

**AMENDED AND RESTATED  
EASEMENT AGREEMENT BETWEEN  
THE REGENTS OF THE UNIVERSITY OF MICHIGAN  
AND  
THE CITY OF ANN ARBOR  
Sidewalk Public Right-of-Way  
Service Location: 1319 S. Main St. (S. Main at Stadium)**

This EASEMENT AGREEMENT is made this \_\_\_\_ day of December, 2015, by and between **The Regents of The University of Michigan**, a Michigan Constitutional corporation, whose address is 326 E. Hoover Street, Ann Arbor, MI 48109-1002, referred to in this instrument as "**Grantor**," and the **City of Ann Arbor**, a Michigan municipal corporation, with its address at 301 E. Huron Street, Ann Arbor, Michigan 48104, referred to in this instrument as "**Grantee**."

Grantor and Grantee executed an Easement Agreement for a Sidewalk Public Right-of-Way dated November 18, 2015 and recorded in Liber 5125 and Page 92 of the Washtenaw County Register of Deeds for the "Easement Area" described below (the "November Easement Agreement"). That November Easement Agreement is hereby terminated and replaced with this Amended and Restated Easement Agreement.

Further, Grantor executed a Grant of Easement to Grantee, dated January 23, 1996 also for the "Easement Area" described below (the "1996 Easement"), which Grantee did not formally accept and was not recorded. The parties agree that that 1996 Easement is hereby terminated and has no further force and effect.

Grantor owns or controls the real property ("Grantor's Property") located in the City of Ann Arbor, Washtenaw County, Michigan, described on **Exhibit A** attached to and made part of this Agreement.

For good and valuable consideration less than \$100.00, the receipt and adequacy of which is hereby acknowledged, and in consideration of the mutual covenants set forth in this agreement, Grantor grants to Grantee a perpetual (except as provided in the Section 6 below) easement (the "**Easement**"), which Easement is (1) exclusive to Grantee on and within the surface of the Easement Area (as defined below) to a depth of one (1) foot of that of that portion of the Grantor's Property which is described on **Exhibit B** and depicted on **Exhibit C**, both attached to and made part of this agreement (the "**Easement Area**") and (2) non-exclusive to Grantee below a depth of one (1) foot of the Easement Area, the Easement shall extend below the surface of the Easement Area only to a depth sufficient to accommodate the Permitted Facilities defined below, provided that any Permitted Facilities greater than six (6) feet below grade shall require the written permission of Grantor.

The Easement is granted subject to any easements and restrictions of record, and any utility installations of Grantor in the Easement Area existing as of the date of this Easement Agreement including storm drains and conduit, on and subject to the following terms, conditions and limitations:

## 1. Access and Use.

a. Use by Grantee. Grantee shall use the Easement solely for the purpose of a sidewalk public right-of-way, including constructing, altering, repairing, maintaining, and replacing the sidewalks, curb and gutter, and all appurtenances thereto; except that Grantee may also use part of the southerly 30 feet of the Easement Area for constructing, altering, repairing, maintaining, and replacing public roadway and all appurtenances thereto, consistent with the depiction on Exhibit C ("**Permitted Facilities**"). In connection with its permitted use of the Easement Area, but only to the extent reasonably necessary to accomplish the purpose for which the Easement is granted, Grantee may:

1. have access to the Easement Area and use it for the construction, alteration, maintenance, repair, and replacement of Permitted Facilities, with any specific restrictions or requirements for access being as follows: None.

2. use the Easement Area for the temporary storage of appropriate materials and equipment during construction, alteration, maintenance, repair, and replacement of Permitted Facilities;

3. make all desirable or appropriate excavations, install any components, whether temporary or permanent, within the Easement Area;

4. as reasonably necessary, trim, cut down, and clear away any and all trees and brush now or subsequently growing within the Easement Area; provided, however, that no "significant" or "landmark" trees, as defined in the Grantor's database, shall be removed or damaged without the written permission of Grantor.

Except in the event of a public health or safety emergency, Grantee shall provide reasonable notice prior to any entry onto the Easement Area. Notice shall include a description of the proposed work. In the case of a public health or safety emergency, Grantee shall provide such notice as may be practicable under the circumstances.

All of Grantee's work within the Easement Area shall be performed (i) in accordance with good engineering practices, (ii) with as little inconvenience to Grantor as reasonably possible, (iii) in accordance with all applicable governmental laws, regulations and ordinances ("**Applicable Law**"), (iv) in a good and workman like manner, and (v) in compliance with the requirements of "Miss Dig," as set forth in MCL 460.701 through MCL 460.718, and any rules, regulations and restrictions Grantor establishes regarding the Easement Area, provided that the rules, regulations, and restrictions do not materially and adversely interfere with the Grantee's use of the Easement Area for the use permitted by this Agreement. Any such rules, regulations, and restrictions governing the Easement Area shall be provided to Grantee upon execution of this Agreement to the extent they exist and, in any event, prior to the commencement of work by Grantee in the Easement Area. Grantee shall have the right to request the waiver of any rule, regulation, and/or restriction based on the specific nature of the work to be undertaken.

Grantee is responsible for supervising the activities of its officials, officers, employees, servants, contractors, agents, guests and invitees, and others with whom it contracts to work in the Easement Area or it permits to be present on the Easement Area and for their compliance with the terms of this Agreement. Grantee shall take precautions adequate to protect the public and for the safety of any persons working within the Easement Area.

Grantee understands and agrees that the Easement Area cannot be subject to liens, and Grantee will take all steps necessary to remove any liens that anyone places on the Easement Area as a result of Grantee's activities.

Grantee shall not use PCBs in the Easement Area, shall not allow any waste to be committed within the Easement Area, and shall comply with all applicable federal, state, and local environmental laws and regulations ("**Applicable Environmental Law**") in all activities undertaken pursuant to this Agreement. Grantee shall not permit the use, storage, or presence of hazardous materials (except in lawful quantities used properly) or generation of hazardous waste on or within the Easement Area. If there is spillage or discharge, as a result of Grantee's activities, of paint, oil, gasoline or other toxic or potentially hazardous materials, or any other contamination within the Easement Area, Grantee shall provide all necessary clean-up and remediation at Grantee's expense. Further, Grantee agrees that if it disturbs any contaminated soil while performing work in the Easement Area, after notice by Grantor of the existence of or the potential existence of such contamination, and as a result is required to dispose of the contaminated soil, Grantee shall be responsible for the costs of sampling, analysis, handling and disposing of the contaminated soil. Grantor shall approve of the disposal of any soil removed from the Easement Area and the disposal location of such soil. Grantor shall be deemed the generator of the contaminated soil and shall provide Grantee necessary and timely assistance in profiling the contaminated soil and executing required paperwork (including but not limited to waste profiles, manifests, or other shipping papers) for disposal of the contaminated soil as required by Applicable Environmental Law. If Grantee discovers, but does not disturb, any contaminated soil on Property owned by Grantor, Grantor shall be responsible for the costs of sampling, analysis, handling and disposing of the contaminated soil to the extent reasonable and necessary to permit Grantee to utilize the Easement Area for the use permitted by this Agreement. Grantee shall notify Grantor as promptly as reasonably possible after discovery of any suspected contaminated soil (but no more than (5) business days after discovery).

Grantee is responsible for all construction, alteration, maintenance, repair, or replacement activity undertaken pursuant to this Agreement.

b. Rights Retained By Grantor. To the extent the Easement Area is at or above grade, Grantor shall have the right to utilize the Easement Area, and to grant others the right to use the Easement Area, for any purpose that does not materially interfere with the use of the Easement Area by Grantee for the purpose permitted by this Agreement. However, Grantor shall not conduct any activities thereon that might damage Permitted Facilities without prior notification to and written permission from Grantee. In any case where Grantor receives written permission from Grantee to conduct activities within the Easement Area, Grantor shall be responsible for any repair or replacement costs in respect of Permitted Facilities, should they be damaged as a result of the activities of Grantor in the Easement Area. Grantor acknowledges and agrees that Grantee shall not be liable for any injury that may occur to any person, or for any damage that may occur to any

property, as a result of any act, decision, or other consequence or occurrence arising out of the acts or omissions of the Grantor, or any person or entity acting on behalf of Grantor (other than Grantee itself) or the approval by Grantee of the acts or omissions of the Grantor.

If all Permitted Facilities are to be placed underground, Grantor specifically retains the right to later install, replace, repair, and maintain at or above grade improvements such as roads, bus shelters, lighting, landscaping, to pave the surface of the Easement Area and park motor vehicles on the Easement Area, and to install fiber optic communication lines, so long as Grantor's doing so will not interfere with Grantee's rights under this Agreement. If Grantor disturbs, damages, or destroys any Permitted Facilities in connection with the installation, maintenance or repair of any such improvements, the cost of restoring the Permitted Facilities shall be borne by Grantor. Similarly, if Grantee reasonably anticipates possible damage to any such installation in connection with the maintenance, repair or replacement the Permitted Facilities, it shall first provide notice to Grantor of that potential and, if possible, permit Grantor to take preventative steps. Following notice reasonable under the circumstances, any restoration of such installations shall be at the sole cost of Grantor, and Grantee shall not be responsible for any damage caused so long as its work is carried out in a reasonable and prudent manner.

2. Due Care; Restoration. Grantee shall use due care to avoid disturbing, damaging or destroying the property of Grantor and others (except to the extent reasonably necessary to accomplish the purpose for which the Easement is granted), and Grantee shall at its expense rectify any disturbance it creates, repair any damage it causes and replace any property it destroys. Following completion of its work in the Easement Area, Grantee shall, to the extent reasonably possible, by cleaning, restoration, repair, or replacement return the Easement Area to the condition in which it was prior to the commencement of Grantee's work. For example, if lawn or landscaping was removed, it should be replaced; if pavement was destroyed or damaged, the area should be repaved.
3. Insurance. Grantee will at all times maintain appropriate levels and types of insurance commercially prudent for the types of activities Grantee is undertaking and the responsibilities Grantee is assuming under this Agreement. Such insurance may be maintained through a "captive" insurer and may be subject to reasonable deductibles or self-retained limits. Grantee will promptly provide evidence of such insurance upon the written request of Grantor.
4. Relocation.
  - (a) If the Permitted Facilities conflict with a proposed Grantor use of the Easement Area after the date of this Agreement, the Grantor will, prior to any design work on a solution to the conflict, notify Grantee of the conflict and Grantee agrees to work with Grantor to design a solution to the conflict. Grantor and Grantee agree to work together in good faith to develop a solution that is optimal for both parties.
  - (b) If the parties cannot reach agreement on a solution under Section 4(a) above, then if Grantor deems it necessary to relocate the Permitted Facilities due to the Grantor's intended future use of the Easement Area or the immediately surrounding property, or for other reasons determined by the Grantor, Grantor may relocate the Permitted Facilities, if it is operationally feasible and after

submitting complete plans for the proposed relocation for review and approval by Grantee, provided that such approval shall not be unreasonably withheld, delayed, or conditioned. All work shall be performed in accordance with current Grantee standards. Any relocating of the Permitted Facilities for Grantor shall be at Grantor's sole expense.

(c) Timeframes of reviewing agencies shall not be the basis for a claim of delay.

(d) All relocation shall be performed only when permitted by and in accordance with Applicable Law and the requirements of any state or federal grant through which the Permitted Facilities were constructed. The Permitted Facilities in the Easement Area at the time of this agreement were constructed using funds from a grant from the Federal Surface Transportation Fund - Urban ("Grant"), which Grant prohibits termination of the Easement or any relocation of the Permitted Facilities constructed with the Grant.

5. Claim Resolution Process. If either party believes it has a claim for property damage or personal injury against the other, it shall notify the other party of its claim promptly, and the parties shall attempt to resolve the claim within the then current claim resolution process in place, if any, between them.
6. Nature. This Agreement shall run with the land and bind and benefit Grantor and Grantee and their respective successor governmental entities.
7. Ownership. Ownership of all Permitted Facilities will remain with Grantee.
8. Third Party Beneficiary. There are no third party beneficiaries to this Agreement, and nothing contained in this Agreement shall be construed as conferring the rights of a third party beneficiary upon any party. Only the parties to this Agreement may enforce it for their benefit or have any claim or remedy for its breach.
9. Mutual Cooperation; Consent. The parties agree to mutually cooperate with one another in good faith to effectuate the intents and purposes of this Agreement and to avoid unduly hindering one another in connection with the construction, alteration, maintenance, repair, and replacement of Permitted Facilities. When consent of a party is required under this Agreement, that consent shall not be unreasonably withheld, delayed, or conditioned.
10. Meaning of "Grantee." Whenever the word "Grantee" or "Grantee's" is used in this Agreement it shall, to the extent permitted by the context, be read to include the Grantee's officials, officers, employees, servants, contractors, agents, guests and invitees.
11. Recordation. This Agreement shall be recorded in the office of the Washtenaw County Register of Deeds within 10 business days of its having been fully executed. This grant is exempt under MCL 207.505(a) and MCL 207.526(a).

**GRANTOR:**

**THE REGENTS OF THE UNIVERSITY OF MICHIGAN**  
**A Michigan constitutional corporation**

By: \_\_\_\_\_

Kevin P. Hegarty

Its: Executive Vice President and Chief Financial Officer

**STATE OF MICHIGAN**  
**COUNTY OF WASHTENAW**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of December 2015, by Kevin P. Hegarty, Executive Vice President and Chief Financial Officer, The Regents of The University of Michigan, a Michigan constitutional corporation, as grantor.

\_\_\_\_\_  
Notary Public

Washtenaw County, Michigan  
Acting in Washtenaw County  
My Commission Expires

**GRANTEE:**

**THE CITY OF ANN ARBOR,  
A Michigan municipal corporation**

By: \_\_\_\_\_  
Christopher Taylor  
Its: Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry  
Its: City Clerk

**STATE OF MICHIGAN  
COUNTY OF WASHTENAW**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of December 2015,  
by Christopher Taylor and Jacqueline Beaudry, Mayor and City Clerk, respectively, of The City of Ann  
Arbor, a Michigan municipal corporation, as grantee.

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

Prepared By and When Recorded Return To:  
Mary Joan Fales (P37142)  
City of Ann Arbor  
301 E. Huron Street  
Ann Arbor, MI 48104

Tax ID No: 09-09-32-115-001

## **EXHIBIT A**

### **GRANTOR'S PROPERTY**

KILLINS STUHRBERG FIRST ADD LOTS 1 THRU 44 G F ALLMENDINGERS FIRST ADD LOTS 2 4  
6 8 10 12 E ALLMENDINGERS ADD S 30.69 FT LOT 29 EXC PAR IN NW COR LOTS 30 31 32  
BROWN AND BACHS ADD AND PRT NE 1/4 SEC 32 BD S BY E & W 1/4 LINE W BY S MAIN ST N  
BY E KEECH AVE AND E HOOVER AVE AND E BY ANN ARBOR RR ROW AND BARNES  
GIBSON RAYMOND DIV LAND EXC TRI IN SW COR 10 FT ON S MAIN ST AND 10 FT ON E  
STADIUM BLVD

Commonly known as 1319 S. Main St.



## **EXHIBIT B**

### **EASEMENT AREA**

A PARCEL OF LAND BEING PART OF THE NE  $\frac{1}{4}$  OF SECTION 32, TOWN 2 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER OF SAID SECTION 32; THENCE ALONG THE EAST-WEST  $\frac{1}{4}$  LINE N87°29'59"E 33.39 FEET; THENCE N02°30'01"W 17.00 FEET TO THE POINT OF BEGINNING; THENCE N01°13'24"W 450.00 FEET; THENCE S05°02'35"E 165.12 FEET; THENCE S01°13'24"E 285.00 FEET; THENCE S87°29'59"W 11.00 FEET TO THE POINT OF BEGINNING.  
CONTAINS 4041.5 SQUARE FEET OR  $\pm 0.093$  ACRES OF LAND.

**EXHIBIT C**  
**EASEMENT AREA**