

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“**Memorandum**”) is made between the County of Ramsey, Minnesota (“**County**”) and the City of Arden Hills, Minnesota (“**City**”) and is entered into as of April 12, 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, IMKD3 LLC, a Delaware limited liability company, as to an undivided fifty (50%) percent interest as tenant in common and Arden Hills 1031 LLC, an Illinois limited liability company, as to an undivided fifty (50%) percent interest as tenant in common (collectively “**KDP**”) have succeeded to Kensington’s interest in the Contract and KDP Parcel by accepting an assignment of the Contract from Kensington; and

WHEREAS, the County is performing certain roadway improvements to Lexington Avenue (the “**Project**”), which improvements include construction 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, 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/will enter into a separate agreement (the "Development Agreement") that will provide that KDP will 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 County and City agree that KDP, at KDP's cost, shall perform the KDP ROW Work and complete same by the Grocery Deadline. The "KDP 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 KDP 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 County and City acknowledge and agree 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 plans. The KDP ROW Work shall be performed by KDP in accordance with the plans and specifications generated by the County. County shall also review and approve the temporary installation of the improvements.

The County and City agree 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 the Development Agreement.

3. **Notices.** All notices, requests, demands, and other communications required or permitted to be given under this Memorandum 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 County:

Director of Public Works and County Engineer
Ransey County-Department of Public Works
1425 Paul Kirkwold Drive
Arden Hills, MN 55112
Att: John R. Mazzitello, Deputy Director-Program Delivery
john.mazzitello@co.ramsey.mn.us

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 Memorandum 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 Memorandum, 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. **Counterparts.** This Memorandum 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 Memorandum may be detached from any counterpart of this Memorandum without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Memorandum 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.

6. **Authority.** Each person whose signature is affixed hereto represents and warrants that such person is authorized to execute this Memorandum 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 Memorandum the day and year first hereinabove written.

COUNTY:

COUNTY OF RAMSEY, MINNESOTA

By: _____
Name: _____
Title: _____

CITY:

CITY OF ARDEN HILLS, MINNESOTA

By: David Grant
Name: David Grant
Title: Mayor

Exhibit A
Site Plan

