



STAFF REPORT

DATE: August 3, 2022

REGULAR

TO: Mayor and City Council
FROM: Molly Just, Planning Director
AGENDA ITEM: **Crossroads East 1st Addition – Second Amendment to Development Agreement**

INTRODUCTION:

Airlake Development, Inc and Crossroads East, LLC (Developer) are proposing a Second Amendment to the Development Agreement for Crossroads East 1st Addition.

BACKGROUND:

On November 3, 2021 the Lake Elmo City Council adopted Resolution 2021-115 approving the Final Plat and PUD Plans for Crossroads East 1st Addition.

On December 7, 2021, the Lake Elmo City Council adopted Resolution No. 2021-134 approving the Development Agreement for Crossroads East 1st Addition.

On April 5, 2022, the Lake Elmo City Council adopted Resolution 2022-034 approving the First Amendment to the Development Agreement for Crossroads East 1st Addition. The developer requested this amendment in order to allow it to proceed with vertical construction of the buildings on the platted property prior to completion of the public improvements.

On June 22, 2022, the Lake Elmo Building Official posted Stop Work Orders for Crossroads East 1st Addition for failure to have public site utilities completed by June 21, per the First Amendment to the Development Agreement. Mayor Cadenhead subsequently reversed the Stop Work Orders.

On July 21, 2022, the Developer submitted application for a Second Amendment to the Development Agreement in order to extend the time allowed to complete the public infrastructure improvements.

ISSUE BEFORE THE CITY COUNCIL:

Should the City Council adopt Resolution 2022 – 076 approving the Second Amendment to the Development Agreement for Crossroads East 1st Addition?

REVIEW/ANALYSIS:

Following approval of the First Amendment to the Development Agreement on April 5th there was a lag in progress on the public improvements and once work proceeded again it proceeded slower than the approved Developer proposed construction schedule. Given that a primary objective of the City is to ensure that progress on the public infrastructure run concurrently with the private improvements and that the public improvements were behind the private improvements the City issued Stop Work Orders on June 22, 2022. The City's standard agreement allows for issuance of Stop Work Orders and the First Amendment specifically calls out the City's ability to issue Stop Work Orders.

The proposed Second Amendment to the Development Agreement accommodates the Developer's objectives and continues to ensure that public improvements proceed concurrently with the private improvements. The agreement ultimately allows for building permits to be issued for the 10 tenants the Developer is relocating to the property in exchange for completing a specific subset of the total public improvements by September 30th. Both terms are concessions made by staff that would not be allowed by the original agreement or the first amendment.

Staff recommends that the City Council adopt the Second Amendment to the Development Agreement as proposed. If the City Council elects to deny the amendment to the agreement then Stop Work Orders must be issued as public improvements are behind the Developer proposed construction schedule adopted with the First Amendment to the Development Agreement.

OPTIONS:

The City Council has the following options:

- 1) Adopt Resolution 2022-076 approving the Second Amendment to the Development Agreement for Crossroads East 1st Addition;
- 2) Direct Staff to revise the Second Amendment to bring back to a future City Council meeting; or
- 3) Direct Staff to prepare a resolution for denial of the Second Amendment to the Development Agreement for Crossroads East 1st Addition.

RECOMMENDATION:

Staff recommends the City Council adopt Resolution 2022-076 approving the Second Amendment to the Development Agreement for Crossroads East 1st Addition.

“Move to adopt Resolution 2022-076 approving the Second Amendment to the Development Agreement for Crossroads East 1st Addition.”

ATTACHMENTS:

- Second Amendment to the Development Agreement
- Resolution 2022 – 076

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

This Second Amendment to Development Agreement (“First Amendment”) is made and entered into this _____ day of August, 2022, by and between the City of Lake Elmo, a municipal corporation under the laws of Minnesota (the “City”) and Airlake Development, Inc., a Minnesota corporation and Crossroads East, LLC, a Minnesota limited liability company (collectively, the “Developer”).

RECITALS:

A. The City and the Developer have entered into a Development Agreement dated February 15, 2022 and recorded with Washington County on _____, 2022 as Document No. _____ (the “Development Agreement”); and

B. The Development Agreement relates to that subdivision located in Lake Elmo, Minnesota known as Crossroads East 1st Addition and the property is legally described on Exhibit A attached hereto (the “Property”); and

D. The Parties entered into a First Amendment to Development Agreement on _____, 2022 (the “First Amendment”); and

E. As part of the First Amendment, the City authorized Developer to proceed with vertical construction of the buildings on the Property prior to completion of the public Subdivision Improvements and the Parties agreed to a schedule to complete the public Subdivision Improvements; and

F. The Developer has asked to further amend to the Development Agreement to extend the deadline for completion of Public Improvements, as herein defined; and

G. The City is willing to grant the requested extension provided that certain restrictions are placed on tenant improvements and the Public Improvements are completed on a revised schedule.

NOW, THEREFORE, in consideration of the above recitals, which are expressly incorporated herein, and for other good and valuable consideration, the receipt and sufficiency which is hereby acknowledged, the City and the Developer agree to this Second Amendment to the Development Agreement as follows:

1. Paragraph 23 of the Development Agreement is hereby amended as follows:

23. BUILDING PERMITS/CERTIFICATES OF OCCUPANCY.

- A. The City will issue a footing and foundation permit for a building within the Subdivision provided that the final plat has been recorded with Washington County. The City will issue a vertical construction permit for a building within the Subdivision prior to installation of the on-site utilities within the Subdivision.
- B. With respect to the construction of the Public Improvements, defined as the public sanitary sewer, public watermain (including watermain internal to the site), Hudson Boulevard street, trail, boulevard, and storm sewer improvements, and emergency vehicle access, the Developer must complete all work no later than September 30, 2022. Should any of the Public Improvements not be Complete by September 30, 2022, the Developer understands and agrees that the City may immediately issue a stop work order on any building construction and any other private improvements within the Subdivision until the Public Improvements are deemed completed by the City. The City will not issue a certificate of occupancy for any building, or part thereof, within the Subdivision until Developer has installed all public Subdivision Improvements (including, but not limited to the emergency vehicle access and other Public Improvements) and the City has accepted as complete such Improvements. For the purposes of this Agreement, the term

“Complete” means that all required testing has been conducted and approved, city engineering inspections have been scheduled and conducted, punch lists have been developed and fully addressed, and as-built record information has been submitted in accordance with the City as-built format requirements, including manhole invert verification showing inverts installed within construction specification tolerances, with all testing, inspections and as-built information demonstrating that the public Subdivision Improvements, including the Public Improvements, have been completed as depicted and described in the approved plans and specifications.

- C. Developer may submit Building Tenant improvement applications to the City Building Official, but Developer agrees that the City will not issue any tenant improvement building permits until the Public Improvements have been deemed Complete by the City Engineer, subject to the following exceptions (such exceptions do not constitute approval or issuance of any permit or remove the Developer’s general responsibility for changes that are necessary following review and inspection):
1. Tenant building improvement permits may be issued for plumbing piping to be placed under the concrete floor prior to floor pour.
 2. Permits for remaining tenant improvements necessary to house up to 10 tenants may be issued only following the approval of the City Engineer of base course bituminous placement on Hudson Boulevard.

- D. Breach of the terms of this Agreement by the Developer, including nonpayment of billings from the City, shall be grounds for denial of building permits, certificates of occupancy, and withholding of other permits, inspections, or actions and the halting of all work in the Subdivision.
 - E. If the City issues or has issued building permits before the acceptance of the public Subdivision Improvements by the City, the Developer assumes all liability and costs resulting in delays in completion of public Subdivision Improvements and damage to public Subdivision Improvements caused by the City, the Developer, the Developer's contractors, subcontractors, materialmen, employees, agents, or any third parties.
 - F. No sewer and water connection permits may be issued until the streets needed for access have been paved with a bituminous surface and the utilities are tested and approved by the City Engineer.
2. All other terms and conditions of the Development Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the City and the Developer have executed this First Amendment to the Development Agreement as of the date first written above.

CITY OF LAKE ELMO

By: _____
Charles Cadenhead, Mayor

By: _____
Julie Johnson, City Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Charles Cadenhead and Julie Johnson, the Mayor and the City Clerk, respectively of the City of Lake Elmo, a Minnesota municipal corporation, on behalf of the City.

Notary Public

AIRLAKE DEVELOPMENT, INC.

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, the _____ of Airlake Development, Inc., a Minnesota corporation, on behalf of the corporation.

Notary Public

CROSSROADS EAST, LLC

By: _____

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, the _____ of Crossroads East, LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

This document was drafted by:

Kennedy & Graven, Chartered (RGT)
Fifth Street Towers
150 South 5th Street, Suite 700
Minneapolis, MN 55402
(612) 337-9300

EXHIBIT A

Legal Description of the Property

All lots and outlots located within the plat of Crossroads East First Addition, according to the recorded plat thereof, County of Washington, State of Minnesota.

**CITY OF LAKE ELMO
WASHINGTON COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2022-076

A RESOLUTION APPROVING THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR DEVELOPMENT OF THE CROSSROADS EAST FIRST ADDITION.

WHEREAS, the City of Lake Elmo is a municipal corporation organized and existing under the laws of the State of Minnesota; and

WHEREAS, Airlake Development Inc, and Crossroads East, LLC (together the "Developer") previously submitted an application to the City of Lake Elmo (the "City") for a final plat for Crossroads East First Addition; and

WHEREAS, the Lake Elmo City Council adopted Resolution No. 2021-115 on November 3, 2021 approving the final plat for Crossroads East First Addition; and

WHEREAS, the Lake Elmo City Council adopted Resolution No.2021-134 on December 7, 2021, approving the Development Agreement for Crossroads East First Addition; and

WHEREAS, the Lake Elmo City Council adopted Resolution No. 2022-034 on April 5, 2022 approving the First Amendment to Development Agreement (the "First Amendment"); and

WHEREAS, the First Amendment authorized Developer to proceed with vertical construction of the buildings on the Property prior to completion of the public Subdivision Improvements provided that the public Subdivision Improvements were completed on an agreed-upon schedule; and

WHEREAS, Developer and City have agreed to further amend to the Development Agreement to extend the deadline for completion of Public Improvements, as herein defined; and

WHEREAS, the City is willing to grant the requested extension provided that The Developer signs the Second Amendment to the Development Agreement by August 10, 2022, certain restrictions are placed on tenant improvements and the Public Improvements are complete no later than September 30, 2022.

NOW, THEREFORE, based on the information received, the City Council of the City of Lake Elmo does hereby approve the Second Amendment to Development Agreement for Crossroads East First Addition and authorizes the Mayor and City Clerk to execute the Second Amendment.

Passed and duly adopted this ____th day of August 2022 by the City Council of the City of Lake Elmo, Minnesota.

Charles Cadenhead, Mayor

ATTEST:

Julie Johnson, City Clerk