument, wall, and auxiliary signage to be included in the Phase I development.
14. A development agreement shall be prepared by the City Attorney and subject to City Council approval for Phase I and subsequent Phases of the project. The agreements shall be executed prior to the issuance of a grading and erosion control permit or other City permits for that Phase.
15. Lexington Station shall construct the entire length of sidewalk along Red Fox Road as shown in the Master PUD Site Plan during Phase I of the project.
16. Lexington Station shall include a minimum of four planters or planting areas on the east side of the Phase I building. A revised landscaping plan shall be submitted and shall be subject to City approval.

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 respected 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.

CITY OF ARDEN HILLS

By: _____
David Grant, Mayor

(SEAL)

And _____
Amy Dietl, Deputy Clerk

STATE OF MINNESOTA)
 (ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by **David Grant** and by **Amy Dietl**, respectively the Mayor and Deputy 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: _____
Justin D. Bonestroo, Vice President

STATE OF MINNESOTA)
 (ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by **Justin D. Bonestroo**, the Vice President of **Lexington Station, LLC**, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

ROBERTS COMMERCIAL PROPERTIES, LLC
A Minnesota Limited Liability Company

By: _____
Justin D. Bonestroo, Vice President

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by **Justin D. Bonestroo**, the Vice President of **Roberts Commercial Properties, LLC**, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

DRAFTED BY:
DRAFTED BY:
Campbell Knutson
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Eagan, Minnesota 55121
Telephone: (651) 452-5000
(AMP/JJJ/jmo)

