

Attachment A

(reserved for recording information)

**MASTER
PLANNED UNIT DEVELOPMENT AMENDMENT
AND PHASE 3 – FINAL PLANNED UNIT DEVELOPMENT
LEXINGTON STATION
(PC#21-004)**

THIS MASTER PLANNED UNIT DEVELOPMENT AMENDMENT AND PHASE 3 – FINAL PLANNED UNIT DEVELOPMENT (“Agreement”) is dated effective _____, 2021, and is entered into by and among the **CITY OF ARDEN HILLS**, a Minnesota statutory city (“City”); **LEXINGTON STATION, LLC**, a Minnesota limited liability company (“Lexington Station”); **KENSINGTON DEVELOPMENT PARTNERS, INC.**; an Illinois corporation (“KDP”); **IMKD3 LLC**, a Delaware limited liability company (“IMKD3”); and **ARDEN HILLS 1031 LLC**, an Illinois limited liability company (“AH1031”) (Lexington Station, KDP, IMKD3 and AH1031 collectively “Developer”).

1. RECITALS.

A. In 2013, the City approved a Master Planned Unit Development Agreement for the Lexington Station redevelopment project at the southwest corner of Lexington Avenue and Red Fox Road. Phase 1 of the redevelopment was completed in 2013-2014 and included the

construction of a 15,340 square foot multi-tenant commercial building. The Master Planned Unit Development Agreement and Phase 1 Final Plan was recorded June 26, 2014 as document number A04512856. On September 30, 2013, the City Council approved an Amendment to the Phase 1 Sign Plan. The First Amendment to Phase 1 - Final Plan and Master Planned Unit Development Agreement was recorded on June 26, 2014 as document number A04512857. On the 5th day of March, 2014, the City Council approved an Amendment to Phase I revised Building Plan. The Second Amendment to Phase 1 - Final Plan and Master Planned Unit Development Agreement was recorded on June 26, 2014 as document number A04512858.

B. On the 6th day of March, 2017, an application was submitted requesting the approval of a Master Planned Unit Development Amendment (“PUD-Master Plan”) and approval of a Phase 2 Final Planned Unit Development (“Phase 2-Final Plan”), for the properties located at 3771 and 3833 Lexington Avenue, and 1120 Red Fox Road, Arden Hills, legally described as Lots 1, 2, and 3, Block 1, Roberts Addition to Arden Hills – (i) at the time Roberts Commerical Properties, LLC, a Minnesota limited liability company, was the fee owner of Lots 1 and 3, Block 1; and (ii) Lexington Station is the owner of Lot 2, Block 1. The Master Planned Unit Development Agreement and Phase 2-Final Plan was recorded on June 27, 2017 as document number A04664511.

C. On the 4th day of March, 2021, the Developer submitted an application requesting the approval of PUD-Master Plan Amendment and approval of a Phase 3 Final Planned Unit Development (“Phase 3-Final Plan”), for the property located at 3787 Lexington Avenue, Arden Hills, legally described as **Lot 3, Block 1, Roberts Addition to Arden Hills** (the “Property”). The Property is zoned in the B-3 District.

D. On _____, 2021, the prior owner/developer of the Property, Roberts Commercial Properties, LLC, a Minnesota limited liability company, sold its interest to KDP, IMKD3 and AH1031 pursuant to the _____ recorded as Ramsey County document number A_____. By acquiring the Property, the Developer will assume all rights, obligations and conditions under all previous Master PUD Agreements, permits, and reviews.

E. The redevelopment plans are illustrated and described on the following documents (“Redevelopment Plan Documents”). The Plans shall not be attached to this Agreement. The Plans will be prepared and submitted to the City for approval.

1. Master and Final PUD Plan Set, consisting of:
 - a. Master PUD Site Plan dated 03/06/17
 - b. ALTA/ACSM Land Title Survey dated 8/13/2019
 - c. Demolition Plan – Phase 3 dated 2/17/2021
 - d. Paving Plan – Phase 3 dated 2/17/2021
 - e. Grading and Erosion Control Plans – Phase 3 dated 2/17/2021
 - f. Utility Plans – Phase 3 dated 2/17/2021
 - g. Tree Preservation Plans – Phase 3 dated 2/17/2021
 - h. Tree Mitigation Plans – Phase 3 dated 2/17/2021
 - i. Landscape Plans – Phase 3 dated 2/17/2021
 - j. Landscape Details Plans – Phase 3 dated 2/17/2021
 - k. Site Plan/Electrical – Phase 3 dated 2/17/2021
 - l. Exterior Concept Plans – Phase 3 dated 2/17/2021
 - m. Building Elevations Plans – Phase 3 dated 2/17/2021

- n. Stormwater Calculations – Phase 3 dated 2/17/2021
- o. Sign Plans dated 2/17/2021

F. Subject to the conditions and modifications contained herein, the Redevelopment Plan Documents represent the nature, scope and configuration of the Project which the Developer is requesting the City to approve.

G. The PUD-Master Plan and the Redevelopment Plan Documents indicate that the Property will be redeveloped in multiple phases:

- i. Phase 1 consisted of the demolition of the existing structure and the construction of a multi-tenant commercial building on Lot 2, Block 1, Roberts Addition to Arden Hills, which has been completed.
- ii. Phase 2 consisted of the demolition of the existing building on Lot 1, Block 1, Roberts Addition to Arden Hills and the construction of a new 16,922 square foot multi-tenant commercial building with a drive through, which has been completed.
- iii. Phase 3 will consist of the demolition of the existing multi-tenant building and the construction of a stand-alone 43,000 square foot grocery store on Lot 3, Block 1 of Roberts Additions to Arden Hills and related work on previous phases of the Property (the “Project”).

2. CITY PLANNING COMMISSION REVIEW AND RECOMMENDATION.

On the 7th day of April, 2021, the City Planning Commission reviewed the application at a public hearing and after considering the application, the reports and comments of the City’s staff and consultants, reports and comments of the Developer, and other public comments; and, subject to conditions, recommended approval of the PUD Master Plan Amendment and the Phase 3-Final Plan.

3. CITY COUNCIL REVIEW. On the 26th day of April, 2021, the City Council reviewed the application, the reports and recommendations of the City’s staff and consultants;

the reports and requests of the Developer; and the recommendations of the City Planning Commission; and has approved the PUD Master Plan Amendment and the Phase 3 – Final Plan, all subject to the terms and conditions contained herein.

4. TERMS AND CONDITIONS. In consideration of the City’s development approvals; in compliance with the City’s development regulations; and in consideration of the undertakings expressed herein, the parties agree:

- A. **PUD – Master Plan.** The PUD-Master Plan is issued subject to the following conditions:
1. The Developer shall continue to abide by the conditions of all previous Master PUD Agreements, permits, and reviews, except as hereinafter amended.
 2. Prior to the City’s issuance of a grading permit, all items identified in the March 4, 2021 Engineering Division memorandum shall be addressed and all comments shall be adopted herein by reference.
 3. The Project shall be completed in accordance with the submitted plans as amended by the conditions of approval. Any significant changes to these plans, as determined by the City Planner, shall require review and approval by the Planning Commission and the City Council.
 4. The proposed structures shall conform to all other regulations of the City Code.
 5. The Developer shall obtain a grading and erosion permit for Phase 3 from the City’s Engineering Division prior to commencing any grading, land disturbance or utility activities. The Developer shall be responsible for obtaining any permits necessary from other agencies, including, but not limited to, MPCA, Rice Creek Watershed District, and Ramsey County prior to the start of any site activities.
 6. The Developer shall install and maintain heavy-duty silt fencing and adequate erosion control measures around the entire construction site during construction to ensure that sediment and storm water do not leave the Project site.
 7. The Developer shall be responsible for protecting the proposed on-site storm sewer infrastructure and components and any existing storm sewer from exposure to any and all stormwater runoff, sediments and debris during all construction activities.

8. Prior to the City's issuance of a building permit, Developer shall submit to the City a landscape financial security equal to 125% of the cost of the landscaping to be installed for the Project. The Developer must submit a detailed cost estimate for the landscaping so City staff can determine the final amount. The landscape financial security shall be held by the City for two (2) full growing seasons.
9. Prior to the City's issuance of a building permit, Developer shall submit to the City floor plans for the Project to be reviewed and approved by City staff.
10. The Developer shall obtain separate sign permits for all signs to be installed for the Project.
11. Current Ramsey County plans for the reconstruction of Lexington Avenue, dated December 31, 2020, indicate the construction of an eight (8') foot sidewalk on the west side of Lexington Avenue abutting the Phase 3 Project. The Developer shall be responsible for constructing this sidewalk, as shown on the Master Plan, and/or sidewalk connections to the buildings it constructs as part of the Project, if the County does not construct the sidewalk and connection. The Developer shall use best efforts to obtain approvals from Ramsey County to construct a sidewalk along Lexington Avenue should the County not proceed with its Lexington Avenue improvements. If the County seeks payment from the City for the construction cost, the City may specially assess the Project for the proportional share of the construction cost of the sidewalk abutting the Project.
12. The Developer shall install and maintain a bike rack or other means to secure non-motorized bicycles for employees and customers. The size, location and style is subject to City staff review and approval.
13. This PUD-Master Plan and Phase 3-Final Plan shall be executed prior to the issuance of any development permits.
14. Except as otherwise modified herein, the development of Phase 3 and subsequent Phases shall comply with all applicable City Regulations.

B. Phase 3 – Final Plan.

1. The Developer shall submit a financial surety in the amount of 125 percent of the estimated costs of site improvements including grading, utilities, and paving, prior to the issuance of any development permits. The Developer shall also submit a financial surety in the amount of 125 percent of the estimated costs for the removal of Lexington Avenue temporary access improvements, if needed. The financial surety shall be in

the form of a letter of credit issued by a FDIC-insured bank, and be in a form acceptable to the City. The purpose of the letter of credit is to ensure that site improvements are completed in the event that the developer defaults on the development agreement

2. The Developer shall submit a cash escrow for site improvements, including grading, utilities, and paving, in the amount of \$20,000 or 25 percent of the total estimated costs of the site improvements, whichever amount is less prior to the issuance of any development permits. The escrow will be used for City costs related to review, approval, and inspection of site improvements or any costs incurred by the City in the event of a developer default.
3. The Developer shall submit a financial surety in the amount of 125 percent of the estimated costs of landscaping prior to the issuance of a building permit. The financial surety shall be in the form of a letter of credit issued by a FDIC-insured bank. The purpose of the letter of credit is to ensure that landscaping is completed in the event that the developer defaults on the development agreement. The City will hold the letter of credit for two years after the installation of landscaping. The letter of credit should not expire during the two-year period.
4. The Developer shall submit a cash escrow for landscaping improvements in the amount of \$15,000 or 25 percent of the estimated costs of landscaping, whichever amount is less, prior to the issuance of a building permit. The escrow will be held by the City for two years after installation of landscaping and used for City costs related to review, approval, and inspection of landscaping, or developer default.

- C. **Lexington Avenue Access**. The County is planning roadway improvements to Lexington Avenue and the County and City have entered into a Cooperative Agreement, dated December 1 2020, to share expenses for those roadway improvements. Those planned improvements include the construction of a signalized intersection aligned with Target Road to the east. The City has entered into an Agreement with Ramsey County dated May 3, 2021 that would allow the City or another party acting on its behalf to construct the planned improvements. Should the County fail to cause the planned improvements, which includes which includes the access work for the Project to be fully funded by January 1, 2022 and/or fails to award a contract for the improvement by February 1, 2022 the Developer will undertake to construct the improvement, all at Developer's cost with a completion date no later than October 31, 2022. All plans and specifications must be reviewed and approved by the City and must be consistent with any permits or other approvals from Ramsey County or other approving agencies, and consistent with Exhibit A, KDP ROW Work, attached hereto.

Should the Trigger Events outlined in Exhibit A 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.

5. RELATIONSHIP OF PARTIES. It is agreed that nothing contained in this Agreement or any referenced document shall be deemed or construed as creating a partnership or joint venture between the parties.

6. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including without limitation, any and all future and present owners, tenants, occupants, licensee, mortgagee and any other parties with any interest in the Property. Should the Developer convey any lot or lots in the Project to a third party, the City and the owner of that lot or those lots may amend the Master Plan or other city approvals for development or use of those lots without the approval or consent of the Developer or other lot owners in the Project. Private agreements between the owners of lots within the Project for shared service or access and related matters necessary for the efficient use of the Project shall be the responsibility of the lot owners and shall not bind or restrict City authority to approve applications from any lot owner in the Project.

7. LIMITATION OF LIABILITY. Notwithstanding anything in this Agreement to the contrary, the liability of the Developer shall be limited to its ownership of the Property. Upon sale or conveyance of any portion of the Property, the transferee shall be liable for all

obligations of the Developer which relate to the portions of the Property so transferred and the transferor shall be automatically released from any further obligation, liability, right or responsibility in respect to such transfer. Moreover, nothing herein shall be construed to create a cause of action on behalf of the City against the Developer with respect to its business operations beyond the obligations set forth herein relating to the development and maintenance of the Property.

8. RECORDING OF DOCUMENT. This Agreement shall run with the Property and shall be recorded in the office of the Ramsey County Recorder or Registrar of Titles with proof thereof shown to the City prior to the issuance of any permits there under.

9. GOVERNING LAW. The City and the Developer agree that the laws of the State of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the undersigned parties and performance under it without regard to principals of conflicts of law. The language of this Agreement is and shall be deemed a result of negotiations among the parties and the respective legal council and shall not be strictly extrude for or against any party. Each party agrees that any action arising out of or in connection with this Agreement shall be brought solely in the courts of the State of Minnesota, Second Judicial District, or the United States District Court for the District of Minnesota.

10. EVENT OF DEFAULT. The occurrence of any of the following shall be considered an “event of default” and the terms and conditions contained in this Agreement:

1. Failure of the Developer to comply with any of the terms and conditions contained in this Agreement; and
2. Failure of the Developer to comply with any applicable ordinance or statute with respect to the development of the Property.

11. REMEDIES. Upon the occurrence of an event of default, the City, in addition to any other remedy which may be available to it, shall be permitted to do any of the following:

1. City may make advances or take other steps to cure the default, and, where necessary, enter the Property for that purpose. The Developer shall pay all sums so advanced, or expenses incurred by the City, upon demand, with interest from the dates of such advances or expenses at the rate of 10% per annum or the maximum amount permitted by law if less than 10%. If no action taken by the City pursuant to this section shall be deemed to relieve the Developer from curing any such defaults to the extent that it is not cured by the City or from any other default hereunder. The City shall not be obligated, by virtue of the existence or exercise of this right, to perform any such act or cure any such default. The Developer shall save, indemnify, and hold harmless, including reasonable attorney's fees, the City from liability or other damages which may be incurred as a result of the exercise of the City's rights pursuant to this section.
2. Obtain an order from a Court of Competent Jurisdiction requiring the Developer to specifically perform its obligations pursuant to the terms and provisions of this Agreement.
3. Exercise any other remedies which may be available to it, including an action for damages.
4. Withhold the issuance of any building permits and/or prohibit the occupancy of all building which permits have been issued.
5. In addition to the remedies and amounts payable as set forth herein, upon the occurrence of an event of default, the Developer shall pay the City all fees and expenses, including reasonable attorneys fees, engineering and consultant fees incurred by the City as a result of an event of default, whether or not a lawsuit or action is formally undertaking.

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be executed as of the date and year first above written.

*[Remainder of page intentionally left blank.
Signature pages follow.]*

CITY OF ARDEN HILLS

By: _____
David Grant, Mayor

(SEAL)

And _____
Julie Hanson, City Clerk

STATE OF MINNESOTA)
 (ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by **David Grant** and by **Julie Hanson**, respectively the Mayor and City Clerk of the **City of Arden Hills**, a Minnesota statutory city, on behalf of the City and pursuant to the authority granted by its City Council.

Notary Public

LEXINGTON STATION, LLC
A Minnesota Limited Liability Company

By: _____
Nicholas S. Roberts, President

STATE OF MINNESOTA)
 (ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by **Nicholas S. Roberts**, the President of **Lexington Station, LLC**, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

**KENSINGTON DEVELOPMENT PARTNERS,
INC., an Illinois corporation**

By _____
_____[print name]
Its _____[title]

STATE OF _____)
(ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of
_____, 2021, by _____, the _____ of
Kensington Development Partners, Inc., an Illinois corporation, on behalf of said corporation.

Notary Public

IMKD3 LLC,
a Delaware limited liability company

By _____
_____ [print name]
Its _____ [title]

STATE OF _____)
(ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of **IMKD3 LLC**, a Delaware limited liability company, on behalf of said limited liability company.

Notary Public

ARDEN HILLS 1031 LLC,
an Illinois limited liability company

By _____
_____[print name]
Its _____ [title]

STATE OF _____)
(ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by _____, the _____ of **Arden Hills 1031 LLC**, an Illinois limited liability company, on behalf of said limited liability company.

Notary Public

DRAFTED BY:
DRAFTED BY:
Campbell Knutson
Professional Association
Grand Oak Office Center I
860 Blue Gentian Road, Suite 290
Eagan, Minnesota 55121
Telephone: (651) 452-5000
JJJ

MORTGAGE HOLDER CONSENT
TO MASTER PLANNED UNIT DEVELOPMENT AMENDMENT
AND PHASE 3 – FINAL PLANNED UNIT DEVELOPMENT
LEXINGTON STATION
(PC#21-004)

EXHIBIT A
TO MASTER PLANNED UNIT DEVELOPMENT AMENDMENT
AND PHASE 3 – FINAL PLANNED UNIT DEVELOPMENT
LEXINGTON STATION
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