

**ROSEVILLE**  
**REQUEST FOR COUNCIL ACTION**

Date: May 22, 2023  
Item No.: 10.1

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Department Approval



City Manager Approval



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Item Description: Lexington Plaza Escrow Agreement at 1754 Lexington Avenue

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1 **BACKGROUND**

2 As part of the Lexington Plaza Site Redevelopment, located at 1754 Lexington Avenue, the  
3 developer, Lexington Plaza, LLC, has worked with the City to develop a project agreement required  
4 for partial reconstruction of the south side of Roma Avenue adjacent to the project. The project  
5 agreement was approved by City Council on April 10, 2023, and called for a construction security in  
6 the amount of 150% of the estimated cost of construction, \$91,957, in the event the developer fails to  
7 perform. In lieu of cash or a letter of credit, the Developer has requested an escrow agreement to  
8 provide the required construction security.

9 The City Attorney has reviewed the escrow agreement.

10 **POLICY OBJECTIVE**

11 It is City policy to keep City-owned infrastructure in good operating condition and to keep systems  
12 operating in a safe condition.

13 **BUDGET IMPLICATIONS**

14 There are no costs to the City for this agreement.

15 **RACIAL EQUITY IMPACT SUMMARY**

16 There should be no equity impacts associated with this agreement.

17 **STAFF RECOMMENDATION**

18 Staff recommends the City Council approve the Lexington Plaza Escrow Agreement.

19 **REQUESTED COUNCIL ACTION**

20 Motion to approve the Lexington Plaza Escrow Agreement.

Prepared by: Jennifer Lowry, Assistant Public Works Director/City Engineer  
Attachments: A: Escrow Agreement

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT is made as of \_\_\_\_\_, 2023, by and among the City of Roseville, a Minnesota municipal corporation (“**City**”), Lexington Plaza, LLC, a Minnesota limited liability company (“**Developer**”), and First American Title Insurance Company, a Nebraska corporation (“**Escrow Agent**”).

### RECITALS

**A.** Developer is redeveloping certain property that it owns in Roseville, Minnesota, described on Exhibit A hereto (the “**Property**”), and City and Developer are parties, in said respective capacities, to that certain Project Agreement dated April \_\_, 2023 (the “**Project Agreement**”) in connection therewith, attached hereto as **Exhibit B**.

**B.** The Project Agreement requires the Developer to deposit funds in escrow, defined in the Project Agreement as Construction Escrow, to secure its obligations to complete certain Improvements under the Project Agreement, and City and Developer desire that Escrow Agent hold those funds as more fully described below.

### PROVISIONS

IN CONSIDERATION of the mutual covenants of the parties contained herein and in the Project Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Simultaneously with the execution of this Agreement, Developer has delivered to Escrow Agent the sum of \$ \_\_\_\_\_, representing the funds called for under the Project Agreement (the “**Escrowed Funds**”).
2. Escrow Agent shall deposit the Escrowed Funds into an interest-bearing trust account pursuant to investment instructions to be mutually agreed upon by the parties. Escrow Agent agrees to hold the Escrowed Funds in accordance with the terms of this Agreement. All interest on the Escrowed Funds shall accrue to the benefit of Developer; provided, however, that if the City is entitled to receive the Escrowed Funds according to the terms of the Project Agreement, the City shall also be entitled to all accrued interest thereon.
3. This Agreement will remain in full force and effect until the City has approved and accepted the Public Improvements as described in the Project Agreement and upon satisfaction of the requirements in Section 4.01 (d) of the Project Agreement.
4. Escrow Agent shall release the Escrowed Funds to the City for completion of work on the Public Improvements and related costs as described in Section 4.01 (b) of the Project Agreement or for other purpose provided for under the Project Agreement. Any request for disbursement of Escrowed Funds must be signed by the Mayor and City

Manager of the City of Roseville and will be given to Escrow Agent as required in Paragraph 5 herein. More than one draw may be made on the Escrowed Funds. Other than the presentation of a request for Escrow Funds, the City has no obligations under this Agreement.

5. Notice. Any notice required to be given to City, Developer or Escrow Agent pursuant to this Agreement shall be in writing and shall be deemed duly given: (i) on the date of personal delivery; (ii) one business day following dispatch by Federal Express or equivalent; or (iii) three (3) business days after mailing certified or registered mail, postage prepaid, return receipt requested, to respective addresses of the parties set out below:

City:  
City of Roseville  
2660 Civic Center Drive  
Roseville, MN 55113  
Attn: City Engineer

with a copy to:

Developer:  
Lexington Plaza, LLC  
P.O. Box 555  
Wayzata, MN 55391  
Attn: Albert Esther, Managing Member

With a copy to:  
Messerli & Kramer P.A.  
100 South Fifth Street, Suite 1400  
Minneapolis, MN 55402  
Attn: Anthony L. Barthel

Escrow Agent:  
First American Title Insurance Company  
121 South Eighth Street  
Suite 1250  
Minneapolis, MN 55402  
Attn: James L. Erickson

Any party, by notice given as aforesaid, may change the address to which subsequent notices are to be sent to such party.

6. The sole duties of Escrow Agent shall be those described herein, and Escrow Agent shall be under no obligation to determine whether the other parties hereto are complying with any requirements of law or the terms and conditions of any other agreements among said parties. Escrow Agent may conclusively rely upon and shall be

protected in acting upon any notice, consent, order, or other document believed by it to be genuine and to have been signed or presented by the proper party or parties, consistent with reasonable due diligence on Escrow Agent's part. Escrow Agent may consult the advice of counsel with respect to any issue concerning the interpretation of its duties hereunder. Developer hereby acknowledges such fact and agrees to indemnify and hold harmless Escrow Agent from any action taken by it in good faith in reliance thereon. Escrow Agent shall have no duty or liability to verify any such notice, consent, order or other document, and its sole responsibility shall be to act as expressly set forth in this Agreement. Escrow Agent shall be under no obligation to institute or defend any action, suit or proceeding in connection with this Agreement. If any dispute arises with respect to the disbursement of any monies, Escrow Agent may continue to hold the same or commence an action in interpleader and in connection therewith remit the same to a court of competent jurisdiction pending resolution of such dispute, and the parties hereto hereby indemnify and hold harmless Escrow Agent for any action taken by it in good faith in the execution of its duties hereunder.

7. This Agreement represents the full understanding and agreement of the parties regarding the Escrow Funds and shall not in any way be modified, amended, or limited except by written agreement between all parties.

IN WITNESS WHEREOF, the parties have set their hands as of the day and year set forth above.

CITY:  
City of Roseville

By: \_\_\_\_\_  
Daniel J. Roe, Mayor

By: \_\_\_\_\_  
Patrick Trudgeon, City Manager

DEVELOPER:  
Lexington Plaza, LLC

By: \_\_\_\_\_

Its \_\_\_\_\_

ESCROW AGENT:  
First American Title Insurance Company

By: \_\_\_\_\_

Its \_\_\_\_\_

## EXHIBIT A

### Parcel A (Abstract property):

The West Quarter of the North Half of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, except the north 247 feet and except the south 60 feet thereof.

### Parcel B (Abstract property):

The West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, except the west 150 feet of that part of said West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter lying north of a line running at right angles to the west line of said Section 14, from a point thereon 559.3 feet north of the southwest corner thereof,

Except that part thereof acquired by the County of Ramsey pursuant to the Final Certificate, dated January 14, 2002, recorded January 28, 2002, in the office of the Ramsey County Recorder as Doc. No. 3463823.

### Parcel C (Abstract property):

All that part of the West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, lying south of a line running at right angles to the west line of said Section 14, from a point thereon distant 559.3 feet north of the southwest corner of said Section 14, and lying north of a line described as follows: Beginning at a point on the west line of said Section 14, distant 451.5 feet north of the southwest corner of said Section; thence running easterly to a point on the east line of said West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter distant 452.88 feet north of the south line of said Section 14.

### Parcel D (Abstract property):

All that part of the West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, lying north of a line running at right angles to the west line of said Section 14 from a point thereon distant 329.5 feet north of the southwest corner of said Section 14, and lying south of a line described as follows: Beginning at a point on the west line of said Section 14, distant 451.5 feet north of the southwest corner of said Section; thence running easterly to a point on the east line of said West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter distant 452.88 feet north of the south line of said Section 14, except all that part of the West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, described as follows: Commencing at a point on the west line of said Section 14, distant 329.5 feet north of the southwest corner thereof; thence running East at right angles to said west line 193.3 feet to the point of beginning of the land being described; thence North at right angles 1/10 of a foot; thence East at right angles 90.05 feet; thence North at right angles 20.97 feet; thence East at right angles 46.44 feet more or less to the east line of the aforescribed fraction of Section 14; thence South on said east line 21.07 feet; thence West 136.51 feet more or less to the point of beginning.

Parcel E (Abstract property):

All that part of the West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, lying south of a line running East at right angles to the west line of said Section 14 from a point thereon distant 329.5 feet north of the southwest corner of said Section 14, and all that part of the West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, described as follows: Commencing at a point on the west line of said Section 14, distant 329.5 feet north of the southwest corner thereof; thence running East at right angles to said west line 193.3 feet to the point of beginning of the land being described; thence North at right angles 1/10 of a foot; thence East at right angles 90.05 feet; thence North at right angles 20.97 feet; thence East at right angles 46.44 feet more or less to the east line of the aforescribed fraction of Section 14; thence South on said east line 21.07 feet; thence West 136.51 feet more or less to the point of beginning,

Except that part thereof acquired by the County of Ramsey pursuant to the Final Certificate, dated January 14, 2002, recorded January 28, 2002, in the office of the Ramsey County Recorder as Doc. No. 3463823.

Parcel F:

A non-exclusive easement for sewer lines and ingress and egress over the westerly 20 feet of the East Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter, Section 14, Township 29, Range 23, as contained in the Easement Agreement, dated May 28, 1957, recorded May 31, 1957, in the office of the Ramsey County Recorder as Doc. No. 1428089.

Parcel G (Abstract property):

The west 150 feet of the West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29 North, Range 23 West, lying north of a line running at right angles to the west line of said Section 14 from a point thereon 559.3 feet north of the southwest corner of said Section 14.

Parcel H:

A non-exclusive easement for the passage and parking of vehicles and for the use, passage and accommodation of pedestrians, over part of Lot 7, Block 1, Memorial Addition No. 1, as contained in the Easement Agreement, dated July 17, 2006, recorded August 10, 2006, in the office of the Ramsey County Recorder as Doc. No. 3969755.

## EXHIBIT B

### CITY OF ROSEVILLE PROJECT AGREEMENT

**THIS PROJECT AGREEMENT** (“Agreement”) is made this \_\_\_ day of April, 2023, by and between the City of Roseville, a municipal corporation under the laws of the State of Minnesota (the “City”) and Lexington Plaza, LLC, a limited liability company under the laws of the State of Delaware (the “Developer”) (The City and Developer may be referred to hereafter as a “Party” and together as the “Parties”).

#### RECITALS

- A. Developer is the fee owner of real property in the City of Roseville legally described as follows:

See attached **Exhibit A** (Ramsey County, Minnesota PID 142923330171)

(the “Property”)

- B. Developer intends to redevelop the property along Roma Avenue between the Lexington Plaza Shopping Center ingress/egress drive and the service drive serving the east side of the shopping center. This would include removal of existing parking spaces, public sidewalk, concrete curb and gutter, and, replace with new public sidewalk, curb and gutter, grass boulevard, and rework of the existing storm basin on the Property (the “Project”).
- C. The City Council has not taken prior action related to the Project.
- D. The City and the Developer now desire to enter into this Agreement setting forth certain requirements and obligations relating to the Project, including but not limited to the execution and recording of certain instruments, and payment of fees and other obligations related to the Property.
- E. The Developer shall install or cause to be installed and pay for the following (the “Improvements”) as reflected in the Site Plan, and all plans related to the Project that have been approved by the City (the “Approved Plans”):
- a. Surface improvements (paved streets, pathways, etc.) to the extent as indicated on the Approved Plans.
  - b. Storm water improvements shall include the removal of the top section in the existing valley gutter and replacing with a top section appropriate for a curb and gutter.
  - c. Site grading to the extent as indicated on the Approved Plans.
  - d. Landscaping to the extent as indicated on the Approved Plans.
  - e. Other items as necessary to complete the Project as stipulated herein or in other agreements.



NOW, therefore, for good and valuable consideration, the receipt and sufficiency of which are acknowledge, the Parties agree as follows:

**ARTICLE ONE  
CONSTRUCTION OF IMPROVEMENTS**

1.01 Prerequisites to Construction of Improvements. Before commencing construction of the Improvements, the Developer must satisfy all of the following conditions precedent:

- a) Developer has provided proof that Developer is the fee owner of the Property and that that no other parties have an interest in the Property other than those that have been disclosed to and accepted by the City;
- b) This Agreement has been executed by the Developer and the City and recorded with Ramsey County;
- c) The Developer has received all required land use approvals and other permits from the City (the “City Approvals”);
- d) The Developer has received City approval of all Approved Plans as set forth in Section 1.02 herein;
- e) Developer has paid all outstanding fees to the City;
- f) The City has received the required Construction Security (as defined in Section 4.01) and Cost Escrow (as defined in Section 4.02) from or on behalf of the Developer;
- g) Developer has submitted final engineering and construction plans in digital (required) and hard copy (if requested) format for the Improvements and has received approval by the City Engineer (the “Approved Plans” as defined in Section 1.02);
- h) Developer or Developer’s representative has initiated and attended a preconstruction meeting with the City Engineer and other City staff;
- i) The Developer has submitted to the City, \$3,678 in Engineering Coordination fees for Construction Observation as described in Section 2.03; and
- j) The City has issued a Notice to Proceed and all conditions precedent have been satisfied.

1.02 Approved Plans. The Property shall be developed in accordance with the following plans, specifications and other documents and approved by the City Engineer (together the “Approved Plans”). These documents may be prepared after the Parties have entered into this Agreement, provided however, no work shall be commenced on the Property until all of the documents have

been submitted to and approved by the City. The Approved Plans shall not be attached to this Agreement, but shall be retained in the City files while the work to be done under this Agreement is being performed. If the Plans vary from the written terms of this Agreement, the written terms shall control. The Approved Plans are as follows:

Plans and Specifications (the below described shall be included in the plans and specifications, however not necessarily individual sheets for each)

- a. Removals;
- b. Site Plan;
- c. Grading, Drainage and Utility Plan;
- d. Erosion Control Plan and Schedule;
- e. Standard and Custom Details;
- f. Landscape Improvements.

1.03 Construction of Public Improvements. The Project will include construction of certain Improvements to current public property (the “Public Improvements”). All Public Improvements must be constructed in accordance with City details and specifications and the Approved Plans (as defined in Section 1.02). All labor and work must be done and performed in the best and most workerlike manner and in strict conformance with the Approved Plans. Any deviation from the Approved Plans must be preapproved in writing by the City Engineer. Public Improvements shall consist of the following:

- a) Public Street Construction: Street improvements include subgrade preparation, gravel base, bituminous surfacing, and concrete curb and gutters. The Developer is required to follow the MnDOT schedule for materials control for testing the work. Developer-contracted testing shall be performed by a qualified third party. The City reserves the right to require additional testing as necessary to ensure proper construction, at the Developer's expense. The following streets shall become publicly owned and maintained after acceptance of the improvement:

- 1. Roma Avenue

- b) Public Pathways. A 6’ wide sidewalk shall be constructed from the westerly shopping center ingress/egress drive to the easterly service drive serving the rear of the building.
- c) Storm Sewer. The Developer shall remove and replace the existing valley gutter basin section with a new section to accommodate the new curb and gutter design.

1.04 Public Dedication and Ownership.

Ownership of Improvements and Risk of Loss. Upon completion and City acceptance of the Public Improvements by the City Council, all Public Improvements lying within public

rights-of-way and easements shall remain City property without further notice or action. The Developer shall be responsible for the risk of loss of all Public Improvements constructed by the Developer until accepted by the City. Any damage or destruction, in whole or in part, to any Public Improvement constructed by the Developer shall be repaired and/or replaced by the Developer until acceptance of such Public Improvement by the City. Upon acceptance of the public improvement, the Developer shall warranty all work for a one (1) year period by providing a warranty bond.

1.05 Work or Materials. All work that Developer is required to perform pursuant to this Agreement shall be done at no expense to the City. No reimbursement shall be made by the City for any work paid for by the Developer. The Developer agrees that it will make no claim for compensation for work or materials so done or furnished.

1.06 Construction of Private Improvements. The Project will consist of construction of certain Improvements on private property (the "Private Improvements"). All labor and work will be done and performed in the best and most workmanlike manner and in strict conformance with the Approved Plans. Any deviation from the Approved Plans must be pre-approved in writing by the City Engineer.

- a) Private Street Construction: Street improvements include subgrade preparation, gravel base, bituminous surfacing, and concrete curb and gutters. Public Street Restoration. Curb cuts and street cuts shall be reconstructed to match existing street typical section.
- b) Site Grading and Restoration: Site grading improvements shall include common excavation, subgrade correction, and embankment grading. The Developer shall perform restoration on the Property in accordance with the Approved Plans.
  - 1. The Developer shall submit to the City a site grading and drainage plan for the entire Project.
  - 2. The Developer shall submit a certificate of survey (as-built survey) of the Project to the City after site grading, with street and lot grades.
  - 3. All improvements to the lots and the final grading shall comply with the approved grading plan.

## **ARTICLE TWO CONSTRUCTION STANDARDS**

2.01 Staking, Surveying and Inspections. Developer must provide all required staking and surveying for the Improvements in order to ensure that the completed Improvements conform to the Approved Plans.

2.02 Observation. The Developer shall provide the services of a Project Representative and assistants at the Property to provide observation of the work to be performed and the Improvements to be constructed under this Agreement.

- a. The Developer shall provide the City Engineer a minimum of two (2) business days' notice prior to the commencement of curb and gutter, concrete flatwork, and bituminous surface construction.
- b. Developer's failure to comply with the terms of this section shall permit the City Engineer to issue a stop work order which may result in a rejection of the work and which shall obligate the Developer to take all reasonable steps, as directed by the City Engineer to ensure that the Improvements are constructed and inspected pursuant to the terms of this Agreement; and shall further result in the assessment of a penalty, in an amount equal to 1% of the amount of the Letter of Credit required for Developer Improvements, per occurrence, which amount the Developer agrees to pay to the City upon demand.
- c. The Developer is required to follow the MnDOT schedule for materials control for testing the work. Developer-contracted testing shall be performed by a qualified third party. All tests should be submitted to the City for review and approval. The City reserves the right to additional testing as necessary to ensure proper construction, at the Developer's expense.

2.03 Engineering Coordination. A City staff Engineering Coordinator shall be assigned to this project to provide further protection for the City against defects and deficiencies in the work and Public Improvements through the observations of the work in progress and field checks of materials and equipment. However, the furnishing of such engineering coordination will not make the City responsible for construction means, methods, techniques, sequences or procedures or for the safety precautions or programs, or for the Contractors failure to perform his work in accordance with the Plans. The Developer is obligated to pay the City for City Construction Observation services an amount equal to 4% of the estimated cost of the Public Improvements, which amount is \$3,678.

2.04 Unsatisfactory Labor or Material. In the event that the City Engineer rejects as defective or unsuitable any material, then such material must be removed and replaced with approved material at the sole cost and expense of the Developer.

2.05 Completion of Public Improvements, Final Inspection, Acceptance.

- a) Time of Completion. The Developer shall complete all required Public Improvements no later than October 1, 2023 (the "Completion Date"). The Developer may, submit a written request for an extension of time to the City Engineer. If an extension is granted,

it shall be conditioned upon updating the Construction Escrow posted by the Developer to reflect cost increases and the extended Completion Date.

- b) Bituminous and Concrete Material Acceptance. The City shall not accept concrete curb and gutter that has structural or cosmetic defects. The City shall identify all defective curbs for removal. The City shall not accept bituminous that does not meet MnDOT specifications that has an open graded appearance as determined by the City Engineer. Such material shall be rejected and shall be required to be removed and replaced at the Developer's expense.

2.06 As-built Plans. Upon completion of the Improvements, the Developer shall provide the City with drawings of all public and private infrastructure improvements in accordance with City Guidelines: (i) a full set of as-built plans in a digital PDF format, and (ii) an as-built survey in a CAD format, for City records. Upon request by the City Engineer, the Developer will provide sufficient information to the City documenting the Developer's work, including any changes that affect the Approved Plans. The Improvements shall not be accepted, nor shall security retainage be released until all record drawings have been received and accepted by the City Engineer.

2.07 Maintenance of Improvements. Developer shall be responsible for all maintenance, upkeep and repair (including, but not limited to snow plowing, mowing, weed control, and grading) of the privately-owned Improvements; and for the Public Improvements, except for public street and pathway plowing, until completed and accepted by the City. Developer shall remain responsible for all maintenance and upkeep of Improvements that are not transferred to the City. Developer hereby agrees to indemnify and hold the City harmless from any and all claims for damages of any nature whatsoever arising out of Developer's acts or omissions in performing the obligations imposed by this Section until such point the City accepts the Improvements.

2.08 Building Permits and Occupancy. The Developer shall maintain reasonable access to any occupied building within the Project, including necessary street maintenance such as grading and graveling and snow removal prior to permanent street surfacing and acceptance of the streets by the City.

2.09 Site Conditions.

- a) Cleaning. The Developer shall clean dirt and debris from streets that has resulted from construction work by its respective contractors, subcontractors, agents or assigns. The City will inspect the Property not less than on a weekly basis to determine whether it is necessary to take additional measures to clean dirt and debris from the streets. After 24 hours' written notice to the Developer, the City may complete or contract to complete the clean-up and may draw down on the Construction Escrow described in Article Four to pay such costs.
- b) Parking and Storage of Materials. Adequate on-site parking for construction vehicles and employees must be provided or provisions must be made to have employees park off-site and be shuttled to the Project Area. No parking of construction vehicles or

employee vehicles shall occur along Roma Avenue. No fill, excavating material or construction materials shall be stored in the public right-of-way with exception to that within the construction limits and only during the construction period.

- d) Cold Weather Construction. The City requires that no public concrete or bituminous infrastructure be constructed on frozen ground. Upon evidence of frozen ground in the project aggregate base/subgrade, all concrete and bituminous work shall cease for the construction year. No bituminous base paving or concrete pouring will be allowed after November 1st of the calendar year, unless approved by the City Engineer, and if permitted such work shall comply with City specifications.

2.10 Construction Hours; Noise; Dust. Developer will comply with all requirements of the City pertaining to the hours and days during which construction activities may take place. Unless a variance is approved by the City Council, construction hours shall be 7:00 a.m. to 9:00 p.m. Monday through Friday and 9:00 a.m. to 9:00 p.m. on weekends.

2.11 Erosion Control. Prior to issuance of the Notice to Proceed, the erosion control plan must be approved and City erosion control permit must be issued. The Developer shall meet all requirements of the City's Erosion Control Permit and Ordinance including but not limited to the following:

- a) No construction activity may occur and no building permits will be issued unless the Property is in full compliance with the erosion control requirements.
- b) The City shall inspect the site periodically and determine whether it is necessary to take additional measures to address erosion.
- d) To remove dirt and debris from streets that has resulted from construction work by the Developer, its agents or assigns, the Developer shall sweep streets within the Project area, and adjacent streets if tracking is observed, on a weekly basis or more frequently as directed by the City Engineer until the site is stabilized. The Developer must sweep roadways with a water-discharge broom apparatus. Kick-off brooms shall not be utilized for street sweeping.
- e) If the Project does not comply with the erosion control plan or supplementary instructions received from the City, the City may, following giving the After 48-hours verbal notice to the Developer (or immediately in the case of an emergency), the City may complete or contract to complete the clean-up and may draw down on the Permit, Project Escrow or Construction Security described in Section 4.01 to pay such costs.

**ARTICLE THREE  
EASEMENT; RIGHT OF ENTRY**

3.01 To the City. The Developer grants to the City, its agents, representatives, employees, officers, and contractors, a right of entry to access all areas of the Property to perform any and all work and inspections necessary or deemed appropriate by the City or to take any corrective actions deemed necessary by the City. The right of entry conveyed by the Developer to the City shall continue until the completion of the Improvements. The City will provide the Developer with reasonable written notice prior to exercising its rights hereunder, except in the case of an emergency.

**ARTICLE FOUR  
SECURITY, WARRANTY**

4.01 Construction Security. Prior to commencement of construction of the Public Improvements, the Developer will furnish the City a list of all Public Improvements and an estimated cost of such Public Improvements, attached hereto as **Exhibit B**, for approval by the City Engineer. Based on those approved costs, Developer will furnish the Construction Security in the form of one of the following: (i) cash to be held in escrow, (ii) an irrevocable Letter of Credit, or (iii) a bond approved by the City Attorney, the total amount of which must be equal to 150% of the estimated project costs for the Public Improvements.

- a) Renewal. In the event Developer posts a Bond or provides a Letter of Credit for the Security, the Bond or Letter of Credit must continue in full force and effect until the City has approved and accepted the Public Improvements. A Letter of Credit must automatically renew at the first of the year until the City releases the developer from responsibility.
- b) Failure to Complete. Upon failure of the Developer to timely perform work on the Public Improvements or to complete work on the Public Improvements by the Completion Date, the City may declare the Developer to be in default as to the Public Improvements and draw an amount from the Construction Security necessary to complete the unfinished work and any City costs associated. Associated costs may include but are not limited to, any attorneys' fees, engineering fees or other technical or professional assistance, including the work of the City staff and employees. The Developer shall be liable to the City to the extent that the Construction Security is inadequate to reimburse the City its costs and pay for the completion of the work.
- c) Reduction of Construction Security. Upon the Developer's written request, the City Engineer may reduce the amount of the Construction Security for completed Public Improvements provided the following conditions are met:
  - 1. The Developer's Engineer of record certifies that the Public Improvements have been constructed to City Standards and in accordance with the Plans.

2. The Developer provides documentation that its contractors and all their subcontractors and suppliers have been paid in full for the work completed and materials supplied.

3. The City Engineer determines that such Public Improvements have been fully completed in accordance with the Plans, specifications and provisions of this Agreement.

4. The amount of reduction shall be equal to that portion of the Construction Security which covers such completed Public Improvements; provided however, in no case shall the remaining amount of the Construction Security be less than the greater of: (i) 25% of the original amount of the Construction Security, or (ii) 150% of the estimated cost to complete the remaining Public Improvements.

b) Release of Construction Security. After the work described in this Agreement has been completed, the Developer may request that the City accept the Public Improvements and release the Construction Security. This is accomplished through a City Council resolution provided the following conditions are met:

1. As-built Survey. The Developer shall provide an as-built survey upon completion of the Improvements described in Section 1.02 in reproducible and digital (CAD) format. The locations and elevations of sewer and water services shall be accurately shown on the survey.

2. Certification. The Developer's engineer submits a letter certifying that the Public Improvements have been constructed to City Standards in accordance with the Plans and requests that the City accept the Public Improvements.

3. Lien Waivers. The Developer provides documentation that its contractors and their subcontractors and suppliers have been paid in full for the work completed and the materials supplied.

4. Warranty. Warranty is provided to the City per Section 4.03.

5. Determination of Completion. The City Engineer and the City Council have determined that all Public Improvements have been completed in accordance with the Approved Plans and terms of this Agreement. The date of City acceptance of the Public Improvements shall be the date of the City Council resolution accepting the Public Improvements

4.02. Escrow for Costs. Prior to entering in to this Agreement, the Developer has deposited a cash escrow in the amount of \$3,678, to pay Administrative Costs. "Administrative Costs" are defined as out-of-pocket costs incurred by the City, together with staff, legal, engineering, and all



other consultant costs of the City, all attributable to or incurred in connection with the Project, but not including Construction Observation. At the Developer's request, but no more often than monthly, the City will provide the Developer with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. If Administrative Costs incurred, and reasonably anticipated to be incurred, are more than the deposit by the Developer, Developer will, upon request of the City, provide additional funds. If the Administrative Costs incurred, and reasonably anticipated to be incurred are less than the deposit by the Developer, the City shall return to the Developer any funds not anticipated to be needed. The City shall return the unused escrow balance to the Developer no later than two (2) months after the acceptance of the Improvements by the City at the contact information provided on the Escrow Receipt Form.

4.03 Warranty. The Developer warrants the Public Improvements and all work required to be performed by the Developer hereunder against poor material and faulty workmanship for a period of one (1) year after its completion and acceptance by the City. The Developer shall repair or replace as directed by the City and at the Developer's sole cost and expense: (i) any and all faulty work, (ii) any and all poor quality and/or defective materials, and (iii) any and all trees, plantings, grass and/or sod which are dead, are not of good quality and/or are diseased, as determined in the sole but reasonable opinion of the City or its Engineer, provided the City or its Engineer gives notice of such defect to Developer with respect to such items on or before 60 days following the expiration of the one (1) year warranty period.

## **ARTICLE FIVE OTHER REQUIREMENTS**

5.01. Indemnification. Notwithstanding anything to the contrary in this Agreement, the City, its officials, agents and employees shall not be personally liable or responsible in any manner to the Developer or its respective contractors or subcontractors, material suppliers, laborers or to any other person or persons for any claim, demand, damages, actions or causes of action of any kind or character arising out of or by reason of the execution of this Agreement or the performance and completion of the work required by this Agreement. The Developer will hold the City, its officials, agents and employees harmless from all such claims, demands, damages, or causes of action and the costs, disbursements, and expenses of defending the same, including but not limited to, attorneys' fees, consulting engineering services, and other technical or professional assistance, including the work of City staff and employees until such point the City accepts the Improvements. The Developer further agrees that they will indemnify, defend, and hold harmless the City and its governing body members, officers, and employees, from any claims or actions arising out of the presence, if any, of hazardous wastes or pollutants on the Subject Property. Nothing in this Section will be construed to limit or affect any limitations on liability of the City under State or federal law, including without limitation Minnesota Statutes Sections 466.04 and 604.02.

5.02. Insurance. The Developer must keep all insurance coverage in force at all times that construction on the Project is in progress. The insurance must name the City as an additional insured. The Developer shall, respectively, furnish certificate of insurance acceptable to the City,

covering any public liability or property damage by reason of the operation of its equipment, laborers, and hazard caused by the Improvements, and include at least the following:

- a) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with any Agreement or Policy with limits against bodily injury, including death, and property damage (to include, but not be limited to damages caused by erosion or flooding) which may arise out of Developer' s work or the work of any of its contractors. The exclusion for underground collapse shall be removed.
- b) Limits for bodily injury or death shall be not less than \$1,000,000.00 for one person per occurrence; limits for property damage shall not be less than \$1,000,000.00 per occurrence; and will maintain a minimum \$2,000,000.00 umbrella.
- c) Worker' s compensation insurance, with statutory coverage, if applicable.
- d) Developer shall file a Certificate of Insurance with the City Engineer prior to commencing site grading. Developer shall be responsible for insuring that the Certificate bear the following wording:

Should any of the above policies be canceled or terminated before the expiration date thereof, the issuing company shall give thirty (30) days' written notice of cancellation or termination to the Certificate Holder.

5.03 Real Estate Taxes. The Developer shall pay all real estate taxes associated with the Property and owed for the year in which the Project is constructed at the times required, and the Developer shall provide proof to the City of such payment. If the Developer is required to convey any property to the City after July 1 of any calendar year, it shall be solely responsible for all real estate taxes owed on said Property through the following calendar year.

## **ARTICLE SIX BREACH AND REMEDIES**

6.01 Default by Developer. In the event of a breach of this Agreement by the Developer, the City may pursue any remedy at law or equity to enforce the terms of this Agreement. In the event of a breach of this Agreement as to any of the work to be performed hereunder by the Developer, its successors or assigns, the City may, at its option, perform the work and the Developer shall promptly reimburse the City for any expense incurred by the City, provided the Developer is first given written notice of the breach of this Agreement, not less than 72 hours in advance and the opportunity to cure such breach. In the event of an uncured breach of this Agreement, the City is granted the right to declare any sums provided by this Agreement due and payable in full, and the City may immediately bring legal action against the Developer to collect the sums covered by this Agreement and/or draw upon the Construction Escrow described in Article Four of this

Agreement. In the event the City draws from the Construction Escrow sums that exceed the costs or damage to the City, the City will return such excess amounts.

6.02 Complete Improvements-Right of Entry. In addition to the City's other remedies under this Agreement, if the Developer's breach involves failure to complete the Improvements by the Completion Date, the City is hereby authorized, at its option, to enter on portions of the Property covered by this Agreement, to complete the installation of any or all of the Improvements to which the breach relates.

6.03 Rights Cumulative. No remedy conferred in this Agreement is intended to be exclusive and each shall be cumulative and shall be in addition to every other remedy. The election of any one or more remedies shall not constitute a waiver of any other remedy.

6.04 Attorney Fees. The Developer will pay the City's costs and expenses, including attorneys' fees, incurred in connection with the Project and in connection with any lawsuit or action that is brought by or against the City relating to the Project, this Agreement, or a Letter of Credit furnished by the Developer relating to the Project.

## **ARTICLE SEVEN MISCELLANEOUS PROVISIONS**

7.01. Amendment. Any amendment to this Agreement must be in writing and signed by all Parties and recorded against the Property.

7.02. Assignment. The Developer may not transfer or assign any of its obligations under this Agreement without the prior written consent of the City Council.

7.03. Agreement to Run with Land. The Developer agrees to record this Agreement among the land records of Ramsey County. The provisions of this Agreement shall run with the land and be binding upon Developer and its successors in interest and assigns. Notwithstanding the foregoing, no conveyance of the Property or any part thereof shall relieve the Developer of its liability for full performance of this Agreement unless the City expressly so releases the Developer in writing.

7.04. Release. Upon completion and approval of all work required herein, including completion of the Improvements and acceptance of the Improvements to be transferred to the City, and satisfaction of all of the Developer's respective obligations under this Agreement, the City agrees to execute an instrument releasing the Property from the terms of this Agreement.

7.05. Severability. The provisions of this Agreement are severable, and in the event that any provision of this Agreement is found invalid, the remaining provisions shall remain in full force and effect.

7.06. Notices. All notices, certificates or other communications required to be given to City Developer shall be sufficiently given and shall be deemed given when delivered or when deposited in the United States mail, first class, with postage fully prepaid and addressed as follows:

**CITY:** City of Roseville  
2660 Civic Center Drive  
Roseville, MN 55113  
Attn: City Engineer

**DEVELOPER:** Lexington Plaza, LLC  
PO Box 555  
Wayzata, MN 55391  
Attn: Albert Esther, Managing Member

The City and Developer, by written notice, may designate different addresses to which subsequent notice, certificate or other communications should be sent.

7.07 No Third-Party Beneficiary. This Agreement and any financial guarantees required pursuant to its terms are not intended for the benefit of any third party.

7.08 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. The Developer agrees to comply with all laws, ordinances, and regulations of Minnesota and the City that are applicable to the Project.

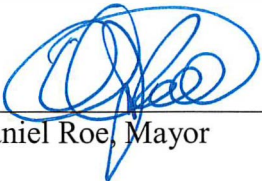
7.09 Counterparts. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be an original and shall constitute one and the same Agreement.

7.10 Non-waiver. Each right, power or remedy conferred, respectively, upon the City or Developer by this Agreement is cumulative and in addition to every other right, power or remedy, express or implied, now or hereafter arising, or available to the City, the Developer at law or in equity, or under any other agreement. Each and every right, power and remedy set forth in this Agreement or otherwise so existing may be exercised from time to time as often and in such order as may be deemed expedient by the City or the Developer, as the case may be, and shall not be a waiver of the right to exercise at any time thereafter any other right, power or remedy. If either Party waives in writing any default or nonperformance by the other Party, such waiver shall be deemed to apply only to such event and shall not waive any other prior or subsequent default.

**SIGNATURES:**

**IN WITNESS OF THE ABOVE**, the duly authorized representatives of the Parties have caused this Agreement to be executed in duplicate on the date and year written above.

**CITY OF ROSEVILLE**

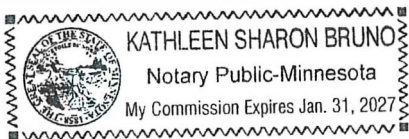
By:   
Daniel Roe, Mayor

By:   
Patrick Trudgeon, City Manager

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RAMSEY    )

The foregoing instrument was acknowledged before me this 10th day of April, 2023 by Daniel Roe and by Patrick Trudgeon, the Mayor and City Manager, respectively, of the City of Roseville, a Minnesota municipal corporation, on behalf of the City.

  
Notary Public





## EXHIBIT A

### Legal Description

Parcel A (Abstract property):

The West Quarter of the North Half of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, except the north 247 feet and except the south 60 feet thereof.

Parcel B (Abstract property):

The West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, except the west 150 feet of that part of said West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter lying north of a line running at right angles to the west line of said Section 14, from a point thereon 559.3 feet north of the southwest corner thereof,

Except that part thereof acquired by the County of Ramsey pursuant to the Final Certificate, dated January 14, 2002, recorded January 28, 2002, in the office of the Ramsey County Recorder as Doc. No. 3463823.

Parcel C (Abstract property):

All that part of the West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, lying south of a line running at right angles to the west line of said Section 14, from a point thereon distant 559.3 feet north of the southwest corner of said Section 14, and lying north of a line described as follows: Beginning at a point on the west line of said Section 14, distant 451.5 feet north of the southwest corner of said Section; thence running easterly to a point on the east line of said West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter distant 452.88 feet north of the south line of said Section 14.

Parcel D (Abstract property):

All that part of the West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, lying north of a line running at right angles to the west line of said Section 14 from a point thereon distant 329.5 feet north of the southwest corner of said Section 14, and lying south of a line described as follows: Beginning at a point on the west line of said Section 14, distant 451.5 feet north of the southwest corner of said Section; thence running easterly to a point on the east line of said West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter distant 452.88 feet north of the south line of said Section 14, except all that part of the West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, described as follows: Commencing at a point on the west line of said Section 14, distant 329.5 feet north of the southwest corner thereof; thence running East at right angles to said west line 193.3 feet to the point of beginning of the land being described; thence North at right angles 1/10 of a foot; thence East at right angles 90.05 feet; thence North at right angles 20.97 feet; thence East at right angles 46.44

feet more or less to the east line of the aforescribed fraction of Section 14; thence South on said east line 21.07 feet; thence West 136.51 feet more or less to the point of beginning.

Parcel E (Abstract property):

All that part of the West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, lying south of a line running East at right angles to the west line of said Section 14 from a point thereon distant 329.5 feet north of the southwest corner of said Section 14, and all that part of the West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29, Range 23, described as follows: Commencing at a point on the west line of said Section 14, distant 329.5 feet north of the southwest corner thereof; thence running East at right angles to said west line 193.3 feet to the point of beginning of the land being described; thence North at right angles 1/10 of a foot; thence East at right angles 90.05 feet; thence North at right angles 20.97 feet; thence East at right angles 46.44 feet more or less to the east line of the aforescribed fraction of Section 14; thence South on said east line 21.07 feet; thence West 136.51 feet more or less to the point of beginning,

Except that part thereof acquired by the County of Ramsey pursuant to the Final Certificate, dated January 14, 2002, recorded January 28, 2002, in the office of the Ramsey County Recorder as Doc. No. 3463823.

Parcel F:

A non-exclusive easement for sewer lines and ingress and egress over the westerly 20 feet of the East Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter, Section 14, Township 29, Range 23, as contained in the Easement Agreement, dated May 28, 1957, recorded May 31, 1957, in the office of the Ramsey County Recorder as Doc. No. 1428089.

Parcel G (Abstract property):

The west 150 feet of the West Half of the Southwest Quarter of the Southwest Quarter of the Southwest Quarter of Section 14, Township 29 North, Range 23 West, lying north of a line running at right angles to the west line of said Section 14 from a point thereon 559.3 feet north of the southwest corner of said Section 14.

Parcel H:

A non-exclusive easement for the passage and parking of vehicles and for the use, passage and accommodation of pedestrians, over part of Lot 7, Block 1, Memorial Addition No. 1, as contained in the Easement Agreement, dated July 17, 2006, recorded August 10, 2006, in the office of the Ramsey County Recorder as Doc. No. 3969755.



**EXHIBIT B**

**Estimated Cost of Improvements**

The Developer must provide the City with a written estimate of all applicable costs of the Work, itemized by type. The estimates shall be based upon actual estimates provided by the contractors who are to do the Work. Said cost estimates will be reviewed by the City, and the City will establish the actual amount of the financial guarantee.

<b>Item</b>	<b>Estimated Cost</b>	<b>150% Construction Security Amount</b>
Earthwork (Demo, Base, Storm, Dirt, Storm, Paving Patching)	\$ 33,817	\$ 50,725
Concrete (curbs & gutters and sidewalk)	\$ 21,240	\$ 31,860
Landscape (Sod & Irrigation)	\$ 6,248	\$ 9,372
Excludes GC's and Markups		
<b>CONSTRUCTION ESCROW TOTAL</b>		<b>\$ 91,957</b>