

(Top 3 inches reserved for recording data)

**COMMERCIAL BUILDING ENCROACHMENT
AND ACCESS APPURTENANT EASEMENT**

THIS AGREEMENT, made this ____ day of _____, 2020, by and between the City of Shakopee (hereafter referred to as "City"), a Minnesota municipal corporation, the Estate of Jerome J. Harviux (hereafter referred to as "Harviux Estate"), Eagle Creek Station, LLC, a limited liability company under the laws of Minnesota, (hereafter referred to as "Eagle Creek") and Union Pacific Railroad Company ("Union Pacific"), a common carrier by railroad engaged in interstate commerce and duly qualified to do business in Minnesota. Based on the covenants, agreements, representations and recitals herein contained, the parties agree as follows:

RECITALS

- A. Harviux Estate is the fee owner and Eagle Creek is the contract purchaser of commercial property located at 333 Second Avenue West, Shakopee, Minnesota (the Property), legally described as follows:

Lot 1 and that part of Lots 2 and 3, Block 20, City of Shakopee, Scott County, Minnesota, described as follows:

Beginning at the southwest corner of said Lot 1; thence northerly along the westerly line of said Lot 1 to the northwest corner of said Lot 1; thence easterly along the northerly line of said Lots 1 and 2 a distance of 85.00 feet; thence southerly parallel with said westerly line of Lot 1 a distance of 37.00 feet; thence deflecting to the east at an angle of 60 degrees 00 minutes 00 seconds a distance of 15.00 feet; thence easterly along a line drawn to a point on the east line of said Block 20 distant 80.00 feet southerly of the northeast corner of Lot 5 of said Block 20, a distance of 49.00 feet; thence southerly parallel with said westerly line of Lot 1 to the southerly line of said Block 20; thence westerly along said southerly line of said Block 20 a distance of 146.24 feet to the point of beginning.

- B. The commercial building on the Property (the Building) has existed substantially in its present form for many decades and encroaches upon the following described portion of Second Avenue West:

That part of 2nd Avenue West (formerly Second Street), SHAKOPEE CITY, according to the plat thereof on file at the County Recorder's office, Scott County, Minnesota, described as follows:

Commencing at the SW corner of Block 20, said SHAKOPEE CITY, thence on an assumed bearing of North 80 degrees 03 minutes 41 seconds East along the southerly line of said Block 20 a distance of 12.81 feet to the point of beginning; thence North 84 degrees 45 minutes 30 seconds East 100.69 feet; thence North 04 degrees 51 minutes 08 seconds West 8.28 feet to said southerly line; thence South 80 degrees 03 minutes 41 seconds West along said southerly line a distance of 101.09 feet to the point of beginning.

Hereinafter "Commercial Building Encroachment" or "Commercial Building Encroachment Area."

- C. Harvieux Estate and Eagle Creek, who are collectively hereafter referred to as the "Owner", desire to continue the Commercial Building Encroachment upon the terms and conditions of this Agreement. Upon conveyance of fee interest in the Property to Eagle Creek, the term "Owner" shall refer to Eagle Creek, its successors, transferees, and assigns.

AGREEMENT

NOW, THEREFORE, in consideration of mutual covenants herein, the parties agree as follows:

1. RECITALS. The foregoing recitals are true and correct and incorporated herein by this reference.
2. ENCROACHMENT. The Owner shall be entitled to continue the Commercial Building Encroachment together with an appurtenant easement extending an additional two feet beyond the location of the existing roof line for the sole purpose of access for maintenance of the Building (the "Access Easement"). The Access Easement Area is described as follows:

That part of 2nd Avenue West (formerly Second Street), SHAKOPEE CITY, according to the plat thereof on file at the County Recorder's office, Scott County, Minnesota, described as follows:

Commencing at the SW corner of Block 20, said SHAKOPEE CITY, thence on an assumed bearing of North 80 degrees 03 minutes 41 seconds East along the southerly line of said Block 20 a distance of 9.12 feet to the point of beginning; thence continue North 80 degrees 03 minutes 41 seconds East along said southerly line a distance of 3.69 feet; thence North 84 degrees 45 minutes 30 seconds East 100.69 feet; thence North 04 degrees 51 minutes 08 seconds West 8.28 feet to said southerly line; thence North 80 degrees 03 minutes 41 seconds East along said southerly line a distance of 2.01 feet; thence South 04 degrees 51 minutes 08 seconds East 10.44 feet; thence South 84 degrees 45 minutes 30 seconds West 106.36 feet; thence North 05 degrees 02 minutes 14 seconds West 1.70 feet to the point of beginning.

("Access Easement"). Owner is permitted to maintain the exiting improvements and utilities attached to the Building that extend beyond the South wall of the existing Building as depicted on the survey attached hereto as Exhibit A and identified as letters A-E by surveyor Peter G. Oetliker, R.L.S. 41887.

3. WAIVER. The Owner acknowledges that Second Avenue West is a public right of way and waives any claims against the City

related to the use and occupancy of the Commercial Building Encroachment except as otherwise provided in this Agreement or which result from the negligence or other misconduct of the City.

4. **WAIVER.** The Owner acknowledges that Union Pacific operates main line railroad tracks upon Second Avenue West and waives any claims against Union Pacific, its officers, agents and employees, related to the use and/or occupancy of the Commercial Building Encroachment and/or the Access Easement except as otherwise provided in this Agreement or which result from the negligence or other misconduct of Union Pacific.
5. **WAIVER.** Union Pacific acknowledges that Owner maintains a portion of its Commercial Building in the Commercial Building Encroachment Area and waives any claims against Owner, their officers, agents and employees, related to the use and/or occupancy of the Commercial Building Encroachment Area and/or the Access Easement except as otherwise provided in this Agreement or which result from the negligence or other misconduct of Owner.
6. **INDEMNITY.** The Owner shall indemnify, defend and hold harmless Union Pacific, its officers, agents and employees, against and from any and all liability, claims, demands, actions, causes of action, costs and expenses, including attorneys' fees, which may be asserted against it as a result of or in connection with the Owner's use and/or occupancy of the Commercial Building Encroachment and/or the Access Easement except as otherwise provided in this Agreement or which result from the negligence or other misconduct of Union Pacific.
7. **BINDING EFFECT.** This Agreement shall run with the land and bind and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.
8. **ENTIRE AGREEMENT.** This Agreement contains all terms and conditions relating to the Commercial Building Encroachment and Access Agreement and replaces any oral agreements between the parties. No modification of this Agreement shall be valid until placed in writing and signed by all of the then owners and mortgagees of the Property.
9. **RECORDING.** This Agreement shall be filed for record after execution thereof and the parties agree that said Agreement shall be memorialized on the certificate of title to be issued for the Property pursuant to a pending Registration proceedings.

CITY OF SHAKOPEE

By: _____
Its: Mayor

By: _____
Its: City Administrator

By: _____
Its: City Clerk

This instrument was acknowledged before me on this _____ day of _____, 2020, by _____, _____, and _____, the Mayor, City Administrator, and City Clerk, respectively, of the City of Shakopee, a political subdivision of the State of Minnesota, on its behalf.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

Estate of Jerome J. Harvieux

Chase Anthony Harvieux, as Personal Representative
of the Estate of Jerome J. Harvieux

State of _____, County of _____

This instrument was acknowledged before me on this _____ day of _____, 2020, by Chase Anthony Harvieux a/k/a
Anthony Chase Harvieux as Personal Representative of the Estate of Jerome J. Harvieux.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

Union Pacific Railroad Company

By: _____

Its: _____

State of _____, County of _____

This instrument was acknowledged before me on this _____ day of _____, 2020, by _____, as
_____ of Union Pacific Railroad Company.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

Eagle Creek Station, LLC

By: _____

Its: _____

State of Minnesota, County of _____

This instrument was acknowledged before me on this _____ day of _____, 2020, by _____,
as _____ of Eagle Creek Station, LLC.

(Stamp)

(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

THIS INSTRUMENT WAS DRAFTED BY:
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