

ENCROACHMENT LICENSE AGREEMENT

Address:

41 E. Jefferson Avenue
Naperville, IL 60540

PIN:

07-13-423-009

Return to:

City Clerk
City of Naperville
400 South Eagle Street
Naperville, IL 60540
Attn: TED

(for Recorder's Use Only)

ENCROACHMENT LICENSE AGREEMENT

THIS ENCROACHMENT LICENSE AGREEMENT (hereinafter referred to as "Agreement") is made this _____ day of _____, 2013 (hereinafter "Effective Date") between the CITY OF NAPERVILLE, an Illinois municipal corporation and home rule unit of local government (hereinafter "Licensor") with an office located at 400 South Eagle Street, Naperville, Illinois 60540, and Jefferson & Main, LLC, (hereinafter "Licensee") with offices located at 510 White Oak Drive, Naperville, IL 60540.

WITNESSETH THAT:

WHEREAS, Licensee owns the real estate which is legally described on **Exhibit A** (hereinafter "Licensee's Property"); and

WHEREAS, Licensee intends to develop Licensee's Property as depicted on the Site Plan attached as **Exhibit B**; and

WHEREAS, Licensor owns the Jefferson Avenue and Main Street rights-of-way adjacent to the Licensee's Property (hereinafter "Licensor's Property"); and

WHEREAS, Licensor also owns a 10' wide pedestrian easement along the northern end of the Licensee's Property (hereinafter "Licensor's Easement"); and

WHEREAS, Licensee has requested permission to place certain improvements (hereinafter "Licensee's Encroachments") that use or encroach on a portion of Licensor's Property or Licensor's Easement (hereinafter "Encroachment Areas") including: (i) a metal canopy extending into the Licensor's Property as depicted on **Exhibit B** and described on **Exhibit C**; and (ii) an underground grease trap ("Grease Trap") located inside of the Licensor's Easement as depicted on **Exhibit B** and described on **Exhibit D**; and

WHEREAS, Licensor has determined that, subject to strict compliance with the terms and conditions set forth herein, Licensee's Encroachments will not adversely impact the Encroachment Areas or impair the public health, safety and welfare; and

WHEREAS, Licensee and Licensor consent and agree to such Licensee's Encroachments as described herein subject to the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. The foregoing Recitals are hereby incorporated herein and made part hereof as though fully set forth herein.
2. To the extent of its authority Licensor does hereby grant to Licensee, and Licensee's successors and assigns, a nonexclusive and revocable license for the benefit of Licensee's Property to encroach upon and to occupy and use Licensor's Property and Licensor's Easement in the manner set forth herein. The following exhibits are attached hereto and made a part hereof:
 - a. **Exhibit A**: A legal description of the Licensee's Property.
 - b. **Exhibit B**: A Site Plan that depicts Licensee's Encroachments and the Encroachment Areas.
 - c. **Exhibit C**: A description of Licensee's Encroachments and proposed use in Licensor's Property.
 - d. **Exhibit D**: A description of Licensee's Encroachments and proposed use in Licensor's Easement.
3. Except as otherwise provided herein or in Ordinance 18-__ approving a setback variance for the Licensee's Property, the Licensee's Encroachments shall comply

with all applicable provisions of the Naperville Municipal Code as amended from time to time.

4. The License herein granted shall be limited to the use by Licensee of the Encroachment Areas for the purpose of maintaining, repairing and replacing thereon Licensee's Encroachments as provided herein.
5. The parties agree that this grant of License to encroach shall not otherwise modify or remove the requirements established in the public right-of-way and easements and covenants of record. The parties agree that the License granted herein is subject to any rights of third parties in the Licensor's Property and Licensor's Easement, and Licensor makes no warranty regarding Licensee's right to use the Encroachment Areas except as regards to the interest of Licensor as provided herein.
6. Licensee accepts the Encroachment Areas in their condition as of the Effective Date of this Agreement.
7. Licensee assumes all liability and shall defend, indemnify, hold harmless and compensate Licensor, its officers, agents and employees for any injury or damage to person or property occasioned by or arising in connection with the use of the above described Encroachment Areas and the existence or condition of Licensee's Encroachments. Licensee further agrees to defend (with legal counsel approved of by Licensor, which approval shall not be unreasonably withheld), indemnify, and save harmless Licensor and its officers, agents and employees from and against: (i) any claim or action against Licensor, its officers, agents, or employees, arising out of or related to this License, Licensee's Encroachments, and the condition of the Encroachment Areas, and any act or omission of Licensee, Licensee's agents or assigns, or any independent contractor acting on Licensee's behalf with respect thereto; and (ii) any claim or expenses incurred by Licensor in enforcing the terms and provisions of this License against Licensee, including but not limited to reasonable attorney's fees (whether in-house or outside counsel) and costs.
8. The City of Naperville and its officers, agents, and employees shall be named as additional insureds on Licensee's, and Licensee's contractors', insurance policies for workers compensation, general liability, automobile liability for any work or activities to be performed within the Encroachment Areas. Copies of additional insurance certificates and additional insured endorsements showing the policy limits and the coverage afforded the City shall be provided by the Licensee to the Licensor prior to installation of either or both of Licensee's Encroachments.
9. Licensee shall obtain all necessary permits for the construction of Licensee's Encroachments in the Encroachment Areas. Licensee shall, upon completion of any work within the Encroachment Areas, promptly restore the Encroachment Areas as required by Licensor to the same or better condition than that which existed prior to the beginning of any work.

10. The provisions and conditions of this Agreement shall bind and inure to the benefit of the legal representatives, successors and assigns of the respective parties hereto, and shall run with the title of Licensee's Property unless terminated as provided herein.
11. Licensee shall maintain Licensee's Encroachments and the Encroachment Areas in a clean and odor-free manner, free of obstructions and debris. Any portion of Licensee's Encroachments located on the ground within Licensor's Property shall be installed and at all times maintained so that they are flush to the ground and do not present a trip hazard. The Grease Trap shall be regularly cleaned, repaired, and maintained in such a manner that it is fully operational at all times and does not at any time emit any odor. Any grease or other substance from the Grease Trap, or resulting or related to the existence, repair or maintenance of the Grease Trap, shall be immediately removed and cleaned from Licensee's Encroachments and the Encroachment Areas so that it is not visible and so that no trip or slip hazard exists. Upon demand from Licensor, Licensee shall immediately correct any defect in Licensee's Encroachments and shall remove any grease or debris of any kind from the Encroachment Areas which, in the sole determination of Licensor, presents an unsightly or unsafe condition. Such actions shall be accomplished to the satisfaction of Licensor. While nothing contained herein shall impose upon Licensor any duty or obligation to maintain the Encroachment Areas or to effect any repair or maintenance of Licensee's Encroachments, Licensor shall have the right to enter upon the Encroachment Areas to remove, repair, maintain and/or clean Licensee's Encroachments and/or the Encroachment Areas when, in the sole determination of the Licensor, such action(s) are appropriate to protect the public health, welfare, safety, or aesthetics of Licensee's Encroachments and/or the Encroachment Areas. Within thirty (30) days of receipt of a bill for such services from the Licensor, Licensee shall remit payment in full to Licensor. Licensee agrees that Licensor shall have the right to record a lien against Licensee's Property for all amounts due, plus interest, if payment in full of such bill is not timely made.

If Licensee leases or rents all or any part of Licensee's Property to another entity or individual, Licensee agrees to include provisions in such lease or rental agreement that reflect the obligations set forth herein. Notwithstanding any such lease or rental agreement, Licensee shall at all times remain liable for Licensee's obligations set forth herein.

12. This License may be terminated by either party as follows:
 - a. Licensor may terminate this License upon one sixty (60) days notice if it determines that Licensee's Encroachment is not properly maintained; or the existence of this License or Licensee's Encroachments presents a danger to the public's health, safety or welfare; or if Licensee's Encroachments is determined to interfere or will potentially interfere with Licensor's use or proposed use of Licensor's Property or Licensor's Easement; or Licensee ceases using the Encroachment Areas for Licensee's Encroachments.
 - b. Licensee may terminate this License upon sixty (60) days notice provided such termination shall not be effective until Licensee's Encroachments are removed and the Encroachment Areas restored to the satisfaction of Licensor.

13. If this Agreement is terminated, Licensee shall cause the removal of Licensee's Encroachments and shall return the Encroachment Areas to substantially the same, or better, condition as of the Effective Date of this Agreement. In the event Licensee fails to cause such removal within ninety (90) days of notice of termination by Licensor, Licensor shall have the right to enter upon the Encroachment Areas and remove Licensee's Encroachment. All costs of said removal as provided herein shall be borne by Licensee and shall be paid to Licensor within thirty (30) days of receipt of a bill therefor. Licensee agrees that Licensor shall have the right to record a lien against Licensee's Property for all amounts due, plus interest, if payment in full of such bill is not timely made.
14. Upon thirty (30) days notice from Licensor, Licensee shall temporarily move or relocate Licensee's Encroachments to permit work or other activity within the Encroachment Areas. Licensee assumes all risk in the placement of Licensee's Encroachments and shall be responsible for removal or relocation of Licensee's Encroachments in the event that Licensor requires access to perform work within the Encroachment Areas. Licensor shall make reasonable efforts to avoid disturbance of Licensee's Encroachments.
15. This Agreement sets forth all of the agreements, conditions, covenants, representations, warranties and understandings between the parties with respect to the subject matter hereof. No subsequent amendment, modification or waiver of any of the provisions of this Agreement shall be effective unless in writing and executed by the parties hereto.
16. Licensee shall be responsible for payment of Licensor's reasonable attorneys' fees and costs associated with enforcement of any aspect of this Agreement unless there is a finding in Licensee's favor rendered by a court of competent jurisdiction, or unless Licensor voluntarily dismisses any legal claim.
17. The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance. Venue for any action arising out of the terms or conditions of this License shall be in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.
18. Notice: Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by fax (with verbal confirmation of receipt) or by mail, certified mail, return receipt requested, or by personal service to the persons and addresses indicated below or to such addresses and persons as either party hereto shall notify the other party of in writing pursuant to the provisions of this subsection.

For the Licensor:
City of Naperville
400 S. Eagle Street
Naperville, IL 60540
Attention: Legal Department

For the Licensee:
Jefferson & Main, LLC
510 White Oak Drive
Naperville, IL 60540
Attention: [Insert Contact Person]

19. This Encroachment License Agreement shall be binding upon Licensor, Licensee, and their respective assigns and transferees. A copy of this Agreement shall be recorded with the DuPage County Recorder.
20. It is mutually understood and agreed that all agreements and covenants herein are severable and that in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.
21. The obligations of the parties under this Agreement, to the extent that they arose while the Agreement was in effect and remained unfulfilled at the time of termination, shall survive the termination of this Agreement.
22. If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.
23. The effective date (“Effective Date”) of this Agreement shall be the date on which it is fully executed by both parties.
24. The undersigned warrant and represent that they are authorized to execute this Encroachment License Agreement.

Signatures on following pages.

IN WITNESS WHEREOF, the parties hereto have executed this Encroachment License Agreement as of the day and year first above written.

LICENSOR/CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

Attest:

By: _____
Pam Gallahue, Ph.D.
City Clerk

State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Douglas A. Krieger, personally known to me to be the City Manager of the City of Naperville, and Pam Gallahue, Ph.D. personally known to me to be the City Clerk for the City of Naperville, appeared before me this day in person and acknowledged that they signed this instrument in their respective capacities as the City Manager and City Clerk of the City of Naperville pursuant to authority granted to them by the City Council of the City of Naperville.

Given under my hand and official seal this _____ day of _____, 2018.

(seal)

Notary Public

LICENSEE/ JEFFERSON & MAIN, LLC

By: *Russell R. Breitwieser*
[Print Name] Russell R. Breitwieser
[Title] Manager

State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State, aforesaid, DO HEREBY CERTIFY that _____ and Russell R. Breitwieser, appeared before me this day in person and acknowledged the signatures set forth above.

Given under my hand and official seal this 3rd day of May, 2018.



Paul M. Mitchell
Notary Public

LEGAL DESCRIPTION

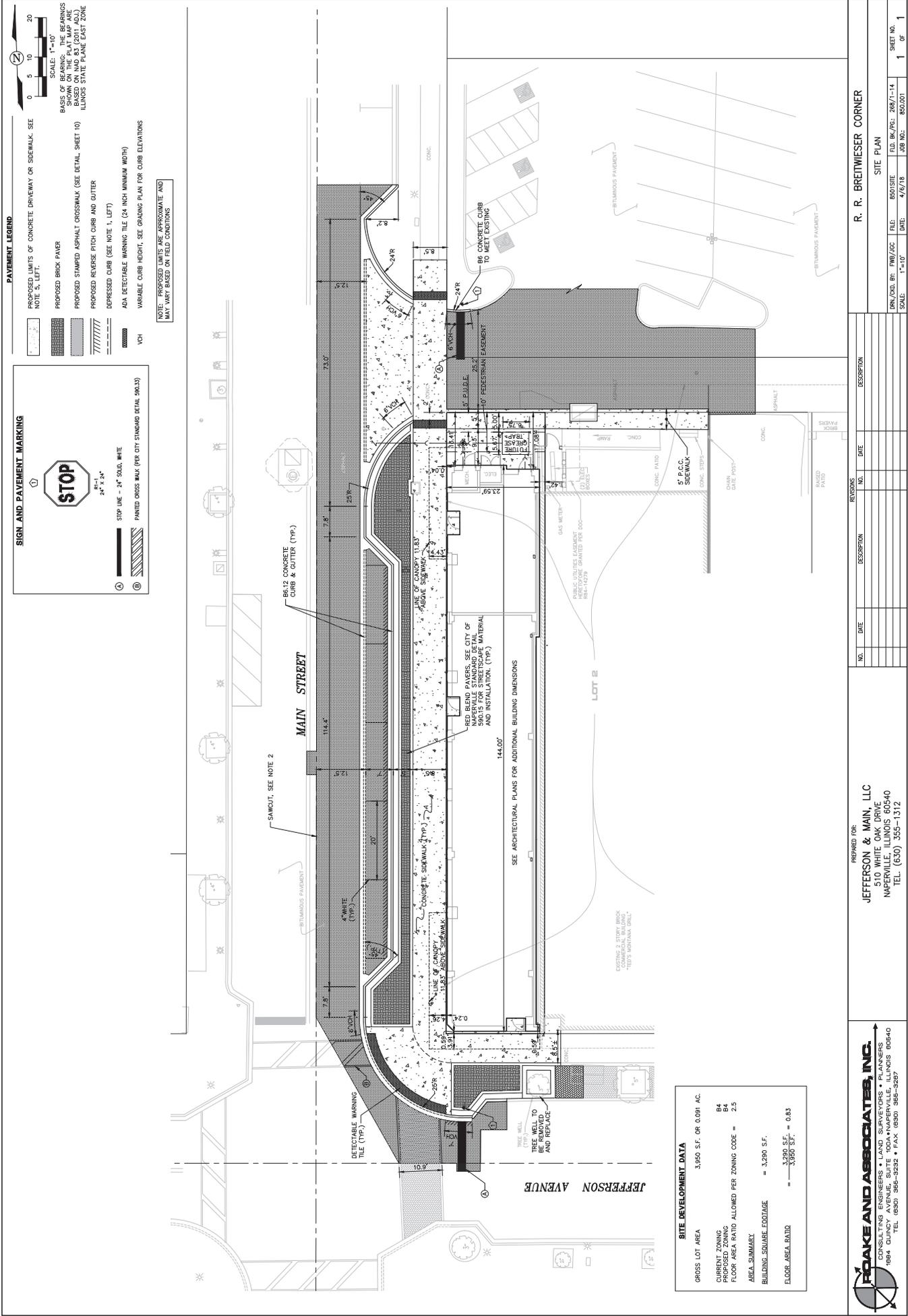
R.R. BREITWIESER CORNER/41 W. JEFFERSON AVENUE

THE WEST 25 FEET OF LOT 15 IN BLOCK 17 IN ASSESSOR'S SUBDIVISION OF BLOCKS 13, 16 AND 17 IN ORIGINAL TOWN (NOW CITY) OF NAPERVILLE, A SUBDIVISION IN THE SOUTH HALF OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS.

PIN: 07-13-423-009

Commonly known as 41 W. Jefferson Avenue, Naperville, IL 60540

EXHIBIT B



SITE DEVELOPMENT DATA	
GROSS LOT AREA	3,950 S.F. OR 0.091 AC.
CURRENT ZONING	B4
PROPOSED ZONING	B4
FLOOR AREA RATIO ALLOWED PER ZONING CODE	= 2.5
AREA SUMMARY	
BUILDING SQUARE FOOTAGE	= 3,290 S.F.
FLOOR AREA RATIO	= 3,290 S.F. / 3,950 S.F. = 0.83

POAKE AND ASSOCIATES, INC.
 CONSULTING ENGINEERS • LAND SURVEYORS • PLANNERS
 1884 DUNCAN AVENUE, SUITE 100A • NAPERVILLE, ILLINOIS 60540
 TEL. (630) 965-9592 • FAX (630) 965-9267

PREPARED FOR:
JEFFERSON & MAIN, LLC
 510 WHITE OAK DRIVE
 NAPERVILLE, ILLINOIS 60540
 TEL. (630) 355-1312

NO.	DATE	DESCRIPTION	REVISION NO.	DATE	DESCRIPTION

R. R. BREITWESER CORNER

DRN./CDD. BR. FINE/ACC. FILE:	8501/SIE	SITE PLAN
DATE:	4/6/18	R.D. BK./P.C.: 288/7-14
SCALE:	1"=10'	JOB NO.:
		JOB NO.:

1 OF 1

PAVEMENT LEGEND

- PROPOSED LIMITS OF CONCRETE DRIVEWAY OR SIDEWALK. SEE NOTE 5, LEFT.
- PROPOSED BRICK PAVEMENT
- PROPOSED STAMPED ASPHALT CROSSWALK (SEE DETAIL SHEET 10)
- PROPOSED REVERSE PITCH CURB AND GUTTER
- DEPRESSED CURB (SEE NOTE 1, LEFT)
- ADA DETECTABLE WARNING TILE (24 INCH MINIMUM WIDTH)
- VARIABLE CURB HEIGHT, SEE GRADING PLAN FOR CURB ELEVATIONS
- VCH

NOTE: PROPOSED LIMITS ARE APPROXIMATE AND MAY VARY BASED ON FIELD CONDITIONS

SIGN AND PAVEMENT MARKING

STOP SIGN - 4" SOLID, WHITE
 STOP LINE - 2" SOLID, WHITE
 PAINTED CROSS WALK (PER CITY STANDARD DETAIL 59A.3)

NOTE: PROPOSED LIMITS OF CONCRETE DRIVEWAY OR SIDEWALK. SEE NOTE 5, LEFT.

NOTE: BASIS OF BEARING, THE BEARINGS ARE GIVEN IN DEGREES AND MINUTES BASED ON NAD 83 (2011 ADJ.) ILLINOIS STATE PLANE EAST ZONE

EXHIBIT C

DESCRIPTION OF LICENSEE'S ENCROACHMENTS IN LICENSOR'S PROPERTY

CANOPIES: The canopies are composed of aluminum composite metal. The height of the canopy at the Northwest, South and Southwest is 11'-10" above the sidewalk. The height of the North canopy is 12'-4" above the sidewalk. The approximate dimensions of each canopy are depicted in Exhibit B. The canopies will encroach into Licensor's Property approximately as follows: 4.43' on the North and Northwest, 3.91' on the South and 4.26' on the Southwest.

EXHIBIT D

DESCRIPTION OF LICENSEE'S ENCROACHMENT IN LICENSOR'S EASEMENT:

GREASE TRAP: The below-ground grease trap is made of high density polyethylene, and is cylindrical in shape, measuring approximately 6' in width, 7' in length and 5' in depth. The grease trap will encroach into Licensor's Easement approximately 5'.

EXHIBIT D