

**STORMWATER FACILITIES MAINTENANCE AGREEMENT  
AND RESTRICTIVE COVENANT**

This Stormwater Facilities Maintenance Agreement and Restrictive Covenant (this “**Maintenance Agreement and Restrictive Covenant**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the City of St. Anthony, a Minnesota municipal corporation, having its principal offices at 3301 Silver Lake Road NE, St. Anthony, Minnesota 55418 (the “**City**”), and Lowry Retail LLC, a Minnesota limited liability company, the current property owner, having its principal offices at 6390 Carlson Drive, Eden Prairie, Minnesota 55346, (the “**Owner**” or “**Lowry Retail**”). The City and Owner are sometimes collectively referred to hereafter as the “**Parties**”.

**RECITALS**

**WHEREAS**, Lowry Retail is the owner of fee simple title in certain real property commonly described as 2654 Kenzie Terrace in the City of St. Anthony, Hennepin County, Minnesota (the “**Property**”) and legally described in Exhibit A, attached hereto and incorporated herein by this reference; and

**WHEREAS**, in connection with the Owner’s proposed development of the Property, the City has required, and the Owner has agreed, to construct an underground stormwater collection and treatment facility on the Property (the “**Stormwater Management Facility**”); and

**WHEREAS**, such Stormwater Management Facility is described in the Stormwater Management Plan dated March 18, 2022 and detailed in the Construction Documents dated March 18, 2022 prepared by Westwood Professional Services for the Property, a copy of which is attached hereto as Exhibit B and incorporated herein by this reference (“**Stormwater Management Plan**”); and

**WHEREAS**, as a condition of project approval, the parties have entered into this Maintenance Agreement and Restrictive Covenant, in order to ensure that the Stormwater Management Facility will be constructed and maintained in accordance with the approved plans;

**NOW, THEREFORE**, in consideration of the mutual agreements contained herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

**TERMS**

**Section 1. Construction and Maintenance.** Owner agrees to construct and maintain the Stormwater Management Facility on the Property, as detailed in the Stormwater Management Plan. Owner agrees to maintain and preserve the Stormwater Management Facility until such time as the City, its successors or assigns, reasonably determines that the Stormwater Management Facility requires modification or enhancement to properly attenuate stormwater collection, treatment, and conveyance at the Property.

**Section 2. No Modification or Removal.** No part of the Stormwater Management Facility shall be dismantled, revised, altered, or removed, except as necessary for maintenance, repair, or replacement.

**Section 3. Access.** The City shall have the right to ingress and egress over those portions of the Property in order to access the Stormwater Management Facility for inspection and to reasonably monitor system performance, operational flows, or defects. Except in the case of emergencies, the City agrees to limit its inspection rights to normal business hours.

**Section 4. Reporting.** The Owner shall be responsible for inspecting and maintaining the Stormwater Management Facility at minimum, on an annual basis. The Owner shall provide a letter to the City Engineer, by September 1<sup>st</sup> of each year, stating that inspection and maintenance have been completed (the “**Inspection Report**”).

**Section 5. Repairs, Failure of Owner to Maintain.** If at any time the City Engineer does not receive the Inspection Report, and the City determines that maintenance or repair work is required to be performed on the Stormwater Management Facility, the City Engineer or his/her designee shall give written notice to the Owner of the system deficiency(ies). The City Engineer shall also set a reasonable time in which the Owner shall cause to have performed the necessary repairs. If the repair or maintenance required by the City Engineer is not completed within the time set by him/her, the City may perform the required maintenance and/or repair, all at the Owner’s expense. Written notice will be sent to the Owner, stating the City's intention to perform such repair or maintenance, and such work will not commence until at least 15 days after such notice is mailed, except in situations of emergency. If, within the sole discretion of the City Engineer, there exists an imminent or present danger to the Stormwater Management Facility, the City's facilities, or the public health and safety, such 15-day period will be waived and maintenance and/or repair work will begin immediately.

**Section 6. Cost of Repairs and/or Maintenance.** The Owner shall assume all responsibility for the cost of any maintenance and repairs to the Stormwater Management Facility, including all associated engineer’s fees, reasonable attorney’s fees and administrative costs. Such responsibility shall include reimbursement to the City within 30 days after the City mails an invoice to the Owner for any work performed by the City. Overdue payments will require payment of interest at the then-current legal rate, as liquidated damages.

**Section 7. Notice to City of Repairs and/or Maintenance.** The Owner is hereby required to obtain written approval from the City Engineer prior to performing any modifications to the Stormwater Management Facility.

**Section 8. Rights Subject to Permits and Approvals.** The rights granted herein are subject to permits and approvals granted by the City affecting the Property subject to this Maintenance Agreement and Restrictive Covenant.

**Section 9. Terms Run with the Property.** The terms of this Maintenance Agreement and Restrictive Covenant are intended to be and shall constitute a covenant running with the Property and shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, and assigns.

**Section 10. Notice.** All notices required or permitted hereunder shall be in writing and shall either be delivered in person or sent by certified U.S. Mail, return-receipt requested, and shall be deemed delivered on the sooner of actual receipt of three (3) days after deposit in the mail, postage prepaid, addressed to the City or the Owner at the addresses set forth below:

**To the City:**

City Manager  
City of St. Anthony  
3301 Silver Lake Road NE  
St. Anthony, Minnesota 55418

And

City Engineer  
City of St. Anthony  
3301 Silver Lake Road NE  
St. Anthony, Minnesota 55418

**To the Owner:**

Lowry Retail LLC  
c/o Interstate Development Corporation  
Attn: Lonnie Provencher  
6390 Carlson Drive  
Eden Prairie, MN 55346

**Section 11. Severability.** Any invalidity, in whole or in part, of any provision of this Maintenance Agreement and Restrictive Covenant shall not affect the validity of any other provision.

**Section 12. Waiver.** No term or provision herein shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented.

**Section 13. Integration.** This Maintenance Agreement and Restrictive Covenant constitutes the entire agreement between the parties on this subject matter, and supersedes all prior discussions, negotiations, and all other agreements on the same subject matter, whether oral or written.

**Section 14. Modification.** This Agreement may be terminated, amended or modified only by recording with the County Recorder for Hennepin County, Minnesota, a document executed by the parties (or their respective successors and assigns) representing their unanimous consent to such amendment or modification. This consent may require City Council action.



**CITY:**

**CITY OF ST. ANTHONY,**  
a Minnesota municipal corporation

By: \_\_\_\_\_  
Randy Stille, Mayor

By: \_\_\_\_\_  
Charlie Yunker, City Manager

**ACKNOWLEDGMENT**

STATE OF MINNESOTA        )  
  ) ss.  
COUNTY OF HENNEPIN        )

This instrument was acknowledged before me on \_\_\_\_\_, 2022, by Randy Stille, Mayor of the City of St. Anthony, a Minnesota municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
(signature of notarial officer)

My commission expires: \_\_\_\_\_

(stamp)

**ACKNOWLEDGMENT**

STATE OF MINNESOTA        )  
  ) ss.  
COUNTY OF HENNEPIN        )

This instrument was acknowledged before me on \_\_\_\_\_, 2022, by Charlie Yunker, City Manager of the City of St. Anthony, a Minnesota municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
(signature of notarial officer)

My commission expires: \_\_\_\_\_

(stamp)

**THIS INSTRUMENT WAS DRAFTED BY:**  
Justin Messner, PE – City Engineer  
WSB & Associates, Inc.

178 E 9<sup>th</sup> Street, Suite 200  
St. Paul, MN 55101

**EXHIBIT A**

**LEGAL DESCRIPTION**

Street Address: 2654 Kenzie Terrace

PID: 0702923240021 and 0702923240020

Municipality: St. Anthony

Legal Description:

Real property in the City of Minneapolis, County of Hennepin, State of Minnesota,  
described as follows:

Lot 2, Block 2, St. Anthony Village Commercial Center Addition No. 1, Hennepin County,  
Minnesota.

Together with that part of vacated Sunset Avenue lying northeasterly of the centerline  
of vacated Sunset Avenue, between the extensions southwesterly of the northwesterly  
line of said Lot 2 and the centerline of Coolidge Street.

(Abstract property)

**EXHIBIT B**

**APPROVED STORMWATER MANAGEMENT PLAN & CONSTRUCTION DOCUMENTS**