

# 2009 West Allis Trail Extension Agreement

## Main Agreement

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1. AGREEMENT DETAILS AND EXCEPTIONS

A. Parties:

**S00 LINE RAILROAD COMPANY**, a Minnesota Corporation doing business as Canadian Pacific ("CP") with general offices at:

Address	Contact Info	
Real Estate Department 501 Marquette Ave. Suite 1525 Minneapolis, Minnesota 55402	Name:	David S. Drach
	Phone:	( 612 ) 904-6139
	Fax:	( 612 ) 904-6147
	Email:	<a href="mailto:david_drach@cpr.ca">david_drach@cpr.ca</a>

and

**WISCONSIN DEPARTMENT OF NATURAL RESOURCES ("DNR")**

Address	Contact Info	
Bureau of Facilities and Lands 101 S Webster St PO Box 7921 Madison Wisconsin 53707-7921	Name:	Richard E. Steffes
	Phone:	( 608 ) 266-0201
	Fax:	( 608 ) 267-2750
	Email:	<a href="mailto:Richard.Steffes@Wisconsin.gov">Richard.Steffes@Wisconsin.gov</a>

and

**WISCONSIN DEPARTMENT OF TRANSPORTATION ("DOT")**

Address	Contact Info	
Office of General Counsel 4802 Sheboygan Ave., Room 115B PO Box 7910 Madison Wisconsin 53707-7910	Name:	James Thiel
	Phone:	( 608 ) 266-0201
	Fax:	( 608 ) 267-2750
	Email:	<a href="mailto:Jim.thiel@Wisconsin.gov">Jim.thiel@Wisconsin.gov</a>

and

**THE CITY OF MILWAUKEE, WISCONSIN ("CITY")**

Address 1	Contact Info	
Department of Public Works Zeidler Municipal Building, Room 919 841 North Broadway Milwaukee, Wisconsin 53202	Name:	Dave Windsor
	Phone:	( 414 ) 286-0459
	Fax:	( 414 ) 286-0663
	Email:	<a href="mailto:dwinds@milwaukee.gov">dwinds@milwaukee.gov</a>

Address 2	Contact Info	
City Attorney's Office City Hall, Room 800 200 East Wells Street Milwaukee, Wisconsin 53202	Name:	Gregg Hagopian
	Phone:	( 414 ) 286-2620
	Fax:	( 414 ) 286-8550
	Email:	ghagop@milwaukee.gov

**B. Background, Location, Definitions and Scope.**

**(i) Background**

- (a) On October 12, 2006 CP sold to DNR approximately 5.25 miles of its so-called West Allis Line rail corridor. That transaction included the transfer of fee title to most of the West Allis Line, plus an easement for trail purposes extending over 1,000 feet east past the eastern terminus of the land sale.
- (b) CP owns land and operates rail lines that connect to the easterly and westerly ends of the West Allis Line rail corridor.
- (c) The DNR and other public and private entities, seek to acquire additional CP land and to utilize CP's active rail corridors to expand the connectivity and reach of recreational trails within the City of Milwaukee and adjoining communities.

**(ii) Exclusions and Exceptions:** The Stipulation between the DOT, DNR, CITY and CP (**Appendix 3.1.A.**) and the Track Work Force Agreement between DOT and CP (**Appendix 3.1.B.**) shall be considered stand alone documents which are separate and distinct from all and every provision(s) of the 2008 West Allis Trail Extension Agreement, its Appendices and Exhibits.

**(iii) Location**

The land encompassed by this agreement is located in

- (a) Milwaukee, Milwaukee County, Wisconsin;
- (b) Wauwatosa, Milwaukee County, Wisconsin; and
- (c) Brookfield, Waukesha County, Wisconsin

**(iv) Definitions**

- (a) "Agreement" and "2009 West Allis Trail Extension Agreement" shall mean this document together with all its subparts, exhibits and appendices.
- (c) "Main Agreement" shall mean this document and is subject to the Exclusions and Exceptions provided for in this document.

(b) “**Component**” means one of the four transactions contemplated by this Agreement

(c) **Other Definitions:** The definitions set forth in **Appendix 5.0** shall apply to the entire Agreement.

(v) **Scope**

The scope of this Agreement is to correct a previous error in the description of the West Allis Easement, and to coordinate several new elements that will extend the West Allis Trail (being part of the Hank Aaron State Trail, a mixed-use trail) and to connect it to other recreational corridors. This Agreement creates commitments to enter into the Component Transactions and to embody terms and provisions that are preliminary to the consummation of a Component, or that are common the Components.

**2. EFFECTIVE, EXPIRATION AND TERMINATION DATES:**

A. **Effective Date:** The effective date of this Agreement shall be **JULY 9, 2009**, but in no event shall this Agreement be effective for any reason if it is not signed by all parties hereto.

B. **Termination Date:** This Agreement does not terminate as a whole unless all Components to this Agreement terminate as provided herein or any appendices hereto in respect to a Component.

**3. COMPONENT TRANSACTIONS:**

A. **West Allis Extension.** CP agrees to sell and DNR agrees to buy the West Allis Extension Property located in Wauwatosa, Milwaukee County, Wisconsin, and Brookfield, Waukesha County, Wisconsin and generally shown upon the map appended hereto as **Exhibit 1**. Neither CITY nor the Redevelopment Authority of the City of Milwaukee (“RACM”) has duties concerning the West Allis Extension Component.

(i) **Form of Agreement.** The West Allis Extension Property will be conveyed by CP to DNR at closing via quit claim deed in substantially the form attached hereto in **Appendix 1.0**. An original copy of the quit claim will be filed in each of the counties in which the West Allis Extension Property is located.

(ii) **Consideration.** In consideration of the sale of the West Allis Extension Property, DNR agrees to pay to CP at closing the sum of

**ONE-HUNDRED SEVENTY-FIVE THOUSAND TWO-HUNDRED EIGHTY FOUR and NO/100 Dollars (\$175,284.00).**

by means of certified or cashier’s check, or electronic funds transfer.

(iii) Closing. Closing on this component transaction will occur at a mutually-agreeable date and location within 120 days of the Effective Date of this Agreement. If agreed between the parties, closing may occur via mail or in escrow.

B. **East End Extension**. CP agrees to grant to DNR an easement in Milwaukee, Milwaukee County, Wisconsin over the East End Extension Property generally shown upon the map appended hereto as **Exhibit 2**, and CP and DNR agree to correct an error in the description of the West Allis Easement by incorporation of a corrected description in the conveyance of an easement for the East End Extension. Neither CITY nor RACM has duties concerning the East End Extension Component.

(i) Form of Agreements.

(a) Correction to West Allis Easement. DNR will release and convey to CP at closing in substantially the form attached hereto in **Appendix 2.1** the rights granted to it on October 12, 2006 in respect to the West Allis Easement.

(b) Reconveyance. The corrected West Allis Easement and an additional easement for the East End Extension Property will be conveyed at closing by CP to DNR via easement grant in substantially the form attached hereto in **Appendix 2.2**.

(ii) Consideration. In consideration of the grant of an Easement for the East End Extension, DNR agrees to pay to CP at closing the sum of

**TWO-HUNDRED ONE THOUSAND and NO/100 Dollars (\$201,000.00)**

by means of certified or cashier's check, or electronic funds transfer.

(iii) Closing. Closing on this component transaction will occur at a mutually agreeable date and location within 120 days of the Effective Date of this Agreement. If agreed between the parties, closing may occur via mail or in escrow.

C. **Valley Passage**.

(i) Conveyances

(a) CP agrees to sell to DNR and DNR agrees to purchase the Ped. Tunnel; and

(b) CP agrees to grant to DNR an easement for the Valley Passage Property in Milwaukee, Milwaukee County, Wisconsin generally shown upon the map appended hereto as **Exhibit 3**.

(ii) Form of Stipulation and Agreements.

(a) DNR, DOT, CITY and CP will execute a Stipulation and Work Force Agreement for the construction of the New Rail Bridge and realignment and changes to track and other railroad infrastructure. The Stipulation and the Work Force Agreement included, respectively, as **Appendix 3.1.A**. and

**Appendix 3.1.B.**, are not a part of this Main Agreement, but are referred to herein for convenience purposes only

- (b) CP will convey title to the Ped. Tunnel to DNR via Bill of Sale in the form attached hereto in **Appendix 3.2.B.**
  - (c) CP will grant to DNR and the CITY an easement for the Valley Passage in the form attached hereto in **Appendix 3.2.A.**
  - (d) CP will release in the form attached hereto in **Appendix 3.2.C.** the protective covenant governing the parcel at 3638 W. Pierce Street.
- (iii) Consideration. In consideration of the grant of the Easement for the Valley Passage, DNR agrees to pay CP at closing the sum of

**ONE and No/100 Dollars (\$1.00)**

and agrees to assume and pay all costs and expenses in connection with the construction of the New Rail Bridge and realignment and changes to track and other railroad infrastructure set forth in **Appendix 3.1.A.** and **Appendix 3.1.B** and to perform the duties required of it under **Appendix 3.2.A.**

- (iv) Closing: Closing on this component transaction will occur at a mutually-agreeable date and location within 30 days of the Effective Date of this Agreement. If agreed between the parties, closing may occur via mail or in escrow. CP, DNR, DOT and CITY will, at Closing, execute the easement agreement at **Appendix 3.2.A.** At Closing, the signed originals of the Bill of Sale (**Appendix 3.2.B**) and the Release regarding 3638 W. Pierce (**Appendix 3.2.C**) shall be held in trust by DNR and may only be released if no Termination Notice is timely recorded as per § 5.B. below.

#### **4. OTHER PROVISIONS**

##### **A. General Provisions.**

The General Provisions contained in **Appendix 6.0** shall apply to all Components of this Agreement.

##### **B. Sale Provision.**

The Sale Provisions contained in **Appendix 7.0** shall apply to the West Allis Extension Component of this Agreement.

##### **C. Whole Agreement.**

The Provisions contained in **Appendix 8.0** shall apply to the entire Agreement.

**D. Exclusions and Exceptions.**

**Appendices 3.1.A. and 3.1.B.** are not a part of this Main Agreement and are referred to herein for convenience purposes only.

**5. FINANCING AND REAL ESTATE CONTINGENCY.**

A. CP's, CITY's, RACM's, and DOT's duties regarding the Valley Passage Component Transaction referred to herein, under **Appendix 3.1.A.** and under **Appendix 3.2.A.** are contingent upon those parties determining, in their reasonable discretion and in good faith:

(1) that adequate funds are available to DOT to construct and complete the Underpass and Improvements (as defined in the Valley Passage Easement, **Appendix 3.2.A.**), from whatever source (including donations from or through Menomonee Valley Partners, Inc., "MVP," and/or funds, including local-sponsor funds, from DNR), and at no cost to CP, DOT, CITY or RACM.

DNR understands that CITY, RACM, DOT and/or CP may terminate the Valley Passage Easement and Valley Passage Component of this transaction if adequate funding is not secured; and

(2) that the DNR owns good and marketable fee simple title to the parcels at:

- **3628 W. Pierce Street**, Milwaukee (tax key no. 436-0004-100-3) (currently owned by Valley Passage, LLC, Steven Mech, Registered Agent), west of the west wall of the existing building on that parcel;
- **3638 W. Pierce Street**, Milwaukee (tax key no. 436-0006-000-8) (currently owned by Valley Passage, LLC, Steven Mech, Registered Agent); and
- **3700 W. Pierce Street**, Milwaukee (tax key no. 436-0007-000-3) (currently owned by Watson Family Enterprises, LLC)

(together, herein called, the "**Approach Parcel**") so as to enable DNR, as contemplated by this Component (and **Appendix 3.2.A.**), to convey an easement in and to the Approach Parcel to itself, the CITY, RACM and the public to allow the Approach Parcel to be used for a recreational trail, meeting ADA requirements, and for the entrance-way to the Valley Passage, and so the Approach Parcel may be used for improvements required as part of the valley passage (including the Underpass and Improvements contemplated by the Valley Passage Easement).

DNR, at no cost to CP, DOT, CITY or RACM, intends to acquire the Approach Parcel and understands that CITY, RACM, DOT and/or CP may terminate the Valley Passage Easement and Valley Passage Component of this transaction if the Approach Parcel is not secured.

B. On or before 5 P.M. on **January 10, 2010**, DNR shall provide written assurance to CP, DOT and CITY informing them that adequate funds are available for construction and completion of the Underpass and Improvements (§5.A(1)).

On or before 5 P.M. on **October 1, 2009**, DNR shall provide to CP, DOT and CITY written assurance of DNR ownership of fee simple title in and to the Approach Parcel (§5.A(2)) along with a copy of the deed or deeds to DNR confirming such, and a recent title insurance commitment or policy indicating such and absence of encumbrances that would interfere with the Approach Parcel for the purposes contemplated by the Valley Passage Easement.

If DNR fails, or is unable, to provide either such notice as required (the §5.A(1) notice or the §5.A(2) notice and materials), then any of CP, RACM, CITY or DOT may, on or before **October 31, 2009** (in the case of §5.A(2), the Approach Parcel assurance and that notice), and on or before **February 28, 2010** (in the case of §5.A(1), the funding assurance and that notice), provide a Termination Notice to the other parties hereto and record same (or a memorandum thereof) in the Milwaukee County Register of Deeds Office to terminate the Valley Passage Easement document and interests created thereunder. In the event such Termination Notice is so provided and recorded, the Valley Passage Component Transaction hereunder, the Stipulation, and the Valley Passage Easement shall terminate, and DNR shall promptly return to CP the signed originals of the Bill of Sale (**Appendix 3.2.B**) and the Release regarding 3638 W. Pierce (**Appendix 3.2.C**) that DNR shall have been holding in trust per § 3.C.(iii) above.

D. Neither the CITY nor RACM has any duty whatsoever with respect to any of (i) the West Allis Extension Property, (ii) the East End Extension Property, (iii) the West Allis Trail, (iv) any property not within the City of Milwaukee, or (v) construction of, or payment of the construction costs to initially build, the Underpass and Improvements.

*{The remainder of this page is intentionally blank. The next two pages, contain Section 6 and the signatures of the parties hereto }*

**6. SIGNATURES**

This Agreement has been executed by the parties, as of the date first written above, as evidence of their agreement to be bound by the terms hereof.

<b>CITY: CITY OF MILWAUKEE</b>	<b>DNR: WISCONSIN DEPARTMENT OF NATURAL RESOURCES</b>
By: _____ Mayor Tom Barrett Per Common Council File No. 090219	By: _____ Name Printed: _____
CITY CLERK	<b>Countersigned:</b>
_____ Ronald Leonhardt, City Clerk	By: _____ Name Printed: _____
<b>Countersigned:</b>	
By: _____	
_____ Michael J. Daun, Deputy Comptroller	
<b>Milwaukee City Attorney Approval</b>	
By: _____	
_____ GREGG C. HAGOPIAN Assistant City Attorney State Bar No. 1007373	
Date: _____	

<b>DOT: WISCONSIN DEPARTMENT OF TRANSPORTATION</b>	<b>CP: SOO LINE RAILROAD COMPANY</b>
<p>By: _____</p> <p>Name Printed: _____</p> <p><b>Countersigned:</b></p> <p>By: _____</p> <p>Name Printed: _____</p>	<p>By: _____</p> <p>Name Printed: David S. Drach Director, Real Estate Marketing, U.S.</p>

**APPENDIX 1.0**

DOCUMENT NUMBER

**QUIT CLAIM DEED**  
(WEST ALLIS EXTENSION  
PROPERTY)

This instrument was drafted by:

David S. Drach  
Real Estate Department  
Canadian Pacific  
501 Marquette Ave.  
Minneapolis, MN 55402

**RESERVED FOR RECORDING DATA**

Tax statements for the property  
described in this instrument  
should be sent to Grantee(s) at:

Wisconsin. Dept. Natural Resources  
Bureau of Facilities and Land  
Management  
101 S. Webster Street  
Madison, WI 53707-7921

Return Recorded Documents to:

Richard E. Steffes  
Wisconsin. Dept. Natural Resources  
101 S. Webster Street  
Madison, WI 53707-7921

Dated as of \_\_\_\_\_, 2009.

PARCEL IDENTIFICATION NUMBER

For valuable consideration,

**SOO LINE RAILROAD COMPANY ("Grantor")** (also referred to herein as "Seller"), a corporation under the laws of the State of Minnesota, doing business as Canadian Pacific with its principal place of business located at 501 Marquette Ave. S., Suite 1525, Minneapolis, Minnesota 55402,

hereby conveys and quitclaims to

STATE OF WISCONSIN, DEPARTMENT OF NATURAL RESOURCES ("Grantee")  
(also referred to herein as "Buyer") .

real property in

**Milwaukee and Waukesha Counties, State of Wisconsin,**

described below, together with all hereditaments and appurtenances thereto. The real property is described as follows:

**IN EXHIBIT A ATTACHED HERETO**

the "**Property.**"

This deed does not convey after-acquired title.

As used in this paragraph, "**Claims**" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultant's fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims); "**Environmental Law**" means the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing and hereafter enacted; and "**Hazardous Substance**" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law. By accepting delivery of this Quit Claim Deed, Grantee, for itself, its directors, officers, agents, affiliates, predecessors, successors and assigns, and anyone acting on its behalf or their behalf covenants and agrees not to sue Grantor or its respective directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, grantors or anyone acting on its behalf or their behalf with respect to any Claims (including without limitation all Claims arising under any Environmental Law), existing and contingent, known and unknown, that Grantee had, has or may have, whether arising at common law, in equity, or under a federal, state or local statute, rule or regulation, arising out of, resulting from, or relating to the condition of the Property. The foregoing shall apply to any unknown condition of the Property, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property, regardless of whether the foregoing condition of the Property was caused in whole or in part by the Grantor's actions or inactions.

Buyer agrees to accept the condition of the Property, including specifically without limitation, the environmental and geological condition of the Property, in an "AS-IS" and with "ALL FAULTS" condition. Buyer's acceptance of title to the Property shall represent Buyer's acknowledgment and agreement that:

- (i) Seller has not made any written or oral representation or warranty of any kind with respect to the Property (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose);
- (ii) Buyer has not relied on any written or oral representation or warranty made by Seller, its agents or employees with respect to the condition or value of the Property;
- (iii) Buyer has had an adequate opportunity to inspect the condition of the Property, including without limitation any environmental testing, and to inspect documents applicable thereto, and Buyer is relying solely on such inspection and testing; and
- (iv) the condition of the Property is fit for Buyer's intended use. Buyer agrees to accept all risk of Claims (including without limitation all Claims under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) whether past, present or future, existing or contingent, known or unknown, arising out of, resulting from or relating to the condition of the Property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Property, whether such Hazardous Substance is located on or under the Property, or has migrated from or to the Property.

**SOO LINE RAILROAD COMPANY**  
(d/b/a Canadian Pacific)

By: \_\_\_\_\_  
Director, Real Estate Marketing, U.S.

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing quitclaim deed was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ by David S. Drach, Director, Real Estate Marketing, U.S. of Soo Line Railroad Company, a corporation under the laws of the State of Minnesota, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

Notary Seal

**APPENDIX 2.1**

\_\_\_\_\_  
DOCUMENT NUMBER

**RELEASE OF EASEMENT**

This instrument was drafted by:

David S. Drach  
Real Estate Department  
Canadian Pacific  
501 Marquette Ave., Suite 1525  
Minneapolis, MN 55402

RESERVED FOR RECORDING DATA

Return Recorded Documents to:

David S. Drach  
Real Estate Department  
Canadian Pacific  
501 Marquette Ave., Suite 1525  
Minneapolis, MN 55402

Part of 422-9999-000  
Part of 423-9999-002

Dated as of \_\_\_\_\_, 2009.

\_\_\_\_\_  
PARCEL IDENTIFICATION NUMBER

**THIS RELEASE OF EASEMENT** is between

**STATE OF WISCONSIN, DEPARTMENT OF NATURAL RESOURCES ("DNR")**

and

**SOO LINE RAILROAD COMPANY**, a Minnesota corporation, doing business as Canadian Pacific, ("CP")

**WITNESSETH:**

**WHEREAS**, by virtue of an Easement dated October 12, 2006 and recorded in the office of the register of deeds in and for Milwaukee County, Wisconsin on December 18, 2006, as Document Number 09355566, the "**Easement Agreement**," the DNR obtained from CP an easement for the construction, operation, repair, maintenance and replacement, of a recreational trail for pedestrian and non-motorized vehicles (motorized wheel chairs or other methods of powered mobility for disabled persons and maintenance and emergency vehicles shall be permitted), the "**Trail**," in, over, under and upon the following described real property in **Milwaukee County, Wisconsin**:

A parcel of land located in the Northeast ¼ of Section 35 and the Northwest ¼ and Southwest ¼ of Section 36, all in Town 7 North, Range 21 East, in the City of Milwaukee, Milwaukee County, Wisconsin, and being more particularly described as

commencing at the Southwest corner of the Northeast corner of Section 35; thence North 88° 25' 42" East along the South line of said ¼ Section 2,344.89 feet;

thence North 01° 34' 18" West, 146.85 feet to the point on the centerline of the Soo Line Railroad Company and the point of beginning of this description;

thence North 10° 17' 22" East, 50.00 feet to a point on the Northerly right-of-way line of said railway;

thence South 79° 42' 38" East along said North line, 366.65 feet to a point of curvature;

thence continue Southeasterly 697.74 feet along said Northerly line, said line being the arc of a curve having a radius of 5,680.00 feet, it's center point to the North, a central angle of 07° 02' 18" and a long chord bearing South 83° 13' 47 East, 697.30 feet;

thence South 03° 26' 22" West, 50.00 feet to a point on the centerline of said railway;

thence Northwesterly 703.72 feet along said centerline, said line being an arc of a curve having a radius 5,730.00 feet, with it's center point to the North, a central angle of 07° 02' 18 and a long chord bearing North 83° 13'

47" West, 703.44 feet to a point of tangency; thence North 79° 42' 38" West along said centerline 366.65 feet to the point of beginning.

(the "Property").

WHEREAS, DNR and CP desire to release said Trail easement for the sole purpose of correcting the description of the easement and re-conveying the easement in a separate document of even date hereof;

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, DNR does hereby release to the said CP, its successors and assigns, all easement rights, title and interest in and upon the Property pursuant to the Easement Agreement.

IN WITNESS WHEREOF, DNR has caused his Release of Easement to be duly executed, as of the day and year first above written.

**STATE OF WISCONSIN, DEPARTMENT OF  
NATURAL RESOURCES**

By: \_\_\_\_\_  
Richard E. Steffes  
Real Estate Director  
State of Wisconsin Dept. of Natural Resources

STATE OF WISCONSIN    )  
                                  ) ss:  
COUNTY OF DANE        )

The foregoing Release of Easement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Richard E. Steffes, Real Estate Director of the State of Wisconsin Department of Natural Resources.

Notary Seal

\_\_\_\_\_  
Notary Public



APPENDIX 2.2

**CORRECTED WEST ALLIS EASEMENT &  
EAST-END-EXTENSION- PROPERTY EASEMENT**

\_\_\_\_\_  
DOCUMENT NUMBER

**EASEMENT**

DRAFTED BY:  
Richard E. Steffes, DNR

RESERVED FOR RECORDING DATA

Return to:  
Richard E. Steffes  
Wisconsin Department of Natural Resources  
Bureau of Facilities and Land Management  
101 S. Webster Street  
Madison, WI 53707-7921

Dated as of \_\_\_\_\_, 2009.

\_\_\_\_\_  
PARCEL IDENTIFICATION NUMBER

In consideration of the sum of Ten Dollars and No Cents (\$10.00) the receipt whereof is hereby acknowledged,

**SOO LINE RAILROAD COMPANY**, a Minnesota corporation doing business as Canadian Pacific, having its principal place of business at 501 Marquette Avenue, Minneapolis, Minnesota 55402, ("CP")

hereby grants unto

**THE STATE OF WISCONSIN, DEPARTMENT OF NATURAL RESOURCES ("DNR")**, its successors and assigns

an easement for the construction, operation, repair, maintenance and replacement, of a recreational trail for pedestrian and non-motorized vehicles (motorized wheel chairs or other methods of powered mobility for disabled persons and maintenance and emergency vehicles shall be permitted), the "**Trail**," in, over, under and upon the following described real property in Milwaukee County, Wisconsin:

**DESCRIBED ON EXHIBIT A ATTACHED**

(the "**Property**.")

The easement rights granted herein for the Trail shall continue only so long as used for such purposes.

CP reserves unto itself, and its successors and assigns, the right and privilege:

- (i) to use said Property for any and all other purposes that are consistent with the use thereof for the purpose(s) permitted by this easement;
- (ii) the right to permit other parties to use said Property, so long as such use does not interfere with the purposes of this easement,
- (iii) to drive vehicles upon the Property if necessary or convenient to reach adjacent railroad tracks for maintenance purposes or in the event of an emergency, subject to the obligation and requirement of CP to promptly repair any damage that may occur to the Trail from such use to the satisfaction of the DNR;
- (iv) and further reserving the right to prevent the placement or maintenance of any Trail improvement upon said Property which would unreasonably interfere with the maintenance and safe and continuous operation of any adjacent railroad tracks and facilities.

CP reserves the title to said Property to itself, and DNR's maintenance and use for the above purposes upon said Property, however long continued, shall not vest in DNR rights adverse to those of CP other than those granted by this indenture.

DNR shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling or other obstructions to the construction of DNR's Trail and to the extent provided by law, shall indemnify, hold harmless and defend CP from and against any and all

liability for damage to the foregoing pipes, wires, conduits, sewers, piling or other obstructions, if any, caused by the construction or maintenance of DNR's Trail. CP makes no representation by the granting of this easement that its property is free of any such pipes, wires, conduits, sewers, pilings or other obstructions.

CP hereby conveys to DNR the commercial grade chain link fence that is partially completed along portions of the southerly and easterly lines of the Property. DNR agrees to assume responsibility for completing the construction of said fence along the Southerly boundary of the property and shall thereafter assume responsibility for maintenance, repair, replacement and removal thereof.

DNR assumes all risk of damage to or destruction of the Trail and the Fence through any cause whatsoever while located upon and across the Property, including as may result from the operation of railroad trains and rolling stock, but excepting as may result from CP's intentional malicious misconduct, or that CP is responsible for repairing as may otherwise explicitly set forth herein.

DNR shall:

- (a) be familiar with the requirements of, comply with, and secure at DNR's own expense any permits or licenses required by, all applicable laws, regulations, ordinances, and standards, including without limitation all Environmental Laws;
- (b) upon written request by CP, provide CP with the results of appropriate reports and tests and with any other applicable documents to demonstrate that DNR has complied with all Environmental Laws relating to the Property;
- (c) not in any manner cause or allow the Property to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Property within the ambit of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or any similar state statute or local ordinance;
- (d) not, without prior written disclosure to and approval by CP, Use or authorize the Use of any Hazardous Substance on the Property;
- (e) not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the Property;
- (f) promptly notify CP of any actual or suspected Release of any Hazardous Substance on, to, or from the Property, regardless of the cause of the Release;
- (g) promptly provide CP with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, causes of action, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United

States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state or local agency or authority, or any other entity or individual, concerning any Release of a Hazardous Substance on, to or from the Property, or any alleged violation of or responsibility under any Environmental Law relating to the Property; and

- (h) promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the Property that gives rise to any liability, claim, cause of action, obligation, demand, fine, penalty, loss, judgment or expense under any Environmental Law, or causes a significant public health or workplace effect, or creates a nuisance;
- (i) assume and pay any fee, tax, assessment or other charge or expense levied against the Property or incurred by the Railroad in connection with installation, use or existence of the Trail upon the Property; and
- (j) assume and pay for any maintenance of the Trail.

To the extent permitted by applicable law, DNR hereby releases and agrees to indemnify, hold harmless and defend CP and its directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, or anyone acting on its behalf or their behalf, from and against any and all Claims (including without limitation any Claims arising under any Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) of every kind, past, present and future, existing and contingent, known and unknown, arising from any injury to persons, firms or corporations whomsoever, including injuries resulting in death, and damage to property whatsoever, wherever such persons or property are located, caused by or attributable to, in whole or in part, any act or omission of DNR (or DNR's employees, agents, representatives, or invitees) in connection with the exercise of the right and privilege herein granted, including without limitation the Use or Release of Hazardous Substances by DNR and the breach by DNR of any of its warranties, representations or covenants. DNR's obligations hereunder shall survive the termination or expiration of this easement.

As used herein,

- (a) "**Claim**" or "**Claims**" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultants' fees, response costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);
- (b) "**Environmental Law**" or "**Environmental Laws**" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act (the Clean Water Act), 33 U.S.C. § 1251 et seq. the

Clean Air Act, 42 U.S.C. § 7401 et seq., and the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted.

- (c) **"Hazardous Substance"** or **"Hazardous Substances"** means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law;
- (d) **"Release"** or **"Released"** means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or spreading of any Hazardous Substance into the environment, as "environment" is defined in CERCLA;
- (e) **"Response"** or **"Respond"** means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Substance;
- (f) **"Use"** means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon a Hazardous Substance.

CP does not warrant title to the above-described property, and DNR shall have no recourse against CP in the event DNR shall be required, through the action of any third party, to either remove the Trail from CP's property or to make any payment to avoid such removal.

This indenture shall inure to the benefit of and be binding upon the successors and assigns of CP and DNR.

*[ the remainder of this page is intentionally blank and the following page contains the signatures of the parties hereto ]*



**APPENDIX 3.1.A.**

**STIPULATION**

BY AND AMONG

THE STATE OF WISCONSIN - DEPARTMENT OF TRANSPORTATION

AND

THE STATE OF WISCONSIN - DEPARTMENT OF NATURAL RESOURCES

AND

THE CITY OF MILWAUKEE

AND

SOO LINE RAILROAD COMPANY

**Hank Aaron State Trail  
and**

**Valley Passage**

**Project I.D. 1693-38-70**

**Structure C- 40 - 81**

**Located on and along the right of way of Soo Line Railroad Company between  
South 43<sup>rd</sup> Street and 37<sup>th</sup> Street extended, north of Pierce Street in the  
City of Milwaukee, Milwaukee County**

THIS STIPULATION is made and entered into by and among the State of Wisconsin, Department of Transportation ("DOT"), the State of Wisconsin, Department of Natural Resources ("DNR"), the City of Milwaukee ("CITY") and Soo Line Railroad Company, doing business as Canadian Pacific ("CP") and is dated as of **JULY 9, 2009**.

**WHEREAS**, DOT, DNR, and CITY are cooperating in developing a recreational trail to be known as the Hank Aaron State Trail ("HAST"), located generally as shown by **Exhibit "A"** which is attached hereto and made a part hereof, and

**WHEREAS**, a segment of the HAST is to occupy a longitudinal segment of railroad right of way owned or controlled by CP, and

**WHEREAS**, a public access to the HAST, referred to as the "**Valley Passage**", including a spur of the HAST and an underpass structure to be known as C-40-81 is to cross the right of way and track of CP at South 37<sup>th</sup> Street extended and

**WHEREAS**, construction of C-40-81 will necessitate removal of an existing unused pedestrian underpass structure at the above referred to location, and

**WHEREAS**, DOT, in accordance with authority vested in it by law, is to let a contract for construction of the HAST, including removal of the existing underpass and construction of the Valley Passage (and also construction of a bridge to carry the HAST over the Menomonee River).

**NOW, THEREFORE**, in consideration of the premises and of their mutual dependent agreements hereinafter set forth, the parties hereto hereby stipulate and agree as follows:

**1. HAST AND SEPARATION OF GRADES.**

(a) A segment of the HAST, including the Valley Passage trail spur will be constructed on CP lands as substantially shown by the typical section and the plan and profile sheets marked **Exhibit "B"** which is attached hereto and made a part hereof.

(b) A separation of grades between the trail and the railroad shall be effected at the Valley Passage by means of a ballast deck trail underpass. Said structure shall have the arrangement and provide the minimum horizontal and vertical clearances as shown on the general plans for Structure C-40-81 marked **Exhibit "C"** which is attached hereto and made a part hereof.

(c) To accommodate the HAST and the Valley Passage, changes to the railroad tracks of CP shall be made as substantially shown by the typical section and the plan and profile sheets marked **Exhibit "D"** which is attached hereto and made a part hereof.

**2. GENERAL.**

(a) Detail plans for the HAST and the Valley Passage, railroad plant changes, and for such other incidental or appurtenant work for which plans will be necessary will be subject to the approval of the parties to this Stipulation. Approval shall not be unreasonably withheld by any party to this Stipulation.

(b) Should federal aid funds be authorized to finance this separation project, the plans, contracts, agreements, and the work done under them, will be subject to the approval of the United States Department of Transportation, Federal Highway Administrator or authorized representative, and the regulations pertinent to the work issued by the Federal Highway Administration.

(c) Construction operations by DOT or its contractors will be subject to the inspection of the chief engineering officer or authorized representative of CP to insure safety of railroad operations during construction, and be subject to CITY inspection.

(d) Construction operations by CP with its own forces, performed in connection with this project, will be subject to the inspection and approval of the Administrator of the DOT or his authorized representatives, and be subject to CITY inspection.

### 3. CONSTRUCTION.

(a) DOT will undertake, in cooperation with CP, the removal of the existing underpass structure, the construction of the HAST and the Valley Passage, and work incidental or appurtenant thereto in accordance with the contract for construction Project I.D. 1693-38-70 which includes the plans therefore, the standard specifications for highway and structure construction of DOT, supplemental specifications and pertinent special provisions to be incorporated into the contract for the work. Such work will be undertaken by DOT without cost to CP or to CITY or to RACM. Special provision items entitled "**Railroad Requirements and Coordination**" in form similar to **Exhibit "E"** which is attached hereto and made a part hereof, will be made a part of the proposal to be furnished to DOT's contractors for bidding purposes.

(b) DOT shall perform grading, drainage and site work on CP lands owned or controlled by to provide a railroad embankment and place sub-ballast thereon, to accommodate the track changes shown by **Exhibit "D"** necessary for construction of the HAST and the Valley Passage. All such work and/or materials shall be performed or furnished by DOT without cost to CP or to CITY or to RACM, and shall be in compliance with CP's standards and plans approved in writing by CP and CITY.

(c) CP with its own forces will make such alterations in the facilities owned or operated by it shown by **Exhibit "D"** above the sub-ballast as is made necessary by the HAST and the Valley Passage, and will undertake such other work with its own forces or preferred contractor as may be mutually agreed upon. All of such work shall be the subject of a separate agreement between DOT and CP. Said agreement shall contain a detailed statement of the work to be performed, supplemented as necessary with plans therefore, and shall show the estimated cost of the work.

4. COST SHARING. This project is considered within classification No. 646.210(b)(2) of Code of Federal Regulations 23, Part 646, Subpart B, Railroad-Highway Projects under which there will be no assessment of benefits against or charge to CP or to CITY or to RACM.

5. REIMBURSEMENT FOR CP FORCE WORK, AUDIT AND RECORDS. DOT will reimburse CP for 100 percent of the cost of the work performed under an agreement for work with CP forces. The form of agreement shall be substantially as shown by **Appendix 3.1.B.** attached hereto and made a part hereof. Such reimbursement will be made in accordance with the Code of Federal Regulations 23, Part 140, Subpart I, Reimbursement for Railroad Work on the basis of invoices submitted by CP.

Such invoices for such reimbursement shall be prepared in accordance with said CFR 23, Part 140, Subpart I, which by reference is made a part of this agreement. Invoices will be audited by DOT upon which payments will be made in such amounts as have been found to be reimbursable under the provisions of CFR 23, Part 140, Subpart I.

Each party to this agreement shall have the opportunity to check the final quantities of work performed by the other, and all books and records shall be open to inspection by representatives of each party and on federal aid projects by representatives of each party and by representatives of the Federal Government.

CP shall file such reports and records pertaining to the work as may be required by DOT and the Federal Highway Administration.

6. **MAINTENANCE**. Upon completion of the work, CP shall maintain the railroad facilities on Structure C-40-81, and other repair and maintenance shall be performed in accordance with CP's, CITY's and DNR's respective duties set forth in that certain Valley Passage Easement by and among CITY, RACM, DNR, DOT and CP dated as of **JULY 9, 2009** attached to that certain "2009 West Allis Trail Extension Agreement" among CP, DNR, DOT and CITY as **Appendix 3.2.A**.

CP's obligation with respect to maintenance shall not include replacement, reconstruction, or modification of Structure C-40-81. In the event a major restoration or replacement of the Structure becomes necessary due to disaster, deterioration, or serious accident affecting the safe use of the Structure, the cost of such restoration or replacement shall be apportioned between the constituted public authority having legal jurisdiction for the maintenance of the HAST and the Valley Passage and CP, as mutually agreed between them. In the absence of such agreement, CP has the right to close, remove or replace the Valley Passage Structure in its sole discretion.

7. **RIGHT OF WAY**. CP hereby grants its assent to the HAST and the Valley Passage, and to DOT for the construction and improvement work called for herein. The CP, CITY, RACM, DOT and DNR entered into the Valley Passage Easement (attached to the "2009 West Allis Trail Extension Agreement" as **Appendix 3.2.A**.) wherein CP provided to CITY, DNR and the public, easement rights to use and maintain the HAST, the Valley Passage and Structure C-40-81.

In addition, CP hereby permits DOT to enter and occupy CP lands as necessary for the construction of Project I.D. 1693-38-70, including site improvements needed to accommodate the work referred to herein, including for such purposes, permission to cross tracks of CP for construction access purposes.

CP further agrees to permit DOT or its contractor or to have CP's own forces or its preferred contractor undertake to remove the existing underpass structure and to construct cut and fill slopes on CP lands in accordance with the approved project plans.

8. **SALE OR TRANSFER OF CONTROL OF PROPERTY**. CP agrees that any purchaser or other recipient of ownership or control of the property of CP involved in this Stipulation shall be bound by this Stipulation to the same extent as CP. CP shall include specific notice of this Stipulation in any sale or transfer document and shall require the purchaser or other recipient of ownership or control to acknowledge and assume CP's rights and/or obligations included herein.

9. **OTHER APPENDICES**. Also attached to the "2009 West Allis Trail Extension Agreement" are the following appendices that CP has entered or will enter into:

- **Appendix 2.1.**, a Release of Easement whereby DNR releases an easement it previously obtained from CP

- **Appendix 2.2**, a Corrected West Allis Easement and East End Extension Property Easement between CP and DNR
- **Appendix 3.2.C.**, a Release of Restrictive Covenant Affecting 3638 W. Pierce.

IN WITNESS WHEREOF, the parties hereto have caused this agreement is to be executed as of the date first written above by their proper officers and representatives.

<b>CITY: CITY OF MILWAUKEE</b>	<b>DOT: WISCONSIN DEPARTMENT OF TRANSPORTATION</b>
<p>By: _____          Mayor Tom Barrett Per          Common Council File No. 090219</p> <p>CITY CLERK</p> <hr/> <p>Ronald Leonhardt, City Clerk</p> <p><b>Countersigned:</b></p> <p>By: _____          Michael J. Daun, Deputy Comptroller</p> <p><b>Milwaukee City Attorney          Approval</b></p> <p>By: _____          GREGG C. HAGOPIAN          Assistant City Attorney          State Bar No. 1007373</p> <p>Date: _____</p>	<p>By: _____          Division Administrator or designee</p> <p>Name Printed: _____</p> <hr/>

<b>DNR: WISCONSIN DEPARTMENT OF NATURAL RESOURCES</b>	<b>CP: SOO LINE RAILROAD COMPANY</b>
By: _____ Division Administrator or designee  Name Printed:  _____	By: _____  Name Printed: _____

## APPENDIX 3.1.B.

### STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION AND SOO LINE RAILROAD COMPANY

#### AGREEMENT FOR RAILROAD FORCE WORK

PROJECT I.D. 1693-38-50  
City of Milwaukee  
(CP Track & AEI Work)

Valley Passage  
Milwaukee County  
DOT Crossing No. \_\_\_\_\_ (CP to Provide)  
Milwaukee Terminal

This Agreement, by and between the State of Wisconsin, Department of Transportation ("DOT") and the Soo Line Railroad Company ("CP"), dated as of **JULY 9, 2009**, provides for the performance of certain work described below by CP on the above project.

#### RECITALS

**WHEREAS**, in conjunction with the planned development of the Hank Aaron State Trail, DOT and CP have stipulated in a separate document (the "**Stipulation**") to their respective interests in accomplishing Project 1693-38-70 which crosses or otherwise affects the property of CP, and

**WHEREAS**, to accommodate Project 1693-38-70, DOT deems it more feasible and advantageous for construction purposes to have a certain part of the project work consisting of CP track and communication work to be performed by CP directly and without bids pursuant to Section 84.06(4), Wisconsin Statutes as set forth in this Agreement (the "**AGREEMENT FOR RAILROAD TRACK WORK**").

#### AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and of their mutual and dependent agreements hereinafter set forth, the parties hereto hereby agree as follows:

1. **STANDARD GENERAL PROVISIONS**. The work to be performed by CP described below shall be performed in accordance with the provisions contained herein and the "Standard General Provisions", dated November 19, 2007, **Exhibit "A"**, attached hereto and made a part of this Agreement.

2. **WORK TO BE PERFORMED BY CP**.

a) *TBD based on construction plan, to include track changes and relocation of AEI Reader*

b) construct a temporary construction crossing for use by DOT's contractor

c) *other? TBD*

The work described above is further described in the Agreement Summary, **Exhibit "B"**, CP's Material and Force Account Estimate dated \_\_\_\_\_ (*CP to Furnish, marked Exhibit "C", Plan of Track Changes, Exhibit "D" and (other exhibits TBD, may include General Outline of Railroad Force Work, Title Sheet, Bridge Staging Plans, Bridge Plans, Track Typical Section, CP Track Plan, or other)*), which are attached hereto and made a part hereof.

3. **DESIGN AND CONSTRUCTION.** The modification of the railroad facilities described under Item 2 above shall be in conformance with the approved project plans. All such work shall be performed under normal CP practices and the applicable requirements of the DOT and of the United States Department of Transportation, Federal Highway Administration, as set forth in 23 CFR Part 646 Subpart B.

4. **COOPERATION.** CP will cooperate with DOT to the fullest extent possible to schedule and carry out railroad force work to meet the prosecution and progress schedule of the DOT referred to in **Exhibit " "** which is attached hereto and made a part hereof.

5. **OWNERSHIP AND MAINTENANCE OF TRACK WORK.** Upon completion of the work, CP shall own and maintain the track work and the AEI Reader, constructed or relocated under this Project.

6. **APPORTIONMENT OF COSTS.** As set forth in **Exhibit "C"**, CP's estimated cost of performing such work is \_\_\_\_\_ (*CP to Furnish*) \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). The DOT agrees to reimburse CP for 100 percent of actual costs incurred by CP under this Agreement.

7. **INVOICE AND BILLS.** CP shall submit progressive billing to the DOT and all requests for payment with the State Project I.D. Number to the DOT's regional office, 141 N.W. Barstow Street, P.O. Box 798, Waukesha, WI 53187-0798. The STATE Project I.D. number is to be included on all invoices and bills with the understanding, however, that the supporting documentation will not need to reference the Project I.D. number. If a Final Bill is not submitted within one year of the DOT's acceptance of CP's work, the last detailed progressive bill will be considered to be the Final Bill pursuant to 23 CFR 140.922. Each copy of the Final invoice shall bear the following endorsement:

"This invoice has been prepared in accordance with the requirements of 23 Code of Federal Regulations, Part 140, Subpart I – Reimbursement for Railroad Work. The records supporting the charges in this bill are located in the office of \_\_\_\_\_"

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the date first written above by their proper officers and representatives.

CP: SOO LINE RAILROAD COMPANY

By \_\_\_\_\_

Title \_\_\_\_\_

DOT: STATE OF WISCONSIN,  
DEPARTMENT OF TRANSPORTATION

By \_\_\_\_\_  
Contracts Manager

APPROVED \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Governor of Wisconsin

## APPENDIX 3.1.C.

### STANDARD GENERAL PROVISIONS for HIGHWAY-RAILROAD AGREEMENTS between THE STATE AND THE COMPANY

1. **Specifications and Special Provisions.** The standard specifications, including supplemental specifications and the project special provisions of the STATE shall apply to work performed by the contractor of the STATE
2. **COMPANY<sup>1</sup> to Furnish Labor and Materials.** The COMPANY or its contractors will furnish all labor, materials, equipment, tools and incidentals necessary to complete the work described in the Agreement and will perform such work in accordance with generally accepted highway and railroad standards and practices and the provisions of the Agreement. All furnished materials shall be in accordance with 23 CFR 635.410 Buy America requirement.
3. **Materials recovered.** Materials recovered from temporary use by the COMPANY and materials recovered due to substitution or replacement of the existing railroad facilities that are included as a part of the Agreement, shall be credited to the project in accordance with 23 CFR 140.908, Materials and Supplies.
4. **Coordination of Work.** The COMPANY will cooperate with and coordinate its work with that of the STATE or its contractors to the extent practicable and feasible for the completion of the project.
5. **Performance of Work.** In connection with the performance of the work, the COMPANY will comply with sections 16.528 and 16.754, Wis. Stats.
6. **Traffic Control.** Unless traffic control devices will be provided and installed by the STATE, the COMPANY shall install traffic control devices and implement methods to adequately protect the traveling public at all times. The COMPANY shall conduct the Agreement work and subsequent maintenance work at grade crossings in accordance with Section 86.135 of the Wisconsin Statutes. Such traffic control devices and methods and their installation or implementation shall conform to Part 6 of the Manual on Uniform Traffic Control Devices (MUTCD) published by the Federal Highway Administration and adopted by the Wisconsin Department of Transportation along with the Wisconsin Supplement to the MUTCD.

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<sup>1</sup> I.e. Soo Line Railroad Company, doing business as Canadian Pacific.

7. **Authorization and Approval of Work.** The work and COMPANY operations provided herein shall be subject to and meet the approval of the Administrator for the STATE or his authorized representative. Work shall not start until the COMPANY has received written notice from the STATE to proceed with the work. The COMPANY shall notify the Transportation Region Office for that area of the State in which the work is located when it will begin its operations and shall give similar notification when operations are resumed, subsequent to suspension of operations.

Any significant change in the extent or scope of the work under the Agreement, including incidental work exceeding 25% of the original estimate for force work labor or the total cost of the work, shall be covered by a written contract change order. It is expressly understood and agreed that any work done by the COMPANY under the Agreement, prior to authorization by the STATE, shall be excluded from payment under the terms of the Agreement.

The COMPANY may subcontract all or portions of the work included under the Agreement provided a market based competitive procurement process is used. Subcontracting of more than 50% of the labor must have prior approval of the STATE. An existing continuing contract under which the COMPANY has the same kind of work regularly performed at its own cost will be considered to conform to the requirements of this section provided that costs to the STATE are reasonable and the contract has the prior written approval of the STATE.

8. **Nondiscrimination.** In connection with the performance of work under the Agreement, the COMPANY agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, development disability as defined in Section 51.01(5) Wisconsin Statutes, sexual orientation as defined in Section 111.32(13m) Wisconsin Statutes, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except for sexual orientation, the COMPANY further agrees to take affirmative action to ensure equal employment opportunities.

The COMPANY shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer for the STATE setting forth the provisions of the nondiscrimination clause.

9. **Reimbursement, Records and Audit.** Reimbursement to the COMPANY for work performed by COMPANY forces under the described project shall be subject to the provisions of 23 CFR, Part 140, Subpart I, Reimbursement for Railroad Work. Overhead and indirect construction costs will not be reimbursed. Any costs incurred or charges made by the COMPANY not in compliance with the above shall be at the sole cost and expense of the COMPANY.

The COMPANY will submit a calculation of indirect cost rates applied in the contract within 180 days of the end of its fiscal year.

Reimbursement for work performed by a contractor hired by the COMPANY to perform work under an agreement between the STATE and the COMPANY shall be subject to the terms of such agreement between the STATE and the COMPANY. Subcontracted work that does not comply with the provisions of Section 7 of these Standard General Provisions will not be reimbursed.

The STATE will reimburse the COMPANY for the STATE 's share of the cost of the work on the basis of invoices (an original and two copies) sent to the STATE 's Transportation Region Office, not more often than once a month during the progress of work for the partial payment on account of the work completed to date. Such invoices shall represent the value to the STATE of the partially completed work. Payment will be made promptly in an amount as has been found to reasonably represent the value of the partially completed work, less any amounts previously paid on account. An item which is not properly submitted or which appears questionable may be excluded from progress payments.

*Estimated unit prices of construction items used for the purpose of determining the total cost of work under the Agreement upon which partial payments are to be based shall not be binding upon either party hereto for determining the actual ultimate gross amount due to the COMPANY under the Agreement.*

An original and two copies of the complete and final invoice, including invoices from subcontractors, shall be submitted, to the STATE 's Transportation Region Office.

*The COMPANY agrees and will require its subcontractors to agree to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred under the terms of the Agreement and to make such materials available at their respective offices at all reasonable times during the contract period and for a period of three years from the date final payment was received by the COMPANY for inspection and audit by the STATE, and/or Federal government. Copies of such records shall be furnished if requested.*

10. **STATE's Contractor to Provide Third-party Railroad Protective Insurance.** The STATE will require its contractors to provide for and in behalf of the COMPANY insurance protection to cover liability imposed by law upon the COMPANY for damages because of bodily injury to or death of persons and injury to or destruction of property resulting from the operations or presence of the contractor, subcontractor, their employees or COMPANY employees on the project; such railroad protective insurance shall be written and shall be in accordance with the requirements of 23 CFR, Part 646, Subpart A - Railroad-Highway Insurance Protection. A copy of each policy so required shall be furnished to the COMPANY.

The minimum limits of coverage to be provided are two million dollars (\$2,000,000) per occurrence for Coverage A (Bodily Injury Liability and Property Damage Liability) and Coverage B (Physical Damage to Property Liability), and shall include an annual

aggregate amount of six million dollars (\$6,000,000). Such aggregate amount shall apply separately to each renewal or extension. This coverage is required for the duration of the project.

11. **Flagging for Work Affecting Railroad Property.** The STATE will require its contractor and subcontractors to contact the railroad for flagging protection as may be required for work on COMPANY property when their operations are likely to occur within 25-feet of the track centerline (unless arrangements are made for a track clearance fence to be installed no closer than 12-feet from the track centerline, in which case flagging will be required when operations occur between the fence and track), and in accordance with Section 107.17 of the STATE 's standard specifications for highway and structure construction or supplements thereto.
12. **Miscellaneous.** The Agreement between the parties shall not be deemed to create a partnership between the parties and no party shall have the authority to obligate the other.

The Agreement shall be governed under the laws of the State of Wisconsin. The parties shall at all times comply with and observe all federal and state laws, local laws, ordinances and regulations which are in effect during the period of the work and which affect the work.

*No right or duty in whole or in part of the Agreement may be assigned or delegated by the COMPANY without prior written consent of the STATE.*

*The STATE reserves the right to terminate the work by the COMPANY in whole or in part without penalty due to non appropriation of funds or for failure of the COMPANY to comply with the terms, specifications, and conditions of the Agreement.*

The provisions of the Agreement are severable. The unenforceability of any provision shall not affect the enforceability of the remainder of the Agreement.

*If a state public official (Section 19.42(13), Wis. Stats.), a member of a state public official's family, or any organization in which a state public official or any member of the official's immediate family owns or controls a 10% interest, is a party to the Agreement and if the Stipulation involves payment of more than \$3,000 within a 12-month period, the Agreement is voidable under state law unless appropriate disclosure is made under Section 19.45(6), Wis. Stats., before signing the Agreement. Disclosure must be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, WI 53703 and to the Secretary, Wisconsin Department of Transportation, P.O. Box 7910, Madison, WI 53707. State classified employees and certain University of Wisconsin faculty and staff are subject to separate disclosure requirements.*

No other correspondence, document, acceptance or acknowledgment shall be effective or binding between the parties unless expressly agreed to by each party in writing.

Costs assigned to the COMPANY for expenses of the Office of the Commissioner of Railroads identified under Section 195.60 of the Wisconsin State Statutes are not reimbursable.

## APPENDIX 3.2.A.

VALLEY PASSAGE EASEMENT

Document Title

Document Number

VALLEY PASSAGE EASEMENT

**Drafted By:**

Gregg C. Hagopian  
Assistant City Attorney  
841 North Broadway, 7<sup>th</sup> Floor  
Milwaukee, WI 53202

Recording Area

Name and Return Address

Gregg Hagopian  
Asst. City Attorney  
841 N. Broadway, 7<sup>th</sup> Floor  
Milw., WI 53202

424-0403-000-5  
423-9999-003-8  
436-9999-000-1  
436-0007-000-3  
436-0006-000-8  
436-0004-100-3  
424-9999-112  
423-9999-002-X  
423-9999-000-3  
422-9999-000  
412-9999-03  
422-9994-000

Tax Key Number

**THIS VALLEY PASSAGE EASEMENT AGREEMENT** (the “**Agreement**”), is made and dated as of **JULY 9, 2009**, and is by and among the Parties hereto for good and valuable consideration, receipt and sufficiency of which are hereby acknowledged as follows:

## 1.0 PARTIES

**SOO LINE RAILROAD COMPANY**, a Minnesota corporation doing business as Canadian Pacific (“CP”),

the **CITY OF MILWAUKEE**, a municipal corporation of the State of Wisconsin (“CITY”),

the **REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE**, a body corporate and politic under Wis. Stat. § 66.1333 (“RACM”),

the **WISCONSIN DEPARTMENT OF NATURAL RESOURCES** (“DNR”), and

the **WISCONSIN DEPARTMENT OF TRANSPORTATION** (“DOT”)

collectively, the “Parties.”

## 2.0 RECITALS

2.1 CP owns fee title to a railroad right of way corridor generally 105 feet in width upon and across the Southeast Quarter of the Northwest Quarter, and the Northeast Quarter of the Southwest Quarter of Section 36, Township 7 North, Range 21 East of the Fourth Principal Meridian, in the City of Milwaukee, Milwaukee County, Wisconsin, herein called the “CP Parcel,” that is depicted on Exhibit A attached hereto as Parcels 2, 2A and 2B, and that includes:

Address: 699 S. 35<sup>th</sup> Street  
Tax Key No.: 423-9999-000-3

And

Address: 3700R W. Pierce Street  
Tax Key No.: 436-9999-000-1

And

Address: 699 S. 35<sup>th</sup> Street  
Tax Key No.: 423-9999-003-8

And

Address: 650 S. 35<sup>th</sup> Street  
Tax Key No.: 424-9999-112

And

Address: 660 S. 44<sup>th</sup> Street  
Tax Key No.: 423-9999-002-X

And

Tax Key No.: 412-9999-03

And, CP conducts, maintains and operates railroad activities upon and across the CP Parcel.

- 2.2 CP, DNR, DOT, and CITY entered into that certain “**2009 West Allis Trail Extension Agreement**” dated as of **JULY 9, 2009** (the “**2009 Comprehensive Contract**”) that contemplates, among other things, extension of the Hank Aaron State Trail (“**HAST**”) by means of a Valley Passage involving the CP Parcel.
- 2.3 DNR and CITY desire to acquire, for their benefit and the benefit of the public, a permanent public access, maintenance, and trail operation easement in and affecting a portion of the CP Parcel, which portion is herein called the “**CP Easement Area,**” and which CP Easement Area is depicted and legally described on the Map attached hereto as **Exhibit A**, and which includes allowing the HAST to pass through the Underpass.
- 2.4. CP is willing to grant a permanent public access, maintenance, and trail operation easement to DNR, CITY and the public on the terms and conditions contained herein.
- 2.5. RACM owns fee title to the following described land in the Menomonee Valley, in the City of Milwaukee, Milwaukee County, Wisconsin, herein called the “**RACM Parcel:**”

Address: 610 South 35<sup>th</sup> Street

Tax Key No.: 424-0403-000-5

Legal Description: Parcel 3 of CSM No. 7701 in the NE and NW ¼ of Section 36 and the NW ¼ of Section 31, T7N, R22E. T1D 53. BID 26.

2.6. DNR and CITY desire to acquire, for their benefit, a permanent public access, maintenance and service-road-operation easement in and affecting a portion of the RACM Parcel, which portion is herein called the “**Service Road**” and which Service Road is depicted and legally described on the Map attached hereto as Exhibit A. DNR and CITY also desire to acquire, for their benefit and the benefit of the public, a permanent public access, maintenance, and trail operation easement in and affecting a portion of the RACM Parcel Property, which portion is herein called the “**RACM Easement Area**,” and which RACM Easement Area is also depicted and legally described on the Map attached hereto as Exhibit A.

RACM is willing to grant those easements on the terms and conditions contained herein.

2.7. DNR owns, or expects to soon own, fee title to the following described land in the Menomonee Valley, in the City of Milwaukee, Milwaukee County, Wisconsin, herein called the “**DNR Parcel**” (depicted and legally described on the Map attached hereto as Exhibit A):

Address:

3700 W. Pierce Street (tax key 436-0007-000-3),

3638 W. Pierce Street (tax key 436-0006-000-8), and

that part of 3628 W. Pierce Street west of the west wall of the building that currently exists on that site (part of tax key 436-0004-100-3).

2.8. CITY desires to acquire, for its benefit and the benefit of the public, a permanent public access, maintenance, and trail operation easement in and affecting a portion of the DNR Parcel, which portion is herein called the “**DNR Easement Area**,” and which DNR Easement Area is also depicted and legally described on the Map attached hereto as Exhibit A.

DNR is willing to grant that easement on the terms and conditions contained herein.

2.9.1 CITY, by its Common Council, duly approved this Agreement by Council Resolution File No. 090219.

- 2.9.2. DNR duly approved this Agreement by DNR Board approval on May 27, 2009.
- 2.9.3. DOT duly approved this Agreement on JUNE 25, 2009.
- 2.9.4. RACM duly approved this Agreement by RACM Board Resolution File No. \_\_\_\_\_
- 2.9.5. CP has duly approved this Agreement

### **3.0 Agreement Provisions**

3.1. **Recitals; Contingencies.** The recitals in Section 2 are hereby mutually acknowledged and accepted. The parties' duties hereunder are subject to and contingent upon ¶5 of that certain "2009 West Allis Extension Agreement" dated as of **JULY 9, 2009** among CP, DNR, DOT and CITY (the "Main Agreement"). Under that ¶5, any of CP, RACM, CITY or DOT may, on or before **October 31, 2009**, and on or before **February 28, 2010**, provide a Termination Notice to the other parties and record same (or a memorandum thereof) in the Milwaukee County Register of Deeds Office, in which case this Valley Passage Easement and the interests created hereunder shall terminate, and DNR shall return to CP the originals of the documents referred to in the Main Agreement as Appendices 3.2.B. and 3.2.C. In the event no such Termination Notice is so recorded by **February 28, 2010**, then this Valley Passage Easement and the rights created hereunder are no longer subject to termination under said ¶5.

#### **3.2.0 Grant of Permanent Public Access, Maintenance, and Trail Operation Easement.**

- 3.2.1 Subject to the covenants, conditions and reservations contained in this Agreement, CP hereby grants to DNR and CITY, for their benefit and the benefit of members of the public, and DNR and CITY hereby accept from CP, on the terms and conditions contained herein, a permanent non-exclusive easement in and to the CP Easement Area as said area is shown and described in **Exhibit A**, with the right to use, maintain, repair, and replace, upon the CP Easement Area a public, recreational trail and appurtenances thereto for the HAST (and which includes DNR, CITY and public right to use the HAST trail through the Underpass).

3.2.2. RACM hereby grants to DNR and CITY, for their benefit and the benefit of members of the public, and DNR and CITY hereby accept from RACM, on the terms and conditions contained herein, a permanent non-exclusive easement in and to the RACM Easement Area (including the Bridge, defined below), with the right to use, maintain, repair, and replace, upon the RACM Easement Area a public, recreational trail and appurtenances therefor (the HAST), together with the right of ingress and egress to the RACM Easement Area.

3.2.3. DNR hereby grants to CITY, for its benefit, DNR's benefit, and the benefit of members of the public, on the terms and conditions contained herein, and DNR hereby subjects for the benefit of City and members of the public, a permanent non-exclusive easement in and to the DNR Easement Area, with the City and DNR right to use, maintain, repair, and replace, upon the DNR Easement Area a public, recreational trail and appurtenances therefore (the HAST), together with the right of ingress and egress to the DNR Easement Area.

### 3.3.0 Construction of HAST Improvements.

3.3.1 Construction of the trail underpass structure (whereby the trail will go beneath CP's railroad track) (the "**Underpass**"), Underpass-structure wingwalls, sloping, drainage facilities, landscaping and trail pavement, and other appurtenances associated with the HAST on the CP Parcel, the DNR Parcel, and the RACM Parcel (herein individually and collectively called "**Improvements**") shall be governed by the terms of:

- a. the Stipulation by and among the DOT, the CITY, the DNR, and CP for the Valley Passage Underpass (the "**Stipulation**") (Underpass structure known as C-40-81), and
- b. the Agreement for Railroad Force Work for the Valley Passage between the DOT and CP (the "**Force Work Agreement**").

3.3.2 CP, DNR and RACM hereby consent to use of their respective parcels on a temporary basis for DOT construction of the Underpass and Improvements (as contemplated by the Stipulation and Force Work Agreement) with such use being limited to so much of the respective parcels as shall be reasonably needed for such construction, it being understood that the DOT shall have restoration duties concerning portions used for construction purposes.

3.3.3 After DOT construction of the Underpass and Improvements, DOT shall convey the Underpass and Underpass-structure wingwalls to CITY by Quit-Claim Deed in the form attached hereto as **Exhibit B**. DOT shall pay the cost of recording said deed in the Milwaukee County Register of Deeds Office. The conveyance to CITY shall be subject to this Agreement. Specifically, CITY (after DOT deeds to it) agrees that it takes title subject to the easement rights created hereby. DOT shall provide CP and CITY with advance written notice of the start date for construction.

3.4. **HAST Use.**

Subject to the terms of this Agreement, DNR, CITY, and members of the public may use the CP, RACM, and DNR Easement Areas for bicycle, pedestrian, and recreational use and access in conjunction with and as a part of the HAST, along with signage installation, maintenance and repair, and trail operations; and DNR, CITY and CP may use the respective Easement Areas for maintenance, repair, and reconstruction activities per the terms herein;. DNR's, CP's and CITY's use of the respective Easement Areas shall be in accordance with all applicable federal, state and local laws and regulations. Except as otherwise provided herein, no party's use of the respective Easement Areas shall unreasonably interfere with right to use of those Areas that any other party and their respective tenants, invitees, employees, licensees, customers, successors, assigns, and the public may have hereunder unless expressly authorized by the other parties hereto in writing.

3.5.0 **HAST-Improvement Maintenance.** After construction of the Improvements by DOT per the Stipulation, repair, replacement, and maintenance of the Improvements shall be done as follows:

3.5.1 **CITY Responsibilities at CITY Expense:**

(CITY responsibilities only pertain as expressly provided herein, and do not extend to anything beyond the valley passage portion of the Hank Aaron State Trail or to the east-west portion of the Hank Aaron State Trail, including that portion extending to Bluemound Road in Brookfield)

- a. Provide assistance with patrolling, law enforcement and fire service;
- b. Provide periodic good faith efforts at graffiti removal on Underpass structure and wing walls;
- c. Maintain any trail lighting at or serving the HAST at the CP, RACM and DNR Easement Areas defined herein (so long as trail lighting is in accordance with plans and specifications that have been approved by CITY prior to installation);

- d. Reimbursement of CP for CP maintenance of Underpass structure (per section 3.5.3 below); and
- e. Maintenance of retaining walls (but not landscaping within any retaining walls) serving HAST at respective Easement Areas defined herein

3.5.2 **DNR Responsibilities at DNR Expense:**

- a. Maintain, repair and replace trail pavement;
- b. Maintain, repair and replace any fencing and railings;
- c. Install and maintain, repair and replace necessary signage, both directional and interpretive for HAST;
- d. Maintain, repair and replace landscaping, including drainage, and including plantings within or part of the HAST, and within or part of any retaining walls serving or part of the HAST, and maintain, repair and replace fabric facing and/or components of living walls;
- e. Snow and ice removal on HAST ; and
- f. Provide enforcement of state statutes pertaining to trail use, sweeping the trail, trash pick-up, and other operational needs.

3.5.3. **CP Responsibilities:**

- a. Repair, at CP expense, damage to the HAST (trail and improvements) caused by CP as a result of activities or operations other than connected with the movement of rail cars or railroad equipment over CP's tracks. For sake of illustration only, if a CP motor vehicle on the HAST trail pavement damages the trail pavement or surrounding sod, CP must repair that; but, for example, CP has no duty to repair any damage to the HAST that may occur due to rail cars or rail equipment moving on or falling from the CP tracks. Thus, CP will not have to repair damage that may be caused by vibrations attributable to rail car movement, or damage that may be caused due to a rail car derailling and damaging the Underpass structure or trail. But, if CP crews driving to the derailment damage the pavement of the trail or sod or fencing, for example, CP will repair that;
- b. Repair, at CP expense, and notwithstanding anything to the contrary contained herein, damage to the Underpass structure and appurtenances caused as a result of CP's intentional malicious misconduct;
- c. Inspecting periodically at CP discretion the Underpass structure. To the extent CP produces written inspection reports, CP shall provide copies of same to CITY;
- d. As used in section 3.5.3.e, "**Threshold Amount**" shall mean an aggregate, maximum amount of \$10,000 per year (with each year being the anniversary

date of the date of this Agreement) providing however, that on each 10-year anniversary of the date of this Agreement, the Threshold Amount initially set at \$10,000 shall then increase on said 10-year anniversaries by \$1,000.

- e. CP shall use its best efforts to provide CITY with advance notice of need for maintenance work or repair to the Underpass as determined as a result of CP inspection along with an itemized cost estimate for that work or repair. When CP makes request of City for reimbursement hereunder, CP shall then submit an itemized invoice that explains the work done and expenses for said work for which reimbursement is being requested. The CITY shall not be obligated to reimburse CP for expenses in excess of the applicable **Threshold Amount** until (i) CP has received advance approval by CITY's DPW Commissioner (not to be unreasonably withheld, conditioned, or delayed), (ii) CP has then performed same (allowing CITY to view the CP work or repair made), and (iii) CP has then billed the CITY for reimbursement of said work or repair.

3.5.4 **Major Restoration or Replacement of Underpass.**

It is understood and agreed that CP shall not be responsible or liable for major restoration or replacement of the Underpass structure due to disaster, deterioration, or serious accident affecting the safe use of the Underpass. If, in the opinion of CP, the Underpass structure is unsafe or unsuitable for railroad operations, CP shall, following reasonable advance notice to the CITY and DNR, have the right to close the Underpass and employ reasonable measures to stabilize the structure to the extent necessary for continued rail operations. The City or DNR shall have a period of 24 months from such closure to reach an agreement with CP to repair or replace the Underpass structure. Failing such agreement, CP may in its sole discretion terminate the easements CP granted herein and remove or permanently close or stabilize the Underpass Structure.

3.6. **Public Access for Trail.** CP, RACM and DNR Easement Areas shall be available for public use at all times, except:

- (i) for such times as those Easement Areas must be closed for maintenance or repair;
- (ii) to avoid the acquisition of adverse or prescriptive rights, CP may close the CP Easement Area for not more than one day per year; and
- (iii) for special events benefiting the public. It is understood that the public is not granted rights to use the Service Road Easement.

3.7. **Damage by the Public.** Damage caused by the public shall be repaired consistent with the respective "**maintenance**" duties provided in sections 3.5.1 and 3.5.2 above.

3.8. **Notices.** Notices required or desired to be given by any party to another party with respect to this Agreement shall be in writing and shall be:

- (i) delivered personally;
- (ii) sent by e-mail or facsimile (provided any e-mail or facsimile is sent during any Monday through Friday that Milwaukee's City Hall is open for business, and is sent during the hours between 8:30 A.M. and 4:30 P.M., and is sent successfully (for example, no error or inability to send message is generated as a result of any such e-mail or facsimile sent));
- (iii) sent by commercial overnight courier service, prepaid; or
- (iv) sent by United States registered or certified mail, return receipt requested, postage prepaid, and, in any event, notices shall be addressed as herein provided and shall be given to the following:

<b>CITY</b>	<i>with a copy to</i>
<p>Jeff Polenske  City Engineer  DPW- Infrastructure Services Division  841 N. Broadway, Room 701  Milw., WI 53202  Ph 414-286-2400  Fax 414-286-5994</p>	<p>Gregg Hagopian  Asst. City Attorney  841 N. Broadway, 7<sup>th</sup> Floor  Milw. WI 53202  Ph 414-286-2620  Fax 414-286-8550  ghagop@milwaukee.gov</p>
<b>DNR</b>	<i>with a copy to</i>
<p>Secretary  Wisc. Dept. Natural Resources  101 S. Webster St.  Madison, WI 53707  Ph. 608-266-2621  Fax 608-267-3579</p>	<p>Richard Steffes  Wisc. Dept. Natural Resources  101 S. Webster St.  Madison, WI 53707  Ph. 608-266-0201  Fax 608-267-2750  Richard.steffes@wisconsin.gov</p>
<b>DOT</b>	<i>with a copy to</i>
<p>Secretary  Wisc. Dept. Transportation  4802 Sheboygan Ave.  PO Box 7910  Madison, WI 53707-7910  Ph. 608-266-1114  Fax 608-267-2750  Frank.busalacchi@wisconsin.gov</p>	<p>James Thiel  Wisc. Dept. Transportation  Office of General Counsel  4802 Sheboygan Ave., Room  115B  PO Box 7910  Madison, WI 53707-7910  Ph. 608-266-0201  Fax 608-267-2750  Jim.thiel@wisconsin.gov</p>

<b>CP</b>	
David Drach Director, Real Estate Marketing, U.S. Canadian Pacific 501 Marquette Ave. Suite 1525 Minneapolis, Minnesota 55402  Ph. 612-904-6139 Fax: 612-904-6147	
<b>RACM</b>	<i>with a copy to</i>
Dave Misky Asst. Exec. Dr./Secretary 801 N. Broadway, 2 <sup>nd</sup> Floor Milwaukee, WI 53202 Ph. 414-286-8682 Fax 414-286-0395 dmisky@milwaukee.gov	Gregg Hagopian Asst. City Attorney 841 N. Broadway, 7 <sup>th</sup> Floor Milwaukee, WI 53202 Ph 414-286-2620 Fax 414-286-8550

Recipient address information (such as change in facsimile number or e-mail address, or contact person) may, from time to time, be changed by notice duly sent hereunder.

- 3.9. **Recording.** This Agreement shall be recorded in the Milwaukee County Register of Deeds Office at DNR's expense.
- 3.10. **Counterparts.** This Agreement may be signed in one or more counterparts each of which shall, when taken together, constitute one and the same document.
- 3.11. **Governing Law; Amendment.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Wisconsin. This Agreement may only be amended by a written instrument signed by all of the parties hereto (or their successors in interest).
- 3.12. **Drafter-Doctrine Not Applicable.** The contract-interpretation doctrine of "construing against the drafter" shall not apply to interpretation of this Agreement.

3.13. **Grant of Service Road Easement.** RACM hereby grants to DOT, DNR and CITY, for their benefit, and DNR, DOT and CITY hereby accept from RACM, on the terms and conditions contained herein, a non-exclusive easement in and to the Service Road, with the right to use, maintain, repair, construct, and replace, upon the Service Road area a private, service road and appurtenances therefore (including gravel, drainage facilities, and signage). Notwithstanding anything to the contrary contained herein, RACM may, in its discretion, upon prior notice to DOT, DNR and CITY, (a) change and alter the easement area that comprises the Service Road in order to accommodate development opportunity, in which case, RACM shall grade and gravel the new, alternate road area and the term “**Service Road**” or “**Service Road Easement Area**” as used herein shall then be understood to be the new, alternate route, with all parties having the same duties concerning that new road and new route as they did with respect to the old Service Road, or (b) terminate the Service Road Easement in order to accommodate development opportunity in which case all provisions herein regarding the Service Road shall cease.

Notwithstanding the foregoing, RACM’s grant of easement rights in and to the Service Road is contingent upon DNR (with CITY cooperation) being able to secure for the benefit of RACM, CITY, DOT, and DNR, on or before the date hereof, an easement – recorded in the Milwaukee County Register of Deeds Office – at no cost to CP, DOT, CITY or RACM, conveying requisite easement rights in and to that portion (the “**Portion**”) of property (Parcel 4 on the Plat attached as **Exhibit A**, which is part of Tax Key No. 422-9994-000) that lies to the west end of the RACM-owned fee of the Service Road, which Portion is owned, or believed to be owned, by the State of Wisconsin, and leased to the Southeastern Wisconsin Professional Baseball Park District, and subleased to The Milwaukee Brewers Baseball Club, Limited Partnership, including the right to access that Portion by vehicle over Miller Park internal roads such that one can travel from public way, over Miller Park roads and the Portion, to get to and use the Service Road. Prior to the recording of any such easement regarding the Portion and access thereto, the easement must meet the review and approval of each of RACM, CITY, DNR and DOT.

3.14.0 **Construction of Improvements on Service Road.**

3.14.1 If DNR is able to secure and record the easement for the Portion (see section 3.13 above), then DOT shall construct, at its expense, and in accordance with plans and specifications approved by DNR, CITY and RACM, a gravel vehicular roadway over the Service Road Easement (together with applicable drainage facilities) and place a restrictive manually-operated gate and signage

thereat (approved by DNR, CITY and RACM) indicating the road is not for use by the public. DOT is aware of historic environmental issues associated with the RACM Parcel, and DOT shall be responsible for constructing on the RACM Parcel so as not to cause any environmental enforcement action to be brought against RACM by any governmental entity with environmental enforcement powers. Prior to constructing on the RACM Parcel, DOT shall communicate with DNR about environmental issues and about capping that is at or that may affect the RACM Parcel.

3.14.2 If DNR is able to secure and record the easement for the Portion (see section 3.13 above), then RACM hereby consents to use of the RACM Parcel on a temporary basis for DOT construction of the Service Road (and related improvements) with such use being limited to so much of the RACM Parcel as shall be reasonably needed for such construction, it being understood that the DOT shall have restoration duties concerning portions used for construction purposes.

3.15. **Service Road Use.** If DNR is able to secure and record the easement for the Portion (see section 3.13 above), then use of the Service Road by CITY, DOT and DNR shall be as a private road to access the HAST by vehicle. It is understood that DOT, DNR and CITY will need to use the Service Road (and Portion) in order to reach the CP, DNR, and RACM Easement Areas to fulfill their respective duties hereunder concerning those Areas, and for those purposes, RACM (subject to the contingency set forth in sec. 3.13 above) grants the easement in the Service Road Easement Area. DNR's, DOT's and CITY's use of the Service Road shall be in accordance with all applicable federal, state and local laws and regulations. Except as otherwise provided herein, DNR's, DOT's and City's use of the Service Road shall not unreasonably interfere with eachother's or RACM's use of the same.

3.16.0 **Maintenance of Service Road.** After DOT grades and constructs the Service Road and adds requisite signage therefore as required hereunder, repair, replacement, and maintenance of the Service Road shall be done as follows:

3.16.1. **CITY Responsibilities:**

- a. Provide assistance with patrolling, law enforcement and fire service.

3.16.2 **DNR Responsibilities**

- a. Maintain, repair and replace Service Road gravel;
- b. Maintain, repair and replace signage and gate;

- c. Maintain, repair and replace landscaping, including drainage;
- d. Snow and ice removal on Service Road; and
- e. Trash pick-up, and other operational needs.

3.17.0 **Construction of River Bridge.**

3.17.1 East of the CP Parcel, and through the RACM Parcel, flows the Menomonee River (the “**River**”). DOT shall construct, at its expense, and in accordance with plans and specifications approved by DNR, the CITY and RACM, a bridge (the “**Bridge**”) so that the HAST (after it has passed under CP’s tracks) may pass over the River.

3.17.2 RACM hereby consents to use of the RACM Parcel on a temporary basis for DOT construction of the Bridge with such use being limited to so much of the RACM Parcel as shall be reasonably needed for such construction, it being understood that the DOT shall have restoration duties concerning portions used for construction purposes.

3.17.3 After construction of the Bridge, and City, RACM and DNR inspection and approval of same, DOT shall quit claim same to City, the parties understanding that the City shall own the Bridge. Said Quit Claim shall be in the form attached hereto as **Exhibit C** and shall be subject to this Agreement. Specifically, CITY (after DOT deeds to it the Bridge) agrees that it takes title subject to an easement to DNR, for its benefit, CITY for its benefit, and the public for its benefit, which shall be permanent and non-exclusive, and be in and to the surface of the Bridge, which easement is intended for use in the HAST, and which easement is on the same terms and conditions contained herein concerning the RACM Easement Area, with CITY and DNR right to use, maintain, repair, and replace, upon the said surface area of the Bridge the recreational trail and appurtenances therefore (the HAST), together with the right of ingress and egress to the Bridge for HAST purposes.

3.18.0 **Maintenance of River Bridge.** After DOT constructs the Bridge and connects the HAST to same on both ends and extends the HAST over same, as required hereunder, repair, replacement, and maintenance of the Bridge shall be done as follows:

3.18.1 **CITY Responsibilities at its Expense:**

a. Inspect, maintain, repair, replace Bridge. Providing, however, if CP terminates the easements CP granted herein and/or removes or permanently closes or stabilizes the Underpass Structure per section 3.5.4 above, RACM may also terminate its easement rights granted herein over that part of any RACM-owned parcel that had been used for HAST Valley Passage, including those rights extending the HAST on the Bridge over the River, in which case RACM may remove or close off the Bridge.

3.18.2 **DNR Responsibilities at its Expense:**

- a. Maintain, repair and replace pavement and signage on Bridge and trail pavement on each end of same;
- b. Maintain, repair and replace signage;
- c. Maintain, repair and replace landscaping;
- d. Snow and ice removal on Bridge; and
- e. Provide enforcement of state statutes pertaining to trail and roadway use, sweeping the trail, Trash pick-up, and other operational needs.

3.19. **Damage.** Notwithstanding anything to the contrary contained herein, if CITY, DOT or DNR (including their respective officers, employees, and agents) cause damage to the Service Road or Bridge or any improvements thereto, the responsible party shall, at its expense, promptly repair or replace the damage to substantially the same condition as existed prior to the damage. Damage caused to the Bridge by the public shall be repaired by City, while damage caused by the public to the trail surface of or signage concerning the Bridge shall be repaired by DNR.

3.20.0 **Reservations and Conditions Regarding CP Easement (Section 3.2.1).**

- 3.20.1 The easement in the CP Easement Area (section 3.2.1) shall continue only so long as used for the purposes specified herein.
- 3.20.2 The Easement is non-exclusive, and CP reserves the right to use the CP Easement Area for any purpose not inconsistent with the use thereof for the purposes specified herein.
- 3.20.3 CP reserves fee title to the CP Easement Area itself, and any other party's or the public's use of the CP Easement Area, however long continued, shall not vest in any of them or the public, rights adverse to those of CP other than those granted by this Agreement.
- 3.20.4. Neither DNR nor CITY shall sell, convey, or assign its rights hereunder to a third party other than a public, quasi-public or nonprofit entity, that intends to use the HAST and Improvements for public-recreational-trail purposes.

Subject to the preceding, DNR, for itself, its successors and assigns, agrees that, should this Easement be required to be periodically re-recorded in order to preserve CP's rights, that such re-recording shall be the obligation and responsibility of DNR or its successors and assigns.

3.21.0 **Conduct and Liability regarding CP Easement Area.**

- 3.21.1 If and to the extent DNR or CITY undertakes any construction, maintenance, repair, replacement, or renewal of the HAST and Improvements (collectively "**Work**") at or on the CP Easement Area, DNR and CITY shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling, or other obstructions on the CP Easement Area (individually a "**Utility**" or collectively "**Utilities**") that could be affected by such Work. DNR and CITY shall require any third-party contractor or invitee acting on its behalf pursuant to this section to indemnify, defend and hold harmless CP for any and all liability for damage to the foregoing Utilities if any, caused by such Work.
- 3.21.2 CP makes no representation by the granting of the Easement that the CP Easement Area is free of any Utilities. In the event of any conflicts between the Work and a Utility, CP shall allow the reasonable relocation or replacement thereof, subject to applicable standards of CP, including, if applicable, the requirement that such Utility or Utilities be covered by CP standard license forms that are used by CP at the time of the relocation or replacement.
- 3.21.3 DNR and CITY, in accordance with their duties and division of labor set forth above, shall keep the HAST or Improvements in reasonable state of repair so not to interfere with, or endanger, railroad operations on adjacent railroad tracks ("**Routine Maintenance**").
- 3.21.4 Whenever Work shall be done or any equipment or other obstruction is to be placed over or interfere with any CP Tracks ("**Major Work**"), DNR and CITY:
- (a) shall not carry on any Major Work on the CP Parcel, until it shall have given CP at least three days' prior written notice. CP may elect to have a representative monitor such work. If CP determines that a flagman is necessary to protect railroad operations, DNR or CITY as the case may be shall promptly reimburse CP for all reasonable and necessary flagman expenses. Any and all plans for Major Work must be submitted to CP for review and approval within 30 days, which approval shall not be unreasonably withheld, conditioned or delayed;
  - (b) must make arrangements with CP for such flagging or watchman service as CP reasonably deems necessary for the protection of railroad traffic. All such flagging and watchman service shall be provided by CP. The fact

that CP provides such service shall not relieve DNR or CITY, as the case may be, from any liability under this Agreement. DNR or CITY as the case may be shall reimburse CP for the reasonable cost (including CP's normal labor and material additives) of such service within 30 days after CP tenders a bill therefor. CP's labor and material additives are subject to change without notice to DNR or CITY, and CP shall be reimbursed based upon its labor and material additives actually in effect as of the date of such service.

- (c) agree that DNR and CITY and any party entering upon the CP Easement Area for the purpose of performing any Major Work shall:
  - (1) be subject to, and shall abide by CP's Minimum Safety Requirements for Contractors Working on Railway Property (the "**Safety Requirements**") as are currently in effect or as may be hereafter updated, amended or revised by CP, provided that CP supplies DNR and CITY with any such changes. DNR and CITY acknowledge receipt of the Safety Requirements that are in effect upon the date of this easement grant. Notwithstanding the preceding, if the Safety Requirements in possession of DNR or CITY at the time of commencement of any Major Work was obtained by it more than 5 years prior to such Major Work, then DNR and CITY shall be responsible for inquiring whether the Safety Requirements have been updated, amended or revised. If they have not, then the version of the Safety Requirements then in DNR's or CITY's possession shall be deemed current for another 5 years unless CP provides DNR and CITY with an updated version prior to the expiration of said 5 years term. The term "**Contractor**" used in the Safety Requirements shall apply to DNR and CITY and any person performing Major Work on DNR's or CITY's behalf as the case may be in the CP Easement Area, provided however that CP understands CITY and DNR are self-insured;
  - (2) if made available by CP, shall attend and participate in on-track safety instruction conducted by CP at DNR's and CITY's expense; and
  - (3) shall be supplied with a copy of the current (as defined in the preceding) Safety Requirements.

3.21.5 DNR and CITY shall:

- (a) be familiar with the requirements of, comply with, and secure at DNR's and CITY's own expense any permits or licenses required by, all applicable laws, regulations, ordinances, and standards, including without limitation all Environmental Laws;
- (b) upon written request by CP, provide CP with the results of appropriate reports and tests and with any other applicable documents to demonstrate that DNR

and CITY has complied with all Environmental Laws relating to the CP Easement Area;

- (c) not in any manner cause or allow the CP Easement Area to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring that area within the ambit of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or any similar state statute or local ordinance;
  - (d) not, without prior written disclosure to and approval by CP, Use or authorize the Use of any Hazardous Substance on the CP Easement Area;
  - (e) not cause or allow the Release or threat of Release of any Hazardous Substance on, to, or from the CP Easement Area;
  - (f) promptly notify CP of any actual or suspected Release of any Hazardous Substance on, to, or from the CP Easement Area, regardless of the cause of the Release;
  - (g) promptly provide CP with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, causes of action, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state or local agency or authority, or any other entity or individual, concerning any Release of a Hazardous Substance on, to or from the CP Easement Area, or any alleged violation of or responsibility under any Environmental Law relating to the CP Easement Area; and
  - (h) promptly take all necessary action in Response to any Release or Use of a Hazardous Substance at the CP Easement Area that gives rise to any liability, claim, cause of action, obligation, demand, fine, penalty, loss, judgment or expense under any Environmental Law, or causes a significant public health or workplace effect, or creates a nuisance; and
  - (i) assume and pay any fee, tax, assessment or other charge or expense levied against the CP Easement Area or incurred by the Railroad in connection with installation, use or existence of the HAST upon the CP Easement Area.
- 3.21.6. To the extent permitted by applicable law, DNR and CITY hereby release and agree to indemnify, hold harmless and defend CP and its directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, or anyone acting on its behalf or their behalf, from and against any and all Claims (including without limitation any Claims arising under any

Environmental Law and all Claims arising at common law, in equity or under a federal, state or local statute, rule or regulation) of every kind, past, present and future, existing and contingent, known and unknown, arising from any injury to persons, firms or corporations whomsoever, including injuries resulting in death, and damage to property whatsoever, wherever such persons or property are located, caused by or attributable to, in whole or in part, any act or omission of DNR or CITY (or their respective employees, agents, representatives, or invitees) in connection with the exercise of the right and privilege herein granted, including without limitation the Use or Release of Hazardous Substances by DNR or CITY and the breach by DNR or CITY of any of its warranties, representations or covenants. DNR's or CITY's obligations hereunder shall survive the termination or expiration of this easement.

3.21.7 As used herein,

- (a) "**Claim**" or "**Claims**" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorney's fees, consultants' fees, response costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);
- (b) "**Environmental Law**" or "**Environmental Laws**" means the Comprehensive Environmental Response, Compensation and Liability Act ("**CERCLA**"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act (the Clean Water Act), 33 U.S.C. § 1251 et seq. the Clean Air Act, 42 U.S.C. § 7401 et seq., and the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation, rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted.
- (c) "**Hazardous Substance**" or "**Hazardous Substances**" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law;
- (d) "**Release**" or "**Released**" means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or spreading of any Hazardous Substance into the environment, as "environment" is defined in CERCLA;

- (e) **“Response”** or **“Respond”** means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Substance;
- (f) **“Use”** means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon a Hazardous Substance.

**4.0 UEC.** DNR may lease or convey a part of the DNR Parcel to the Urban Ecology Center (“UEC”). DNR’s duties hereunder are binding on successors in interest to DNR, and any conveyance or lease to UEC of any part of the DNR Parcel shall be subject to the terms hereof. DNR has informed CITY and RACM that UEC desires to make certain improvements to that part of the DNR Parcel known as 3700 West Pierce Street. DNR shall inform UEC that it may not construct any improvements on or affecting the DNR Easement Area without the CITY’s and RACM’s prior written consent. CITY and RACM inform DNR that they shall consider UEC’s requests for consent (and specific plans that UEC submits in conjunction therewith) in good faith – with DNR understanding (i) that UEC improvements may not interfere with the CP Parcel or CP operations on the CP Parcel, (ii) with HAST trail operations or maintenance, repair and replacement operations, (iii) that UEC will need to improve in accordance with all applicable laws and regulations, (iv) that CITY will need adequate area for access and for conducting its duties hereunder, and (v) that CITY and RACM and DNR approval will be needed prior to any UEC improvement being built within any DNR Easement Area.

**5.0 SIGNATURES:**

**THE PARTIES HERETO** have caused this Agreement to be executed by their authorized signatories as of the date first written above.

<b>CITY: CITY OF MILWAUKEE</b>	<b>RACM: REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE</b>
By: _____ Mayor Tom Barrett Per Common Council File No. 090219  CITY CLERK	By: _____ Robert B. Rondini, Chair  And

<p>Ronald Leonhardt, City Clerk</p> <p><b>Countersigned:</b></p> <p>By:</p> <p>Michael J. Daun, Deputy Comptroller</p> <p><b>Milwaukee City Attorney</b>  <b>Approval; and Authentication of CITY and RACM Signatures</b></p> <p>Gregg C. Hagopian, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the CITY and RACM representatives above, and also authenticates the signatures of each of the CITY and RACM representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).</p> <p>By:</p> <p>_____  GREGG C. HAGOPIAN  Assistant City Attorney  State Bar No. 1007373</p> <p>Date: _____</p>	<p>By: _____  David P. Misky, Asst. Exec. Dr./Sec.</p>
<p><b>DNR: WISCONSIN DEPARTMENT OF NATURAL RESOURCES</b></p>	<p><b>CP: SOO LINE RAILROAD</b></p>
<p>By: _____</p> <p>Name  Printed: _____</p> <p><b>Countersigned:</b></p>	<p>By: _____  David S. Drach  Director, Real Estate Marketing, U.S.</p>

By: \_\_\_\_\_

Name

Printed: \_\_\_\_\_

**DNR Authentication**

Rick Henneger, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the State DNR representatives above, and also authenticates the signatures of each of the above State DNR representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).

By: \_\_\_\_\_

RICK HENNEGER

State Bar No. \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss:

COUNTY OF \_\_\_\_\_ )

The foregoing easement was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by David S. Drach, Director, Real Estate Marketing, U.S., of Soo Line Railroad Company, a corporation under the laws of the State of Minnesota, on behalf of the corporation.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_,  
County

My Commission: \_\_\_\_\_

**DOT: WISCONSIN DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_

Name

Printed: \_\_\_\_\_

**Countersigned:**

By: \_\_\_\_\_

Name

Printed: \_\_\_\_\_

**DOT Authentication**

James Thiel, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the State DOT representatives above, and also authenticates the signatures of each of the above State DOT representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).

By: \_\_\_\_\_  
JAMES THIEL

State Bar No. \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A TO VALLEY PASSAGE EASEMENT**

QUIT CLAIM DEED

Document Title

Document Number

QUIT CLAIM DEED

DOT to CITY

Drafted By:

Gregg C. Hagopian  
Assistant City Attorney  
841 North Broadway, 7<sup>th</sup> Floor  
Milwaukee, WI 53202

Recording Area

Name and Return Address

Gregg C. Hagopian  
Assistant City Attorney  
841 North Broadway, 7<sup>th</sup> Floor  
Milwaukee, WI 53202

424-0403-000-0  
423-9999-003  
436-9999-000-1

Tax Key Number

**EXHIBIT B TO VALLEY PASSAGE EASEMENT**

QUIT-CLAIM DEED FROM DOT TO CITY  
UNDERPASS AND UNDERPASS WINGWALLS,  
AND BRIDGE

THIS QUIT CLAIM DEED (the "Deed"), is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 200 \_\_, and is from the STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION ("DOT"), as Grantor, to CITY OF MILWAUKEE (a municipal corporation located in Milwaukee, Wisconsin), ("CITY") as the Grantee.

**RECITALS**

- A. DOT and CITY are parties (along with the STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES ("DNR"), SOO LINE RAILROAD COMPANY ("CP"))

and the REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE ("RACM"), to that certain Valley Passage Easement (the "VP EASEMENT").

- B. Under the VP EASEMENT, DOT is obligated to convey to CITY by this Deed the Underpass and Underpass-structure wingwalls and the Bridge (all as defined in the VP EASEMENT) and to record this Deed at DOT's expense in the Milwaukee County Register of Deeds Office.
- C. The Underpass and Underpass-structure wingwalls are situated upon lands owned by CP in the City of Milwaukee, Milwaukee County, Wisconsin, herein called the "CP Parcel" and shown generally on the map attached hereto as EXHIBIT A, and legally described in EXHIBIT A.
- D. The Bridge is situated upon lands owned by RACM in the City of Milwaukee, Milwaukee County, Wisconsin, herein called the "RACM Parcel" and shown generally on the map attached hereto as EXHIBIT A, and legally described in EXHIBIT A.

CONVEYANCE

- 1. Conveyance. DOT hereby conveys to CITY the Underpass and Underpass wingwalls and the Bridge.
- 2. Easement. DOT's conveyance is subject to the VP Easement document – including the easement CP granted therein to DNR and the CITY for their benefit and members of the public.
- 3. Recording. This Deed shall be recorded in the Milwaukee County Register of Deeds Office against the CP Parcel at DOT's expense.

IN WITNESS WHEREOF, DOT, as Grantor, caused this Deed to be executed by its authorized signatories as of the date first written above.

<b>DOT: WISCONSIN DEPARTMENT OF TRANSPORTATION</b>
By: _____  Name Printed: _____

**Countersigned:**

By: \_\_\_\_\_  
Name Printed: \_\_\_\_\_

**DOT Authentication**

James Thiel, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the State representatives above, and also authenticates the signatures of each of the above State representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).

By: \_\_\_\_\_  
JAMES THIEL

State Bar No. \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX 3.2.B.**

**CP TO DNR PED. TUNNEL**

**BILL OF SALE**

KNOW ALL MEN BY THESE PRESENTS, that

SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as Canadian Pacific ("CP")

in consideration of the sum of TEN DOLLARS to it in hand paid by

THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES (Grantee),

the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, quit claim and convey unto the Grantee, its successors and assigns, forever, the following described Goods, Chattels and Personal Property, to-wit:

A Pedestrian Tunnel and utility wires, pipes, conduits or connections appurtenant thereto located in the City of Milwaukee, Milwaukee County, Wisconsin upon the land in the City and County of Milwaukee, Wisconsin, located at CP's lands at 699 S. 35<sup>th</sup> Street and 3700 R W. Pierce Street, and which Tunnel is roughly north of 3638 W. Pierce Street,

collectively, the "Improvements"

This Bill of Sale is made on an "AS-IS" and with "ALL FAULTS" basis. Grantee's execution hereto shall represent its acknowledgment and agreement that Grantor has not made any written or oral representation or warranty of any kind with respect to the Improvements (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose.

TO HAVE AND TO HOLD THE SAME, unto the Grantees, their successors and assigns Forever.

Dated as of \_\_\_\_\_

SOO LINE RAILROAD COMPANY  
d/b/a Canadian Pacific

By: \_\_\_\_\_  
Director, Real Estate Marketing, U.S.

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

The foregoing Bill of Sale was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009 by David S. Drach, the Director, Real Estate Marketing, U.S. of Soo Line Railroad Company d/b/a Canadian Pacific, a corporation under the laws of the State of Minnesota, on behalf of the corporation.

\_\_\_\_\_  
Notary Public  
Name Printed: \_\_\_\_\_

My commission: \_\_\_\_\_

**STATE OF WISCONSIN, DEPARTMENT OF  
NATURAL RESOURCES**

By: \_\_\_\_\_  
Richard E. Steffes  
Real Estate Director  
State of Wisconsin Dept. of Natural Resources

STATE OF WISCONSIN )  
 ) ss:  
COUNTY OF DANE )

The foregoing Bill of Sale was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Richard E. Steffes, Real Estate Director of the State of Wisconsin Department of Natural Resources.

Notary Seal

\_\_\_\_\_  
Notary Public

**APPENDIX 3.2.C.**

**RELEASE OF CCR AGAINST ACCESS PARCEL**

\_\_\_\_\_  
DOCUMENT NUMBER

**RELEASE OF  
RESTRICTIVE  
COVENANT AFFECTING  
3638 W. PIERCE**

This instrument was drafted by:  
Richard E. Steffes, DNR

\_\_\_\_\_  
RESERVED FOR RECORDING DATA

Return Recorded Documents to:

Richard E. Steffes  
Wisconsin Department of Natural Resources  
Bureau of Facilities and Land Mgt  
101 S. Webster Street  
Madison, WI 53707-7921

Dated as of **JULY 9, 2009.**

436-0006-000-8  
PARCEL IDENTIFICATION NUMBER

**THIS RELEASE** is made by

**SOO LINE RAILROAD COMPANY**, a Minnesota corporation, doing business as Canadian Pacific, hereinafter called the "**CP**"

**WITNESSETH:**

**WHEREAS**, pursuant to a reservation in a Quit Claim Deed dated May 22, 1989 and recorded in the Register's Office in and for Milwaukee County, Wisconsin on June 9, 1989 as Document Number 6283187, CP did convey to WHM Partners the following real property in Milwaukee County, Wisconsin:

Lot 20, in Block 1 in Arlington Heights, being a Subdivision of the Southwest ¼ of Section 36, Township 7 North, Range 21 East, in the City of Milwaukee,

a/k/a 3638 West Pierce Street, Milwaukee, Tax Key 436-0006-000-8,

the "**Deed**;"

**WHEREAS**, the Deed was subject to the following restrictive covenant:

"A railroad underpass is located partly on and partly off the real property. Grantee covenants [sic], for itself and its successors and assigns, that it shall, at its sole cost and expense, permanently close and seal off the south end of the underpass in the manner shown on the attached Exhibit A. This covenant shall run with the land and shall bind subsequent owners of the real property."

[Exhibit A referenced above is omitted from this document], the "**Restrictive Covenant**;" and

**WHEREAS**, CP now desires to abandon and remove said Restrictive Covenant from the Deed.

**NOW, THEREFORE**, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, CP does hereby abandon and release said Restrictive Covenant from the property encompassed by the Deed.

CP has caused this Release of Restrictive Covenant to be duly executed, as of the day and year first above written.

**CP: SOO LINE RAILROAD COMPANY**  
d/b/a Canadian Pacific

By: \_\_\_\_\_  
David S. Drach  
Director, Real Estate Marketing, U.S.

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

The foregoing Release of Restrictive Covenant was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by David S. Drach, Director, Real Estate Marketing, U.S., of Soo Line Railroad Company, a corporation under the laws of the State of Minnesota, on behalf of the corporation.

Notary Seal

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My commission Expires: \_\_\_\_\_

**APPENDIX 4.1**

**INTENTIONALLY OMITTED**

## APPENDIX 5.0

### Definitions to 2009 West Allis Trail Extension Agreement

1. “**West Allis Line**” means the CP railroad corridor (past and present) extending approximately 7.29 miles westerly from CP’s Muskego Yard in Milwaukee, to Elm Grove, Wisconsin.
2. “**West Allis Trail**” means the approximately 5.25 miles of the West Allis Line sold by CP to DNR on October 12, 2006.
3. “**East End Point**” means the easterly end of the West Allis Trail, being 100 feet easterly of the east end of the rail bridge crossing Hwy 41 (Miller Parkway) in the City of Milwaukee, Wisconsin.
4. “**West End Point**” means the westerly end of the West Allis Trail being a point along the Southerly right-of-way line of the West Allis Line of the point of intersection of the Northerly extension of the centerline of North 123<sup>rd</sup> Street and said Southerly right-of-way line in the Village of Wauwatosa, Wisconsin.
5. “**West Allis Easement**” means the easement for recreation purposes granted by CP to DNR on October 12, 2006 over the northerly 50 feet of the West Allis Line extending 1,070 feet, more or less, easterly of the East End Point.
6. “**Air Line Yard**” means a section of rail storage tracks that parallel the West Allis Line westerly from CP’s Muskego Yard to approximately 39<sup>th</sup> Street.
7. “**Ped. Tunnel.**” means the existing pedestrian tunnel beneath the West Allis Line and Air Line Yard at approximately 37<sup>th</sup> Street.
8. “**West Extension**” means the fee title to that portion of the West Allis Line extending westerly from the West End Point to the center line of Blue Mound Road (U.S. Rt. 18).
9. “**East Extension**” means an easement for recreational purposes over that portion of the West Allis Line and Airline yard extending easterly from the east end of the West Allis Easement to approximately 36<sup>th</sup> Street.
10. “**Valley Passage**” means a new recreational underpass proposed to be constructed in the same general location as the Ped. Tunnel.
11. “**New Rail Bridge**” means a new ballast deck rail bridge proposed to be constructed to support a rail track over the Valley Passage.
12. “**Mitchell Park Bridge**” means a pedestrian bridge proposed to be constructed over CP’s Air Line Yard extending southerly from the Mitchell Park Domes.

13. **“Property”** when used in conjunction with one of the Components shall refer to the real estate associated with that Component.

# APPENDIX 6.0

## General Provisions to 2009 West Allis Trail Extension Agreement

1. **CAPITALIZED TERMS**: Unless assigned a new or different meaning, capitalized phrases in this Appendix 6.0 shall have the same definitions as contained in the 2009 West Allis Trail Extension Agreement:

The 2009 West Allis Trail Extension Agreement is referred to herein as the “**Main Agreement**.”

As used herein, “**Buyer**” shall mean DNR, in respect to a Component Transaction involving it.

2. **GOVERNMENTAL APPROVAL**: If CP is required to obtain governmental approval or exemption in lieu thereof (collectively, Authorization) in order to consummate a Component Transaction, the closing of the Component shall be contingent upon the granting of Authorization, and Buyer will cooperate, as reasonably practical, with CP to obtain Authorization. If Authorization is not obtained within one hundred eighty (180) days after the Effective Date of the Main Agreement, the Component Transaction shall automatically terminate at the end of the said period and the parties shall have no further liabilities, rights or obligations to one another hereunder. If Authorization is not obtained prior to the expiration of the time period specified in Section 2, the date for closing shall be delayed to a date no later than 15 days after Authorization is obtained; however, under no circumstances shall the closing be delayed to a date later than one hundred eighty (180) days after the Effective Date.
3. **ESCROW**: If the Component Transaction is closed in escrow, Buyer will pay all fees and charges in connection with the escrow.
4. **ENCUMBRANCES**: Property or rights thereupon will be conveyed subject to facts which would be disclosed by a comprehensive survey complying with current ALTA/ACSM Minimum Survey Standards or Chapter AE-7, Wis. Adm. Code, rights and claims of parties in possession, rights of the public, and easements, leases, licenses, and permits. Buyer may object to the marketability of CP's title on the basis of such matters.
5. **JUDGMENT LIENS**: Any judgment against CP which may appear of record as a lien against Property shall be settled and satisfied by CP within thirty (30) days after it becomes final and unappealable, and CP shall indemnify Buyer, and Buyer's title insurer, for any loss sustained by either of them as a result of CP's failure to have any such judgment lien so settled and satisfied. Buyer may object to the marketability of CP's title on the basis of such matters.
6. **SURVEY**: Within 45 days following the Effective Date the Buyers shall, at their expense, obtain a survey of the Properties consistent with the survey standards recited in Section 4

above. The survey shall be prepared by a surveyor registered in the State of Wisconsin. If the Land is registered (i.e., Torrens) land, or if a certified survey is required by law, the survey shall be duly certified. The survey shall describe the:

- (a) Property to be sold or encumbered;
  - (b) easements or other rights reserved onto CP, including, but not limited to, billboard(s), utility lines or railroad tracks;
  - (c) location of all known easements and improvements, including, but not limited to, easements for railroad tracks, including easements reserved by CP pursuant to any Component Transaction; and
  - (d) location of all CP's railroad tracks within 50 feet of the outer boundaries of the Property.
7. **SUBDIVISION PLATS**: Buyer will be responsible for preparing, at its expense, any survey or plat required by any governmental authority (including any survey or plat of CP's property contiguous to the Land, where such survey or plat is required in connection with or as a consequence of, Buyer's purchase of Land or an Easement). The survey or plat shall not be filed or recorded until CP has approved it. CP's approval shall not be unreasonably withheld.
8. **RIGHT OF ENTRY**: Except as may be otherwise provided in connection with a Component Transaction, during the first 45 days after the Effective Date, or until 7 days prior to closing for a particular Component Transaction, whichever is earlier, Buyer (and its employees, agents, and contractors) may enter Property and, to the extent necessary to effectuate the purposes of this Section, CP's land in the vicinity of the Property (such land and the Property being referred to, collectively, as the Site), for the purpose of conducting soil tests, environmental tests, and a survey, subject to the following conditions:
- (a) Buyer shall give CP reasonable advance notice of the date and time of each entry and the nature of the activities to be conducted on the Site at each such date and time.
  - (b) CP may elect to be present during the conduct of such activities and to monitor same. Such monitoring shall not relieve Buyer of any liability under this Section 8.
  - (c) Prior to entering the Site, Buyer shall secure the permission of any tenant then in possession of same.
  - (d) Upon the completion of its activities on the Site, Buyer shall remove any debris resulting from such activities and shall restore the Site, as reasonably practical, to the condition it was in prior to the commencement of such activities.
  - (e) To the extent provided by law, Buyer shall indemnify, hold harmless and defend the Indemnitees (as defined below) from and against all Claims arising out of, resulting from or relating to any loss of (or damage to) any property or business or any injury to (or death of) any person, where such loss, damage, injury, or death actually or allegedly arises (whether directly or indirectly, wholly or in part) from:

(1) any negligent action or omission of Buyer (or its employees, agents, or contractors) while on the Site pursuant to this Section 17; or (2) the exercise by Buyer (or its employees, agents, or contractors) of the permission granted by this Section 8; or (c) the release of any Hazardous Substance (as defined in Section 30) resulting (directly or indirectly, wholly or in part) from any action or omission of Buyer (or its employees, agents, or contractors) while on the Site pursuant to this Section 8. Indemnitees means CP, its subsidiaries, affiliated companies and parent companies, and their directors, officers, employees and agents, including without limitation Soo Line Corporation, The Milwaukee Motor Transportation Company, Hiawatha Transfer Company, and Canadian Pacific Company.

- (f) Buyer (and its employees, agents, and contractors) shall comply with all applicable laws while on the Site.
  - (g) Buyer will not commence any environmental testing until its work plan for such testing has been approved in writing by CP, which approval shall not be unreasonably withheld, conditioned or delayed. Buyer will provide CP with complete copies of the test data and test reports as soon as they are available to Buyer.
  - (h) The cost of any test or survey will be borne solely by Buyer.
  - (i) Test holes shall be located no closer than 10 feet from the nearest rail of any railroad track located on or adjacent to the Site. Drilling equipment and related equipment shall not be placed closer than 10 feet from the nearest rail of any such track.
  - (j) While on the Site, Buyer (and its employees, agents, and contractors) shall comply with CP's safety rules, including any requirement regarding the use of flagmen. All costs associated with compliance with such rules shall be borne by Buyer. If CP shall incur any costs in connection therewith, Buyer shall reimburse CP within 30 days after receipt of CP's invoice.
  - (k) Unless disclosure is required by court order or applicable law, Buyer shall maintain, and shall cause its employees, agents, and contractors to maintain, the confidentiality of all information pertaining to any environmental test performed on the Site.
  - (l) If any mechanic's or materialmen's lien, or similar lien, is asserted against the Site, the Property, or any other property of CP or the Indemnitees as a result of the exercise of the permission granted in this Section 8, Buyer shall immediately satisfy and/or obtain the release of such lien, all at Buyer's expense, and Buyer shall indemnify, hold harmless and defend the Indemnitees from and against all Claims arising out of or connected with such lien.
9. **TITLE MATTERS:** CP makes no warranty or representation with respect to the marketability or quality of its title and is not under any obligation to furnish abstracts of title,

title reports, or title insurance policies in respect of the Property. Buyer shall have 45 days after the Effective Date in which to raise objections to the marketability of CP's title. If Buyer objects to CP's title, it must give CP notice within such 45-day period, specifying the precise nature of the alleged title defects. The notice must be accompanied by evidence of the alleged defects, in the form of a copy of an abstract of title or a title company's title commitment. If Buyer fails to give proper or timely notice, it shall be deemed to have waived its right to object (except that defects which arise subsequent to the 45-day period shall not be deemed waived unless Buyer fails to give CP notice of same promptly after it learns, or in the exercise of reasonable diligence should have learned, of them); furthermore, even if Buyer gives proper and timely notice, it shall be deemed to have waived its right to object on the basis of then-existing defects not specified in the notice. CP shall have 45 days or until the closing, whichever is less (the Cure Period), in which it may, if it so chooses, attempt to cure any defect specified in a timely and otherwise proper notice. CP has no obligation or responsibility whatsoever to cure (or attempt to cure) any title defect. If CP shall undertake to cure or attempt to cure any title defect, it may withdraw from such undertaking at any time without penalty; such undertaking shall not create, nor shall it under any circumstance be construed to create, any obligation whatsoever on the part of CP to cure any such defect. If CP is unable or unwilling to cure any specified defect, Buyer may terminate this Agreement by giving CP notice of termination at any time prior to the actual delivery and acceptance of the deed, which notice shall state that this Agreement is being terminated by reason of CP's failure to cure title defects. If Buyer gives proper and timely notice of termination, CP reimburse Buyer for the actual amount paid by Buyer for the abstract of title or title commitment, provided that the abstract or commitment is delivered and assigned to CP. By accepting delivery of any applicable conveyance document, Buyer shall be deemed to waive any and all uncured title defects.

10. **REAL ESTATE BROKERS:** CP represents that it has not retained any real estate broker or agent in connection with any of the Component Transactions. If any real estate broker or agent can establish a valid claim for commission or other compensation in connection with a Component Transaction, such commission or other compensation shall be paid by Buyer.
11. **ENVIRONMENTAL: PARTIES' RIGHT TO TERMINATE:** Either party may terminate this Agreement at any time prior to the delivery of the deed if it determines, in the exercise of its discretion, that circumstances related to Hazardous Substances render the sale inadvisable and upon such termination the parties shall have no further liabilities, rights or obligations to one another hereunder. The closing of the sale, if it occurs, is not, and shall not be construed as, an actual or implied representation or warranty by CP as to the condition of the Property or the absence of Hazardous Substances.
12. **LITIGATION EXPENSES:** In any action brought in connection with this Agreement, the prevailing party shall be entitled to recover its litigation expenses, including, but not limited to, court costs, disbursements, witness fees, experts' fees, and attorneys' fees.
13. **LIQUIDATED DAMAGES AND SPECIFIC PERFORMANCE:** If Buyer fails to perform any of the terms or conditions of this Agreement within the specified time limits, CP may declare this Agreement terminated. Likewise, if CP fails to perform any of the terms or

conditions of this Agreement within the specified time limits, Buyer may declare this Agreement terminated or Buyer may have this Agreement specifically enforced. The rights and remedies granted to the parties in this Section are intended to be cumulative to all other rights and remedies available to the parties (whether under this Agreement, at law, in equity or otherwise); accordingly, the exercise by either party of any such right or remedy shall not preclude it from exercising any other such right or remedy.

14. **RAIL SERVICE; NO OBLIGATION:** Nothing in the Main Agreement or any of its subparts or appendices is intended to create, nor shall it be construed to create, any express or implied obligation on the part of CP to provide (or continue to provide) rail service to Buyer and/or the Property. Nothing in this Agreement is intended to prevent or limit, nor shall it be construed to prevent or limit, the discontinuance, by CP, of rail service over any railroad line or trackage by which rail service is or may be provided to Buyer and/or the Property.

## APPENDIX 7.0

### **Sale Provisions to 2009 West Allis Trail Extension Agreement**

1. **CAPITALIZED TERMS**: Unless assigned a new or different meaning, capitalized phrases in this Appendix 7 shall have the same definitions as contained in the 2009 West Allis Trail Extension Agreement.

The 2009 West Allis Trail Extension Agreement is referred to herein as the “**Main Agreement**.”

2. **REAL ESTATE TAXES**: The total real estate tax bill accruing in the year in which the date of closing occurs will be prorated on a per diem basis as of the closing, using the most recent tax bill; such proration will be final and binding on CP and Buyer and there shall be no post-closing adjustment. There will be no proration to the extent the payment of such taxes has been assumed by a lessee under a lease that will be assigned to Buyer or merged into the purchase.
3. **SPECIAL ASSESSMENTS**: Buyer will assume responsibility for paying any special assessment (or installment thereof) that is levied, pending or deferred where the due date for payment is on or after the closing date, irrespective of the date of the improvement.
4. **LEASES**: Except as may be otherwise agreed by Buyer and CP, at and as of the closing, CP will assign to Buyer CP's rights, and Buyer will assume CP's obligations, under any lease which: (a) was granted or benefited by CP (or its predecessors in interest) as lessor, (b) is known to CP, and (c) includes or burdens any portion of the Property; provided, that if Buyer is the lessee under such a lease, that lease shall merge into the purchase as of the closing. And further provided, that if a lease includes property other than the Property, the assignment and assumption (or merger) shall be limited to the leasehold interest in the Property. The assignment and assumption contemplated by this Section shall be limited to rights and obligations accruing as of and after the closing. Prepaid rentals shall be prorated on a per diem basis at and as of the closing. In the event of a partial assignment or merger, rentals in respect of the period from and after the closing shall be adjusted between CP and Buyer on the basis of the square footage of the land area of their respective interests in the leased premises; provided, however, that where the rental was established on a basis other than square footage, the adjustment shall be determined using such other basis. CP will provide a copy of each such lease to Buyer within 30 days after CP accepts this offer. At the closing, the parties will execute an assignment and assumption agreement incorporating the terms of this Section and identifying such lease or leases.
5. **EASEMENTS, LICENSES, AND PERMITS**: Except as may be otherwise agreed by Buyer and CP, at and as of the closing, CP will assign to Buyer CP's rights, and Buyer will assume CP's obligations, under existing easements, licenses, and permits (collectively, instruments) which: (a) were granted by CP (or its predecessors in interest), (b) are known to CP, and (c) include or burden any portion of the Property. There shall be no proration of prepaid rentals, prepaid fees, or other prepaid charges in respect of any such instrument. If such an instrument pertains in part to property other than the Property, the assignment and

assumption shall be limited to the interest the instrument creates in the Property. In the event of such partial assignment, the rentals, fees, and other charges which come due after the closing shall be allocated between CP and Buyer on the basis of the square footage of the land area of their respective interests in the property affected by the instrument; provided, however, that where the rental, fee, or other charge was established on a basis other than square footage, the adjustment shall be determined using such other basis. The assignment and assumption contemplated by this Section shall be limited to rights and obligations accruing as of and after the closing. CP will provide a copy of each such instrument to Buyer within 30 days after CP accepts this offer. At the closing, the parties will execute an assignment and assumption agreement incorporating the terms of this Section and identifying such instrument or instruments.

## APPENDIX 8.0

### Provisions Governing the Whole of 2009 West Allis Trail Extension Agreement

1. **Applicable Law:**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin.

2. **Capitalized Words or Phrases.**

Unless expressly provided to the contrary, capitalized words or phrases shall have the specific meaning ascribed to them in this Agreement throughout this Agreement regardless of whether the word or phrase is defined prior or subsequent to the occurrence or use of the capitalized word or phrase.

3. **Computation Of Time.**

For the purpose of computing the time periods specified in this Agreement, Saturdays, Sundays and legal holidays shall be counted. However, where the last day for performing any act falls on a Saturday, Sunday, or legal holiday, that act may be performed on the next succeeding day which is not a Saturday, Sunday, or legal holiday.

4. **Conflict of Terms:**

Except as provided in Appendix 3.1, should any phrase contained in this document or any of its subparts or appendices conflict with any other term in the Agreement, the meaning in any conveyance document (Appendices 1 through 8, including subparts) shall take precedence over any other part of the Agreement. Subject to the preceding, any other Appendix shall take precedence over the Main Agreement.

5. **Duplicate Copies & Counterparts.**

This Agreement may be executed in counterparts, which together shall constitute one and the same document. The parties may execute more than one copy of this Agreement, each of which shall constitute an original.

6. **Entire Agreement:**

This Agreement constitutes the entire agreement between the parties with respect to the sale and purchase of the Property. Buyer has not relied on any statements or representations by CP except as are set forth in this Agreement.

7. **Headings:**

The Section headings used in this Agreement are used solely for the purpose of convenience. They are not intended to, and do not, modify or limit the wording of the Sections to which they are appended, and they shall not be used or construed as guides to the interpretation of said Sections.

8. **Assignability:**

Buyer shall not in any manner assign or transfer its rights under this Agreement,

voluntarily or involuntarily, by operation of law or otherwise, without the advance written consent of CP. Any attempted or purported assignment or transfer by Buyer without such consent shall be void. Subject thereto, this Agreement shall inure to the benefit of, and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties.

**9. Notices**

Any notice given by any party hereto shall be good if served upon another party at the address set forth in Section 1.A. of the Agreement, or other address has may subsequently amended by the party, or if deposited in a United States Postal Service post office, certified mail, addressed to a party at their last known address.

**10. Severability:**

Each provision, paragraph, section, sentence, clause, phrase, and word of this Agreement shall apply to the extent permitted by applicable law and is intended to be severable. If any provision, paragraph, section, sentence, clause, phrase or word of this Agreement is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of the Agreement.

**11. Singular and Plural.**

As used in this Agreement, the singular form of a word includes the plural form of that word, and vice versa, and this Agreement shall be deemed to include such changes to the accompanying language as may be necessary to conform to the change from singular to plural, or vice versa.

**12. Survival Of Indemnification, Litigation Expense And Confidentiality Provisions:**

The indemnification, litigation expense, and confidentiality provisions of this Agreement shall survive its termination.

**13. Survival Of Terms And Conditions:**

The terms and conditions of this Agreement shall survive and be in full force and effect after the delivery of the deed, and shall not be deemed to have merged therein.

**14. Time Of The Essence:**

Time is of the essence of this Agreement.