

AGREEMENT AND GRANT OF EASEMENT FOR SEWERS AND WATER MAIN

EASEMENT NO. ____

THIS AGREEMENT AND GRANT OF EASEMENT FOR SEWERS AND WATER MAIN (this "**Agreement**") made and entered into this ____ day of _____ 2019, by and between **1400 WEBWARD AVENUE LLC**, a Michigan limited liability company, having offices at 630 Woodward Ave., Detroit, Michigan 48226, hereinafter referred to as "**Owner**"; and the **CITY OF DETROIT**, a Michigan municipal corporation by and through its **DETROIT WATER AND SEWERAGE DEPARTMENT BOARD OF WATER COMMISSIONERS**, having offices at 735 Randolph Street, Detroit, Michigan 48226, hereinafter referred to as the "**Board**." Each of the Owner's and of the Board's respective agents, representatives, officers, employees, contractors, and subcontractors are hereinafter collectively referred to as such party's "**Agents**".

WITNESSETH:

WHEREAS, Owner is the owner of fee simple title to the land from which the Easement (as hereinafter defined) is to be created;

NOW, THEREFORE, for ten dollars (\$10.00) and other good and valuable consideration, Owner and the Board hereby agree and covenant as follows:

1. Owner does hereby grant, convey and confirm unto the Board a non-exclusive subsurface easement (the "**Easement**") underneath the vacated alley bounded on the west by Woodward Avenue, on the east by Farmer Avenue, on the north by John R. Street, and on the south by E. Grand River Avenue, as more particularly described and depicted on Exhibit "A" attached hereto and made a part hereof (the "**Alley**"), in perpetuity, for the sole purpose of maintaining,

operating, inspecting, replacing and/or repairing the Board's two (2) existing 15" x 20" combined sewers and one (1) existing 8" water main (collectively, the "**Facilities**") located underneath the Alley. Owner shall provide the Board with access over the Alley to the Facilities.

2. Owner agrees that, except for the Permitted Improvements (as hereinafter defined), no building or structure, or any part thereof, shall be erected, constructed or permitted within the limits of the Easement, without the prior approval of the Board, or its Agents, which approval shall not be unreasonably withheld, conditioned, or delayed, and that the Easement shall be kept free at all times from any and all obstructions or obstacles which would impede access by the Board or its Agents, and its necessary equipment to the Facilities and their appurtenances; and that it will not alter the acceptable grades within the Easement without the prior written approval of the Board, or its Agents. If any building or structure (except for the Permitted Improvements) is erected within the limits of the Easement without the prior written approval of the Board, and if such building or permanent structure is not removed by Owner within twenty-one (21) business days after notice from the Board to Owner, the Board, or its Agents, are hereby authorized to enter upon the Easement and dismantle and remove any and all parts of any such building or structure erected or constructed in violation of this Agreement. Owner further agrees to waive all claims for damages against the Board or any of its Agents due to trespass or damage resulting from such dismantling, or removal, and agrees to reimburse the Board for the actual and reasonable costs involved in such dismantling or removal. Restoration of dismantled and removed structures and obstructions pursuant to this Agreement shall be by and at the expense of Owner and with the Board's approval, which approval shall not be unreasonably withheld, conditioned, or delayed.
3. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, the Board hereby approves of the construction of the following items within the Easement (collectively, the "**Permitted Improvements**"): (a) paving, pavers, bushes, landscaping, planters, curbs, sidewalks, grates, lighting, signage, tables, umbrellas, seating, trash receptacles, bike racks, bollards, drainage infrastructure, conduit, piping, and other improvements, infrastructure, and equipment similar in terms of the impact of the foregoing items; (b) the existing bridge located over the Alley (the "**Bridge**"), which the Board hereby approves and consents to; and (c) transformers located within the Alley ("**Transformers**"), which the Board hereby approves and consents to. Owner and its Agents shall take commercially reasonable measures to prevent the Permitted Improvements from causing any damage to the Facilities. Without the Board's

consent, which consent shall not be unreasonably withheld, conditioned, or delayed, none of the Permitted Improvements may be constructed beneath a depth of twelve (12) inches below the surface of the Alley. The Board's restoration obligations with respect to any Permitted Improvements located within the Easement are limited as set forth in Section 10 below. Owner shall not install any Permitted Improvements in a manner which would interfere with the Board's access rights under Section 1 above.

4. Owner agrees, at its own expense, to promptly repair any damage to the Facilities caused by the Permitted Improvements and take such actions as are reasonably necessary to prevent future damage to the Facilities from the Permitted Improvements.
5. The Board and its Agents, shall avoid taking any actions that could adversely impact the Permitted Improvements. To the extent that the operation, maintenance, repair, or replacement of the Facilities must be conducted in a manner that requires the removal or alteration of any of the Permitted Improvements, then the Board shall (a) provide advance written notice to Owner and sufficient time to Owner for Owner to remove the Permitted Improvements from the Alley prior to Owner or its Agents conducting any activities on the Alley which could damage the Permitted Improvements; and (b) cooperate with Owner, and its Agents, so as to minimize the impact of such actions on the Permitted Improvements and so as to minimize the duration of such actions. The Board shall be responsible for all damages to the Permitted Improvements if it fails to provide Owner with advance written notice and sufficient time to remove the Permitted Improvements from the Alley as required under this Section. Notwithstanding the foregoing or anything to the contrary contained in this Agreement, in no event may the Board remove, dismantle, modify, alter, or otherwise take any actions that could adversely affect the Bridge or Transformers without the prior written consent of Owner.
6. Owner hereby grants and conveys to the Board all existing or modified sewers and underground equipment and appurtenances for sewer facilities within the limits of the Easement.
7. Owner agrees to indemnify and save harmless the City of Detroit, its officers, employees and agents and the Board and its Agents, from liability upon any and all claims for damages arising out of the negligence or misconduct of Owner or its Agents, and shall assume the defense and bear all costs and expenses of all suits which may be brought against the City of Detroit, its officers, employees or agents and the Board and its Agents, by reason of the negligence or misconduct of Owner or its Agents; provided, however that nothing contained herein may be constituted as rendering Owner liable for acts of negligence of the Board or its Agents.

8. The parties hereto shall comply with all applicable fair employment practices, laws and ordinances, and require similar compliance by all parties contracted with pursuant to this Agreement. Failure to so comply or to require compliance may be considered a material breach of this Agreement.
9. The Board shall, at its sole cost and expense, maintain, repair, and if necessary, rehabilitate / replace the Facilities in a good operating condition consistent with the Boards' practices and procedures; provided, however, that (a) the Board shall not be responsible for damage to the Facilities caused by the negligence or misconduct of Owner or its Agents, and (b) the Board shall not be responsible for the service lines located adjacent to the Facilities, unless they are damaged by the Board or its Agents. The Board may not expand or increase the size of the Facilities without the prior written consent of Owner, which consent shall not be unreasonably withheld, conditioned, or delayed. Any work by Owner or its Agents, associated with connection to the Facilities, removal of the existing Facilities, and/or installation of new sewer or water main facilities shall be subject to the prior written approval of the Detroit Water and Sewerage Department.
10. Restoration Obligations:
 - a. Subject to the remainder of this Section 10 (including the limitations on the Board's restoration obligations within the Easement contained herein), if the Board or its Agents, or their vehicles or equipment damage the Alley (or other land abutting the Alley owned by Owner or its affiliates), or any improvements thereon, while entering the Alley, then the Board will promptly restore such damaged area to the condition which existed prior to such damage, including, but not limited to, the replacement of structures, roads, drives, curbs, walks, parking areas, fences, landscaping, ground cover and other improvements (including the Permitted Improvements), as the same existed prior to such damage; provided, however, that while the Board will be required to use commercially reasonable efforts to restore the Alley using the same materials as existed prior to such damage, Owner acknowledges that it may not be feasible to restore the Alley to the exact condition that existed prior to such damage, and there may be instances where materials fade or there are other aesthetic changes over time, and such conditions by themselves will not result in the Board being in default under this Section, so long as the Board uses commercially reasonable efforts to restore the Alley to the same condition that existed prior to such damage.

- b. Notwithstanding the foregoing restoration obligation or anything to the contrary contained in this Agreement, except for (i) any damage caused to the Transformers, (ii) any damage caused to the Bridge (which shall be governed pursuant to Section 10(d) below), or (ii) any damage caused by the negligence, misconduct, or breach of this Agreement by the Board (or its Agents), the Board's restoration obligations under this Section with respect to the Alley (but not any other adjacent land owned by Owner or its affiliates, which shall not be limited pursuant to this sentence) shall be limited to the restoration of the below-grade portion of the Easement and of the surface of the Easement (excluding, however, any pavers or paving which exist on the surface, so long as the Board provides Owner with advance written notice of any activities that could damage such pavers and sufficient time to remove such pavers as required under Section 5 above) to the condition which existed prior to such damage, and the Board shall have no restoration obligations with respect to any vertical improvements on the Alley (e.g., above-grade planters, trees, or other above-grade improvements). The Board shall backfill and compact all below-grade areas pursuant to and in accordance with the Board's standards, as validated by a third party reasonably selected by Owner, whose costs shall be paid by the Board.
- c. Any such restoration shall commence within twenty-one (21) days after the occurrence of the damage, or as soon as commercially practicable after the occurrence of such damage. In the event that the Board fails to restore the Alley or any improvements thereon (including, without limitation, the Bridge and Transformers, any other land abutting the Alley owned by Owner or its affiliates, or any improvements located thereon) as required herein, Owner may perform all necessary and reasonable repair and restoration work at the expense of the Board upon notice to the Board. In addition, if the Board has not commenced such restoration within twenty-one (21) days after the occurrence of the damage, then upon written notice to the Board, Owner may elect to perform such restoration work itself on the Board's behalf and at the expense of the Board without overhead expenses. In either such event, the Board shall reimburse Owner for its actual reasonable costs and expenses incurred in connection with such restoration work within thirty (30) days after Owner provides an invoice to the Board together with backup documentation.

- d. Notwithstanding anything to the contrary contained in this Agreement, if the Board or its Agents damage the Bridge, the Board shall only be obligated to pay for fifty percent (50%) of the costs and expenses of restoring the portion of the Bridge that is located beneath sixteen (16) feet from the surface of the Alley, unless such damage was caused by (i) the Board's or its Agent's gross negligence, willful misconduct, or breach of this Agreement, or (ii) the Board's deviation from a work plan agreed to by the Board and Owner, in which events the Board shall remain obligated to pay for one hundred percent (100%) of such costs and expenses. The limitation in this Section 10(d) shall not apply to the costs and expenses of restoring damage to any portion of the Bridge that is located above sixteen (16) feet from the surface of the Alley, and the Board shall remain obligated for one hundred percent (100%) of the costs and expenses of restoring such portion of the Bridge. In the event of any damage to the Bridge by the Board or its Agents, the Owner may elect to perform the restoration work itself and charge the Board for its applicable share of all related costs and expenses.
11. Except in the case of an emergency (in which case no advance notice to Owner is required), or in the event that any actions by the Board or its Agents would be reasonably expected to damage any of the Permitted Improvements (in which case the Board shall provide Owner prior written notice as required under Section 5 above), the Board shall provide no less than twenty-four hours' advance notification to Owner before entering the Alley. The Board or its Agents, agrees to cooperate with Owner to conduct all work within the Alley in a manner that is reasonably coordinated and sequenced with Owner's schedule to improve the Alley and additional surrounding real property owned by Owner or its affiliates, in such a manner so as to minimize interference with the operation of the Alley and such surrounding real property, and so as to cause the least possible inconvenience and disturbance to Owner and its tenants. The Board shall not cause any construction lien to be recorded against the Alley. In the event such a lien is so recorded, the Board shall promptly cause the same to be discharged of record.
12. The Board acknowledges and agrees that the Easement is non-exclusive and other service and utility providers (collectively, the "**Other Providers**") currently, or in the future may, have infrastructure and/or equipment within the Alley (collectively, the "**Other Facilities**"). The Board agrees to reasonably cooperate and coordinate with the Other Providers with respect to the Other Facilities and to operate and maintain the Facilities in a manner such that the Facilities will not interfere with or damage any of the Other Facilities. The Board acknowledges that the

Other Providers currently do or will operate, maintain, repair, and replace Other Facilities within the Alley and will continue to have the right to maintain (and expand) the use of such Other Facilities, so long as none of the foregoing actions interfere with or damage the Facilities. Owner shall notify the Board if Owner becomes aware of any planned construction activities by any of the Other Providers within the Alley that would reasonably be expected to have a material adverse effect on the Facilities.

13. This Agreement shall inure to and be binding upon the heirs, successors or assigns of both parties.
14. This Agreement may be executed by Owner and the Board in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same document.
15. This Agreement may only be changed, canceled, modified or amended in whole or in part by written and recorded instruments executed by Owner and the Board.
16. This Agreement shall be governed by the laws of the State of Michigan. The parties agree that all actions and proceedings arising out of or relating directly or indirectly to this Agreement shall be litigated solely and exclusively in the state or federal courts located in the City of Detroit, Michigan, and that such courts are convenient forums. Each party hereby submits to the personal jurisdiction of such courts for purposes of any such actions or proceedings.
17. No third party shall be deemed a beneficiary of this Agreement. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Alley to the general public for any purpose whatsoever.
18. Notices permitted or required hereunder shall be in writing and shall be delivered or sent by certified mail or overnight delivery by a reputable national carrier to the addresses provided below, provided that any party may change such address by written notice to the other party in accordance with the provisions of this Section:

If to Owner: 1400 Webward Avenue LLC
 630 Woodward Avenue
 Detroit, Michigan 48226
 Attention: Chief Executive Officer

with copy to: 1400 Webward Avenue LLC
 630 Woodward Avenue
 Detroit, Michigan 48226

EASEMENT NO. _____

Attention: General Counsel

If to the Board: City of Detroit Board of Water Commissioners
735 Randolph Street
Detroit, Michigan 48226
Attention: General Counsel

[SIGNATURE PAGE FOLLOWS.]

**[SIGNATURE PAGE TO AGREEMENT AND GRANT OF EASEMENT FOR SEWERS AND WATER MAIN
BETWEEN 1400 WEBWARD AVENUE LLC AND THE CITY OF DETROIT, BY AND THROUGH ITS BOARD OF
WATER COMMISSIONERS]**

IN WITNESS WHEREOF, the parties hereto have set their names and affixed their seals as of the
day and year first above written.

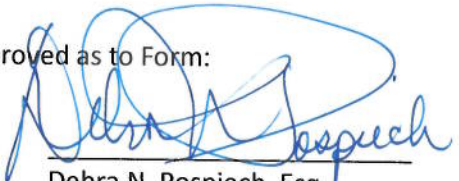
1400 WEBWARD AVENUE LLC
a Michigan limited liability company

By: _____
Name: James A. Ketai
Its: Authorized Signatory

**CITY OF DETROIT, by its
BOARD OF WATER COMMISSIONERS**

By:  _____
Gary Brown, Director

Approved as to Form:

By:  _____
Debra N. Pospiech, Esq.,
General Counsel

Prepared by:
Paul W. Mardirosian, Esq.
Honigman LLP
660 Woodward Avenue
2290 First National Building
Detroit, Michigan 48226-3506

When recorded, return to:
Board of Water Commissioners
735 Randolph
Detroit, Michigan 48226

Attention: Law Group & Property Management
Section

BOARD ACKNOWLEDGMENT

STATE OF MICHIGAN)

) SS.

COUNTY OF WAYNE)

The foregoing Easement Agreement acknowledged before me this 17th day of May 2019, by Gary Brown, the Director of the Board of Water Commissioners of the City of Detroit, on behalf of said City of Detroit.



Notary Public
Wayne County Michigan
My Commission Expires:

MATTHEW R KNOTT
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF WAYNE
My Commission Expires May 2, 2023
Acting in the County of _____

COMPANY ACKNOWLEDGMENT

STATE OF MICHIGAN)

) SS

COUNTY OF WAYNE)

The foregoing instrument was acknowledged before me this _____ day of _____ 2019, by James A. Ketai, the Authorized Representative of 1400 Webward Avenue LLC, a Michigan limited liability company, on behalf of the company.

Notary Public

_____ County
My Commission Expires:

EXHIBIT A

Legal Descriptions and Drawing of Alley

[Attached hereto.]