

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (“MOA”) entered into this 8th day of October, 2019, by and between Keats Bloomington, LLC (“Keats”), Goodwill Industries, Inc. (“Goodwill”) and The Luther Company, LLLP (“Luther”).

Luther has a pending application before the City of Bloomington Planning Commission for approval of a conditional use permit (the “CUP”) to develop a Subaru automobile dealership on its property located at Interstate 494 and Lyndale Avenue South. Keats owns an adjacent property located at 7845 Lyndale Avenue South, which is subject to a 25-foot-wide public access easement (the “Easement”) which provides access to the Luther property. Goodwill is the sole tenant in the building located on the Keats property. Keats is concerned about use of the Easement for construction traffic. The parties have met to discuss Keats concerns in a series of meetings facilitated by Bloomington City staff, and have agreed:

- Luther, with input from Keats and Goodwill, will work with the City to prepare a formal construction traffic management plan for Luther’s project which regulates construction traffic as follows:
 1. Large construction vehicles will include multi-axle rigs such as earthwork side dumpers, semi-trucks and similar vehicles;
 2. Large construction vehicles may enter the Easement via a right turn only from American Boulevard and will be restricted to the hours of 6 AM to 6 PM, Monday through Friday;
 3. Large construction vehicles will be allowed to exit onto westbound American Boulevard via the Easement only between the hours of 6 AM and 9:45 AM;
 4. Luther will post a “No Large Construction Vehicle Traffic After 9:45 AM” sign at the north end of the Easement and after 9:45 AM all large construction vehicles must exit to Lyndale Avenue;
 5. After 6 PM, no construction traffic will be allowed on the Easement and use of the Easement will resume as normal (same as before construction);
 6. At no time will construction traffic be allowed to park or stop in the Easement or the Keats property.
 7. At no time will any construction traffic be allowed to exit onto American Boulevard by left turn (eastbound);
 8. During the period from commencement of demolition or construction work, through completion of construction: (a) employees working at the businesses operating at the Luther property may not use the Easement, and (b) the Easement may not be used by any traffic related to delivery of vehicles for pre-delivery inspections;

9. Luther's contractor will have a flag person posted on the southwest corner of the Key Collision property during construction and delivery hours coordinating construction traffic, including enforcement of the above access, parking and stopping restrictions, to minimize the disruption of the traffic flow of Goodwill's customers to and from the Goodwill store;
 10. Luther's contractor's representative will maintain communication with Goodwill's on-site manager or representative to inform Goodwill of the dates and times when large construction vehicles will be using the Easement. Specifically, but without limitation of the foregoing, Goodwill shall be invited to and shall have the right to attend weekly construction meetings; and
 11. In order to improve safety within the Keats property and the Easement area while large construction vehicles are using the Easement, Luther and Goodwill will work together to coordinate alternative parking for the 17 parking spaces located on the east side of the Keats property, during certain limited periods to be agreed upon by Goodwill and Luther, to the extent necessary to ensure safety.
- In addition to the above commitments Luther will, within 10 days after it completes its site plan improvements, including installation of a new driveway into its site from American Boulevard, pay Keats \$14,000 toward repair and/or replacement of the asphalt surface of the parking lot on the Keats property. If Keats subsequently replaces the asphalt surface of the parking lot on the Keats property, Luther will pay Keats an additional \$6,000 upon completion of the resurfacing project, toward repair and/or replacement of the asphalt surface of the parking lot on the Keats property.
 - In consideration of the above commitments and payments by Luther, Keats and its tenant Goodwill Industries will:
 - a. withdraw their objections to Luther's pending application for a CUP;
 - b. agree not to appeal a Planning Commission approval of the CUP, if the approval is consistent with the pending application and this MOA; and
 - c. agree not to petition to vacate the Easement or commence litigation against Luther or the City challenging the existence or validity of the Easement.

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall form a single instrument. A facsimile, "pdf" and/or electronic copy of a signed original counterpart of this Agreement shall be deemed sufficient to bind the parties, and shall be deemed an original for all purposes.

SIGNATURES APPEAR ON FOLLOWING PAGE

SIGNATURE PAGE TO
MEMORANDUM OF AGREEMENT

KEATS BLOOMINGTON, LLC

GOODWILL INDUSTRIES, INC.

By: _____

By: _____

Its: _____

Its: _____

THE LUTHER COMPANY, LLLP

By: Linda McGinty

Its: Vice President of Real Estate

SIGNATURE PAGE TO
MEMORANDUM OF AGREEMENT

KEATS BLOOMINGTON, LLC

GOODWILL INDUSTRIES, INC.

By: _____
Its: _____

By: Jill Roehm
Its: CFO

THE LUTHER COMPANY, LLLP

By: _____
Its: _____

KEATS BLOOMINGTON, LLC



By: _____
Its: Chief Manager

GOODWILL INDUSTRIES, INC.

By: _____
Its: _____

THE LUTHER COMPANY, LLLP

By: _____
Its: _____