

## EASEMENT AGREEMENT

### ALLEN CREEK BERM OPENING PROJECT

This agreement, dated \_\_\_\_\_, 2019, is between **115 DEPOT, LLC**, a Michigan limited liability company, ("**Grantor**") whose 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 115 Depot Street described on the attached Exhibit A ("Grantor's Property").
- B. The City wishes to construct a project (the "Project") that includes among other things 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, along with necessary appurtenances for which the City requires a permanent easement through Grantor's Property.
- C. The City, the Grantor and 201 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 Easement

- 2.1 Grantor hereby grants to the City a permanent easement for storm sewers and appurtenances (collectively, "Public Utilities Systems"), as described and illustrated on Exhibit B and 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.
- 2.2 The City shall install Public Utilities Systems within the Storm Sewer 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.
- 2.3 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 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, (b) the City shall have reasonable access over the paved portions of Grantor's Property not within the Storm Sewer 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.
- 2.4 Within the Storm Sewer 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, a sprinkler system, and brick walls within the Storm Sewer Easement, which the City acknowledges and permits on the condition that no expansion of these systems occurs without prior written permission of the City.
- 2.5 If the City's use of the Storm Sewer 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, brick walls, 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 Easement as of the date of this easement shall be Grantor's responsibility and cost.

On September 11, 2000, the City and Grantor 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. 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.
4. 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.
5. Waiver and Notice
  - 5.1 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.
  - 5.2 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

115 Depot, LLC  
115 Depot Street  
Ann Arbor, Michigan 48104

6. Effective Date and Termination

- 6.1 This agreement shall be effective on the date of the last signature of all parties. This agreement may 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.
- 6.2 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 restore Grantor's Property at the City's cost.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. Governing Law. This agreement shall be governed and construed under the laws of the State of Michigan.

13. Compensation. This easement agreement is made for consideration less than \$100.00 and is exempt from transfer tax under MCL 207.505(5)(a) and 207.526(a).  
*(signatures on following pages)*

**115 Depot, LLC**

\_\_\_\_\_  
William C. Martin, Manager

Signed on: \_\_\_\_\_, 2019 in:  
State of Michigan  
County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 2019 by  
William C. Martin.

\_\_\_\_\_  
, Notary Public  
County of \_\_\_\_\_, Michigan  
Acting in County of \_\_\_\_\_  
My Commission Expires:

*[signatures continue on the following page]*

**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. 09-09-20-403-032

**115 DEPOT EASEMENT AGREEMENT  
EXHIBIT A**

Real property located in the City of Ann Arbor, Washtenaw County, Michigan, commonly known as 115 Depot Street, described at Liber 5257, Page 609 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 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)" to a **PLACE OF BEGINNING**; thence continuing along the Northerly Right-of-Way line of said Depot Street and the Southerly line of said Block XI N64°06'15"W 235.26 feet; thence N10°49'55"E 22.35 feet; thence S79°10'05"E 137.22 feet along the Northerly line of Lots 5 & 7 of said Block XI; thence N10°49'55"E 21.49 feet along the Westerly line of said Lot 7 of Block XI; thence S70°52'05"E 71.81 feet; thence S11°02'29"E 71.08 feet; thence S25'38'45"W 29.64 feet to the Point of Beginning, being a part of said Block XI of said "Map of Ormsby and Page's Addition Ann Arbor Village (now City)", containing 0.30 acres of land, more or less.

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



**115 DEPOT EASEMENT AGREEMENT  
EXHIBIT B**

Easement Drawing