

**FIRST AMENDMENT
TO
DEVELOPMENT AGREEMENT**

This First Amendment to the Development Agreement (the "Amendment") is entered into effective this 3rd day of August, 2015 (the "Effective Date") by and between the City of Bloomington, a municipal corporation under the laws of Minnesota, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 (the "City"), and Kraus-Anderson, Incorporated, a corporation under the laws of Minnesota, 523 South 8th Street, Minneapolis, Minnesota 55404-1078 ("Kraus-Anderson" or "the Applicant"). Kraus-Anderson and the City are collectively referred to herein as the "Parties" or "Party" as the context may require.

BACKGROUND

The use and development of the Southtown Shopping Center, legally described in the attached Exhibit A (the "Property"), is governed by that certain Development Agreement, dated December 18, 1995, by and between the Parties (the "Development Agreement" or "Agreement"), the Final Development Plan (defined herein), as well as by the Bloomington City Code.

In 1995, the City Council of the City of Bloomington approved a series of revisions to the final development plans for a shopping center expansion and renovation at 7803 Penn Avenue, subject to conditions; these actions were taken on March 6, 1995, August 21, 1995, September 5, 1995 and October 16, 1995 (collectively the applicable revisions are described herein as the "Final Development Plan").

The City now intends to rezone the Property on or after August 3, 2015, as recommended by the Penn American District Plan, the effect of which would result in the Property not conforming to certain aspects of the new zoning standards.

The purpose of this Amendment is to modify certain terms of the Development Agreement to govern the types of permitted revisions and amendments allowed on the Property and to establish the standards for the City's review and approval of such amendments.

AGREEMENT

1. The Introduction of the Agreement is modified to delete "2215 West Old Shakopee Road" and insert "1800 West Old Shakopee Road."
2. The Parties agree that the existing buildings and structures located on the Property that are consistent with the approved Final Development Plan, or modified as allowed within this agreement, will be treated by the City as legally conforming to the City Code.
3. Paragraph 1(c) of the Agreement is deleted in its entirety and replaced with the following paragraph:

The Applicant agrees it will develop the shopping center on the Property in conformance with the Final Development Plan for the Property. The Parties agree that amendments to the Final Development Plan affecting the Property legally described in Exhibit A (also referred to as the “Southtown Shopping Center”), shall be reviewed and permitted pursuant to paragraph 7 of the Agreement.

4. Paragraph 4(b) of the Agreement is deleted in its entirety and replaced with the following paragraph:

The City reserves its right to initiate rezoning of the Property. The Parties agree that any such rezoning shall not affect, limit or modify the terms of this Agreement which may only be amended by mutual written agreement of the Parties.

5. Paragraph 6(b) of the Agreement is modified to delete “2215 West Old Shakopee Road” and insert “1800 West Old Shakopee Road.”

6. Paragraph 7 of the Agreement is deleted in its entirety and replaced with the following paragraph:

a. This Agreement may be amended, in writing, as the parties may mutually agree. Furthermore, the plans, standards, stipulations, and other information constituting the Final Development Plan and the conditions placed on the approval of the Final Development Plan as detailed in Exhibits B and C may be amended upon application by the Applicant and approval of the City pursuant to Bloomington City Code Sections 21.501.02 and 21.501.03, as may be amended. Amendments to the Final Development Plan that affect development of the Southtown Shopping Center shall be reviewed and permitted pursuant to paragraph 7 of the Agreement. Once approved, amendments to the Final Development Plan and conditions shall become part of this Agreement and shall be fully binding upon the parties as if set forth herein.

b. Site Improvements. The Parties agree that “Site Improvements” shall mean any change or improvement to the Southtown Shopping Center site characteristics. Site Improvements to the Southtown Shopping Center shall be permitted after review as specified in the Bloomington City Code, and subject to the standards and review process of the Bloomington City Code as may be amended from time to time and compliance with the Final Development Plan. Site Improvements shall include, but not be limited to:

- (1) Lighting improvements;
- (2) Stormwater improvements;
- (3) Parking lot reconfiguration, restriping, or resurfacing; and
- (4) Façade improvements or alternations.

c. Minor Building Unit Amendments. The Parties agree that Minor Building Unit Amendments to the Final Development Plan for the Southtown Shopping Center shall be permitted, subject to the review process stipulated in the Bloomington City Code. Minor Building Unit Amendments to the Southtown Shopping Center may, at the option of the Applicant, be reviewed for compliance with the City Code, as written on August 2, 2015 and attached for reference as Exhibit D. Minor Building Unit Amendments to the Final Development Plan for the Southtown Shopping Center shall include any revision, alteration, or improvement to an existing Building Unit that results in a net increase in the gross building area of up to 10 percent or a net decrease in the gross building area of 30 percent or less. Building Units are as depicted on the attached Exhibit E. Notwithstanding this provision, the Parties agree that Building Unit F and Building Unit G may be completely removed at the election of the Applicant. In no case shall the City approve more than one Minor Amendment to a Building Unit in any three year period unless compliant with the Bloomington City Code or unless flexibility is granted through the Planned Development process. In no case shall the cumulative additions or demolitions to a Building Unit exceed 20 percent above or 60 percent below the amount of floor area in existence on August 2, 2015 unless compliant with the Bloomington City Code or unless flexibility is granted through the Planned Development process.

d. Those amendments to the Final Development Plan that affect the Southtown Shopping Center, but do not qualify as Minor Building Unit Amendments shall be subject to the provisions of the Bloomington City Code governing amendments to planned developments and subject to conformance with the underlying zoning standards in effect at the time.

e. Except as provided in this paragraph, development within the Southtown Shopping Center shall not be required to meet a minimum floor area ratio greater than 0.40, unless the parties to this Agreement mutually agree in writing to modify this provision. If funding for the proposed bus rapid transit station on or adjacent to the Property is approved, then the minimum floor area ratio for development on that portion of the Southtown Shopping Center rezoned C-5 shall increase to 1.0, unless otherwise compliant with the Bloomington City Code or unless flexibility is granted through the Planned Development process.

7. Ratification. As amended, the Agreement is hereby ratified and affirmed by the Applicant and the City. In the event of any conflict or inconsistency between this Amendment and the Agreement, this Amendment shall control.

9. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same Amendment.

Exhibit A
To
Development Agreement

Lot 1, Block 1, Southtown Shopping Center 3rd Addition, Hennepin County, Minnesota

(Southtown Shopping Center)

Exhibit D
To
Development Agreement

CR-1 Zoning Regulations in Effect as of August 2, 2015

SEC. 19.31.01. REGIONAL COMMERCIAL (CR-1) DISTRICTS

- (a) **Intent** - This district is intended to provide for the development of regional and community scale integrated retail, office, business services, personal services and services to the traveling public near freeway interchanges. The provisions of this district are intended to:
- (1) promote and properly manage high-intensity development;
 - (2) allow for the provision of other services related to principal uses
 - (3) promote an integrated site and building design framework;
 - (4) to avoid traffic hazard and congestion by careful location of accesses to public streets;
 - (5) protect future roadway improvements; and;
 - (6) create a visual identity for the District while allowing reasonable identity for individual uses in scale with the size of use.
- (b) **Permitted Principal Uses** -
- (1) Retail Shopping Uses.
 - (2) Office buildings.
 - (3) Banks and financial institutions.
 - (4) Medical and dental offices.
 - (5) Theaters and cinemas, except drive-in theaters.
 - (6) Hotels and motels.
 - (7) Public uses.
 - (8) Automobile rental agencies with an on-site inventory of ten (10) or fewer rental vehicles, subject to performance standards set forth in Section 19.63.07 of this Code.
 - (9) Transient merchant sales as an accessory use in hotel interiors only.
- (c) **Provisional Uses** - The uses described below are permitted uses, provided that:
- (1) The following uses are located in a structure containing a permitted principle use, or are located in a structure meeting the minimum floor area requirement of the CR-1 District:
 - (A) Restaurants.
 - (B) Personal service establishments, including licensed therapeutic massage enterprises, beauty and barber shops, exercise and health facilities, dry cleaning drop-off and pick-up stations, laundering, repair of household items and similar personal services.
 - (C) Business services, including copying and printing businesses and similar services.
 - (D) Commercial recreation facilities.
 - (E) Licensed day care facilities.
 - (F) Instructional Center.
 - (G) Licensed Body Art Establishments.
 - (2) The following uses are adjacent to and integrated by means of orientation, parking, pedestrian and vehicular circulation, access and design with a permitted principal use:
 - (A) Class I motor vehicle sales.
 - (B) Service Stations.
 - (C) Automobile repair businesses.
 - (3) Accessory uses which are customarily incidental and are clearly subordinate to permitted principal uses.

- (4) Class II motor vehicle sales accessory to Class I motor vehicle sales.
 - (5) Repair of motor vehicles accessory to Class I motor vehicle sales.
 - (6) Vehicle rental accessory to Class I Motor Vehicle Sales subject to the regulations set forth in Section 19.63.07(e).
 - (7) Beekeeping.
- (d) **Conditional Uses -**
- (1) New Motor Vehicle Sales.
 - (2) Freestanding restaurants.
 - (3) Reserved.
 - (4) Public utility uses.
 - (5) Hotel airport parking.
 - (6) Towers. For related provisions see Sections 15.14, 19.63.05 and 21.301.10 of this Code.
 - (7) Automobile rental agencies with an on-site inventory more than ten (10) but no more than thirty-five (35) rental vehicles, subject to performance standards set forth in Section 19.63.07 of this Code.
 - (8) Vehicle rental accessory to Class I Motor Vehicle Sales subject to the regulations set forth in Section 19.63.07(e).
- (e) **Minimum Floor Area Requirements -**
The minimum floor area of any building within the CR-1 District shall be 20,000 square feet, except that there shall be no minimum floor area:
- (1) where the proposed use is listed as a provisional use in Section 19.31.01(c)(2); or;
 - (2) where the proposed use is listed as a conditional use in Section 19.31.01(d).
- (f) **Maximum Floor Area Ratio -**
The maximum floor area ratio within the CR-1 District shall be one square foot of gross floor area for each one square foot of net lot area.
- (g) **Dimensional Requirements -**
- | | |
|---|------------|
| Minimum District Area: | 10 Acres |
| Minimum Lot Size: | 2 Acres |
| Minimum Lot Width: | 120 Feet |
| Setback Requirements - | |
| Front Yard: | 65 Feet |
| Side Yard: | 25 Feet |
| Rear Yard: | 25 Feet |
| Side or Rear Adjacent to a Public Street: | 65 Feet |
| Maximum Structure Lot Coverage - | 30 Percent |
- (h) **Reserved.**
- (i) **Special Provisions -**
- (1) Reserved.
 - (2) The City Council may waive the minimum lot size required for any use, provided that the use and building is integrated, or, where adjacent property is undeveloped may be shown to be reasonably integrated, by means of orientation, parking, access, circulation and design with other adjacent conforming development in the CR-1 District.
 - (3) Reserved.
 - (4) A parking structure or the portion of any structure used for parking shall not be counted as building floor area or structure coverage for the purpose of calculating building floor area and percentage of site coverage by structures.
 - (5) No loading docks may be on any street frontage or facing a residential district, unless completely screened by a wall constructed of materials equivalent to that of the structure.
 - (6) Exterior Materials. The exterior materials and finish of all buildings erected on lands within Regional Commercial CR-1 Zoning Districts shall be in conformance with the applicable requirements of Section 19.63.08 of this Code.
 - (7) All refuse storage shall comply with the requirements of Section 19.51 of this Code.

- (8) In instances where second-level pedestrian connections are made across public streets or to adjacent properties, setbacks may be reduced to 20 feet for a width not to exceed 100 feet.
 - (9) Reserved.
 - (10) Structure height shall be regulated pursuant to Section 21.301.10 of this Code.
 - (11) Reserved.
- (j) **Sign Regulations.** Refer to Article X of this Chapter.

SOUTHTOWN SHOPPING CENTER

Hwy 494 & Penn Avenue, Bloomington, MN

