

AGENDA

RULES MEETING OF THE BOARD OF TRUSTEES VILLAGE OF PARK FOREST, COOK AND WILL COUNTIES, ILLINOIS

Village Hall

8:00 p.m.

September 8, 2009

Roll Call

1. Legacy Square Pavement Rehabilitation and Surfacing Contract
2. A Resolution Authorizing the Execution of a Voluntary Mitigation Agreement Between the Village of Park Forest and Grand Truck Corporation
3. A Resolution Authorizing the Execution of a Parking Lot Reconstruction Agreement Between the Village of Park Forest and the EJ&E Railway Company
4. A Resolution Authorizing the Execution of a Real Estate Sale and Easement Agreement and Option Agreement Between the Village of Park Forest and the Illinois Central Railroad Company
5. A Resolution Authorizing the Execution of a Right of Entry Agreement Between the Village of Park Forest and the Illinois Central Railroad Company
6. A Resolution Authorizing the Execution of Certain Amendments to an Agreement between the Village of Park Forest and the Elgin, Joliet and Eastern Railway Company Titled "Orchard Drive Underpass Supplemental Agreement"
7. An Ordinance Amending Chapter 6 ("Alcoholic Beverages")

Mayor's Comments

Manager's Comments

Trustee's Comments

Attorney's Comments

Audience to Visitors

Adjournment

Agenda Items are Available in the Lobby of Village Hall

AGENDA BRIEFING

DATE: August 26, 2009
TO: Mayor Ostenburg
Board of Trustees
FROM: Roderick Ysaguirre, Assistant Village Engineer
RE: Awarding of Pavement Rehabilitation and Surfacing Contract

BACKGROUND/DISCUSSION:

On Monday, August 17, at 10:00 a.m., the Department of Public Works opened five bids for the Pavement Rehabilitation and Surfacing Project. This project will consist of pavement patching, drainage structure adjustments and/or reconstruction, curb and sidewalk work, minimal storm sewer installation, and ultimately place the final surface pavement for Legacy Square and School House Manor subdivisions. Invitations to bid were published in the South Town Star Newspaper, in the Illinois Department of Transportation Notice to Contractors Bulletin, and were sent to 7 qualified asphalt contractors. K-Five Construction Corporation, located in Lemont, IL, was the lowest bidder in the amount of \$329,847.00 dollars. K-Five Construction Corp. has performed work for the Village before and satisfactorily completed all items proposed. K-Five was also the General Contractor for the recently completed Western Ave. Reconstruction project.

The bid tab is divided showing the work items and associated costs pertaining to each subdivision. Funding for this project is as follows, \$198,000 dollars is budgeted in the TIF Fund for road base restoration for Legacy Square. \$103,000 dollars is budgeted in the Public Works Fund for final surfacing pavement, but the final cost for this final pavement lift will be reimbursed to the Village through the Legacy Square Redevelopment Agreement. \$54,100 dollars is budgeted in the Public Works Fund for final surfacing pavement for School House Manor, but 50% of the final cost for this final pavement lift will be reimbursed to the Village through an agreement with the property owners.

Budget

In Public Works Fund	
For Legacy Square	\$103,000
For School House	\$54,100
In TIF Fund	
For Legacy Square	<u>\$198,000</u>
	\$355,100
Reimbursement	
From School House 50%	\$16,658
From Bigelow Homes	<u>\$57,477</u>
Total Funding	\$429,235
<u>Project Costs</u>	

Lowest Bid	\$329,847
30% Contingency	<u>\$98,954</u>
Total Costs	\$428,801

According to the bid documents and, if agreed by the contractor, Public Works may add additional work to be done in an amount not to exceed 30% of the bid amount, without adjustment of the unit prices by the Contractor. Public Works requests the authorization to take advantage of this opportunity if necessary.

RECOMMENDATION: Award the Pavement Rehabilitation and Surfacing Contract to K-Five Construction Corp. of Lemont, IL in the amount of \$329,847dollars with a 30% contingency for additional unexpected work for a total cost not to exceed \$428,801 dollars.

SCHEDULE FOR CONSIDERATION: This item will appear on the Agenda of the Rules meeting of September 8, 2009 for your discussion.

Village of Park Forest - Pavement Rehab & Surfacing Project - Bid Tab

Bid Opening: Aug. 17, 2009 10:00 am

SCHOOL HOUSE MANOR				Alpha Construction Co.		Gallagher Asphalt Corporation		Iroquois Paving Corporation		K-Five Const. Corporation		Sunset Paving Inc.		Egr. Estimate	
NO.	ITEM	UNIT	QTY	UNIT \$	TOTAL \$	UNIT \$	TOTAL \$	UNIT \$	TOTAL \$	UNIT \$	TOTAL \$	UNIT \$	TOTAL \$	UNIT \$	TOTAL \$
1	HMA Surface Mix D N50 1-1/2"	T	285	\$72.25	\$20,591.25	\$76.00	\$21,660.00	\$75.50	\$21,517.50	\$73.50	\$20,947.50	\$95.00	\$27,075.00	\$82.00	\$23,370.00
2	Leveling Binder Machine Method N50	T	98	\$75.00	\$7,350.00	\$76.00	\$7,448.00	\$90.00	\$8,820.00	\$73.50	\$7,203.00	\$95.00	\$9,310.00	\$82.00	\$8,036.00
3	Pavement Remove and Replace 1-1/2"	SY	33	\$55.00	\$1,815.00	\$57.00	\$1,881.00	\$48.50	\$1,600.50	\$29.00	\$957.00	\$60.00	\$1,980.00	\$15.00	\$495.00
4	Bituminous Materials (Prime Coat)	GAL	339	\$2.50	\$847.50	\$0.01	\$3.39	\$2.00	\$678.00	\$2.00	\$678.00	\$4.00	\$1,356.00	\$2.00	\$678.00
5	Curb and Gutter Remove and Replace B6-12	FT	45	\$58.00	\$2,610.00	\$33.00	\$1,485.00	\$23.00	\$1,035.00	\$25.00	\$1,125.00	\$30.00	\$1,350.00	\$24.00	\$1,080.00
6	Inlet to be Adjusted	EA	1	\$455.00	\$455.00	\$550.00	\$550.00	\$555.00	\$555.00	\$405.00	\$405.00	\$350.00	\$350.00	\$700.00	\$700.00
7	Inlet to be Reconstructed w. Frame&Grate	EA	1	\$1,425.00	\$1,425.00	\$600.00	\$600.00	\$700.00	\$700.00	\$900.00	\$900.00	\$1,100.00	\$1,100.00	\$900.00	\$900.00
8	Traffic Control and Protection	LS	1	\$850.00	\$850.00	\$500.00	\$500.00	\$4,205.00	\$4,205.00	\$1,100.00	\$1,100.00	\$1,500.00	\$1,500.00	\$800.00	\$800.00
				SUBTOTAL	\$35,943.75		\$34,127.39		\$39,111.00		\$33,315.50		\$44,021.00		\$36,059.00

Legacy Square				Alpha Construction Co.		Gallagher Asphalt Corporation		Iroquois Paving Corporation		K-Five Const. Corporation		Sunset Paving Inc.		Egr. Estimate	
NO.	ITEM	UNIT	QTY	UNIT \$	TOTAL \$	UNIT \$	TOTAL \$	UNIT \$	TOTAL \$	UNIT \$	TOTAL \$	UNIT \$	TOTAL \$	UNIT \$	TOTAL \$
1	HMA Surface Mix D N50 1-1/2"	T	782	\$70.50	\$55,131.00	\$76.00	\$59,432.00	\$75.50	\$59,041.00	\$73.50	\$57,477.00	\$85.00	\$66,470.00	\$82.00	\$64,124.00
2	Class D Patches, Type IV, 6"	SY	4306	\$28.25	\$121,644.50	\$31.50	\$135,639.00	\$30.00	\$129,180.00	\$30.65	\$131,978.90	\$29.00	\$124,874.00	\$41.00	\$176,546.00
3	Pavement Remove and Replace 2-1/2"	SY	3204	\$19.00	\$60,876.00	\$14.75	\$47,259.00	\$12.75	\$40,851.00	\$16.25	\$52,065.00	\$18.00	\$57,672.00	\$17.00	\$54,468.00
4	Bituminous Materials (Prime Coat)	GAL	931	\$2.50	\$2,327.50	\$0.01	\$9.31	\$2.00	\$1,862.00	\$2.00	\$1,862.00	\$3.50	\$3,258.50	\$2.00	\$1,862.00
5	Aggregate (Prime Coat)	T	11	\$85.00	\$935.00	\$64.00	\$704.00	\$93.00	\$1,023.00	\$53.00	\$583.00	\$100.00	\$1,100.00	\$15.00	\$165.00
6	Aggregate Base Repair	T	500	\$46.30	\$23,150.00	\$16.00	\$8,000.00	\$21.00	\$10,500.00	\$12.00	\$6,000.00	\$18.00	\$9,000.00	\$12.00	\$6,000.00
7	Crack Routing	FT	550	\$0.60	\$330.00	\$1.00	\$550.00	\$1.05	\$577.50	\$1.10	\$605.00	\$2.00	\$1,100.00	\$2.00	\$1,100.00
8	Crack Filling	LB	250	\$10.50	\$2,625.00	\$2.00	\$500.00	\$15.60	\$3,900.00	\$2.10	\$525.00	\$20.00	\$5,000.00	\$2.00	\$500.00
9	Pavement Cleaning and Weed Spraying	LS	1	\$750.00	\$750.00	\$2,500.00	\$2,500.00	\$4,200.00	\$4,200.00	\$2,400.00	\$2,400.00	\$3,000.00	\$3,000.00	\$4,000.00	\$4,000.00
10	Preparation of Base	SY	7510	\$4.45	\$33,419.50	\$1.80	\$13,518.00	\$0.90	\$6,759.00	\$1.75	\$13,142.50	\$1.50	\$11,265.00	\$2.00	\$15,020.00
11	Curb and Gutter Remove and Replace B6 12	FT	60	\$37.25	\$2,235.00	\$31.50	\$1,890.00	\$23.00	\$1,380.00	\$25.00	\$1,500.00	\$25.00	\$1,500.00	\$24.00	\$1,440.00
12	Curb and Gutter Remove and Replace M3 12	FT	15	\$71.55	\$1,073.25	\$31.50	\$472.50	\$23.00	\$345.00	\$25.00	\$375.00	\$35.00	\$525.00	\$24.00	\$360.00
13	Curb Remove and Replace B6	FT	129	\$38.80	\$5,005.20	\$24.50	\$3,160.50	\$20.00	\$2,580.00	\$22.00	\$2,838.00	\$25.00	\$3,225.00	\$22.00	\$2,838.00
14	Concrete Curb and Gutter B6 12	FT	97	\$41.00	\$3,977.00	\$33.00	\$3,201.00	\$44.00	\$4,268.00	\$25.00	\$2,425.00	\$25.00	\$2,425.00	\$26.00	\$2,522.00
15	Concrete Curb B6	FT	191	\$34.10	\$6,513.10	\$29.00	\$5,539.00	\$41.00	\$7,831.00	\$25.00	\$4,775.00	\$25.00	\$4,775.00	\$26.00	\$4,966.00
16	Paved Invert	FT	63	\$42.00	\$2,646.00	\$20.00	\$1,260.00	\$47.50	\$2,992.50	\$15.00	\$945.00	\$50.00	\$3,150.00	\$48.00	\$3,024.00
17	Gutter Removal	FT	51	\$37.50	\$1,912.50	\$5.25	\$267.75	\$5.50	\$280.50	\$6.00	\$306.00	\$10.00	\$510.00	\$13.00	\$663.00
18	PCC Sidewalk 5"	SF	163	\$16.00	\$2,608.00	\$9.00	\$1,467.00	\$12.50	\$2,037.50	\$8.50	\$1,385.50	\$8.00	\$1,304.00	\$9.00	\$1,467.00
19	Sidewalk Remove and Replace	SF	90	\$23.00	\$2,070.00	\$11.00	\$990.00	\$10.00	\$900.00	\$11.50	\$1,035.00	\$10.00	\$900.00	\$6.30	\$567.00
20	Detectable Warnings	SF	8	\$33.00	\$264.00	\$30.00	\$240.00	\$31.75	\$254.00	\$33.00	\$264.00	\$40.00	\$320.00	\$24.00	\$192.00
21	Catch Basin Type C 24" w/ Frame and Lid	EA	1	\$2,350.00	\$2,350.00	\$3,500.00	\$3,500.00	\$2,100.00	\$2,100.00	\$1,600.00	\$1,600.00	\$800.00	\$800.00	\$2,000.00	\$2,000.00
22	Storm Sewer Class III RCCP Type 2, 12"	FT	117	\$115.00	\$13,455.00	\$55.00	\$6,435.00	\$56.00	\$6,552.00	\$53.00	\$6,201.00	\$80.00	\$9,360.00	\$100.00	\$11,700.00
23	Manhole to be Adjusted	EA	1	\$735.00	\$735.00	\$550.00	\$550.00	\$555.00	\$555.00	\$405.00	\$405.00	\$650.00	\$650.00	\$700.00	\$700.00
24	Frame and Lid to be Adjusted	EA	1	\$435.00	\$435.00	\$550.00	\$550.00	\$555.00	\$555.00	\$405.00	\$405.00	\$350.00	\$350.00	\$110.00	\$110.00
25	Parkway Restoration	SY	45	\$40.00	\$1,800.00	\$20.00	\$900.00	\$31.00	\$1,395.00	\$23.00	\$1,035.00	\$20.00	\$900.00	\$5.00	\$225.00
26	Traffic Control and Protection	LS	1	\$3,555.00	\$3,555.00	\$3,000.00	\$3,000.00	\$4,205.00	\$4,205.00	\$2,000.00	\$2,000.00	\$5,000.00	\$5,000.00	\$1,200.00	\$1,200.00
27	Paint Pavement Marking 4"	FT	1900	\$0.50	\$950.00	\$0.35	\$665.00	\$0.75	\$1,425.00	\$0.35	\$665.00	\$0.50	\$950.00	\$0.30	\$570.00
28	Paint Pavement Marking 12"	FT	28	\$2.50	\$70.00	\$1.00	\$28.00	\$3.25	\$91.00	\$1.20	\$33.60	\$10.00	\$280.00	\$0.55	\$15.40
29	Construction Layout	LS	1	\$1,550.00	\$1,550.00	\$2,500.00	\$2,500.00	\$1,800.00	\$1,800.00	\$1,700.00	\$1,700.00	\$3,000.00	\$3,000.00	\$1,000.00	\$1,000.00
				SUBTOTAL	\$354,392.55		\$304,727.06		\$299,440.00		\$296,531.50		\$322,663.50		\$359,344.40
				TOTAL	\$390,336.30		\$338,854.45		\$338,551.00		\$329,847.00		\$366,684.50		\$395,403.40

VILLAGE OF PARK FOREST

MEMORANDUM

TO: John A. Ostenburg, Mayor
Village Board of Trustees

FROM: Thomas K. Mick,
Village Manager

DATE: September 1, 2009

RE: A RESOLUTION AUTHORIZING THE EXECUTION OF A
VOLUNTARY MITIGATION AGREEMENT BETWEEN THE VILLAGE
OF PARK FOREST AND GRAND TRUCK CORPORATION

Background

On January 31, 2009, Canadian National rail company (CN) was granted authority by the federal Surface Transportation Board (STB) to move forward with its acquisition of the former EJ&E rail company and its rail track system. With the STB's determination in January of this year, communities along the rail arc began to approve Voluntary Mitigation Agreements (VMA) with CN in accordance with guidelines set forth by the federal board.

In January of this year, the Village convened initial negotiations with CN on a VMA and the potential sale of a tract of land covered by the rail company as part of its master plan for the EJ&E acquisition. As a result of a package deal negotiated and proposed to be agreed upon by the Village and CN, the rail company is willing to provide the Village the following as part of a VMA:

- CN will contribute \$2,450,000 for traffic congestion mitigation. Funds will be used to help offset a funding gap which exists for the project which will redesign, reconfigure and reconstruct Orchard Drive from Route 30/Lincoln Highway north to Lakewood Boulevard. The Board is already aware of the plans for the reconstruction and improvement of Orchard Drive due to natural deterioration of this thoroughfare. Funds will also be used to construct and install 4-way streetlight/traffic control devices at the intersection of Orchard Drive and Westwood Drive. Village Staff is of the opinion that traffic patterns will naturally flow down Westwood Drive and/or North Street when trains are crossing Western Avenue. Implementation of a traffic light-controlled intersection at Orchard & Westwood should assist in better control of traffic seeking alternate routes when trains are crossing Western Avenue.
- CN will contribute \$1,500,000 toward residential noise mitigation issues. Village Staff envisions these funds being distributed in two fashions. The first is to fund a sound barrier along the rail track for a long stretch, if not full length, of properties east of Western Avenue to the Forest Preserve District property. Funding toward this sound barrier would be \$1,000,000 and likely will need to be leveraged with grant funds in the case that these funds are not sufficient to install a full length sound barrier from Western

to the Forest Preserve. A sound barrier is a key component of the Strategic Plan for Land Use and Economic Development and the study's vision for the redevelopment of the Eastgate neighborhood.

The second use for the pool of \$1,500,000 for noise mitigation is to establish a reimbursement fund which would allow impacted property owners west of Western Avenue a set amount of dollars per property for the purpose of making home improvements to offset diminished property values with the increase of rail traffic. Funding for this program would amount to approximately \$500,000 and would be allocated for properties along Water Street, Waldmann Street, Well Street and Well Court which are immediately adjacent to the rail tracks.

- CN will contribute to the Village \$100,000 to fund the purchase of vehicles/equipment at the sole discretion of the Village which will be used to enhance emergency response operations along the rail track.
- CN will contribute \$100,000 to the Village to fund economic development projects. Village staff envisions several ideas for these dollars, such as: providing capacity building training to existing Park Forest small businesses on such things as marketing, business operations, pricing and cash flow projections; marketing the Village-owned properties in the Park Forest Business Park; providing a match for grant funds to continue planning studies for the 211th Street Metra Station TOD; and installing information kiosks at both Park Forest commuter lots to promote Village of Park Forest events. The Village could also propose to spend the bulk of the funds to pay for a restaurant build-out or to create a micro-loan pool for new or existing Park Forest businesses undertaking capital improvements. The ultimate use of these funds will be determined after more discussion with the Village's economic development team, the Economic Development Advisory Group and the Board of Trustees.
- CN will grant an easement right at the 211th Street commuter lot at an estimated value of \$60,000. The 211th Street Metra Station Transit Oriented Development (TOD) Study recommends the construction of a pedestrian tunnel from the Park Forest commuter parking lot to the Matteson station entrance. This will enhance the attractiveness of this parking lot to commuters because it will create more direct access to the station entrance than what currently exists. The construction of this pedestrian tunnel requires approval from both Metra and CN as it will cross their rights-of-way. CN's willingness to grant this license will enable the construction of the pedestrian tunnel at such time as funding becomes available.
- CN agrees to finance consulting support of the Village's pursuit of a quiet zone for the Western Avenue crossing. Estimated value of this support is \$25,000. This benefit would be contingent upon the Village Board's determination that it would prefer a quiet zone designation.
- CN agrees to facilitate and engage in ongoing training of public safety/emergency response personnel. Estimated value of this commitment is \$25,000.

- CN will provide enhanced rail track and crossing observation capabilities for SouthCom dispatching services. Estimated value of this technology is at least \$25,000. This benefit will allow for a constant warning system to alert the SouthCom Tele-communicators to train locations along the rail track as public safety vehicles are dispatched in Park Forest. CN will not only implement the system but commit to ongoing upgrades for system hardware and software which might be necessary in the future.

The attached Voluntary Mitigation Agreement and the corresponding enabling resolution have been reviewed by Village Attorney Paul Stephanides.

SCHEDULE FOR CONSIDERATION:

This issue will be on the agenda for Board discussion at its September 8, 2009 Rules Meeting.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE EXECUTION OF
A VOLUNTARY MITIGATION AGREEMENT BETWEEN
THE VILLAGE OF PARK FOREST AND
GRAND TRUCK CORPORATION**

BE IT RESOLVED by the Mayor and Board of Trustees of the Village of Park Forest, Cook and Will Counties, Illinois, in the exercise of their home rule authority, as follows:

Section 1. Approval of Agreement. The Voluntary Mitigation Agreement (“Agreement”) between the Village of Park Forest and Grand Truck Corporation, attached hereto and incorporated herein by reference as Exhibit A, is hereby approved in substantially the form attached, and subject to the review and approval of the Village Attorney.

Section 2. Execution of Agreement. The Village Manager is directed and authorized to execute the Agreement in substantially the form attached and the Village Clerk is directed and authorized to attest the signature of the Village Manager. The Village Manager and the Village Clerk are directed and authorized to execute any and all other documents as may be necessary to effectuate the purposes of the Agreement.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED this ____ day of _____, 2009.

APPROVED:

ATTEST:

Mayor

Village Clerk

VOLUNTARY MITIGATION AGREEMENT

This **VOLUNTARY MITIGATION AGREEMENT** ("Agreement") is made and entered into this ___ day of _____, 2009, by and between the **Village of Park Forest**, an Illinois municipal corporation ("Park Forest") and **Grand Trunk Corporation**, a wholly owned U.S. subsidiary and owner of the U.S. rail operating subsidiaries of Canadian National Railway Company (collectively, "GTC"), and co-applicant in the filing before the Surface Transportation Board ("STB") in STB Finance Docket No. 35087. This Agreement sets out certain commitments GTC is prepared to make to address the following issues resolved by the parties related to existing train traffic and changes in train traffic anticipated as a result of the CN/EJ&EW transaction ("Transaction"), authorized by the STB on December 24, 2008 in STB Finance Docket No. 35087, and the corresponding agreement by Park Forest that these commitments by GTC resolve any outstanding concerns Park Forest has related to the Transaction, other than those contained in other agreements entered into between Park Forest and GTC. The additional specific terms of this Agreement between GTC and Park Forest are set forth below, and will be effective upon the execution of this Agreement by duly authorized representatives of Park Forest and GTC.

A.

I. Quiet Zones

GTC will support and provide at its sole cost and expense the independent consulting assistance to assist Park Forest's application for a Quiet Zone. GTC will bear such cost until the application for the Quiet Zone has been approved by the appropriate authorities having jurisdiction over the same.

II. Noise and Safety Mitigation

GTC will provide \$1,500,000 for noise mitigation and safety fencing for adjacent residential, school, and park properties within Park Forest, approximately \$500,000 of which shall be for adjacent residential properties and approximately \$1,000,000 shall be for the construction of a sound wall. These funds include all costs for the improvements including design and engineering. Park Forest may use these funds for any combination of mitigation elements constructed on non-railroad property, but immediately adjacent to the right of way. In addition, Park Forest may utilize any portion of these funds to administer a mitigation fund for distribution to adjacent property owners. Park Forest or adjacent property owners will be responsible for the construction, ownership and maintenance of all improvements.

Within thirty (30) days from the effective date of this Agreement, GTC shall provide the funding to Park Forest pursuant to this Section. . Park Forest shall have full discretion as to the use of the funds provided pursuant to the purposes of this Section, and Park Forest shall have the right to choose any consultants in its discretion for the performance of services pursuant to this Section.

III. Emergency Response and Training

GTC will provide training at no cost to Park Forest for Park Forest's emergency responders. GTC will complete a training plan in conjunction with the designated Fire Department representatives within six months after effective date of this agreement. All training will be completed within a three-year span. Some training will be limited to qualified candidates submitted by Park Forest. This does not preclude additional training in subsequent years for new employees and as a refresher for persons who received previous training.

IV. Communications

GTC will fund at its sole expense the establishment and long-term maintenance, upgrade and replacement of a specific emergency protocol and dispatching view capability (the "System") on behalf of Park Forest. GTC shall bear the cost of the hardware, software and communication equipment in order to provide the System at the appropriate dispatch facility. GTC shall begin the work required by this Section to establish the System within one hundred and eighty (180) days of the effective date of this Agreement and shall complete said System promptly thereafter.

V. Traffic Improvements

GTC will provide \$2,450,000 to Park Forest to enable traffic signal, traffic lane configuration, or road improvements as deemed necessary solely by Park Forest to accommodate emergency vehicle and traffic diversion within the village. GTC shall provide said funds to Park Forest within thirty (30) days of the effective date of this Agreement.

VI. Other

In consideration of Park Forest's expedited acceptance of this Agreement, and the formal closing on the acquisition by GTC of a certain parcel of property owned by Park Forest pursuant to a separate agreement between the parties, GTC agrees to the following:

- (A) GTC will provide \$100,000 to Park Forest to be used for the purchase of emergency response vehicles or safety equipment. GTC shall provide said funds within thirty (30) days of the effective date of this Agreement.
- (B) GTC will provide \$100,000 to Park Forest to assist with the promotion of business development initiatives in the Village. GTC shall provide said funds within thirty (30) days of the effective date of this Agreement.
- (C) GTC will assume ownership and responsibility of the maintenance from Park Forest for the Orchard Drive overhead bridge pursuant to a separate agreement between the parties. In addition, GTC will commit an estimated \$225,000 to repaint the bridge within three years from the date of execution of this Agreement, or additional costs as required. Further, GTC will allow Park Forest

to construct an electronic sign(s) to be added to the bridge structure, with no license fees for Park Forest payable to GTC. The parties will execute a separate agreement titled "Orchard Drive Underpass Supplemental Agreement" to be effective on the same date as this Agreement regarding the ownership and responsibility of the Orchard Drive overhead bridge and the license for Park Forest to maintain an electronic sign(s) on the bridge.

- (D) GTC will provide an easement, at no cost to Park Forest, for a pedestrian access at the 211th street station area as part of a redevelopment project pursuant to a separate easement agreement between the parties to be executed within sixty (60) days of the execution of this Agreement. Said easement shall be of sufficient width and dimensions to provide pedestrian access through the 211th Street embankment from Park Forest's commuter parking lot to the station entrance on the west side of the embankment through and under the railroad right-of-way. GTC will require engineering review and approval for any construction in the easement, such approval not to be unreasonably withheld.
- (E) GTC will contribute a surplus railroad caboose to Park Forest, and arrange to place the caboose on Park Forest property at a location at Park Forest's discretion, and GTC shall provide a concrete pad foundation and railroad track for said caboose. Park Forest will identify a location for placement of the caboose within one (1) year of the date of this Agreement.
- (F) GTC will install and construct a retaining wall as part of the new connection. GTC shall consult with Park Forest as to the finish of the retaining wall, and the finish shall be suitable for a mural. Park Forest shall have the right to install and maintain a mural on the retaining wall. Park Forest shall be responsible for any potential maintenance, lighting, and vandalism control with regard to the mural. The mural will be created using materials that will not create any long-term damage to the retaining wall (i.e., no acid etching, etc.). In no event will Park Forest allow the mural to display any message which might place the Railway, its officers, directors or employees, or the railroad industry in a bad light. A license agreement for the mural may be required if the parties concur that it such an agreement is necessary
- (G) GTC will contribute \$40,000 to Park Forest for the construction, by Park Forest of a train-viewing platform and access way on Park Forest property. GTC shall provide said funds within thirty (30) days of the effective date of this Agreement.

B.

CONDITIONS FOR GTC'S OBLIGATIONS UNDER THIS AGREEMENT

I. The commitments of GTC set forth in this Agreement are conditioned upon the following:

- A. Upon execution of this Agreement, GTC will fulfill its commitments contained herein within a three-year period after the effective date of this Agreement, unless otherwise specified herein.
- B. Park Forest agrees that it shall not make further submissions in the STB proceeding or in appellate proceedings without GTC's prior review and approval except in support of this Agreement and/or the STB's decision approving this Agreement and the matters contained herein.
- C. GTC and Park Forest will complete the sale of certain parcels of property separately itemized by a separate Real Estate Sale and Easement Agreement within thirty (30) days of the date of execution of this Agreement, unless otherwise provided in the Real Estate Sales and Easement Agreement and any extensions agreed upon thereto.
- D. GTC and Park Forest will complete a separate Parking Lot Reconstruction Agreement within thirty (30) days of the execution of this Agreement, unless otherwise provided in the Parking Lot Reconstruction Agreement and any extensions agreed upon thereto.
- E. GTC and Park Forest will complete a separate Orchard Drive Underpass Supplemental Agreement within thirty (30) days of the execution of this Agreement, unless otherwise provided in the Parking Lot Reconstruction Agreement and any extensions agreed upon thereto.
- F. Park Forest will agree to support the construction of the new GTC rail connection and the related modifications to the Park Forest municipal parking lot. GTC will agree to take responsibility for securing Metra's approval for the parking lot modifications. GTC will develop a construction staging plan in conjunction with Park Forest staff, and subject to Park Forest approval, and GTC agrees to meet on a weekly basis with Park Forest staff during the construction phase.

II. Confidentiality

This negotiated Agreement and its terms shall be confidential, except to the extent disclosure may be essential for consideration by the Park Forest corporate authorities at a public meeting and as otherwise required by law.

III. STB Compliance

It is the intent of the parties to this Agreement that the STB require GTC's compliance with this Agreement in lieu of any additional or inconsistent mitigation that the STB might otherwise impose regarding environmental impacts in Park Forest. The STB has asked that CN provide copies of any formalized agreements between GTC and affected communities, and the parties agree that GTC shall provide a copy of this Agreement to the STB upon execution.

IV. Effective Date

The effective date of this Agreement shall be the date that the Village Clerk attests the signature of the Village Manager of the Village of Park Forest.

V. Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors, and assigns, except as otherwise provided herein.

VI. Severability

If any of the provisions of this Agreement are determined by a court of competent jurisdiction to be invalid, such provisions shall be deemed to be stricken, and such adjudication shall not affect the validity of the remainder of the terms of this Agreement as a whole or of any section, subsection, sentence or clause not adjudged to be invalid.

VII. Binding Authority

The individuals executing this Agreement on behalf of GTC and Park Forest represent that they have the legal power, right, and actual authority to bind their respective parties to the terms and conditions of this Agreement.

Agreed To:

GTC

By: _____

Print Name: _____

Title: _____

Date: _____

Attest:

By: _____

Print Name: _____

Title: _____

Date: _____

Agreed To:

VILLAGE OF PARK FOREST

By: _____
Thomas K. Mick, Village Manager

Date: _____

ATTEST:

By: _____

Print Name: Sheila McGann

Title: Village Clerk

Date: _____

VILLAGE OF PARK FOREST

MEMORANDUM

**TO: John A. Ostenburg, Mayor
Village Board of Trustees**

**FROM: Thomas K. Mick,
Village Manager**

DATE: August 31, 2009

**RE: A RESOLUTION AUTHORIZING THE EXECUTION OF A PARKING
LOT RECONSTRUCTION AGREEMENT BETWEEN THE VILLAGE OF
PARK FOREST AND THE EJ&E RAILWAY COMPANY**

Background

On January 31, 2009, Canadian National rail company (CN) was granted authority by the federal Surface Transportation Board (STB) to move forward with its acquisition of the former EJ&E rail company and its rail track system. With the STB's determination in January of this year, communities along the rail arc began to approve Voluntary Mitigation Agreements (VMA) with CN in accordance with guidelines set forth by the federal board.

In January of this year, the Village convened initial negotiations with CN on a VMA and the potential sale of a tract of land covered by the rail company as part of its master plan for the EJ&E acquisition. As a result of a package deal negotiated and proposed to be agreed upon by the Village and CN, the rail company is willing to make substantial improvements to the Village-owned commuter parking lot located at Homan Avenue and Hickory Street. Highlights of the attached Parking Lot Reconstruction Agreement include:

- CN will construct a new 'kiss & ride' lane, which would be constructed along the north side of the commuter lot. This lane would be appropriately reinforced and constructed so as to accommodate future bus traffic needs. CN will also re-pave and re-light the entire remaining parking lot and carry out fence repair and/or replacement work as needed around the perimeter of the lot. This work will enhance the overall attractiveness of the remaining commuter lot. It is anticipated that 80% (approximately 570 spaces) of the existing parking capacity will remain intact subsequent to the construction project. The anticipated construction work at the commuter lot is \$1,110,000.
- CN will contribute \$40,000 to Park Forest for an electronic parking lot capacity sign. This sign will alert commuters to availability of the Homan/Hickory commuter lot and how many spaces are open at any given time. While the exact location of the lot capacity/availability sign has yet to be determined by Village Staff, it will likely to be along Western Avenue or on Lincoln Highway/Route 30. As part of this initiative, CN will add electronic loops in parking lot entry lanes to communicate with the lot capacity signage. The estimated cost for this improvement is \$10,000.
- CN will contribute \$60,000 to the Village for additional site enhancements such as a new

fare box collection system. Funds may also be used for a multi-use asphalt path connecting the Old Plank Road Trail to a public park/point of interest to be constructed immediately south of the Homan/Hickory commuter lot.

The attached Parking Lot Reconstruction Agreement and the corresponding enabling resolution have been reviewed by Village Attorney Paul Stephanides.

SCHEDULE FOR CONSIDERATION:

This issue will be on the agenda for Board discussion at its September 8, 2009 Rules Meeting.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE EXECUTION OF A PARKING LOT
RECONSTRUCTION AGREEMENT BETWEEN
THE VILLAGE OF PARK FOREST AND THE EJ&E RAILWAY COMPANY**

BE IT RESOLVED by the Mayor and Board of Trustees of the Village of Park Forest, Cook and Will Counties, Illinois, in the exercise of their home rule authority, as follows:

Section 1. Approval of Agreement. The Parking Lot Reconstruction Agreement (“Agreement”) between the Village of Park Forest and the EJ&E Railway Company, attached hereto and incorporated herein by reference as Exhibit A, is hereby approved in substantially the form attached, and subject to the review and approval of the Village Attorney.

Section 2. Execution of Agreement. The Village Manager is directed and authorized to execute the Agreement in substantially the form attached and the Village Clerk is directed and authorized to attest the signature of the Village Manager. The Village Manager and the Village Clerk are directed and authorized to execute any and all other documents as may be necessary to effectuate the purposes of the Agreement.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED this ____ day of _____, 2009.

APPROVED:

ATTEST:

Mayor

Village Clerk

PARKING LOT RECONSTRUCTION AGREEMENT

This **PARKING LOT RECONSTRUCTION AGREEMENT** is made in duplicate this _____ day of _____, 2009

BETWEEN :

**ELGIN, JOLIET & EASTERN RAILWAY
COMPANY**

17641 South Ashland Avenue

Homewood, IL 60430

(hereinafter referred to as the "**Railroad**")

AND :

Village of Park Forest, Illinois

350 Victory Drive

Park Forest, IL 60466

(hereinafter referred to as the "**Village**")

Whereas, Village owns and operates a municipal parking lot ("Parking Lot") located in Matteson, Illinois east of and adjacent to Railroad's main line tracks, as depicted on the attached Exhibit "A", by reference hereto made a part hereof; and

Whereas, effective this same date as reflected above, Village and Railroad have executed Voluntary Mitigation and Real Estate Sale and Easement Agreements that provide for Railroad to purchase a portion of the Parking Lot and other Village owned property for construction of new interchange tracks; and

Whereas, Railroad has agreed that, as an element of its purchase of a portion of the Parking Lot and other Village owned property, Railroad will resurface, restripe, and reconfigure (collectively the "Reconstruction") the remaining portions of the Parking Lot (the "Remaining Lot"), and perform such other work as is agreed to by the parties hereto, at an estimated cost of approximately \$1,110,000; and

Whereas, the parties hereto wish to document their rights and obligations with respect to the Reconstruction.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, to be by them respectfully kept and performed as hereinafter set forth, the receipt and sufficiency of which are hereby confirmed, the parties hereto agree as follows:

ARTICLE 1 - RECONSTRUCTION:

Subject to and in accordance with the terms and conditions of this Agreement, Railroad shall perform, or cause to be performed by contractors of its sole choosing, the Reconstruction of the Remaining Lot to be performed by Railroad’s contractor and more specifically described in Exhibit A, attached hereto and incorporated herein by reference. The Reconstruction of the Remaining Lot shall be performed in accordance with the most recent edition of the Illinois Department of Transportation’s “Standard Specifications for Road and Bridge Construction.” The Reconstruction shall include the following items:

- a. Resurfacing of the portion of Remaining Lot not otherwise adjusted with commercial grade asphalt;
- b. Restriping of the portion of Remaining Lot not otherwise adjusted in the configuration substantially in compliance with Exhibit A using thermoplastic striping; and
- c. Constructing, adding to, or repairing curbs, drainage, lighting, pavement, striping, guard rails, and fencing for the replacement Kiss’n’Ride facility and other accompaniment of the Remaining Lot substantially in compliance with Exhibit A.

In addition to the terms provided above, the Reconstruction shall be performed in accordance with the terms contained in correspondence from the Village to Erice Jakubowski of Railroad dated July 29, 2009, and attached hereto and incorporated herein by reference as Exhibit B. Railroad shall comply with all applicable laws and regulations with regard to the Reconstruction, including, but not limited to, the Illinois Prevailing Wage Act, 820 ILCS 130/0.01 *et seq.* (2009), as amended.

In addition to the terms provided above, Railroad agrees to contribute a cash payment of \$40,000 to the Village for the off-site construction by the Village of a parking lot capacity sign, payable within thirty (30) days of the effective date of this Agreement. Railroad shall also install electronic loops to provide data feeds for the capacity sign referenced above. Railroad shall also contribute a cash payment of \$60,000 to the Village for other improvements to the Parking Lot to be determined in the Village’s discretion, which may include the installation of an electronic fare box system.

ARTICLE 2 – GENERALLY ACCEPTED PRACTICES:

Railroad shall perform the Reconstruction in accordance with Generally Accepted Practices. For the purposes hereof, “Generally Accepted Practices” means the generally accepted practices, methods and acts engaged in or approved by professional engineers on projects similar to the Reconstruction, which at the time such practice, method or act is employed, and in the exercise of reasonable judgment in light of the facts known at such time, would be expected to accomplish the desired result in a workmanlike manner and to comply with the specifications and requirements

set out herein, all applicable laws and regulations, including the Village's Code of Ordinances, and to the approval of the Village, such approval to not be unreasonably withheld.

ARTICLE 3 - SCHEDULE:

Railroad shall complete the Reconstruction in accordance with the work schedule set forth in Exhibit C to this Agreement, attached hereto and incorporated herein by reference. Railroad's

ARTICLE 4 - FEES AND EXPENSES:

All fees, costs, and expenses, including but not limited to costs for contractors and subcontractors, permitting and licensing, and every other expense shall be born solely by Railroad.

ARTICLE 5 - INDEPENDENT CONTRACTOR:

Railroad shall use its own forces, or it will secure, at its own expense and selection, duly qualified personnel to perform the Reconstruction under this Agreement. At all times, Railroad's employees, contractors and subcontractors shall not be deemed employees of the Village for any purpose. Village shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction.

ARTICLE 6 – INSURANCE:

1. Village acknowledges that Railroad operates under a program of self-retained risk (otherwise known as self insurance) for all loss levels reasonably foreseeable to be reached for losses relating to the Reconstruction. For all work on the Reconstruction, Railroad shall require each of its contractors and subcontractors to be covered by the following policies of insurance:
 - a. Statutory Workers Compensation and Employer's Liability Insurance.
 - b. Automobile Liability Insurance in an amount not less than \$5,000,000 combined single limit. The Village shall be named as an additional insured on said policy.
 - c. Commercial General Liability Insurance (Occurrence Form) and in an amount not less than \$5,000,000 per Occurrence, with an Aggregate limit of no less than \$10,000,000. The Village shall be named as an additional insured on said policy.
2. Before commencing work, Railroad shall deliver to Village certificates of insurance evidencing the foregoing coverages and that the Village is named as an additional insured on said policies.
3. Each policy shall provide for not less than thirty days prior written notice to Village of cancellation in that policy.

4. It is understood and agreed that the foregoing insurance coverage requirements, and Railroad's assurance that its contractors and subcontractors secure policies meeting those requirements, is not intended to, and shall not, relieve Railroad from, or serve to limit, Railroad's liability and indemnity obligations under the provisions herein. All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of not less than A IX, according the latest edition of A.M. Best Company.

ARTICLE 7 - INDEMNITY

To the fullest extent permitted by law, Railroad agrees to protect, defend, indemnify, and save harmless Village, its officers, directors, agents and employees thereof, from and against any and all liabilities, penalties, fines, demands, claims, causes of action, suits and costs (including indirect, consequential, punitive, or exemplary damages, costs of defense, settlements, and attorneys' fees) which any or all of them suffer and incur to the extent caused by:

- (i) the negligence, or act or omission, or strict liability, of Railroad, its contractors or subcontractors in the performance of the Reconstruction;
- (ii) violation by Railroad, its contractors or subcontractors of any applicable federal, state, or local statute, ordinance, order, rule or regulation; and
- (iii) violation by Railroad, its contractors or subcontractors of any provision of this Agreement.

ARTICLE 8 - CHANGES

If, through no fault of Railroad, its contractors or subcontractors, it shall become necessary to make any changes in the Reconstruction and/or the Work Schedule under this Agreement, the party requiring such changes shall notify the other in writing and Railroad shall not proceed with such changes until the parties have agreed in writing upon the nature of the said changes and the adjustments to the Work Schedule required in respect of the said changes.

ARTICLE 9 - TERM OF THIS AGREEMENT

1. This Agreement shall continue in full force and effect until the Reconstruction is completed, except as provided below.
2. Village may upon fifteen (15) days written notice to Railroad terminate this Agreement because the Reconstruction has been abandoned or suspended.

ARTICLE 10 – DISPUTES AND VENUE

In the event that a dispute shall arise with respect to the Reconstruction or the interpretation of this Agreement, the parties shall first negotiate in good faith with a view towards a just and equitable resolution of such dispute. The proper venue with respect to any litigation in connection with this Agreement shall be in the County of Cook, State of Illinois.

ARTICLE 11 - WARRANTY

Railroad warrants that it has the right to use any patented or copyrighted matter which is used in the performance of the Reconstruction and agrees to indemnify and save harmless Village from and against all royalties, license fees, suits or any claims, demands or damages made or brought in respect of such use.

ARTICLE 12 - NOTIFICATION

All notices required under this Agreement shall be in writing and shall be deemed sufficiently served if given by fascimile or by postage prepaid registered mail to the following addresses:

To **RAILROAD:**

**ELGIN, JOLIET & EASTERN RAILWAY
COMPANY
17641 S. Ashland Avenue
Homewood, IL 60430
Fascimile:
Attn: Sr. Manager, Technical Services**

To **VILLAGE:**

**Village of Park Forest, Illinois
350 Victory Drive
Park Forest, IL 60466
Facsimile: (708) 503-8560
Attn: Thomas K. Mick, Village Manager**

and shall be deemed to be received upon receipt of same.

ARTICLE 13 - COMPLIANCE WITH APPLICABLE LAWS

1. The parties hereto shall comply with all Applicable Laws.
2. For purposes of this Agreement, “Applicable Laws” shall mean the applicable and enforceable statutes, regulations, policies, directives, orders, approvals and other legal requirements of an Authority or of the common law in effect from time to time including, without limitation, those, together with the guidelines of an Authority, relating to the protection, conservation or restoration of the natural environment; and “Authority” shall mean the federal, provincial, and municipal governments, the courts, administrative and

quasi-judicial boards and tribunals and any other organizations or entities with the lawful authority to regulate, or having a power or right conferred at law or by or under a statute, including the Village's Code of Ordinances.

ARTICLE 14 - SUCCESSORS AND ASSIGNS

1. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, their successors and assigns.
2. Neither party shall assign this Agreement without the prior written consent of the other.

ARTICLE 15 – GOVERNING LAW

This Agreement will be governed by and interpreted under the laws of the State of Illinois and the laws of the United States of America applicable therein. Time is of the essence of this Agreement and each of its provisions. The captions of the Sections and Articles are included for convenience only, and will have no effect upon the interpretation of this Agreement.

ARTICLE 16 - ENTIRE AGREEMENT

This Agreement and the appendices attached hereto constitute and form part of this Agreement.

ARTICLE 17 – BINDING AUTHORITY

The individuals executing this Agreement on behalf of the Railroad and the Village represent that they have the legal power, right and actual authority to bind his or her respective party to the terms and conditions of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the date first above appearing.

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

By: _____

Print Name: Paul E. Ladue

Title: Regional Director Contracts and Administration

Date: _____

ATTEST:

By: _____
Printed Name: _____
Title: _____

Dated: _____, 2009

VILLAGE OF PARK FOREST, ILLINOIS

By: _____
Printed Name: Thomas K. Mick
Title: Village Manager

Dated: _____, 2009

ATTEST:

By: _____
Printed Name: Sheila McGann
Title: Village Clerk

Dated: _____, 2009

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VILLAGE OF PARK FOREST

MEMORANDUM

TO: John A. Ostenburg, Mayor
Village Board of Trustees

FROM: Thomas K. Mick,
Village Manager

DATE: August 31, 2009

RE: A RESOLUTION AUTHORIZING THE EXECUTION OF A REAL ESTATE SALE AND EASEMENT AGREEMENT AND OPTION AGREEMENT BETWEEN THE VILLAGE OF PARK FOREST AND THE ILLINOIS CENTRAL RAILROAD COMPANY

Background

On January 31, 2009, Canadian National rail company (CN) was granted authority by the federal Surface Transportation Board (STB) to move forward with its acquisition of the former EJ&E rail company and its rail track system. With the STB's determination in January of this year, communities along the rail arc began to approve Voluntary Mitigation Agreements (VMA) with CN in accordance with guidelines set forth by the federal board.

In January of this year, the Village convened initial negotiations with CN on a VMA and the potential sale of a tract of land coveted by the rail company as part of its master plan for the EJ&E acquisition. As a result of a package deal negotiated and proposed to be agreed upon by the Village and CN, the rail company will purchase 5.778 acres of Village-owned property that are legally situated within the corporate limits of the Village of Matteson. Highlights of the Real Estate and Easement Agreement and the Option Agreement as attached include:

- CN will purchase 3 parcels of land (totalling 5.778 acres) for a sales price of \$475,000. The purchase includes land plus air rights/easements which will allow CN to convene its planned construction of a switch rail from the east/west bound rail line to the north/south bound line.
- Post construction through the Option Agreement, CN will deed back to Park Forest, at no cost, a surplus wooded lot of approximately 2 acres. The estimated value of this clause is \$80,000. CN agrees to grub and remove vegetation on the deeded back 2 acre parcel per Park Forest input so as to begin prepping the parcel as a point of interest for train enthusiasts. The estimated value of this clearing work is \$60,000.
- CN agrees to donate a surplus rail caboose for placement on the above-noted wooded acreage property. Estimated value is \$30,000.

Subsequent to the land sale and deeding back of the wood acreage, the Village envisions a public

park being established related to the heritage of the rail industry and of particular interest to train enthusiasts. The 2 acres would be cleared of vegetation except for desirable salvaged trees (hardwoods such as oaks, hickories, etc.), any necessary noise buffering at the edges of the property and any wetlands-designated foliage which may be needed. On the cleared site, a train viewing platform would be installed for train enthusiasts to climb and view trains making the transition from east/west bound rail lines to north/south bound lines. In close proximity a rail caboose would be mounted on a concrete pad with interpretive signage perhaps to be placed noting historical points of interest pertaining to rail traffic in the region. The point of interest would also include a rail-related mural to be constructed on a large retaining wall of the switch rail bridge.

The attached Sales and Easement Agreement, the Option Agreement and corresponding enabling resolution have been reviewed by Village Attorney Paul Stephanides.

SCHEDULE FOR CONSIDERATION:

This issue will be on the agenda for Board discussion at its September 8, 2009 Rules Meeting.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE EXECUTION OF A REAL ESTATE SALE AND
EASEMENT AGREEMENT AND OPTION AGREEMENT BETWEEN
THE VILLAGE OF PARK FOREST AND
THE ILLINOIS CENTRAL RAILROAD COMPANY**

BE IT RESOLVED by the Mayor and Board of Trustees of the Village of Park Forest, Cook and Will Counties, Illinois, in the exercise of their home rule authority, as follows:

Section 1. Approval of Agreements. The Real Estate Sale and Easement Agreement (“Sale Agreement”) between the Village of Park Forest and the Illinois Central Railroad Company, attached hereto and incorporated herein by reference as Exhibit A, including the Option Agreement attached thereto (“Option Agreement”), is hereby approved in substantially the form attached, and subject to the review and approval of the Village Attorney.

Section 2. Execution of Agreements. The Village Manager is directed and authorized to execute the Sale Agreement and Option Agreement in substantially the forms attached and the Village Clerk is directed and authorized to attest the signatures of the Village Manager. The Village Manager and the Village Clerk are directed and authorized to execute any and all other documents as may be necessary to effectuate the purposes of the Sale Agreement and Option Agreement and the sale and transfer of the properties described therein and the granting of the easement described therein.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED this ____ day of _____, 2009.

APPROVED:

ATTEST:

Mayor

Village Clerk

REAL ESTATE SALE AND EASEMENT AGREEMENT

THIS REAL ESTATE SALE AND EASEMENT AGREEMENT (“Agreement”), is made by and between the Village of Park Forest, Illinois, an Illinois municipal corporation (“Seller”), whose mailing address is 350 Victory Lane, Park Forest, Illinois, 60466, and Illinois Central Railroad Company, an Illinois corporation, or its assigns (“Buyer”), whose mailing address is 17641 S. Ashland Avenue, Homewood, Illinois, 60430, as of the “Effective Date” as such term is defined in Section 3 hereof.

Subject to the terms and provisions of this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, the real property and interest in real property defined as follows:

- i.) The real property located in the Village of Matteson, County of Cook, State of Illinois, which real property consists of approximately 5.69 acres of land as depicted in red on the plat labeled **EXHIBIT A**, attached hereto and incorporated herein by reference, and approximately 0.088 acres of land depicted in orange on the plat labeled **EXHIBIT B**, attached hereto and incorporated herein by reference, and both legally described in **EXHIBIT C**, attached hereto and incorporated herein by reference, together with (a) all rights and easements benefiting such real property; and (b) all other privileges and entitlements appurtenant thereto, including all of Seller’s right, title and interest in and to all rights-of-way, open or proposed streets, alleys, strips or gores of land adjacent thereto and all derivative rights of any kind whatsoever, including riparian, oil, gas and mineral rights and all privileges, easements, interests and appurtenances associated therewith (collectively, the “Property”); and
- ii.) A perpetual easement for the construction, use, maintenance, repair, and replacement of an overhead railroad bridge and embankment supporting Buyer’s trackage, signals and communications, and all appurtenances thereto to constructed by Buyer, at Buyer’s sole cost and expense, on, over, and across the premises as shown shaded in blue on the plat labeled EXHIBIT A referenced herein (the “Easement”), and as more fully set forth in the Easement Agreement labeled as **EXHIBIT D**, attached hereto and incorporated herein by reference. Buyer’s use of said easement shall include the right to admit other railroad companies to operate over said easement; the right to clear the premises encumbered by the Easement of brush, trees, and vegetation; the right to erect, maintain and use electrical, signal and communications equipment on the premises encumbered by the Easement; the right to excavate and deposit earthwork on the premises encumbered by the Easement; and the right to do or have done all actions in furtherance of operation of a common carrier railroad system, all in compliance with applicable federal, state and local statutes, necessary or desirable for the Buyer’s use of the Easement as set forth herein.

1. PURCHASE PRICE:

Subject to the terms and provisions of this Agreement, Buyer agrees to pay to Seller the sum of Four Hundred Seventy Five Thousand Five Hundred and NO/100 U. S. Dollars (\$475,000.00) (“Purchase Price”) or such greater or lesser amount as may be required after credits, deposit(s), adjustments and prorations) payable via a check, or wire transfer from the

Title Company upon the conveyance of the Property and the grant of Easement in accordance with the terms hereof at closing (“Closing”).

2. EARNEST MONEY DEPOSIT:

Within seven (7) business days following the Effective Date (as such term is defined in Section 3 below), Buyer shall deposit with Chicago Title Insurance Company (“Title Company”), Chicago, Illinois, as escrow agent, in a Strict Joint Order #1 Escrow the sum of Fifty Thousand and NO/100 U.S. Dollars (\$50,000.00), hereinafter referred to as (the “Deposit”), said Deposit shall be applied against the Purchase Price at Closing. Any interest on the Deposit shall be the property of the Buyer.

3. ACCEPTANCE AND EFFECTIVE DATE:

If this Agreement shall not have been signed by both parties on or before _____, 2009, the Agreement will be deemed null and void. The effective date of this Agreement shall be the date that the Village Clerk attests the signature of the Village Manager of the Village of Park Forest (“Effective Date”).

4. ADDITIONAL CONSIDERATION:

In addition to the purchase price as set forth in Section 1 herein, Buyer shall, at Buyer’s sole cost and expense and subsequent to the closing of this transaction, undertake the following duties and obligations:

- i. Re-engineer and reconfigure ingress and egress to Seller’s adjacent paved commuter parking lot depicted in **EXHIBIT A**, and more fully set forth in the Parking Lot Reconstruction Agreement attached hereto and incorporated herein by reference as **EXHIBIT E**.
- ii. Re-engineer and reconfigure the layout of Seller’s adjacent paved commuter parking lot so as to maximize the number and efficiency of parking spaces within said commuter parking lot including, but not limited to, the repaving and re-striping of those parking spaces and the relocation of lighting and other improvements displaced through the sale of the Property and Easement as more fully set forth in **EXHIBIT E**.

5. CONVEYANCE:

The conveyance of the Property shall be in fee simple, subject to the Permitted Exceptions (as such term is defined in Section 6 hereof), with general warranty of title. The conveyance of the Easement shall be with full warranty of title, subject to the Permitted Exceptions as aforesaid.

6. TITLE:

Within thirty (30) days following the Effective Date, Buyer shall obtain, at Buyer’s cost, a title commitment (the “Title Commitment”), dated after the Effective Date for an ALTA owner’s title insurance policy (2006 policy form) for the Property and the Easement in the

amount of the Purchase Price, from the Title Company wherein the Title Company shall commit to issue its ALTA owner's title insurance policy, in the full amount of the Purchase Price, with affirmative insurance over the general exceptions and containing such other endorsements as Buyer requires, each in form and substance acceptable to Buyer (the "Title Policy") and which shall show title to the Property to be vested in Seller subject only to (i) general taxes for the year of Closing and subsequent years; (ii) applicable zoning and governmental regulations; and (iii) easements, covenants, conditions, restrictions and other matters of record which are expressly approved by Buyer in writing as "Permitted Exceptions". The Title Company shall issue the Title Policy to Buyer in the form required by this Section 6, insuring Buyer's interest in the Property subject only to the Permitted Exceptions. Seller agrees to obtain a satisfaction or release of any mortgage encumbering the Property at Closing.

7. UNPERMITTED EXCEPTIONS:

If either the Title Commitment and/or the Survey (hereinafter defined) disclose liens, encumbrances or other conditions relating to the Property and/or Easement that are unacceptable to Buyer ("Unpermitted Exceptions"), Buyer shall notify Seller of such fact in writing within thirty (30) days following the Effective Date ("Buyer's Defect Notice"). Within thirty (30) days after the date of Seller's receipt of Buyer's Defect Notice ("Seller's Cure Period"), Seller shall either (i) have the Unpermitted Exceptions removed from the Title Commitment, corrected in the Survey or otherwise affirmatively insured over by the Title Company to the reasonable satisfaction of Buyer, or (ii) negotiate with Buyer an adjustment to the Purchase Price with respect to such Unpermitted Exception. Should the giving of such notice extend the time for Seller to respond beyond the Closing Date, the Closing Date shall be extended fourteen (14) days after the expiration of the referenced thirty (30) day period. If, before the expiration of Seller's Cure Period (i) Seller fails to have the Unpermitted Exceptions removed or corrected aforesaid or affirmatively insured over to the reasonable satisfaction of Buyer, or (ii) the parties fail to enter into a written agreement with respect to the final Permitted Exceptions and Purchase Price, Buyer shall elect, within fifteen (15) days after the expiration of Seller's Cure Period, to either (i) terminate this Agreement upon the delivery of written notice to Seller, whereupon the Earnest Money Deposit shall be promptly refunded to Buyer, and the parties shall be released from further liability hereunder, or (ii) take title in the condition which Seller is able to deliver. If Buyer makes no such election within the required period, this Agreement shall automatically terminate and, upon the refund of the Deposit to Buyer, the parties shall be released from further liability hereunder.

8. SELLER'S WARRANTIES: Seller represents and warrants to Buyer that, as of the date hereof and as of the Closing:

(a) The Property and/or Easement are not the subject of any litigation, nor to Seller's knowledge, is there any threatened litigation with respect to the Property.

(b) To the best of Seller's knowledge there is no pending, contemplated, threatened or anticipated (i) condemnation of any part of the Property and/or Easement, (ii) widening, change of grade or limitation on use of streets, roads or highways abutting the Property and/or Easement, (iii) special tax or assessment to be levied against the Property and/or Easement, (iv) change in the zoning classification of the Property and/or Easement, or (v) change in the tax assessment of the Property and/or Easement.

(c) To the best of Seller's knowledge that: (i) neither the Property and/or Easement, nor any part thereof, is in breach of any law regulating the physical or environmental condition of the Property and/or Easement; and (ii) the Property and/or Easement is free of any materials that could be deemed hazardous or environmentally dangerous or which could trigger a response or remedial action under any law regulating environmental conditions or any existing common law theory based on nuisance or strict liability.

(e) Seller has received no notice that the Property and/or Easement or any part thereof is, and, to the best of its knowledge and belief, no part of the Property and/or Easement is located within an area that has been designated by the Federal Emergency Management Agency, the Army Corps of Engineers or any other governmental body as being subject to special regulation.

(f) There are no persons in possession or occupancy of the Property and/or Easement or any part thereof, nor are there any persons who have possessory rights in respect to the Property and/or Easement or any part thereof.

Seller agrees to give prompt written notice to Buyer of any fact that is made known to Seller that would have the effect of making any of the foregoing representations or warranties untrue. Seller's representations and warranties in this Section 8 shall survive the Closing.

9. SURVEY:

Within thirty (30) days following the Effective Date, Buyer shall obtain at Buyer's sole cost and expense, a survey prepared by a licensed Illinois land surveyor of the Property and Easement in accordance with the 2005 ALTA/ACSM/NSPS Minimum Standard Detail Requirements which such survey shall be dated not earlier than the Effective Date and which shall be certified to Buyer and the Title Company (the "Survey").

10. PRORATIONS:

Real Estate taxes, assessments, utilities and rents shall be prorated to the date of Closing. Real estate taxes shall be prorated based on one hundred five percent (105%) of the most recent ascertainable bill. Seller and Buyer acknowledge that the Property is currently classified as exempt in the records of the Cook County, Illinois Assessor.

11. RIGHT OF ENTRY:

(1) Immediately following the Effective Date, Buyer, its employees, agents, contractors or engineers shall have the right to enter upon the Property during normal business hours for the purpose of (a) performing a survey; (b) taking other measurements, and (c) conducting environmental or engineering tests (including drilling and coring for soil analyses), and, (d) making such physical inspections and analyses as Buyer shall deem necessary; provided, however, that Buyer assumes, and agrees to defend, indemnify and save Seller harmless from and against any claim, cost or expense (including attorney's fees) resulting from any injury to or death of any person(s) (including employees or contractors of Buyer), property damage or liability or claim of any kind, including, without limitation, reasonable attorneys' fees and court

costs, arising from the acts or omissions of Buyer, during the exercise of the right of entry herein granted. Buyer agrees to do no act, which would encumber title to Property in exercising this right of entry.

(2) Buyer shall provide the Seller with at least two (2) business days' prior notice and, at the election of the Village, accompanied by a representative of the Village, of any activities taken pursuant to Section 11(1) above.

(3) Buyer shall not make or cause to be made any physically intrusive testing of the Property without the Seller's prior consent. Such consent shall not be unreasonably withheld, conditioned, or delayed.

(4) Buyer's activities pursuant to Section 11(1) above shall not cause any irreparable injury to the Property.

(5) Buyer, at its sole cost and expense, shall promptly repair any damage to the Property caused by its activities pursuant to Section 11(1) above.

(6). Buyer shall pay all costs and expenses incurred in connection with any of its activities pursuant to Section 11(1) above.

(7) Buyer's activities pursuant to Section 11(1) above shall not impede the use of the Property as a parking lot by users of the Property.

(8) Prior to entering the Property, Buyer shall provide evidence to the Seller through certificates of insurance that Buyer or Buyer's designated consultant(s) or contractor(s) maintains comprehensive general liability (including contractual liability endorsements) in the amount of \$5,000,000 per occurrence, with an Aggregate limit of no less than \$10,000,000 (including contractual liability endorsements); (2) comprehensive automobile liability in the amount of \$5,000,000 combined single limit; (3) worker's compensation in statutory minimum amounts; and (4) umbrella coverage in the amount of \$10,000,000 comprehensive general public liability insurance. Seller shall be named as an additional insured on all insurance policies, except worker's compensation, and Buyer shall provide a certificate naming Seller as an additional insured to the Village upon its execution of this Agreement. All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of not less than A IX, according the latest edition of A.M. Best Company.

12. POSSESSION:

Seller shall deliver to Buyer possession of the Property and Easement at Closing.

13. LIABILITY:

Seller hereby acknowledges the intended use of the Property and Easement by Buyer for the location, construction, and operation of a railroad or railroad facilities. In the event Seller is the owner of land adjacent to the Property, Seller shall release Buyer, its successors and assigns, from all claims for damages which Seller may have by reason of any reduction in use and enjoyment and inconveniences, including noise, vibrations and odors, which may result from

Buyer's use of the Property and Easement. This provision shall survive Closing and shall not be merged into the deed of conveyance.

14. DAMAGE BY FIRE, ETC.:

This Agreement is further conditioned upon delivery of the improvements, if any, in their present condition, and in event of material damage by fire or otherwise before Closing, Buyer may declare the Agreement void whereupon the Deposit shall be returned to Buyer.

15. CLOSING:

The Closing shall take place on a date mutually acceptable to Buyer and Seller not later than thirty (30) days after the Effective Date (the "Closing Date") at the office of Title Company in Chicago, Illinois, or as extended pursuant to Section 7 herein.

16. CLOSING COSTS:

(a) **Seller's Expenses.** Seller shall pay expenses of or relating to clearing any Unpermitted Exceptions, including the cost of recording any releases with respect to Unpermitted Exceptions, and state and county real estate transfer fees, if applicable, normally and customarily paid by sellers of real estate or which are otherwise provided to be paid by the Seller hereunder.

(b) **Buyer's Expenses.** Buyer shall pay all title charges and expenses of or relating to the Title Commitment, the Title Policy, the Survey, the cost of any endorsements to the Title Policy required or desired by Buyer, escrow closing costs, the cost of recording the deed and easement documents, municipal real estate transfer fee (if any), and all other expenses normally and customarily paid by purchasers of real estate generally or which are otherwise provided to be paid by Buyer hereunder.

17. TRANSACTIONS AND ENCUMBRANCES AFFECTING THE PROPERTY:

Prior to Closing, Seller shall not do, suffer or permit, or agree to do, any of the following:

(a) enter into any other transaction or agreement in respect to or affecting the Property and/or Easement other than between the Seller and Buyer; or

(b) sell, encumber or permit the existence of an encumbrance or grant any interest in the Property and/or Easement or any part thereof in any form or manner whatsoever, or otherwise perform or permit any act which might diminish or otherwise affect Buyer's interest under this Agreement or in or to the Property and/or Easement or which will prevent Seller's full performance of its obligations hereunder.

18. BUYER'S OPTION TO REACQUIRE:

Buyer and Seller mutually acknowledge that Buyer's intended use of the Property and Easement is for the construction, operation and use of railroad trackage and appurtenances thereto, as shown on **EXHIBIT A**, servicing Buyer's, and/or its affiliates, existing rail lines

situated adjacent to or in the vicinity of the Property and Easement. Following the Closing Date, on a one time basis, Buyer shall, at Buyer's sole cost and expense, and in coordination with the Seller, grub and clear brush (in compliance with federal, state, and local codes) over that portion of the Property located south of North Street, and east of the proposed water tower access road, as depicted in **EXHIBIT F**, attached hereto and incorporated herein by reference, and legally described in **EXHIBIT G**, attached hereto and incorporated herein by reference (the "Option Parcel"), less and except the easternmost 50 feet, in equal width, of the Property that shall remain in its native state. Buyer shall grub and clear brush on the Option Parcel in accordance with the Seller's direction as to which vegetation shall be left in place.

Following the completion of the Construction Period, Buyer grants to Seller the exclusive right to exercise an option to reacquire the Option Parcel depicted in **EXHIBIT F** legally described in **EXHIBIT G**. Seller's exercise of the option shall be in the form marked **EXHIBIT H**, attached hereto and made a part hereof. Buyer shall not transfer, sell, assign and/or otherwise encumber the Option Parcel at any time.

The provisions as set forth in this Section 18 shall be binding upon the Buyer and Seller, and their respective successors and assigns, and shall survive the Closing of this transaction.

19. BROKERS:

Seller and Buyer warrant and represent to each other that no real estate broker or agent was involved in the procurement of this transaction. Seller shall indemnify Buyer against any claim of any other broker claiming by, through or under Seller. Buyer shall indemnify Seller against any claim of any other broker claiming by, through or under Buyer.

20. ASSIGNMENT:

This Agreement may be assigned by Buyer with the prior written consent of the Seller, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer may assign this Agreement to one or more entities owned or controlled by Buyer or its shareholders for the purpose of taking title to the Property and Easement without the prior written consent of the Seller.

21. DEFAULT:

(1) In the event of a default by Buyer under this Agreement, which is not cured by Buyer within ten (10) business days after written notice thereof to Buyer by Seller, Seller may elect to terminate this Agreement by delivery of notice to Buyer. Seller agrees that Seller's sole remedy with respect to Buyer's default hereunder shall be termination of this Agreement and Seller may retain the Deposit as liquidated damages and just compensation, and not as a penalty or forfeiture.

(2) In addition to this Agreement and the exhibits attached hereto, the following agreements between Buyer and Seller are incorporated herein by reference as though fully set forth: (a) Parking Lot Reconstruction Agreement; (2) Voluntary Mitigation Agreement; and (3) Orchard Overpass Supplemental Agreement (collectively the "Incorporated Agreements"). In the event of a default by Buyer of any provision or term of the Incorporated Agreements, the

Seller shall not be under any obligation to sell or transfer the Property, or grant the Easement set forth herein, until such default or breach is cured by Buyer, and any time period(s) set forth herein shall be tolled until such default is cured.

(3) In the event of a default by Seller under this Agreement, Buyer may elect to (a) terminate this Agreement by delivery of notice to Seller and to receive an immediate return of the Deposit, if any, and reimbursement for any reasonable third-party expenses incurred by Buyer as agreed upon liquidated damages in full settlement of any and all claims arising under or in any way related to this Agreement, (b) exercise the remedy of specific performance or (c) pursue any and all other rights and remedies available to it at law or in equity. Seller agrees that Buyer shall have no obligation to post a bond if Buyer seeks an action for specific performance against Seller.

22. NOTICE:

(1) All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by facsimile telecommunications (followed by next day overnight delivery service), by overnight air express service, or by U.S. registered or certified mail, postage prepaid and return receipt requested, in each case addressed to the parties hereto at their respective addresses set forth below:

To the Seller: Thomas K. Mick, Village Manager
Village of Park Forest
350 Victory Drive
Park Forest, Illinois 60466
Fax: (708) 503-8560

With copies to: Paul L. Stephanides
Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.
24 West Cass Street
5th Floor
Joliet, Illinois 60432-0450
Fax: (815) 722-0450

To the Buyer: _____

With copies to: _____

(2) Except as otherwise provided herein, notice served by certified mail or regular mail shall be effective on the third (3rd) business day following the date of mailing.

(3) Notice by facsimile transmission shall be effective as of date and time of facsimile transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 a.m. to 5:00 p.m. Chicago time). In the event facsimile notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission.

23. CHOICE OF LAW:

This Agreement shall be construed and interpreted under the laws of the State of Illinois. The Seller and the Buyer agree that the proper venue with respect to any litigation in connection with this Agreement shall be in the County of Cook, State of Illinois.

24. AS IS CONDITION.

Except as otherwise set forth in this Agreement, the Property and the Easement are being sold in an "**AS IS, WHERE IS**" CONDITION AND "**WITH ALL FAULTS**" as of the Effective Date and as of the Closing. Except as expressly set forth in this Agreement, no representations have been made or are made, and no responsibility has been or is assumed by the Seller or the Buyer, as the case may be, or by any officer, director, board member, employees, agents or volunteers, attorney, or representative acting or purporting to act on behalf of the parties as to the condition or repair of the Property or the Easement or the value, expense of operation, or income potential thereof or as to any other fact or condition which has or might affect the Property or the Easement or the condition, repair, value, expense of operation or income potential of the Property or the Easement or any portion thereof. The parties acknowledge and agree that all understandings and agreements heretofore made between them or their respective agents or representatives are merged into this Agreement and the Exhibits attached hereto, which alone fully and completely express their agreement, and that this Agreement has been entered into after full investigation, or with the parties satisfied with the opportunity afforded for investigation, neither party relying upon any statement or representation by the other. The Seller does not make any representations or warranties as to whether the Property or the Easement contain asbestos or any hazardous materials or harmful or toxic substances, or pertaining to the extent, location or nature of same, if any. Further, to the extent that the Seller has provided information to the other party hereto from any inspection, engineering or environmental reports concerning asbestos or any hazardous materials or harmful or toxic substances, the Seller does not make any representations or warranties with respect to the accuracy or completeness, methodology of preparation, or otherwise concerning the contents of such reports. Buyer acknowledges that the Seller has requested that the Buyer inspect the Property and Easement fully and carefully and investigate all matters relevant thereto, and that Buyer relies solely upon the results of Buyer's own inspections or other information obtained or otherwise available to Buyer, rather than any information that may have been provided by the Seller to the Buyer.

25. TIME OF THE ESSENCE:

The parties hereto acknowledge that time is of the essence for each time and date specifically set forth in this Agreement.

26. **BINDING EFFECT:**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors, and assigns, except as otherwise provided herein.

27. **COUNTERPARTS:**

This Agreement may be executed in two counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement; provided, however, that each of the counterparts shall have been executed by the parties hereto.

28. **BUSINESS DAYS.**

(1) Business days as used in this Agreement are defined as Monday through Friday, excluding federal holidays, unless otherwise provided.

(2) If the final day of any period or any date of performance under this Agreement falls on a Saturday, Sunday or federal holiday, then the final day of the period or the date of such performance shall be extended to the next business day.

29. **NON-WAIVER.**

(1) Except as herein expressly provided, no waiver by a party of any breach of this Agreement by the other party shall be deemed to be a waiver of any other breach by such other party (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a party after any breach by the other party shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder by such other party whether or not the first party knows of such breach at the time it accepts such payment or performance.

(2) No failure or delay by a party to exercise any right it may have by reason of the default of any other party shall operate as a waiver of default or as a modification of this Agreement or shall prevent the exercise of any right by the first party while the other party continues to be so in default.

30. **AMENDMENTS AND MODIFICATIONS.**

No agreement, amendment, modification, understanding or waiver of or with respect to this Agreement or any term, provision, covenant or condition hereof, nor any approval or consent given under or with respect to this Agreement, shall be effective for any purpose unless contained in writing signed by the party against which such agreement, amendment, modification, understanding, waiver, approval or consent is asserted.

31. **APPROVALS AND CONSENTS.**

(1) Except as otherwise expressly provided herein, any approval or consent provided to be given by a party hereunder may not be unreasonably withheld, conditioned, or delayed.

(2) The parties each agree to do, execute, acknowledge and deliver all such further acts, instruments and assurances and to take all such further action before or after the Closing as shall be reasonably necessary or desirable to fully carry out this Agreement and to fully consummate and effect the transactions contemplated hereby.

32. THIRD PARTIES.

Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any other person other than the Seller and the Buyer, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to either the Seller or the Buyer, nor shall any provision give any third parties any rights or subrogation or action over or against either the Seller or the Buyer. This Agreement is not intended to and does not create any third party beneficiary rights whatsoever.

33. NO JOINT VENTURE, AGENCY OR PARTNERSHIP CREATED.

Nothing in this Agreement, or any actions of the parties to this Agreement, shall be construed by the parties or any third person to create the relationship of a partnership, agency or joint venture between or among such parties.

34. NO PERSONAL LIABILITY OF SELLER'S OFFICIALS.

No covenant or agreement contained in this Agreement shall be deemed to be the agreement of any official, officer, partner, member, director, agent, employee, consultant or attorney of the Seller in his or her individual capacity, and no official, officer, partner, member, director, agent, employee or attorney of the Seller shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of or in connection with or arising out of the execution, delivery, and performance of this Agreement, or any failure in connection therewith.

35. SEVERABILITY.

If any of the provisions of this Agreement are determined by a court of competent jurisdiction to be invalid, such provisions shall be deemed to be stricken, and such adjudication shall not affect the validity of the remainder of the terms of this Agreement as a whole or of any section, subsection, sentence or clause not adjudged to be invalid.

36. PRESUMPTION OF DRAFTSMANSHIP.

This Agreement shall be deemed to have been negotiated by and between the parties such that no presumption of draftsmanship shall inure to the detriment or benefit to either party.

37. AUTHORITY TO EXECUTE.

The Seller is a home-rule community under the laws of the State of Illinois and enters into this Agreement pursuant to such authority and by exercise of its home-rule powers. The Seller hereby warrants and represents to the Buyer that the person executing this Agreement on

its behalf has been properly authorized to do so by its Mayor and Board of Trustees. The Buyer represents and warrants that it: (1) has the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein; (2) all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken; and (3) neither the execution of this Agreement nor the performance of the obligations assumed by, as applicable, the Buyer hereunder will (i) result in a breach or default under any agreement to which the Buyer is a part; or (ii) violate any statute, law, restriction, court order, or agreement to which the Buyer is subject.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the day and year indicated below.

BUYER

Illinois Central Railroad Company, an Illinois corporation

By: _____
Printed name: Michael F. Deegan
Title: Regional Manager-Southern Region
Business Development and Real Estate

Dated: _____, 2009

ATTEST:

By: _____
Printed Name: _____
Title: _____

Dated: _____, 2009

SELLER

Village of Park Forest, Illinois

By: _____
Printed Name: Thomas K. Mick
Title: Village Manager

Dated: _____, 2009

:

ATTEST:

By: _____

Printed Name: Sheila McGann

Title: Village Clerk

Dated: _____, 2009

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PROPERTY ADDRESS:

Matteson, IL

P.I.N.

RETURN TO:

**Village Clerk
Village of Park Forest
350 Victory Drive
Park Forest, IL 60466**

OPTION AGREEMENT

This Agreement is made as of the ____ day of _____, 20__.

BETWEEN:

Illinois Central Railroad Company
an Illinois corporation
17641 S. Ashland Avenue
Homewood, Illinois 60430

(“ICRR”)

- and -

Village of Park Forest, Illinois
an Illinois municipal corporation
350 Victory Lane
Park Forest, Illinois 60466

(“Village”)

RECITALS:

- A. ICRR is the owner of certain real estate situated in the Village of Matteson, Cook County, Illinois, as shown on the plat labeled **EXHIBIT A**, attached hereto and made a

EXHIBIT H

part hereof, together with all improvements thereon and legally described in **EXHIBIT B**, attached hereto and made a part hereof (the “**Property**”);

- B. Village desires the option to acquire the Property as more particularly set out in this Agreement.

IT IS AGREED:

1.0 Option

- 1.1 ICRR hereby grants to the Village an irrevocable and exclusive option (the “**Option**”) to acquire all right, title and interest in and to the Property and all improvements thereon

2.0 Option Price

- 2.1 In consideration for the granting of the Option, the Village shall pay ICRR the sum of one \$1.00 (the “**Option Price**”) on the execution of this Agreement.

3.0 Term

- 3.1 Unless extended by mutual written consent of both parties, the Option shall begin upon the completion of the Construction Period set forth in the Real Estate Sale and Easement Agreement between the parties and shall run in perpetuity until the Village exercises its Option pursuant to the terms herein (the “**Option Period**”).

4.0 Exercise of Option

- 4.1 The Village may exercise the Option at any time during the Option Period, through the execution of a real estate sale contract between ICRR and the Village pursuant to the following terms and conditions:
- a. ICRR shall donate and convey its real estate interest in the Property to the Village by Special Warranty Deed, subject to covenants, conditions, easements, restrictions, and standard title exceptions in existence prior to ICRR’s term of ownership of the Property. No monetary consideration shall be paid by the Village to ICRR for the Property.
 - b. The Village represents to ICRR that the Village is a tax exempt entity which is qualified under the terms and provisions as set forth by the Internal Revenue Service (the “IRS”) to receive tax deductible donations. In connection with the donation of the Property, the Village shall agree to take all actions and execute all documents, including, but not limited to, the Donee Acknowledgement section of the IRS Form 8283, and Charitable Contribution Receipt. ICRR shall be responsible for securing, at ICRR’s expenses, an independent appraisal of the Property pursuant to the provisions of the IRS.

- c. The Village may, at its sole cost and expense, following the exercise of the Option, enter the Property for the purpose of inspecting, surveying and making environmental and engineering studies and soil tests.
- d. The Village may, at its sole cost and expense and following the exercise of the Option secure a title insurance commitment and current plat of survey of the Property. In the event a current plat of survey is required to consummate the sale of the Property, the plat of survey shall be secured by the Village at its sole cost and expense.

5.0 Representations and Warranties

5.1 ICRR represents, warrants and covenants that:

- (a) It is the owner of the Property and, through the authority granted by its Board of Directors, has the full right and authority to enter into this Agreement;
- (b) It has not assigned or licensed to any other person, firm or corporation, or in any such manner encumbered, any of the Rights;
- (c) It has not and will not at any time enter into any agreement which conflicts in any way with this Agreement or undertake or permit activities which will interfere with, diminish or compete with the exercise of any of the Rights, or attempt to sell, license, assign, dispose of or encumber any of the Rights;

5.2 ICRR will indemnify and hold harmless the Village from and against any claims, actions, losses and expenses (including legal expenses) occasioned, either directly or indirectly, by the breach or alleged breach of any of the above representations, warranties or covenants.

6.0 Miscellaneous

6.1 The Village may not assign this Agreement or any of its rights or obligations hereunder without the express written consent of ICRR. This Agreement shall be binding upon and enure to the benefit of the parties and their respective successors and permitted assigns.

6.2 The parties agree to execute and deliver such documents and perform and cause to perform such further acts as may be necessary or desirable in order to give full effect to this Agreement.

6.3 This Agreement constitutes the entire agreement between the parties, supersedes all previous agreements, deal memos and negotiations between the parties and their representatives, and may not be modified except by written agreement of the parties.

6.4 The failure at any time to require performance of any provision of this Agreement shall not affect the full right to require such performance at any later time. The waiver of a

breach of any provision shall not constitute a waiver of the provision of any succeeding breach. Should any provision of this Agreement be held invalid, the remainder of the Agreement shall be effective as though such invalid provision has not been contained in this Agreement.

- 6.5 This Agreement shall be construed in accordance with the laws of the State of Illinois. The parties agree that the proper venue with respect to any litigation in connection with this Agreement shall be in the County of Cook, State of Illinois.
- 6.6 The parties intend that the terms and conditions of this Agreement shall be a covenant running with the land and shall constitute a lien against the Property enforceable by the Village and shall be binding upon and inure to the benefit of the parties hereto, their grantees, nominees, successors in interest, assignees, heirs, executors, or lessees provided. ICRR shall be required to inform any and all prospective and future successors, nominees and assigns of the obligations contained in this Agreement.
- 6.7 This Agreement shall be recorded with the office of the Cook County Recorder of Deeds at ICRR's expense within seven (7) days after its execution.

**[REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS]**

VILLAGE OF PARK FOREST

Attest:

By: _____
Thomas K. Mick, Village Manager

By: _____
Sheila McGann, Village Clerk

State of Illinois)
)
County of Cook)

The foregoing instrument was acknowledged before me by Thomas K. Mick, Village Manager, and Sheila McGann, Village Clerk, this _____ day of _____, 2009, A. D.

- SEAL -

Notary Public

ILLINOIS CENTRAL RAILROAD COMPANY:

Attest:

By: _____
Its: _____

By: _____
Its: _____

State of _____)
)
County of _____)

The foregoing instrument was acknowledged before me by _____, its _____, and _____, this _____ day of _____, 2009 A. D.

- SEAL -

Notary Public

VILLAGE OF PARK FOREST

MEMORANDUM

**TO: John A. Ostenburg, Mayor
Village Board of Trustees**

**FROM: Thomas K. Mick,
Village Manager**

DATE: September 1, 2009

**RE: A RESOLUTION AUTHORIZING THE EXECUTION OF A RIGHT OF
ENTRY AGREEMENT BETWEEN THE VILLAGE OF PARK FOREST
AND THE ILLINOIS CENTRAL RAILROAD COMPANY**

Background

With Canadian National's potential purchase of village-owned property in and around the Homan/Hickory commuter lot, the rail company has requested access to the property as it starts its environmental analysis, engineering work and construction preparation. While the company has been given administrative authority to conduct such work as ongoing negotiations have worked toward a culmination, the attached Right of Entry Agreement officially codifies Village authorization to enter the property through CN's point of purchase. The attached agreement and corresponding enabling resolution have been reviewed by Village Attorney Paul Stephanides.

SCHEDULE FOR CONSIDERATION:

This issue will be on the agenda for Board discussion at its September 8, 2009 Rules Meeting.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE EXECUTION OF
A RIGHT OF ENTRY AGREEMENT BETWEEN
THE VILLAGE OF PARK FOREST AND
THE ILLINOIS CENTRAL RAILROAD COMPANY**

BE IT RESOLVED by the Mayor and Board of Trustees of the Village of Park Forest, Cook and Will Counties, Illinois, in the exercise of their home rule authority, as follows:

Section 1. Approval of Agreement. The Right of Entry Agreement (“Agreement”) between the Village of Park Forest and the Illinois Central Railroad Company, attached hereto and incorporated herein by reference as Exhibit A, is hereby approved in substantially the form attached, and subject to the review and approval of the Village Attorney.

Section 2. Execution of Agreement. The Village Manager is directed and authorized to execute the Agreement in substantially the form attached and the Village Clerk is directed and authorized to attest the signature of the Village Manager. The Village Manager and the Village Clerk are directed and authorized to execute any and all other documents as may be necessary to effectuate the purposes of the Agreement.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED this ____ day of _____, 2009.

APPROVED:

ATTEST:

Mayor

Village Clerk

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2009, by the Village of Park Forest, an Illinois home rule municipal corporation (“Village”), and the Illinois Central Railroad Company, an Illinois corporation (“ICRR”).

WHEREAS, the Village currently maintains ownership of the property depicted in Exhibit A and Exhibit B, attached hereto and incorporated herein by reference (hereinafter collectively referred to as the “Subject Property”); and

WHEREAS, pursuant to this Agreement, the ICRR shall be permitted to enter upon the Subject Property for the limited purpose of conducting environmental testing, including soil boring tests (use language of real estate sales - survey); and

WHEREAS, the ICRR shall perform all environmental testing and inspections at its own risk pursuant to this Agreement.

NOW THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, the Parties hereto agree that:

1. **Recitals Incorporated.** The preceding paragraphs are substantive and incorporated herein as though fully set forth.

2. **ICRR Inspections.** The ICRR shall be permitted the opportunity to inspect the physical condition of the Subject Property, including any and all buildings located on the Subject Property, during normal business hours and upon at least two (2) business days (defined as Monday through Friday excluding federal holidays) prior notice to the Village, and, at the election of the Village, accompanied by a representative of the Village subject to the conditions of this Agreement.

3. **Testing Permitted.** The ICRR shall not make or cause to be made any physically intrusive testing of the Subject Property without the Village’s prior consent, with the exception that the Village consents to the ICRR conducting a Phase I environmental inspection, including but not limited to soil borings on the Subject Property.

4. **No Harm to Subject Property.** The ICRR's inspections shall not cause any irreparable injury to the Subject Property.

5. **Restoration of the Subject Property.** The ICRR, at its sole cost and expense, shall promptly repair any damage to the Subject Property caused by its inspections and/or testing and restore the Subject Property to its original condition.

6. **ICRR to Pay Costs.** The ICRR shall pay all costs and expenses incurred in connection with its inspections and/or testing.

7. **Liability.** The ICRR shall assume all potential liability for any injuries, deaths, losses, damages, claims or judgments of any nature whatsoever resulting from or in connection with its inspection activities, and the ICRR shall hold harmless, indemnify and defend the Village against any such losses according to the provisions of paragraph 8 below.

8. **Indemnification.** The ICRR shall indemnify, defend and hold the Village harmless from and against any and all loss, cost, injury, damage, liability or expense, including, without limitation, reasonable attorneys' fees and court costs, and liability of any kind arising out of or in connection with the ICRR's inspection activities on the Subject Property, directly or indirectly, including, without limitation, the acts and omissions of the ICRR's agents, employees, architects, engineers and other personnel; provided, however, that the foregoing indemnification shall not apply to the extent such cost, injury, damage, liability or expense is caused by the negligent or willful acts or omissions of the Village, its officials, agent, employees and other personnel, or to a cost, injury, damage, liability or expense arising out of the Village becoming liable for any environmental cleanup cost which results from environmental contamination on the Subject Property being revealed, but not caused, by the ICRR's environmental inspection(s).

9. **Insurance.** The Village acknowledges that ICRR operates under a program of self-retained risk (otherwise known as self insurance) for all loss levels reasonably foreseeable to be reached for losses relating to the inspections described herein. Prior to entering the Subject Property, the ICRR shall provide evidence to the Village through certificates of insurance that the inspecting company(ies) hired by the ICRR (if any) maintains the following insurance coverage for its inspection activities undertaken pursuant to this Agreement: (1) comprehensive general liability in the amount of \$5,000,000 per occurrence, with an Aggregate limit of no less than \$10,000,000; (2) comprehensive automobile liability in the amount of \$5,000,000 combined single limit; (3) worker's compensation in statutory minimum amounts; and (4) umbrella coverage in the amount of \$10,000,000. The ICRR shall name, or cause the inspecting company(ies) to name, the Village as an additional insured on all insurance policies except worker's compensation, and provide a certificate naming the Village as an additional insured to the Village upon its execution of this Agreement. All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of not less than A IX, according the latest edition of A.M. Best Company.

10. **Notice.** Any notice required to be given by this Agreement shall be deemed sufficient if made in writing and sent by certified mail, return receipt requested, by personal service, or by facsimile to the persons and addresses indicated below or to such other addresses as either party hereto shall notify the other party of in writing pursuant to the provisions of this subsection:

Village: Thomas Mick, Village Manager
Village of Park Forest
350 Victory Drive
Park Forest, Illinois 60466
Fax: (708) 503-8560

With copies to: Paul L. Stephanides
Robbins, Schwartz, Nicholas, Lifton & Taylor, Ltd.
24 West Cass Street
5th Floor
Joliet, Illinois 60432-0450
Fax: (815) 722-0450

To the ICRR: _____

With a copy to: _____

11. **Survival of Terms.** Notwithstanding anything to the contrary contained in this Agreement, the terms, provisions, conditions and indemnifications of this Agreement shall survive the termination of this Agreement.

12. **Inspection Activities to Comply with Village Code.** The ICRR agrees that all inspection activities it undertakes on the Subject Property shall be in strict compliance with all applicable Village Codes and regulations and in compliance with this Agreement.

13. **At Risk.** The ICRR acknowledges and agrees that all inspection activities conducted by it on the Subject Property shall be fully at its own risk and the Village shall not be prejudiced in any way by the ICRR's at risk activities on the Subject Property.

14. **Agreement at ICRR Request.** The ICRR acknowledges that it has requested this Agreement and shall fully comply with all of its terms.

15. **Term.** This Agreement shall be in full force and effect after its execution by the parties until October 15, 2009.

16. **Enforcement of Agreement.** The parties shall indemnify the other for any costs, including reasonable attorney's fees, which the other may incur in enforcing the provisions of this Agreement.

17. **Release.** Unless caused by either: (i) the negligent or willful acts or omissions of the Village, its agents, employees and other personnel; or (ii) any condition existing at the Subject Property not caused by the ICRR's inspection activities: (A) the ICRR forever releases and discharges the Village, its officials, agents, and employees from all claims, demands, damages, actions, or causes of action, arising out of this Agreement or the Village's inspection activities pursuant to this Agreement; and (B) the ICRR, and its assigns, hereby covenant not to sue or otherwise bring any action in law or equity against the Village, its officials, employees, or

agents for any claims, loss, damage, expense, debt or liability of any nature whatsoever as a result of the this Agreement or the ICRR's inspection activities permitted pursuant to this Agreement.

18. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Illinois. The provisions of this Agreement shall be enforceable in any action in law or in chancery. The parties hereto agree that any legal action to enforce any right or obligation contained in or arising out of this Agreement shall be brought in the Circuit Court of Cook County, Illinois.

19. **No Assignment.** This Agreement shall not be assigned by any party hereto. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, and successors, except as otherwise provided herein.

20. **Headings and Titles.** The headings or titles of any provisions of this Agreement are for convenience or reference only and are not to be considered in construing this Agreement.

21. **Entire Agreement.** This Agreement sets forth all the covenants, conditions and promises between the parties, and it supersedes all prior negotiations, statements or agreements, either written or oral, with regard to its subject matter. There are no covenants, promises, agreements, conditions or understandings between the parties, either oral or written, other than those contained in this Agreement.

22. **Severability.** If any of the provisions of this Agreement are determined by a court of competent jurisdiction to be invalid, such provisions shall be deemed to be stricken, and such adjudication shall not affect the validity of the remainder of the terms of this Agreement as a whole or of any section, subsection, sentence or clause not adjudged to be invalid.

23. **Effective Date.** The effective date of this Agreement shall be the date that the Village Clerk attests the signature of the Village Manager of the Village of Park Forest.

24. **Binding Authority.** The individuals executing this Agreement on behalf of the Village and the ICRR represent that they have the legal power, right, and actual authority to bind his or her respective party to the terms and conditions of this Agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]**

THE PARTIES TO THIS AGREEMENT by their signatures acknowledge they have read and understand this Agreement and intend to be bound by its terms.

VILLAGE OF PARK FOREST

**ILLINOIS CENTRAL RAILROAD
COMPANY**

By: Thomas K. Mick
Its: Village Manager

By:
Its:

Date: _____, 2009

Date: _____, 2009

ATTEST

ATTEST

By: Sheila McGann
Its: Village Clerk

By:
Its:

Date: _____, 2009

Date: _____, 2009

VILLAGE OF PARK FOREST

MEMORANDUM

**TO: John A. Ostenburg, Mayor
Village Board of Trustees**

**FROM: Thomas K. Mick,
Village Manager**

DATE: August 31, 2009

**RE: A RESOLUTION AUTHORIZING THE EXECUTION OF CERTAIN
AMENDMENTS TO AN AGREEMENT BETWEEN THE VILLAGE OF
PARK FOREST AND THE ELGIN, JOLIET AND EASTERN RAILWAY
COMPANY TITLED THE "ORCHARD DRIVE UNDERPASS
SUPPLEMENTAL AGREEMENT"**

Background

On January 31, 2009, Canadian National rail company (CN) was granted authority by the federal Surface Transportation Board (STB) to move forward with its acquisition of the former EJ&E rail company and its rail track system. With the STB's determination in January of this year, communities along the rail arc began to approve Voluntary Mitigation Agreements (VMA) with CN in accordance with guidelines set forth by the federal board. In January of this year, the Village convened initial negotiations with CN on a VMA and the potential sale of a tract of land coveted by the rail company as part of its master plan for the EJ&E acquisition.

As a result of the package deal negotiated and proposed to be agreed upon by the Village and CN, the rail company is willing to accept transfer of ownership of the rail track bridge/overpass of Orchard Drive. Highlights of the attached agreement include:

- CN agrees to assume responsibility of maintenance, liability and replacement of this structure. The estimated value of this transaction is \$900,000. Village Staff believes this is a conservative estimate, at best. Getting out from under this liability is a major accomplishment of the package deal with CN.
- CN agrees to paint the Orchard Drive overpass/bridge within the next three years with an estimated cost for this work being \$225,000. This upgrade will coincide with the Village's planned improvements all along the Orchard Drive corridor. Paint work will include sandblasting and full lead abatement.
- CN agrees to contribute \$40,000 to Park Forest for the purchase of an electronic message board(s) that will be permitted to be installed and operated (in perpetuity) on the overpass. Invariably, the Village and/or service clubs have resorted to hanging banners on the overpass alerting the public to events taking place in the community. Installation of a remote-accessed electronic reader board(s) will enhance the look of the Village's message to commuters travelling along Orchard Drive with ongoing updates to be posted from the desk top of Village's public relations office.

The attached Orchard Drive Underpass Supplemental Agreement and the corresponding enabling resolution have been reviewed by Village Attorney Paul Stephanides.

SCHEDULE FOR CONSIDERATION:

This issue will be on the agenda for Board discussion at its September 8, 2009 Rules Meeting.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING THE EXECUTION OF
CERTAIN AMENDMENTS TO AN AGREEMENT
BETWEEN THE VILLAGE OF PARK FOREST AND
THE ELGIN, JOLIET AND EASTERN RAILWAY COMPANY
TITLED THE "ORCHARD DRIVE OVERPASS SUPPLEMENTAL AGREEMENT"**

WHEREAS, the Village of Park Forest ("Village") and the Elgin, Joliet and Eastern Railway Company ("EJ&E Railway Company") entered into an Agreement dated June 24, 1959 regarding the overpass structure located at Orchard Drive in the Village ("Overpass Agreement") by which the Railway granted to the Village permission and authority to install, construct, maintain and operate an underpass grade separation structure upon the terms and conditions provided for in the Agreement; and

WHEREAS, the Village and the EJ&E Railway Company wish to amend the Agreement to transfer ownership of certain portions of the overpass structure to the EJ&E Railway Company and restate portions of the Overpass Agreement to the mutual benefit of the parties.

NOW THEREFORE, BE IT RESOLVED by the Mayor and Board of Trustees of the Village of Park Forest, Cook and Will Counties, Illinois, in the exercise of their home rule authority, as follows:

Section 1. Recitals Incorporated. The above recitals are incorporated herein as though fully set forth.

Section 2. Approval of Agreement. The Orchard Drive Supplemental Agreement ("Agreement") between the Village of Park Forest and the Illinois Central Railroad Company, attached hereto and incorporated herein by reference as Exhibit A, is hereby approved in substantially the form attached, and subject to the review and approval of the Village Attorney.

Section 3. Execution of Agreement. The Village Manager is directed and authorized to execute the Agreement in substantially the form attached and the Village Clerk is directed and authorized to attest the signature of the Village Manager. The Village Manager and the Village Clerk are directed and authorized to execute any and all other documents as may be necessary to effectuate the purposes of the Agreement.

Section 4. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

PASSED this ____ day of _____, 2009.

APPROVED:

ATTEST:

Mayor

Village Clerk

ORCHARD DRIVE UNDERPASS SUPPLEMENTAL AGREEMENT

This Orchard Drive Underpass Supplemental Agreement, dated and effective _____, 2009, is entered by and between Elgin, Joliet & Eastern Railway Company, an Illinois Corporation (hereinafter termed the "Railway") and the Village of Park Forest, Illinois, a body politic and corporate of the State of Illinois (hereinafter termed the "Village").

WHEREAS, the parties entered into that certain Agreement dated June 24, 1959 (hereinafter termed the "Agreement") by which the Railway granted to the Village permission and authority to install, construct, maintain and operate an underpass grade separation structure (hereinafter termed the "underpass structure") upon the terms and conditions provided for in the Agreement; and

WHEREAS, the parties wish to amend and restate portions of the Agreement to the mutual benefit of the parties.

NOW, THEREFORE, intending to be mutually bound, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Section "SIXTH" of the Agreement shall be stricken and replaced with the following:

SIXTH: It is understood and agreed that the Railway shall own the rail, track fittings, ties, ballast, plate girders, cover plates, decking, and concrete abutments of the underpass structure, and shall maintain, keep in good repair, reconstruct and renew the same and all parts thereof at its sole cost and expense. Further, the Village shall own the sidewalks, roadway, pedestrian fencing/railings, and drainage structures associated with the underpass structure, along with all lighting attached to same, and shall maintain, keep in good repair, reconstruct and renew the same and all parts thereof at its sole cost and expense. The parties agree to operate the portions of the underpass structure they own and maintain in accordance with all laws and ordinances that may be applicable thereto and also in accordance with the applicable rules and regulations of the proper public authorities now or at any time hereafter having jurisdiction thereof and in a manner reasonably satisfactory to the other party. The Railway grants the right in perpetuity to the Village and the public for motor vehicle and other traffic to travel though the underpass structure.

2. Simultaneous with the execution of this Supplemental Agreement, the Village will properly execute and deliver to the Railway the attached bill of sale, covering all items and elements of the underpass structure which shall henceforth be owned and maintained by the Railway.

3. The following paragraphs shall be added at the end of the existing Section “FOURTH” of the Agreement:

For so long as this Agreement shall remain in effect, the Railway shall by these presents confer upon the Village a license to construct, maintain and operate a message board on one or both sides of the underpass structure (at the Village’s sole option). The Railway shall provide funding to the Village in the amount of \$40,000 within thirty (30) days of the effective date of this Agreement as reflected above for the purchase and/or construction of the message boards. Prior to the construction or modification of any message board, the Railway shall be provided with complete plans for same. The Village will modify the plans for the message boards to meet the Railway’s reasonable engineering and operating objections, and the message boards shall not interfere in any way with the Railway’s ability to either operate trains on the underpass structure (including any adverse impact on the visibility of train signals) or maintain the underpass structure. The Village shall be solely responsible for providing electricity and any other communications wiring and systems needed for the operation of the message boards, which the Railway shall allow to be attached to the underpass structure by reasonable means. The message boards will be used to display messages of municipal interest. In no event will the Village allow the message boards to display any message which might place the Railway, its officers, directors or employees, or the railroad industry in a bad light. At any time prior to the construction and installation of the message boards, the Village may install temporary signage and/or banners on one or both sides of the underpass structure to display messages of municipal interest, said temporary signage and/or banners to be erected by personnel in bucket trucks or lifts positioned on the roadway below the underpass structure, and not by personnel located on the underpass structure decking.

Within three (3) years of the effective date of this Supplemental Agreement as reflected above, the Railway shall paint the underpass structure’s plate girders and related outward facing metal fixtures on a one-time basis with appropriate paints using a color similar to the existing green shade at an estimate cost of up to \$225,000.

4. All other terms and conditions contained in the Agreement shall remain in full force and effect, except to the extent inconsistent with the terms contained herein, in which event the terms contained herein shall govern.

5. The individuals executing this Agreement on behalf of the Village and the Railway represent that they have the legal power, right, and actual authority to bind his or her respective party to the terms and conditions of this Agreement.

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

By: _____
Printed Name: _____
Title: _____

Dated: _____, 2009

ATTEST:

By: _____
Printed Name: _____
Title: _____

Dated: _____, 2009

VILLAGE OF PARK FOREST, ILLINOIS

By: _____
Printed Name: Thomas Mick
Title: Village Manager

Dated: _____, 2009

ATTEST:

By: _____
Printed Name: Sheila McGann
Title: Village Clerk

Dated: _____, 2009

BILL OF SALE

KNOW ALL PERSONS BY THESE PRESENTS, that the Village of Park Forest, Illinois, a municipal corporation of Illinois, with offices at 350 Victory Drive, Park Forest, Illinois 60466, hereinafter referred to as "Seller," for and in consideration of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, to it in hand paid, does hereby GRANT, SELL and TRANSFER unto Elgin, Joliet & Eastern Railway Company, an Illinois corporation, with a mailing address of 17641 S. Ashland Avenue, Homewood, Illinois 60430, hereinafter referred to as "Buyer," all its right, title and interest in and to all plate girders, cover plates, decking, and concrete abutments (collectively the "Improvements"), located on the existing grade separation structure located at the crossing of Buyer's rail line over Orchard Drive, within Seller's corporate limits; subject, however, upon and to the covenants, conditions and restrictions hereinafter contained, to which Buyer, for itself, its successors and assigns, agrees to be bound as part of the consideration hereof.

FIRST: The Improvements are conveyed by Seller and accepted by Buyer as is and where is, and without any warranties or representations of any nature or kind expressed or implied by Seller except as to Seller's ownership therein.

SECOND: Buyer will henceforth assume all liability for future maintenance, repair or removal of the Improvements. Buyer shall indemnify, hold harmless and defend the Village, its agents, officials, and employees, for and against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses, including reasonable attorneys' fees, which may in any way accrue against the Village, its

agents, officials and employees with regard to any use now or in the future of the Improvements. In any such action against Seller, its agents, officials and employees, Buyer shall, at its own expense, appear, defend and pay all charges of attorneys' fees and costs and other expenses arising from the any use nor or in the future of the Improvements, and, if any judgment shall be rendered against Seller, its agents, officials and employees in any such action, Buyer shall, at its own expense, satisfy and discharge such judgment.

THIRD: Buyer forever releases and discharges Seller, its agents, officials, and employees from all claims, demands, damages, actions or causes of action which arise out of any use now or in the future of the Improvements. Buyer covenants not to sue or otherwise bring any action in law or equity against Seller, its agents, officials or employees for any claims, loss, damage, expense, debt or liability of any nature whatsoever which Buyer may sustain arising out of any use now or in the future of the Improvements.

FOURTH: The individuals executing this Bill of Sale on behalf of the Buyer and Seller represent that they have the legal power, right, and actual authority to bind his or her respective party to the terms and conditions of this Bill of Sale.

FIFTH: The effective date of this Bill of Sale as reflected above shall be the date that the Seller's Village Clerk attests the signature of Seller's Village Manager.

The words "Seller" and "Buyer," as used herein, shall be deemed to include at all times and in all cases their respective successors or permitted assigns.

IN WITNESS WHEREOF, Seller and Buyer hve executed this Bill of Sale on this _____, 2009.

VILLAGE OF PARK FOREST, ILLINOIS

By: _____
Printed Name: Thomas K. Mick
Title: Village Manager

Dated: _____, 2009

ATTEST:

By: _____
Printed Name: Sheila McGann
Title: Village Clerk

Dated: _____, 2009

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

By: _____
Printed Name: _____
Title: _____

Dated: _____, 2009

ATTEST:

By: _____
Printed Name: _____
Title: _____

Dated: _____, 2009

VILLAGE OF PARK FOREST

MEMORANDUM

TO: John A. Ostenburg, Mayor
Village Board of Trustees

FROM: Hildy L. Kingma, AICP
Director of Economic Development and Planning

DATE: September 1, 2009

RE: AN ORDINANCE AMENDING CHAPTER 6 (“ALCOHOLIC BEVERAGES”) OF THE CODE OF ORDINANCES, VILLAGE OF PARK FOREST, COOK AND WILL COUNTIES, ILLINOIS

BACKGROUND/DISCUSSION:

On August 1, 2009, Bixby’s Restaurant closed for business. On July 31, 2009, the business license for this business expired because Mr. Schmalz, the business owner, had been paying for his liquor license on a payment plan and he ceased payments that would have kept his license current.

Liquor licenses in Park Forest are controlled by Chapter 6 of the Village Code of Ordinances. Currently, the following six (6) establishments/addresses currently hold a liquor license in the community:

- CVS 1 Main Street
- 7-Eleven 425 Sauk Trail
- Bixby’s 22315 S. Central Park Avenue
- Tattlers 90 S. Orchard Drive
- Stop & Shop 2599 S. Western Avenue
- Park Forest Tennis & Health Club Westwood & Sauk Trail

Note that Section 6-49(b) of the Village Code of Ordinances provides that a liquor license is automatically revoked, and the number of liquor licenses automatically reduced, if a license holder fails to operate a business that sells liquor for a period of ten days or more. However, Village practice has been to immediately amend the Code of Ordinances pertaining to available liquor licenses, and formally reduce the number of liquor licenses, whenever such a license has been vacated. As such, the attached Ordinance would amend Village Code to allow for a maximum of five (5) liquor licenses in Park Forest.

The Village is currently working with the property owner at Central Court Plaza (the former location of Bixby’s) to assist him with filling the retail space vacated by Bixby’s. At least two potential tenants have already looked at the space. Staff will keep the Board informed of the status of re-leasing this space.

SCHEDULE FOR CONSIDERATION:

This item will be on the agenda for Board discussion at the Rules meeting of September 8, 2009.

ORDINANCE _____

**AN ORDINANCE AMENDING CHAPTER 6 (“ALCOHOLIC BEVERAGES”),
ARTICLE II (“LICENSES), SECTION 6-49 (“NUMBER LIMITED”)
OF THE CODE OF ORDINANCES, VILLAGE OF PARK FOREST,
COOK AND WILL COUNTIES, ILLINOIS**

WHEREAS, the Code of Ordinances of the Village of Park Forest (“Village Code”) provides that “the number of licenses in effect at any one time for the sale of liquor shall not exceed six for the total of classes A-1, A-2, B-1 and B-2; and

WHEREAS, there are currently six (6) liquor licenses in the Village of Park Forest; and

WHEREAS, one of the businesses currently holding a liquor license has not been in operation for a period exceeding ten (10) days;

WHEREAS, the Village seeks to amend the amount of A-1, A-2, B-1 and B-2 liquor licenses in the Village to five (5) due to the business not being in operation as set forth above pursuant to the provisions of Section 6-49(b) of the Village Code.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Park Forest, Cook and Will Counties, Illinois, in the exercise of the Village’s home rule powers, that:

Section 1. Code of Ordinances Amended. Chapter 6 (“Alcoholic Beverages”), Article II (“Licenses”), Section 6-49 (“Number Limited”) of the Code of Ordinances of the Village of Park Forest, Cook and Will Counties, Illinois, is hereby amended by adding the following underlined words and deleting the stricken language to read as follows:

ARTICLE II. LICENSES

Section 6-49. Number Limited.

(a) Except as otherwise provided in section 6-55, the number of licenses in effect at any one time for the sale of liquor shall not exceed ~~six~~ five for the total of classes A-1, A-2, B-1 and B-2.

(b) However, if any license is revoked or any licensee fails to operate a business providing for the sale of liquor at the address for which a license is issued for a period in excess of ten days, except in a natural disaster or if a permit for alteration has been applied for, the license may not be reissued and the total number of licenses authorized in this section shall be accordingly reduced in number.

(c) If, however, a licensee sells his business and the buyer applies for a new license at the same address within ten days of the sale, the number of licenses shall not be reduced if the license applied for is granted by the local liquor commissioner.

Section 2. Severability and Repeal of Inconsistent Ordinances. If any provision of this Ordinance, or the application of any provision of this Ordinance, is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this Ordinance, or their application, that can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided by this Ordinance. All ordinances, resolutions or orders, or parts thereof, in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.

Section 3. Effective Date. This Ordinance shall be in full force and effect from and after its passage and approval and publication as required by law.

Passed this _____ day of _____, 2009.

APPROVED:

ATTEST:

MAYOR

VILLAGE CLERK