**MEMORANDUM OF UNDERSTANDING**
**BETWEEN THE CITY OF BLOOMINGTON**
**AND KRAUS ANDERSON, INC.**
**REGARDING SOUTHTOWN CENTER**

This Memorandum of Understanding is made this 26 day of January, 2015, by and among Kraus Anderson, Incorporated, a Minnesota corporation ("**Kraus Anderson**"), and the City of Bloomington, a Minnesota municipal corporation (the "**City**"). Kraus Anderson and the City are collectively referred to herein as the "**Parties**" or "**Party**" as the context may require.

**RECITALS**

A. This Memorandum of Understanding ("**MOU**") is intended to create additional time to explore solutions to the Parties' differences related to rezoning of the Southtown Shopping Center and adjoining parcels (the "**Property**") as proposed by the City. The Property is legally described in the attached Exhibit A.

B. The use and development of the Property is governed by that certain Development Agreement, dated December 18, 1995, by and between the Parties (the "**Development Agreement**") as well as by the Bloomington City Code.

C. The City Council of the City of Bloomington at its regular meeting of March 6, 1995, approved the rezoning of the Property from CR-1 Regional Commercial to CR-1 (PD) Regional Commercial (Planned Development). On March 6, 1995, the City Council also approved the revised Preliminary and Final Development Plan for a shopping center expansion on the Property subject to certain conditions.

D. The Parties now seek to explore solutions to the parties' differences until the property is rezoned on or after August 3, 2015 or 90 days after either Party declares an impasse in the discussions, whichever occurs first.

E. The City approved a Moratorium Ordinance in February 2014 that applies to the Property and during its one year duration, the City Council directed staff to carefully study and consider the adequacy and effectiveness of the existing zoning and Comprehensive Plan regulations in this area to further the Penn American District Plan, and to study and consider amendments to those regulations. The City Council found that a one-year moratorium was critical to the successful implementation of the Penn American District Plan. The City now agrees to extend the time period for review of the regulatory framework for the Property, at the request of Kraus Anderson, as a means to continue review of zoning amendments consistent with the City's development goals as set forth in the Penn American District Plan, adopted by the City Council on January 27, 2014, the key elements of which include:

a. Adding new pedestrian friendly streets and creating smaller development blocks and redevelopment occurs;

b. Increasing mobility through targeted roadway, bikeway and pedestrian way improvements;

c. Improving development design;

d. Increasing development intensity;

e. Providing a broader mix of land uses;

f. Promoting district-wide sustainability;

g. Creating high quality public places; and

h. Enhanced transit service along American Blvd. and along I-35W with a transit station at or near American Boulevard (the "BRT Station").

G. Kraus Anderson shares the City's goal of an amicable resolution of the regulatory framework governing the Property without agreeing to each (or any) of the above goals and objectives of the Penn American District Plan.

Now, therefore, in consideration of the mutual commitments of the Parties herein provided, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## STATEMENT OF UNDERSTANDING

1. The preceding recitals are incorporated and made a part of this MOU.

2. The City agrees to suspend any action to rezone the Property until August 3, 2015 unless it provides at least 90 days' notice to Kraus Anderson.

3. Kraus Anderson will agree to a voluntary moratorium on development of the Property and will not submit development or land use applications for the Property, including but not limited to applications for Comprehensive Plan amendments, rezoning, preliminary development plans, final development plans, final site and building plans, conditional use permits, preliminary plats, final plats or variances ("Development Applications"). The purpose of this voluntary moratorium is to give the Parties the opportunity to work with adjoining property owners and other affected agencies to seek approval of a regulatory framework with which each Party can agree.

4. The City will agree to this voluntary moratorium in recognition of Kraus Anderson's goal of maximizing its private development on the Property and mitigating any diminution of its value.

5. Accordingly, Kraus Anderson agrees to give the City at least 90 days' notice prior to any submission of any Development Application defined in paragraph 3 of this MOU.

6. During the voluntary moratorium period, Kraus Anderson will continue to work with Metro Transit, MnDOT and the City to attempt to site the BRT Station within or adjacent to the Property in a manner that furthers the City's Penn American District Plan for transit oriented development while maximizing private development and mitigating diminution of property value. Accordingly, Kraus Anderson will inform the City of any impasse in negotiations related to the location of the BRT Station and provide at least 90 days' notice prior to commencing legal action or otherwise seeking to enforce or act upon its property rights.

7. The voluntary moratorium will not apply to the following:

(i) The issuance of building, grading, demolition and related permits;

(ii) Construction of any public improvements, including underground and above-ground utilities and local and regional transportation facilities;

(iii) Expansion of a building or structure or accessory structure or appurtenant equipment provided the expansion is no greater than five percent of the floor area of the building or structure;

(iv) Interior improvements or alterations of buildings or structures;

(v) Improvement or alteration of the facade of a building or structure;

(vi) The colocation of antennas and associated equipment upon existing structures;

(vii) Interim Use Permits;

(viii) Conditional Use Permits for uses within existing buildings;

(ix) Administrative approvals; or

(x) City initiated applications.

8. This MOU is not intended to, nor does it, amend the Development Agreement.

9. Neither Party waives its rights or remedies in law or in equity by virtue of entering into this MOU. Either Party may terminate this MOU upon 90 days' written notice to the other Party. Each Party hereby acknowledges that, by entering this MOU, the other Party does not waive any substantive right that it possesses or may hereafter possess; nor does the other Party waive or limit its right to assert any substantive position in any litigation. Neither Party waives or agrees to limit in any way any right it now has or may hereafter have to seek any form of relief (temporary or permanent) from a court

(or otherwise) in any proceeding or to seek relief (in any form and whether temporary or permanent) from conduct by the other Party.

10. This MOU commences upon the expiration of the existing Moratorium Ordinance on February 3, 2015 and continues until the Property is rezoned on or after August 3, 2015 or 90 days after either Party declares an impasse in the discussions, whichever occurs first.

11. Any notice required to be given under this MOU will be provided to the other Party in writing and delivered or mailed as follows:

City of Bloomington
Attention: City Manager
1800 W. Old Shakopee Road
Bloomington, MN 55431

Kraus Anderson, Incorporated
Attention: Dan Engelsma
4210 West Old Shakopee Road
Bloomington, MN 55437-2951

With a copy to:

Larkin Hoffman Daly & Lindgren Ltd.
Attention: William Griffith
8300 Norman Center Drive, Suite 1000
Minneapolis, MN 55437-1060

or to such other address as the Party addressed has previously designated by notice given in accordance with this section. Notices shall be deemed to have been duly given on the date of service if served personally on the Party to whom notice is to be given, or on the third day after mailing if mailed as provided above.

IN WITNESS to this MOU, the Parties have caused this MOU to be executed as of the day and year first above written, subject to all of the terms and conditions set forth herein.

***[Signature Pages to Follow]***

**MEMORANDUM OF UNDERSTANDING**
**REGARDING SOUTHTOWN CENTER**

**KRAUS ANDERSON, INCORPORATED**

By: _____

Daniel Engelsma
(Printed Name)

Its: President

**MEMORANDUM OF UNDERSTANDING**
**REGARDING SOUTHTOWN CENTER**

**CITY OF BLOOMINGTON**

By: _____
Gene Winstead
Mayor

By: _____
Larry Lee
Acting City Manager

Reviewed and approved by the City Attorney.

_____
City Attorney

## Exhibit A

## Legal Description of the Property

Southtown Parcel

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

Lucky 13's Parcel

Lot 2, Block 1, Southtown Shopping Center 2nd Addition, Hennepin County, Minnesota

Mitsubishi Parcel

Lot 1, Block 1, Harold's Addition, Hennepin County, Minnesota

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