

**5-R-19**

**A RESOLUTION**

**Authorizing the City Manager to Negotiate and Execute a Temporary Construction Easement Agreement with Kap-Sum Properties, L.L.C. for the Main Street Corridor Improvement Project**

**NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:**

**SECTION 1:** The City of Evanston will upgrade the existing signalized intersection at Main Street and McDaniel Avenue; construct a new signalized intersection at the east entrance to the Main Street Marketplace; make sidewalk and driveway improvements for pedestrian and ADA access, and other right-of-way improvements between the west City Limits and Hartrey Avenue ("Right-of-Way Improvements").

**SECTION 2:** The Right-of-Way Improvements require the reconstruction of the three access driveways and adjacent sidewalks to the Main Street Marketplace Resubdivision. In order to construct the Right-of-Way Improvements, the City seeks a temporary construction easement from private property owners to ensure that the contractor has adequate area and access available for equipment, vehicles and material for the purposes of facilitating the construction.

**SECTION 3:** The City Manager is hereby authorized to execute the attached Temporary Construction Easement Agreements with Kap-Sum Properties, L.L.C. for the City to receive a temporary construction easement to construct the referenced Right-of-Way Improvements. The Temporary Easement Agreement is attached as Exhibit 1 and incorporated herein by reference.

**SECTION 4:** The City Manager is hereby authorized and directed to negotiate any additional conditions of the Easement Agreement as he may determine to be in the best interests of the City and in a form acceptable to the Corporation Counsel.

**SECTION 5:** Resolution 5-R-19 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.

Attest:

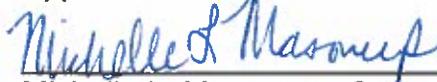


\_\_\_\_\_  
Devon Reid, City Clerk

Adopted: January 14, 2019

  
\_\_\_\_\_  
Stephen H. Hagerty, Mayor

Approved to form:



\_\_\_\_\_  
Michelle L. Masoncup, Corporation Counsel

**EXHIBIT 1**

**TEMPORARY EASEMENT AGREEMENT**

## TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

**THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT** (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and among Kap-Sum Properties, L.L.C., an Illinois limited liability company ("Grantor"), and the City of Evanston, an Illinois municipal corporation ("Grantee"); the Grantor and Grantee shall be referred to herein collectively as the "Parties":

### WITNESSETH:

1. The Grantor, in consideration of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, does hereby give, grant and convey unto the Grantee a non-exclusive:

(a) a temporary construction easement ("**Temporary Construction Easement**") over those portions of the property of the Grantor, situated in the City of Evanston, County of Cook, Illinois, and more particularly described as Lot 2 in Main Street Commons Resubdivision, recorded November 21, 2005 as Document 0532539031 in Cook County Illinois (the "**Grantor Tract**"), identified as "Temporary Easement #1", "Temporary Easement #2", and "Temporary Easement #3" on Exhibit A attached hereto (collectively, the "**Construction Easement Area**") and made a part hereof, and

(b) the right to access and use a staging area, which will consist of 10 parking spaces (approximately 100 feet by 20 feet) as depicted on Exhibit B attached hereto (the "**Staging Area**"), for temporary storage of equipment, materials, and supplies necessary for Grantee's contractor to perform the Right-of-Way Improvements.

2. During the Term (defined below) of the Temporary Construction Easement, Grantee, its agents, permittees, licensees, and assigns (collectively, the "**Grantee Parties**"), will have the non-exclusive right to go on the Easement Area with necessary labor, equipment, vehicles and material for the purposes of facilitating the construction of a signalized intersection, sidewalk improvements and other right-of-way improvements at the corners of Main Street and the two western entrances to the Main Street Commons Resubdivision ("**Right-of-Way Improvements**").

3. The Temporary Construction Easement may be used by the Grantee Parties solely to enter in, upon, under and across that portion of the Easement Area for the construction of the Right-of-Way Improvements. Except for the cost outlined in Paragraph 5 below, all costs and expenses arising out of or in any way related to the construction of the Right-of-Way Improvements and the Grantee Parties' use of or access to the Easement Area or the Staging Area shall be the sole responsibility of Grantee.

4. The Temporary Construction Easement and the right of any Grantee Parties to use the Staging Area shall terminate on the earlier of (i) the date Grantee completes construction of the Right-of-Way Improvements or (ii) November 1, 2019 (the "**Term**"). Grantee will use all commercially reasonable commercial efforts to commence construction of the Right-of-Way Improvements by May 15, 2019.

5. This shall include the right and obligations of Grantee to grade, fill, and place topsoil to restore, to Grantor's reasonable satisfaction, the Easement Area and the Staging Area to its condition that existed prior to the Grantee's entry.

TO HAVE AND TO HOLD the above granted Temporary Construction Easement unto the Grantee Parties during the Term of this Agreement.

And the Parties hereby covenant as follows:

1. That the Grantor is lawfully seized of the Easement Area upon which said Temporary Construction Easement is granted, and has title to the Easement Area, and the Grantor therefore has good and lawful right to convey the Temporary Construction Easement referenced herein.

2. Grantor, without limiting the interest above granted and conveyed, acknowledges that upon payment of the agreed consideration, Grantee waives and releases all claims for diminution in value to the Grantor Tract caused by the opening, improving and using the Right-of-Way Improvements. This acknowledgment does not waive any claim of Grantor for (a) trespass, negligence, or other wrongful conduct against the Grantee, the Grantee Parties, or any other third-party which may cause damage to the Grantor's Tract, or (b) breach by Grantee of any other the terms of this Agreement. Grantee covenants and agrees that it shall indemnify, hold harmless and defend Grantor from and against any losses, costs, claims and actions for damages to property or injury to persons arising out of the existence, installation, maintenance, repair or removal of any improvements to the Grantor Tract made by, or on behalf of, any Grantee Parties under the authority of this Agreement, or any other activities undertaken by or on behalf of any Grantee Parties under the authority of this Agreement.

3. That the Grantor does hereby expressly permit entry by the Grantee for any purpose hereof upon the Easement Area without furnishing notice of said entry to Grantor.

4. The Temporary Construction Easement and right to use the Staging Area is granted to the Grantee only for the purpose stated herein and for no other purpose, and the Grantee shall not be entitled to use the Easement Area or Staging Area for any other purpose. The Temporary Construction Easement and Staging Area shall be used by Grantee Parties in such a manner so as not to unreasonably interfere with, obstruct or delay the use, access, conduct and operations of the business of Grantor or any other party at any time conducted on Grantor Tract, including, without limitation, public access to and from said the Grantor Tract; provided, however, the Grantee Parties shall ensure the safety and security of the Easement Area and Staging Area and maintain proper safeguards to protect Grantor, its agents, invitees, licensees, permittees, and member of the public from hazards posed by, arising out of, or related to the Right-of-Way Improvements or any Grantee Parties' use of the Easement Area or the Staging Area. Grantor shall have the right to construct or allow to be constructed any building, structure or other improvements on the Easement Area, and to plant or allow to be planted any trees, shrubs, bushes, undergrowth or other vegetation on the Easement Area, and to make any other use whatsoever of the Easement Area, provided that such activities do not materially impair the easement right granted to Grantee herein.

5. Any construction undertaken by or on behalf of Grantee shall be diligently prosecuted to completion in a good and workmanlike manner, in compliance with all applicable laws, codes, rules and regulations, and so as to minimize any interference with the business of Grantor or any occupants of the Grantor Tract. All lands, landscaping and/or other improvements from time to time disturbed within the Easement Area or Staging Area by any Grantee Parties shall, at the expense of Grantee, be restored at Grantee's sole cost and expense to a condition which is equal to or better than the condition which existed prior to such disturbance. Restoration shall include replacing topsoil, reestablishing grass vegetation, and repairing or replacing pavement in the Easement Area and the Staging Area, as applicable. Grantee shall indemnify and hold harmless Grantor from all damages, losses, liens or claims attributable to the performance of work on or on the Easement Area or use of the Staging Area by the Grantee Parties. Nothing set forth herein shall permit any Grantee Parties (or their

respective agents, contractors, invitees, customers, or employees) to use the Easement Area, Staging Area, or any other property of Grantor for construction staging (of materials, equipment or otherwise) or for any other purpose not expressly provided herein.

6. In consideration of Grantee constructing a sidewalk on Grantor's private property for the benefit of Grantor and to Grantor's reasonable satisfaction, Grantor will pay for the cost associated with the construction of such sidewalk. Grantor will issue payment in the amount of twenty-five thousand dollars (\$25,000) to Grantee within 30 days of completion of construction of the Right-of-Way Improvements and such sidewalk, which will not be later than January 31, 2020.

7. The rights and easements created and established in this Agreement do not, are not intended to, and/or shall not be construed to create any easements, rights or privileges in and for the benefit of the general public. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

[REMAINDER OF PAGE BLANK. SIGNATURE PAGES FOLLOW.]



GRANTEE:

**CITY OF EVANSTON**

An Illinois municipal corporation

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ILLINOIS )

COUNTY OF COOK )

SS.

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, who is personally known to me to be the \_\_\_\_\_ of the City of Evanston, Illinois, a municipal corporation, and the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered the said instrument as such City Manager and as her free and voluntary act and as the act and deed of the City of Evanston, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Notary Public  
(Type or Print Name)

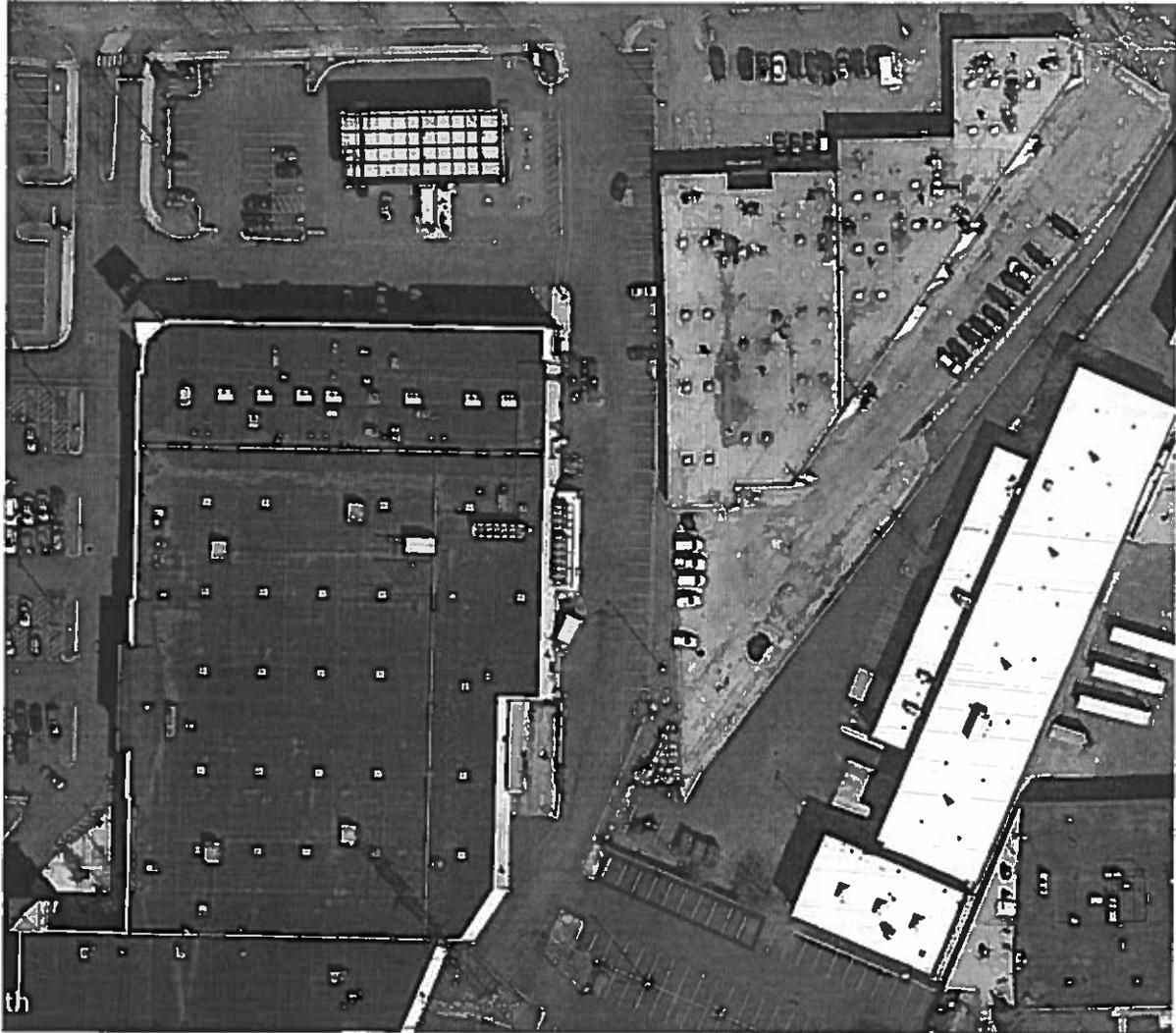
My Commission Expires:

**EXHIBIT A**  
**SEE ATTACHED PAGE FOR TEMPORARY EASEMENTS**

**EXHIBIT B**

**SEE ATTACHED PAGE FOR CONSTRUCTION STAGING AREA**

## Exhibit B – Staging Area



Construction Staging Area