

MAINTENANCE AGREEMENT

This agreement (this "Agreement") is made and entered into this ____ day of February 20¹⁸, by and between the City of Detroit, a Michigan municipal corporation, acting by and through its Department of Public Works (the "City"), and WYOMING-ELLSWORTH LLC & WY FENK LLC, as tenants in common, a Michigan limited liability company ("Owner") whose address is 8632 Telegraph Rd. #359 Bloomfield Hills, MI 48301.

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

- 1. Purpose of Agreement:** Owner holds title to a certain building described in Exhibit A attached hereto (the "Building"). City owns certain property adjacent to the Building. Inasmuch as persons entering or exiting from the Building may use the City-owned property, and/or to the extent that certain services benefiting the Building (for example, water and sewer) are located in the City-owned property, Owner has agreed to improve and maintain a portion of City-owned property in the location (the "Maintenance Area") and manner detailed in the plan attached as Exhibit B for the Term, as defined herein.
- 2. Financial Responsibility:** It is understood that during the Term, all physical improvements and repairs to the Maintenance Area, as set forth herein, shall be at the sole cost and expense of Owner, subject to any express limitations set forth in this Agreement.
- 3. Indemnification and Hold Harmless:** Owner hereby agrees to indemnify, defend and hold the City harmless from all loss, costs, expense, actions, claims 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 caused by Owner's actions or omissions in the course of or resulting from the maintenance activities contemplated by this Agreement.
- 4. Insurance:** Owner covenants and agrees, at its sole cost and expense, to maintain or cause to be maintained 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) at any time occurring in the course of or resulting from work carried out by Owner upon, in or about the Maintenance Area, at combined single limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. Such insurance coverage shall name the City of Detroit as an additional insured and shall provide that the same may not be cancelled or materially modified without prior written notice by certified mail to the City to the attention of City of Detroit, Finance Department, Coleman A. Young Municipal Center, Detroit, MI 48226; Attention: Risk Management Division. Said coverage may

be evidenced by a certificate of insurance issued upon so-called "blanket" coverage, or by either a certificate or the original of an insurance policy effecting such coverage. The insurance shall be primary and any such insurance or self-insurance maintained by the City shall be secondary and non-contributory and excess. Owner shall be responsible for payment of all deductibles relating to such insurance. The provisions requiring Owner to carry or cause to be carried such insurance shall not be constructed as waiving or restricting the liability of Owner under this Agreement.

5. **Term:** The term of this Agreement (the "Term") shall commence on the date of this Agreement and continue for five (5) years thereafter unless terminated or extended pursuant to the following:
 - a. The City may terminate this Agreement prior to the end of the Term in the event the City has designed and has committed to implement a uniform scheme for the improvement of an area of City-owned property that encompasses the Maintenance Area and other adjacent City-owned property. The aforesaid may include widening of streets or sidewalks and relocation of water or sewer facilities.
 - b. Owner may terminate this Agreement prior to the end of the Term if it sells or ground leases the Building or grants a mortgage lien or security interest in the Building or portion thereof.
 - c. In the event a party elects to terminate this Agreement pursuant to Sections 5(a) or 5(b) above, such party shall deliver to the other party written notice of such election at least thirty (30) days prior to the date on which termination shall be effective.
 - d. Following the five-year expiration (but not the early termination) of this Agreement, this Agreement shall automatically continue on month to month basis subject to final termination by either party upon delivery of at least thirty (30) days' written notice to the other party.
6. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
7. **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 or effect. Any amendment to or modification of this Agreement shall be of no force or effect unless it is in writing and signed by an authorized signatory for each of the parties.
8. **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. Notwithstanding the aforesaid, Owner shall have the right, without requiring the City's consent to assign this Agreement to any purchaser of the Building or any affiliate of Owner; provided that if Owner assigns this Agreement to any unaffiliated third party purchaser of the Building, Owner shall notify the City in

writing no later than thirty (30) days after such assignment, and the City may, by written notice to Owner within forty-five (45) days after receiving such notice from Owner (subject to reasonable extension due to City Council recess), terminate this Agreement. Unless terminated as provided above, this Agreement shall be binding upon the parties' successors and assigns.

9. Improvement Changes: Any changes to the Maintenance Area, except as contemplated by this Agreement, are subject to the prior approval of the City. Owner shall not install or construct in the Maintenance Area any structure, fixture, furniture, or equipment (including but not limited to signs, lighting, fixtures, shades, canopies, or awnings) as may obstruct or in any way encroach upon the Maintenance Area except as set forth in Exhibit B or otherwise properly permitted by the City.

10. Rights of City: The parties understand that this Agreement in no way limits the property rights of the City with regard to the Maintenance Area.

11. Certain Maintenance Obligations of Owner: During the Term, Owner shall be responsible for the improvement and maintenance activities set forth on Exhibit B.

IN WITNESS WHEREOF, the City and the Owner, by and through their authorized officers and representatives, have executed this Agreement as follows:

WYOMING-ELLSWORTH LLC & WY FENK LLC, as tenants in common,
a Michigan limited liability company

BY: 

(Signature)

PRINT NAME: Jacob Bacall

ITS: Manager

(Duly Authorized Representative)

CITY OF DETROIT, through its Department of Public Works - City Engineering Division

BY: 

(Signature)

PRINT NAME: Richard Doherty

ITS: City Engineer

Exhibit A

BUILDING DESCRIPTION

Land Situated in the City of Detroit, County of Wayne, State of Michigan:

Parcel I:

Lots 8, 9,10, 11, 12, 13 and 14, Ley's Subdivision, according to the recorded plat thereof, as recorded in Liber 15, Page 71 of Plats, Wayne County Records.

Parcel II:

Lots 95 and 96, Ley's Subdivision, according to the recorded plat thereof, as recorded in Liber 15, Page 71 of Plats, Wayne County Records.

Parcel Numbers: 16037449-53, 16006715-6

Exhibit B

Maintenance Area and Plan for Improvements; Any Related Maintenance Responsibilities.

Maintenance Area:

All of the public alley, 16.0 feet wide, lying easterly of and abutting the East line of Lots 8, 9, 10, 11, 12, 13 and 14 "Leys Subdivision" according to the recorded plat thereof, as recorded in Liber 15, Page 71 of Plats, Wayne County Records; also lying westerly of and abutting the West line of Lots 94 and 95, "Leys Subdivision" according to the recorded plat thereof, as recorded in Liber 15, Page 71 of Plats, Wayne County Records

Maintenance Responsibilities:

Notwithstanding anything in this Agreement to the contrary, Owner's maintenance obligations in connection with this Agreement are as follows:

Owner, at Owner's sole cost and expense, agrees to repave the Maintenance Area prior to the opening of the Family Dollar store at the property described on Exhibit A attached hereto. Further, during the Term of this Agreement, Owner, at Owner's sole cost and expense, agrees to keep the Maintenance Area free and clear of obstructions, keep the Maintenance Area free from trash, and provide snow removal from the Maintenance Area. Any further maintenance in connection with the Maintenance Area during the Term of this Agreement will be conducted as necessary in Owner's sole discretion and at Owner's cost and expense.