

ACCESS MODIFICATION AGREEMENT

THIS AGREEMENT (this “Agreement”) is made and entered into as of this 21 day of October , 2022, by and between United Properties Investment, LLC, a Minnesota limited liability company (“United Properties”) and the City of Shakopee, a body politic and corporate under the laws of the State of Minnesota (“City”). United Properties and the City may collectively at times be referred to as (“Parties”) or individually as (“Party”).

Recitals

- A. United Properties owns properties (collectively, the “Property”) described as Lot 2, Block 1, Canterbury Park 3rd Addition, and Lot 1, Block 1, Valley Park 12th Addition, Scott County (the “County”), Minnesota, which Property is located at 4241 12th Avenue East in the City of Shakopee. 12th Avenue East abuts the Property on the south and the Property currently has two full access points to and from an existing undivided local roadway known as 12th Avenue East. The west access point is primarily used for ingress and egress to the employee parking lot; the east access point is used for truck access to and from the Property. Attached to this Agreement as Figure 1 is a circa 2020 GIS aerial photograph depicting the current access points to the Property; and
- B. In 2022, the City is partnering with Scott County, who is planning and designing a project to reconstruct County Highway 83 (“CH 83”) along with a portion of 12th Avenue East as a divided four lane roadway with opposing traffic lanes separated by a median that abuts the Property under a County highway project known as Project CP 83-24 (“Project”); and
- C. The City and United Properties have been in discussions regarding the changes in access caused by the Project, in favor of United Properties’ preference for modification by closing the current westerly access and shifting it further east in order to benefit the Property with full access at this driveway and full access at the easterly access (“Driveway Reconstruction”); and
- E. The City is willing to accommodate the access changes contemplated by this Agreement to improve access management for the welfare and safety of the travelling public on 12th Avenue East and improving access for the Property. This accommodation will not hinder or limit in any manner at any time the road authority’s management of a roadway known as 12th Avenue East, including but not limited to, the regulation of access. Attached to this Agreement as Figure 2 is a copy of that part of the proposed new layout for 12th Avenue East depicting the changes to the access points to and from the Property after the Project is completed; and

- F. United Properties and the City desire to memorialize the understanding between them regarding private property access to and from the Property as a result of the Project, and the work to be performed for the Driveway Reconstruction by the City as provided herein.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. The Recitals set out above are hereby incorporated in this Agreement.
2. The Parties agree to the access management changes depicted on Figure 2 for the benefit both the Project and the Property. The City shall cause final design and engineering plans and specifications for the Driveway Reconstruction to be prepared and incorporated into the Project's plans and specifications (herein, the "Plans") at the City's sole cost and expense. The Plans, to the extent they are on or affect the Driveway Reconstruction and the Property, shall be subject to the review and approval of United Properties within ten (10) business days of receipt, which United Properties shall not unreasonably withhold. United Properties understands that the driveway access management changes will result in the loss of parking on a portion of the Property that is currently used for such parking and that there may be other property rights adversely impacted by, associated with or resulting from the Driveway Reconstruction (collectively, "Property Damages"). In exchange for reconstruction of the access to and from the Property as described in this Agreement, United Properties agrees to waive compensation for the Property Damages. United Properties waives any right to such compensation and releases the City from any obligation to pay compensation for the Property Damages provided the Driveway Reconstruction is completed as proposed in this Agreement.
3. The City, at the City's sole cost and expense, shall provide all labor, materials, improvements and other work to be supplied and/or performed in accordance with the Driveway Reconstruction. The Driveway Reconstruction will be performed in accordance with the approved Plans. United Properties will incur no costs relating to the Driveway Reconstruction. The Parties agree that all costs and expenses for the Driveway Reconstruction will be borne by the City.
4. United Properties will provide, at no cost to the City (other than recording fees, to the extent applicable), the necessary temporary construction easement on the portion of the Property necessary to allow for relocation and reconstruction of the access points by the Driveway Reconstruction (the "Easement Area"). United Properties acknowledges that the temporary construction easement will be granted to the City in order that such Driveway Reconstruction may be incorporated into the Project. Said temporary construction easement shall be pursuant to a Right of Entry Permit in the form and content of Exhibit A: attached hereto (the "Easement"), which United

Properties shall execute and deliver contemporaneously with the execution and delivery of this Agreement.

5. The City agrees to:

- a. perform the Driveway Reconstruction and store materials within the Easement Area in a manner so as not to materially interfere with the business operations of United Properties, its tenants or other occupants at the Property;
- b. provide United Properties with advance written notice of construction activities whenever reasonably feasible, and conduct activities as to minimize interference with the business operations of any occupant of the Property;
- c. perform all Driveway Reconstruction in a good and workmanlike manner free from defects per the Plans. The City shall provide United Properties notice in writing upon the completion of the Driveway Reconstruction. United Properties shall have 90 days from the receipt of such notice to make any objections regarding the workmanship.
- d. at its sole cost and expense, repair damage caused to the Property in connection with the City's activities and restore the Easement Area to its condition prior to the undertaking of such activities, including but not limited to backfilling of any excavated land in proper manner so as to ensure that the backfilled soil is properly compacted and will not sink over time; provided, however, United Properties shall be responsible for any environmental contamination, if any, discovered in the Easement Area, except to the extent exacerbated by the City;
- e. not unreasonably interfere with vehicular ingress or egress to the Property, nor use the Easement Area to store materials, machinery or equipment in a manner that creates a safety hazard;
- f. maintain the Easement Area in good order and repair, at its sole cost and expense, during the term of the Easement;
- g. not cause or permit any mechanic's liens in connection with the Driveway Reconstruction;
- h. cause the Driveway Reconstruction to be completed with diligence in accordance with the Plans and this Agreement by not later than the termination date set forth in the Easement;
- i. accept the Easement Area in its current "AS-IS" condition without representation or warranty of any kind whatsoever, express or implied, made by United Properties, and, notwithstanding anything to the contrary in this Agreement, release, discharge and hold harmless United Properties from any claim, cause of action, demand, expense, or liability whether known or unknown,

foreseen or unforeseen, connected with the Easement Area, including without limitation, the condition of the soils, except as otherwise expressly set forth in this Agreement.

6. Indemnification. Notwithstanding anything to the contrary herein contained, the City shall defend, indemnify and hold harmless United Properties, its tenant occupants, and its members, officers, employees, agents, representatives, successors and assigns, from and against any and all liability, loss, claim, damage, demand, action, cause of action, suit, judgment, proceeding, cost or expense, including court costs and reasonable attorneys' fees, which at any time after execution of this Agreement may be alleged against United Properties and that relates to and/or arises out of the City's, or its employees', contractors', agents', invitees', licensees' or assigns' work, maintenance, repair, occupancy or use of the Easement Area. This indemnification shall be limited to the City's statutory maximum tort liability.
8. Compliance with Laws. In conducting its activities hereunder, City will, at its sole cost, expense and effort, comply with all laws, ordinances, permits, rules and regulations, enacted by any federal, state, or local governmental agency having jurisdiction or control over any activity occurring upon the Easement Area resulting from or applicable to this Agreement. City further agrees to obtain all required permits for its activities hereunder at its sole cost and expense and to comply with all such permits.
9. Personal Property. United Properties agrees to remove all of its personal property from the Easement Area during the Driveway Reconstruction. City understands and agrees that, except as otherwise provided below, any loss by theft or otherwise of City's personal property within the Easement Area shall be at the risk of the City. United Properties shall not be liable for any damage to any personal property in, on or upon the Easement Area sustained by the City, unless such damage or loss arises from any acts, omissions, negligence or willful misconduct of United Properties or its agents or employees.
10. Default by Agency. If the City defaults in the performance of any provision of this Agreement, United Properties may terminate this Agreement and pursue any remedies it may have at law or in equity.
11. Notices. All notices or communications between Parties shall be deemed sufficiently given or rendered if in writing and delivered to either party personally; or if mailed by United States registered or certified mail to the addresses set forth below, or such future addresses as may be subsequently supplied by the Parties hereto to each other, return receipt requested, postage prepaid; or if transmitted by facsimile copy followed by mailed notice; or if deposited cost paid with a nationally recognized, reputable overnight courier, properly addressed as follows:

United Properties Investments LLC
250 Nicollet Mall, Suite 500
Minneapolis, Minnesota 55401
Attn: Chris Wold

With a copy to: City of Shakopee
Attn: Ryan Halverson, Assistant City Engineer
485 Gorman Street
Shakopee, MN 55379

12. Entire Agreement; Amendments. This Agreement states the entire agreement between the Parties with respect to the subject matter hereof, and replaces any oral or written proposals, statements, discussions, negotiations, previous agreements or understandings, or other agreements before or contemporaneous to this Agreement. This Agreement may only be amended by a document in writing and signed by the Parties. The Parties acknowledge that they have not been induced to enter into this Agreement by any oral or written representations or statements not expressly contained in this Agreement.
13. Severability. If any provision of this Agreement or its application to any person or circumstance is held unenforceable, the remainder of this Agreement, or the application of the provision to other persons or circumstances, shall not be affected, provided that the essential purpose of this Agreement is not thereby adversely affected or prevented.
14. Assignment. This Agreement may not be assigned, delegated, or transferred by the City without the prior written consent of United Properties.
15. Headings. The headings of the sections in this Agreement are for convenience only and do not construe or limit the contents of such section.
16. Counterparts. The Parties agree that this Agreement may be executed in one or more separate counterparts, which, when taken together, shall be and comprise one agreement. A facsimile or electronic copy of any execution of a counterpart shall have the same force and effect as if it were an original signature.
17. Successors and Assigns. This Agreement shall inure to the benefit of the Parties hereto and is binding upon the executors, administrators, heirs, successors and assigns of the Parties hereto.

[Signature page follows.]

EXECUTED as of the first date written above.

Dated: October 21, 2022

United Properties Investment, LLC

By: 
Christian Wold (Oct 21, 2022 10:37 CDT)

Christian Wold {Printed Name}
Its: Vice President

By: 
Matt Van Slooten (Oct 21, 2022 09:06 CDT)

Matt VanSlooten {Printed Name}
Its: President and Chief Investment Officer

Dated: _____, 2022

City of Shakopee

By: _____

_____ {Printed Name}

Its: _____

This Document Drafted by:

City of Shakopee
Public Works Department
485 Gorman Street
Shakopee, MN 55379

Figure 1
(Existing Roadway and Access Conditions)

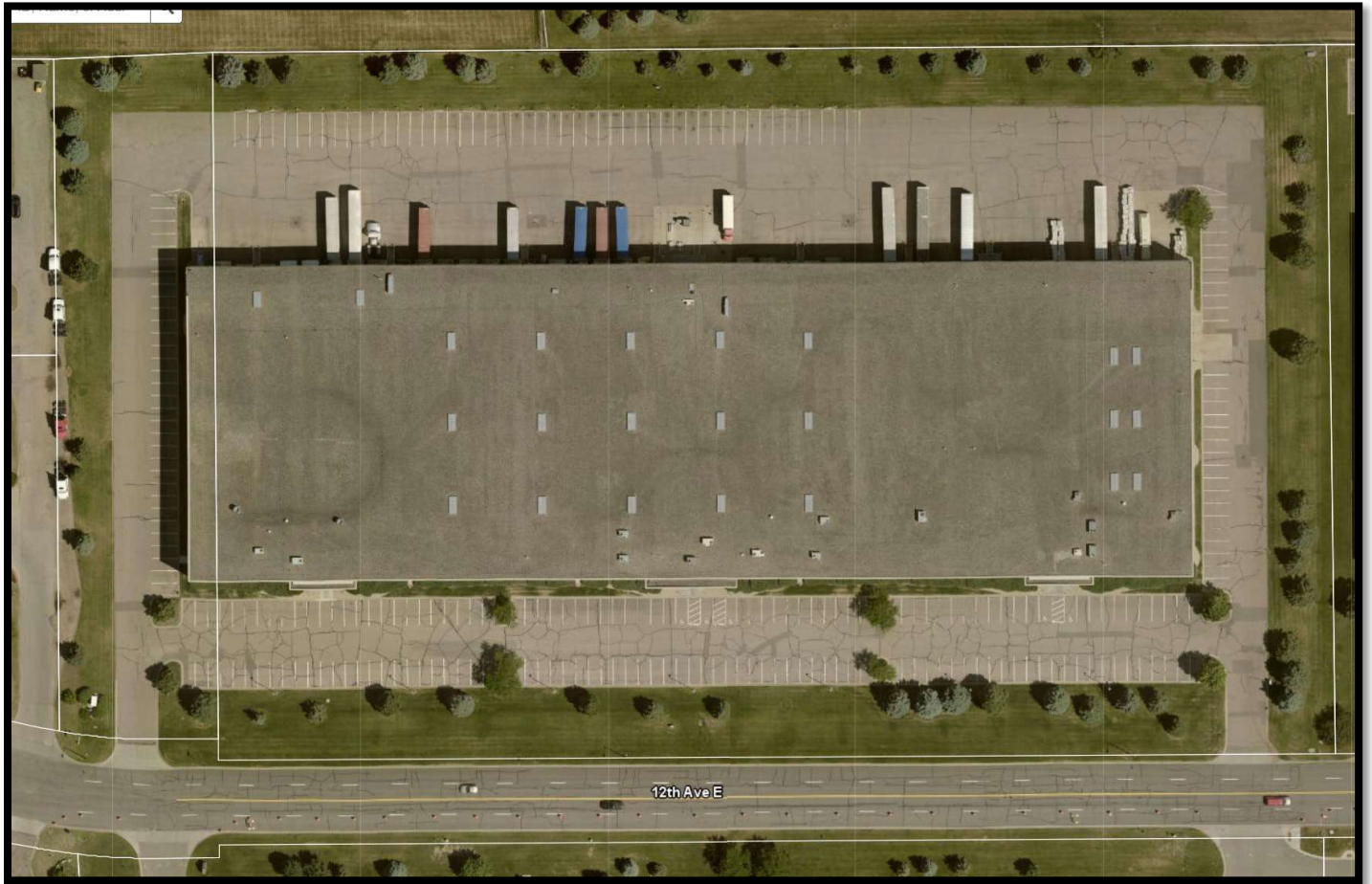


Figure 2
(Access Modification Improvements)

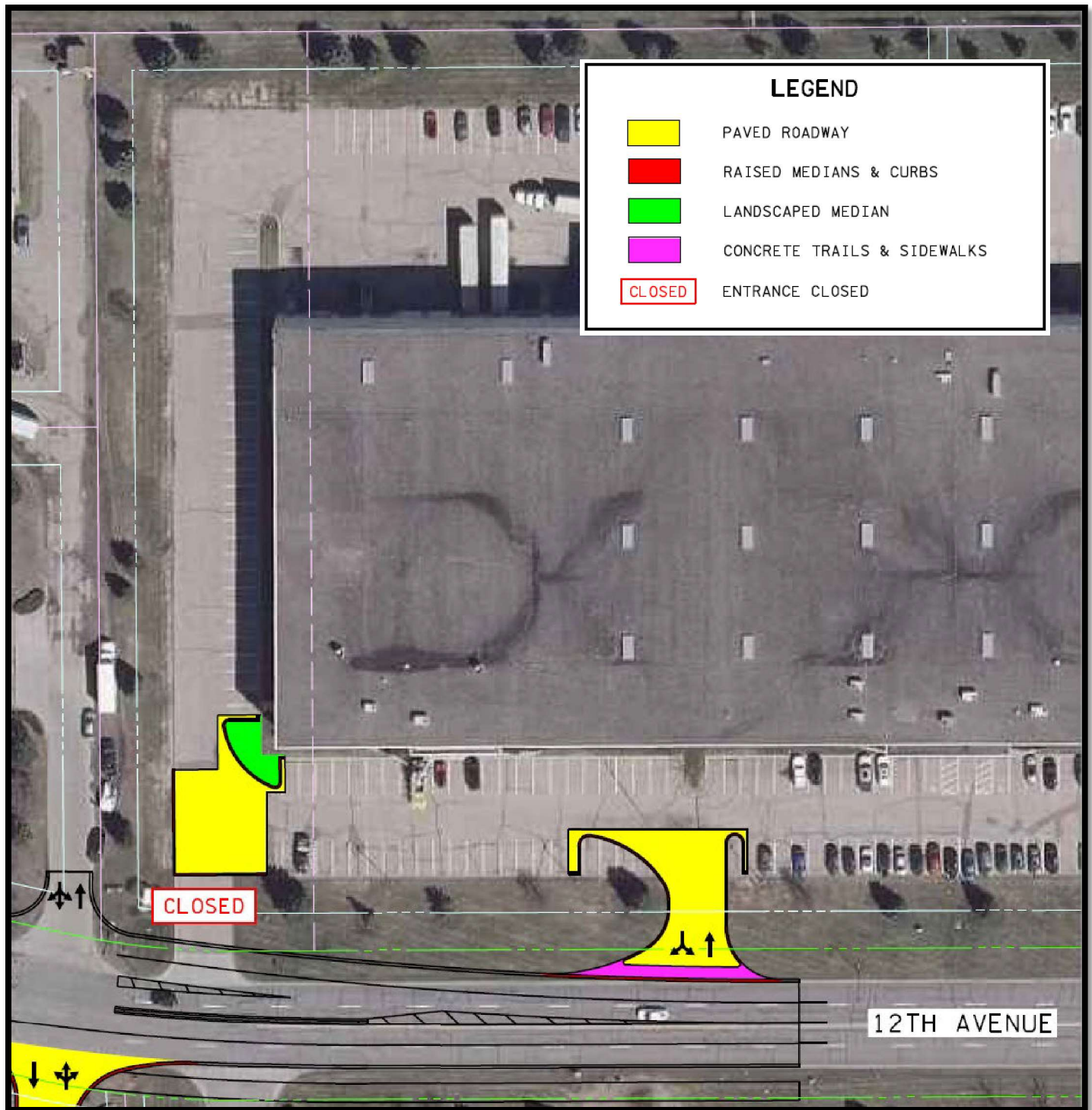


Exhibit A
(Temporary Construction Easement)

RIGHT OF ENTRY PERMIT

United Properties Investment, LLC
4241 12th Avenue East
Shakopee, MN 55379

PID(s): 272120010 and 271550020

The undersigned is the owner and/or authorized representative of the subject properties in Shakopee, MN referenced above.

The City of Shakopee wishes to enter upon the subject property for purposes of constructing access modification improvements.

The undersigned hereby grants the City of Shakopee, its agents, employees, contractors and invitees the right to enter upon the areas identified in the attached Figure 3 for the purpose of constructing access modification improvements. This includes removing and closing the western most driveway access, constructing a new driveway access, grading, restoration and and grading activities, as described in that certain Access Modification Agreement between the City of Shakopee and United Properties Investment, LLC dated , 2022.

This Right of Entry Permit shall be effective immediately and shall terminate on September 30, 2023.

Dated: _____, 2022

United Properties Investment, LLC

By: _____

 {Printed Name}

Its: _____

By: _____

{Printed Name}

Its: _____

Figure 3
(Temporary Construction Easement Area)

