

DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”) is made between IMKD3 LLC, a Delaware limited liability company and Arden Hills 1031 LLC, an Illinois limited liability company (collectively “**KDP**”) and the City of Arden Hills, Minnesota (“**City**”) and is entered into as of _____, 2021.

WITNESS

WHEREAS, Kensington Development Partners, Inc., an Illinois corporation (“**Kensington**”), is under contract (the “**Contract**”) to buy the real estate commonly known as 3787 Lexington Avenue, Arden Hills, MN (the “**KDP Parcel**”); and

WHEREAS, KDP has succeeded to Kensington’s interest in the Contract and the KDP Parcel by accepting an assignment of the Contract from Kensington; and

WHEREAS, the County of Ramsey, Minnesota (“**County**”) is performing certain roadway improvements to Lexington Avenue (the “**Project**”), which improvements include construction of a full access (right in/right out/left in/left out) traffic signal and intersection/curb cut/entry apron adjacent to and leading into the KDP Parcel in the locations shown on the site plan attached hereto as Exhibit A (the “**Site Plan**”); a deceleration lane (in the location shown on the Site Plan) that will allow vehicles to turn right into the KDP Parcel; new curbs as shown on the Site Plan; and such other work as may be necessary to cause that part of Lexington Avenue that is adjacent to the KDP Parcel to conform to the Site Plan (which work is collectively called the “**ROW Work**”); and

WHEREAS, KDP intends to redevelop the KDP Parcel for grocery purposes and the grocery tenant is requiring that the ROW Work be completed no later than October 31, 2022 (the “**Grocery Deadline**”); and

WHEREAS, the County has entered into an intergovernmental agreement with other counties and government entities to share the expenses of the Project (which includes the ROW Work) which intergovernmental agreement provides that the ROW Work will be completed by the Grocery Deadline; and

WHEREAS, should the County, and the other parties under the intergovernmental agreement (i) fail to cause the Project (which includes the ROW Work) to be fully funded by January 1, 2022 and/or (ii) fail to award a contract for the ROW Work by February 1, 2022 (the matters in [i] and [ii] aforesaid are hereinafter called the “**Trigger Events**”), then the ROW Work may not be completed by the Grocery Deadline in which event, KDP will suffer severe economic repercussions under its agreement with the grocery tenant; and

WHEREAS, pursuant to that certain Memorandum of Understanding dated _____ 2021 (the “**MOU**”) between the County and the City, the County and City have agreed that if the Trigger Events occur, then KDP will assume the obligation, at KDP’s cost, to perform the KDP ROW Work (defined hereinafter) and complete same by the Grocery Deadline; and

WHEREAS, the City and KDP have entered into this Agreement to authorized KDP to perform the KDP ROW Work in the event the Trigger Events occur.

NOW THEREFORE, for ten dollars (\$10.00) and other good and valuable consideration, the parties agree to the following terms and conditions:

1. The recitals set forth above are restated by this reference.

2. **KDP ROW Work.** Should the Trigger Events occur, the City agrees that KDP, at KDP's cost, shall perform the KDP ROW Work and complete same by the Grocery Deadline. The "**KPD ROW Work**" is that part of the ROW Work that includes the full access (right in/right out/left in/left out) traffic signal and intersection/curb cut/entry apron adjacent to and leading into the KDP Parcel which is located in Lexington Avenue and is labeled as the KDP ROW Work on the Site Plan. For the avoidance of doubt, the KDP ROW Work (a) is only that part of the ROW Work that falls in Lexington Avenue and is labeled as the KPD ROW Work on the Site Plan, (b) *does not include* the deceleration lane, and (c) includes the work necessary to install a temporary traffic signal. So long as KDP has obtained a building permit for the work it will perform on the KDP Parcel, the City acknowledges and agrees that KDP shall be responsible for obtaining all necessary permits to perform the KDP ROW Work and the KDP ROW Work shall be substantially consistent with the County. The KPD ROW Work shall be performed by KDP in accordance with the plans and specifications generated by the County.

The City agrees that its receipt, pursuant to the notice provisions of Section 3 hereinafter, of written notice from KDP that the Trigger Events occurred shall be sufficient evidence that the Trigger Events have occurred and will allow KDP to perform the KDP ROW Work pursuant to this Agreement.

3. **Notices.** All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be given in writing (at the addresses set forth below) by any of the following means: (i) personal service; (ii) electronic mail or an attachment to electronic mail in Adobe Systems, Inc. Portable Document Format (PDF); or (iii) delivery by any reputable overnight courier service. Any notice, demand or request sent pursuant to either (i) or (ii) hereof shall be deemed received upon such personal service or upon dispatch by electronic means and if sent pursuant to (iii) hereof shall be deemed received one (1) day following delivery to such courier service.

To KDP:

Kensington Development Partners, Inc.
700 Commerce Drive, Suite 130
Oak Brook, Illinois 60523
Attn: Dan Rae
dan@kensingtondev.com

To City:

Public Works Director and City Engineer
City of Arden Hills
1245 West Highway 96
Arden Hills, MN 55112
dswearingen@cityofardenhills.org

4. **Enforcement/Attorney Fees.** Any party(ies) hereto shall have the right to enforce the provisions of this Agreement against the other party(ies) by a proceeding at law or in equity. In any such action at law or in equity to enforce or construe any provisions or rights under this Agreement, the unsuccessful party(ies) to such litigation, as determined by the court in a final judgment or decree, shall pay the successful party(ies) all costs, expenses, and reasonable attorneys' fees incurred therein by such successful party(ies) (including, without limitation, such costs, expenses, and fees on any appeals), and if such successful party(ies) shall recover judgment in any such action or proceeding, such costs, expenses, and attorneys' fees shall be included as part of such judgment.

5. **Warranties And Representations.** KDP covenants, warrants and represents that: (a) KDP will perform all of its obligations hereunder in prompt and workmanlike manner in accordance with this Agreement; (b) the personnel assigned and consultants employed or used by KDP in the performance of its obligations hereunder shall be of sufficient number and quality in all respects for such assignment, employment and use; and (c) KDP possesses the necessary personnel, skills, experience, and technical and financial resources to undertake the performance of the services and obligations of KDP required herein.

6. **Indemnity.** KDP shall be liable to and hereby agrees to protect, defend, indemnify and hold harmless City and any employees, officers or affiliates of the City from and against any and all claims, loss, expense, liability, action or damage (including reasonable attorneys' fees and other costs of defending any of the foregoing) arising or resulting from any fraud, willful misconduct, or grossly negligent omission or performance by KDP, or any partner, officer, shareholder, employee or other affiliate of KDP or any consultant to KDP rising from or in connection with the KDP ROW Work.

7. **Insurance.** In the event KDP performs the KDP ROW Work, KDP shall carry, workers' compensation and employers liability insurance in such amount of not less than \$500,000 per occurrence. In addition, KDP shall require all design, architectural and engineering professionals to maintain professional liability insurance with a limit of liability not less than \$1,000,000 insuring such professional and any officer, director, stockholder, employee, consultant to or partner of such professional, and all other persons for whose acts such professional may be liable, against any and all liabilities arising out of or in connection with the negligent acts, errors or omissions of any the foregoing in connection with the carrying out of their professional responsibilities with regard to the KDP ROW Work. Such policies shall provide that the insurance company ("**Company**") or an attorney approved by the Company shall defend any suit or proceeding against KDP and/or the City in connection with the KDP ROW Work, even if such suit is groundless, false or fraudulent. Notwithstanding the foregoing, KDP shall have the right to engage its own attorneys for the purpose of defending any suit or proceeding against it or any officer, agent or employee thereof

All required insurance shall be maintained with responsible insurance carriers qualified to do business in the State of Minnesota. Before commencing any performance hereunder, KDP shall deposit with City the original policies of insurance, or certificates therefor. The workers' compensation and employers liability and disability insurance described above hereof shall be kept in force until final payment for the KDP ROW Work is made by KDP.

KDP shall also carry or cause to be carried comprehensive general liability insurance in amounts to be determined by KDP against claims for personal injury or property damage arising out of or in connection with the KDP ROW Work, and naming the City, if possible, as an additional insured.

8. **Severability.** If this Agreement contains any unlawful provisions not an essential part of the Agreement and which appear not to have been a controlling or material inducement to the making thereof, the same shall be deemed to be of no effect, and shall upon the application of either party be stricken from the Agreement without affecting the binding force of the Agreement as it shall remain after omitting such provisions.

9. **Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Minnesota.

10. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages. Executed copies hereof may be delivered by facsimile or as an attachment to electronic mail in Adobe Systems, Inc. Portable Document Format (PDF) or other graphic file type and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

11. **Authority.** Each person whose signature is affixed hereto represents and warrants that such person is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf such person's signature is affixed.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first hereinabove written.

KDP:

IMKD3 LLC, a Delaware limited liability company

By: _____
Chad Jones, authorized signatory

ARDEN HILLS 1031 LLC, an Illinois limited liability company

By: _____
Jay Eck, manager

CITY:

CITY OF ARDEN HILLS, MINNESOTA

By: _____
Name: _____
Title: _____

Exhibit A
Site Plan

