

23 MAR-27 11:59



**DECLARATION OF CONTINUING PUBLIC USE  
EASEMENT AGREEMENT**

This Declaration of Continuing Public Use Easement Agreement (“Declaration”) is declared this 14<sup>th</sup> day of March, 2023 by 19 ASSOCIATES LLC, a Michigan limited liability company, with an address of 333 W. Fort Street, Suite 1350, Detroit, Michigan 48226 (“Declarant”).

**RECITALS**

- A. Declarant owns certain real property located in the City of Detroit, Michigan as more particularly described in the attached Exhibit “A” (“Conference Center Expansion Parcel”).
- B. Declarant also owns certain real property located in the City of Detroit, Michigan as more particularly described in the attached Exhibit “B” (“Second Avenue Parcel”). The Conference Center Expansion Parcel and the Second Avenue Parcel may sometimes collectively be referred to herein as the “Property”.
- C. Simultaneously with the execution of this Declaration, Declarant is conveying both the Conference Center Expansion Parcel and the Second Avenue Parcel to the City of Detroit pursuant to the terms of that certain Development Agreement between Declarant, the City of Detroit, acting by and through its Planning & Development Department (the “City”) and the Detroit Regional Convention Facility Authority (the “Developer”) dated March 27, 2023 and recorded in Liber 5837 Page 816 Wayne County Records (the “Development Agreement”). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Development Agreement.
- D. Under the terms of the Development Agreement the City and the Developer have agreed to permit Declarant to encumber that portion of the Property (either the Conference Center Expansion Parcel or the Second Avenue Parcel or both, in whole or in part) with easements necessary to construct and install (i) a glass sky bridge (“Sky Bridge”) and related improvements, (ii) connections from any development on any real property retained by Declarant (the “Retained Property”), more particularly

described in Exhibit "C" hereto, after the conveyances of the Conference Center Expansion Parcel and the Second Avenue Parcel to the City, including without limitation, public access and public utilities, and (iii) improvements for any other legal use determined by Declarant, in its sole discretion, from time to time and at any time. Under the terms of the Development Agreement, the Developer shall construct the Second Avenue Extension on the Second Avenue Parcel resulting in a private road which shall, at all times, be subject to the use by the public pursuant to the terms of this Declaration and the Development Agreement.

- E. The easements declared hereunder by Declarant and to be declared in the future pursuant to this Declaration confirm (i) that the public and Declarant are the benefited parties hereunder and (ii) that the Retained Property is the benefited property hereunder.
- F. In addition to the public use easement over the Second Avenue Extension, Declarant desires to establish certain access, construction and use easements, over, under and across the Property or any portion thereof, as hereinafter described, for access, construction and use for the sole benefit of Declarant and the Retained Property.

NOW THEREFORE, in consideration of the foregoing Declarant declares as follows:

- 1. Recitals. The foregoing recitals are fully incorporated herein.
- 2. Grant of Easements.

(A) Declarant declares for the benefit of the public for the purposes hereinafter described, upon the completion of the Second Avenue Extension, an easement for public pedestrian and vehicular traffic over the Second Avenue Extension. The Second Avenue Extension, which is a private roadway, shall be maintained by Developer in a first-class condition, open 24 hours, seven days a week, to be kept open at all times for such public pedestrian and vehicular traffic, all as set forth in the Development Agreement (such easement is hereinafter referred to as the "Public Second Avenue Easement"). Such public access shall not be suspended for any reason without prior written notice to, and prior written approval by Declarant and the City. The land subject to the Public Second Avenue Easement shall be the entirety of the Second Avenue Parcel.

(B) Declarant declares for its benefit and its successors and assigns, as current owner of Conference Center Expansion Parcel and Second Avenue Parcel ("Declarant Parties"), an access, use and construction easement (the "Declarant Easement") over, under and across the Property for any and all legal purposes, including, but not limited to, the installation and maintenance of the Sky Bridge, improvements on the

Retained Property (utilizing, among other things, air rights for cranes and tables), connections from any development on the Retained Property to the Second Avenue Extension, utility lines, parking areas, driveways, curb cuts, sidewalks, landscaping, lighting, signage and ingress and egress to, for or from any improvements on the Conference Center Expansion Parcel and/or Second Avenue Parcel (including direct vehicular access and egress from the Second Avenue Extension to the Retained Property across pedestrian walkways and bicycle pathways). The land subject to the Declarant Easement shall be the entirety of the Conference Center Expansion Parcel and the Second Avenue Parcel ("Declarant's Easement Area"). Maintenance (and the cost thereof), for the Second Avenue Extension built by Developer and any facilities installed and retained thereon by Declarant shall be governed by the terms of the Development Agreement.

3. **No Lien.** Any construction activities by Declarant on the Declarant's Easement Area shall be conducted in accordance with good construction industry practices. Declarant shall not permit any lien to stand against the Declarant's Easement Area, or any improvements within the Declarant's Easement Area for any labor or materials used in connection with work of any character performed or claimed to have been performed by or at the direction of Declarant on the Declarant's Easement Area. In the event of any such lien attaching to the Declarant's Easement Area, or any improvements in the Declarant's Easement Area, Declarant shall either pay or cause to be paid the same and have said liens promptly discharged of record, or shall take such action as may be required to reasonably and legally object to such lien, or to have the lien removed from the property, and in all events shall have such lien discharged prior to the foreclosure of such lien.
  
4. **Default and Remedies.** If any party defaults in performance of an obligation under this Declaration, the other parties shall not have the right to exercise any remedies hereunder if the default is cured within five (5) business days of receiving written notice of such default specifying in detail the default and the requested remedy (the "**Notice of Default**") from another party or the other parties; provided, that if the nature of the default requires, in the exercise of commercially reasonable diligence, more than five (5) business days to cure, then the notifying party shall not have the right to exercise any remedies hereunder so long as the defaulting party commences performance of the cure within five (5) business days of receipt of Notice of Default and thereafter completes such cure with commercially reasonable diligence. In the event that a party's default remains uncured beyond the applicable cure periods, the non-defaulting party(ies) shall have and shall be entitled to exercise any remedy available at law or equity, including, without limitation, a suit for specific performance of any obligations set forth in this Declaration or any appropriate injunctive or other equitable relief, or for damages directly resulting from such

default. If any party, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Declarant's Easement Area or significant interference with the use of the Declarant's Easement Area, a non-defaulting party may act immediately, without providing prior notice to the defaulting party and without waiting for the five (5) business day cure period to expire only if providing such notice and/or waiting for such cure period to expire is practically unreasonable under the then circumstances. The non-defaulting party shall provide notice to the defaulting party as soon as practicable. The parties agree that the remedies at law for any violation of the terms of this Declaration rising to the level described in the preceding sentence are inadequate and that the non-defaulting parties shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which the non-defaulting parties may be entitled, including specific performance. Notwithstanding the foregoing or anything to the contrary herein, no party shall be liable to the other parties for consequential, incidental, exemplary or punitive damages, or for loss of revenues, profits or the like and subject to the Declarant's rights of reverter as set forth in the Development Agreement and as set forth in certain quit claim deeds conveying the Conference Center Expansion Parcel and Second Avenue Parcel to the City, on or about even date herewith, no party shall have a right to terminate this Declaration.

5. **No Waiver.** Any delay or omission by any party to exercise its rights or remedy under this Declaration shall not be deemed or construed to be a waiver of any right or remedy available to such party under this Declaration or a waiver or consent to any subsequent right or remedy available under this Declaration.
6. **Notices.** All notices or other communications required or permitted by this Declaration shall be in writing and shall be deemed given when personally delivered to Declarant, City or Developer, or in lieu of such personal delivery services, may be sent by a reputable national overnight courier service, postage prepaid, and shall be deemed given upon delivery or when delivery is refused and shall be addressed as follows:

**DECLARANT:** 19 ASSOCIATES LLC  
333 W. Fort Street, Suite 1350  
Detroit, Michigan 48226  
Attn: Elie Torgow  
Email: [elijet@detroit.com](mailto:elijet@detroit.com)

**With a copy to:** Barris, Sott, Denn, & Driker, PLLC  
333 W. Fort Street, Suite 100  
Detroit, Michigan 48226  
Attn: James S. Fontichiaro, Esq.  
Email: [jfontichiaro@bsdd.com](mailto:jfontichiaro@bsdd.com)

And Law Offices of Eli Halpern PLLC  
333 W. Fort Street, Suite 1350  
Detroit, Michigan 48226  
Attn: Eli Halpern, Esq.  
Email: [eli@halpernpllc.com](mailto:eli@halpernpllc.com)

CITY: Planning & Development Department  
2 Woodward Avenue, Suite 808  
Detroit, Michigan 48226  
Attn: Director

With a copy to: City of Detroit Law Department  
2 Woodward Avenue, Suite 810  
Detroit, Michigan 48226  
Attn: Corporation Counsel

DEVELOPER: Detroit Regional Convention Facility Authority  
One Washington Avenue  
Detroit, Michigan 48226  
Attn: Patrick Bero, C.E.O and C.F.O  
Email: [PBero@DRCFA.org](mailto:PBero@DRCFA.org)

With a copy to: Garan Lucow Miller P.C.  
1155 Brewery Park, Suite 200  
Detroit, Michigan 48207  
Attn: Ebony L. Duff, Esq.  
Email: [eduff@garanlucow.com](mailto:eduff@garanlucow.com)

A party may change the address or person to whom notices to it are required to be given by providing proper notice to the other parties in the manner provided in this Section.

7. Reservation of Rights. Declarant reserves the right to create or grant easements and make declarations thereof in the future for any legal purpose whatsoever over, under and across either the Conference Center Expansion Parcel or the Second Avenue Parcel. City and Developer acknowledge and agree with this reservation of rights in favor of Developer.


8. **Effective Date.** This Declaration shall be effective as of the recording date of this Declaration with the Wayne County Register of Deeds.
9. **Successors and Assigns/Easement to Run with the Land.** The covenants, terms, conditions and restrictions of this Declaration shall inure to the benefit of and be binding upon the parties hereto and all parties having or acquiring any right, title or interest in any portion of the Declarant's Easement Area, including any lessee, any transferee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them, and shall continue as a servitude running in perpetuity with the Declarant's Easement Area.
10. **Governing Law/Enforceability.** This Declaration shall be construed and enforced in accordance with the laws of the State of Michigan.
11. **No Gift/Private Easement.** Except as specifically described and declared, herein, nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Conference Center Expansion Parcel or the Second Avenue Parcel to any utility provider, the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto that this Declaration is for the exclusive benefit of Declarant and Declarant Parties, and that nothing in this Declaration, express or implied, shall confer upon any person, other than such parties hereto, any rights or remedies under or by reason of this Declaration.
12. **Partial Invalidity.** Should any provision of this Declaration be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding and enforceable to the fullest extent permitted by law.
13. **Counterparts.** This Declaration, and any amendment hereto, may be executed in any number of counterparts and by each party on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument.
14. **Exemptions.** This Declaration is exempt from Real Estate Transfer Tax pursuant to MCL 207.505(a) and from State Real Estate Transfer Tax pursuant to MCL 207.526(a).

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The parties have executed this Declaration of Continuing Public Use Easement Agreement as of the last date set forth below:

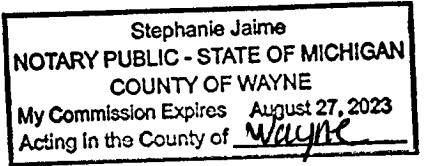
**DECLARANT:**

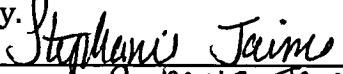
**19 ASSOCIATES LLC,**  
a Michigan limited liability company

By:   
Printed Name: Ben Wayntraub  
Its: Authorized Representative

STATE OF Michigan )  
  )ss  
COUNTY OF Wayne )

The foregoing instrument was acknowledged before me on March 23, 2023 by Ben Wayntraub, the Authorized Representative of 19 Associates LLC, a Michigan limited liability company, on behalf of the company.



  
Printed name: Stephanie Jaime  
Notary Public, Wayne County, State of MI  
My commission expires: August 27, 2023  
Acting in the County of Wayne

**INSTRUMENT DRAFTED BY AND  
WHEN RECORDED RETURN TO:**

Laura C. Ragold, Esq.  
Barris, Sott, Denn, & Driker, PLLC  
333 W. Fort Street, Suite 1200  
Detroit, Michigan 48226313-965-9725

EXHIBIT "A"  
"CONFERENCE CENTER EXPANSION PARCEL"

CONFERENCE CENTER EXPANSION PARCEL DESCRIPTION

(PART OF TAX ID: 04000004-19)

LAND IN THE CITY OF DETROIT, WAYNE COUNTY, MICHIGAN, BEING ALL OF LOTS 12 THROUGH 14, BOTH INCLUSIVE, AND ALL OF LOTS 17 THROUGH 20, BOTH INCLUSIVE, AND PART OF LOTS 10, 11, 15, 16, 21 AND 22 OF BLOCK D; ALSO PART OF LOTS 3 AND 4 OF BLOCK C OF ALL OF THE MAP OF THE FRONT OF THE CASS FARM AS SUBDIVIDED INTO LOTS FOR THE PROPRIETORS, ACCORDING TO THE PLAT THEREOF AS RECORDED ON NOVEMBER 19, 1836, IN LIBER 9 OF CITY RECORDS, PAGE 409; INCLUDING ALL OF THE VACATED STREETS AND ALLEYS ADJACENT TO THE ABOVE DESCRIBED LOTS WITHIN THE BOUNDS OF THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT HARBOR REFERENCE MONUMENT NO. 39, SAID MONUMENT BEING 2.20 FEET WEST OF THE CENTERLINE OF THIRD STREET (60' WIDE) EXTENDED; THENCE NORTH 22°55'55" WEST, 165.52 FEET ALONG A LINE PARALLEL TO AND 2.20 FEET WEST OF THE CENTERLINE OF THIRD STREET TO A POINT ON THE NORTH LINE OF CIVIC CENTER DRIVE (DEDICATED AS CIVIC CENTER DRIVE) EXTENDED; THENCE SOUTH 84°15'14" EAST, 36.70 FEET TO A POINT AT THE INTERSECTION OF THE EAST LINE OF THIRD STREET AND THE NORTH LINE OF CIVIC CENTER DRIVE; THENCE NORTH 22°55'55" WEST, 334.26 FEET ALONG SAID EAST LINE OF THIRD STREET; THENCE ALONG A NON-TANGENT CURVE TO THE RIGHT 329.17 FEET, SAID CURVE HAVING A RADIUS OF 756.00 FEET, A CENTRAL ANGLE OF 24 DEGREES 56 MINUTES 50 SECONDS, AND LONG CHORD BEARING NORTH 66 DEGREES 15 MINUTES 59 SECONDS EAST, 326.58 FEET; THENCE NORTH 75°01'45" EAST, 28.44 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING NORTH 75°01'45" EAST, 12.06 FEET; THENCE NORTH 81°06'07" EAST, 99.72 FEET; THENCE SOUTH 31°06'22" EAST, 338.27 FEET; THENCE SOUTH 63°43'17" WEST, 18.10 FEET; THENCE SOUTH 30°25'42" EAST, 155.04 FEET; THENCE SOUTH 67°44'55" WEST, 94.51 FEET; THENCE NORTH 30°04'24" WEST, 518.36 FEET TO THE POINT OF BEGINNING AND CONTAINING 1.199 ACRES.



EXHIBIT "B"  
"SECOND AVENUE PARCEL"

SECOND AVENUE PARCEL DESCRIPTION

(PART OF TAX ID: 04000004-19)

LAND IN THE CITY OF DETROIT, WAYNE COUNTY, MICHIGAN, BEING PART OF LOTS 15 AND 16 OF BLOCK D; ALSO PART OF LOT 1 OF BLOCK E; ALSO PART OF LOT 4 OF BLOCK C; ALSO PART OF LOT 30 OF BLOCK 4 OF THE MAP OF THE FRONT OF THE CASS FARM AS SUBDIVIDED INTO LOTS FOR THE PROPRIETORS, ACCORDING TO THE PLAT THEREOF AS RECORDED ON NOVEMBER 19, 1836, IN LIBER 9 OF CITY RECORDS, PAGE 409; INCLUDING ALL OF THE VACATED STREETS AND ALLEYS ADJACENT TO THE ABOVE DESCRIBED LOTS WITHIN THE BOUNDS OF THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT HARBOR REFERENCE MONUMENT NO. 39, SAID MONUMENT BEING 2.20 FEET WEST OF THE CENTERLINE OF THIRD STREET (60' WIDE) EXTENDED; THENCE NORTH 22°55'55" WEST, 165.52 FEET ALONG A LINE PARALLEL TO AND 2.20 FEET WEST OF THE CENTERLINE OF THIRD STREET TO A POINT ON THE NORTH LINE OF CIVIC CENTER DRIVE (DEDICATED AS CIVIC CENTER DRIVE) EXTENDED; THENCE SOUTH 84°15'14" EAST, 36.70 FEET TO A POINT AT THE INTERSECTION OF THE EAST LINE OF THIRD STREET AND THE NORTH LINE OF CIVIC CENTER DRIVE; THENCE NORTH 22°55'55" WEST, 334.26 FEET ALONG SAID EAST LINE OF THIRD STREET; THENCE ALONG A NON-TANGENT CURVE TO THE RIGHT 289.85 FEET, SAID CURVE HAVING A RADIUS OF 756.00 FEET, A CENTRAL ANGLE OF 21°58'01", AND A CHORD BEARING NORTH 64°46'34" EAST, 288.07 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID CURVE TO THE RIGHT 39.33 FEET, SAID CURVE HAVING A RADIUS OF 756.00 FEET, A CENTRAL ANGLE OF 02°58'50", AND A CHORD BEARING NORTH 77°14'59" EAST, 39.32 FEET; THENCE NORTH 75°01'45" EAST, 28.44 FEET; THENCE SOUTH 30°04'24" EAST, 518.36 FEET; THENCE SOUTH 67°44'55" WEST, 57.62 FEET; THENCE ALONG A TANGENT CURVE TO THE RIGHT 2.94 FEET, SAID CURVE HAVING A RADIUS OF 142.18 FEET, A CENTRAL ANGLE OF 01°11'10", AND A CHORD BEARING SOUTH 68°20'30" WEST, 2.94 FEET; THENCE NORTH 30°04'24" WEST, 499.20 FEET; THENCE SOUTH 59°55'36" WEST, 5.00 FEET; THENCE NORTH 30°04'24" WEST, 30.00 FEET TO THE POINT OF BEGINNING AND CONTAINING 0.723 ACRES.

EXHIBIT "C"

DEVELOPER'S "RETAINED PROPERTY"

LAND IN THE CITY OF DETROIT, WAYNE COUNTY, MICHIGAN, BEING ALL OF LOTS 2 THROUGH 30, AND PART OF LOT 1 OF BLOCK E; ALSO PART OF LOTS 1 THROUGH 4 OF BLOCK F; ALSO PART OF LOTS 22 THROUGH 30, OF BLOCK 4 OF THE MAP OF THE FRONT OF THE CASS FARM AS SUBDIVIDED INTO LOTS FOR THE PROPRIETORS, ACCORDING TO THE PLAT THEREOF AS RECORDED ON NOVEMBER 19, 1836, IN LIBER 9 OF CITY RECORDS, PAGE 409; INCLUDING ALL OF THE VACATED STREETS AND ALLEYS ADJACENT TO THE ABOVE DESCRIBED LOTS WITHIN THE BOUNDS OF THE FOLLOWING DESCRIBED PARCEL:

COMMENCING AT HARBOR REFERENCE MONUMENT NO. 39, SAID MONUMENT BEING 2.20 FEET WEST OF THE CENTERLINE OF THIRD STREET (60' WIDE) EXTENDED; THENCE NORTH 22°55'55" WEST, 165.52 FEET ALONG A LINE PARALLEL TO AND 2.20 FEET WEST OF THE CENTERLINE OF THIRD STREET TO A POINT ON THE NORTH LINE OF STEVE YZERMAN DRIVE (DEDICATED AS CIVIC CENTER DRIVE) EXTENDED; THENCE SOUTH 84°15'14" EAST, 36.70 FEET TO A POINT AT THE INTERSECTION OF THE EAST LINE OF THIRD STREET AND THE NORTH LINE OF STEVE YZERMAN DRIVE, ALSO BEING THE POINT OF BEGINNING; THENCE NORTH 22°55'55" WEST, 334.26 FEET ALONG SAID EAST LINE OF THIRD STREET; THENCE ALONG A NON-TANGENT CURVE TO THE RIGHT 289.85 FEET, SAID CURVE HAVING A RADIUS OF 756.00 FEET, A CENTRAL ANGLE OF 21°58'01", AND A CHORD BEARING NORTH 64°46'34" EAST, 288.07 FEET; THENCE SOUTH 30°04'24" EAST, 30.00 FEET; THENCE NORTH 59°55'36" EAST, 5.00 FEET; THENCE SOUTH 30°04'24" EAST, 499.20 FEET; THENCE ALONG A NON-TANGENT CURVE TO THE RIGHT 66.64 FEET, SAID CURVE HAVING A RADIUS OF 142.40 FEET, A CENTRAL ANGLE OF 26°48'46", AND A CHORD BEARING SOUTH 82°20'25" WEST, 66.03 FEET; THENCE NORTH 84°15'14" WEST, 336.13 FEET TO THE POINT OF BEGINNING AND CONTAINING 3.269 ACRES.