

EASEMENT AGREEMENT

ALLEN CREEK BERM OPENING PROJECT

This agreement, dated _____, 2019, is between **201 DEPOT L.L.C. ("Grantor")**, a Michigan limited liability company whose registered office address is 115 Depot Street, Ann Arbor, Michigan 48104, and the **CITY OF ANN ARBOR ("City")**, a Michigan municipal corporation whose address is 301 East Huron Street, Ann Arbor, Michigan 48104.

Recitals

- A. Grantor is the fee simple owner of land commonly known as 201 Depot Street described on the attached Exhibit A ("Grantor's Property").
- B. The City wishes to construct a culvert underneath the Michigan Department of Transportation ("MDOT") railroad northeast of Grantor's Property connected to a storm sewer pipe through Grantor's Property to provide flood relief under a grant from the Federal Emergency Management Agency, and to construct a pedestrian path through the same culvert to allow public access under the railroad, along with necessary appurtenances ("Project") for which the City requires temporary and permanent easements through Grantor's Property.
- C. The City, the Grantor and 115 Depot, LLC, a Michigan limited liability company that is an affiliate of the Grantor (the "Affiliate") owning property adjacent to the Grantor's Property (the "Affiliate's Property"), have entered into the MASTER AGREEMENT dated as of the date of this Easement Agreement (the "Master Agreement") pursuant to which the Grantor has agreed to be party to this Easement Agreement granting easements on the Grantor's Property and the Affiliate has agreed to be party to a companion Easement Agreement dated as of the date of this Easement Agreement granting easements on the Affiliate's Property.

Agreement

Grantor and the City agree as follows:

1. Master Agreement. The Master Agreement is hereby incorporated by reference into this Easement Agreement. In the event of any inconsistency between the terms of this Easement Agreement and the Master Agreement, the terms of the Master Agreement shall prevail.

2. Storm Sewer/Weir Easement
 - 2.1 Grantor hereby grants to the City a permanent easement for storm sewers and appurtenances and a weir, open drain, and appurtenances (including bollards, a support wall, and warning signage) (collectively, "Public Utilities Systems"), described and illustrated as "Storm Sewer Easement" on Exhibit B.
 - 2.2 The weir, open drain, and appurtenances shall be constructed subject to the provisions of the Master Agreement. To the extent that the Public Utilities Systems are funded wholly or partly with federal or state grant money, Grantor shall allow the City to comply, at the City's cost, with all applicable federal and state requirements concerning their location, maintenance, and use.
 - 2.3 The City shall install within the Storm Sewer/Weir Easement in accordance with the plans and specifications approved under the Master Agreement. As provided in the Master Agreement, the City will ensure that Grantor's existing private storm water pipes that are connected to the City's existing storm sewer are connected to the City's new underground storm sewer pipe for the purpose of discharging storm water from Grantor's Property.
 - 2.4 Subject to the procedures and restrictions in the Master Agreement, (a) the City shall have the right to access, construct, maintain, alter, abandon, and remove Public Utilities Systems within the Storm Sewer/Weir Easement, for which purposes the City may use all necessary materials and equipment, including motor vehicles; remove vegetation, including trees, as necessary; and make all necessary excavations and (b) the City shall have reasonable access over the paved portions of Grantor's Property not within the Storm Sewer/Weir Easement to reach the Public Utilities Systems. The City shall provide plans to and consult with Grantor prior to any City alteration of the Public Utilities Systems.
 - 2.5 Within the Storm Sewer/Weir Easement, Grantor shall not construct any permanent structure or make any change in grade without prior approval from the City; Grantor shall not bury, obstruct, impair, or otherwise make inaccessible any manhole, standpipe, grate, drain, vent, or other surface element of the Public Utilities Systems; Grantor may pave the surface, park cars, or place landscaping if otherwise permitted by law. Grantor presently maintains pole lights with associated electrical conduit and a sprinkler system within the Storm Sewer/Weir Easement, which the City

acknowledges and permits on the condition that no expansion of these systems occurs without prior written permission of the City.

- 2.6 If the City's use of the Storm Sewer/Weir Easement disturbs (1) a paved area, the City shall restore or pay for restoration with asphalt (or concrete if the original paving was concrete) of the minimum quality specified in the initial construction plans for the Project; (2) an unpaved area, the City shall restore or pay for restoration with turf grass; (3) the pole lights, associated electrical conduit, or sprinkler system existing at the time this agreement is entered, the City shall restore or pay for restoration of those facilities, relocating them as necessary to avoid conflict with the Public Utilities Systems. Restoration of any other type of paving, landscaping, planting, grading, storm water feature, or other installation not in existence in the Storm Sewer/Weir Easement as of the date of this easement shall be Grantor's responsibility and cost.
- 2.7 On September 11, 2000, the City and William C. Martin (predecessor in title to Grantor's Property) entered into an agreement for storm water pipeline occupation recorded at Liber 3969, Page 675, Washtenaw County Records ("Pipeline Agreement"). This agreement supersedes and replaces the Pipeline Agreement as to Grantor's Property.

3. Temporary Construction Easement

- 3.1 Grantor hereby grants to the City a temporary construction easement to enter and occupy Grantor's Property in the area described and illustrated on Exhibit C in order to perform construction work related to the Project as described in sections 2.2 and 2.3. The anticipated durations described in sections 2.2 and 2.3 may vary depending upon weather; availability of materials, equipment, or labor; force majeure; or other unforeseen circumstances. The City shall have reasonable access over the paved portions of Grantor's Property not within the temporary construction easement to reach the temporary construction easement. All construction work and restoration under the temporary construction easement shall be substantially completed by October 31, 2020. If weather does not permit complete grass restoration, such restoration may be completed as soon as practicable thereafter.
- 3.2 The Shutdown Phase of the construction work includes dismantling a portion of the existing railroad trestle bridge on Grantor's Property, setting up a temporary crane; moving, staging, or lifting sections of culvert and other material related to the Project's construction; and any related activity ("Shutdown Phase"). The Shutdown Phase is anticipated to occur for a period of approximately 10 days sometime in 2019 or 2020, which will coincide with a shutdown of the adjacent MDOT railroad on a date to be determined by MDOT and/or Amtrak.
- 3.3 The Wall/Path Phase of the construction work includes grading, backfilling, removing an existing brick wall and constructing a new wall/fence in the railroad right-of-way along the northeast line of Grantor's Property, and related work ("Wall/Path Phase").

The Wall/Path Phase is anticipated to occur throughout the Project, with entry and occupancy on an as-needed basis.

- 3.4 For avoidance of doubt, the City may temporarily remove part or all of the asphalt pavement with associated markings, landscaping and associated irrigation, underground electrical service for lighting and vehicle charging that are installed on the Grantor's Property as of the date of this Easement Agreement as necessary for the City's construction of the Improvements but shall, in the completion of the Project, reconstruct or restore those installations to a condition that is at least equivalent to the condition of those installations as of the date of this Easement Agreement under a restoration plan to be proposed by the City and approved by the Grantor prior to the City's commencement of construction. Following the completion of construction of the Project, the Grantor, at its discretion, may at Grantor's expense maintain or remove or replace any or all of the installations referenced in this Section 3.4
- 3.5 Upon completion of construction work under the temporary construction easement, the City shall restore or pay for restoration of (1) unpaved areas with turf grass; (2) paved areas with standard asphalt (or standard concrete if the original paving was concrete); and (3) any other damage to Grantor's Property occurring as a result of the construction work to a condition equal to or better than that which existed at the time the construction work commenced.

4. Sidewalk Easement

- 4.1 Grantor grants to the City a permanent easement for public sidewalks, paths, or ways, and appurtenances thereto ("Sidewalks"), described and illustrated as "Pedestrian Easement" on Exhibit B.
- 4.2 Subject to Section 3.4, the City shall have the right to access, construct, maintain, alter, abandon, and remove Sidewalks within the Sidewalk Easement, for which purposes the City may use all necessary materials and equipment, including motor vehicles; remove vegetation, including trees, as necessary; and make all necessary excavations.
- 4.3 Grantor shall not allow any sign or impediment to be placed within or near the Sidewalk Easement that limits public access through the easement. Grantor shall not alter the grade of the Sidewalk Easement nor alter any Sidewalks that the City has caused to be constructed within the Sidewalk Easement.
- 4.4 If the City obtains an easement adjacent to the Sidewalk Easement over the property currently known as 325 Depot and owned by the National Railroad Passenger Corporation d/b/a Amtrak) that meets the requirements of the Project, including all grant requirements, the City shall use that adjacent easement to connect the Project to Depot Street at the City's cost and the Sidewalk Easement portion of this agreement shall terminate upon the City's completion of the new connection, but in no case later than one year after the City obtains the adjacent easement. Grantor reserves the right to relocate the Sidewalk Easement within Grantor's Property at its sole cost, provided

that the proposed relocation complies with all Project requirements, including all grant requirements, and Grantor receives prior written approval from the City, which approval shall not be unreasonably withheld.

5. Use of Contractors. The City may use contractors or agents, including contractors or agents of the State of Michigan or the government of the United States to construct or maintain the Project, which contractors or agents shall have the same rights to use the easements in this agreement as the City. The City shall be responsible to Grantor for those contractors' or agents' compliance with this agreement.
6. Other Easements. Grantor shall notify and consult with the City prior to granting any easement that overlaps the permanent easements described in this agreement. No overlapping easement use may conflict with or impair the use or maintenance of the Public Utilities Systems.
7. Waiver and Notice
 - 7.1 The waiver of any breach by any party shall not waive any subsequent breach. Neither party shall be deemed in breach of this agreement unless the other party gives notice of the alleged breach and 30 days to cure. Notices required under this agreement shall be in writing and deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.
 - 7.2 Any notice required by this agreement shall be sent or delivered to the registered business address (or current street address, if no registered business address exists) of the respective parties or their successors, which the parties shall make reasonable efforts to confirm.

At the time of this agreement, the respective addresses are:

City of Ann Arbor
Attn: Public Services Area Administrator
301 E. Huron Street
Ann Arbor, MI 48104

201 Depot L.L.C.
115 Depot Street
Ann Arbor, Michigan 48104

8. Effective Date and Termination
 - 8.1 This agreement shall be effective on the date of the last signature of all parties. This agreement shall terminate only upon mutual written agreement of all parties. Any party that believes a breach of this agreement has occurred and has complied with the

notice and cure requirements of this agreement may pursue a court order for specific performance of any obligation under this agreement or other available and appropriate equitable remedy as determined by a court of law.

- 8.2 Upon termination, the easements described in this agreement shall be extinguished and the parties shall have no further liability to each other under this agreement except for liability already accrued prior thereto. Within 30 days after termination, Grantor may, upon notice to the City, require the City to remove any remaining Public Utilities Systems and Sidewalks and restore Grantor's Property at the City's cost.
9. Third Party Beneficiary. Nothing contained in this agreement shall be construed to confer upon any person not a party to this agreement the rights of a third party beneficiary.
10. Binding Effect; Appurtenant Easement. This agreement shall run with Grantor's Property as an appurtenance and shall be binding upon and inure to the benefit of the City, Grantor, and their respective transferees, successors, executors, and assigns.
11. Authority; Mortgagee Consent. Grantor represents that Grantor is the fee simple owner of Grantor's Property with full authority to execute this Grant and grant the easements described in this Grant. Grantor shall provide any necessary consent and subordination to this Grant from any mortgagee of Grantor with an interest in Grantor's Property. City represents that all necessary municipal action has been taken to authorize this agreement.
12. Severability. To the extent possible, each provision of this agreement shall be interpreted so as to be valid, legal, and enforceable under applicable law. If any portion of any provision of this agreement is invalid, illegal, or unenforceable under any applicable law or decision, the validity, legality, and enforceability of the remainder of the agreement shall not be invalidated or affected.
13. Entire Agreement. This agreement along with the Master Agreement constitutes the sole and entire agreement of the parties to this agreement regarding its subject matter and supersedes all prior and contemporaneous statements, understandings, agreements, representations, and warranties, both written and oral, regarding the subject matter. No change to this agreement is valid unless agreed in writing by the parties.
14. Governing Law. This agreement shall be governed and construed under the laws of the State of Michigan.
15. Compensation. The compensation for this grant shall be \$7,000.00 for the Sidewalk Easement and \$0.036 per square foot per month of use by the City for the Temporary Construction Easement (17,277 square feet) to be paid by the City to Grantor upon Grantor providing the City a complete IRS Form W-9.

(signatures on following pages)

201 DEPOT L.L.C.

By: _____

Michael C. Martin

Its: Co-Managing Member

Signed on: _____, 2019 in:

State of Michigan

County of _____

This instrument was acknowledged before me on _____, 2019 by Michael C. Martin, Co-Managing Member of 201 Depot L.L.C.

_____, Notary Public

County of _____, Michigan

Acting in County of _____

My Commission Expires:

[signatures continue on the following pages]

CITY OF ANN ARBOR

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

STATE OF MICHIGAN)
) ss
COUNTY OF WASHTENAW)

The foregoing instrument was acknowledged before me on _____, 2019, by Christopher Taylor and Jacqueline Beaudry, respectively the Mayor and City Clerk of the City of Ann Arbor.

Notary Public
Washtenaw County, Michigan
Acting in Washtenaw County, Michigan
My Commission Expires: _____

Prepared by and when recorded return to:

Christopher Frost (P70380)
Office of the City Attorney
City of Ann Arbor
301 E. Huron Street
Ann Arbor, MI, 48104

Tax ID No. 09-09-20-403-031

EXHIBIT A

Real property located in the City of Ann Arbor, Washtenaw County, Michigan, commonly known as 201 Depot Street, described at Liber 4490, Pages 936 and 937 of Deeds, Washtenaw County Records and as:

Commencing at the monumented intersection of the centerlines of E. Summit Street (66 feet wide) and N. Fifth Ave. (formally Fifth Street) (66 feet wide) as shown in "Map of Ormsby and Page's Addition Ann Arbor Village (now City)", as recorded in Liber M of Deeds, Pages 191 and 192, Washtenaw County Records, Washtenaw County, Michigan; thence N29°04'36"E 203.96 feet along the centerline of said N. Fifth Avenue to a monument located in Depot Street (66 feet wide); thence continuing N29°04'36"E 28.04 feet to a PLACE OF BEGINNING being the intersection of the Northerly Right-of-Way line of said Depot Street and the centerline of vacated N. Fifth Avenue (66 feet wide); thence N63°56'30"W 377.96 feet along the Northerly Right-of-Way line of said Depot Street and the Southerly line of Block XII of said "Map of Ormsby and Page's Addition Ann Arbor Village (now City)" to the centerline of vacated Fourth Avenue (formally Fourth Street) (66 feet wide), said Northerly Right-of-Way line for Depot Street is parallel to and 28.00 feet North of monumented Depot Street; thence N64°06'15"W 151.53 feet along the Northerly Right-of-Way line of said Depot Street and the Southerly line of Block XI of said "Map of Ormsby and Page's Addition Ann Arbor Village (now City)"; thence N25°38'45"E 29.64 feet; thence N11°02'29"W 71.08 feet; thence N70°52'05"W 71.81 feet; thence N10°49'55"E 225.32 feet along the Westerly line of Lots 4, 6, 7 and 8 of said Block XI and the Northerly extension thereof; thence 394.06 feet along the arc of a 1366.22 foot radius non-tangential circular curve to the left, with a central angle of 16°31'34", having a chord which bears S38°30'43"E 392.70 feet along the Southerly line of the Michigan Central Railroad corridor (100 feet wide) to a point on the Easterly line of said vacated N. Fourth Avenue.; said point lies S24°29'40"W 2.00 feet from a capped iron rod marking Reference Point "A"; thence continuing along said Southerly line of the Michigan Central Railroad corridor 358.45 feet along the arc of a 1700.14 foot radius compound non-tangential circular curve to the left, with a central angle of 12°04'48", having a chord which bears S53°11'53"E 357.79 feet; thence S29°04'36"W 59.41 feet along the centerline of said vacated N. Fifth Avenue to the Point of Beginning, being a part of said Block XI, all of said Block XII, part of said vacated N. Fourth Avenue and said vacated N. Fifth Avenue of said "Map of Ormsby and Page's Addition Ann Arbor Village (now City)", containing 1.88 acres of land, more or less.

AS-SURVEYED LEGAL DESCRIPTION
201 DEPOT STREET BY SMITHGROUP
August 1, 2017
C.A.L.
Project No. 79500