

41-R-96

A RESOLUTION

Authorizing the City Manager to Execute
a Lease Agreement with the
Union Pacific Railroad Company to Operate and Maintain
the Central Street Commuter (METRA) Station

WHEREAS, the Union Pacific Railroad Company and METRA are interested in improving the Central Street Commuter Train Station to make the facility accessible for the disabled and make other general improvements to this facility; and

WHEREAS, the City in seeing these improvements completed in a timely manner and interested in seeing that this facility remains open and is maintained adequately to serve the commuters at this location; and

WHEREAS, the Union Pacific Railroad Company requires municipalities to enter into a lease agreement for the maintenance of commuter stations prior to making major improvements to commuter facilities; and

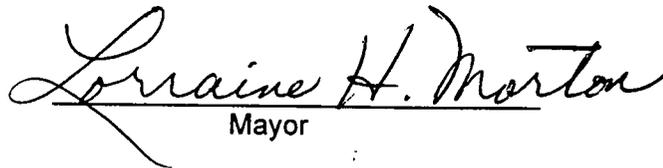
WHEREAS, said improvements are in the best interest of the City of Evanston.

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

SECTION 1: That the City Manager of the City of Evanston is hereby authorized to sign the lease agreement marked as Exhibit A attached hereto and incorporated herein by reference.

SECTION 2: That the City Manager of the City of Evanston is hereby authorized and directed to negotiate any additional conditions as are in the best interest of the City of Evanston.

SECTION 3: That this Resolution shall be in full force and effect following its passage and approval in the manner required by law.


Lorraine H. Morton
Mayor

ATTEST:

Kristen Davis
City Clerk

Adopted June 24, 1995

Exhibit A

LEASE NO. _____
FILE NO. 220-86

LEASE AGREEMENT

LESSOR: Union Pacific
Railroad Company
1416 Dodge Street
Omaha, NE 68179-1100

LESSEE: City of Evanston
2100 Ridge Avenue
Evanston, IL 60201-2798

On this _____ day of _____ 19____, THE CITY OF EVANSTON (hereinafter called "Lessee") hereby offers and agrees to lease from the UNION PACIFIC RAILROAD COMPANY (hereinafter called "Lessor") the passenger station (hereinafter called "Premises") of Lessor, situated on Central Street in the CITY OF EVANSTON State of Illinois shown outlined on "Exhibit A", attached hereto and made a part hereof. In addition to the area outlined on "Exhibit A", the Premises also include the lower level of the passenger station, and the exterior facade of the building including the roof, but does not include the platform areas stairway or ramps. The term of this Lease Agreement shall be twenty (20) years, unless sooner terminated as provided herein. The Lease is to commence on the day and year first above written.

This Lease is made upon the following express covenants and agreements, each of which is made an express condition hereof:

COVENANT

1. Lessee covenants and agrees to pay Lessor as rent for the premises the sum of One Dollar and No/100 (\$1.00) per year and other valuable considerations.

PURPOSE OF LEASE

2. The Lessee desires (a) to maintain the existing architectural appearance of the passenger station on the said premises, (b) to control and maintain access to the said station, and (c) to develop commercial endeavors in the station which will serve the Lessor's commuters. Accordingly, the Lessor has granted the Lessee this lease. However, the said Premises will continue to be used and occupied primarily as a railroad commuter station facility. The Lessor reserves unto itself, its successors and assigns, and

licensees the right to use said Premises in the general conduct of its railroad business including endeavors to convenience its commuters and the public.

**EXCLUSIVE
USE BY LESSOR**

3. Lessor reserves for its exclusive use and occupancy that portion of the passenger station shaded and labeled as the ticket office on the attached "Exhibit A".

**USE BY LESSOR
AND PUBLIC**

4. Lessor reserves for lawful use by Lessor and the public, including but not limited to Lessor's customers, the said Premises (except such part of said premises as are with Lessor's consent hereafter sublet by Lessee). Lessee shall not interfere with or infringe upon Lessor's or the public's lawful use of the said Premises so reserved. Lessor reserves the right to regulate and control the people who enter said Premises, and their conduct, and reserves the right to enter upon said premises at any time, and to eject therefrom any disorderly person or persons.

**ROADWAYS
ACCESS**

5. Lessee accepts the Premises subject to rights of roadways, easements, permits, or licenses. Lessee agrees to provide to Lessor, and the public, access over and through Premises on these existing roadways and easements should such access be deemed necessary by Lessor. Lessee further agrees that Lessor shall not be responsible for the care or maintenance (including snow removal) of said roadways.

RELOCATION

6. Lessor reserves the right to maintain or relocate its existing facilities, or to construct and thereafter maintain new facilities, in the vicinity of the Premises with no liability for damages to Lessee's interests or property resulting from such activities. Lessor agrees, however, that no changes shall be made without consultation with Lessee.

SIGNS

7. Lessor reserves the right to post, paint, or place, or to have posted, painted or placed on the Premises, informational signs relative to the operations of the Lessor on the Premises, including, but not limited to, those designed to enhance the accessibility of said facilities and services to the elderly and handicapped. Lessor

agrees, however, that no such signs shall be posted, painted, or placed without Lessee's consent. Advertising signs will not be posted in the Premises.

**COMPLIANCE
(LEGAL AND
INSURANCE)**

8. Lessee shall not use or permit upon the Premises anything that will invalidate any policies of insurance now or hereafter carried on the Premises or any building or structure thereon. Lessee shall maintain and use the Premises and buildings and structures thereon in accordance with the requirements of all local ordinances, state and federal laws in effect during the term of this lease.

POLLUTION

9. Lessee further agrees to comply with all ordinances, laws, rules, and regulations enacted by any governmental body or agency relating to the control, abatement or emission of air and water contaminants and/or disposal of refuse, solid wastes or liquid wastes. Lessee shall bear all cost and expense arising from compliance with said ordinances, laws, rules, or regulations and shall indemnify and save harmless Lessor from all liability, including without limitation, fines, forfeitures, and penalties arising in connection with the failure by Lessee to comply with such ordinances, laws, rules or regulations.

**ENVIRONMENTAL
CONTAMINATION**

10. Lessee recognizes and assumes responsibility for environmental liability or responsibility imposed under applicable environmental laws, regulations or any other similar requirements relating to any contamination of the Premises or groundwater thereunder or discharge or release to adjacent property arising from or in any respect aggravated or altered by any operations or activities by, or any equipment or facilities used by or permitted on the Premises by Lessee (the foregoing hereinafter referred to as "Lessee operations"). Lessee, therefore, agrees to indemnify and hold harmless Lessor, its officers, agents and employees from any and all liability, fines, penalties, claims, demands, loss or lawsuits brought by any third party or governmental agency under any theory of law against Lessor seeking to hold Lessor liable for any investigation, response or cleanup costs, penalties or damages, whether personal, property or environmental, for any contamination of any property or groundwater thereunder or discharge or release to adjacent property arising out of or in any

respect aggravated or altered by Lessee operations. Lessee agrees that the above indemnity extends to any liability resulting from or arising out of Lessee's implementation of any investigation, response or cleanup plan approved by the United States Environmental Protection Agency or companion state agency. Lessee further agrees to undertake, at its own expense, any investigation, response or cleanup of any contamination of the premises and groundwater thereunder arising from or in any respect aggravated or altered by any Lessee operations and to promptly notify Lessor of any event, notice, claim, demand or litigation which involves or alleges contamination of the premises, the groundwater thereunder or a discharge or release therefrom to adjacent property.

**RELOCATIONS
OF WIRES**

11. Lessee accepts the Premises subject to rights of any party, including Lessor, in and to any existing telephone, telegraph or other wires, and poles and facilities of any kind whatsoever, whether or not of record. Should the Lessee at any time require the relocation of any of same, Lessee shall bear and pay the cost of so doing.

**QUIET ENJOYMENT
AND LESSOR'S
TITLE**

12. Lessor makes no covenant for quiet enjoyment of the premises. Lessee assumes any damages Lessee may sustain as a result of, or in connection with, any want or failure at any time of Lessor's title to the Premises.

NO SUBROGATION

13. Lessee agrees all insurance policies, if any, issued to it, or for or upon Lessee's account, covering any injuries to persons or any loss or damage to property so written that the insurer shall have no claim or recourse of any kind whatsoever against Lessor, Metra, or the Premises unless said injuries, loss or damage are the result of the sole negligence by the Lessor, Metra or Lessor's representatives.

LIABILITY

14. As a material consideration for entering into this Lease and without which the Lessor would not enter into same, the Lessee covenants and agrees to indemnify, save harmless and protect the Lessor and the Commuter Rail Division of the Regional Railway Authority ("METRA") from and against any and all loss, damage, claim, demand, fine, lawsuit and/or liability, and any and

all costs, expenses and legal fees in connection therewith by reason of injuries to or death of persons and/or loss of or damage to property and/or violation of any law, ordinance or regulation arising or growing out of or connected with this Lessee, the Premises, and/or any act or omission of (i) the Lessee, its employees or agents, and/or (ii) any other person performing any work or service for or on behalf of the Lessee on or about said Premises or arising out of their presence on said Premises.

LIENS

15. Lessee agrees not to suffer or permit any lien of mechanics or material man to be placed against the Premises or any part thereof and, in case of any such lien attaching, immediately to pay off and remove same. It is further agreed by the parties hereto that Lessee has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Lessee, operation of law or otherwise, to attach to or to be placed upon Lessor's title or interest in the Premises, and any and all liens and encumbrances created or suffered by Lessee or its tenants shall attach to Lessee's interest only.

EMINENT DOMAIN

16. If the whole or any part of the Premises shall be taken or condemned by any competent authority for any public use or purpose, this lease shall, as to the part so taken, terminate as of the date when taken or required for such use or purpose. The entire amount of damages or compensation payable or paid for the part taken and then for remainder, if any, shall be paid to and retained by Lessor as its own property without apportionment. Lessee hereby assigns to Lessor any claim which Lessee would have to such damages. Lessee shall look to said authority solely for any compensation or damages on account of Lessee's cost and expense of removing Lessee's personal property from the Premises and for the cost and expense of moving any building or other structure placed upon the Premises by Lessee and which Lessee would have the right to remove as a Lessee of the Premises.

CAUSE FOR BREACH

17. If Lessee defaults in any of Lessee's undertakings or obligations in this lease, then such event or action shall be deemed to constitute a breach of this lease and if such default remains uncured for thirty (30) days after notice in writing, this lease shall cease and terminate, at Lessor's option.

TERMINATION

18. Either party may at any time terminate this lease by giving ninety (90) days' written notice of its intention to do so.

SURRENDER OF PREMISES

19. Upon the termination of this lease by any manner, means, or contingency whatsoever, Lessee shall, without further notice or demand, deliver possession of the Premises to Lessor in as good condition as when entered upon, ordinary wear and tear accepted.

REENTRY

20. If Lessee shall breach or default in any of the terms of this lease and if such breach or default is not cured or if this lease shall expire or terminate in any manner, it shall be lawful for Lessor, then or at any time thereafter, to reenter the Premises and take possession thereof, with or without process of the law, and to use any reasonable or necessary force for regaining possession; provided however, the Lessee shall have the right to remove certain of Lessee's properties as hereinabove provided.

WAIVER OF REMEDIES

21. (a) No waiver of any default of Lessee shall be implied from omission by Lessor to take any action on account of such default. No express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No receipt of money by Lessor from Lessee (i) after any default by Lessee, (ii) after the termination of this lease, (iii) after the service of any notice of demand or after the commencement of any suit, or (iv) after final judgement for possession of the Premises, shall waive such default or reinstate, continue or extend the term of this lease or affect in any way any such notice or suit, as the case may be.

(b) The erection of buildings or improvements on the Premises shall not constitute a waiver or affect in any way the right of either party to terminate this lease.

SUBLETTING

22. Any rentals or other revenues generated by the subletting by Lessee of any portion of the Premises shall belong solely to the Lessee.

IMPROVEMENTS

23. Prior to any improvements being made to the premises, Lessee shall submit to Lessor's Director-Real Estate of plans and specifications for improvements on any portion of the Premises. ("Improvements" shall include, but not necessarily be limited to, replacement or repair of roof, floors, heating plant, plumbing, or walls; but shall not include such items of maintenance as window washing, cleaning, sweeping, or normal services ordinarily provided by a janitor.)

CUMULATIVE RIGHTS

24. All rights and remedies of Lessor shall be cumulative, and none shall exclude any other rights and remedies allowed by law.

NOTICES

25. All notices, demands, elections, and other instruments required or permitted to be given or made by either party upon the other by the terms of this lease or any statute, shall be in writing. They shall be deemed to have been sufficiently served, if sent by certified or registered mail, with proper postage prepaid to Lessor or Lessee at the respective address first above shown. Such notices, demands, elections and other instruments shall be considered as delivered to recipient on the first business day after deposit in the U.S. Mail.

ENTIRE AGREEMENT

26. All of the representations and obligations of Lessor are contained herein. No modifications, waivers or amendments of this lease, or any of its terms, shall be binding upon Lessor unless it is in writing and signed by a duly authorized Officer of the Lessor.

RAIL SERVICE

27. Lessor makes no warranties or representations, expressed or implied as to continued rail service to the Premises.

HOURS OPEN TO PUBLIC

28. Lessee shall control the hours during which the Premises shall be open to the public.

ACCEPTANCE

29. Lessee has examined and knows the condition of the Premises and shall enter upon and take the same in their condition at the commencement of the term of this lease.

MAINTENANCE

30. Lessee agrees to provide all cleaning and janitorial service and supplies, including toilet paper and hand soap, to keep Premises in a clean and neat condition satisfactory to the Lessor's Director-Real Estate. Only those areas as defined as the "Premises" will be governed by this section.

During the term of this Agreement, Lessee shall maintain and repair said passenger station and all fixtures and appurtenances thereof, and shall keep all of the same, and any area used in the future for commercial development, in a good state of repair, appearance and order (including, but not limited to, regular cleaning of floors, windows, painting, plumbing fixtures and the providing of scavenger service), corresponding to standards that apply to public buildings and facilities, except Lessee shall not be responsible for repairing or replacing any structural parts of the depot building resulting from ordinary wear and tear (such as support walls, structural members, columns, floors, roof, heating plant and foundation). Lessee shall be responsible for notifying the Lessor, in writing, of the need for improvements or repairs which are to be the responsibility of the Lessor. For the purpose of determining what items shall be the responsibility of Lessee or Lessor, hereunder it is hereby agreed that any single item costing more than \$2,500 to repair or replace, shall be the responsibility of the Lessor and all other single items costing \$2,500 or less to repair or replace, shall be the responsibility of the Lessee.

RIGHT TO INSPECT

31. Lessor, its agents, employees and authorized contractors shall have the right to enter the Premises or any part thereof, at all reasonable hours, for the purpose of inspecting the Premises to determine if Lessee is complying with all terms and conditions of this lease and/or to determine through inspection and/or testing if any hazardous condition, pollution or contamination is present or threatened. Lessee agrees to cooperate with Lessor in any such inspection and to provide at Lessor's request any and all permits, reports, journals, bills, shipping papers or records of any kind, paper or electronic, relating to any materials used, stored, heated, disposed of or sold on or transported from the Premises.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

WITNESS:

(For Lessor)

WITNESS:

(For Lessee)

UNION PACIFIC RAILROAD COMPANY

By: _____

CITY OF EVANSTON

By: _____

FORM 90015