

**AGREEMENT AS TO
CONDITIONAL APPROVAL FOR ENCROACHMENT
INTO PUBLIC EASEMENTS**

This Conditional Approval is given this _____ day of _____, 20____, by the City of Bloomington, a Minnesota municipal corporation, 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 (the "City").

RECITALS

LMC Bloomington Holdings, LLC a Delaware limited liability company (the "Applicant") is the owner of certain property located in Hennepin County, Minnesota, at 3350 East 80½ Street, Bloomington, Minnesota 55431, and legally described as follows:

Lot 1, Block 1, BLOOMINGTON CENTRAL STATION 4TH ADDITION,
(the "Premises").

The City holds certain public easements over and across the Premises, to-wit:

Drainage and utility easements as dedicated in the record plat of
BLOOMINGTON CENTRAL STATION 4TH ADDITION,

Sidewalk and bikeway easement as described in Document No.
A10147075, filed of record in the Office of the County Recorder,
Hennepin County, Minnesota.

(the "Public Easements").

The Applicant would like to construct concrete pedestrian walkways, steps, patios, retaining wall and would also like to install lighting bollards, ornamental metal fencing, railings, and other various patio appurtenances within an area of the Public Easements (hereinafter, the "Encroachment") as shown by the drawing attached hereto as Exhibit A, and described as follows:

That part of the easterly 10.00 feet of Lot 1, Block 1, BLOOMINGTON CENTRAL STATION 4TH ADDITION, according to the record plat thereof, Hennepin County, Minnesota, lying westerly of and adjoining a line described as commencing at the southeast corner of said Lot 1; thence along the easterly line of said Lot 1, on an assumed bearing of North 0 degrees 04 minutes 33 seconds East distant 7.40 feet to the point of beginning of the line to be described; thence continuing North 0 degrees 04 minutes 33 seconds East, along said easterly line of Lot 1, a distance of 142.01 feet to a point of curvature on said easterly line of Lot 1; thence northerly a distance of 7.99 feet along said curve, along said easterly line of Lot 1 and said line there terminating.

Together with that part of the easterly 10.00 feet of said Lot 1 lying westerly of and adjoining a line described as commencing at the terminus of the last described line; thence northerly, along said easterly line of Lot 1, a distance of 110.17 feet to a point of compound curvature on said easterly line of Lot 1; thence northerly and northwesterly 40.45 feet along said compound curve, along said easterly line and the northeasterly line of said Lot 1, to the point of beginning of the line to be described; thence northwesterly 37.25 feet along said curve, along said northeasterly line of Lot 1, and said line there terminating.

Together with that part of the easterly 10.00 feet of said Lot 1 described as commencing at the terminus of the last described line; thence northwesterly 30.78 feet along said compound curve, along said northeasterly line of Lot 1, to the point of beginning of the line to be described; thence northwesterly 11.91 feet along said curve, along said northeasterly line of Lot 1, to a northerly corner of said Lot 1; thence South 89 degrees 31 minutes 35 seconds West, not tangent to said curve, along a northerly line of said Lot 1 and its westerly extension, distant 29.79 feet; thence South 0 degrees 29 minutes 12 seconds East 10.00 feet to a line 10.00 feet southerly and parallel with said northerly line of Lot 1 and its westerly extension; thence easterly and parallel with said northerly and northeasterly lines of Lot 1, a

distance of 41.67 feet to a line which bears South 0 degrees 01 minute 56 seconds West from the point of beginning; thence North 0 degrees 01 minute 56 seconds East 10.11 feet to the point of beginning.

Bloomington City Code Section 19.08 provides that such an encroachment into a public easement is not permitted without the written approval of the City.

The City is willing to approve the Encroachment under the terms and conditions expressed herein.

NOW, THEREFORE, the City does hereby grant its approval for the above-described Encroachment, with the following terms and conditions:

(1) This approval of the Encroachment into the Public Easements is not intended, nor shall it be in any way construed, to be a vacation or abandonment of the Public Easements or of the City's rights and interests thereunder. It is understood that the City continues to fully reserve and maintain all of its rights and interests under the Public Easements on behalf of itself and other public or private utilities authorized to use the Public Easements (hereinafter, the "Other Utilities") and that the City and the Other Utilities may exercise their rights thereunder at any time.

(2) To the extent that the approved Encroachment at any time becomes inconsistent or incompatible with the utilization of the Public Easements by the City or the Other Utilities, the City may revoke this Conditional Approval. In such cases, the Encroachment shall be removed, to the extent necessary, by the Applicant; if not removed by the Applicant, the City or the Other Utilities may do so.

(3) When a removal of the Encroachment is required upon revocation of this Conditional Approval or in order for the City to access and/or use the Public Easements, or to perform maintenance to public sidewalk, bikeway, drainage, and utility facilities, the City will provide at least twenty-one days notice of the need for removal to the Applicant, at the address of the Applicant or, if

unknown, at the address of the Premises; provided, however, in the case where access is required on an emergency or other basis requiring accelerated action, the notice may be less than twenty-one days.

(4) By acceptance of this Conditional Approval and the construction and installation of the Encroachment allowed herein, the Applicant, and its successors and assigns, understands and assumes the risk that current and future use of the Public Easements by the City or Other Utilities may occur and that damage may result to the Encroachment by reason of such use, and the Applicant agrees, (a) to hold harmless the City and the Other Utilities for any claims involving the removal of the Encroachment or damage thereto necessitated by the removal, and (b) that the Applicant will be responsible in such cases for any repair or replacement of the Encroachment (assuming the Conditional Approval has not been revoked).

(5) This Conditional Approval shall run with the land and the rights and duties hereunder shall be binding upon and inure to the benefit of the parties hereto and its successors and assigns. When the term "Applicant" is used in this document, it shall mean the Applicant herein or its successor in interest to the Premises unless the context indicates otherwise.

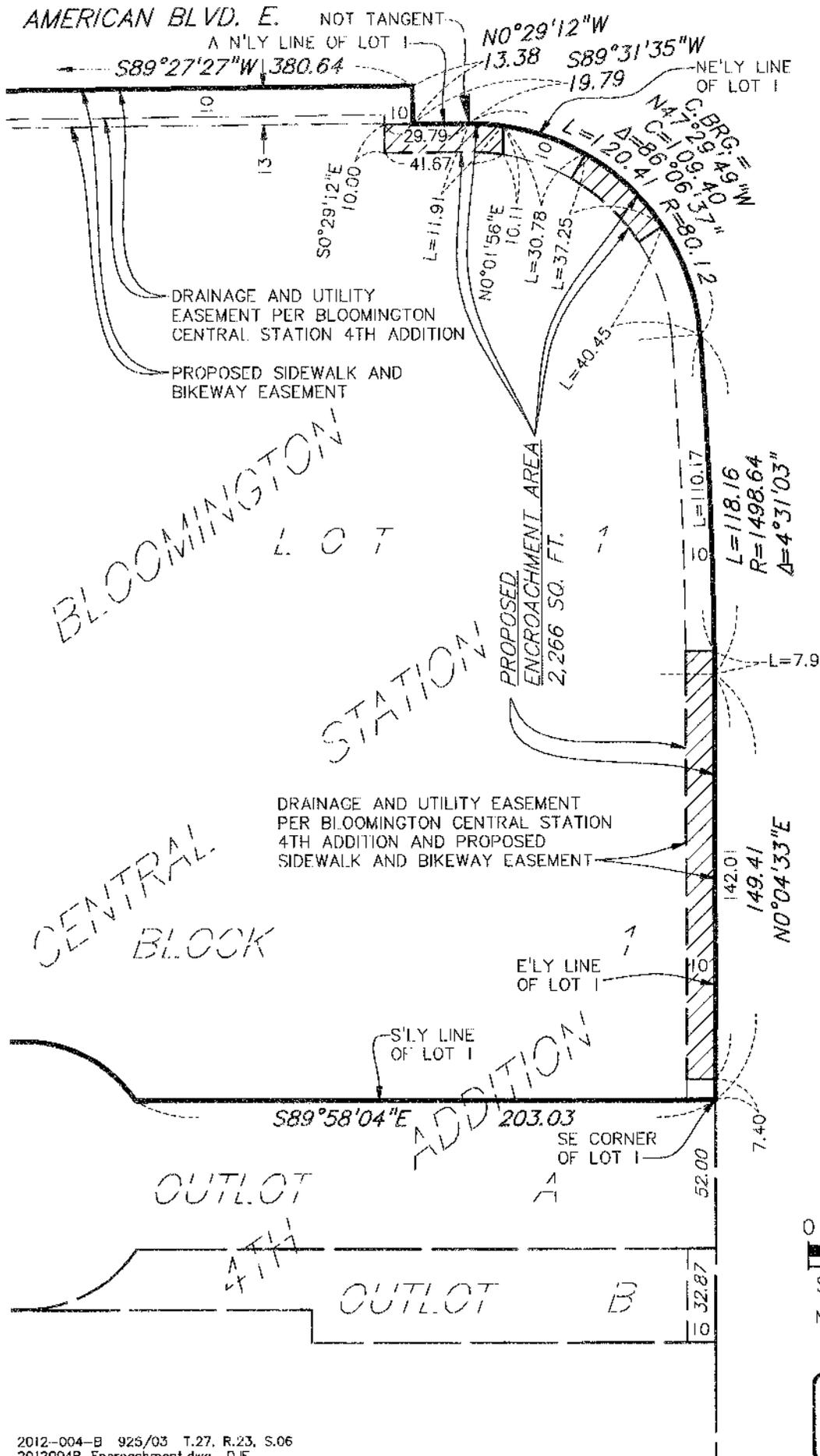
(6) The Encroachment shall be constructed, installed, and maintained in such a manner that any public improvements and improvements of the Other Utilities within the Public Easements are not damaged thereby. If any damage to the public improvements or improvements of the Other Utilities occurs by reason of the construction, installation, or maintenance of the Encroachment, the Applicant shall be responsible for the cost of repairs.

(7) If any damage to the Encroachment is caused by the City by reason of construction or maintenance of public sidewalks, the Applicant shall be responsible for the cost of repairs.

(8) If any damage to public sidewalks occurs by reason of construction, installation, or maintenance of the Encroachment, the Applicant shall be responsible for the cost of repairs.

EXHIBIT A

Encroachment Sketch



34TH AVENUE SOUTH



November 17, 2014

