

MAINTENANCE AGREEMENT

This Agreement is made and entered into this ___ day of July 2010 by and between the City of Detroit, a body public, through its Department of Public Works, (referred to as the "CITY") and Corktown Community Parking Lot, L.L.C., a Michigan limited liability company (referred to as "CORKTOWN").

NOW THEREFORE, for valuable consideration, including the covenants and undertakings herein contained, it is mutually agreed as follows:

1. **Purpose of Agreement:** CORKTOWN owns certain property described as:

Land in the City of Detroit, County of Wayne and State of Michigan being Lots 15, 16, 19 and 22; Plat of part of the Peter Godfrey Farm of Private Claim 726, City of Detroit, Wayne County Michigan, Rec'd L. 1, P. 132 Plats, Wayne County Records; a/k/a 2262, 2274, 2288 14th Street, Ward 10, Items 004870, 004871 & 004872.001

which it intends to improve and maintain for parking. CITY owns a certain alley and right of way adjacent to CORKTOWN's property. CORKTOWN desires to improve the CITY owned property and agrees to maintain during the Term set forth in Paragraph 2 the following infrastructure improvements as detailed in the plan attached as Exhibit "A" and incorporated by reference herein:

- a. **Public Alley Maintenance.** Maintenance of the improvements identified on the attached as Exhibit "A", 14th Street Site and Utility Plan prepared by professional engineering firm of Engineering Services, Inc., dated 06-16-2010.
 - b. **Pedestrian Sidewalk.** Construction of a pedestrian sidewalk and designated improvements as identified on the attached Exhibit "A", 14th Street Site and Utility Plan prepared by professional engineering firm of Engineering Services, Inc., dated 06-16-2010.
2. **Term:** The Term of this Agreement shall commence upon CORKTOWN's completion of the community parking lot identified on the attached Exhibit "A", 14th Street Site and Utility Plan prepared by professional engineering firm of Engineering Services, Inc., dated 06-16-2010 and shall continue for a period of ten (10) years thereafter. Following the initial term, this Agreement shall be automatically extended on a year to year basis unless and until terminated by either party upon thirty (30) days prior written notice. The improvements set forth within

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Exhibit "A" are scheduled to commence upon execution of this Maintenance Agreement and are to be completed no later than November 1, 2010.

3. **Scope and Definition of Duty to Maintain and Repair:** The CITY hereby contracts with CORKTOWN for the maintenance and repair of the infrastructure improvements set forth in Paragraph 1 of this Agreement. The terms "maintenance and repair" shall include snow removal and the repair of ordinary wear and tear associated with asphalt paving and construction and the scope of work approved by the City of Detroit as set forth in Exhibit "A". It is exclusive, however, of damages incurred as a result of work done within the public right of ways identified in this Agreement either by the CITY or any public utility or other governmental entity, holding recorded easement or other such encumbrance. Any such damages incurred or caused by a municipal, other governmental or publicly regulated utility shall be repaired at such third party's expense. CORKTOWN shall perform its obligations under this Agreement in accordance with all applicable municipal ordinances, regulations and laws of the State of Michigan.
4. **Financial Responsibility:** It is understood that all physical improvements and repairs set forth herein shall be at the sole cost and expense of CORKTOWN except as set forth to the contrary in paragraph 3.
5. **Indemnification and Hold Harmless:** CORKTOWN hereby agrees to indemnify, defend and hold the CITY harmless only from all loss, costs, expense, actions, claims, causes of action, damages and liability (including attorneys' fees and costs) for injury to or death of any person or persons and for the damage to or destruction of property arising from the sole negligence or misconduct of CORKTOWN in the performance of its obligations as set forth under this Agreement.
6. **Insurance:** CORKTOWN covenants and agrees at its sole cost and expense to maintain for the mutual benefit of it and the CITY comprehensive general liability insurance on an occurrence form against claims for bodily injuries (including, but not limited to, death) or property damage (including, but not limited to, destruction) occurring upon, in or about the public right of ways described herein, at combined single limits of not less than One Million (\$1,000,000.00) Dollars per occurrence; One Million (\$1,000,000.00) Dollars aggregate, subject to the exclusion set forth in paragraph 3. Such insurance coverage shall name the City of Detroit as an additional insured and shall provide that the same may not be canceled or materially modified without prior written notice by certified mail to the CITY to the attention of the City of Detroit, Finance Department, Coleman A. Young Municipal Center, Detroit, MI 48226, Attn: Risk Management Division. Said coverage may be affected by a certificate of insurance issued upon so-called "blanket" coverage, or by either a certificate or the original of an insurance policy affecting such coverage. The insurance shall be primary and any such insurance maintained by the CITY shall be secondary and non-contributory and excess over the CITY's comprehensive general liability insurance. CORKTOWN shall be responsible for payment of all deductibles relating to insurance maintained by CORKTOWN provided however that CITY waives and releases CORKTOWN from any claims for such deductible amount to the extent the CITY has liability insurance coverage unless this waiver and release causes an increase in the CITY's insurance premiums, in which event the CITY shall give CORKTOWN written notice of such additional insurance premiums and CORKTOWN's liability for such deductible shall be waived and released upon the reimbursement to the CITY of such additional premiums. The provision requiring CORKTOWN to carry such

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insurance shall not be construed as waiving or restricting the liability of CORKTOWN under this Agreement.

7. **Right to Assign:** CORKTOWN may assign its rights and obligations under this Agreement to an entity under CORKTOWN's control, such as a wholly owned affiliate or subsidiary, without CITY's prior consent. CORKTOWN shall immediately notify the CITY in writing of such an assignment and such assignment shall not relieve CORKTOWN of its obligations hereunder in the event its assignee fails to comply with the terms and conditions of this Agreement. CORKTOWN may also assign its rights and obligations under this Agreement to an unrelated third party upon CITY's prior consent, not to be unreasonably withheld. Upon such authorized assignment to an unrelated third party, CORKTOWN's obligations under this Agreement will cease.
8. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
9. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties. Any prior agreements, negotiations or representations not expressly set forth in this Agreement are of no force and effect. Any amendment to or modification of this Agreement shall be of no force and effect unless it is in writing and signed by an authorized signatory for each of the parties.
10. **Successors and Assigns:** This Agreement shall be binding upon the successors and assigns. This Agreement is for the exclusive benefit of the parties stated herein and shall not be deemed to give any legal or equitable right, remedy or claim whatsoever to any other person.
11. **Binding Arbitration:** All disputes under the terms of this Agreement will be resolved through binding Arbitration under the rules and procedures of the American Arbitration Association. The parties agree such Arbitration shall be conducted by an Arbitrator mutually agreed upon by the parties. Any such arbitration will be conducted in or near Detroit, Michigan.
12. **Historic Designation:** This Agreement is in accordance with the Historic Designation of that portion of the public alley bounded by Michigan Avenue & 14th Street which falls within the Corktown Historic District.
13. **Improvement Changes:** Any changes outside the scope of this Agreement by CORKTOWN to the public right of ways described herein shall be subject to the prior approval of the CITY.

REMAINDER OF PAGE INTENTIONALLY BLANK

Witness the execution hereof [under seal] as of the date first written above.

CITY OF DETROIT, A BODY PUBLIC, THROUGH ITS DEPARTMENT OF PUBLIC WORKS

By: _____

Richard Doherty
Head Engineer
City Engineering Division DPW

APPROVED AS TO
FORM & EXECUTION

Assistant Corporation Counsel

STATE OF MICHIGAN)
)ss
COUNTY OF WAYNE)

The foregoing instrument was acknowledged before me this ___ day of July 2010, by **Richard Doherty** the above-named Head Engineer, City Engineering Division of the City of Detroit, Department of Public Works, a Body Public, and acknowledged the foregoing to be the free act and deed of said entity, before me.

Notary Public
Wayne County, Michigan
Acting in Wayne County, Michigan
My commission expires: _____

CORKTOWN COMMUNITY PARKING LOT, L.L.C., a Michigan limited liability company.

By: 

Phillip Cooley

Its: Authorized Member

STATE OF MICHIGAN)
)ss
COUNTY OF WAYNE)

The foregoing instrument was acknowledged before me this 12th day of July 2010, by Phillip G. Cooley, the Authorized Member of Corktown Community Parking Lot, L.L.C., a Michigan limited liability company, on behalf of the company.



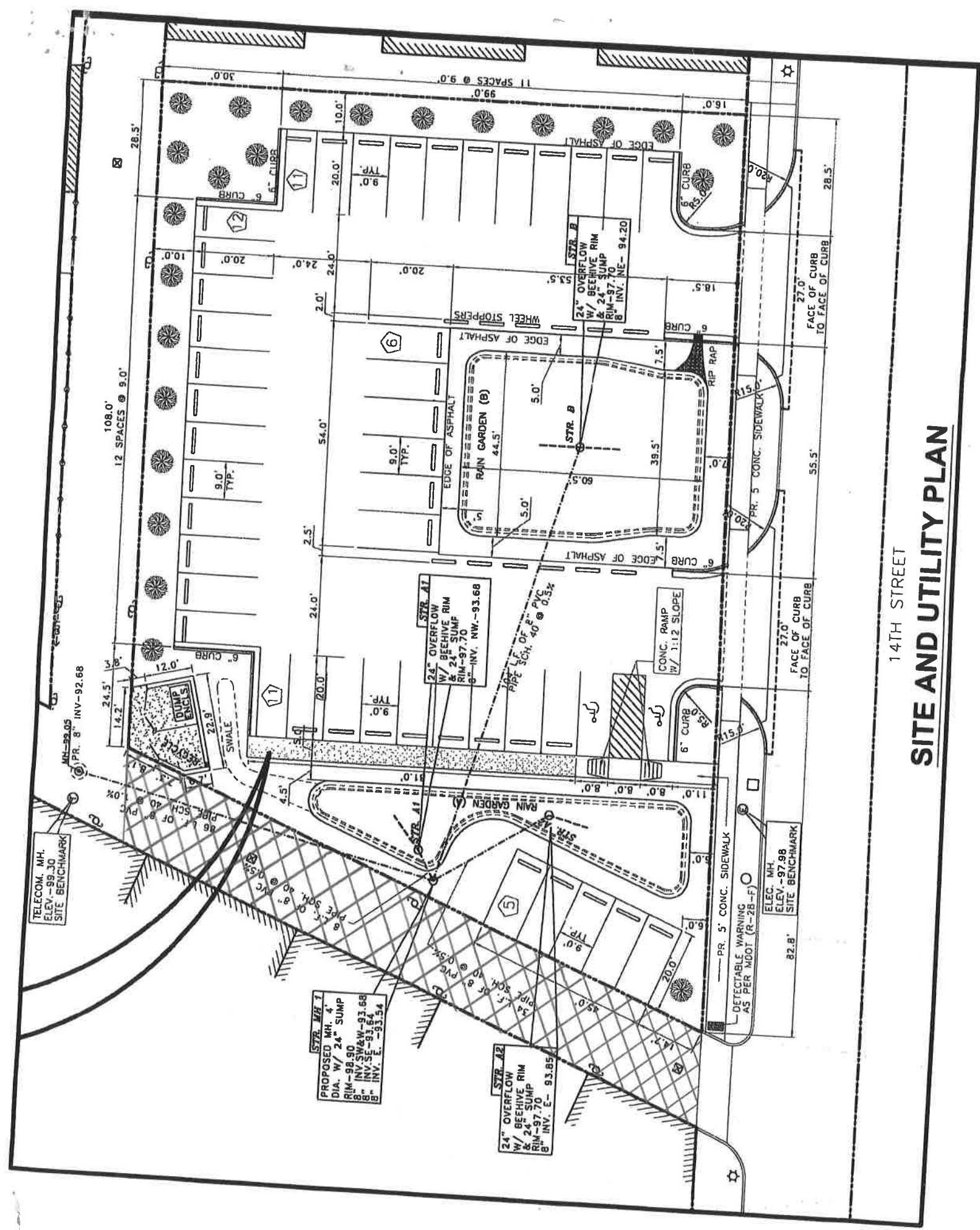
Christopher A. Hajek, Notary Public
Oakland County, Michigan
Acting in Wayne County, Michigan
My commission expires: 1/13/2015

Drafted by:

Christopher A. Hajek, Esq.
The Hajek Firm, PLLC
2003 Brooklyn St., #404
Detroit, Michigan 48226
(248) 613-9563

When recorded return to:

City of Detroit, Department of Public Works
City Engineering Division
65 Cadillac Tower, Suite 1000
Detroit, MI 48226



TELECOM. MH.
ELEV. -99.30
SITE BENCHMARK

MN-99.05
PR. 8" INV. -92.68

STR. MH. 1
PROPOSED MH. 4"
DIA. W/ 24" SUMP
RIM -98.90
8" INV. SWAW -91.68
8" INV. SE -91.67
8" INV. E. -93.54

STR. A1
24" OVERFLOW
W/ BEEHIVE RIM
& 24" SUMP
RIM -97.70
8" INV. NW. -93.68

STR. A2
24" OVERFLOW
W/ BEEHIVE RIM
& 24" SUMP
RIM -97.70
8" INV. E. -93.85

STR. B1
24" OVERFLOW
W/ BEEHIVE RIM
& 24" SUMP
RIM -97.70
8" INV. NE -94.20

ELEC. MH.
ELEV. -97.98
SITE BENCHMARK

SITE AND UTILITY PLAN

14TH STREET