

ROSEVILLE
REQUEST FOR COUNCIL ACTION

Date: March 22, 2021
Item No.: 9.h

Department Approval



City Manager Approval



Item Description: Approve 2420 Fairview Easement & Encroachment Agreement

BACKGROUND

As part of the redevelopment of the site at 2420 Fairview Avenue, the City has been working with the developer, PPF RTL Rosedale Shopping Center, LLC, to create a storm water utility easement and encroachment agreement. During the site review for the plans the Rice Creek Watershed District (RCWD) and the City determined that a portion of the storm sewer that serves Fairview Avenue and goes into the parcel was not under an easement. This pipe was under RCWD authority, via state statutes related to ditch law, since it was part of the Ramsey County Ditch 4 system. As of February 24, all of RCD 4 including this portion of the system was turned over to the City to manage this system.

Due to the jurisdiction change the developer has worked with the City to dedicate a storm water utility easement (Attachment A) to the City to cover the existing pipe. A portion of a proposed drive will encroach over the new easement so the City has worked with the developer to develop an encroachment agreement (Attachment B).

Since the developer has worked with the City to dedicate an easement over the pipe, City staff has no issues with approving an encroachment agreement. Due to the size and depth of the pipe the City will likely not need to dig the pipe up unless there was a catastrophic failure. Most maintenance and rehabilitation can be done from the inside of the pipe.

The City Attorney has reviewed the easement and the encroachment agreement. A formal legal description with exhibit is currently being prepared by the developer's consultant and will be added to the agreement prior to final execution by the City.

POLICY OBJECTIVE

The agreement and easements provide the City the legal right to occupy the referenced area and protects City's rights and limits liability due to the use of the easement area.

FINANCIAL IMPACTS

There is no public financial participation requested.

STAFF RECOMMENDATION

Staff is requesting that Council approve Storm Water Utility Easement with PPF RTL Rosedale Shopping Center, LLC.

Staff is requesting that Council approve Encroachment agreement with PPF RTL Rosedale Shopping Center, LLC.

31 **REQUESTED COUNCIL ACTION**

32 Consider motion to approve Storm Water Utility Easement with PPF RTL Rosedale Shopping
33 Center, LLC.

34 Consider motion to approve Encroachment agreement with PPF RTL Rosedale Shopping Center,
35 LLC.

Prepared by: Jesse Freihammer, Assistant Public Works Director/City Engineer

Attachments: A: Stormwater Utility Easement

B: Encroachment Agreement

C: Site Plan

STORMWATER UTILITY EASEMENT

THIS INDENTURE is made as of this ____ day of _____, 202__, between PPF RTL Rosedale Shopping Center, LLC, a Delaware limited liability company (“Grantor”), and the City of Roseville, a Minnesota municipal corporation (“City”).

WITNESSETH:

That said Grantor, in consideration of One and no/100 Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby grant and convey unto the City, and its successors and assigns, a permanent, non-exclusive stormwater utility easement on, over, across and through a portion of the following described real property located in Ramsey County, Minnesota, to-wit:

See attached Exhibit A;

Said easement being that part of the above described parcel which is legally described as follows:

See attached Exhibit B (the “Easement Area”).

The Easement Area is shown on the Certificate of Survey attached as Exhibit C.

The grant of the foregoing easement is solely for the purpose of permitting the City, and its contractors, agents, employees, and successors and assigns, to enter upon and use the Easement

Area to maintain, repair, reconstruct, and replace the existing storm sewer line (the “Storm Sewer Line”) located beneath the right-of-way of Fairview Avenue North (also known as Ramsey County Road 48), which right-of-way adjoins the Easement Area on the west; and, in connection with any such maintenance, repair, reconstruction, or replacement of the Storm Sewer Line, (i) to grade, level and fill the Easement Area upon the completion of any such work; (ii) to excavate temporary cuts and slopes within the Easement Area during any such work; (iii) to remove and import soils from and into the Easement Area (provided any imported soil is free of any hazardous substances or materials, as ever defined by any statute, ordinance, rule or regulation of any governmental authority having jurisdiction over the Easement Area); (iv) to remove trees, brush, undergrowth and other obstructions from the Easement Area, as necessary in connection with any such work; and (v) to do all other acts and things which are reasonably necessary for or incidental to the enjoyment of the easement rights granted herein. At least ninety (90) days before commencing any work authorized by this paragraph, the City shall notify the then owner and occupant of the Easement Area, which notice shall include a description of the proposed work and a schedule for the commencement and completion of the proposed work. The City shall perform any proposed work in such a manner as to minimize the interruption of any business then operating on the parcel that includes the Easement Area as much as reasonably possible.

The foregoing easement shall be binding upon the Grantor and its successors and assigns, shall inure to the benefit of the City and its successors and assigns, and shall run with the land.

The Grantor, for itself and its successors and assigns, covenants with the City, and its successors and assigns, that Grantor is the owner of the Easement Area described herein and has good right to grant and convey the easement given herein to the City, subject to any recorded documents as of the date hereof.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, to the City, its successors and assigns, forever.

IN TESTIMONY WHEREOF, the Grantor has caused this easement to be executed as of the _____ day of _____, 202__.

GRANTOR

PPF RTL ROSEDALE SHOPPING CENTER LLC,
a Delaware limited liability company

By: PPF Retail, LLC, its sole member

By: PPF OP, LP its sole member

By PPF OPGP, LLC its General Partner

By: Prime Property Fund, LLC its sole member

By: Morgan Stanley Real Estate Advisor, Inc., its
Investment Adviser

By: _____

Printed: _____

Title: _____

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me this _____ day of _____, 2020, by _____, the _____ of Morgan Stanley Real Estate Advisor, Inc., the Investment Adviser of Prime Property Fund, LLC, the sole member of PPF OPGP, LLC, the general partner of PPF OP, LP, the sole member of PPF Retail, LLC, the sole member of PPF RTL ROSEDALE SHOPPING CENTER, LLC, a Delaware limited liability company, on behalf of the limited liability company.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Erickson, Bell, Beckman & Quinn, P.A.
1700 West Highway 36
Suite 110
Roseville, MN 55113
651-223-4999

EXHIBIT A

**Legal Description of
Grantor's Property**

Lot 2, Block 1, Rosedale Center Seventh Addition, Ramsey County, Minnesota.

(Torrens Property)

EXHIBIT B

Legal Description for Easement Area

[Insert legal description]

EXHIBIT C
Certificate of Survey

The Certificate of Survey follows.

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (this “Agreement”) is made this ____ day of _____, 2021, by and between, PPF RTL Rosedale Shopping Center, LLC, a Delaware limited liability company, (“Owner”), and the City of Roseville, a Minnesota municipal corporation (“City”);

WITNESSETH THAT:

WHEREAS, the Owner is the owner of real property located in Roseville, Minnesota, legally described on the attached Exhibit A (the “Owner’s Property”); and

WHEREAS, the City is the grantee from Owner of that certain Stormwater Utility Easement, dated _____, 2021, recorded on _____, 2021, as Document Number _____ in the Office of the Ramsey County Registrar of Titles (the “Stormwater Utility Easement”), which easement encumbers the area legally described on the attached Exhibit B (the “Easement Area”), and

WHEREAS, the Owner desires to construct, maintain, repair, reconstruct, or replace within the Easement Area, as determined by Owner or its tenant from time to time: (a) a paved drive-through lane or driveway; (b) a canopy to cover a portion of the drive-through lane; (c) landscaping; and (d) underground utilities and surface appurtenances incidental to items (a), (b),

and (c) above (collectively, the “Improvements”) for the benefit of the Owner’s Property. An initial site plan of the Improvements is shown in Exhibit C attached hereto.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the parties agree as follows:

1. The Owner shall have the right to construct, maintain, repair, reconstruct and replace the Improvements, subject to the terms and conditions of this Agreement.

2. Except as provided otherwise in this Agreement, the Improvements shall be constructed, maintained, repaired, reconstructed and replaced by the Owner, in compliance with plans approved in advance by the City, at the Owner’s sole cost and expense holding the City free and clear of same. The City hereby approves the plans attached as Exhibit C. The Owner shall maintain the Improvements in a neat, clean and safe condition.

3. In the City’s exercise of its rights under the Stormwater Utility Easement, the City will act in good faith to avoid or limit damage to the Improvements, including, without limitation, making use of non-intrusive methods and technologies to access, maintain, repair, reconstruct, or replace the “Storm Sewer Line,” as defined in the Stormwater Utility Easement, in an effort to avoid, to the fullest extent possible, excavation under or removal of the Improvements. The City will not allow, and will act promptly to remove, any mechanic’s lien filed against the Owner’s Property in connection with the City’s activities within the Easement Area.

4. After the completion of any work within the Easement Area by the City that is permitted by the Stormwater Utility Easement, the City shall promptly repair, reconstruct, or replace, as appropriate, at the City’s sole expense, any of the Improvements affected by such work to a condition substantially the same or better than the condition of such Improvements immediately before the commencement of any such work, including, without limitation, any

filling, grading, compacting, paving, striping, or sodding necessary in connection therewith. The City shall indemnify, defend, and hold the Owner, its tenant and any other authorized user of the Easement Area harmless from and against any loss, cost, damage or expense, including reasonable attorneys' fees, arising from the City's exercise of its rights (and/or failure to perform its obligations) pursuant to the Stormwater Utility Easement and/or this Agreement, excluding any lost sales due to any interruption of the business operations then being conducted on the Owner's Property by the Owner, any tenant, or any other authorized user thereof.

5. The Owner shall be responsible for obtaining and paying for all permits, variances, approvals, costs, fees and other expenses necessary to construct, maintain, repair, reconstruct or replace the Improvements, except to the extent related to the City's exercise of its rights or the performance by the City of its duties under the Stormwater Utility Easement or this Agreement. Unless the City is obligated to do so pursuant to the preceding sentence, the Owner shall construct, maintain, repair, reconstruct and replace the Improvements in compliance with all laws, rules, regulations, codes and ordinances imposed by all governmental authorities that have jurisdiction over the Easement Area.

6. The covenants and agreement contained herein shall be binding upon and inure to the benefit of the parties hereto, and their successors and assigns, and shall run with the land.

7. Any notice to be given by either party upon the other under this Agreement shall be properly given if mailed to the other by United States registered or certified mail, return receipt requested, postage prepaid, addressed in the manner set forth below, or if given to a nationally recognized, reputable overnight courier for overnight delivery to the other addressed as follows:

If to the City:

City of Roseville
Roseville City Hall
2660 Civic Center Drive
Roseville, MN 55113

Attn: City Manager

If to the Owner: PPF RTL Rosedale Shopping Center LLC
c/o Rosedale Center
595 Highway 36 W #10
Roseville, MN 55113
Attn: General Manager

IN WITNESS WHEREOF, the undersigned parties have signed this Agreement as of the date set forth above.

PPF RTL ROSEDALE SHOPPING CENTER LLC,
a Delaware limited liability company

By: PPF Retail, LLC, its sole member

By: PPF OP, LP its sole member

By PPF OPGP, LLC its General Partner

By: Prime Property Fund, LLC its sole member

By: Morgan Stanley Real Estate Advisor, Inc., its Investment Adviser

By: _____

Printed: _____

Title: _____

STATE OF _____
COUNTY OF _____

This instrument was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of Morgan Stanley Real Estate Advisor, Inc., the Investment Adviser of Prime Property Fund, LLC, the sole member of PPF OPGP, LLC, the general partner of PPF OP, LP, the sole member of PPF Retail, LLC, the sole member of PPF RTL ROSEDALE SHOPPING CENTER, LLC, a Delaware limited liability company, on behalf of the limited liability company.

Notary Public

City: CITY OF ROSEVILLE,
a municipal corporation

By: _____
Mayor

By: _____
City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____ and _____ the Mayor and City Manager of the City of Roseville, a municipal corporation, on behalf of said municipal corporation.

Notary Public

This Document Was Drafted By:

Erickson, Bell, Beckman & Quinn, P.A.
Attorneys-at-Law
1700 West Highway 36
Suite 100
Roseville, MN 55113
Telephone: 651-223-4999

EXHIBIT A

Owner's Property

Lot 2, Block 1, Rosedale Center Seventh Addition, Ramsey County, Minnesota.

(Torrens Property)

DRAFT

EXHIBIT B

Legal Description for Easement Area

[Insert legal description]

DRAFT

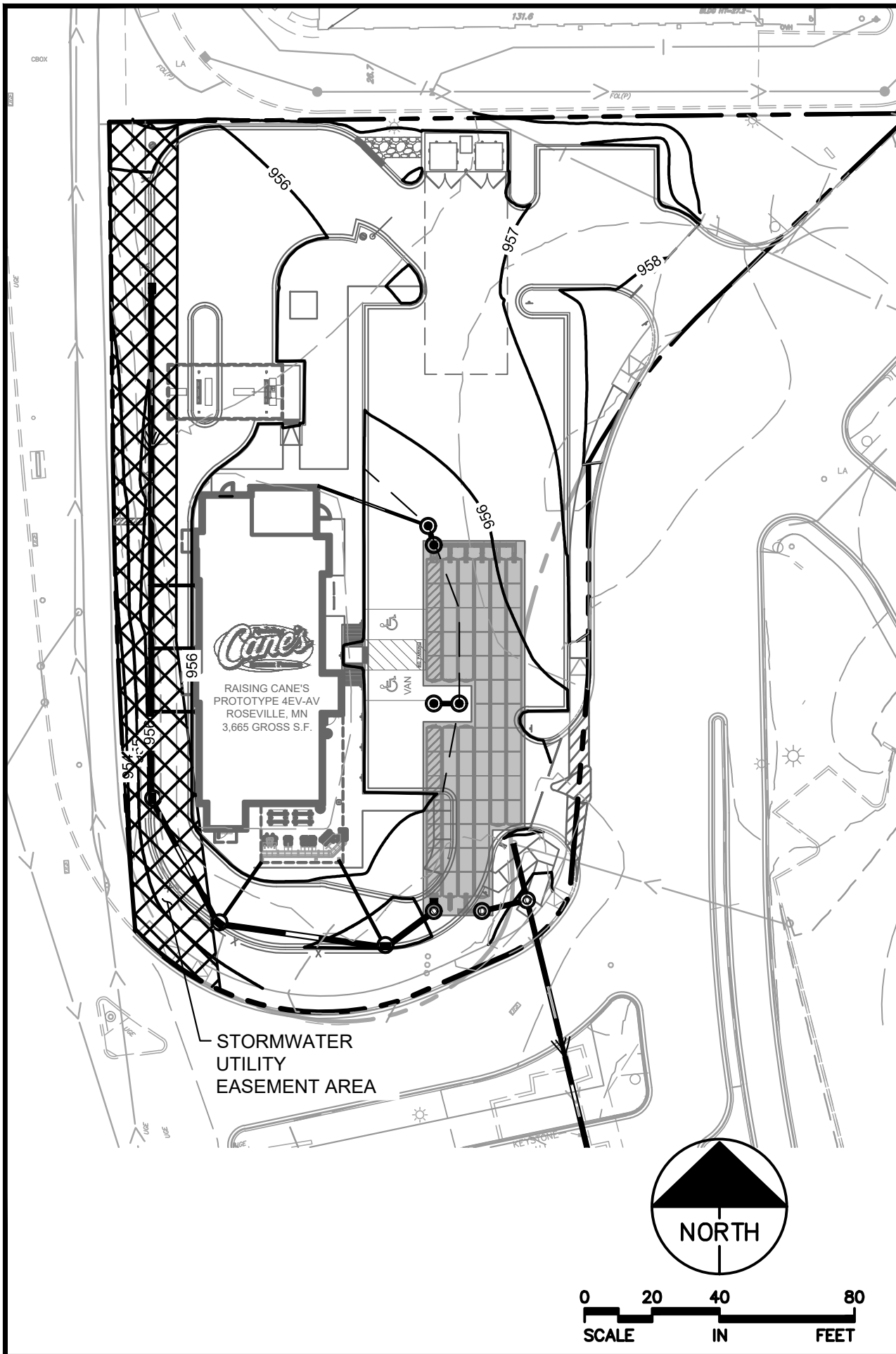
EXHIBIT C

**Initial Site Plan Showing Improvements
within the Easement Area**

The initial Site Plan follows.

DRAFT

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DRAWN BY:	BRJ	SHEET NO.	EX-A
DATE:	3/17/2021	STORMWATER UTILITY EASEMENT	RAISING CANE'S ROSEVILLE, MN
		767 EUSTIS STREET, SUITE 100, ST. PAUL, MN 55114 PHONE: 651-645-4197 WWW.KIMLEY-HORN.COM	