

Appendix J

Railroad Operating Agreements



**May 1, 1984 Operating Agreement
Chicago and Northwestern Transportation Company**

Orig. in Vault on 6
B-30000
32111

OPERATING AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of May, 1984, by and between CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware Corporation, hereinafter sometimes called "North Western", and HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY, a political subdivision and local government unit of the State of Minnesota, hereinafter sometimes called "Authority".

WITNESSETH:

WHEREAS, by separate deed dated May 1, 1984, Authority purchased from North Western its land, bridges, and buildings between Minneapolis and Hopkins, Minnesota, as more fully described in said deed; and

WHEREAS, said deed provides certain easements for the continued railroad operations of North Western between Minneapolis and Hopkins, Minnesota, and the parties hereto now desire to more fully set forth the terms and conditions of operations by North Western and Authority;

NOW THEREFORE, the parties hereto, intending to be legally bound AGREE AS FOLLOWS:

de. m. n. 2002

ARTICLE I DEFINITIONS

For the purpose of this Agreement only, the following definitions and terms shall apply:

"Additions" shall mean work projects and improvements the cost of which is chargeable in whole or in part to Property Accounts.

"Agreement" shall mean this Agreement dated May 1st, 1984.

"Car Mileage Proportion" shall mean the ratio of the number of miles of cars, locomotives and cabooses operated by each party hereto over the Joint Line compared to the total number of miles of cars, locomotives and cabooses operated by both parties over the Joint Line during the same time period. The miles of all cars, locomotives and cabooses moving over the Joint Line, or any part thereof, excluding those engaged in work or wrecker service on the Joint Line, shall be counted. Each locomotive unit and each caboose shall be counted as one (1) car. Cars, locomotives and cabooses in the care, custody or control of either of the parties hereto shall be counted against that party. Except as otherwise provided herein, miles operated by North Western shall be counted twice to reflect the greater maintenance costs attributable to its train operations.

"Deed" shall mean the deed dated May 1st, 1984, by which North Western conveyed to Authority certain land, bridges, and buildings between Minneapolis, Minnesota, and Hopkins, Minnesota, a copy of said Deed being marked Exhibit "A", attached hereto, and by reference herein made a part hereof.

"Initial Railroad Easement" shall mean the easement contained in Exhibit "A" providing for the continuation of North Western's present operation of through freight trains and for use and operation of the roadbed, necessary bridges and railroad trackage and for all other railroad purposes.

"Joint Line" shall mean one of the two light rail transit tracks to be constructed by Authority between Minneapolis and County Road 18 in Hopkins, Minnesota, as designated by Authority, and as more fully set forth in said Exhibit A, including necessary right-of-way, track and appurtenances, signals, communications, and facilities of Authority, except overhead electrification, and all Additions thereto as are required for the operation of the parties hereto of

such single track pursuant to this Agreement.

"Loss or Damage": Includes any and all claims, liabilities, damages, costs, judgments, and expenses (including reasonable attorneys' fees and expenses) of every character incident to loss or destruction of or damage to property and injury to or death of persons, arising upon or as a result of the use of the Joint Line or as a result of any other operations conducted under the terms of this Agreement.

"Milwaukee Road" shall mean the Chicago, Milwaukee, St. Paul and Pacific Railroad Company or any successor thereto.

"Permanent Railroad Easement" shall mean the easement providing for the relocation of North Western's rail operations to Authority's designated easement area as more fully set forth in said Exhibit A following Authority's construction of its Transportation System.

"Property Accounts" shall mean the accounts so designated by the applicable Interstate Commerce Commission classification for railroad companies currently in effect from time to time.

"Sole Employees" and "Sole Property" shall mean employees, agents, contractors, passengers, invitees, trains, buses, locomotives, cabooses, cars, including lading, and equipment of each of the parties or their agents or contractors while engaged or about to engage in maintaining, using, operating, constructing, repairing, renewing, replacing and improving the Trackage or Joint Line, or in switching or handling cars of the respective parties hereto. With respect to Authority, the employees and property engaged in construction of the Transportation System and any of Authority's lessees and property of its lessees, its and their employees, agents, invitees, and contractors, and their property shall, for purposes of this definition, be deemed the Sole Employees and Sole Property of the Authority.

"Taxes" shall mean lawfully imposed real estate taxes and assessments.

"Transportation System" shall mean a mass transit system, including but not limited to either the Joint Line or a busway, as set forth herein.

ARTICLE II RAILROAD OPERATIONS DURING PERIOD OF INITIAL RAILROAD
 EASEMENT

Section 1. GRANT OF RIGHTS

1.1 Pursuant to the Initial Railroad Easement contained in Exhibit A and subject to the terms and conditions of this Article II, Authority hereby confirms and grants to North Western the exclusive right to continue its present railroad operations and to continue its common carrier obligations at North Western's sole cost and obligation, on its solely owned tracks (hereinafter in Article II "Trackage") located upon said Initial Railroad Easement between Minneapolis and Hopkins, Minnesota, including the exclusive right to:

(a) serve any interchange, industry, team or house track existing along the Trackage on the date of this Agreement or as otherwise may be required by law; and

(b) Permit or admit a third party only for interchange and emergency detour purposes to use all or any portion of said Trackage; and

(c) Construct tracks connecting to or crossing said Trackage, subject to provisions of this Agreement, and the prior written approval by the Authority, which approval shall not be unreasonably withheld and shall be deemed given if required by law.

Section 2. CONSTRUCTION, REPAIRS, MAINTENANCE, ADDITIONS, OPERATIONS,
 CONTROL OF THE TRACKAGE

2.1 North Western shall have the exclusive direction and control of said Trackage, and at its sole cost and expense shall perform all construction, derailment or wreck clearing, maintenance, repair and renewal of the Trackage, including any Additions thereto it may deem necessary or desirable for the safe and efficient operation of its trains.

2.2 The management and operation of the Trackage shall be under the exclusive direction and control of North Western. North Western shall have the unrestricted power to change its operations, management and operating practices

on and over the Trackage as in its judgment may be necessary, expedient or proper for the operations thereof herein intended, consistent with the provisions of this Agreement.

2.3 North Western shall have the exclusive right to operate trains, engines and cars over the Trackage for its sole benefit, and shall not, except as provided for in Section 1.1.(b) of this Article, without prior written permission by Authority, which permission shall not unreasonably be withheld, permit any third party to operate trains, engines or cars over the Trackage.

2.4 North Western shall, at its sole cost and expense, determine all means and employ all persons necessary to operate, maintain, repair and renew the Trackage, as well as crossings, crossing signals, ditches, bridges, and communication lines within the Initial Railroad Easement which may be necessary for its use of the Trackage.

2.5 North Western agrees that North Western, its agents, licensees, contractors and assigns shall have until June 1, 1985, for the purpose of removing North Western-owned rails and ties situated outside the Initial Railroad Easement which are not used for local rail service to North Western's customers. Such removal shall be done in a thorough and workmanlike manner, at the sole cost and expense of North Western, and so as not to create public hazards. All other North Western-owned property outside the Initial Railroad Easement other than rails and ties which shall be removed as above, shall be deemed abandoned by North Western without obligation, and shall become the property of the Authority in place. North Western, its agents, licensees, contractors and assigns shall have the right to remove North Western-owned rails, ties, communication lines, signal equipment and other usable equipment situated within the Initial Railroad Easement and Permanent Railroad Easement areas (except street crossing protection devices which shall be left in place) in conjunction with either (i) North Western's relocation to the Authority-designated Permanent Railroad Easement, or (ii) North Western's permanent abandonment or cessation of all rail service, and if not so removed within 180 days following any such relocation shall be deemed abandoned by North Western without obligation to North Western and shall become the Authority's property in place.

2.6 Authority shall not pay the expenses of any public crossing of the Trackage which may be opened or improved, including all expenses of crossing protection, unless such crossings are requested by Authority or opened or improved in conjunction with the development of any real estate described in Exhibit A.

Section 3. EFFECTIVE DATE - TERM

3.1 This Article II of this Agreement shall become effective May 15th, 1984, and shall continue in full force and effect until terminated by:

- (a) North Western's lawful abandonment of said Trackage between Minneapolis and Hopkins, Minnesota; or
- (b) the relocation of North Western's train operations to the tracks of the Milwaukee Road or other portions of North Western's own system; or
- (c) the construction by Authority of a Transportation System and relocation of North Western's train operations to the area of the Permanent Railroad Easement.

3.2 Upon termination of this Article II of this Agreement under the provisions of this Section 3, the parties shall be relieved of all rights and obligations hereunder except for any rights or obligations which may have been incurred or accrued prior to said termination.

resulting therefrom except as otherwise provided in Article V. The turnouts and crossings shall utilize hand-thrown switches, unless North Western desires an interlocking plant which would be constructed at North Western's sole expense. Notwithstanding anything to the contrary in this Agreement contained, upon retirement of any of the facilities constructed under this ^S section 1.1.(b), same shall be removed by North Western at its sole cost and expense, the material recovered therefrom shall become the Sole Property of North Western, and North Western shall "straight rail" the crossing to the same standard then existing at either side of such crossing at its sole cost and expense.

1.2 If as an alternative to the Joint Line provided for in Section 1.1 of this Article III, the Authority constructs a busway, then in such event, pursuant to the Permanent Railroad Easement contained in Exhibit A and subject to the terms and conditions contained in this Article III, Authority hereby confirms and grants to North Western the right to continue to use (Authority, at such time to designate either North Western's southbound main track or North Western's northbound main track hereinafter in Article III "Trackage"^{said}) Trackage, such use to be pursuant to the provisions of Article II, Section 2, except such operation shall be limited to the operation of two (2) through freight train movements per day between Minneapolis and Hopkins, Minnesota, said trains to observe a maximum speed limit of twenty-five (25) miles per hour, and to operate during the hours of 12:00 midnight and 6:00 a.m. in common with the Authority for so long as required by North Western, it being understood and agreed that North Western shall also have the right during such hours to:

(a) set out, pick up, or store as necessary on tracks other than main line tracks connecting with the Trackage, locomotives, cars or cabooses bad ordered enroute; and

(b) serve any interchange, industry, team or house track existing along the Trackage as of the effective date of Article III of this Agreement, or as otherwise may be required by law, and to provide emergency detour. If at any time during the existence of this Agreement North Western desires the construction of any turnouts from the Trackage or the construction of any railroad crossing of the busway for the purpose of serving its industries along the Trackage, North Western and Authority shall mutually agree in writing as to the location, design, installation and maintenance of said turnouts or crossings to

a standard that is compatible with each party's operation, and North Western shall, at North Western's sole cost and expense, use reasonable and customary care, skill, and diligence in the construction and maintenance of all such turnouts and crossings, and any related signals or other safety devices as may be required by any governmental agency having jurisdiction, and Authority shall not, by reason of North Western's performance or failing or neglecting to perform any operations, maintenance, repair, renewal or removal, have or make against North Western any demand of any loss, damage, destruction, injury or death whatsoever resulting therefrom, except as otherwise provided in Article V. The turnouts and crossings shall utilize hand-thrown switches, unless North Western desires an interlocking plant which would be constructed at North Western's sole expense. Notwithstanding anything to the contrary in this Agreement contained, upon retirement of any of the facilities constructed under this Section 1.2.(b), same shall be removed by North Western at its sole cost and expense, the material recovered therefrom shall become the Sole Property of North Western, and North Western shall restore that portion of the Authority's property situated between either side of such crossing or turnout to the then existing condition of the property adjoining such crossing or turnout at its sole cost and expense.

Section 2. NOTICE, CONSTRUCTION, REPAIRS, MAINTENANCE, ADDITIONS,
OPERATIONS, AND CONTROL

2.1 Authority shall provide North Western with two (2) years' written notice of its intention to construct and operate two (2) light rail transit lines or busway, said notice to include a copy of the preliminary plans for the transitway and a designation by Authority of the location over which of North Western's existing two mains North Western shall operate upon during the construction period, recognizing North Western's obligation to provide at all times continuous and uninterrupted rail service across the property. The final construction plans and specifications shall be reasonably approved by North Western as to compatibility within 45 days from receipt thereof by North Western's Chief Engineer or his representative. Following the construction by Authority at Authority's cost of two light rail transit lines or busway, as the case may be, and the relocation by North Western to the extent required of its railroad operations, the Initial Railroad Easement will then shift and be permanently

relocated to a thirty-foot wide corridor, being fifteen feet in width on each side of the center line of the light rail transit line designated by Authority as the Joint Line, or in the case of a busway, to the Authority-designated North Western southbound or northbound main track, and the Initial Railroad Easement shall then automatically terminate. North Western agrees to reimburse the Authority for the additional cost, if any, necessary to upgrade the Joint Line for North Western's use above the standards provided in the plans for the light rail transit lines. For this purpose, Authority confirms its minimum standards for construction to be the use of at least 112 pound rail, 22-inch tie spacing and 8-12 inches of ballast.

2.2 Authority shall make any Additions to the Joint Line which Authority deems necessary or desirable for the safe, efficient and economical use of the Joint Line by the parties, and these shall progressively during construction become part of the Joint Line, except for overhead electrification or other appurtenances which shall be provided and maintained solely at the cost of, and for the use and exclusive benefit of the Authority. Authority shall advise North Western in writing of any contemplated Additions to the Joint Line costing in excess of \$25,000 in advance of accomplishing them. North Western may request Additions to the Joint Line which North Western shall deem reasonably necessary or desirable for the safe, efficient and economical use of the Joint Line by the parties, and Authority shall have the right to reasonably approve such requests on the basis of compatibility with its operations, such approval to be given or shall be deemed given if not responded to within 45 days after receipt by Authority of North Western's written request. The cost and expense of constructing, and thereafter of maintaining, repairing, renewing, and operating, Additions for the exclusive benefit of only one of the parties hereto, shall be assumed by the said party.

2.3 The management and operation of the Joint Line shall be under the exclusive direction and control of Authority. Authority shall have the unrestricted power to change the management and operations on and over the Joint Line as in its judgment may be necessary, expedient or proper for the operations thereof herein intended consistent with the provisions of this Agreement; provided that any such change shall not materially interfere with North Western's right to use the Joint Line.

2.4 Authority shall determine all means and employ all persons and organizations necessary to operate, maintain, repair, renew, remove and replace the Joint Line consistent with the provisions of this Agreement, and may freely enter into any contract for said purpose. Authority shall be bound to use only reasonable and customary care, skill and diligence in the operation, maintenance, repair, renewal, removal and management of the Joint Line and North Western shall not, by reason of Authority's performing or failing, or neglecting to perform any operation, maintenance, repair, renewal, removal or management of the Joint Line, have or make against Authority any claim or demand for any loss, damage, destruction, injury or death whatsoever resulting therefrom except as otherwise provided in Article V. In emergency situations where damage to the Joint Line has occurred, North Western, at its sole option, shall have the right to repair such damage, and shall notify the Authority of the actions taken, and Authority shall reimburse North Western for its prorata share of the repair cost. Where major property damage, injury or loss of life has occurred to or upon the Joint Line, or where operations by the parties must cease, the party taking notice of the situation shall promptly notify the other party. All employees and equipment engaged in performing emergency maintenance or repairs on the Joint Line shall, while so engaged, be deemed the Sole Employees and Sole Property respectively of the parties hereto.

2.5 Should North Western desire that the Joint Line be maintained for its sole benefit to a standard higher than the prevailing maintenance standard, in such event it shall so request by notifying Authority in writing and Authority shall maintain the Joint Line to the higher standard desired by North Western and North Western shall reimburse Authority for the cost differential of the maintenance and operations expenses between the prevailing standard and the higher standard desired by North Western.

2.6 Except as otherwise provided in Section 2.4 of this Article III, if the use of the Joint Line shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, Authority shall, with reasonable diligence, restore the Joint Line for the passage of trains of the parties hereto. Neither party hereto shall have or make any claim against the other for Loss or Damage of any kind resulting from such interruption or delay.

2.7 Each party shall be responsible for furnishing, at its own expense, all labor, fuel and train supplies necessary for the operation of its own trains over the Joint Line.

2.8 The operation by North Western on or along the Joint Line shall at all times be in accordance with the rules, instructions and restrictions of the Authority which Authority shall promulgate upon ten (10) days advance written notice to North Western, but such rules, instructions and restrictions shall be reasonable, just and fair between the parties using the Joint Line and shall not unjustly discriminate against either of them.

2.9 Each party shall be responsible for its respective mileage allowances and car hire charges accruing on cars in its account on the Joint Line and each party shall report and pay same direct to the owners of such cars.

2.10 With respect to operation of trains, locomotives, cabooses and cars on and over the Joint Line, each party shall comply with all applicable laws, rules, regulations and orders promulgated by any municipality, board, commission or governmental agency having jurisdiction, and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against the other party, that party shall give prompt written notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost, charge or expense to the other party.

2.11 All employees of North Western engaged in or connected with the operations of North Western on or along the Joint Line shall be required to pass periodic examinations on the rules of Authority, provided, that with respect to such examinations, that upon request of North Western, Authority shall qualify one or more of North Western's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of North Western engaged in or connected with North Western's operations on or along the Joint Line.

2.12 If any employee of North Western shall neglect, refuse or fail to abide by Authority's rules, instructions or restrictions governing the operation on or along the Joint Line, Authority shall, in writing, so notify North West-

ern. Authority shall have the right to require North Western to withhold any North Western employee from service on the Joint Line, pending the result of formal investigation, which in Authority's sole opinion shall have neglected, refused or failed to abide by Authority's rules or applicable rules of any other governmental body governing the operation on or along the Joint Line. Upon such notice presented in writing, Authority and North Western shall promptly hold a joint investigation, which shall be held in the Minneapolis-St. Paul Metropolitan Area in accordance with the employee's schedule agreement, and in which all parties concerned shall participate and bear the expense for its officers, counsel, witnesses and employees. Notice of such investigations to North Western employees shall be given by North Western officers, and such investigation shall be conducted in accordance with the terms and conditions of the schedule agreements between North Western and its employees. If in the judgment of Authority, the result of such investigation warrants, such employee shall, upon written request by Authority, be restricted by North Western from operating on the Joint Line and North Western shall release and indemnify Authority from and against any and all claims and expenses because of such restriction.

2.13 If any cars, cabooses or locomotives of North Western are bad ordered enroute on the Joint Line and it is necessary that they be set out, such cars, cabooses or locomotives shall be placed off the Transportation System so as not to obstruct transit operations.

2.14 Should any locomotive or car in the train of either party be derailed or damaged while being run or operated upon the Joint Line, Authority, unless otherwise agreed, shall pick up and remove same and the cost and expense thereof shall be treated as an item of expense to be born and assumed by the parties hereto under the provisions of Article V, Section 2, of this Agreement; provided however that the employees of North Western shall be permitted to reraill locomotives or cars in its train where a wrecking derrick or on track wrecking equipment is not required.

Section 3. CAR MILEAGE PROPORTION COMPENSATION AND BILLING

3.1 After the initial construction of the Joint Line, North Western shall pay to Authority, North Western's Car Mileage Proportion of (a) the actual cost of maintaining, operating, repairing, renewing and replacing the Joint

Line, and (b) the actual cost of making those Additions to the Joint Line which are for the mutual benefit of the parties hereto.

3.2 In the event of the renewal or replacement of any property now or hereafter forming a part of the Joint Line, North Western shall receive reimbursement of a proportion of the material recovered or of the total price received equal to the proportion of North Western's contribution toward the purchase and net installation cost of the item in cash or, at North Western's option, receive a credit against its maintenance and operating bills.

3.3 Except as otherwise specifically provided for, bills rendered pursuant hereto shall be prepared in conformance with rules, rates, and surcharges to be mutually agreed upon between the parties hereto.

3.4 In determining the price(s) of materials for purposes of this Article III, Authority shall use the following procedures:

- (a) New prices shall be equal to the total price of new materials installed on the Joint Line.
- (b) Secondhand rail and material prices shall be equal to the total price at the time the rail or material is installed on the Joint Line; second hand rail and materials to be removed from the Joint Line shall be valued according to the price received by Authority at the time such rail or materials are sold.
- (c) Scrap material prices shall be equal to the amount received by Authority.

3.5 Within thirty (30) days following the close of each calendar month, North Western shall furnish to Authority a statement setting forth the number of cars, locomotives and cabooses in the account of North Western moved over the Joint Line.

3.6 North Western and Authority shall maintain and hold records of their respective operations over the Joint Line covering three-year periods commencing with the operation of the Joint Line, said records to be made available

on written request by either party to the other party, its authorized agents and representatives, for purposes of inspection, copying and auditing at reasonable times, in the Minneapolis-St. Paul Metropolitan Area.

3.7 Authority may install and thereafter maintain, repair and replace at its sole cost and expense, such equipment as it may find appropriate for the purpose of accurately metering and recording traffic operating over the Joint Line, and data so recorded, which will be subject to audit and inspection by North Western, may be used for calculating the Car Mileage Proportion.

Section 4. EFFECTIVE DATE - TERM.

4.1 This Article III of this Agreement shall become effective upon the effective date of the Permanent Railroad Easement (such date to be established by written agreement between the parties) and shall continue in full force and effect thereafter until terminated by:

- (a) the relocation by North Western of its train operations to the tracks of the Milwaukee Road or to other portions of the North Western's own railroad system; or
- (b) the lawful abandonment by North Western of its train operations over the Joint Line; or
- (c) the written notice by North Western to Authority of the permanent discontinuance of train operations by North Western over the Joint Line.

ARTICLE IV RAILROAD OPERATIONS - LOCAL RAIL SERVICE

Section 1. LOCAL RAIL SERVICE - PAYMENT OF RENTAL BY NORTH WESTERN

1.1 For so long as any Article of this Agreement shall remain in effect or North Western desires or is required to serve those industries located on or adjoining the property conveyed in the Deed to the Authority, Authority hereby leases to North Western, at a rental rate of thirteen cents (\$0.13) per square foot to be paid to Authority annually in advance, for the exclusive use of that right of way required to serve such industries and for other railroad purposes, all of said right of way being shown on the prints dated March 15, 1984, marked Exhibit B, attached hereto and by reference herein made a part hereof, and agreed to contain 164,000 square feet. North Western shall relinquish to Authority the area comprising the Hopkins depot building and team track, referenced in Exhibit B as number one (1), upon six months written notice to North Western by Authority, and Authority shall reduce proportionately the rent to reflect the lesser area, refund to North Western all prepaid rents for such excluded area, and assist North Western where possible to find an alternate location on the property.

1.2 Said rental shall be subject to adjustment on May 15, 1989, and thereafter no sooner than each five year interval from the last such rental adjustment so as to reflect the then current fair market value of said right of way. In the event the parties are unable to agree upon such rental adjustment within 45 days of the above date, the dispute shall be submitted to binding arbitration by the American Arbitration Association, but during the period of any such dispute, North Western shall be entitled to remain in possession of the leased premises on the basis of the last current rental rate. Each party shall appoint an arbitrator and the two arbitrators shall agree upon a third arbitrator. In the event the two arbitrators cannot agree upon a third arbitrator either party may apply to the Chief Judge of the Hennepin County District Court to appoint the third arbitrator. Each party shall pay the fees of its arbitrator and costs of its witnesses and shall jointly pay the fee of the third arbitrator. The decision of the arbitrators shall be final, binding and non-appealable.

1.3 Notwithstanding anything herein to the contrary, North Western may, upon thirty (30) days written notice to Authority, release from time to time areas no longer required by North Western to be leased hereunder, whereupon the rental shall be adjusted proportionately to reflect the lesser area and Authority shall refund to North Western all prepaid rentals for the areas which have been so released.

1.4 North Western shall have the right to enter into its standard track agreement with such industries covering the local rail service, so long as no provision in said standard track agreement shall countermand any provision of this Agreement.

1.5 North Western shall have the right to perform switching operations for such local industries situated between Minneapolis and Hopkins, Minnesota, consistent with Articles II or III hereof, as the case may be.

ARTICLE V GENERAL CONDITIONS

Section 1. TAXES - PAYMENTS

1.1 Authority agrees to pay promptly to taxing authority when due all Taxes, if any, duly levied on the property described in the Deed with respect to the Authority's ownership, leases, air rights development, and/or operations. North Western agrees to pay promptly to taxing authority when due all Taxes, if any, with respect to its use or operations duly levied, to the extent North Western's property right has been separately assessed by the appropriate assessing authority to North Western during the period of the Initial Railroad Easement, upon the property contained in the Initial Railroad Easement, and during the period of the Permanent Railroad Easement, upon the property contained in the Permanent Railroad Easement. To the extent North Western's property right is not so separately assessed to North Western, but the underlying fee in the Initial Railroad Easement or Permanent Railroad Easement, as the case may be, is assessed as railroad operating property and would be exempt except for North Western's use and operations, then North Western agrees to pay all such Taxes duly levied during the period of the Initial Railroad Easement, upon property contained in the Initial Railroad Easement, and during the period of the Permanent Railroad Easement, upon the property contained in the Permanent Railroad Easement. Otherwise, the Taxes on such property shall be paid by each of the parties, with the basis for determining the Taxes payable by North Western as the Car Mileage Proportion, except in this instance North Western's Car Mileage Proportion shall be counted once. North Western reserves the right to protest to the taxing authority any such Taxes it deems to be unfair or excessive and may in good faith litigate and settle with the taxing authority any such protested amount.

1.2 Authority shall pay without reimbursement from North Western all Taxes, if any, attributable to the Authority relative to the Transportation System, including but not limited to improvements made by or for Authority for trains, engines, cars, buses, roadways, curbs, gutters, platforms, stations, lighting, sidewalks, sewer, water, pedestrian walkways, stairs and/or elevator systems, etc., in conjunction with the purchase, installation, maintenance,

repair or replacement of the Transportation System or any portion thereof.

1.3 If on or before May 1st, 1987, North Western elects either to permanently relocate its through train operations off the property described in Exhibit A, or to cease such train operations entirely, Authority agrees to pay promptly to North Western, 90 days following receipt by Authority from North Western of written notice of such election, the sum of \$1,500,000 for the extinguishment, solely with respect to through freight train operations, of the Initial Railroad Easement and Permanent Railroad Easement in exchange for simultaneous delivery by North Western to Authority of the appropriate executed release document(s). If North Western makes such election on or before May 1st, 1991, then Authority agrees to pay to North Western in the same manner as provided above, the sum of \$500,000 for such extinguishment solely with respect to through freight train operations of the Initial Railroad and Permanent Railroad Easements. In any event, the right to cross the property from one side to the other to continue to provide uninterrupted local rail service shall remain in full force and effect, and shall be included at no additional charge to North Western as part of North Western's lease pursuant to Article IV of this Agreement. If Authority fails or refuses to pay any such amount when due, interest shall accrue at the prime rate established for 90-day loans at First Bank of Minneapolis on such unpaid amount until the same has been paid.

1.4 North Western shall pay to Authority at the Office of the Treasurer of Authority or at such other location as Authority may from time to time in writing designate, all the compensation and charges of every name and nature which in and by this Agreement North Western is required to pay in lawful money of the United States. Bills shall be rendered by Authority and shall contain a statement of the amount due on account of the expenses incurred during the billing period. All bills rendered pursuant to this Agreement shall be due and payable within Forty-five (45) days of the receipt thereof.

Section 2. LIABILITY

2.1 During the period of the Initial Railroad Easement as set forth in Article II, but only until such time as Authority commences to construct a Transportation System, North Western agrees to indemnify and save harmless Authority from Loss or Damage occurring within the Initial Railroad Easement, including

Loss or Damage to North Western's own employees and property, but excepting Loss or Damage to Authority's own employees and property, regardless of whether any such Loss or Damage is caused or contributed to by the negligence of Authority, its officers, agents or employees.

2.2 North Western agrees to indemnify and save harmless Authority from Loss or Damage occurring within the lease areas created by Article IV hereof, including injury or damage to North Western's own employees and property, but excepting injury or damage to Authority's own employees and property, regardless of whether any such Loss or Damage is caused or contributed to by the negligence of Authority, its officers, agents or employees, unless the Authority's trains, engines, cars, buses, other vehicles or equipment encroach upon a spur or industry track at the time of Loss or Damage.

2.3 After Authority commences to construct a Transportation System, or prior thereto during any period of inspection or survey within the Initial Railroad Easement, and thereafter following completion of such Transportation System and relocation by North Western of its train operations to the area of the Permanent Railroad Easement, each party assumes all risk of Loss or Damage occurring on or about the Transportation System to its Sole Employees and Sole Property, and to third persons and their property, by reason of the use of the Transportation System by any engine, car, train, bus, other vehicle or equipment of such party in all respects as if such party had been in the exclusive use and control of the Transportation System, regardless of cause, excepting only Loss or Damage caused by the sole negligence of the Sole Employees of the other party. Except as aforesaid, each party agrees to save the other party harmless from Loss or Damage caused by the sole negligence of its Sole Employees. The parties may at their option and expense obtain public liability insurance to indemnify themselves from any liability they may have to third parties or to each other.

2.4 Notwithstanding anything in this Agreement to the contrary, in case of collision occurring on the Transportation System between trains, engines, cars, buses, other vehicles or equipment operated by the respective parties which causes Loss or Damage involving the Sole Property or Sole Employees of each of the parties hereto, the party whose Sole Employees are alone at fault shall be solely responsible for and shall settle for and pay the entire Loss or

Damage caused thereby, or, if caused by the fault of the Sole Employees of both parties hereto, each party hereto shall bear and pay for all Loss or Damage which its Sole Employees and Sole Property may have suffered as a result thereof, and each party shall bear the percentage of Loss or Damage for which it is responsible to third parties.

2.5 Each party hereto shall pay all Loss or Damage for which such party shall be liable under the provisions of this Agreement, and shall indemnify and save harmless the other party against such Loss or Damage, including any such damages in any court action. Each party hereto shall have the right to settle, or cause to be settled for it, all claims for Loss or Damage for which such party shall be liable under the provisions of this Agreement, and to defend or cause to be defended all suits for the recovery of any such Loss or Damage.

2.6 Each party shall give the other prompt written notice of any and all claims or suits arising from the operations on or about the Initial Railroad Easement or the Permanent Railroad Easement and/or the Transportation System.

Section 3. REVIEW OF AGREEMENT

3.1 Authority and North Western will meet and review this Agreement for the purpose of considering modifications thereto which may become necessary or desirable at the following times:

- a. When Authority notifies North Western of its intention to proceed with the development and construction of the Transportation System; and
- b. Within six months following the commencement of North Western's operation under the Permanent Railroad Easement; and
- c. Upon termination of Initial Railroad Easement or of Permanent Railroad Easement.

Section 4. AFFIRMATIVE ACTION

4.1 The parties agree that they will not discriminate against any person based upon race, color, creed, age, sex or national origin in the performance of any of their respective duties, obligations or rights under this Agreement. The parties agree to observe all affirmative action laws and regula-

tions of the State of Minnesota and of the United States of America as they may apply to performance under this Agreement from time to time.

Section 5. LAWS GOVERNING

5.1 This Agreement shall be governed, and the parties agree to be bound, by the laws of the State of Minnesota; and the parties agree to comply with or abide by all laws governing their respective operations in the State of Minnesota.

Section 6. LABOR RELATIONS

6.1 North Western and Authority each shall be responsible for conducting their own labor relations with any labor organization either representing or seeking representation among either's employees, and each shall regulate or seek to adjust all disputes that may arise with respect to their employees without involving the other party. Either party may freely enter into any contract with any labor organization representing or seeking representation among its own employees. Neither party shall obligate the other party to its employees or to any union representing its employees. Each party shall give written notice to the other of any labor dispute that prevents or threatens to prevent timely performance under this Agreement, including all relevant information concerning the dispute that may impact upon this Agreement.

Section 7. INDEPENDENT CONTRACTOR

7.1 North Western and Authority hereby declare that they are engaged in independent businesses, and agree that in the performance of this Agreement their actions are as independent contractors and not as an employee of either; nor are any of their respective employees considered at any time an employee of the other. North Western has and hereby retains full control of its business in the performance of this Agreement and full control of all the employment, compensation and discharge of all employees of North Western assisting in its performance hereunder. North Western and Authority each shall be fully responsible for all matters relating to payment of their employees, including compliance with Social Security, Railroad Retirement, withholding taxes and all other laws and regulations governing such matters. North Western and Authority each shall be responsible for their own acts and those of their agents, offi-

cers, employees, lessees, and contractors during the term of this Agreement.

Section 8. RELOCATION OF NORTH WESTERN THROUGH TRAIN OPERATIONS TO THE TRACKS OF THE MILWAUKEE ROAD.

8.1 Subject to the provisions of Exhibit A, if at any time during the existence of this Agreement North Western shall acquire the Core Properties of the Milwaukee Road or acquire other rights adequate to North Western to accommodate its existing or future through freight train operations, together with all necessary governmental approval therefor, or if North Western shall determine to relocate its through freight operations to other lines within its own system, North Western agrees to relocate such through train operations to such alternative route within six (6) months after the effective date of such acquisition and necessary governmental approval.

8.2 Effective upon completion of such relocation, this Agreement shall be superseded by a "New Agreement" for local rail service which the parties hereto shall promptly enter into. Said New Agreement shall include Article IV and other applicable provisions of this Agreement.

8.3 North Western's local rail service operations shall continue uninterrupted during all phases of such relocation and New Agreement negotiations.

8.4 North Western, its agents, licensees, contractors and assigns shall have the right to remove North Western-owned rails and ties (except street crossing protection devices which shall be left in place) in conjunction with North Western's relocation of its through train operations, and if not so removed within 180 days following any such relocation, shall be deemed abandoned by North Western without obligation, and shall become the Authority's property in place.

Section 9. LEASES BY AUTHORITY

9.1 So long as the Authority or any successor thereto uses the Initial Railroad Easement and the Permanent Railroad Easement for transit purposes and such use by the Authority does not interfere with the safe and efficient rail operations of North Western, such Easements shall be non-exclusive.

9.2 Authority may without the consent or approval of North Western, hire or subcontract with another entity, including another railroad company, to operate, manage and maintain light rail passenger service only over the Joint Line, provided that both Authority and such entity agree in writing with North Western to be bound by all of the terms and obligations contained in this Agreement.

9.3 The sale, lease or development of air rights by Authority, its lessees, vendees or joint venturers, (either or all, the "Developer") including plans, specifications, schedules and techniques, (together the "Plans"), shall be subject to approval by North Western as to compatibility with and safety of its railroad operations. Any ensuing uses shall not impair, hinder or interfere with North Western's freight operations, and shall provide for the safe control of emissions from trains, engines, cars, buses, and other vehicles or equipment operating below and/or adjoining such development . Such approval shall not be unreasonably withheld. North Western shall have 90 days from receipt of the "Plans" to give its written approval or written objections. During such North Western approval period, each party shall use its best efforts to cause the Developer to furnish both Authority and North Western with indemnification and insurance, including railroad protective liability insurance during the construction period, in an amount and for such liability as would reflect inherent risks of an air right development in such close proximity to a mass transit and railroad freight operation.

Section 10. ABANDONMENT BY NORTH WESTERN OF ITS OPERATIONS

10.1 Subject to approval of any government authority having jurisdiction, North Western may abandon its train operations and in such event shall have the right at any time upon thirty (30) days advance written notice to Authority to terminate this Agreement as of the date such abandonment becomes effective.

10.2 Upon termination of this Agreement through abandonment or otherwise, the parties hereto are relieved of any and all obligations hereunder, except for any obligations which may have accrued or which may have been incurred prior to the date of such termination, and except for the right of North Western, its agents, licensees, contractors and assigns, to remove North

Western-owned rails and ties (except street crossing devices which shall be left in place) in conjunction with North Western's abandonment of its train operations, and if not so removed within 180 days following the effective date of such abandonment, shall be deemed abandoned by North Western without obligation, and shall become the Authority's property in place.

Section 11. PUBLIC AUTHORITY AND PERMISSION

11.1 If it is determined that Interstate Commerce Commission or any other governmental authority is required to enable the lawful accomplishment of the objects and purposes of this Agreement, North Western shall be responsible for the obtaining of such authority.

11.2 Authority agrees to cooperate with North Western and to support any and all governmental actions to enable the lawful accomplishment of the objects and purposes of this Agreement.

11.3 The parties agree that so long as North Western operates as a common carrier on the Trackage (as defined in Articles II and III) or the Joint Line, the rights and remedies herein provided shall be and remain subject to the jurisdiction of the Interstate Commerce Commission in so far as such jurisdiction shall relate to the operations of North Western.

11.4 Authority agrees to comply with all governmental regulations applicable to Authority regarding its uses and operations under this Agreement.

Section 12. NOTICES - HOW GIVEN

12.1 All notices, approvals, consents, and designations to be served hereunder shall be served in writing and shall be deemed properly served if sent by registered or certified mail, postage prepaid, as follows:

- (a) If to North Western: Chicago and North Western Transportation
Company
One North Western Center
Chicago, Illinois 60606
Attn: Senior Vice President - Operations

(b) If to Authority: Hennepin County Regional Railroad Authority
2300-A Government Center
Minneapolis, Minnesota 55487
Attn: Executive Director

or to such other address as either party may designate by notice to the other party.

Section 13. SECTION HEADINGS

13.1 Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Section 14. AGREEMENT TO BE CONSTRUED LIBERALLY - NOT FOR THE BENEFIT OF THIRD PARTIES

14.1 This Agreement shall be construed liberally so as to secure each party hereto all the rights, privileges and benefits herein provided or manifestly intended. This Agreement, and each and every provision hereof, is for the exclusive benefit of the parties hereto and their successors and assigns. No party other than the parties hereto and their successors and assigns shall have any rights, interests, or benefits under this Agreement, nor be entitled to rely hereon, nor be deemed a third party beneficiary hereunder.

Section 15. LEGALITY

15.1 If any provision of this Agreement, or the application thereof to any person or circumstance, shall be determined to be invalid, illegal or unenforceable by statutory limitation or otherwise, such determination shall not affect the validity, legality or enforceability of any other provision of this Agreement, or the application thereof to any other person or circumstance, and the remaining provision or application of the remaining provision of this Agreement shall be enforced as if the invalid, illegal or unenforceable provision or application of such provision were not contained herein, and to that end the parties hereto agree that the provisions or applications of such provisions in this Agreement are and shall be severable.

Section 16. SUCCESSORS AND ASSIGNS

16.1 This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors and assigns.

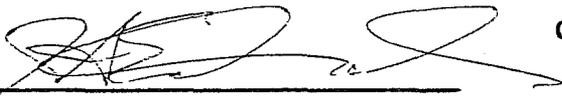
Section 17. OBLIGATION TO PROVIDE RAILROAD FREIGHT SERVICE

17.1 Nothing in this Agreement shall be construed to obligate Authority to provide railroad freight service.

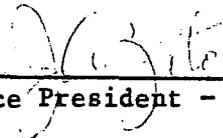
* * * *

ATTEST:

CHICAGO AND NORTH WESTERN TRANSPORTATION
COMPANY



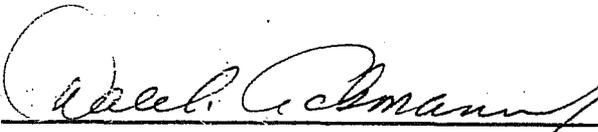
Assistant Secretary

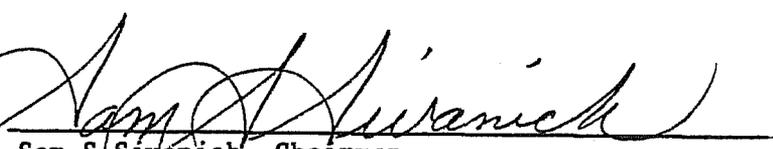


Sr. Vice President - Operations

ATTEST:

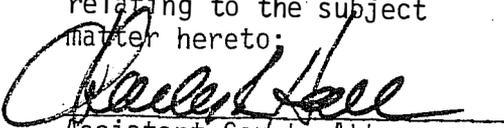
HENNEPIN COUNTY REGIONAL RAILROAD
AUTHORITY





Sam S. Sivanich, Chairman

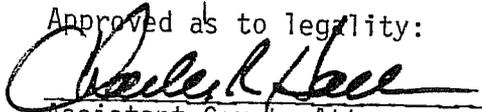
Upon proper execution, this Agreement will be legally valid and binding and upon date of approval is in compliance with all laws relating to the subject matter hereto:



Assistant County Attorney

Date: 5-1-84

Approved as to legality:



Assistant County Attorney

Date: 5-1-84

**December 31, 1990 Operating Agreement
Chicago and Northwestern Transportation Company**

OPERATING AGREEMENT

THIS AGREEMENT, made and entered into this 31 day of December, 1990, by and between CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation, hereinafter sometimes called "North Western," and HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY, a political subdivision and local government unit of the State of Minnesota, hereinafter sometimes called the "Authority."

WITNESSETH:

WHEREAS, by separate deed dated May 1, 1984, the Authority purchased from North Western its land, bridges, and buildings between Minneapolis and Hopkins, Minnesota, as more fully described in said deed; and

WHEREAS, said deed provides certain easements for the continued railroad operations of North Western between Minneapolis and Hopkins, Minnesota, and the parties set forth terms and conditions of operations by North Western and the Authority in an Agreement dated May 1, 1984; and

WHEREAS, certain changes have occurred in the plans of the Authority and the parties now desire to revise and change the terms and conditions of operations by North Western in accordance with the revised plans of the Authority.

NOW, THEREFORE, the parties hereto, intending to be legally bound agree as follows:

Section 1 - Definitions

For the purpose of this Agreement only, the following definitions and terms shall apply:

1.1 "Additions" shall mean work projects and improvements the cost of which is chargeable in whole or in part to Property Accounts.

1.2 "Agreement" shall mean this Agreement dated December 31, 1990.

1.3 "CPI Index" shall mean the index number of the Consumer Price Index for all items, Twin Cities Area, as published by the United States Department of Labor, Bureau of Labor Statistics.

1.4 "Deed" shall mean the deed dated May 1, 1984, by which North Western conveyed to the Authority certain land, bridges, and buildings between Minneapolis, Minnesota, and Hopkins,

Minnesota, a copy of said Deed being marked Exhibit "A" attached hereto, and by reference herein made a part hereof.

1.5 "Freight Railroad Easement" shall mean the easement described as the Initial Railroad Easement in Exhibit "A" to this Agreement, providing for the continuation of North Western's present operation of local common carrier freight railroad service and the use of property owned by the Authority as may be necessary for said railroad operations, including use of the existing roadbed, bridges, and other existing railroad facilities.

1.6 "Loss or Damage" includes any and all claims, liabilities, damages, costs, judgments, and expenses (including reasonable attorneys' fees and expenses) of every character incident to loss or destruction of or damage to property and injury to or death of persons, arising upon or as a result of any operations conducted under the terms of this Agreement.

1.7 "Property Accounts" shall mean the accounts as designated by the applicable Interstate Commerce Commission classification for railroad companies currently in effect from time to time.

1.8 "Sole Employees" and "Sole Property" shall mean employees, agents, contractors, passengers, invitees, railroad and motor vehicle equipment, including lading, and other equipment of each of the parties or their agents or contractors while engaged in, or about to engage in, maintaining, using, operating, constructing, repairing, renewing, replacing and improving the trackage in the Freight Railroad Easement, or in switching or handling railroad cars of the respective parties hereto. With respect to the Authority, the employees and property engaged in construction of the Transportation System and any of the Authority's lessees and property of its lessees, its and their employees, agents, invitees, and contractors, and their property shall, for purposes of this definition, be deemed the Sole Employees and Sole Property of the Authority.

1.9 "Soo Line" shall mean the Soo Line Railroad Company, its lessees, assigns and any successor or successors thereto.

1.10 "Taxes" shall mean lawfully imposed real estate taxes and assessments.

1.11 "Trackage" shall mean trackage owned by North Western and located upon the Freight Railroad Easement.

1.12 "Transportation System" shall mean a passenger transit system to be built by the Authority in the vicinity of the Freight Railroad Easement.

Section 2 - Grant of Rights

2.1 Pursuant to the Freight Railroad Easement contained in Exhibit A and subject to the terms and conditions of this Agreement, the Authority hereby confirms and grants to North Western the right to continue its present railroad operations and to continue to meet its common carrier obligations at North Western's sole cost and obligation, on its solely owned tracks located upon said Freight Railroad Easement between Minneapolis and Hopkins, Minnesota, including the right to:

2.1.1 Exclusively serve any interchange, industry, team or house track existing along the Trackage on the date of this Agreement or as otherwise may be required by law, except to the extent Soo Line, its successors and assigns are authorized to serve any such point as of the date of this Agreement; and

2.1.2 Permit or admit a third party only for bridge rights, interchange and emergency detour purposes to use all or any portion of said trackage and subject to the right of the Authority in its sole discretion to grant third parties the right to operate over the Freight Railroad Easement for any purpose except those set forth in 2.1.1 above, so long as such operations do not unreasonably interfere with North Western operations; and

2.1.3 Construct tracks connecting to or crossing said Trackage, subject to provisions of this Agreement, and the prior written approval by the Authority, which approval shall not be unreasonably withheld and shall be deemed given if required by Law.

Section 3 - Construction, Repairs, Maintenance, Additions, Operations, Control of the Trackage

3.1 North Western shall have the exclusive direction and control of said Trackage, at its sole cost and expense, subject to the provisions of Section 3.5 of this Agreement. North Western shall perform all construction, derailment or wreck clearing, maintenance, repair and renewal of the Trackage, including any Additions thereto it may deem necessary or desirable for the safe and efficient operation of all trains.

3.2 The management and operation of the Trackage shall be under the direction and control of North Western. North Western shall have the power to change its operations, management and operating practices on or over the Trackage as in its judgment may be necessary, expedient or proper for the operations herein intended, consistent with the provisions of this Agreement,

having due regard for the effect upon passenger transit operations contemplated by the Authority.

3.3 North Western shall have the right to operate trains, engines and cars over the Trackage for its sole benefit, and shall not, except as provided in Section 2.1.2 and Section 3.5 of this Agreement without prior written permission by the Authority, which permission shall not unreasonably be withheld, permit any third party to operate trains, engines or cars over the Trackage.

3.4 North Western shall, at its sole cost and expense, determine all means and employ all persons necessary to operate, maintain, repair and renew the Trackage, as well as crossings, crossing signals, ditches, bridges, and communication lines within the Freight Railroad Easement which may be necessary for its use of the Trackage.

3.5 North Western agrees that Soo Line shall be afforded freely assignable bridge trackage rights over the Freight Railroad Easement at a rate of \$7.50 per train mile and subject to a trackage rights agreement containing terms mutually acceptable to Soo and North Western, including usual joint facility liability provisions and subject to adjustment for inflation based on Association of American Railroads' ("AAR") standards usually applied for such purpose. If such an agreement is entered into after December 31, 1991, the initial train mile rate will be adjusted in accordance with said AAR Railroad Cost Index standards. Any connections, signals or trackage required for Soo Line use will be at the sole installation and maintenance and operating expense of the Soo Line. Assignability of Soo Line trackage rights shall be subject only to a showing of financial responsibility by the Assignee satisfactory to North Western and the Authority.

3.6 The Authority shall not pay the expenses of any public crossing of the Trackage which may be opened or improved, including all expenses of crossing protection, unless such crossings are requested by the Authority or opened or improved in conjunction with the development of any real estate described in Exhibit A. The Authority shall not be responsible for any expenses incurred by North Western as a result of activities of third parties not authorized by the Authority occupying or otherwise interfering with the Freight Railroad Easement.

3.7 The Authority reserves the right to upgrade the Trackage through and upon the Freight Railroad Easement to Federal Railroad Administration Class 2 standards at its sole expense. In such event, North Western agrees to perform all necessary upgrade work to the Trackage pursuant to a separate agreement to be entered into between the parties which will provide for progressive payment by the Authority to the North Western for direct labor costs and expenses, fringe benefits and

other additives attributable to labor including supervisory expense, cost of materials and material handling, outside contractors, and such other items as may be agreed by the parties. It is the intention of the parties that North Western be reimbursed for costs it incurs attributable to the upgrade project and no more. The Authority may select the party or parties to perform the upgrade work only in the event that North Western is unwilling or unable to perform said work.

Section 4 - Effective Date - Term

4.1 This Agreement shall become effective December 31, 1990, and shall continue in full force and effect until terminated by North Western's lawful abandonment of freight railroad operations between Minneapolis and Hopkins, Minnesota, or North Western's assignment of said operating rights to another common carrier by rail.

4.2 Upon termination of this Agreement under the provisions of Section 4.1, the parties shall be relieved of all rights and obligations hereunder except for any rights or obligations which may have been incurred or accrued prior to said termination.

Section 5 - Local Rail Service - Payment of Rental by North Western

5.1 For so long as North Western operates over the Freight Railroad Easement or is required to serve those industries located on or adjoining the property conveyed in the Deed, the Authority hereby leases to North Western, at a rental rate of thirteen cents (\$0.13) per square foot to be paid to the Authority annually in advance, for the use of that right of way required to serve such industries and for other railroad purposes, all of said right of way being described on Exhibit B, attached hereto and by reference herein made a part hereof, and agreed to contain 46,790 square feet.

5.2 For so long as North Western or its lessees, successors or assigns operate over the Freight Railroad Easement, North Western will pay an annual rental of \$20,000 to the Authority for all other property utilized by North Western in the Freight Railroad Easement that is not otherwise subject to rental under Section 5.1 above.

5.3 The rentals set forth in Sections 5.1 and 5.2 above shall be subject to adjustment every three years starting January 1, 1994, based upon changes, if any, in the CPI Index. Rentals shall be increased or decreased by a fraction, the denominator being the CPI Index on January 1, 1991, and the numerator being the CPI Index on January 1, 1994, and this fraction shall be multiplied by the annual rental for the prior period to determine the rental for the succeeding three year period.

5.4 Notwithstanding anything herein to the contrary, North Western may, upon thirty (30) days' written notice to the Authority, release from time to time areas no longer required by North Western to be leased hereunder, whereupon the rental under Section 5.1 shall be adjusted proportionately to reflect the lesser area and the Authority shall refund to North Western all prepaid rentals for the areas which have been so released.

5.5 North Western shall have the right to enter into its standard track agreement with such industries covering the local rail service, so long as no provision in said standard track agreement shall countermand any provision of the Agreement.

5.6 Nothing in this Agreement shall prevent North Western from obtaining partial reimbursement from other users of the Trackage for land use rental paid pursuant to Sections 5.1 and 5.3.

Section 6 - Taxes - Payments

6.1 The Authority agrees to pay promptly to taxing authority when due all Taxes, if any, duly levied on the property described in the Deed with respect to the Authority's ownership, leases, air rights development, and/or operations. North Western agrees to pay promptly to taxing authority when due all Taxes, if any, with respect to its use or operations duly levied, to the extent North Western's property right has been separately assessed by the appropriate assessing authority to North Western while conducting operations over the Freight Railroad Easement. To the extent North Western's property right is not so separately assessed to North Western, but the underlying fee in the Freight Railroad Easement is assessed as railroad operating property and would be exempt except for North Western's use in operations, then North Western agrees to pay all such taxes duly levied while conducting operations over the Freight Railroad Easement. Otherwise the Taxes on such property shall be paid by each of the parties. North Western reserves the right to protest to the taxing authority any such Taxes it deems to be unfair or excessive and may in good faith litigate and settle with the taxing authority any such protested amount.

6.2 The Authority shall pay without reimbursement from North Western all Taxes, if any, attributable to any passenger transportation system installed by or at the direction of the Authority.

6.3 If at any time North Western abandons or otherwise ceases to conduct railroad operations over the Freight Railroad Easement, it shall have no further obligation to pay rental to the Authority and shall have no claim against the Authority for any payment of any kind except as may have arisen prior to such abandonment or cessation by reason of other provisions of this

Agreement. In the event North Western abandons or ceases operations over the Freight Railroad Easement, it shall be entitled to remove its railroad tracks and appurtenant appliances or, at the sole discretion of the Authority, receive payment for railroad tracks and appurtenant appliances then owned by North Western in an amount not to exceed net liquidation value less the value of additions and betterments previously provided at the expense of the Authority. If any railroad is still operating over the Freight Railroad Easement at the time of abandonment or cessation of operations by North Western, North Western shall immediately assign to the Authority without additional consideration its rights under any agreement or agreements with said railroad or railroads governing operations over the Freight Railroad Easement, and the Authority shall be required to purchase North Western-owned railroad tracks and appurtenant appliances from North Western at net liquidation value less the value of additions and betterments previously provided at the expense of the Authority, with payment to be made within sixty (60) days from the effective date of North Western's abandonment.

6.4 North Western shall pay to the Authority at the Office of the Treasurer of the Authority or at such other location as the Authority may from time to time in writing designate, all the compensation and charges of every name and nature which in and by this Agreement North Western is required to pay in lawful money of the United States. Bills shall be rendered by the Authority and shall contain a statement of the amount due on account of the expenses incurred during the billing period. All bills rendered pursuant to this Agreement shall be due and payable within forty-five (45) days of the receipt thereof.

Section 7 - Liability

7.1 While conducting operations over the Freight Railroad Easement, North Western agrees to indemnify and hold harmless the Authority from Loss or Damage occurring within the Freight Railroad Easement, including Loss or Damage to North Western's own employees and property (but excepting Loss or Damage to the Authority's own employees and property) unless such Loss or Damage is caused or contributed to by the negligence of the Authority, its officers, agents, or employees.

7.2 North Western agrees to indemnify and save harmless the Authority from Loss or Damage occurring within the additional lease areas created by Section 5.1 hereof, including injury or damage to North Western's own employees and property (but excepting injury or damage to the Authority's own employees and property) unless such Loss or Damage is caused or contributed to by the negligence of the Authority, its officers, agents or employees, or unless the Authority's railroad or motor vehicle equipment or other equipment encroach upon a spur or industry track at the time of Loss or Damage.

7.3 Notwithstanding anything in this Agreement to the contrary, in case of collision occurring on the Transportation System involving railroad cars, locomotives, rail passenger cars, motor vehicles, other vehicles or equipment operated by the respective parties which causes Loss or Damage involving the Sole Property or Sole Employees of each of the parties hereto, the party whose Sole Employees are alone at fault shall be solely responsible for and shall settle for and pay the entire Loss and Damage caused thereby, or, if caused by the fault of the Sole Employees of both parties hereto, each party hereto shall bear and pay for all Loss or Damage which its Sole Employees and Sole Property may have suffered as a result thereof, and each party shall bear the percentage of Loss or Damage for which it is responsible to third parties.

7.4 Each party hereto shall pay all Loss or Damage for which such party shall be liable under the provisions of this Agreement, and shall indemnify and save harmless the other party against such Loss or Damage, including any such damages in any court action. Each party hereto shall have the right to settle, or cause to be settled for it, all claims for Loss or Damage for which such party shall be liable under the provisions of this Agreement, and to defend or cause to be defended all suits for the recovery of any such Loss or Damage.

7.5 Each party shall give the other prompt written notice of any and all claims or suits arising from operations on or about the Freight Railroad Easement.

Section 8 - Affirmative Action

8.1 The parties agree that they will not discriminate against any person based upon race, color, creed, age, sex or national origin in the performance of any of their respective duties, obligations or rights under this Agreement. The parties agree to observe all affirmative action laws and regulations of the State of Minnesota and of the United States of America as they may apply to performance under this Agreement from time to time.

Section 9 - Laws Governing

9.1 This Agreement shall be governed, and the parties agree to be bound, by the laws of the State of Minnesota; and the parties agree to comply with or abide by all laws governing their respective operations in the State of Minnesota.

Section 10 - Labor Relations

10.1 North Western and the Authority each shall be responsible for conducting their own labor relations with any labor organization either representing or seeking representation

among either's employees, and each shall regulate or seek to adjust all disputes that may arise with respect to their employees without involving the other party. Either party may freely enter into any contract with any labor organization representing or seeking representation among its own employees. Neither party shall obligate the other party to its employees or to any union representing its employees. Each party shall give written notice to the other of any labor dispute that prevents or threatens to prevent timely performance under this Agreement, including all relevant information concerning the dispute that may impact upon this Agreement.

Section 11 - Independent Contractor

11.1 North Western and the Authority hereby declare that they are engaged in independent businesses, and agree that in the performance of this Agreement their actions are as independent contractors and not as an employee of either; nor are any of their respective employees considered at any time an employee of the other. North Western has and hereby retains full control of its business in the performance of this Agreement and full control of all the employment, compensation and discharge of all employees of North Western assisting in its performance hereunder. North Western and the Authority each shall be fully responsible for all matters relating to payment of their employees, including compliance with Social Security, Railroad Retirement, withholding taxes and all other laws and regulations governing such matters. North Western and the Authority each shall be responsible for their own acts and those of their agents, officers, employees, lessees, and contractors during the term of this Agreement.

Section 12 - Leases by the Authority

12.1 In addition to parties provided for in Section 3.5, the Authority shall have the right to request North Western to permit bridge operation by one or more third parties upon and over the Freight Railroad Easement at any time, which request shall not unreasonably be denied by North Western. If a third party is admitted, said third party or third parties shall pay rental to North Western for use of North Western trackage at the rate of \$7.50 per train mile or such other rate as may be agreed between North Western and said third party or parties. The North Western may enter into agreements with said third party or parties under terms normally found in railroad joint facility agreements, including normal provisions with respect to operating, liability and cost adjustments. Such agreements will be assignable subject to the approval of the North Western, which approval will not unreasonably be withheld. Any trackage required to be added or modified in order to provide access for any such third party shall be at the sole expense of said third party. All such third parties may be charged a proportionate

share of the rental paid by North Western under Sections 5.2 and 5.3 of this Agreement.

12.2 The Authority may, without the consent or approval of North Western, hire or subcontract with another entity, including another railroad company, to operate, manage and maintain light rail passenger service over the Passenger Transportation System.

12.3 The sale, lease or development of air rights by the Authority, its lessees, vendees or joint ventures (either or all, the "Developer"), including plans, specifications, schedules and techniques (together the "Plans"), shall be subject to approval by North Western as to compatibility with and safety of its railroad operations. Any ensuing uses shall not impair, hinder or interfere with North Western's freight operations, and shall provide for the safe control of emissions from trains, engines, cars, buses, and other vehicles or equipment operating below and/or adjoining such development. Such approval shall not be unreasonably withheld. North Western shall have ninety (90) days from receipt of the "Plans" to give its written approval or written objections. During such North Western approval period, each party shall use its best efforts to cause the Developer to furnish both the Authority and North Western with indemnification and insurance, including railroad protective liability insurance during the construction period, in an amount and for such liability as would reflect inherent risks of an air right development in such close proximity to a railroad freight operation.

Section 13 - Abandonment by North Western of Its Operations

13.1 Subject to approval of any government authority having jurisdiction, North Western may abandon its train operations and in such event shall have the right at any time upon thirty (30) days' advance written notice to the Authority to terminate this Agreement as of the date such abandonment becomes effective.

13.2 Upon termination of this Agreement through abandonment or otherwise, the parties hereto are relieved of any and all obligations hereunder, except for any obligations which may have accrued or which may have been incurred prior to the date of such termination, and except for the right of North Western, its agents, licensees, contractors and assigns, to remove North Western-owned rails and ties (except street crossing devices which shall be left in place) in conjunction with North Western's abandonment of its train operations, and if not so removed within one hundred eighty (180) days following the effective date of such abandonment, shall be deemed abandoned by North Western without obligation, and shall become the Authority's property in place. North Western shall give notice to the Authority of its intention to remove North Western-owned rails and related track materials prior to commencing removal of same. In such event,

the Authority at its sole option may declare that the railroad trackage is to be left in place and sold to the Authority at net liquidation value, less the value of any additions or betterments previously provided at the expense of the Authority. In the event of continued railroad operations over the Freight Railroad Easement after North Western abandonment, the Authority shall be required to purchase the Trackage in accordance with the preceding sentence.

Section 14 - Public Authority and Permission

14.1 If it is determined that Interstate Commerce Commission or any other governmental authority is required to enable the lawful accomplishment of the objectives and purposes of this Agreement, North Western shall be responsible for the obtaining of such authority.

14.2 The Authority agrees to cooperate with North Western and to support any and all governmental actions to enable the lawful accomplishment of the objectives and purposes of this Agreement.

14.3 So long as North Western operates as a common carrier on the Trackage located upon the Freight Railroad Easement, the rights and remedies herein provided shall be and remain subject to the jurisdiction of the Interstate Commerce Commission insofar as such jurisdiction shall relate to the operations of North Western.

14.4 The Authority agrees to comply with all governmental regulations applicable to the Authority regarding its uses and operations under this Agreement.

Section 15 - Notices

15.1 All notices, approvals, consents, and designations to be served hereunder shall be served in writing and shall be deemed properly served if sent by registered or certified mail, postage prepaid, as follows:

If to North Western:	Chicago and North Western Transportation Company One North Western Center Chicago, Illinois 60606 Attn: Senior Vice President - Operations
----------------------	---

If to the Authority: Hennepin County Regional
Railroad Authority
Southwest Street Level
Hennepin County Government Center
Minneapolis, Minnesota 55487
Attn: Executive Director

or to such other address as either party may designate by notice to the other party.

Section 16 - Section Headings

16.1 Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Section 17 - Agreement to be Construed Liberally

17.1 This Agreement shall be construed liberally so as to secure each party hereto all the rights, privileges and benefits herein provided or manifestly intended. This Agreement, and each and every provision, is for the benefit of the parties and their successors and assigns except to the extent trackage rights are afforded to the Soo Line or to third parties. North Western agrees that Soo Line shall have an absolute right to operate trains over any and all portions of the Freight Railroad Easement necessary to reach interchange connections with Burlington Northern or Burlington Northern's successors and assigns for purposes of operating trains of Soo Line and its existing tenants between points to the West and points to the East of the Freight Railroad Easement.

Section 18 - Legality

18.1 If any provision of this Agreement, or the application thereof to any person or circumstance, shall be determined to be invalid, illegal or unenforceable by statutory limitation or otherwise, such determination shall not affect the validity, legality or enforceability of any other provision of this Agreement, or the application thereof to any other person or circumstance, and the remaining provision or application of the remaining provision of this Agreement shall be enforced as if the invalid, illegal or unenforceable provision or application of such provision were not contained herein, and to that end the parties agree that the provisions or applications of such provisions in this Agreement are and shall be severable.

Section 19 - Successors and Assigns

19.1 This Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors and assigns.

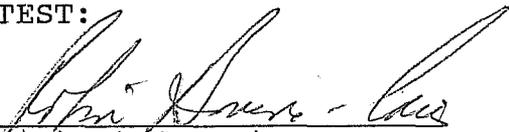
Section 20 - Obligation to Provide Railroad Freight Service

20.1 Nothing in this Agreement shall be construed to obligate the Authority to provide railroad freight service.

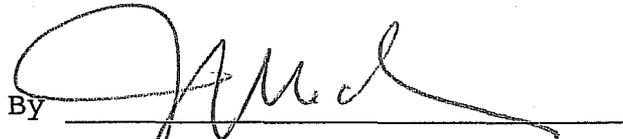
Section 21 - Termination of Prior Agreement

21.1 The Operating Agreement dated May 1, 1984, between the Authority and North Western is hereby canceled in its entirety, except with respect to any rights that may have arisen thereunder prior to December 31, 1990. North Western agrees to execute correction deeds, if any, as may be necessary or appropriate to reflect the changes in plans for use of land conveyed by the Deed.

ATTEST:


Assistant Secretary

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

BY 
Its VICE PRESIDENT - TRANSPORTATION

ATTEST:

HENNEPIN COUNTY REGIONAL
RAILROAD AUTHORITY

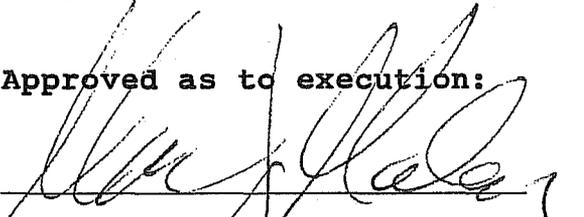
BY 
Its Chairman

and

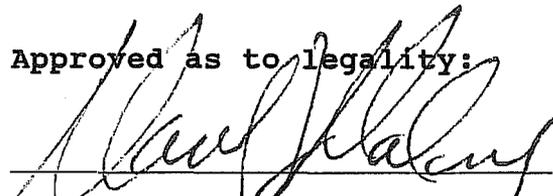
BY 
Its Deputy Executive Director

APPROVED AS TO REAL ESTATE
Richard B. Taylor
VICE PRESIDENT
CHICAGO & NORTH WESTERN TRANSPORTATION CO

Approved as to execution:


Assistant County Attorney

Approved as to legality:


Assistant County Attorney

Dated: 1-9-91

Dated: 12-28-90

EXHIBIT B

Soo Line Connector

That certain connecting track, labeled as I.C.C. 241 - M & St. L., and its westerly extension found on Right of Way and Track Map, Minn.-1A, Sheet 13, St. Louis Park, lying approximately between stations 323+25 to 324+20, containing approximately 3,000 square feet.

McGarvey Coffee

That certain spur track, found on Right of Way and Track Map, Minn.-1A, Sheet 15, St. Louis Park, lying approximately between stations 370+90 and 381+40, containing approximately 17,800 square feet.

Red Owl

That certain spur track, found on Station Map, Minn.-1B, S-1B, Hopkins, lying approximately between stations 485+30.5 and 492+05, containing approximately 13,350 square feet.

Super Value (Merchants Refrigeration)

That certain spur track found on Right of Way and Track Map, Minn.-1A, Sheet 18 and Minn.-1B, S-1A, St. Louis Park - Hopkins, lying approximately between stations 453+03 and 455+44, containing approximately 2,520 square feet.

Hopkins Depot Team Track

That certain team track, labeled I.C.C. 5 shown on the Station Map, Minn.-1B, S-1C, Hopkins, lying approximately between stations 507+25 and 513+70, containing approximately 10,120 square feet.

**July 26, 1993 Trackage Rights Agreement Exhibit A
Chicago and Northwestern Transportation Company**

EXHIBIT A

TCW COUNTERPART

CHICAGO NORTHWESTERN ABANDONED THEIR
TRACKAGE RIGHTS IN THE 1990S
TRACKAGE RIGHTS AGREEMENTS
HCPRA / CHICAGO AND NORTHWESTERN

THIS AGREEMENT, made and entered into this 26th day of July, 1993, by and between the **CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY**, a Delaware corporation (hereinafter sometimes referred to as "CNW"), and the **TWIN CITIES & WESTERN RAILROAD COMPANY**, a Minnesota corporation (hereinafter sometimes referred to as "TCW").

W I T N E S S E T H :

WHEREAS, pursuant to an Operating Agreement dated December 31, 1990 (the "Operating Agreement") between CNW and Hennepin County Regional Railroad Authority (hereinafter referred to as the "Authority"), CNW operates a line of railroad between Hopkins, Minnesota and Cedar Lake, Minnesota, a copy of said Agreement being marked Exhibit "A" attached hereto and by reference herein made a part hereof; and

WHEREAS, the Authority has now requested CNW grant overhead trackage rights to the TCW upon and over CNW solely owned trackage in accordance with said Operating Agreement; and

WHEREAS, CNW is agreeable to such aforesaid operation by the TCW upon CNW trackage but only upon the terms and conditions hereinafter contained.

NOW, THEREFORE, the parties hereto hereby agree as follows:

SECTION 1 - JOINT TRACKAGE - DEFINED

1.1 The term "Joint Trackage" as used herein shall refer to (1) that portion of CNW's railroad between Point "A" at MP 13.7 and Point "B" at MP 16.2 as shown in red color on the print dated April 9, 1993 marked Exhibit "B", attached hereto and by reference made a part hereof; (2) all sidings now existent or hereafter constructed along the Joint Trackage to be jointly used hereunder; and (3) such other appurtenances and facilities, signals, switches, jointly used connecting tracks, interlocking devices and plants, signal and communication lines, and all improvements and betterments thereof and additions thereto, wherever located, as are required for the operation of the parties hereto over the Joint Trackage hereunder.

1.2 It is understood and agreed to by the parties hereto that as of the date of this agreement the length of the Joint Trackage as defined herein is 2.5 miles.

SECTION 2 - GRANT OF RIGHTS

2.1 Subject to the terms and conditions herein contained, CNW grants to TCW only for non-exclusive bridge rights the use of the Joint Trackage for the operation of its freight trains, locomotives, cabooses and cars in its account over the Joint Trackage in common with CNW and such other railroad company or companies as CNW has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or any part of the Joint Trackage, it being understood and agreed that TCW shall not have the right to:

- (a) set out, pick up or store cars or switch any existing or future industries upon the Joint Trackage, or any part thereof, except as necessary for handling locomotives, cabooses or cars bad ordered en route; or
- (b) serve any industry, team or house track now existing along the Joint Trackage, nor shall it have the right to serve any industry, team or house track hereafter located along the Joint Trackage; or
- (c) permit or admit any third party to the use of all or any portion of the Joint Trackage, nor under the guise of doing its own business, contract or make any agreement to handle as its own trains, locomotives, cabooses or cars over or upon the Joint Trackage, or any portion thereof, the trains, locomotives, cabooses, or cars of any such third party which in the normal course of business would not be considered as the trains, locomotives, cabooses or cars of TCW; or
- (d) construct tracks connecting to the Joint Trackage.

SECTION 3 - CONSTRUCTION, MAINTENANCE AND OPERATION OF CONNECTING TRACKS

3.1 In the event any connecting track, track changes and related signals, safety devices, telephones, telephone boxes or other communication equipment, other facilities and appurtenances, hereinafter referred to collectively as "Additional Facilities", are required to permit the entrance to or exit from the Joint Trackage by the trains, engines and cars of TCW, that part of the Additional Facilities as shall lie on the right-of-way of CNW shall be constructed, installed, changed, maintained, operated, repaired and renewed by CNW at the sole cost and expense of TCW. The balance of any such Additional Facilities shall be constructed, installed, changed, maintained, operated, repaired and renewed by TCW at its sole cost and expense.

3.2 The term "cost and expense", as used herein, shall also include, but shall not be limited to, any taxes or assessments, general or special, levied against either party hereto by any governmental agency because of the existence of any Additional Facilities.

3.3 The normal position of any connecting track switch shall be for continuous movement by the trains of CNW over the Joint Trackage. Employees of TCW when entering and leaving the Joint Trackage upon receiving proper authority from CNW's Dispatcher or other authorized person, shall unlock and open said switch and after movement of TCW's train through said switch has been completed, the switch shall be relined to its normal position and securely locked by said employees of TCW.

3.4 Notwithstanding any agreement for payment, the ownership of any Additional Facilities for the purpose of maintenance and operation under the terms and conditions of this agreement, shall be vested in the party constructing, installing or changing same. During the term of this agreement any part of said Additional Facilities, with consent of the other party, may be removed by the party so constructing or installing same. The materials salvaged therefrom and the cost and expense therefor shall be distributed between the parties in the same proportion as each party shared in the cost and expense of constructing, installing or changing same.

SECTION 4 - CONSTRUCTION, REPAIRS, MAINTENANCE, ADDITIONS AND BETTERMENTS, OPERATIONS, CONTROL OF THE JOINT TRACKAGE

4.1 The construction, maintenance, repair and renewal of the Joint Trackage shall be under the exclusive direction and control of CNW. CNW shall make any additions and betterments to the Joint Trackage which CNW deems necessary or appropriate for the safe, efficient and economical use of the Joint Trackage by the parties. Any such additions and betterments shall, as constructed, become part of the Joint Trackage.

4.2 The management and operation of the Joint Trackage shall be under the exclusive direction and control of CNW. CNW shall have the unrestricted right to change the management and operations on and over the Joint Trackage as in its judgment may be necessary, expedient or proper; provided that any such change shall not materially interfere with TCW's right to use the Joint Trackage, and provided that any restrictions enforced by CNW apply equally against CNW and TCW.

4.3 CNW shall employ all persons necessary to operate, maintain, repair and renew the Joint Trackage. CNW shall be bound to use only reasonable and customary care, skill and diligence in the performance thereof. Notwithstanding any provisions of Section 8 hereof, TCW shall not have or make any claim against CNW for liability as defined in Section 8 hereof resulting from any defect in the Joint Trackage or any failure on the part of CNW to properly maintain or repair same; provided that if CNW shall fail to repair any such defect within a reasonable time after TCW has given CNW written notice specifying the defect and requesting that it be repaired, then TCW shall have the right to make the necessary repairs and CNW will reimburse TCW the entire cost thereof.

4.4 TCW, at its sole cost and expense, shall install and maintain upon its trains, locomotives, cabooses and cars such equipment or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of CNW, for operation of trains upon the Joint Trackage.

4.5 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, CNW shall, with reasonable diligence, restore the line for the passage of trains of the parties hereto. Except as provided in Section 8 hereof, neither party hereto shall have or make any claim against the other for any loss, damage, loss of business or expense of any kind resulting from such interruption or delay.

4.6 Each party shall be responsible for furnishing, at its own cost and expense, all labor, fuel and train supplies necessary for the operation of its own trains over the Joint Trackage.

4.7 The operation by TCW on or along the Joint Trackage shall at all times be in accordance with the rules, instructions and restrictions of CNW, but such rules, instructions, and restrictions shall be reasonable and fair between all parties using the Joint Trackage and shall not unjustly discriminate against any of them. CNW shall accommodate TCW trains with reasonable diligence and dispatch in a manner consistent with schedules established from time to time during the term of this agreement as may be mutually agreed to by the transportation officers of CNW and TCW. All rules, regulations and orders, and interpretations and applications thereof governing the movement of trains over the Joint Trackage shall be reasonable, fair and just between CNW and TCW and shall not discriminate against either of them, according equal priority to like classes of CNW and TCW trains.

4.8 TCW shall be responsible for all mileage allowances and car hire charges accruing on cars in TCW's account on the Joint Trackage and TCW shall report and pay same direct to the owners of such cars.

4.9 With respect to operation of trains, locomotives, cabooses and cars on and over the Joint Trackage, each party shall comply with all applicable laws, rules, regulations and orders promulgated by any governmental body or agency having jurisdiction, and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge, and all expenses and attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.10 All employees of TCW engaged in or connected with the operations of TCW's trains on or along the Joint Trackage shall be required to pass periodic examinations on the rules of CNW provided that with respect to such examinations, upon request of TCW, CNW shall qualify one or more of TCW's supervisory officers on said rules and such supervisory officer or officers so qualified shall examine all employees of TCW engaged in or connected with TCW's operations on or along the Joint Trackage. Pending qualification of train and engine crews of TCW, CNW shall furnish a pilot or pilots, at the expense of TCW, as deemed necessary by CNW to assist in operating trains of TCW over the Joint Trackage. For the purpose of Section 8 of this agreement, any such pilots furnished by CNW shall be deemed to be the sole employees of TCW.

4.11 If any employee of TCW shall neglect, refuse or fail to abide by CNW's rules, instructions or restrictions governing the operation on or along the Joint Trackage, CNW shall, in writing, so notify TCW. CNW shall have the right to require TCW to withhold any TCW employee from service on the Joint Trackage pending the result of formal investigation, if in CNW's sole opinion such employee shall have neglected, refused or failed to abide by CNW's rules, instructions or restrictions governing the operation on or along the Joint Trackage. Upon such notice presented in writing, CNW and TCW shall promptly hold a joint investigation in which all parties concerned shall participate and bear the expense for its officers, witnesses and employees. Notice of such investigation to TCW employees shall be given by TCW officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between TCW and its employees. If, in the judgment of CNW the conduct and result of such investigation warrants, such employee shall, upon written request by CNW be restricted by TCW from operating on the Joint Trackage, and TCW shall release and indemnify CNW from and against any and all claims and expenses because of such restrictions.

4.12 If any cars, cabooses or locomotives of TCW are bad ordered en route on the Joint Trackage and it is necessary that they be set out, such cars, cabooses or locomotives shall, after being promptly repaired, be promptly picked up by TCW. Unless otherwise agreed, CNW shall at TCW's expense furnish required labor and material and perform light repairs to make such bad ordered equipment safe for movement. In the event CNW shall perform any such repairs to freight cars in TCW's account, billing therefor shall be at rates prescribed in the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads, hereinafter called "Interchange Rules", in effect at the date of performance of the repairs and CNW shall prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules and CNW shall prepare and submit billing directly to and collect from TCW for handling line responsibility items as described under said Interchange Rules. If CNW shall perform repairs to TCW equipment other than freight cars, CNW shall prepare and submit billing directly to and collect from TCW as provided for in this agreement.

4.13 Should any locomotive, car or caboose in the train of either party be derailed or damaged while being run or operated upon or over the Joint Trackage, CNW shall pick up and remove same and the cost and expense thereof shall be treated as an item of expense to be borne and assumed by the parties hereto under the provisions of Section 8 of this agreement; provided, however, that the employees of TCW shall be permitted to rerail locomotives, cars and cabooses where no wrecking derrick or on-track equipment is required.

SECTION 5 - COMPENSATION AND BILLING

5.1 For and in consideration of the bridge rights herein granted, TCW shall pay to CNW, in addition to the expenses herein elsewhere provided, the rate of Seven dollars and fifty cents (\$7.50) per train mile for each train operated by TCW upon or over the Joint Trackage, or any portion thereof.

5.2 In computing charges, for the purpose of this Section 5, the rate of (\$7.50) per train-mile shall be multiplied by 2.5 miles, producing a charge of Eighteen dollars and seventy-five cents (\$18.75) for each train operated the entire length of the Joint trackage. If for any reason a partial movement is made, TCW shall pay the appropriate per train-mile charge for the number of miles actually operated upon the Joint Trackage.

5.3 Said rate of (\$7.50) shall be adjusted on July 1, 1992 and on each July 1 thereafter by utilization of the Annual Indices of Charge-Out Prices and Wage Rates (1977=100), Series RCR, included in the "AAR Railroad Cost Recovery Index", and supplements thereto, issued by the Association of American Railroads. In making such adjustment, the final "Material prices, wage rates and supplements combined (excluding fuel)" Index for the Western District for the calendar year 1990 shall be compared to the final Index for the calendar year immediately preceding the year in which such adjustment is to become effective. Said Train Mile Rate shall then be adjusted by the percentage of increase or decrease, as the case may be, in the Index of the year to be escalated as related to the year 1990, provided, however, that said Train Mile Rate shall never be less than (\$7.50). If the Association of American Railroads, or any successor organization or association, discontinues such Index, an appropriate substitute for determining in a similar manner the percentage of increase or decrease in the Train Mile Rate shall be agreed upon by the parties hereto.

5.4 Except as otherwise specifically provided for in this agreement, bills rendered pursuant hereto shall be prepared in conformance with the then current reasonable billing practices, procedures, rates, and schedules of CNW.

5.5 Within thirty (30) days after the close of a calendar month, TCW shall furnish to CNW's Manager of Billing a statement showing the number of trains operated upon or over the Joint Trackage during the preceding month. Upon receipt of said statement, CNW shall render a bill against TCW, which bill TCW hereby agrees to pay

within thirty (30) days after receipt thereof. Should TCW fail to render the aforementioned monthly train usage statement within the time specified, CNW shall have the right to estimate such train usage for the purpose of rendering a bill against TCW and any required adjustments thereto shall be made in a subsequent bill after receipt of the train movement statement from TCW.

5.6 The payment of bills rendered hereunder shall not be delayed or payment thereof refused because of minor errors which are not serious and important, but such bills shall be paid as rendered. The necessary correction and adjustment of all such errors shall be made on subsequent bills.

5.7 The records of each party hereto insofar as they pertain to matters covered by this agreement shall be open to representatives of either party for inspection during regular office hours.

5.8 It is expressly understood and agreed that the payments hereinabove to be made by TCW to CNW do not in any case include any cost or expense which may be incurred by CNW on account of loss of or damage to any property whatsoever, or injury to or death of any persons whomsoever arising out of or in connection with the operation by TCW of its freight trains, engines, cars, or cabooses over said Joint Line, connecting tracks or any part thereof. It is agreed by and between the parties hereto that such items of expense shall be borne and paid by the parties hereto under the liability provisions of Section 8 of this agreement.

SECTION 6 - SWITCH KEYS, RULE BOOKS, TIMETABLES

6.1 CNW shall furnish TCW with necessary switch keys and rule books and TCW shall pay to CNW the cost and expense thereof.

6.2 CNW shall furnish TCW necessary timetables governing the operation of trains over and along the Joint Trackage and TCW shall pay to CNW the cost of timetables so furnished. TCW will also reimburse CNW for any expenses incurred by CNW in the issuance of timetables made necessary solely by the changes in the operation of trains of TCW over the Joint Trackage.

SECTION 7 - ADMISSION OF OTHER RAILROADS

7.1 CNW only shall have the right to admit other parties to the use of the Joint Trackage, or any part thereof, on such terms and conditions as it may deem proper, provided that such admittance shall not deprive TCW of the reasonable and proper use of the Joint Trackage for the purposes herein granted.

SECTION 8 - LIABILITY

8.1 For the purposes of this Section 8, all employees and equipment of CNW, including work trains and work train equipment and the crews thereof, engaged in the construction, maintenance, operation, repair or renewal of, the making of additions and betterments to, or the removal of the tracks, signal and communication facilities referred to in Section 3 hereof, shall be deemed the sole employees and sole equipment of TCW.

8.2 Train and engine service employees of either party, except CNW train and engine service employees when acting as pilots on TCW trains as provided in Section 4.10 or when acting as crews of work trains in connection with work upon the Joint Trackage as hereinabove and hereinafter provided, shall be deemed sole employees of such party.

8.3 Except as provided in Paragraphs 8.1 and 8.4 of this Section 8, all employees and equipment of CNW, including work trains and work train equipment and crews thereof, engaged in the operation, inspection, maintenance, repair or renewal of the Joint Trackage or any part thereof, or the making of additions and betterments thereto or retirements therefrom, or en route thereto or therefrom, shall be deemed the joint employees and joint equipment of the parties hereto.

8.4 Employees and equipment of CNW or its emergency service contractor engaged in clearing wrecks or derailments or engaged in the repair and renewal of the Joint Trackage in connection with such wreck or derailment, and while en route to such assignment and while returning therefrom, shall be deemed the employees and equipment of the party or parties responsible for such wreck or derailment as provided in this Section 8.

8.5 "Liability", as used herein, shall mean all loss, damage, expense or liability of any nature (including any penalties, fines, attorneys' fees, clean up, monitoring or investigation costs) arising, in any manner, from injury to or death of any persons whomsoever or loss or destruction of or damage to any property (including pollution, damage to or destruction of the environment) whatsoever (including the Joint Trackage)

resulting from, arising out of, incidental to, or occurring in connection with the Joint Trackage, and shall be borne by the parties hereto as follows:

When Liability shall be due to:

- (a) the acts or omissions of a sole employee or sole employees of either party hereto (whether or not combined with acts or omissions of joint employees or third persons); or to
- (b) a defect in or failure of the sole property of either party hereto (not including the Joint trackage) or property in its possession, or of sole equipment as defined herein,

it shall be borne by the party whose sole employee, employees, equipment, property or property in its possession so caused such Liability.

When Liability shall be due to:

- (c) the combined acts or omissions of sole employees of both parties hereto; or to
- (d) the combined acts or omissions of a joint employee or joint employees and of sole employees of both parties hereto; or to
- (e) the sole acts or omissions of a joint employee or joint employees; or to
- (f) the failure of or any defect in the Joint Trackage or any part thereof or in any joint equipment as defined herein; or
- (g) acts of God, acts of third persons (except when combined with acts or omissions of sole employees of either party hereto) or any other cause or combination of causes whatsoever,

it shall be borne by each party hereto as to its sole property (not including the Joint Trackage), property in its custody or possession, and as to its sole employees, patrons, passengers, invitees and others on or about the Joint Trackage in connection with its business or operations and the property of all such persons, including lading; while as to the Joint Trackage and joint equipment, and as to joint employees and their property, and as to third persons and their property, such Liability shall be borne by the party hereto whose trains, locomotives, cars or lading were involved in the incident giving rise to such Liability; but, (i) when the trains, locomotives, cars or lading of both parties are involved, Liability with respect to the Joint Trackage and joint equipment, and to joint employees and their property, and to third persons and their property, shall be shared equally, and (ii) when no trains, locomotives, cars or lading of either party are so involved, Liability with respect to the Joint Trackage and joint equipment, and to joint employees and their property, and to third party persons and their property shall be shared in proportion to the number of train miles operated by each user of the Joint Trackage during the month prior to the month of such Liability.

8.6 If a claim is made involving joint Liability, the party hereto against which such claim is made shall give prompt notice thereof to the other party which shall have the opportunity to share or join in the defense of the claim. If the party so notified does not exercise such opportunity, it shall be bound for its share of any settlement of such claim and all expenses incident thereto. If a claim is made against a party which is not chargeable hereunder in whole or in part with the Liability involved in such claim, such party shall promptly notify in writing the responsible party.

8.7 If a judgment should be recovered against and satisfied by one party hereto involving Liability which should, under this agreement, be borne or participated in by the other party, then all expenses in connection therewith shall be settled by the parties hereto in accordance with the provisions of this agreement, and the party against which such judgment shall have been rendered shall be promptly reimbursed by the other party to the extent to which such other party is indebted. All releases taken pursuant to the settlement of claims involving liability of either or both parties shall include both parties hereto, their parents, affiliates, directors, officers, successors and assigns and copies shall be furnished each of the parties hereto.

8.8 Notwithstanding any provision hereof to the contrary, any judgment or decree at law or in equity against one party hereto shall not be conclusive against the other party unless that party shall have had reasonable notice from such other party requiring it to appear in the action or suit and make defense thereto for its own account or jointly with such other party. If such notice shall have been given and the party receiving same shall have failed to appear and make defense, it shall be concluded by the judgment or decree in such suit.

8.9 Notwithstanding the foregoing provisions, whenever any loss of, damage to or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, occurs with the trains, locomotives, cars, cabooses or equipment of, or in the account of, both TCW and any other user of the Joint Trackage or any portion thereof being involved, regardless of whether cause in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of CNW, TCW or any other user of the Joint Trackage or their officers, agents or employees, then any such other user shall be considered as CNW for the purpose of determining between the parties to this agreement TCW's assumption and apportionment of liability, cost and expense under this Section 8.

8.10 It is understood and agreed that a number of vehicular and/or pedestrian crossings of the Joint Line presently exist, or may be constructed. TCW agrees to accept all crossings in whatever condition they may be during the term of this agreement and will not assert any claim, demand or cause of action against CNW and will hold CNW harmless from any claim, demand or cause of action arising out of any crossing accident on the Joint Line in which the engines, cars, cabooses, trains or equipment of TCW only is involved.

SECTION 9 - DEFAULT

9.1 It is understood and agreed between the parties hereto that should TCW make default in any of the payments to be made by it hereunder, or fail to faithfully perform any of its covenants herein or violate any term or condition of this agreement, and if such default, failure or violation shall continue for a period of sixty (60) days after CNW shall have given TCW written notice thereof "an event of default", CNW may thereupon

declare this agreement terminated and exclude TCW from all the rights and privileges granted it hereunder, and TCW shall have no claim or demand upon CNW at law or in equity on account of such exclusion.

9.2 No delay, inaction or failure to act by CNW with respect to any such default, failure or violation by TCW shall be deemed a waiver of any right of CNW hereunder and any waiver shall be construed to extend to any future default, failure or violation, whether of a similar nature or otherwise, nor to impair CNW right to termination resulting therefrom.

SECTION 10 - PUBLIC AUTHORITY AND PERMISSION

10.1 In the event it is necessary to secure from the Interstate Commerce Commission authority or exemption from such authority to enable the lawful accomplishment of the objects and purposes hereof and the lawful performance of the terms, provisions and conditions hereof, TCW at its own expense, shall be responsible for the obtaining of such authority or exemption, shall forthwith apply to the Interstate Commerce Commission therefor, and shall diligently prosecute the application to final determination. CNW, at its own expense, shall assist and support such application and will furnish such information and execute, deliver and file such instrument or instruments in writing as may be necessary and appropriate to obtain such approval.

10.2 Should authority or exemption for any purpose in this Section 10 mentioned be denied by the Interstate Commerce Commission, or should such authority or exemption be granted subjected to limitations not reasonably acceptable to either or both of the parties hereto, then this agreement shall be null and void.

SECTION 11 - EFFECTIVE DATE - TERM

11.1 This agreement shall take effect upon meeting all regulatory approval requirements or as of the first day TCW commences use of the Joint Trackage, and, unless sooner terminated in accordance with the provisions of Section 9, Section 10 or Section 12 hereof, shall remain in effect until terminated by TCW.

11.2 No termination of this agreement shall serve to relieve either party hereto of any obligations incurred hereunder on or prior to the date of such termination.

SECTION 12 - ABANDONMENT OR CESSATION BY CNW

12.1 In the event of abandonment or cessation of operations by CNW, TCW agrees to be bound by the terms and conditions of the Operating Agreement between CNW and the Authority, Exhibit "A".

SECTION 13. - NOTICES - HOW GIVEN

13.1 Any notices to be served hereunder shall be served, in writing, upon any executive or general officer of the party upon whom such notice is to be served.

SECTION 14 - SECTION HEADINGS

14.1 Section headings are inserted for convenience only and shall not affect any construction or interpretation of this agreement.

SECTION 15 - AGREEMENT TO BE CONSTRUED LIBERALLY - NOT FOR BENEFIT OF THIRD PARTIES

15.1 This agreement shall be construed liberally so as to secure to each party hereto all the rights, privileges and benefits herein provided or manifestly intended. This agreement, and each and every provision hereof, is for the exclusive benefit of the parties hereto and not for the benefit of any third party.

SECTION 16 - SUCCESSORS AND ASSIGNS

16.1 This agreement shall inure to the benefit of and shall be binding upon the successors and assigns of CNW and TCW.

SECTION 17 - GOVERNING LAW

17.1 This agreement shall be governed by the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the date first hereinabove written.

WITNESS:

B. B. Bump

WITNESS:

Kirsta Davidson

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By: [Signature]
Vice President - Transportation

TWIN CITIES & WESTERN RAILROAD
COMPANY

By: [Signature]

**October 29, 1993 Easement
City of Eden Prairie**

EASEMENT

73-3040
Doc. No. 6179428 41B
PROJECT FILE 73-33040
CANDLEWOOD PARKWAY

THIS AGREEMENT made this 29TH day of October, 1993, by and between the Hennepin County Regional Railroad Authority (HCRRA), a political subdivision and local government unit, of the County of Hennepin, State of Minnesota, ("GRANTOR"), and the City of Eden Prairie, a municipal corporation under the laws of the State of Minnesota ("GRANTEE").

WITNESSETH, that GRANTOR, in consideration of One Dollar (\$1.00) and other good and valuable considerations to it in hand paid by GRANTEE, the receipt of which is hereby acknowledged, does grant, bargain, sell, and convey to GRANTEE, its successors and assigns, a permanent easement for public road, utility, sidewalk and trail purposes. The real property is described as:

A 60 foot wide roadway easement over and across that part of the 100 foot wide Hennepin County Regional Railroad Authority right of way embraced within the North One-half of the Northwest Quarter of Section 20, Township 116, Range 22, Hennepin County, Minnesota, the centerline described as follows:

Commencing at the most southerly corner of Lot 1, Block 1, FAIRFIELD WEST, according to the recorded plat thereof; thence South 43 degrees 23 minutes 00 seconds West, assumed bearing, along the northwesterly line of said Hennepin County Regional Railroad Authority right of way a distance of 30.00 feet to the beginning of the centerline to be described; thence South 46 degrees 37 minutes 00 seconds East a distance of 100.00 feet to the southeasterly line of said Hennepin County Regional Railroad Authority right of way and said centerline there terminating.

The above-described easement includes the rights of GRANTEE, its contractors, agents and employees to do whatever is necessary for enjoyment of the rights granted herein including the right to enter the easement for purposes of constructing, operating, maintaining, altering, repairing, replacing, and/or removing said roadway and utilities and the rights of the public to traverse over and across the same and all other related uses thereof.

GRANTOR covenants that it is the Owner and is in possession of the above-described premises and has lawful right and authority to convey and grant the easement described herein.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed as of the 29TH day of October, 1993.

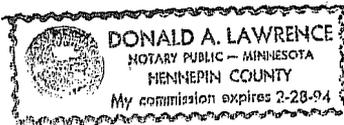
GRANTOR
HENNEPIN COUNTY REGIONAL RAILROAD
AUTHORITY

By: Sandra Hilary
Its: Chair

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 29TH day of October, 1993, by Sandra Hilary,
Chair
Title

of Hennepin County Regional Railroad Authority, a Minnesota political subdivision and local government unit, on behalf of the Authority.



Donald A. Lawrence
NOTARY PUBLIC

ATTESTATION
CITY OF EDEN PRAIRIE

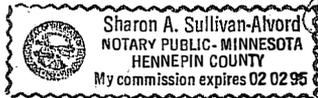
By: Eugene A. Dietz
Its: DIRECTOR OF PUBLIC WORKS

GRANTEE
City of Eden Prairie

By: Carl J. Gullis
Its: City Manager

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 8th day of November, 1993, by Carl J. Gullis, City of Eden Prairie, Minnesota, a Minnesota political subdivision and local government unit.



Sharon A. Sullivan-Alvord
NOTARY PUBLIC

**March 16, 1994 Quit Claim Deed
John Juen Wong**

Sale at West 21st Street

1994 AND PRIOR TAXES PAID
DEPT. OF PROPERTY TAX & PUBLIC RECORDS
TRANSFER ENTERED

QUIT CLAIM DEED

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA

MAR 16 1994

6254163

CERTIFIED FILED AND OR
RECORDED ON

1994 MAR 16 AM 9:59

AS DOCUMENT # 6254163

R. Dan Carlson CO. RECORDER

HENNEPIN COUNTY MINN.
[Signature] DEPUTY

(reserved for valuation and tax data)

(reserved for recording data) *[Signature]* DEPUTY

STATE DEED TAX DUE HEREON: \$ 224.40

16MAR9410:06 B6254163 SCD \$4.50
16MAR9410:06 B6254163 COH \$5.00
16MAR9410:06 B6254163 DDC \$15.00

Date: March 15, 1994

FOR VALUABLE CONSIDERATION, the Hennepin County Regional Railroad Authority, a political subdivision and local government unit, under the laws of the State of Minnesota, Grantor, hereby conveys and quitclaims to John Juen Wong, 1604 West 140th Street, Burnsville, Minnesota, Grantee, real property in Hennepin County, Minnesota, together with all hereditaments and appurtenances belonging thereto, reserving to Grantor any and all iron and/or other valuable minerals in and upon the same with the right to explore for, mine and remove the same and reserving the right to Grantor to access any abutting limited access highway. The real property is described as follows:

DIV. PROCESS 32-029-24-12-0043

Lot 1, Block 1, Hennepin Rail Authority

Hennepin County Regional Railroad Authority

HENNEPIN COUNTY
PROPERTY TAX DEP
MN DEED TAX PAID
03/16/94 10:42AM F-AID \$224.40

By *[Signature]*
Its Chair

C. V. FILED NOT REQ

By *[Signature]*
Its Executive Director

MAR 16 1994

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

[Signature] DEPUTY

The foregoing was acknowledged before me this 15th day of March, 1994, by Sandra Hilary and James M. Bourey the Chair and Executive Director of Hennepin County Regional Railroad Authority, a political subdivision and local government unit under the laws of Minnesota, on behalf of the Authority.

JUSTIN A. CHUMBLEY
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Comm. Expires Dec. 11, 1997

[Signature]
Notary Public

Well Certification: The Seller does/ X does not know of any wells on the described real property.

This Instrument was drafted by:

Tax Statements for the real property described in this instrument should be sent to:

Hennepin County Regional Railroad Authority
Southwest Street Level Government Center
300 South Sixth Street
Minneapolis, MN 55487-0016

[Signature] John Juen Wong
1604 West 140th Street
Burnsville, MN 55337

STATE OF MINNESOTA, COUNTY OF HENNEPIN
Certified to be a true and correct copy of the
original on file and of record in my office.
OCT 30 1996
R. Dan Carlson, County Recorder
By *[Signature]* Deputy

(2)

MPLS. PARK BOARD

KENWOOD

HCRRA

5

6

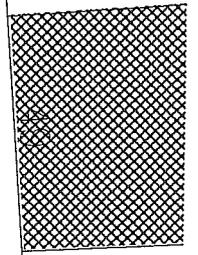
50

RE

50

"A"

49



48

(19)

46.47

THOMAS AVE S

LOT 1 SOLD IN 1994

HENNEPIN

(43)

RAIL

88.29

HCRRA

(44)

AUTHORITY

1

2

50.02

152.26

S4°32'06"E

153.5

OUTLOT A

(45)

HCRRA

45.69

0.17
15.5
40.46

95.79

57.71

85.62

S84°02'32"W

N6°07'47"W

95.81

99.34

21st ST. WEST

56

44

ST

ST

W

114.4

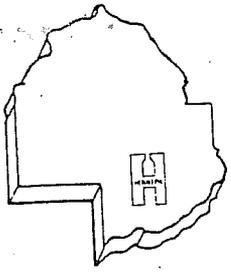
HCRRA

14.5

R=1.
T=30

45.6

**April 5, 1994 Permit 94-03
City of Eden Prairie**



HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY

Southwest Street Level Government Center, Minneapolis, MN 55487-0016 612/348-9260
Fax 612/348-9719

Project No. 73-33040

PERMIT

Permit No. 94-03

Permission is hereby given (See General Requirements and Special Provisions) to CITY OF EDEN PRAIRIE,
Name

Permittee, 8080 Mitchell Road, Eden Prairie, MN 55344 for installation, use and maintenance of
Address

(name facility) At-grade street crossing, Bearpath Trail South, City of Eden Prairie
Mailbox, Driveway, etc.

at Permittee's sole cost, over, on, or under Hennepin County Regional Railroad Authority (HCRRA) property described as
(describe HCRRA property affected):

New Bearpath Trail South, a private street crossing located in the City of Eden Prairie (see easement description "B" attached).

for the benefit of (describe property benefitted):

For public and private ingress and egress throughout the development and for improved access for police and fire protection.

GENERAL REQUIREMENTS

1. No work shall be started until request is approved and permit issued.
2. If the installation of this facility makes it necessary to work on the right of way, traffic must be protected; lights, signs and proper barricades must be in place.
3. After facility construction is completed, persons requesting installation must notify the HCRRA that such work has been completed and ready for final inspection and acceptance by the HCRRA.
4. No changes or alterations in facility may be made at any time without written permission from the HCRRA.
5. HCRRA retains the right to revise, relocate or close any entrance or revoke this Permit at its discretion without any compensation to Permittee.
6. Existing facilities are not automatically perpetuated. In the event of a change in land use or a major change in the traffic pattern of the existing facility, new facility applications will be required by the HCRRA. This Permit is revocable at the sole discretion of the HCRRA and not transferable.
7. Permittee is responsible to abide by any local, state or federal ordinance or regulation in the exercise of the rights herein given.
8. Permittee must protect all existing utility installations.
9. All waterways and lines of drainage shall remain operative.
10. Burning or disking operations and/or the use of chemicals to control or kill trees, brush and other vegetation is prohibited without prior approval from the HCRRA.
11. It shall be further understood that the Permittee will be responsible for maintenance of any failures due to settlement, erosion, lack of vegetation growth, rutting, or other problems related to use of this Permit.

DESCRIPTION B
PROPOSED EASEMENT DESCRIPTION FOR
BEARPATH TRAIL SOUTH RAILROAD CROSSING

A 60.00 foot easement for road, drainage and utility purposes lying over, under and across that part of the Northeast Quarter of Section 19, Township 116, Range 22, Hennepin County, Minnesota. The centerline of said easement is described as follows:

Commencing at the most northerly corner of Lot 1, Block 8, Bearpath Addition as platted and of record in the office of the County Recorder, said Hennepin County; thence North 44 degrees 27 minutes 29 seconds East, bearing assumed, along the northwesterly line of Outlot DD, said Bearpath Addition, a distance of 30.00 feet to the point of beginning of the center line to be described; thence North 45 degrees 23 minutes 10 seconds West, a distance of 59.67 feet; thence northerly, a distance of 40.71 feet, along a tangential curve concave to the east having a central angle of 13 degrees 19 minutes 37 seconds, and a radius of 175.00 feet to the northerly right-of-way line of the Chicago and Northwestern Railroad and there terminating. The sidelines of said easement shall be prolonged or shortened to terminate on said northerly right-of-way line and said northwesterly line of Outlot DD, also being the southerly right-of-way line of said Chicago and Northwestern Railroad.

CITY OF EDEN PRAIRIE
HENNEPIN COUNTY, MINNESOTA

RESOLUTION NO. 94 - 44

ASSUMING RESPONSIBILITY FOR ROADS, PEDESTRIAN BRIDGES, AND
UTILITIES
CROSSING EASEMENT ISSUED BY
HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY
FOR CROSSING OF CORRIDOR BY BEARPATH DEVELOPMENT

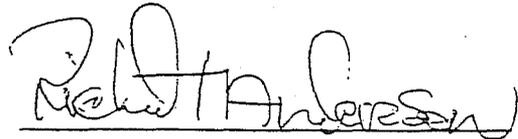
WHEREAS, Sienna Corporation proposes to construct streets, utilities and pedestrian bridge improvements for the Bearpath Golf and Country Club Development across right-of-way administered by the Hennepin County Regional Railroad Authority (HCRRA) in the City of Eden Prairie;

NOW, THEREFORE, BE IT RESOLVED, by the Eden Prairie City Council, that upon completion and acceptance of the improvements, the City of Eden Prairie will assume the responsibility for maintenance of the grade crossings and any and all costs of any crossing signals that may be required when any type of transportation improvement is implemented in the corridor; and

BE IT FURTHER RESOLVED, that the City of Eden Prairie will be responsible for the terms of HCCRA Permits Numbers:

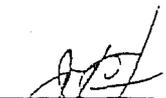
94-03 Bearpath Trail	94-08 Storm Sewer
94-04 Dell Road	94-09 Storm Sewer
94-05 Riley Lake Road	94-10 Storm Sewer
94-06 Pedestrian Bridge	94-11 Riley Lake Park Boat Launch Rd
94-07 Pedestrian Bridge	

ADOPTED by the City Council of the City of Eden Prairie on April 5, 1994.



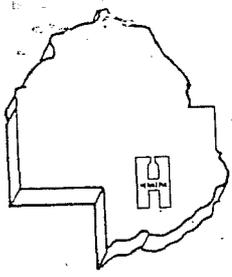
~~Douglas B. Tenpas, Mayor~~
Richard T. Anderson, Acting Mayor
SEAL

ATTEST:



John D. Frane, Clerk

**April 5, 1994 Permit 94-04
City of Eden Prairie**



HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY

Southwest Street Level Government Center, Minneapolis, MN 55487-0016 612/348-9260
Fax 612/348-9719

Project No. 73-33040

PERMIT

Permit No. 94-04

Permission is hereby given (See General Requirements and Special Provisions) to City of Eden Prairie,
Name

Permittee, 8080 Mitchell Road, Eden Prairie, MN 55344 for installation, use and maintenance of
Address

(name facility) At-grade street crossing, new Dell Road, in the city of Eden Prairie.
Mailbox, Driveway, etc.

at Permittee's sole cost, over, on, or under Hennepin County Regional Railroad Authority (HCRRA) property described as
(describe HCRRA property affected):

New Dell Road, a public street crossing located in the city of Eden Prairie
(see easement description "A" attached).

for the benefit of (describe property benefitted):

For public ingress and egress throughout the city of Eden Prairie and for improved
access for fire and police protection.

GENERAL REQUIREMENTS

1. No work shall be started until request is approved and permit issued.
2. If the installation of this facility makes it necessary to work on the right of way, traffic must be protected; lights, signs and proper barricades must be in place.
3. After facility construction is completed, persons requesting installation must notify the HCRRA that such work has been completed and ready for final inspection and acceptance by the HCRRA.
4. No changes or alterations in facility may be made at any time without written permission from the HCRRA.
5. HCRRA retains the right to revise, relocate or close any entrance or revoke this Permit at its discretion without any compensation to Permittee.
6. Existing facilities are not automatically perpetuated. In the event of a change in land use or a major change in the traffic pattern of the existing facility, new facility applications will be required by the HCRRA. This Permit is revocable at the sole discretion of the HCRRA and not transferable.
7. Permittee is responsible to abide by any local, state or federal ordinance or regulation in the exercise of the rights herein given.
8. Permittee must protect all existing utility installations.
9. All waterways and lines of drainage shall remain operative.
10. Burning or disking operations and/or the use of chemicals to control or kill trees, brush and other vegetation is prohibited without prior approval from the HCRRA.
11. It shall be further understood that the Permittee will be responsible for maintenance of any failures due to settlement, erosion, lack of vegetation growth, rutting, or other problems related to use of this Permit.

DESCRIPTION A
PROPOSED EASEMENT DESCRIPTION FOR
DELL ROAD RAILROAD CROSSING

A 100.00 foot easement for road, drainage and utility purposes, lying over, under and across that part of the Northeast Quarter of Section 19, Township 116, Range 22, Hennepin County, Minnesota. The centerline of said easement is described as follows:

Commencing at the most northerly corner of Outlot I Bearpath Addition, as platted and of record in the office of the County Recorder, said Hennepin County; thence North 44 degrees 27 minutes 29 seconds East, bearing assumed, along the northeasterly extension of the westerly line of said Outlot I a distance of 57.95 feet to the point of beginning of the line to be described; thence northerly, a distance of 125.24 feet along a nontangential curve concave to the east having a central angle of 10 degrees 37 minutes 50 seconds, a radius of 675.00 feet and a chord bearing North 8 degrees 38 minutes 09 seconds West to the northerly right-of-way line of the Chicago and Northwestern Railroad and there terminating. The side lines of said easement shall be prolonged or shortened to terminate on said northerly right-of-way line and on said northeasterly extension of the westerly line of said Outlot I, also being the southerly right-of-way line of said Chicago and Northwestern Railroad.

CITY OF EDEN PRAIRIE
HENNEPIN COUNTY, MINNESOTA

RESOLUTION NO. 94 - 44

ASSUMING RESPONSIBILITY FOR ROADS, PEDESTRIAN BRIDGES, AND
UTILITIES
CROSSING EASEMENT ISSUED BY
HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY
FOR CROSSING OF CORRIDOR BY BEARPATH DEVELOPMENT

WHEREAS, Sienna Corporation proposes to construct streets, utilities and pedestrian bridge improvements for the Bearpath Golf and Country Club Development across right-of-way administered by the Hennepin County Regional Railroad Authority (HCRRA) in the City of Eden Prairie;

NOW, THEREFORE, BE IT RESOLVED, by the Eden Prairie City Council, that upon completion and acceptance of the improvements, the City of Eden Prairie will assume the responsibility for maintenance of the grade crossings and any and all costs of any crossing signals that may be required when any type of transportation improvement is implemented in the corridor; and

BE IT FURTHER RESOLVED, that the City of Eden Prairie will be responsible for the terms of HCCRA Permits Numbers:

94-03 Bearpath Trail	94-08 Storm Sewer
94-04 Dell Road	94-09 Storm Sewer
94-05 Riley Lake Road	94-10 Storm Sewer
94-06 Pedestrian Bridge	94-11 Riley Lake Park Boat Launch Rd
94-07 Pedestrian Bridge	

ADOPTED by the City Council of the City of Eden Prairie on April 5, 1994.



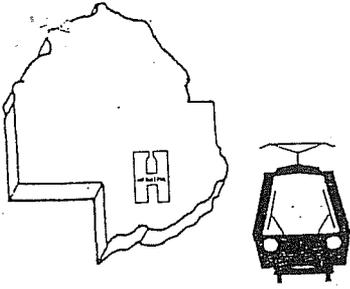
Douglas B. Tenpas, Mayor
Richard T. Anderson, Acting Mayor
SEAL

ATTEST:



John D. Frane, Clerk

**April 5, 1994 Permit 94-05
City of Eden Prairie**



HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY

Southwest Street Level Government Center, Minneapolis, MN 55487-0016 612/348-9260
Fax 612/348-9719

Project No. 73-33040

PERMIT

Permit No. 94-05

Permission is hereby given (See General Requirements and Special Provisions) to City of Eden Prairie,
Name

Permittee, 8080 Mitchell Road, Eden Prairie, Minnesota 55344 for installation, use and maintenance of
Address

(name facility) At-grade street crossing, new Riley Lake road, in the city of Eden Prairie.
Mailbox, Driveway, etc.

at Permittee's sole cost, over, on, or under Hennepin County Regional Railroad Authority (HCRRA) property described as:
(describe HCRRA property affected):

New Riley Lake Road, a public street crossing located in the city of Eden Prairie
(see easement description "C" attached).

for the benefit of (describe property benefitted):

For public ingress and egress throughout the city of Eden Prairie and for
improved access for police and fire protection.

GENERAL REQUIREMENTS

1. No work shall be started until request is approved and permit issued.
2. If the installation of this facility makes it necessary to work on the right of way, traffic must be protected; lights, signs and proper barricades must be in place.
3. After facility construction is completed, persons requesting installation must notify the HCRRA that such work has been completed and ready for final inspection and acceptance by the HCRRA.
4. No changes or alterations in facility may be made at any time without written permission from the HCRRA.
5. HCRRA retains the right to revise, relocate or close any entrance or revoke this Permit at its discretion without any compensation to Permittee.
6. Existing facilities are not automatically perpetuated. In the event of a change in land use or a major change in the traffic pattern of the existing facility, new facility applications will be required by the HCRRA. This Permit is revocable at the sole discretion of the HCRRA and not transferable.
7. Permittee is responsible to abide by any local, state or federal ordinance or regulation in the exercise of the rights herein given.
8. Permittee must protect all existing utility installations.
9. All waterways and lines of drainage shall remain operative.
10. Burning or disking operations and/or the use of chemicals to control or kill trees, brush and other vegetation is prohibited without prior approval from the HCRRA.
11. It shall be further understood that the Permittee will be responsible for maintenance of any failures due to settlement, erosion, lack of vegetation growth, rutting, or other problems related to use of this Permit.

DESCRIPTION C
PROPOSED EASEMENT DESCRIPTION FOR
RILEY LAKE ROAD RAILROAD CROSSING

A 66.00 foot easement for road, drainage and utility purposes lying over under and across that part of the Southeast Quarter of Section 19 Township 116, Range 22 Hennepin County, Minnesota. The centerline of said easement is described as follows:

Commencing at the most northerly corner of Outlot D, Bearpath Addition, as platted and of record in the office of the County Recorder, said Hennepin County; thence North 44 degrees 27 minutes 29 seconds East, bearing assumed; along the northeasterly extension of the northwesterly line of said Outlot D, a distance of 33.00 feet to the point of beginning of the center line to be described; thence North 45 degrees 32 minutes 31 seconds West, a distance of 100.00 feet to the northerly right-of-way line of the Chicago and Northwestern Railroad and there terminating.

CITY OF EDEN PRAIRIE
HENNEPIN COUNTY, MINNESOTA

RESOLUTION NO. 94 - 44

ASSUMING RESPONSIBILITY FOR ROADS, PEDESTRIAN BRIDGES, AND
UTILITIES
CROSSING EASEMENT ISSUED BY
HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY
FOR CROSSING OF CORRIDOR BY BEARPATH DEVELOPMENT

WHEREAS, Sienna Corporation proposes to construct streets, utilities and pedestrian bridge improvements for the Bearpath Golf and Country Club Development across right-of-way administered by the Hennepin County Regional Railroad Authority (HCRRA) in the City of Eden Prairie;

NOW, THEREFORE, BE IT RESOLVED, by the Eden Prairie City Council, that upon completion and acceptance of the improvements, the City of Eden Prairie will assume the responsibility for maintenance of the grade crossings and any and all costs of any crossing signals that may be required when any type of transportation improvement is implemented in the corridor; and

BE IT FURTHER RESOLVED, that the City of Eden Prairie will be responsible for the terms of HCCRA Permits Numbers:

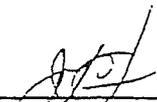
94-03 Bearpath Trail	94-08 Storm Sewer
94-04 Dell Road	94-09 Storm Sewer
94-05 Riley Lake Road	94-10 Storm Sewer
94-06 Pedestrian Bridge	94-11 Riley Lake Park Boat Launch Rd
94-07 Pedestrian Bridge	

ADOPTED by the City Council of the City of Eden Prairie on April 5, 1994.



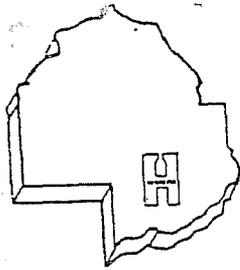
~~Douglas B. Tenpas, Mayor~~
Richard T. Anderson, Acting Mayor
SEAL

ATTEST:



John D. Frane, Clerk

**April 5, 1994 Permit 94-11
City of Eden Prairie**



HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY

Southwest Street Level Government Center, Minneapolis, MN 55487-0016 612/348-9260
Fax 612/348-9719

Project No. 73-33040

PERMIT

Permit No. 94-11

Permission is hereby given (See General Requirements and Special Provisions) to City of Eden Prairie,
Name

Permittee, 8080 Mitchell Road, Eden Prairie, MN 55344 for installation, use and maintenance of
Address

(name facility) Riley Lake Boat Launch Access Road
Mailbox, Driveway, etc.

at Permittee's sole cost, over, on, or under Hennepin County Regional Railroad Authority (HCRRA) property described as
(describe HCRRA property affected):

The proposed roadway improvement is at an existing roadway crossing. The HCRRA property will be disturbed and restored during construction of the roadway.

for the benefit of (describe property benefitted):

The City of Eden Prairie, Riley Lake Park

GENERAL REQUIREMENTS

1. No work shall be started until request is approved and permit issued.
2. If the installation of this facility makes it necessary to work on the right of way, traffic must be protected; lights, signs and proper barricades must be in place.
3. After facility construction is completed, persons requesting installation must notify the HCRRA that such work has been completed and ready for final inspection and acceptance by the HCRRA.
4. No changes or alterations in facility may be made at any time without written permission from the HCRRA.
5. HCRRA retains the right to revise, relocate or close any entrance or revoke this Permit at its discretion without any compensation to Permittee.
6. Existing facilities are not automatically perpetuated. In the event of a change in land use or a major change in the traffic pattern of the existing facility, new facility applications will be required by the HCRRA. This Permit is revocable at the sole discretion of the HCRRA and not transferable.
7. Permittee is responsible to abide by any local, state or federal ordinance or regulation in the exercise of the rights herein given.
8. Permittee must protect all existing utility installations.
9. All waterways and lines of drainage shall remain operative.
10. Burning or disking operations and/or the use of chemicals to control or kill trees, brush and other vegetation is prohibited without prior approval from the HCRRA.
11. It shall be further understood that the Permittee will be responsible for maintenance of any failures due to settlement, erosion, lack of vegetation growth, rutting, or other problems related to use of this Permit.

RECEIVED

MAY 6 1994

HENNEPIN COUNTY
REGIONAL RAILROAD AUTHORITY

May 5, 1994

Mr. Larry O'dell
Hennepin County Regional Rail Authority
Southwest Street Level Government Center
Minneapolis, MN 55487-0016

Re: Riley Lake Park Improvements
Eden Prairie, Minnesota
RCM Project No. 10240.02



**rieke
carroll
muller
associates, inc.**

engineers
architects
land surveyors

*equal opportunity
employer*

Dear Larry:

This letter is confirmation that the 30 feet wide curb cuts have been added to the above referenced construction plans at the HCRRA right-of-way. The curb cuts will have 5 foot tapers and will be centered on the right-of-way. Also, the grade along the boat access road has been adjusted to match the centerline grade at the HCRRA right-of-way. This grade will accommodate pedestrian and bicycle traffic on the proposed trail.

If you have further questions please call me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark C. Anderson', written in a cursive style.

Mark C. Anderson, EIT
RIEKE CARROLL MULLER ASSOCIATES, INC.

MCA/ka

c: Barbara Cross, City of Eden Prairie

PERMIT No. 94-11

CITY OF EDEN PRAIRIE
HENNEPIN COUNTY, MINNESOTA

RESOLUTION NO. 94 - 44

ASSUMING RESPONSIBILITY FOR ROADS, PEDESTRIAN BRIDGES, AND
UTILITIES
CROSSING EASEMENT ISSUED BY
HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY
FOR CROSSING OF CORRIDOR BY BEARPATH DEVELOPMENT

WHEREAS, Sienna Corporation proposes to construct streets, utilities and pedestrian bridge improvements for the Bearpath Golf and Country Club Development across right-of-way administered by the Hennepin County Regional Railroad Authority (HCRRA) in the City of Eden Prairie;

NOW, THEREFORE, BE IT RESOLVED, by the Eden Prairie City Council, that upon completion and acceptance of the improvements, the City of Eden Prairie will assume the responsibility for maintenance of the grade crossings and any and all costs of any crossing signals that may be required when any type of transportation improvement is implemented in the corridor; and

BE IT FURTHER RESOLVED, that the City of Eden Prairie will be responsible for the terms of HCCRA Permits Numbers:

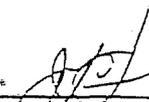
94-03 Bearpath Trail	94-08 Storm Sewer
94-04 Dell Road	94-09 Storm Sewer
94-05 Riley Lake Road	94-10 Storm Sewer
94-06 Pedestrian Bridge	94-11 Riley Lake Park Boat Launch Rd
94-07 Pedestrian Bridge	

ADOPTED by the City Council of the City of Eden Prairie on April 5, 1994.



~~Douglas B. Tenpas, Mayor~~
Richard T. Anderson, Acting Mayor
SEAL

ATTEST:



John D. Frane, Clerk

**August 3, 1998 Trackage Rights Agreement
Twin Cities & Western Railroad Company**

**TRACKAGE RIGHTS AGREEMENT
BETWEEN
SOO LINE RAILROAD COMPANY,
TWIN CITIES & WESTERN RAILROAD COMPANY
AND
HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY**

THIS Agreement, made and entered into this 10th day of August, 1998 by and between the SOO LINE RAILROAD COMPANY, a Minnesota corporation doing business as Canadian Pacific Railway (hereinafter sometimes called "Soo"), TWIN CITIES & WESTERN RAILROAD COMPANY, a Minnesota corporation (hereinafter sometimes called "TCW") and the HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY, a political subdivision and local government unit of the State of Minnesota (hereinafter sometimes called the "Authority").

RECITALS

The Authority presently owns a line of railroad approximately 2.5 miles in length, extending from a point of connection with Soo trackage in the City of St. Louis Park, in the vicinity of Lake Street and the westerly city limits of the City of Minneapolis, northeasterly to a point of connection with trackage owned and operated by The Burlington Northern and Santa Fe Railway Company in the vicinity of Cedar Lake, in the City of Minneapolis. The Authority acquired the right-of-way, bridges and other related structures, but not the trackage, west from the Chicago and North Western Transportation Company (hereinafter called "CNW") in 1984. CNW retained ownership of the trackage, including rails and ties, and was granted an easement to continue freight service over said line of railroad.

On July 26, 1993, CNW granted overhead trackage rights to Soo and TCW over said trackage, subject to an Operating Agreement dated December 31, 1990 between CNW and the Authority.

CNW subsequently abandoned its operating rights over said railroad line and sold its interest in the trackage, including rail and ties, to the Authority. The Authority acquired the trackage subject to the trackage rights held by the Soo and TCW.

Soo and the Authority entered into an Agreement dated December 23, 1992 in which the parties agreed to cooperate in obtaining a rail route alternative to the 29th Street trackage in the City of Minneapolis, being acquired by the Authority pursuant to said Agreement. The Cedar Lake line of railroad described in the first recital has been identified by the parties as an alternative route under the December 23, 1992 Agreement.

The Soo and TCW desire to commence operations over this trackage on or after the date of this Agreement as a result of the implementation of the earlier agreements mentioned above.

The parties, therefore, agree as follows:

SECTION 1 - DEFINITIONS

1.1. "Agreement" shall mean this Agreement dated _____, 1998. All references in this document to Exhibits are to those attached to, and made a part of, this Agreement.

1.2. "Rail Line" is defined as the trackage and underlying right-of-way formerly owned by the CNW, extending from a point of connection with Soo Line trackage at or near CNW milepost 16.2 in the City of St. Louis Park, easterly to CNW milepost 13.7 at a point of connection with BNSF in the City of Minneapolis.

1.3. "Rail Corridor" shall mean the area where a right of use is created by this Agreement providing for operation by Soo and TCW over the Rail Line consisting of a corridor 50 feet in width centered on the Rail Line, except where the Authority does not own sufficient land to provide a 50-

foot corridor, and where the Kenilworth Trail as described in Section 1.5 is to be located less than 25 feet from the center line of the Rail Line. The Rail Corridor is further described in Exhibit A.

1.4 “Railroad(s)” shall mean the Soo and TCW.

1.5 “Kenilworth Trail” shall mean the public trail described in Exhibit B attached hereto.

1.6 “Sole Employees” and “Sole Property” shall mean employees, agents, contractors, passengers, invitees, railroad and motor vehicle equipment, including lading, and other equipment of each of the parties or their agents or contractors while engaged in, or about to engage in, maintaining, using, operating, constructing, repairing, renewing, replacing and improving the trackage in the Rail Corridor, or in switching or handling railroad cars of the respective parties hereto.

1.7 “Taxes” shall mean lawfully imposed real estate taxes and assessments including, but not limited to, special assessments.

1.8 “Trackage” shall mean all rail, cross ties, related track appliances such as spikes and tie plates (sometimes known as “other track material”), ballast, all grade crossing signals and other signal and communication equipment located upon the Rail Line, and including trackage laid in and across public streets and highways.

SECTION 2 - GRANT OF RIGHTS

2.1 Subject to the terms and conditions in this Agreement, Authority grants to Soo and TCW, and their respective permitted assigns, non-exclusive rights to conduct railroad operations over the Rail Line within the Rail Corridor for the operation of freight trains, occasional passenger trains, locomotives, cabooses, rail cars, maintenance-of-way equipment and other rail equipment in common with other railroad users the Authority may admit to the joint use of the Rail Line in the future. This grant of rights shall be known as the Rail Corridor rights under this Agreement and

supersedes and replaces all other agreements, including trackage rights agreements between CNW and Soo, and between CNW and TCW, governing use of the Rail Line in the Rail Corridor.

2.2 The Authority shall convey a Railroad Easement to TCW in the form shown on Exhibit C attached.

2.3. Soo and TCW shall not have the right to set out, pick up or store cars or switch any existing or future industries on the Rail Line, or serve any industry or team tracks now or hereafter located on the Rail Line without the express written consent of the Authority. Neither Soo nor TCW may admit additional tenants, and assignment of existing operating rights shall require the consent of the Authority, except as otherwise provided in this Agreement.

2.4. Nothing in this Agreement is to be construed as establishing any common carrier status on the part of the Authority.

2.5. Soo and TCW acknowledge that, concurrent with the exercise of their rights and obligations under this Agreement, the City of Minneapolis will exercise rights granted to it by the Authority for the Kenilworth Trail (State Project No. 141-090-05) in proximity to the Rail Corridor as more fully described in Exhibit B and made a part of this acknowledgment.

SECTION 3 - RENT

3.1. The rental for use of the Rail Corridor payable by TCW or Soo, in addition to payment of any expenses provided elsewhere in this Agreement, shall be \$7.50 per train mile, for each train operated by either TCW or Soo. To compute charges, the train mile rate shall be multiplied by 2.5 miles. Any movement of one or more pieces of railroad equipment over the Rail Corridor, except maintenance-of-way equipment and work trains while actually engaged in work on the Rail Corridor, shall be considered a train movement.

3.2. Rent shall be payable to the Authority quarterly. The rate of \$7.50 per train mile shall be adjusted retroactively to July 1, 1992 and on each July 1 thereafter, by utilization of the Annual

Indices of Charge-Out Prices and Wage Rates (1977= 100) Series RCR, included in the "AAR Railroad Cost Recovery Index", and supplements thereto, issued by the Association of American Railroads. In making such adjustment, the final "Material prices, wage rates and supplements combined (excluding fuel)" Index for the Western District for the calendar-year 1990 shall be compared to the final Index for the calendar year immediately preceding the year in which such adjustment is to become effective. Said Train Mile Rate shall then be adjusted by the percentage of increase or decrease, as the case may be, in the Index of the year to be escalated as related to the year 1990, provided, however, that said Train Mile Rate shall never be less than \$7.50. If the Association of American Railroads, or any successor organization or association, discontinues such Index, an appropriate substitute for determining in a similar manner the percentage of increase or decrease in the Train Mile Rate shall be agreed upon by the parties hereto.

3.3. At such time as use of, and the right to use, the Rail Corridor is terminated by written notice by either Soo or TCW, the terminating party shall have no further obligation to pay rental to the Authority and shall have no claim against the Authority for any payment of any kind, except as may have arisen prior to such termination or by reason of other provisions of this Agreement. At such time as TCW relinquishes its right to use the Rail Corridor, Soo shall become obligated to pay a minimum Annual Rental until such time as Soo provides written notice to the Authority of its intention to permanently abandon Railroad rights to use the Rail Corridor. Soo shall be obligated to pay a minimum Annual Rental of \$10,000 for any year in which rentals payable in accordance with Sections 3.1 and 3.2 do not reach \$10,000. In such case, the minimum Annual Rental payment shall be in lieu of rental required under Section 3.1 and Section 3.2.

SECTION 4 - MAINTENANCE, CONTROL AND OPERATIONS

4.1. TCW shall have the exclusive management, direction and control of the Rail Corridor, including the obligation to dispatch rail traffic, at its sole cost and expense. In dispatching,

directing and controlling use of the Rail Corridor, TCW shall not discriminate against the trains of Soo or any other railroad tenants admitted to use of the rail line. In the event the Authority seeks to admit additional railroad tenants to use of the Rail Line, the Authority agrees to require such tenant to agree to terms, including liability, substantially as contained in this Agreement. The parties agree to renegotiate this Section 4 in the event any additional railroad tenants are admitted to use of the Rail Line by the Authority in order that additional costs incurred by TCW that are attributable to such additional tenants may be fairly compensated.

4.2(1) TCW shall perform all construction, derailment and wreck clearing, maintenance, repair and renewal of the Trackage, including any additions Soo or TCW may deem necessary or desirable for the safe and efficient operation of all trains. Any additions deemed necessary or desirable for the safe and efficient operation of trains will be paid for by the Railroad or Railroads requesting the same. The cost of derailment and wreck clearing are governed by Section 10. The Authority shall reimburse TCW for construction, maintenance, repair and renewal costs, as outlined in Section 4.3. The provisions of Sections 4.2(2) through 4.2(6) shall control as between the Railroads in the case of conflict with other provisions of this Agreement.

4.2(2) TCW shall employ all persons necessary to operate, maintain, repair and renew the Rail Corridor. TCW shall be bound to use only reasonable and customary care, skill and diligence in the operation, maintenance, repair, renewal and management of the Rail Corridor and Soo shall not, by reason of TCW's performing or failing, or neglecting to perform any operation, maintenance, repair, renewal or management of the Rail Corridor, have or make against TCW any claim or demand for delay, loss, damage, destruction, injury or death whatsoever resulting from TCW's performance, failure or neglect, except as otherwise provided in Section 10.3.

4.2(3) Soo, at its expense, shall install and maintain upon its trains, locomotives, cabooses and cars such equipment or devices as may now or in the future be necessary or appropriate, in the reasonable judgment of TCW for the safe and efficient operation of trains over the Rail Corridor.

4.2(4) If the use of the Rail Corridor is at any time interrupted or traffic over the Rail Corridor is delayed for any cause, TCW shall, with reasonable diligence, restore the line for the passage of trains of the parties. Neither Railroad shall have or make any claim against the other for loss or damage of any kind resulting from such interruption or delay.

4.2(5) The operation of Soo over the Rail Corridor shall at all times be in accordance with the General Code of Operating Rules, or such other rules as TCW and Soo agree upon, TCW timetables, bulletins, instructions and restrictions, but such rules, instructions and restrictions shall be reasonable, just and fair between all Railroads using the Rail Corridor and shall not unjustly discriminate against any of them. TCW shall provide Soo with a copy of existing rules and instructions and provide Soo with prior, written notice of any changes in such rules or instructions. These rules and instructions shall include, but not be limited to, General Code of Operating Rules, Timetables, Special Instructions, Bulletins, General Orders and authoritative directions of Train Dispatchers and Operating Officers and all applicable federal statutes and regulations regarding railroad safety.

4.2(6) All employees of Soo engaged in the operation of Soo trains over the Rail Corridor shall be required to qualify, at Soo's expense, to operate over the Rail Corridor. TCW shall have the right to bar Soo employees from service over the Rail Corridor for cause until such time the barred individual is deemed to be qualified.

4.3. The Authority will reimburse TCW for construction, maintenance, repair and renewal costs on an annual basis upon presentation of a complete description of work done and materials used for the preceding calendar year. The Authority shall have the right to audit such billings and

to inspect work done upon reasonable notice. The Authority's obligation to reimburse TCW for such costs shall be limited to sixty percent (60%) of the trackage rights fees paid to the Authority by all users for the calendar year during which the maintenance charges were incurred, subject to an authorized minimum expenditure for maintenance cost of \$16,000 per year in any year when trackage rights fees are not sufficient to justify expenditures to that level. The authorized minimum expenditure shall be adjusted annually from \$16,000 beginning July 1, 1999 and thereafter in accordance with the formula set forth in Section 3.2 hereof. The authorized expenditures for maintenance, as limited by the foregoing, shall be known as the *Maintenance Allowance*. Any unexpended Maintenance Allowance may be drawn upon in future years for authorized expenditures, including the above minimum expenditure. TCW may draw, as additional Maintenance Allowance, an amount equivalent to a maximum of 100% of the prior year's rentals as calculated under Section 3, only for the following purposes:

1. To reach the authorized minimum expenditure for maintenance of \$16,000 per year;
- or
2. To carry out necessary bridge repairs or repairs to crossing signals.

If at any time the cumulative Maintenance Allowances justified by rental payments and this Section 4.3 are not sufficient to permit the safe and continued operation of the Rail Line, the additional maintenance and repair costs will be borne by the Authority. The Authority shall have no other obligation to reimburse TCW for construction, maintenance, repair or renewal costs, including long-term rehabilitation and capital expenditures.

4.4. Prior to commencement of operations over the Rail Corridor under this Agreement, MNDOT will arrange for rehabilitation of the Rail Line to FRA Class 2 standards. Following said commencement of operations, all maintenance, rehabilitation, renewal, reconstruction, repairs and improvements, replacement, including bridges, grade crossings and signals, will be the sole

responsibility of TCW to perform, the costs of which shall be reimbursed by the Authority, in accordance with Section 4.3.

4.5. TCW shall have a right of access over other portions of the Rail Corridor within 25 feet either side of the center line of the now existing Trackage for the sole purpose of maintaining said Trackage over the Rail Corridor, except as limited by the physical proximity of fencing for the pedestrian and bicycle trails as provided for in the Kenilworth Trail (Exhibit B). Provided, however, that TCW shall not have the right to remove trees and other vegetation found more than 15 feet either side of the center line of the now existing trackage, except for purposes of wreck clearance, track repair, visibility at grade crossings, or with the consent of the Authority.

4.6. Neither Soo nor TCW shall be permitted to erect any structures in or upon the Rail Corridor without the express written permission of the Authority. The Authority shall not construct any facility in or over the Rail Corridor where the vertical distance between the top of the rail or the ground surface of the Rail Corridor, and any part of the facility, is less than 23 feet.

4.7. Unless otherwise ordered by the State, the Authority shall not pay the expenses of any public crossing of the Rail Corridor which may be opened or improved, including all expenses of crossing protection, unless such crossings are requested or opened by the Authority. The Authority shall not be responsible for any expenses incurred by Soo or TCW as a result of activities of third parties not authorized by the Authority occupying or otherwise interfering with the Rail Corridor, except as otherwise provided in this Agreement.

4.8. The Authority will permit construction of pedestrian and bicycle trails in proximity to the Rail Line as shown in Exhibit B. At any point where a trail is located within 25 feet of the center line of the Trackage, a fence along the boundary of the trail corridor will be provided, maintained and promptly repaired at no expense to Soo or TCW by the City of Minneapolis. No

trespassing and other appropriate warning signs shall be provided by the City. The Authority will require that the City agree to the terms of this provision.

SECTION 5 - TERMINATION

5.1. The Rail Corridor rights shall become effective upon execution of this Agreement, and shall continue in full force and effect until terminated by either TCW or Soo as to the respective rights of the terminating party upon thirty (30) days' written notice, which notice may be given at any time. Trackage, other facilities and all improvements to the Rail Corridor will remain the property of the Authority. The permanent easement conveyed, however, may not be terminated by the Authority, except in accordance with this Agreement.

5.2. At such time as either Railroad desires to terminate its rights over the Rail Corridor, such Railroad shall have the obligation to obtain necessary Surface Transportation Board ("STB") and other regulatory approval that may be required. The Authority agrees to cooperate in seeking regulatory approval.

5.3. TCW and Soo will vacate all use of, and permanently terminate all rights to use, the Rail Corridor no later than thirty (30) days after a new connection between the Soo Hopkins line (TCW's current operating route) and the former Minneapolis, Northfield & Southern line in St. Louis Park (MNS connection), and between the MNS and The Burlington Northern and Santa Fe Railway (BNSF connection) becomes operational, or at such time as any other feasible alternative to use of the Rail Corridor satisfactory to TCW becomes available and is operational. The MNS connection and the BNSF connection are shown on Exhibit D attached to this Agreement.

SECTION 6 - CONDITIONS PRECEDENT

Operation over the Rail Corridor is contingent upon obtaining any required regulatory and government approvals, and any necessary corporate authorization.

SECTION 7 - TAXES

7.1. The Authority agrees to pay promptly to taxing authorities when due all Taxes, if any, duly levied on the Property with respect to the Authority's ownership, leases, air rights development, and/or operations. TCW and Soo agree to pay promptly to taxing authorities when due all Taxes, if any, with respect to their use or operations duly levied, to the extent Soo or TCW's property rights have been separately assessed by the appropriate assessing authority while either TCW or Soo are conducting operations over the Rail Corridor. To the extent TCW's property right is not so separately assessed to TCW, but the underlying fee in the Rail Corridor is assessed as railroad operating property and would be exempt except for TCW's use in operations, then TCW agrees to pay all such Taxes duly levied while conducting operations over the Rail Corridor. TCW reserves the right to protest to a taxing authority any such Taxes it deems to be unfair or excessive and may in good faith litigate and settle with the taxing authority any such protested amount. This subparagraph 7.1 will apply to Soo for any period during which Soo exercises its operating rights.

7.2. The Authority shall pay without reimbursement from Soo or TCW all Taxes, if any, attributable to any passenger transportation system installed by or at the direction of the Authority.

SECTION 8 - ASSIGNMENT RIGHT

Soo may admit a third-party operator as assignee of Soo's common carrier freight service obligation, or in connection with the sale of, or merger of, all or most of its railroad system, subject to the consent of the Authority, which shall not be unreasonably withheld, and subject to orders of the Surface Transportation Board ("STB"). TCW may admit a third-party operator as assignee of TCW's common carrier freight service obligation in connection with the sale of, or merger of all or most of its railroad system, subject to the consent of the Authority, which shall not be unreasonably withheld, subject to the orders of the STB.

SECTION 9 - OBLIGATIONS FOLLOWING TERMINATION.

Upon termination of all rights to the Rail Corridor, the parties hereto are relieved from any and all obligations relating thereto, except for any obligations which may have accrued or which may have been incurred prior to the date of such termination or in accordance with the terms of this Agreement.

SECTION 10 - LIABILITY AND ENVIRONMENTAL INDEMNIFICATION.

10.1. TCW agrees to defend, indemnify and hold harmless the Authority, its commissioners, officers, agents and employees from any liability, claims, damages, costs, judgments, or expenses, including reasonable attorneys' fees, resulting directly or indirectly from any act or omission of TCW, its agents, employees, customers, tenants, or invitees, occurring on or from the Rail Corridor after the effective date of this Agreement, except that portion of liability caused by, or contributed to by, acts or omissions of the Authority, its agents, employees and invitees, notwithstanding the provisions of Section 12.

10.2. Soo agrees to defend, indemnify and hold harmless the Authority, its commissioners, officers, agents and employees from any liability, claims, damages, costs, judgments, or expenses, including reasonable attorneys' fees, resulting directly or indirectly from any act or omission of Soo, its agents, employees, customers, tenants, or invitees, occurring on or from the Rail Corridor after the effective date of this Agreement, except that portion of liability caused by, or contributed to by, acts or omissions of the Authority, its agents, employees and invitees, notwithstanding the provisions of Section 12.

10.3 The Authority agrees to defend, indemnify and hold harmless Soo and TCW, their respective officers, agents and employees from any liability, claims, damages, costs, judgments, or expenses, including reasonable attorneys' fees, resulting directly or indirectly from any act or omission of the Authority, its commissioners, officers, agents and employees, tenants, customers or

invitees occurring on the Rail Corridor after the effective date of this Agreement, except that the Authority shall not be required to defend, indemnify or hold TCW harmless to the extent the liability is caused or contributed by acts or omissions of TCW, and the Authority shall not be required to defend, indemnify or hold Soo harmless to the extent the liability is caused or contributed by acts or omissions of Soo, notwithstanding the provisions of Section 12.

10.4 Railroads. In the event Soo commences operations on the Rail Corridor, Soo and TCW shall allocate liability as between them only as follows.

Definition: Whenever the expression "Loss or Damage" is used in this Section 10.4, it means all costs, liabilities, judgments, fines, fees (including without limitation reasonable attorneys' fees and disbursements) and expenses of any nature arising from or in connection with death of or injury to persons, including without limitation employees of the Railroads, or damage to or destruction of property including without limitation property of the Railroads or the Rail Corridor, in connection with operations of the Railroads over or on the Rail Corridor.

Definition: Whenever the expression "proportionally by the Railroads" is used in this Section, it means that expenses will be borne in proportion to the total trains handled by each Railroad over any part of a segment of the Rail Corridor on which the Loss or Damage occurs during the three calendar months prior to the month of the occurrence, or if the occurrence is in any of the first three months of operation under this Agreement, such lesser period as precedes the date of occurrence. For the purposes of determining proportionality as herein provided, light engines shall not be considered a trains. In case of conflict with other provisions of this Agreement, the provisions of Section 10.4 shall control as between the Railroads.

10.4(1) The employees of either Railroad while operating, maintaining or directing operation along the Rail Corridor shall not be considered as joint employees but will remain the sole employees of either Railroad. However, when any sole employee of TCW or Soo is engaged in the

direct activity of maintaining, repairing, renewing, removing, or inspecting the Rail Corridor, or in dispatching, giving orders for or directing the movement of trains over the Rail Corridor for the common benefit of the Railroads, and Loss or Damage to TCW, Soo or a third party, arises out of such service for the common benefit of the Railroads, then the expense of the Loss or Damage shall be borne proportionally by the Railroads; provided that the terms of this Section 10.4(1) shall control in the case of conflict with the provisions of Section 10.4(3) below, but in the case of conflict with Section 10.4(2) below, that Section shall control.

10.4(2) Notwithstanding anything else contained in this Agreement, liability for Loss or Damage resulting from or in connection with the operation of locomotives, trains or cars of either Railroad, or in connection with the presence on the Rail Corridor of locomotives, trains, cars or property of either Railroad, shall be borne and paid by the Railroads as follows:

(a) When the same shall involve the train or equipment of only one of the Railroads, regardless of any third party involvement, all Loss or Damage, including but not limited to, restoration and repair of the Rail Corridor and third party persons or property will be borne by that Railroad.

(b) When the same shall involve the trains or equipment of both Railroads, Loss or Damage shall be borne by each Railroad as to its own employees, property, or property in its custody (except for damage to the Rail Corridor). As to third party persons or property and the Rail Corridor, Loss or Damage shall be borne equally by the Railroads.

10.4(3) Liability for Loss or Damage not involving the train or equipment of either Railroad, or where the identity of the train or equipment involved is unknown, shall be borne and paid by the Railroads as follows:

(a) Liability for Loss or Damage shall be borne by each Railroad as to its own employees (except for employees performing services for the common benefit of the

Railroads), property (other than the Rail Corridor), or property in its custody, but as to third party persons or property, employees performing service for the common benefit of the Railroads, and the Rail Corridor, the cost of Loss of Damage shall be borne proportionally by the Railroads.

(b) Third party claims for Loss or Damage arising out of the killing or injuring of livestock or the setting of fires on or along the Rail Corridor, when caused by the locomotive, train, car or fusee of one of the Railroads, shall be handled or settled by the Railroads whose locomotive, train, car or fusee caused such Loss or Damage, but if it cannot be determined whose locomotive, train or car caused such Loss or Damage, the claim will be handled or settled on behalf of both Railroads in the first instance by TCW, and the Loss or Damage will then be borne equally by the Railroads.

10.4(4) Each Railroad agrees that it will pay for all Loss or Damage, the risk of which it has herein assumed, the judgment of any court to the contrary notwithstanding, and will forever indemnify and save harmless the other Railroad, its successors and assigns, from such payment; provided, however, the indemnifying Railroad shall be assigned any rights which the indemnified Railroad may have against any third party or parties for recovery of any indemnified amount.

10.4(5) In the event that both Railroads hereto shall be liable under the Agreement for Loss or Damage, and the same shall be compromised and settled by voluntary payment of money or valuable consideration by one of the Railroads, the settling Railroad shall obtain a valid and enforceable release from liability for TCW and Soo Line Railroad Company, Soo Line Corporation and their Parents, Subsidiaries and Affiliated Companies, and all of their Officers, Agents, and Employees, etc. Neither Railroad shall make any such compromise or settlement in excess of \$5,000 without prior, written authority of the other Railroad having liability, but any settlement made by

one Railroad in consideration of \$5,000 or less shall be a settlement releasing all liability of both Railroads and shall be binding upon both Railroads.

10.4(6) In case a lawsuit or lawsuits shall be commenced against either Railroad hereto for or on account of any Loss or Damage for which the other Railroad would be solely or jointly liable under this Agreement, the Railroad thus sued shall give the other Railroad timely written notice of the pendency of such suit, and thereupon the Railroad so notified shall assume or join in the defense thereof, and if the Railroad so notified is liable therefore under this Agreement, such Railroad shall save harmless the Railroad so sued from all Loss or Damage in accordance with the liability allocation set forth in this Agreement. Neither Railroad shall be bound by any judgment against the other Railroad unless it shall have been so notified and shall have had reasonable opportunity to assume or join in the defense of the action. When so notified, and said opportunity to join in the defense of the action has been afforded, the Railroad so notified shall to the extent of its liability under this Agreement be bound by such judgment.

10.4(7) If trains, locomotives or cars of Soo are wrecked or derailed on the Rail Corridor, TCW shall arrange to pick up and remove said equipment, and Soo shall bear the entire cost of such service (except to the extent that the allocation of liability in this Agreement provides otherwise), except that if TCW does not have the necessary personnel or equipment, Soo may furnish both as required, at its own expense; provided, however, that in the case of a minor derailment where the derailed equipment can be promptly rerailed by rerailers or blocking by Soo's employees, then in such event Soo may, at its sole expense, rerail such equipment unless TCW's supervisory employees direct otherwise.

10.4(8) It is understood and agreed that a number of vehicular crossings on the Rail Corridor presently exist, or may be constructed. Soo agrees to accept all crossings in whatever condition they may be during the term of this Agreement and will not assert any claim, demand or cause of action

against TCW and will hold TCW harmless from any claim, demand or cause of action arising out of any crossing accident on the Rail Corridor in which the engines, cars or trains of Soo only are involved; provided, however, that nothing in this Section 10.4(8) shall relieve TCW or Soo from liability arising from its gross negligence or intentional acts.

10.5. Soo shall remediate any environmental pollution or contamination on the Rail Corridor that is in violation of any applicable environmental statute, ordinance, rule or regulation which first occurred during its period of use and was caused by Soo or its invitees. Soo shall bear the expense of all practices or work, preventative, investigative or remedial, which may be required because of any such conditions on the Rail Corridor caused by Soo, or its invitees during Soo's period of use, including conditions caused by Soo or its invitees which affect other lands. Soo expressly agrees that the obligations it hereby assumes shall survive cancellation of this Agreement. Soo agrees that statutory limitation periods on actions to enforce these obligations shall not be deemed to commence until the Authority discovers any such conditions and Soo hereby knowingly and voluntarily waives the benefits of any shorter limitation period.

10.6. TCW shall remediate any environmental pollution or contamination on the Rail Corridor that is in violation of any applicable environmental statute, ordinance, rule or regulation which first occurred during its period of use and was caused by TCW or its invitees. TCW shall bear the expense of all practices or work, preventative, investigative or remedial, which may be required because of any such conditions on the Rail Corridor caused by TCW, or its invitees during TCW's period of use, including conditions caused by TCW or its invitees which affect other lands. TCW expressly agrees that the obligations it hereby assumes shall survive cancellation of this Agreement. TCW agrees that statutory limitation periods on actions to enforce these obligations shall not be deemed to commence until the Authority discovers any such conditions and TCW hereby knowingly and voluntarily waives the benefits of any shorter limitation period.

10.7. Authority shall have the right, but not the duty, to enter upon the Rail Corridor from time to time as set forth below to inspect the Rail Corridor for environmental contamination and in the course thereof to conduct soil and groundwater testing and to perform environmental investigation, remediation or mitigation. Authority may enter the Rail Corridor upon 24 hour notice to TCW and Soo, and may enter the Corridor in the case of an emergency, without prior notice, but the Authority shall give TCW and Soo immediate notice of the emergency. Authority shall conduct any such inspections or testing so as to not to interfere with Soo's and TCW's operations and shall provide sufficient notice of actions that might impair safe train operation. Authority's entry on to the Rail Corridor pursuant to this paragraph shall not relieve Soo's and TCW's obligations to pay rent under this Agreement.

10.8. At the request of the Authority, Soo (if Soo commences operations over the rail corridor) and TCW shall pay for the services of a state-approved contractor to sample what appears to be any visibly contaminated areas of the Rail Corridor for which they respectively appear to be responsible. For any contaminated areas, Soo's and TCW's respective contractor shall provide remediation recommendations to the Authority, and shall provide remediation as may be required by law. Copies of the results shall be forwarded to the Authority to ensure that the Rail Corridor is returned to the Authority reasonably free of contamination and in compliance with all applicable environmental law, ordinances, regulations and requirement. The provisions of this paragraph shall survive the termination of this Agreement.

Notwithstanding the foregoing, Soo and TCW is not responsible, by virtue of the terms of this Agreement, for any testing or sampling costs resulting from contamination existing on the Rail Corridor prior to their respective use or occupancy of the Rail Corridor, or which was not caused by TCW or Soo or their invitees, or where no contamination was found.

10.9. Each party shall give the other parties prompt written notice of any and all claims or suits arising from operations on or about the Rail Corridor.

10.10. Notwithstanding the foregoing, the terms of this Agreement are not to be construed as, nor operate as, waivers of the Authority's statutory or common law immunities or limitations on liability, including, but not limited to, Minnesota Statutes Chapter 466. Further, the Authority's obligations set forth in this Section and otherwise in this Agreement, are expressly limited and governed by the provisions of Minnesota Statutes Chapter 466, Minnesota Statutes Chapter 604, and any other applicable law or regulation.

SECTION 11 - INSURANCE.

11.1 TCW, at its own cost or expense, will procure and maintain in effect during the term of this Agreement, a policy or policies of insurance covering the liability to which TCW is or may be subject under this Agreement. Such policy shall name Soo as an additional insured which shall provide the following total coverage:

Third party liability coverage covering injury to or death of persons and damage to property in any one occurrence in the amount of not less than \$10,000,000 (ten million dollars) with a maximum deductible of \$100,000 (one hundred thousand dollars) per occurrence. Such coverage shall include all employees and shall insure named insureds against workmen's compensation and Federal Employers' Liability Act claims. Soo agrees to cooperate in the processing of insurance claims.

11.2. If the insurance procured by TCW, pursuant to this Section, takes the form of a claims-made policy and is cancelled or allowed to expire without renewal, TCW may provide evidence of insurance that provides per occurrence and annual aggregate limits of not less than those

required pursuant to Section 11.1 Such coverage must be retroactive to the original inception date of the cancelled or non-renewed policy.

11.3. At any time not less than sixty (60) days prior to an anniversary date of this Agreement, Soo, in consideration of current and reasonably anticipated claims and litigation costs, may notify TCW of Soo's intent to increase the amount of insurance required by this Agreement or to require that the terms and conditions of such insurance be modified. Should TCW object to any such increase or modification, TCW and Soo will attempt in good faith to negotiate a resolution of their disagreement. If TCW and Soo are not able to agree and such disagreement continues for thirty (30) days past the anniversary date of this Agreement, then the matter or matters in disagreement will be submitted to arbitration in accordance to the rules of the American Arbitration Association.

11.4. Each policy of insurance obtained by TCW pursuant to the requirement of this Section will contain provisions requiring that the insurance carrier give Soo, through the Soo's Director of Insurance, at least thirty (30) days' notice, in writing, of any proposed policy cancellation or any modification of the terms and conditions of any policy of insurance TCW is required to provide under this Section.

11.5. The terms and conditions of each policy of insurance obtained by TCW to satisfy the requirements of this Section will be subject to the approval of Soo, which approval shall not be unreasonably withheld or delayed. TCW will furnish to Soo's Director of Risk Management an accurate copy of each policy of insurance obtained pursuant to the requirements of this Section. Neither compliance with this requirement nor Soo's approval of the terms and conditions of any such policy will in any way limit or modify the obligation of TCW to provide the specific insurance coverage required by this Section.

11.6. In the event TCW fails to maintain the levels of insurance coverage required in this Section, or fails to properly notify Soo of said coverage, after giving TCW written notice of

noncompliance and then (10) days from receipt of such notice within which to comply, Soo may require TCW to suspend operations over the Rail Corridor until such time as TCW complies with the insurance requirements hereunder or otherwise provides Soo evidence of financial responsibility acceptable to Soo in its sole discretion.

SECTION 12 - REPRESENTATIONS AND WARRANTIES

Soo and TCW accept the Rail Corridor and the Rail Line in an “as is” condition, with no express or implied representations or warranties by the Authority as to the physical condition or fitness or suitability for any particular purpose, express or implied, except as otherwise provided in this Agreement. Soo and TCW are responsible for, had ample opportunity to inspect the Rail Line and are familiar with the same. As between the parties, Soo and TCW acknowledge the risks to their rail operations associated with the proximity of the Rail Line to the pedestrian and bicycle trails adjacent to the Rail Corridor. Soo and TCW do not assume liability for damages to the property of third persons or for injury to third persons by reason of Soo or TCW rail operations on the Rail Corridor nor waive any claims they might have against such third persons.

SECTION 13 - SURVIVAL

All of the terms of this Agreement, including all warranties, representations, and indemnification given by each party to this Agreement, all of which are relied upon by each party, shall survive and be enforceable after the execution of this Agreement and any subsequent transfer of title of the Property.

SECTION 14 - LAWS GOVERNING

This Agreement shall be governed to the extent applicable and not preempted by federal law, and the parties agree to be bound, by the laws of the State of Minnesota; and the parties agree to comply with or abide by all laws relevant to this Agreement governing their respective operations in the State of Minnesota.

SECTION 15 - REMEDIES FOR BREACH

Should Soo or TCW default in any payments to be made hereunder or fail to faithfully perform any of their covenants herein or violate any term or condition of this Agreement and, if such default, failure or violation shall continue for a period of sixty (60) days after the Authority shall have given Soo or TCW notice of an "event of default", the Authority may thereupon exclude Soo or TCW, as the case may be, from all the rights and privileges granted to it hereunder, and Soo and TCW shall have no claim or depend upon the authority at law or in equity on account of such exclusion. The rights and remedies granted to the parties in this Section 14 are intended to be cumulative to all other rights and remedies available to the parties (whether under this Agreement, at law, in equity or otherwise); accordingly, the exercise by any party of any such right or remedy shall not preclude it from exercising any other such right or remedy.

SECTION 16 - ASSIGNMENT; BINDING EFFECT

The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, including without limitation, any entities into or by which either of the parties is merged, combined, reorganized or acquired.

SECTION 17 - NOTICES

Unless explicitly stated to the contrary elsewhere in this Agreement, all notices and other communications required or contemplated by this Agreement must be in writing and shall be deemed given when delivered in legible form to the business address of the party to whom addressed. The business addresses of the parties are as follows:

SOO:

Mailing Address: P.O. Box 530
Minneapolis, Minnesota 55440
Attention: Director - Commercial Development

Delivery Address: 1710 Soo Line Building
105 South 5th Street
Minneapolis, Minnesota 55402
Attention: Director - Commercial Development

Fax: 612/347-8064
Attention: Director - Commercial Development-

TCW:

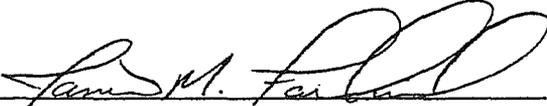
Mailing Address: 2925 - 12th Street East
Glencoe, MN 55336
Attention: President
Fax: 320/864-7220

THE AUTHORITY:

Mailing Address: Hennepin County Regional Railroad Authority
and Delivery A2300 Government Center
Minneapolis, MN 55487-0230
Attention: Executive Director
Fax: 612/348-8228

Notices not given in the manner or within the time limits set forth in this Agreement are of no effect and may be disregarded by the party to whom they are directed. Either party may change its business address, for notice purposes, by giving notice of the change to the other party.

ATTEST:


Title: MGR - CONTRACTS

SOO LINE RAILROAD COMPANY

By: 
Its: VP

ATTEST:


Title: Assistant Secretary

TWIN CITIES & WESTERN RAILROAD COMPANY

By: 
Its: Chairman

Approved as to Form


Assistant Hennepin County Attorney

Date: 8/5/98

Approved as to Execution


Assistant Hennepin County Attorney

Date: 8-6-98

**HENNEPIN COUNTY REGIONAL
RAILROAD AUTHORITY**

By: 
Its: Chair

and

By: 
Its: Executive Director

RAILROAD EASEMENT

(reserved for valuation and tax data)

(reserved for recording data)

STATE DEED TAX DUE HEREON: \$ _____

Date: August 10, 1998

FOR VALUABLE CONSIDERATION, the Hennepin County Regional Railroad Authority, a political subdivision and local government unit under the laws of the State of Minnesota, Grantor, hereby conveys and quitclaims to the Twin Cities and Western Railroad Company, a corporation under the laws of the State of Minnesota, Grantee, a railroad easement over real property in Hennepin County, Minnesota, the terms of which are set forth in Trackage Rights Agreement between the Twin Cities and Western Railroad Company, Soo Line Railroad Company and the Hennepin County Regional Railroad Authority dated August 10, 1998. The real property is described as follows:

(Legal description on Exhibit A)

Hennepin County Regional Railroad Authority

By Mary Tamborino
Its Chairman

By Jeff Spartz
Its Executive Director

STATE OF MINNESOTA)
)ss
COUNTY OF HENNEPIN)

The foregoing was acknowledged before me this 10th day of August, 1998, by Mary Tamborino and Jeff Spartz, the Chairman and Executive Director of Hennepin County Regional Railroad Authority, a political subdivision and local government unit under the laws of Minnesota, on behalf of the Authority.

Mary Ellen Hudson
Notary Public

This instrument was drafted by:

Hennepin County Regional Railroad Authority
417 North Fifth Street, Suite 320
Minneapolis, MN 55401-1362

Tax Statements for the real property described in this instrument should be sent to:

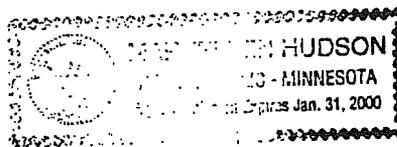


EXHIBIT A

Description of Railroad Easement

A strip of land fifty feet in width lying 25 feet on either side of the centerline of the railroad tracks extending from the point of connection with Soo Line trackage at or near Chicago North Western Railway milepost 16.2 in the City of St. Louis Park, easterly to Chicago North Western Railway milepost 13.7 at a point of connection with Burlington Northern Santa Fe Railway in the City of Minneapolis except as the width is limited by the Trackage Rights Agreement between the Twin Cities and Western Railroad, Soo Line Railroad Company and the Hennepin County Regional Railroad Authority dated *Aug. 10, 1998*.

**September 19, 2000 Easement
Metropolitan Council**

MET COUNCIL EASEMENT FOR SOUTHERLY
20' CORRIDOR - LYNDALE / FREEMONT
29th St. CORRIDOR

Easement

(uptown transit station)

WHEREAS, GRANTOR is the owner of certain right of way (by fee, easement, license, joint use agreement, governmental grant or other interest) commonly referred to as the 29th Street Corridor (Corridor);

WHEREAS, GRANTOR acquired the Corridor for transportation uses, including without limitation, for use as a light rail transit corridor, and preservation as a corridor for public right of way use.

WHEREAS, GRANTEE, is responsible for providing public transit service in the metropolitan area. GRANTEE desires to locate a multi-modal transit station (Uptown Transit Station), and appurtenances thereto for the purpose of facilitating bus transit and other transit modes, including without limitation, light rail transit, over and contiguous to a portion of the Corridor and adjacent to property it will or has acquired.

DESCRIPTION OF PERMANENT EASEMENT AREA

A permanent easement for multi-modal transit station and appurtenance over, under, across and through that part of Hennepin County Regional Railroad Authority (HCRRA) right-of-way located in Section 33, Township 29, Range 24, Hennepin County, Minnesota, as depicted on Sheet 2 of the Hennepin County Regional Railroad Authority Property Map No. 33 (C.R. Doc. No. 6760099), and described as follows:

The south 20.00 feet of that part of said right-of-way lying between the southerly extension across it of the east line of Block 10, Windom's Addition to Minneapolis, according to the duly recorded plat thereof, and a line drawn parallel with and distant 84.00 feet east of the west line of the Southwest Quarter of the Southeast Quarter of said Section 33.

Also a permanent easement for multi-modal transit station and appurtenance over, under, across and through that part of said right-of-way lying within the east 40.00 feet of the west 84.00 feet of the Southwest Quarter of the Southeast Quarter of said Section 33.

Also a permanent easement for multi-modal transit station and appurtenance over, under, across and through that part of said right-of-way lying within the west 40.00 feet of the east 84.00 feet of Government Lot 12 of said Section 33.

Also a permanent easement for multi-modal transit station and appurtenance over, under, across and through that part of the north 5.00 feet of the south 25.00 feet of said right-of-way lying within the east 120.00 feet of the west 204.00 feet of the Southwest Quarter of the Southeast Quarter of said Section 33, all lying above an elevation of 900.00 feet National Geodetic Vertical Datum-1929 Adj.

All subject to the rights granted the Soo Line Railroad Company contained in the Purchase Agreement, dated December 23, 1992 and the Temporary Railroad Easement, (C.R. Doc. No. 6144008) between HCRRA and the Soo Line Railroad Company, the rights of the City of Minneapolis and HCRRA regarding the Midtown Greenway, and subsequent extension of the Greenway as contemplated by the Permit Agreement.

DESCRIPTION OF TEMPORARY EASEMENT

A temporary easement for construction purposes over, under, across and through that part of Hennepin County Regional Railroad Authority (HCRRA) right-of way located in Section 33, Township 29, Range 24, Hennepin County, Minnesota, as depicted on Sheet 2 of the Hennepin County Regional Railroad Authority Property Map No. 33 (C.R. Doc. No. 6760099), and described as follows:

The north 5.00 feet of the south 25.00 feet of said right-of-way lying between the southerly extension across it of the east line of Block 10 Windom's Addition to Minneapolis, according to the duly recorded plat thereof, and a line drawn parallel with and distant 124.00 east of the west line of the Southwest Quarter of the Southeast Quarter of said Section 33, except that part of the west 80.00 feet thereof lying above an elevation of 900.00 feet National Geodetic Vertical Datum-1929 Adj.

Also a temporary easement for construction purposes over, under, across and through that part of said right-of-way lying within the east 40.00 feet of the west 124.00 feet of the Southwest Quarter of the Southeast Quarter of said Section 33, except the south 25.00 feet of said right-of-way.

Also a temporary easement for construction purposes over, under, across and through the north 5.00 feet of the south 25.00 feet of said right-of-way lying within the east 40.00 feet of the west 124.00 feet of the Southwest Quarter of the Southeast Quarter of said Section 33, except that part of said right-of-way lying above an elevation of 900.00 feet National Geodetic Vertical Datum-1929 Adj.

Also a temporary easement for construction purposes over, under, across and through that part of said right-of-way lying within the west 40.00 feet of the east 124.00 feet of Government Lot 12 of said Section 33.

All subject to the rights granted the Soo Line Railroad Company contained in the Purchase Agreement, dated December 23, 1992 and the Temporary Railroad Easement,

(C.R. Doc. No. 6144008) between HCRRA and the Soo Line Railroad Company, the rights of the City of Minneapolis and HCRRA regarding the Midtown Greenway, and subsequent extension of the Greenway as contemplated by the Permit Agreement.

THIS EASEMENT AGREEMENT made _____, 2000, by and between the Hennepin County Regional Railroad Authority (HCRRA), a political subdivision and local government unit, under the laws of the State of Minnesota ("GRANTOR"), and Metropolitan Council, a public corporation and subdivision of the State of Minnesota, ("GRANTEE"), to-wit:

1. GRANTOR, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration to GRANTOR from GRANTEE, receipt of which is acknowledged, grants unto GRANTEE, its successors and assigns, a non-exclusive easement for the construction of a multi-modal transit station ("transit station") and appurtenances, over, under and across the Easement Area as more specifically described, and limited, in the description of the Easement Area above and depicted on Exhibit A.

2. Said easement is limited solely to the above stated purposes and shall expire automatically if not used for those purposes for a period of six consecutive months at which time GRANTEE shall deliver to GRANTOR a release of the easement suitable for recordation.

3. This non-exclusive easement is granted with the understanding that GRANTOR's plans for the segment of the Corridor affected by this instrument are only preliminary. GRANTEE shall use its best efforts to construct the transit station facilities in such a manner as to facilitate use of the transit station for future light rail transit on the Corridor and for use of the Corridor for other transportation purposes. In the event that use of the transit station for light rail transit or other transportation uses requires modification or relocation of the transit station, said modification or relocation shall be at GRANTEE's sole cost, and not at GRANTOR's cost.

Prior to construction, GRANTEE shall submit its plans to GRANTOR for review and comment. GRANTOR reserves the right to reject any plans for construction proposed by GRANTEE on the grounds, in GRANTOR's sole discretion, that said plans are inappropriate or incompatible with its future use of the Corridor, or with the operations of the Soo Line Railroad Company or other railroads operating on the Corridor, and the operations of the City of Minneapolis pursuant to its Permit Agreement referred to in Paragraph 9.

4. The rights granted herein may be exercised at any time subsequent to the execution of this document.

5. GRANTEE agrees to indemnify, defend and hold GRANTOR and its officers, directors and employees harmless from and against all liability, loss, cost, damage or expense of every nature including, without limitation, attorneys' fees, whether or not suit be brought, resulting from injury to or death of persons or loss or destruction to property which arises out of or in any way is connected with or incident to the exercise of GRANTEE'S rights on, over, and across the Easement Area. Notwithstanding the foregoing, this provision does not waive GRANTEE's statutory and common-law rights to limitations on liability, and Grantee shall not be liable for that portion of liability, loss, cost, damage, or expense arising from the intentional or negligent act or omission by Grantor, the City of Minneapolis, County of Hennepin, or Canadian Pacific Railway, their officers, agents, employees, contractors, invitees, successors, or assigns.

6. GRANTEE hereby covenants and warrants that it shall not use, employ, deposit, store, dispose of, place or otherwise release on the Easement Area, in connection with the exercise of its rights under this Easement, any hazardous substance, hazardous waste or pollutant or contaminant, as such terms are defined under any federal, state or local statute, ordinance, rule, code or regulation. GRANTEE agrees to indemnify defend and hold GRANTOR and its successors and assigns harmless against any and all liability, loss, cost, damage or expense resulting from or due to the release of or threatened release of hazardous substances, hazardous wastes or any pollutants or contaminants which were, or are claimed or alleged to have been used, employed, deposited, stored, disposed of, placed or otherwise released on or from the Easement Area by GRANTEE, its employees, agents, contractors or representatives.

7. GRANTOR reserves the right to use and occupy the Easement Area and shall have the right to agree to other occupations of the same premises by one or more persons or firms, provided, however, such uses shall not unreasonably interfere with the easement rights granted hereunder.

8. GRANTOR is not responsible for the maintenance, or construction, of GRANTEE'S facilities in the Easement Area.

9. GRANTEE agrees that the rights contained in this easement are subject to and subordinate to the rights granted and contained in the Permit Agreement between grantor and the City of Minneapolis, A09775 (parcel 73-51003) dated September 12, 1995, and that GRANTEE shall comply, at its sole expense, with all rules and regulations of the City of Minneapolis in regards to the exercise of its rights over GRANTOR's right-of-way, including but not limited to those regarding safety.

Further, GRANTEE agrees that the rights contained in this easement are subject to and subordinate to the rights granted and contained in the Purchase Agreement and easement granted therein between HCRRA and the Soo Line Railroad Company dated December 23, 1992. GRANTEE agrees that it shall comply with the provisions of 14. G. of the Purchase Agreement and easement as though it were the Grantor in any circumstances that it makes entry upon the Railroad Easement area created by that agreement.

10. GRANTOR covenants with GRANTEE, its successors and assigns, that GRANTOR is the owner of the above-described premises and has the right to sell and convey an easement in the manner and form aforesaid.

11. GRANTEE shall not alter the vertical and horizontal clearances of the Corridor as represented by the current configuration of the Hennepin Avenue Bridge. Nor shall the Grantee's use otherwise adversely affect future transportation uses and other use of the Corridor for public right of way, including without limitation, use as a light rail transit corridor and preservation as a corridor for public right of way use.

12. The rights herein granted are subject to existing rights of way, whether or not of record, for highway, roads, railroads, pipelines, canals, laterals, ditches and fiber optic, electrical or other transmission lines, and should it, at any time, become necessary because of GRANTEE's use of the Easement Area to relocate any of said facilities by reason of GRANTEE'S exercise of the rights granted herein, GRANTEE, and not GRANTOR, shall bear and pay the cost of so doing.

GRANTEE also accepts said Easement Area subject to any want or failure at any time of GRANTOR's title to said Easement Area or any part thereof and GRANTEE shall assume any damages sustained by GRANTEE in connection therewith. GRANTEE also accepts such Easement Area subject to rights of any party, including GRANTOR, in and to any roadways, easements, leases and permits, whether granted, at GRANTOR's sole discretion, either prior to or after the date of this Easement Agreement except that any subsequent grant shall not unreasonably interfere with GRANTEE'S use of the Easement Area.

GRANTEE agrees to provide to GRANTOR or other tenants of GRANTOR access over and through the Easement Area should such access be deemed necessary by GRANTOR. GRANTEE accepts said Easement Area subject to the right of GRANTOR, its employees, agents, permittees, lessees, and contractors when reasonably necessary to walk upon said Easement Area to repair adjacent property and the right of GRANTOR, its employees, agents, permittees, lessees, and contractors to temporarily place equipment upon the property when reasonably necessary for the purpose of maintaining, repairing, inspecting or constructing upon GRANTOR's property.

13. The GRANTOR agrees to execute and deliver to GRANTEE, at GRANTEE's cost, without additional compensation, any additional documents needed to correct the legal description of the easement area to conform to the right-of-way actually occupied by the driveway crossing.

14. It is mutually understood and agreed that this instrument covers all the agreements and stipulations between the parties and that no representation or statements, verbal or written, have been made modifying, adding to or changing the terms hereof.

This instrument is exempt from the Minnesota Deed Tax.

50

6144008

GRANTOR COUNTY RECORDS
RECORDS DIVISION, MINN. STATE

RECORDED AND/OR
INDEXED

RAILROAD EASEMENT

TRANSFER ENTERED
DEPT. OF PROPERTY TAX & PUBLIC RECORDS

AUG 30 1993

HENNEPIN COUNTY MINN.
BY [Signature] DEPUTY

1993 SEP -1 AM 11-43

AS BOOKED # **6144008**

BY [Signature] CLERK

DEPUTY

18EP9311 44 D6144008 SLD \$4.50
18EP9311 44 D6144008 DGC \$15.00

(reserved for valuation and tax data) (reserved for recording data)

STATE DEED TAX DUE HEREON: \$ _____

Date: July 30, 1993

FOR \$1.00 AND OTHER VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the Hennepin County Regional Railroad Authority, a political subdivision and local government unit under the laws of the State of Minnesota, Grantor, hereby conveys and quitclaims to the Soo Line Railroad Company, a corporation under the laws of the State of Minnesota, Grantee, a temporary railroad easement over real property in Hennepin County, Minnesota, the terms of which are set forth in that certain Purchase Agreement (the Purchase Agreement) between Soo Line Railroad Company and the Hennepin County Regional Railroad Authority dated December 23, 1992. The real property is described as follows: see attached Exhibit A.

Hennepin County Regional Railroad Authority

BY [Signature]
Sandra M. Hilary
Its Chair

BY [Signature]
James M. Bourey
Its Executive Director

50X 333

Exhibit A (p. 1 of 2)

Temporary Easement No. 1:

Strips of land 30 feet in width lying 15 feet on either side of the centerlines of: all main tracks, spurs, sidings and tail tracks as they are now laid out and constructed over Parcel A (described below).

Except for that portion of Parcel A described as Temporary Easement No. 2, below, and unless terminated earlier pursuant to Section 12 of the Purchase Agreement, Temporary Easement No. 1 shall terminate at the earlier of the following: 15 years after the date of this Easement or at such time as all of Grantee's railroad crossings of Hiawatha Avenue between 26th Street East and Lake Street are permanently severed.

Temporary Easement No. 2:

Strips of land 30 feet in width lying 15 feet on either side of the centerlines of all existing trackage over that portion of Parcel A lying between the west boundary of Fifth Avenue and the west boundary line of Bloomington Avenue, in the City of Minneapolis

also

a strip of land 30 feet in width lying 15 feet on either side of the centerline of the south main track over that portion of Parcel A lying west of the west boundary line of Fifth Avenue, and east of the west boundary of Bloomington Avenue to the east boundary line of Cedar Avenue, in the City of Minneapolis

Temporary Easement No. 2 shall terminate 15 years after the date of this Easement, unless earlier terminated pursuant to Section 12 of the Purchase Agreement.

Parcel A:

All that part of the Hennepin County Regional Railroad Authority right of way, formerly the right of way of the Soo Line Railroad Company, passing through the Northwest Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, and the Southeast Quarter of the Southwest Quarter, all in Section 36, Township 29, Range 24; all of which lies westerly of the easterly right of way line of Hiawatha Avenue.

also:

All that part of the Hennepin County Regional Railroad Authority right of way, formerly the right of way of the Soo Line Railroad Company, passing through the South Half of the Southeast Quarter and

Exhibit A (p. 2 of 2)

the South Half of the Southwest Quarter, Section 35, Township 29, Range 24; the South Half of the Southeast Quarter and the South Half of the Southwest Quarter, Section 34, Township 29, Range 24; the South Half of the Southeast Quarter and the South Half of the Southwest Quarter, Section 33, Township 29, Range 24; the South Half of the Southeast Quarter and the Southeast Quarter of the Southwest Quarter, Section 32, Township 29, Range 24; and the North Half of the Northwest Quarter of Section 5, Township 28, Range 24.

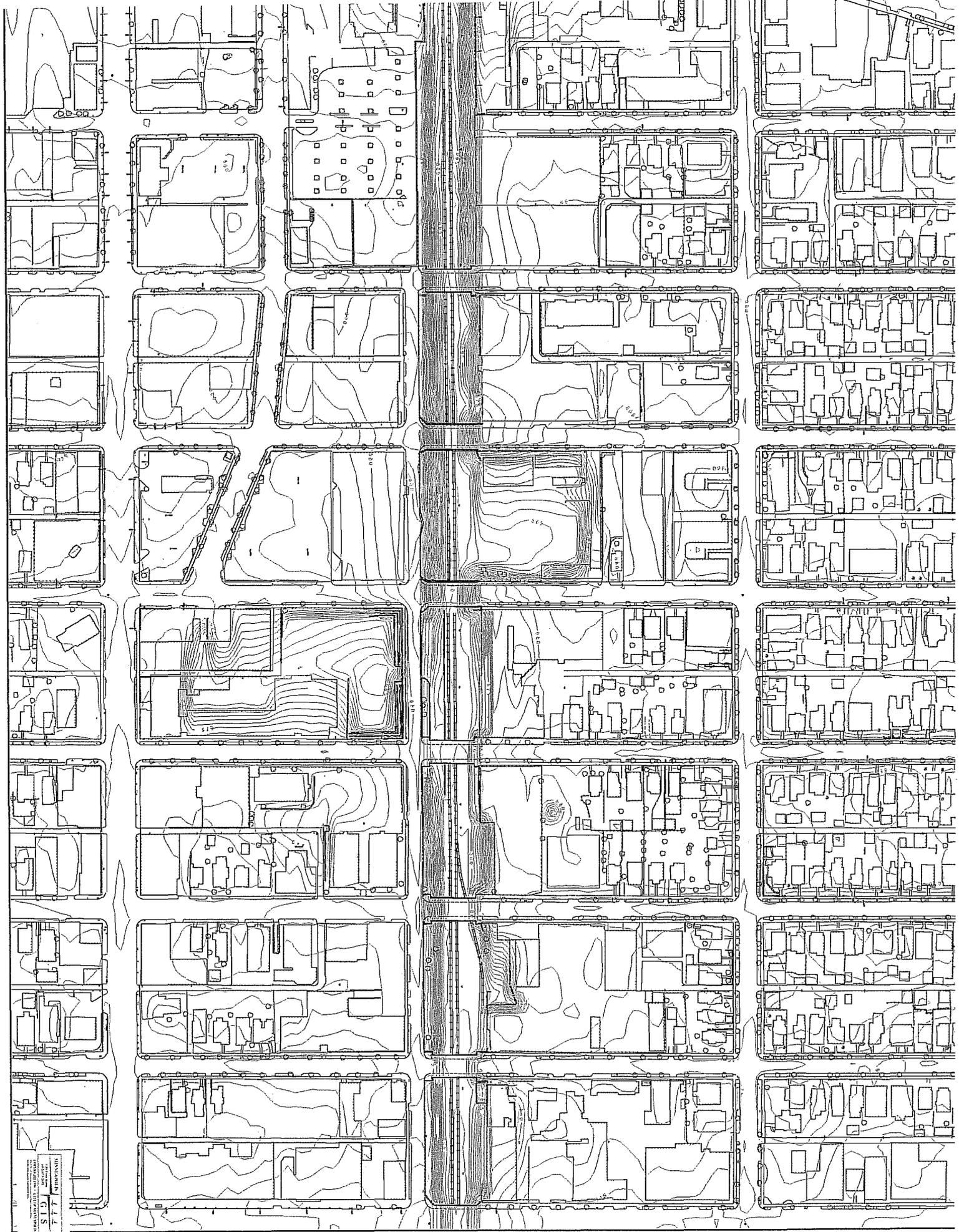
(Abstract Property)

also:

All that part of the North Half of the Southeast Quarter of the Southwest Quarter of Section 35, Township 29, Range 24, lying South of the South line of Block 3, "Avery's Chicago Avenue Addition to Minneapolis", and between the extensions South of the East and West lines of said Block 3.

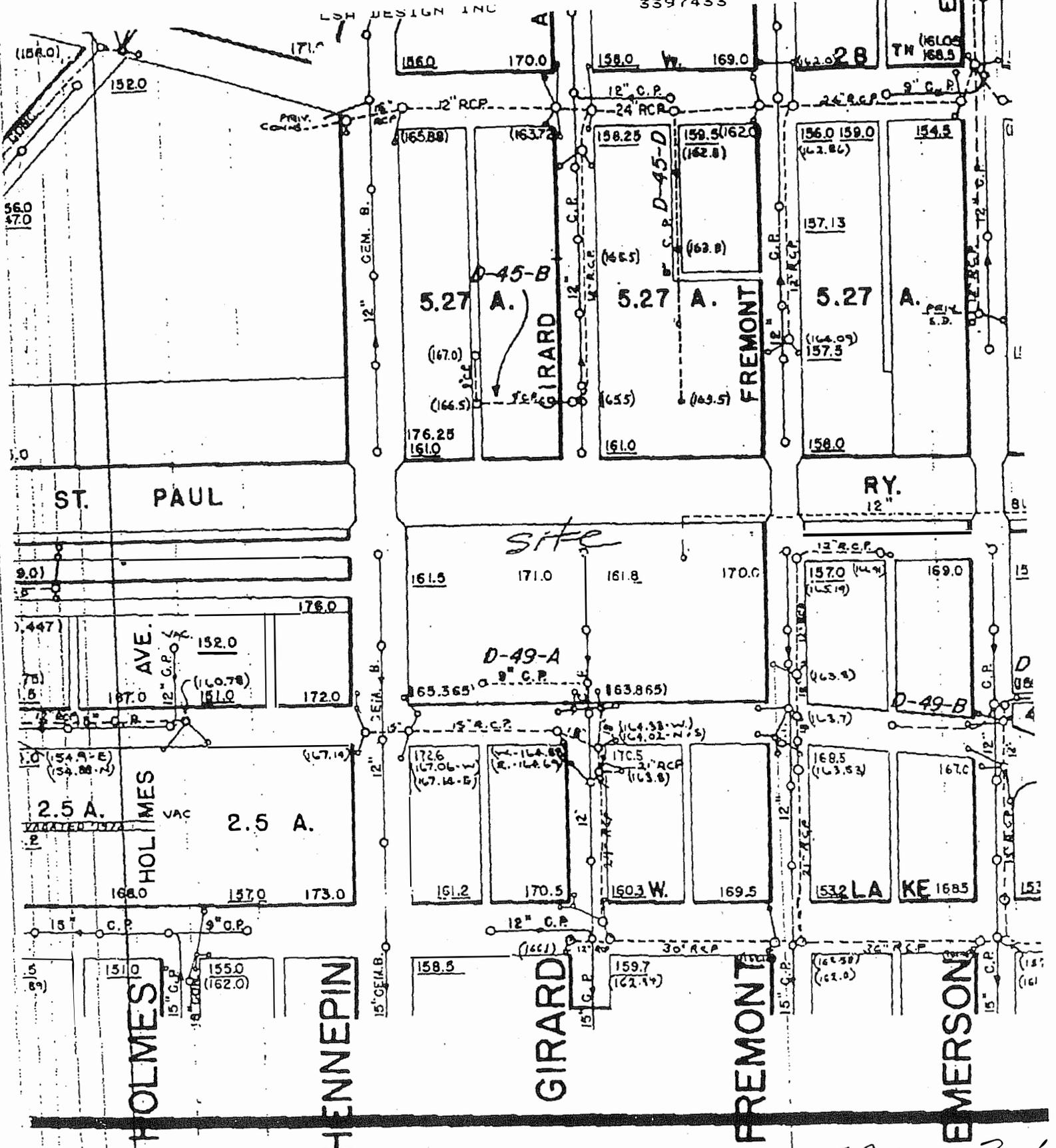
According to the recorded plats thereof and according to the Government Survey thereof, as evidenced by Certificate of Title No. 371889.

(Torrens Property)



Architectural drawing showing floor plan details and structural elements. The drawing includes a title block in the bottom left corner with the following text:

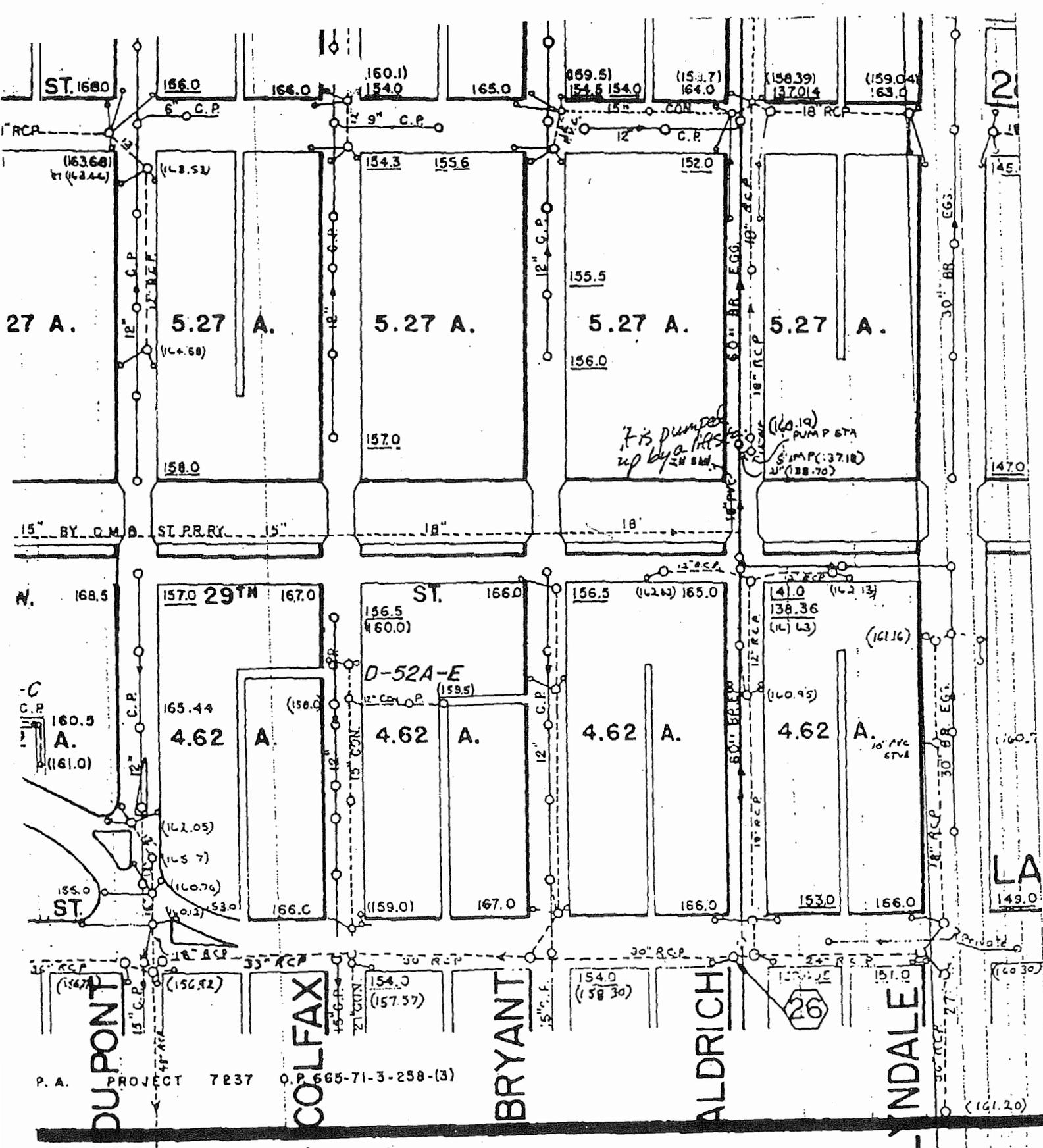
STUDY
777
ARCHITECTURE



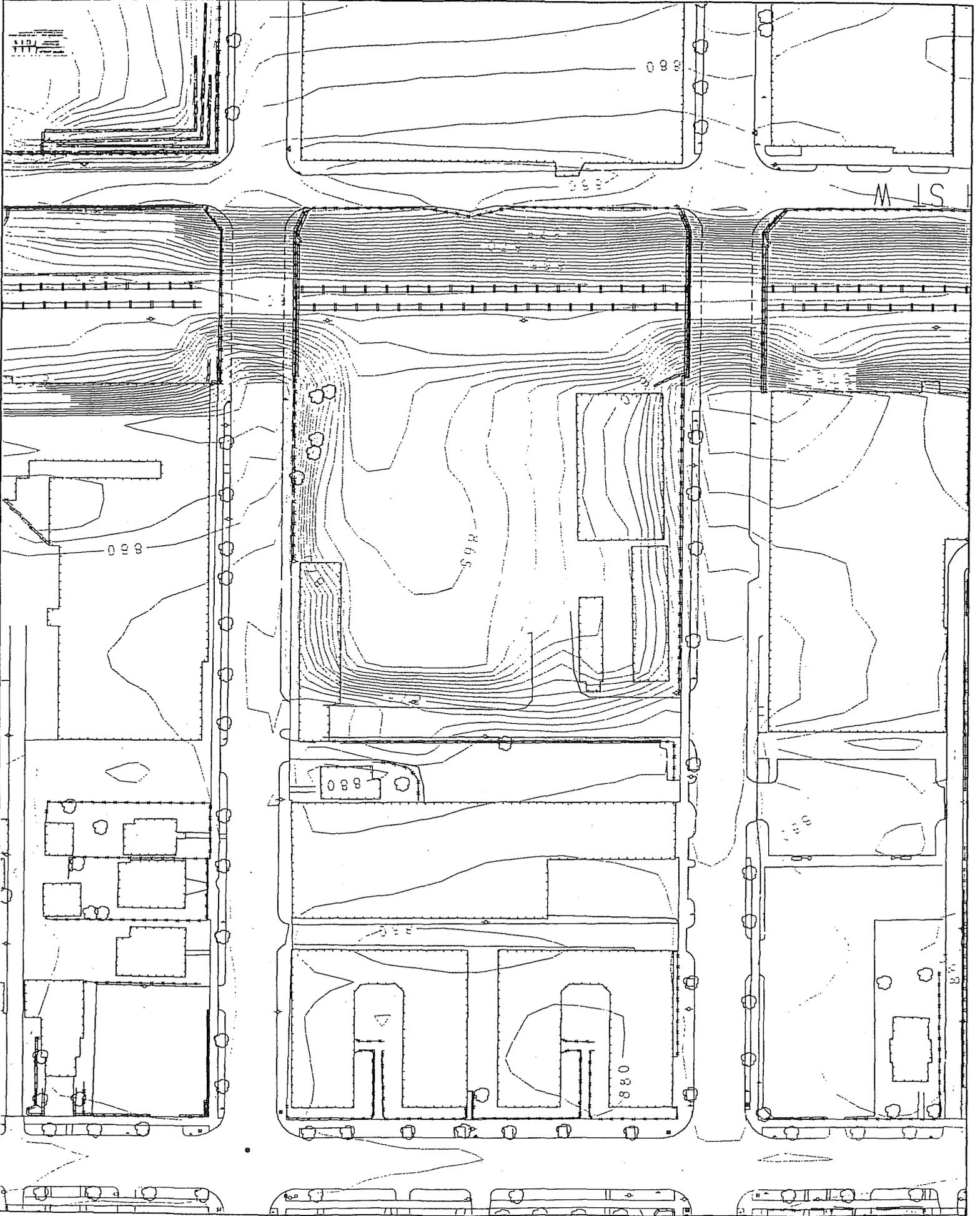
Post-It* Fax Note	7671	Date	6-23-00	# of pages	2
To	Dean Michalko	From	Mark Henderson		
Co./Dept.	HCPRA	Co.	LSA		
Phone #	348-6286	Phone #	890-8756		
Fax #	348-9710	Fax #	890-8756		

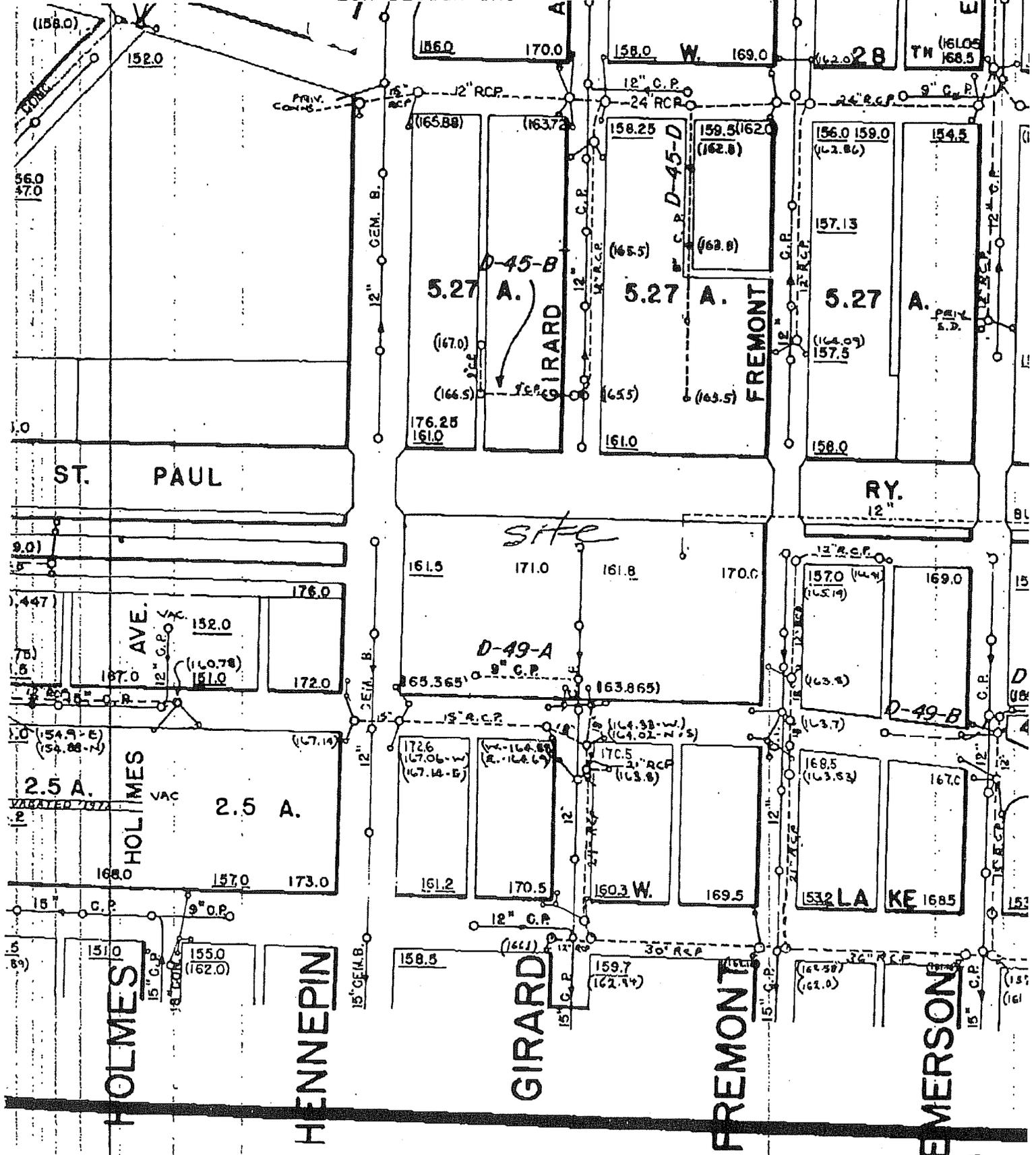
Dean could you fax to me your drawing of storm

5900 Paul
Girard
Mark
Ward



*wellness thought
 as are in place but that had covered and
 were put on it, if pipe is functioning,
 tank thought it should be.*





Post-It® Fax Note	7671	Date	6-23-00	# of pages	2
To	Dean Michalko	From	Mark Henderson		
Co./Dept.	HCRBA	Co.	LSA		
Phone #	348-6286	Phone #	890-8756		
Fax #	348-9710	Fax #	890-8756		

Dean could you fax to me your drawing of storm-

5-9-00 Paul
 Street
 and
 Wind

TRANSACTION CODE 116
RECORDED THRU 07/03/00
SEARCH FIELD 7 LEGAL

DR QUICK LOOK INQUIRY
ABSTRACT/TORRENS A

07/19/00

SEARCH FROM
SEARCH TO

GRANTOR
GRANTEE

REC DATE

DOC DOC TYPE
CERTIF REF DOC

_____ HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY 07/21/97 6760099 R R MAP
_____ HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY

_____ CHICAGO MILWAUKEE CORP 11/08/93 6179121 Q C D
_____ CMC HEARTLAND PARTNERS

_____ CMC REAL ESTATE CORP 11/08/93 6179118 Q C D
_____ CHICAGO MILWAUKEE CORP

_____ HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY 09/01/93 6144008 ESMT
_____ SOO LINE RAILROAD CO

_____ SOO LINE RAILROAD CO 08/05/93 6128880 Q C D
_____ HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY

COMPLETE N

TRANSACTION CODE 116
RECORDED THRU 07/03/00
SEARCH FIELD 7 LEGAL

DR QUICK LOOK INQUIRY
ABSTRACT/TORRENS A

07/19/00

SEARCH FROM
SEARCH TO

GRANTOR
GRANTEE

REC DATE

DOC DOC TYPE
CERTIF REF DOC

MCI TELECOMMUNICATIONS CORP
SOO LINE RAILROAD CO

02/11/92

5876260 ESMT

COMPLETE Y

TRANSACTION CODE 116
RECORDED THRU 07/03/00
SEARCH FIELD 7 LEGAL

DR QUICK LOOK INQUIRY
ABSTRACT/TORRENS A

07/19/00

SEARCH FROM
SEARCH TO

GRANTOR
GRANTEE

REC DATE

DOC DOC TYPE
CERTIF REF DOC

_ HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY 07/21/97 6760099 R R MAP
_____ HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY

_ CHICAGO MILWAUKEE CORP 11/08/93 6179121 Q C D
_____ CMC HEARTLAND PARTNERS

_ CMC REAL ESTATE CORP 11/08/93 6179118 Q C D
_____ CHICAGO MILWAUKEE CORP

_ HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY 09/01/93 6144008 ESMT
_____ SOO LINE RAILROAD CO

_ SOO LINE RAILROAD CO 08/05/93 6128880 Q C D
_____ HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY

COMPLETE N

Exhibit A (p. 1 of 2)

Temporary Easement No. 1:

Strips of land 30 feet in width lying 15 feet on either side of the centerlines of: all main tracks, spurs, sidings and tail tracks as they are now laid out and constructed over Parcel A (described below).

Except for that portion of Parcel A described as Temporary Easement No. 2, below, and unless terminated earlier pursuant to Section 12 of the Purchase Agreement, Temporary Easement No. 1 shall terminate at the earlier of the following: 15 years after the date of this Easement or at such time as all of Grantee's railroad crossings of Hiawatha Avenue between 26th Street East and Lake Street are permanently severed.

Temporary Easement No. 2:

Strips of land 30 feet in width, lying 15 feet on either side of the centerlines of all existing trackage over that portion of Parcel A lying between the west boundary of Fifth Avenue and the west boundary line of Bloomington Avenue, in the City of Minneapolis

also

a strip of land 30 feet in width lying 15 feet on either side of the centerline of the south main track over that portion of Parcel A lying west of the west boundary line of Fifth Avenue, and east of the west boundary of Bloomington Avenue to the east boundary line of Cedar Avenue, in the City of Minneapolis

Temporary Easement No. 2 shall terminate 15 years after the date of this Easement, unless earlier terminated pursuant to Section 12 of the Purchase Agreement.

Parcel A:

All that part of the Hennepin County Regional Railroad Authority right of way, formerly the right of way of the Soo Line Railroad Company, passing through the Northwest Quarter of the Southwest Quarter, the Southwest Quarter of the Southwest Quarter, and the Southeast Quarter of the Southwest Quarter, all in Section 36, Township 29, Range 24; all of which lies westerly of the easterly right of way line of Hiawatha Avenue.

also:

All that part of the Hennepin County Regional Railroad Authority right of way, formerly the right of way of the Soo Line Railroad Company, passing through the South Half of the Southeast Quarter and

L S A

D E S

I G



Fax Memo- Meeting Minutes

Date: November 3, 1999
Project: Uptown Transit Station
Meeting: October 27, 1999 at CP Rail offices
Subject: Uptown Transit Station, Minneapolis
Attendees: John P. Nail, Canadian Pacific Railway, 612.347.8170
 Gary Mentjes, Canadian Pacific Railway, 612.347.8243
 → Larry Odell, Hennepin County, 612.348.9710
 Dean Michalko, Hennepin County, 612.348.9710
 Frank Jordan, Wells Engineering, 612.332.2725
 Mark Henderson, LSA
 Kyle Williams, LSA *KW*

The meeting was held to discuss the construction of the Uptown Transit Station and the impact on CP Rail's easement within the Hennepin County right of way along the 29th street corridor.

1. Kyle W. reviewed the construction concept and the impact on the right of way. The following are the critical elements of the plan.
 - a. No permanent physical improvements will be within the CP Rail operating envelope and easement. A minor exception to this is the extension of Hennepin Avenue bridge. The bridge currently encroaches within the 23' vertical envelope; the extension will match the existing bridge profile.
 - b. Construction access is required within the right of way to build a retaining wall near the southerly edge of the easement, extend the Hennepin Avenue bridge and clean up the grading at the base of the retaining wall.
2. John N. and Gary M. concluded that there are no real estate issues with the construction of the transit station.
3. A discussion ensued regarding the storm water headwall located on the southerly side of the right of way between Girard and Fremont. Storm water from the parking lot above the corridor currently discharges within the right of way at this location. The new busway storm water would contribute to this flow (less than 5 cfs) The following summarizes the discussion:
 - a. Mark H discussed the issue with the City of Minneapolis. One concept was to extend a storm pipe at the parking lot grade to Fremont. A cursory review of the Fremont system raised a concern of whether or not it could handle the water from the entire parking lot. The City recommended continuing the existing condition. An old plan at the city suggested there

Page 2

Meeting Minutes- Uptown Transit Station 10.28.99

might be a pipe in the ditch near the headwall. Mark H. was on site and reported that the existing catch basin was severely deteriorated, water was standing and there did not appear to be an outlet pipe.

- b. Gary M. pulled some corridor plans and profiles. The railway line slopes continuously east from the lakes. Utility plans that Gary M had suggest that water surface drains.
 - c. The conclusion was that the final grading plan would continue the existing storm water flow and improve existing grades as possible. The design intent is to ensure drainage from a reconstructed headwall (to include the busway water) and the track bed is perpetuated in a swale along the southerly right of way.
4. The following procedure and action items were agreed upon.
- a. Hennepin County to submit a letter to Gary M supporting the construction of the project and seeking concurrence from CP Rail. Gary M said CP Rail generally concurs with the concept as long as the grading plan addresses the storm water issue.
 - b. CP Rail engineering will issue a Right of Entry to the transit station contractor after submittal of the construction plans prior to start of construction.
 - c. Easements, temporary and permanent, are to be obtained from Hennepin County, none are required from CP Rail.
 - d. No real estate issues are raised as a result of this project, therefore no letters or concurrence is required.

Please submit any additions or corrections to these minutes to Kyle Williams at LSA Design.

cc: Aaron Isaacs- Metro Transit 612.349.7548
Gary Erickson, Hennepin County 612.348.9710
Katie Walker, Hennepin County 612.348.9710
Gary Criter- City of Minneapolis 612.673.2002
Jim Lasher, LSA Design
File 98.14.3

**June 21, 2005 Easement
City of Hopkins**

JUL 05 2005

Agreement No. 73-33009


HENNEPIN COUNTY
DEPUTY

EASEMENT AGREEMENT
8th Avenue Extension

SCANNED

THIS AGREEMENT, made this 21st day of June, 2005, by and between Hennepin County Regional Railroad Authority, a political subdivision and local government unit of the State of Minnesota (hereinafter referred to as "HCRRA"); and the City of Hopkins, a municipal corporation under the laws of the State of Minnesota (hereinafter referred to as ("CITY")).

RECITALS

- A. HCRRA acquired that certain Chicago and North Western Transportation Company railroad right of way that traverses through the City of Hopkins, County of Hennepin, State of Minnesota, in the vicinity of Excelsior Boulevard and 8th Avenue South, for future transportation purposes, including, without limitation, rail, bus, bicycle and foot travel, for the location of communication facilities, including fiber optics lines, and for other future transportation uses (hereinafter referred to as "Corridor").
- B. In the vicinity of 8th Avenue South and Excelsior Boulevard in the City of Hopkins, the Corridor runs parallel to, and southerly of, Excelsior Boulevard.
- C. The CITY is the owner in fee simple of certain real property (hereinafter referred to as "City Property") located between Excelsior Boulevard and the Corridor. The City Property is adjacent to and contiguous with the Corridor. The City Property is legally described in Exhibit A attached hereto and incorporated herein by this reference.
- D. The CITY desires to extend 8th Avenue in the City of Hopkins southward across Excelsior Boulevard, over that portion of the City Property that is burdened with a perpetual easement for public street, drainage and utility purposes by Declaration of Easement dated February 1, 2005 and filed for record as Document No. 4074060 with the Hennepin County Registrar of Titles (hereinafter "8th Avenue Roadway Area"), and southerly over a portion of the Corridor (hereinafter referred to as "Easement Area") to the "Adjacent Property" described in Recital Paragraph E. The Easement Area is legally described in Exhibit B attached hereto and incorporated herein by reference.
- E. In connection with an impending commercial development located on real property situated immediately to the south of the Easement Area (hereinafter referred to as "Adjacent Property"), the CITY has determined that it is necessary to extend 8th Avenue South across the Corridor for the purposes of providing public access to the Adjacent Property. The Adjacent Property is legally described in Exhibit C attached hereto and incorporated herein by reference.
- F. HCRRA is agreeable to an extension of 8th Avenue South across the Corridor in a manner that is consistent with HCRRA's current and future intended use of the Corridor.

4132712

- G. HCRRA has granted permission to the Suburban Hennepin Regional Park District (now known as Three Rivers Park District) pursuant to Permit Agreement No. 73-33001 dated July, 1992, to use the Corridor on an interim basis for a recreational trail from the City of Hopkins to Highway 212 in Chaska, Minnesota (hereinafter referred to as "Trail").
- H. In a separate Easement Agreement between the CITY and HCRRA dated June 21st, 2005, recorded July 5, 2005 as Document No. 4132713 and identified as Agreement No. 73-33009C ("Transportation Use Easement"), CITY has granted to HCRRA an easement for public transportation uses over the City Property.
- I. The location of the Corridor, Trail, Easement Area, City Property (including the 8th Avenue Roadway Area and the Transportation Use Easement Area), Excelsior Boulevard and the Adjacent Property are depicted on Exhibit D, attached hereto and made a part of this Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated in and made a part of this Agreement, and in consideration of the sum of One and No/100 Dollars (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, HCRRA hereby grants to CITY, its successors and assigns the following:

1. A nonexclusive easement (hereinafter "8th Avenue Extension Easement") for public road crossing purposes, over, under and across the Easement Area, as legally described in Exhibit B attached hereto, in accordance with the terms of this Agreement. The easement rights granted include the right to construct and maintain a public road crossing over the Easement Area for the purposes of providing street access to the Adjacent Property. This grant of easement includes the right to place underground utility crossings within the Easement Area running from the City Property to the Adjacent Property. All references to "public road crossing" in this grant of easement and the obligations hereunder equally apply to all utility crossings placed within the Easement Area. The 8th Avenue Easement shall continue in effect indefinitely until its termination in accordance with either Section 9 or 15 of this Easement Agreement.
2. CITY shall exercise the rights granted by this Easement Agreement in such a manner as to be compatible with the use of HCRRA's Corridor for and shall not unreasonably interfere with the use of the Corridor for transportation purposes, including, without limitation, rail, bus, bicycle and foot travel, for the location of communication facilities, including fiber optics lines, and for other future transportation uses. CITY's use of the Easement Area is subservient to all federal laws and regulations governing rail operations on the Corridor.
3. In the event that use of the Corridor for light rail transit or other transportation uses, at HCRRA's sole discretion, requires modification or relocation of the public road crossing, said modification (including without limitation construction of a grade separated crossing) or relocation shall be at the CITY's sole cost, and not at HCRRA's, unless CITY elects to terminate the 8th Avenue Extension Easement created by this Agreement in lieu of paying for the cost of construction

of a grade separated crossing in accordance with the terms of Section 9.

4. CITY shall give HCRRA at least three working days' advance written notice prior to entry on to the Easement Area for purposes of constructing, repairing, or replacing the public road crossing or where such entry involves excavation or other physical alteration of the Easement Area or otherwise will interfere with safe passage along the Corridor. For each entry, the notice shall identify the date, time, location and the precise nature of the activities to be conducted on the Easement Area. CITY shall take all reasonable precautions to assure the safety of passage along the Corridor.

5. CITY and its contractors shall not interfere with operations upon the Corridor except with the consent of HCRRA which consent shall not be unreasonably withheld.

6. No work shall be done or obstruction placed over any track or pathway on the Corridor unless CITY has arranged to furnish, at the CITY's or its contractors' expense, such flagging as HCRRA deems necessary for the protection of railroad or other transportation operations on the Corridor. Such flagging shall not relieve the CITY or its contractors from any liability.

7. Construction equipment and related equipment shall not be placed closer than 10 feet from the nearest rail of any track, pathway or trail located on the Corridor without CITY taking all reasonable precautions to protect the safety of passage along the Corridor.

8. Prior to construction of any public road crossing, or modification or relocation thereof, CITY shall submit its plans to HCRRA for review and comment. HCRRA reserves the right to reject any plans for construction proposed by CITY by written notice to the CITY within thirty (30) days of submission of plans by the CITY on the grounds, in HCRRA's sole discretion, that said plans are inappropriate or incompatible with its present and future use of the Corridor. Such notice shall state HCRRA's basis for rejection of the plans. In the event HCRRA rejects plans for modification or relocation, the Completion Period as defined in Section 9 shall be extended by sixty (60) days. The CITY may submit revised plans upon rejection of the plans by HCRRA, but there shall be no further extension of the Completion Period unless the parties mutually agree to the extension. However, the CITY and HCRRA shall cooperate with one another in resolving objections to the proposed plans. HCRRA's failure to notify the CITY within thirty (30) days of the submission of the plans and/or revised plans to HCRRA shall be deemed acceptance of such plans.

9. In the event modification or relocation is required pursuant to Section 3, upon one hundred twenty (120) days' written notice from HCRRA to CITY ("Modification Notice"), which notice shall state the specific modification or relocation to be accomplished, CITY shall complete the relocation or modification in accordance with plans submitted by CITY to HCRRA and agreed to by HCRRA. In lieu of paying for the cost of construction of a grade separated crossing to accommodate light rail transit or other transportation uses on the Corridor required by HCRRA, CITY may elect to terminate the 8th Avenue Extension Easement created by this Agreement by delivering to HCRRA a release of CITY's easement rights suitable for recording (hereinafter "Release of Easement for the 8th Avenue Extension") within sixty (60) days of receiving the Modification Notice from HCRRA. Upon HCRRA's receipt of the CITY's Release of Easement for the 8th Avenue Extension, CITY shall have

no further obligations to HCRRA under Sections 3, 8 and 9 of this Agreement for relocation or modification of the Easement Area. In the event CITY fails to complete any required relocation or modification within one hundred twenty (120) days ("Completion Period") and has not timely released the 8th Avenue Extension in accordance with this section, HCRRA may enter upon the Easement Area and modify and relocate the public road crossing in such a manner as to be compatible with use of the Corridor for transportation purposes, provided the Completion Period shall be extended for such period of time, but no longer than sixty (60) days, if the CITY is unable to proceed with relocation or modification of the public road crossing due to inclement weather or other circumstances beyond the control of the CITY. CITY shall pay to HCRRA the cost of modification or relocation incurred by HCRRA within thirty (30) days of written invoice of the cost from HCRRA to CITY.

10. CITY agrees to indemnify, defend and hold HCRRA and its officers, directors and employees harmless from and against all liability, loss, cost, damage or expense of every nature including, without limitation, attorneys' fees, whether or not suit be brought, resulting from injury to or death of persons or loss or destruction to property which arises out of or in any way is connected with or incident to the exercise of CITY's rights on, over, and across the Easement Area. Notwithstanding the foregoing, this provision does not waive CITY's statutory and common-law rights to limitations on liability, and CITY shall not be liable for that portion of liability, loss, cost, damage, or expense arising solely from the intentional or negligent act or omission by HCRRA or, its officers, agents, employees, contractors, invitees, successors, or assigns.

11. CITY hereby covenants and warrants that it shall not use, employ, deposit, store, dispose of, place or otherwise release on the Easement Area, in connection with the exercise of its rights under this Easement Agreement, any hazardous substance, hazardous waste or pollutant or contaminant, except in full compliance with all applicable laws, nor shall it create or permit any condition on the Easement Area that could present a threat to human health or to the environment. CITY agrees to indemnify, defend and hold HCRRA and its successors and assigns harmless against any and all liability, loss, cost, damage or expense resulting from or due to the release of or threatened release of hazardous substances, hazardous wastes or any pollutants or contaminants, or any other environmentally regulated materials, including petroleum products and the various constituents thereof, which were, used, employed, deposited, stored, disposed of, placed or otherwise released on or from the Easement Area by CITY, its employees, agents, contractors or representatives, including those released on or from the Easement Area in full compliance with all applicable laws where said release is the result of an emergency response.

12. The rights herein granted are subject to existing rights of way, whether or not of record, for roadways, pipelines, canals, laterals, ditches, communication facilities, including fiber optics, electrical or other transmission lines, and should it, at any time, become necessary because of CITY's use of the Easement Area to relocate any of said facilities by reason of CITY's exercise of the rights granted herein, CITY, and not HCRRA, shall bear and pay the cost of so doing.

CITY also accepts said 8th Avenue Extension Easement subject to any want or failure at any time of HCRRA's title to said Easement Area or any part thereof and CITY shall assume any

damages sustained by CITY in connection therewith. CITY also accepts such 8th Avenue Extension Easement subject to rights of any party, including HCRRA, in and to any roadways, easements, leases and permits, whether granted, at HCRRA's sole discretion, either prior to or after the date of this Easement Agreement except that any subsequent grant shall not unreasonably interfere with CITY's use of the 8th Avenue Extension Easement.

CITY agrees to provide to HCRRA reasonable access over and through the Easement Area should such access be deemed necessary by HCRRA. CITY accepts said Easement Area subject to the right of HCRRA, its employees, agents, permittees, lessees, and contractors when reasonably necessary to walk upon said Easement Area to repair adjacent property and the right of HCRRA, its employees, agents, permittees, lessees, and contractors to temporarily place equipment upon the Easement Area when reasonably necessary for the purpose of maintaining, repairing, inspecting or constructing upon HCRRA's property, provided the placement of such equipment shall not unreasonably interfere with the use of the public road crossing.

13. Said 8th Avenue Extension Easement shall be non-exclusive and shall not in any manner restrict HCRRA from granting for fair market value, other fair consideration or without consideration, subsequent rights to use of its Corridor for transportation purposes, or other public purpose consistent with the continued use of the Easement Area as a public road crossing. The continued use of this 8th Avenue Extension Easement shall not create a roadway dedicated or accruing to the public or any individual in the meaning of Minn. Stat. Sec. 160.05 or any other statute or at common law.

14. This Agreement and the 8th Avenue Extension Easement shall run with title to the Easement Area and the City Property and shall be binding upon the HCRRA and CITY and their successors and assigns, until terminated by the terms of this Agreement. The terms of this Easement Agreement are for the benefit of the parties and are not to be construed as creating third party beneficiary rights and are not to be construed as creating a right in favor of the CITY to assign any of its rights and obligations created by this Easement Agreement to third parties. However, the CITY shall be entitled to enter into an agreement with the owner of the Adjacent Property allowing the owner use of the public road crossing and requiring the owner of the Adjacent Property to construct and maintain the road improvements within the Easement Area in accordance with the terms of this Agreement.

15. This 8th Avenue Extension Easement is limited solely to use as a public road crossing. In the event the Easement Area is not used as a public road crossing for a period of twelve (12) consecutive months, this 8th Avenue Extension Easement shall terminate automatically and CITY shall deliver to HCRRA a Release of Easement for the 8th Avenue Extension within thirty (30) days of HCRRA's request to CITY. Any period of time during which the Easement Area is not used to provide access to the Adjacent Property as a result of the HCRRA's exercise of its rights under Paragraphs 3, 8 and 9 of this Agreement shall not be included in the twelve (12) consecutive month period of time referred to in the immediately preceding sentence. Additionally this 8th Avenue Extension Easement shall automatically terminate upon the opening of a public street access to the Adjacent Property other than that created by this Agreement and by that existing access at 5th Avenue

South and CITY shall deliver to HCRRA a Release of Easement for the 8th Avenue Extension within thirty (30) days of the date of opening of the public street access.

16. Upon delivery by City to HCRRA of CITY's Release of Easement for the 8th Avenue Extension pursuant to either Section 9 of this Agreement (in lieu of paying for the cost of a grade separated crossing) or Section 15 of this Agreement (for non-use as a public road crossing or the opening of an alternative access) the provisions of Section 4 of the Transportation Use Easement shall apply.

17. Any request, notice or other communication which one party to this Agreement wishes or is required to give to the other party will be regarded as effective if such notice is in writing and either delivered personally to such party or such notice is sent by certified mail, return receipt requested and postage prepaid, addressed as follows:

To Grantor: Hennepin County Regional Railroad Authority
417 North Fifth Street, Suite 320
Minneapolis, MN 55401-1362
Attention: Manager of Leasing and Land Management

To Grantee: City of Hopkins
1010 First Street South
Hopkins, MN 55343
Attention: Public Works Director

Either party may change the above address for notices by written notice to the other party given in the manner provided in this section.

IN WITNESS WHEREOF, the said parties have caused this Agreement to be executed the day and year first above written.

GRANTOR:

GRANTEE:

**Hennepin County Regional
Railroad Authority**

City of Hopkins

By:

By:

Its: Board Chair

Its: Mayor

Date: 6-20-05

Date: June 14, 2005

By:

By:

Its: Deputy/Executive Director

Its: City Manager

Date: 6-21-05

Date: June 14, 2005

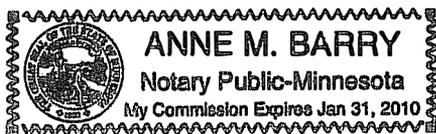
ATTEST:
Deputy/Clerk of Authority Board

Reviewed by County Attorney's Office

Date 6/8/05

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 21st day of June, 2005, by Peter McLaughlin and Gary Erickson the Chair and Executive Director of Hennepin County Regional Railroad Authority, a political subdivision and local government unit of the State of Minnesota, on behalf of the Authority.



Anne M. Barry
Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this 14th day of June, 2005, by Eugene J. Maxwell and Richard Getschow the Mayor and City Manager of the City of Hopkins, a municipal corporation of the State of Minnesota, on behalf of the CITY.



Shannon C. Smith
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Hennepin County Regional Railroad Authority
417 North Fifth Street, Suite 320
Minneapolis, MN 55401-1362

Exhibit A

(Legal Description of City Property for the 8th Avenue Extension Easement)

That part of the South Half of the Southeast Quarter of Section 24, Township 117, Range 22 described as follows: Beginning at the intersection of the Southerly right-of-way line of County Road Number 3, as shown in Book 4 of Highway Plats, Page 4, office of the County Recorder, with the Southerly right-of-way line of the Chicago and North Western Transportation Company, formerly The Minneapolis & St. Louis Railway Company; thence Southwesterly 249.23 feet along the Southerly right-of-way line of said County Road Number 3, which right-of-way line is a curved line concave to the Northwest having a radius of 1860.08 feet, a central angle of 7 degrees 40 minutes 37 seconds and an assumed chord bearing of South 66 degrees 17 minutes 41 seconds West; thence South 70 degrees 08 minutes West along the Southerly right-of-way line of said County Road Number 3 a distance of 1224.29 feet, said line hereinafter referred to as line "A"; thence Westerly on a tangential curve to the right along the Southerly right-of-way line of said County Road Number 3 a distance of 971.08 feet, said curve having a radius of 2814.77 feet and a central angle of 19 degrees 46 minutes; thence South 89 degrees 54 minutes West along the Southerly right-of-way line of County Road Number 3, which line is hereinafter referred to as line "B" to its intersection with the Northerly extension of the East line of Registered Land Survey No. 1316; thence Southerly along said extension and along said East Line to its intersection with a line drawn parallel with and 100.00 feet Southerly from said line "B"; thence North 89 degrees 54 minutes East along said parallel line and its extension to the intersection with a line drawn parallel with and 76.00 feet Southeasterly from said line "A" and its Southwesterly extension; thence North 70 degrees 08 minutes East along the last described parallel line and its extension a distance of 2098.14 feet; thence North 60 degrees 15 minutes 48 seconds East a distance of 73.56 feet to a point which is on a line bearing South 76 degrees 51 minutes 15 seconds East and distant 146.95 feet from the point of beginning; thence along a curve concave to the Northeast, having a radius of 686.62 feet and a central angle of 12 degrees 17 minutes 10 seconds a distance of 147.23 feet to the point of beginning, except that part thereof embraced within the plat of 10417 Associates Addition (Torrens Certificate of Title No. 1010683)

Exhibit B

(Legal Description of Easement Area for 8th Avenue Extension Easement)

That part of the following described parcel of land in the City of Hopkins:

That part of Hennepin County Regional Railroad Authority Property Map No. 28, according to the recorded plat thereof, Hennepin County, Minnesota, recorded as Document No.6540294, lying in the Northwest Quarter of the Northeast Quarter of Section 25, Township 117, Range 22, in said County.

And also that part of Hennepin County Regional Railroad Authority Property Map No. 29, according to the recorded plat thereof, Hennepin County, Minnesota, recorded as Document No.6540295, lying in the Southwest Quarter of the Southeast Quarter of Section 24, Township 117, Range 22, in said County.

Which lies within the following permanent easement for public roadway crossing purposes:

A strip of land 66.00 feet in width over (The Tract), the centerline of said strip is contiguous with a line drawn parallel with and distant 37.00 feet easterly of the easterly line of Lot 1, Block 2, 10417 Associates Addition, according to the recorded plat thereof, in said County, and its southerly extension. Said strip of land is to extend by its full width from the northerly line of said Hennepin County Regional Railroad Authority Property Map No. 29, to the southerly line of said Hennepin County Regional Railroad Authority Property Map No. 28.

Exhibit C

(Legal Description of the Adjacent Property for 8th Avenue Extension Easement)

Outlot A, Cornerstone (Torrens Certificate of Title No. 1123841)

Lot 5 and that part of Lot 4, Auditor's Subdivision Number 195, Hennepin County, Minnesota and that part of the Southwest Quarter of the Southeast Quarter of Section 24, Township 117, Range 22 and that part of the Northwest Quarter of the Northeast Quarter of Section 25, Township 117, Range 22, all described as beginning at the Northwest corner of said Lot 4; thence South to the Southwest corner of said Lot 4; thence East along the South line of said Lot 4 to the Southeasterly line thereof; thence Northeasterly along the Southeasterly line of said Lot 4 to its intersection with a line drawn parallel to and 33 feet West from the East line of said Southwest Quarter of the Southeast Quarter; thence North along said parallel line to the most Northerly corner of said Lot 5; thence Southwesterly to the point of beginning except that part of said Lot 4 lying Southwesterly of a line and its Southeasterly extension drawn from a point in the Northwesterly line of said Lot distant 990.02 feet Northeasterly of the Northwest corner of said Lot to a point in the Southeasterly line of said Lot a distance of 1360.84 feet Northeasterly of the most Southerly corner of Block 38, West Minneapolis (Torrens Certificate of Title No. 1115463)

ROADWAY & UTILITY EASEMENT (CITY PROPERTY)

AREA = 7193 sq ft



ACCESS EASEMENT (HCRA PROPERTY)

AREA = 6600 sq ft



TRANSPORTATION USE EASEMENT, PER AGREEMENT (CITY PROPERTY)

AREA = 18,892 sq ft

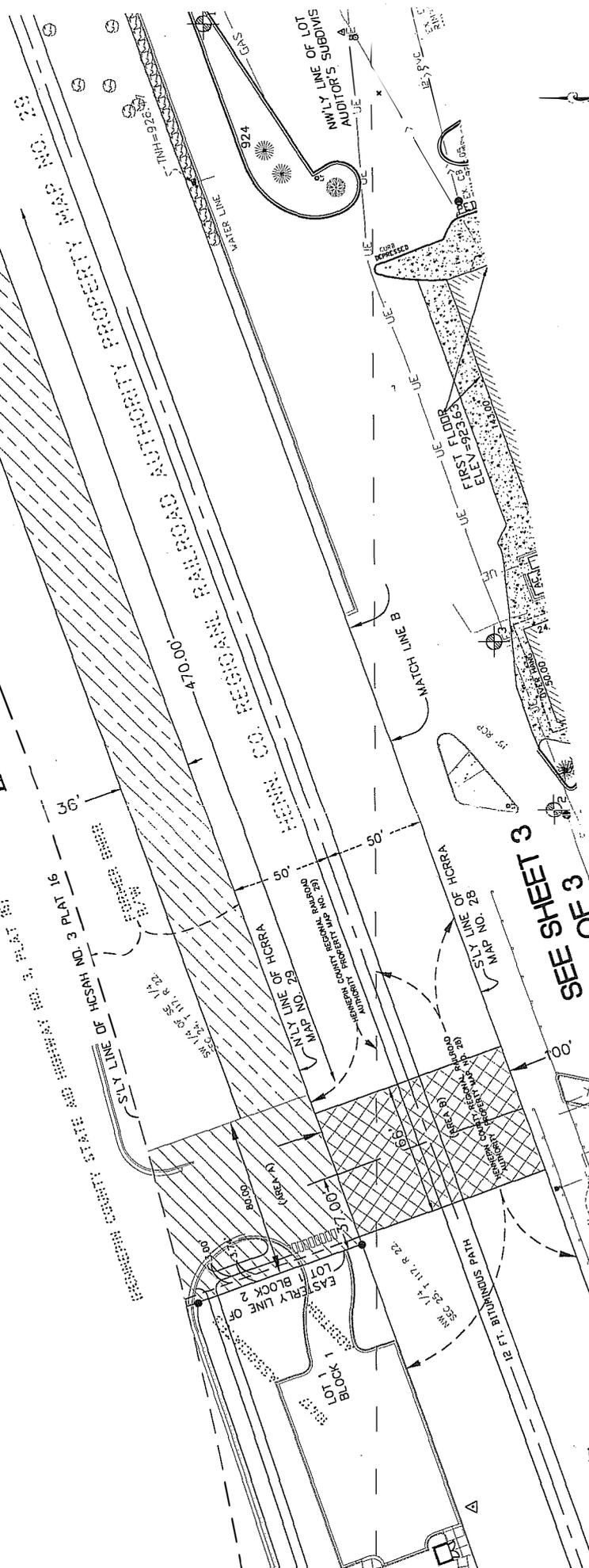


Exhibit D

SEE SHEET 2
OF 3

MATCH LINE A

EXCELSIOR BOULEVARD



SEE SHEET 3
OF 3

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA

Signature of Steven V. Ische
STEVEN V. ISCHE

DATE: 5/1/05 REG. NO. 22703

DATE: 5/1/2005
Revised Date: 6/14/2005

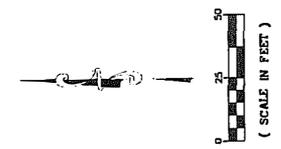
AREA ABC
SHEET 1 OF 3

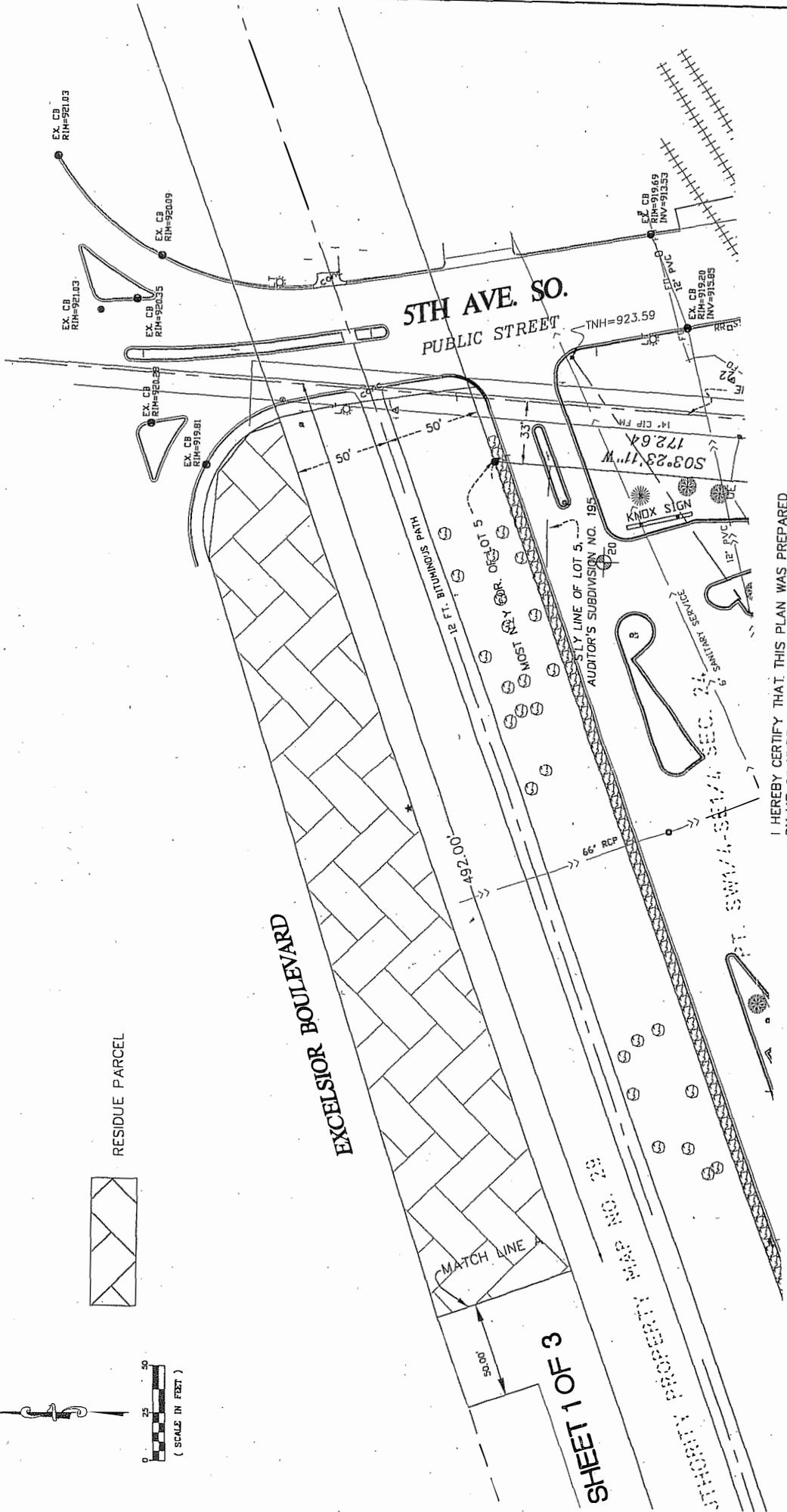
EASEMENT EXHIBIT
CITY OF HOPKINS, MN

4150 Olson Memorial Highway
Suite 300
Minneapolis, MN 55422
TEL 612-480-7851
FAX 763-541-1700



INFRASTRUCTURE ENGINEERS & PLANNERS





I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY REGISTERED LAND SURVEYOR UNDER THE LAWS OF THE STATE OF MINNESOTA

Steven V. Ische
STEVEN V. ISCHE

DATE: 5/1/05 REG. NO.: 22703

DATE: 5/1/2005

8TH AVENUE CROSSING EASEMENT EXHIBIT
CITY OF HOPKINS, MN

RESIDUE PARCEL SHEET 2 OF 3

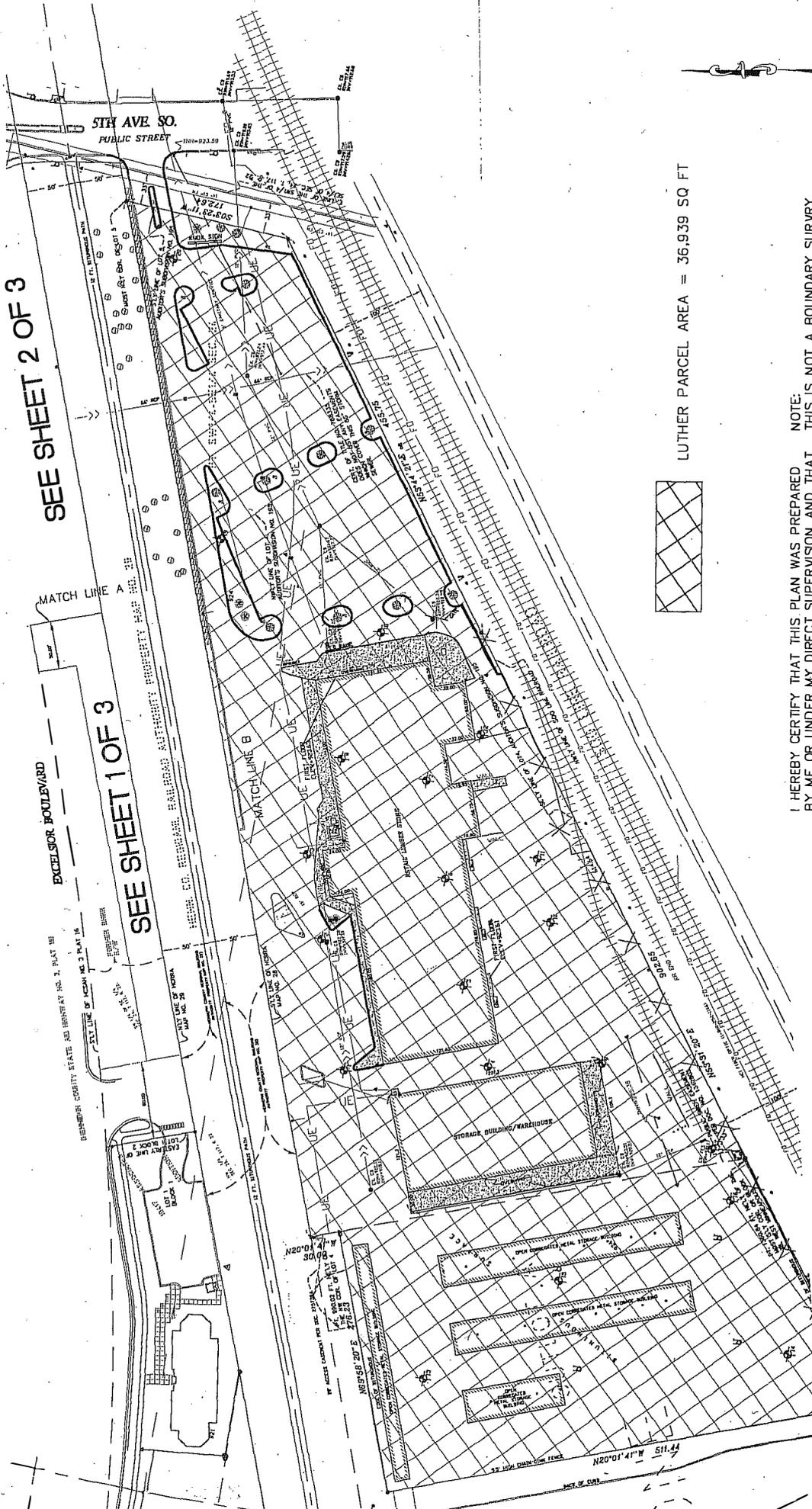
WSB
SURVEYING & ENGINEERING, PLLC

4150 Olson Memorial Highway
Suite 300
Minneapolis, MN 55422
TEL: 763-641-4300
FAX: 763-641-1700

SEE SHEET 2 OF 3

EXCELSIOR BOULEVARD

SEE SHEET 1 OF 3



LUTHER PARCEL AREA = 36.939 SQ FT



NOTE:
 THIS IS NOT A BOUNDARY SURVEY
 BOUNDARY INFORMATION SHOWN IS
 TAKEN FROM PRELIMINARY BOUNDARY
 SURVEY BY OTHERS

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED
 BY ME OR UNDER MY DIRECT SUPERVISION AND THAT
 I AM A DULY REGISTERED LAND SURVEYOR UNDER
 THE LAWS OF THE STATE OF MINNESOTA

Steven V. Ische
 STEVEN V. ISCHE

DATE: 5/1/05 REG. NO. 22703

DATE: 5/7/2005

LUTHER PARCEL
SHEET 3 OF 3

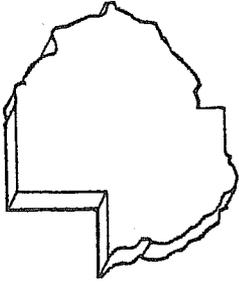
8TH AVENUE CROSSING
EASEMENT EXHIBIT
CITY OF HOPKINS, MN

4150 Olson Memorial Highway
 Suite 300
 Minneapolis, MN 55422
 TEL: 612-541-4400
 FAX: 612-541-1700



PLANS, EASEMENTS, ETC. ARE THE PROPERTY OF THE SURVEYOR - GEORGE LUTHER

**December 2, 2007 Permit
Lyndale Redevelopment LLC, a Limited Liability Company**



HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY

417 North Fifth Street, Suite 320, Minneapolis, MN 55401-1362 (612) 348-9260
FAX: (612) 348-9710

STAIRWAY - N. SIDE 29th ST.
LYNDALE TO GARFIELD

Permit No. **22-07**
File No. **73-51075F**

Permit

Permittee: **Lyndale Redevelopment LLC, a Limited Liability Company, and their successors and assigns,**

Address: *2200 Blairdell Ave So mpls 55404*
~~5407 Excelsior Boulevard, Suite B, St. Louis Park, Minnesota 55416~~

Commencement Date: _____
[TO BE FILLED IN BY HCRRA]

WHEREAS, Hennepin County Regional Railroad Authority (HCRRA) is the fee owner of a depressed rail corridor, formerly owned by the Soo Line Railroad Company, in the City of Minneapolis known as the 29th Street Corridor legally described on attached Exhibit A (hereinafter referred to as "Corridor").

WHEREAS, Permittee is fee owner of property adjoining said Corridor legally described on attached Exhibit B (hereinafter referred to as the "Benefited Parcel").

WHEREAS, Permittee is in the process of constructing a building (hereinafter referred to as the "Building") to be located on the Benefited Parcel.

WHEREAS, Permittee wishes to construct two (2) separate concrete stairways including supporting foundations, and other related appurtenances, connecting the Corridor to the Building and to public streets, and which include portions of said stairways encroaching onto Corridor, legally described on attached Exhibit C and depicted with hatch marks on attached Exhibit D (hereinafter referred to as "Stairways").

WHEREAS, in exchange for certain agreements by Permittee, HCRRA agrees to allow the Stairways to encroach upon the Corridor until certain events occur.

WHEREAS, Permittee wishes to make certain agreements with HCRRA in exchange for permitting a temporary encroachment of the Stairways on the Corridor.

BOARD OF COMMISSIONERS

Peter McLaughlin Chair
Linda Koblick Vice Chair
Mark Stenglein Secretary
Gail Dorfman Treasurer
Mike Opat
Randy Johnson
Penny Steele
Permit- Minor Utility Installations and Underground Crossings 11-03-06

NOW THEREFORE, HCRRA and the Permittee agree to the following:

HCRRA grants to Permittee, in accordance with the terms of this Permit, permission for installation, use, and maintenance of: two (2) concrete stairways, foundations supporting stairways, and other related appurtenances ("Permitted Facility"), at Permittee's sole cost and expense, over, on or under that part of the Corridor specifically described on attached Exhibit C (hereinafter referred to as "Property") and shown by hatch marks and depicted on Exhibit D, attached hereto and incorporated by reference in this Permit ("Property") until that portion of the Building to be located on the Benefited Parcel is demolished and any debris and contaminants from the Stairways have been properly removed, and disposed of, from the Corridor and the site has been resotored. The Property shall be used by the Permittee for no other purpose than for encroachment of the Stairways.

The Permittee agrees that upon the collapse or demolition of the Building to be located on the Benefited Parcel, they will promptly demolish, remove and properly dispose of all debris and contamination from the Stairways that may remain upon or fall upon any part of the Corridor and pay any and all costs associated with the same; and that those costs shall not be HCRRA's. Any removal, demolition and disposal shall be conducted in a manner prescribed by HCRRA that reasonably protects safety of travel on the Corridor and protects the physical integrity of the Corridor, including the depression adjacent to the Benefited Parcel. Permittee, at their sole cost and expense, will restore said Corridor to the condition of the adjacent Corridor lands, including planting of replacement vegetation, all as approved by HCRRA. Upon satisfactory completion of the foregoing, the Permittee shall provide a release of the encroachment Permit created by this Agreement and HCRRA shall accept said release. Thereupon the encroachment Permit shall be released and this Agreement shall be terminated with the parties having no further rights or duties between them, except for those provisions which shall survive termination of the Agreement as provided for in this Agreement.

The terms of this Agreement shall run with the land and shall be binding upon the parties and their successors and assigns. The rights and obligations of the parties contained within this Agreement are solely to the benefit of the parties, their successors and assigns and not to third parties.

The cost of this Permit shall be **Three Thousand Two Hundred Seventy One and 50/100 Dollars (\$3,271.50).**

1. No work shall be started, nor entry made, onto the Property until HCRRA approves this Permit and issues it to Permittee.
2. Prior to beginning construction on the Permitted Facility and prior to any modification or relocation of the Permitted Facility, Permittee shall submit its plans for the work to HCRRA for review and comment. Permittee shall not begin work until HCRRA has reviewed Permittee's plans and has given Permittee written authorization to proceed. HCRRA reserves the right to reject any plans proposed by Permittee on the grounds, in HCRRA's sole discretion, that the plans are inappropriate or incompatible with current or future use of the Corridor for transportation uses, including, but not limited to rail, bicycle and foot travel and the location of communication facilities including fiber optics lines.
3. Prior to beginning work on the Property, Permittee shall notify HCRRA when construction, modification or relocation of the Permitted Facility is scheduled to start and shall notify HCRRA when the work has been completed.
4. Permittee shall coordinate all permitted work with HCRRA's Contact, John Tripp, 612-348-9265.
5. Permittee shall operate and maintain Stairways in such a manner that they are open to the general public at all times, and accessible by the general public from both Lyndale and Garfield Avenues South at all times, unless permitted by prior written approval from HCRRA.
6. Permittee understands that HCRRA owns the Corridor of which the Permitted Property is a part, and that HCRRA acquired this right-of-way for light rail transit and other permitted transportation uses. HCRRA has granted to Donovan Harmel, individually, acting as Vera's Garden Club, permission to use a portion of the right-of-way for public garden purposes subject to HCRRA's future use of the property. Permittee shall obtain prior approval from Donovan Harmel, his successors and assigns, for use of the Vera's Garden site for any purpose, including, the movement of equipment and delivery of materials such as dirt, compost, or wood chips, and Permittee shall coordinate and cooperate any planting or maintenance work on the stairway Property by contacting Don Harmel, 612-827-5163.
7. Permittee understands that HCRRA has granted to City of Minneapolis permission to use a portion of the right-of-way for trail purposes subject to HCRRA's future use of the property. Permittee shall obtain prior approval from City of Minneapolis for use its trail for any purpose, including, the movement of equipment and delivery of materials such as dirt, compost, or wood chips by contacting Don Pflaum, 612-673-2129.
8. During any construction, modification or relocation of the Permitted Facility, Permittee shall protect the work site and those who may enter the Property with proper signs, barricades and other protection or appropriate safety mechanisms.

9. Permittee acknowledges that underground fiber optic communication cables, in addition to other underground and aboveground utilities, may have been installed in the Corridor. Permittee shall at its expense properly locate and protect all such utilities during any construction, modification or relocation of the Permitted Facilities.
10. All work on the Property shall be performed in a workman like manner. Permittee shall abide by all local, state or federal ordinances or regulations related to its use of this Permit.
11. Permittee shall not make any changes in its use of the Property without permission of HCRRA.
12. Burning or disking operations and/or the use of chemicals to control or kill trees, brush and other vegetation is prohibited without prior approval from HCRRA.
13. Except as provided for in plans submitted to and authorized by HCRRA, Permittee shall avoid damaging existing trees and shall replace any trees existing on the Property that are damaged by Permittee at HCRRA's discretion with trees of similar size and type at Permittee's expense. Permittee shall properly sod and/or seed any areas disturbed by Permittee if required by HCRRA.
14. Permittee shall correct at its expense any failures due to settlement, erosion, lack of vegetation growth, rutting, or other problems related to its use of this Permit and shall restore to original or better condition all areas disturbed by any construction, relocation or modification of the Permitted Facility.
15. At its expense, Permittee shall relocate or modify the Permitted Facility in a manner satisfactory to HCRRA, including without limitation relocation of utility or communication conduits to a concrete encased duct bank if, in HCRRA's sole discretion, such action is required for implementation of transportation uses or for the modification of related transportation facilities on the Corridor.
16. HCRRA shall provide the Permittee one hundred twenty (120) days written notice of the need for any relocation or modification of the Permitted Facilities, except where such notice is impracticable. Under those circumstances, HCRRA shall notify Permittee with as much advance notice as possible. In the event Permittee fails to take the required action within one hundred twenty (120) days after notice or within such reasonable time period designated by HCRRA in the notice, HCRRA may remove, modify or relocate the Permitted Facility at Permittee's expense.
17. At its expense, Permittee shall maintain the Permitted Facility in good repair, including but not limited to, trash removal and weed control, and shall use reasonable precaution to prevent waste, damage, or injury.

18. Permittee shall comply with all reasonable rules adopted by HCRRA for the safety, care, and cleanliness of the Property and shall not create any nuisance on the Property.
19. Permittee accepts the Property subject to any want or failure at any time of HCRRA's title to the Property or any part thereof and assumes any damages sustained by Permittee for want or failure of HCRRA's title to the Property. Permittee also accepts the Property subject to the rights of any party, including HCRRA, in and to any existing roadways and easements. Further, Permittee accepts the Property subject to all uses by HCRRA and all future uses by third parties permitted by HCRRA that are not incompatible with Permittee's permitted use.
20. Permittee accepts the Property subject to the rights of any person, firm or corporation, including HCRRA, in and to any existing telephone, telegraph and/or other wires, poles, underground cables or utilities, and facilities of any kind whatsoever, whether or not of record, and should it, at any time, become necessary because of Permittee's use of the Property to relocate any such facilities, Permittee shall bear and pay the cost of so doing.
21. Permittee accepts the Property in an "AS IS" condition with no express or implied representations or warranties by HCRRA as to the physical condition or fitness for suitability for any particular purpose.
22. Permittee shall not create or permit any condition of the Property that could present a threat to human health or to the environment. Permittee shall bear the expense of all practices or work, preventative, investigative or remedial, which may be required because of any conditions of the Property introduced by Permittee, its agents, employees, invitees, subpermittees or permittees during Permittee's period of use, including conditions introduced that affect other lands. Permittee expressly agrees that the obligations it hereby assumes shall survive cancellation of this Permit. Permittee agrees that statutory limitation periods on actions to enforce those obligations shall not be deemed to commence until HCRRA discovers any such health or environmental impairment and has a plan for development of the Corridor to its highest and best use. Permittee hereby knowingly and voluntarily waives the benefits of any shorter limitation period.
23. In exchange for the rights and privileges granted in this Permit, Permittee agrees to bear the expense of all practices or work, preventative, investigative or remedial necessary to comply with all federal, state, local and other governmental statutes, rules and regulations related to construction, modification and relocation of the Permitted Facility regarding any hazardous waste, pollutant, contaminant, petroleum-related material or other regulated substance on the Property regardless of whether or not the same was present on the Property before or after the commencement of this Permit.

24. Permittee shall provide to HCRRA, at no charge, upon HCRRA's request, copies of all studies, reports and findings resulting from any environmental, geotechnical, survey or other work conducted by or for Permittee on the Property.
25. Permittee shall defend, indemnify and hold harmless HCRRA, its Commissioners, officials, officers, agents, and employees from any liability, claims, causes of action, judgments, damages, losses, costs or expenses, including reasonable attorney's fees, resulting directly or indirectly from an act or omission of Permittee or Permittee's Secondaries or from any failure by them to comply with the provisions of this Permit and arising from exercise of the rights granted by this Permit including, but not limited to, those resulting from the presence of any hazardous waste, pollutant, contaminant, petroleum-related material or other regulated substance on the Property regardless of whether or not the same was present on the Property before or after the commencement of this Permit. Permittee's Secondaries shall mean its contractors, subcontractors, officers, agents, employees, customers, volunteers, invitees, subpermittees, permittees, lessees or other occupiers of the Permitted Facility under its supervision or control. Permittee expressly agrees that the obligations it hereby assumes shall survive cancellation and termination of this Permit. HCRRA shall not be liable to Permittee or those claiming by, through, or under Permittee for any injury, death or property damage occurring in, on or about the Property based upon the construction, operation, maintenance, relocation or modification of the Permitted Facility, nor for loss or damage sustained by Permittee or others in, about or adjacent to the Property by reason of the present or future condition of repair of the Permitted Facility, or for loss or damage arising from the acts or omissions of Permittee's Secondaries. This paragraph shall not be construed to waive any statutory or common law limitations on liability applicable to either party, including, without limitation, those contained in Minn. Stat. Sec. 466.
26. In order to protect itself, as well as HCRRA under the indemnification provisions contained in this agreement, Permittee and Permittee's contractors, subcontractors or agents shall purchase and maintain in force at all times during the term of this Permit the following minimum insurance coverages applicable to the Property, the Permitted Facility, affiliated activities, and/or this Permit or other insurance acceptable to HCRRA:

	<u>Amounts</u>
1. Commercial General Liability with the following coverages and limits.	
General Aggregate	\$1,000,000
Products-Completed Operations Aggregate	1,000,000
Personal and Advertising Injury Aggregate	1,000,000
Each Occurrence - Combined Bodily Injury and Property Damage	\$1,000,000
2. Automobile Liability - Combined single limit each occurrence coverage for bodily injury and	\$1,000,000

property damage covering owned, non-owned, and hired automobiles.

3. Workers' Compensation and Employer's Liability:

- | | |
|--|-----------|
| a. Workers Compensation | Statutory |
| If the contractor is based outside of the state of Minnesota, coverage must apply to Minnesota laws. | |
| b. Employer's Liability. Bodily injury by: | |
| Accident - Each Accident | \$100,000 |
| Disease - Policy Limit | 500,000 |
| Disease - Each Employee | 100,000 |

An umbrella or excess policy over primary liability coverages is an acceptable method to provide the required insurance limits.

The above establishes minimum insurance requirements. It is the sole responsibility of Permittee to determine the need for and to procure additional coverage which may be needed in connection with the Permitted Facility. All insurance policies shall be open to inspection by HCRRA. Permittee shall submit copies of all required policies to HCRRA upon request.

27. This Permit shall not be valid until Permittee has obtained the required insurance and filed an acceptable certificate of insurance with HCRRA. The certificate shall name Hennepin County Regional Railroad Authority, as certificate holder and as an additional insured with respect to operations covered under the Permit for all liability coverages except Workers' Compensation and Employer's Liability.

28. All notices required or permitted pursuant to this Lease shall be directed to the following individuals and shall be either hand-delivered or mailed to the following addresses:

To Permittee: Lyndale Redevelopment LLC
5407 Excelsior Boulevard, Suite B
St. Louis Park, Minnesota 55416

To HCRRA: Hennepin County Regional Railroad Authority
417 North Fifth Street, Suite 320
Minneapolis, MN 55401-1362
Attn: Director, Housing, Community Works and Transit

29. The terms of this Permit are not intended to create rights in third party beneficiaries.

30. The language of this Permit shall prevail in the event there is a conflict between it and any depiction or any other representation contained in any attached Exhibit.

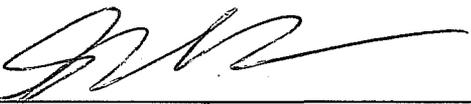
(I, We), the undersigned, herewith accept the terms and conditions of the regulations as laid down by HCRRA and agree to fully comply therewith to the satisfaction of the HCRRA.

***HCRRA:**

By: 
Director of Housing, Community Works & Transit

Date: 11-20-07

****PERMITTEE:** _____

By: 

Title: Vice President

Date: 12/2/07

By: _____

Title: _____

Date: _____

*In accordance with 06-HCRRA-23 the Director of Housing, Community Works and Transit is authorized to approve, execute and terminate permits for minor utility installations and underground utility and communications conduit crossings on behalf of the Hennepin County Regional Railroad Authority.

**Permittee shall submit applicable documentation (articles, bylaws, resolutions, or ordinances) that confirm the signatory's delegation of authority. This documentation shall be submitted at the time Permittee returns the signed Permit to the Authority. Documentation is not required for a sole proprietorship.

EXHIBIT A
DESCRIPTION OF HCRRRA CORRIDOR PROPERTY

All that part of the Southwest Quarter of the Southwest Quarter of Section 34, Township 29, Range 24, Hennepin County, Minnesota, lying within Hennepin County Regional Railroad Authority Property Map No. 34 filed for record in the office of the Hennepin County Recorder as Document No. 6977591 (formerly the Chicago, Milwaukee, St. Paul and Pacific Railroad Right of Way).

EXHIBIT B
BENEFITED PARCEL

Lots 2, 3, 4, 5, 6, 7, 8 and 9, Block 2, "Chamberlains Addtn To Minneapolis".

Being registered land as is evidenced by Certificate of Title No. 1187963

and,

Lot 10, Block 2, Chamberlain's Addition to Minneapolis, Hennepin County, Minnesota.

Abstract Property

EXHIBIT C
DESCRIPTION OF STAIRWAYS PROPERTY

A permit for stairway encroachment purposes over, under and across all that part of the Southwest Quarter of the Southwest Quarter of Section 34, Township 29, Range 24, Hennepin County, Minnesota, lying within Hennepin County Regional Railroad Authority Property Map No. 34 filed for record in the office of the Hennepin County Recorder as Document No. 6977591 (formerly the Chicago, Milwaukee, St. Paul and Pacific Railroad Right of Way) described as follows:

STAIRWAY AREA A

Beginning at the southwest corner of Lot 6, Block 2, "Chamberlain Addition to Minneapolis", according to the recorded plat thereof, Hennepin County, Minnesota; thence easterly, along the south line of said Lot 6, a distance of 20.00 feet; thence southerly, deflecting 90 degrees 00 minutes 00 seconds to the right, a distance of 10.00 feet; thence deflecting 90 degrees 00 minutes 00 seconds to the right, a distance of 20.00 feet to the Southerly extension of the West line of said Block 2; thence northerly, a distance of 10.00 feet along said Southerly extension, to the point of beginning.

STAIRWAY AREA B

Commencing at the southwest corner of Lot 6, Block 2, "Chamberlain Addition to Minneapolis", according to the recorded plat thereof, Hennepin County, Minnesota; thence easterly, along the south line of said Lot 6, a distance of 80.00 feet to the point of beginning of the land to be described; thence continue easterly, along the south line of said Lot 6, a distance of 20.00 feet; thence southerly, deflecting 90 degrees 00 minutes 00 seconds to the right, a distance of 15.00 feet; thence deflecting 90 degrees 00 minutes 00 seconds to the right, a distance of 20.00 feet; thence northerly, deflecting 90 degrees 00 minutes 00 seconds to the right, a distance of 15.00 feet, to the point of beginning.

EASEMENT EXHIBIT FOR: **BKV GROUP**

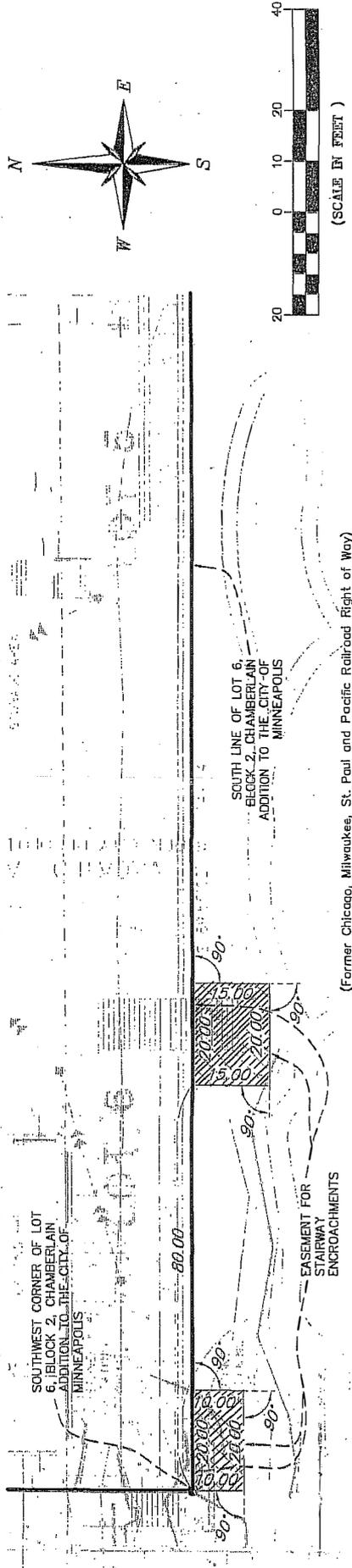


Schoell Madison
 Planning Engineering Surveying
 15650 23rd Avenue North
 Plymouth, Minnesota 55447
 T 763-746-1600 F 763-746-1699
 554 Third Street NW, Suite 100
 Elk River, Minnesota 55330
 T 763-241-0106 F 763-241-8351
 www.schoellmadison.com

An easement for stairway encroachment purposes over, under and across that part of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Right of Way described as follows:
 Beginning at the southwest corner of Lot 6, Block 2, "Chamberlain Addition to Minneapolis", according to the recorded plat thereof, Hennepin County, Minnesota; thence easterly, along the south line of said Lot 6, a distance of 20.00 feet; thence southerly, deflecting 90 degrees 00 minutes 00 seconds to the right, a distance of 10.00 feet; thence deflecting 90 degrees 00 minutes 00 seconds to the right, a distance of 20.00 feet to the Southerly extension of the West line of said Block 2; thence northerly, a distance of 10.00 feet along said Southerly extension, to the point of beginning.

AND

An easement for stairway encroachment purposes over, under and across that part of the former Chicago, Milwaukee, St. Paul and Pacific Railroad Right of Way described as follows:
 Commencing at the southwest corner of Lot 6, Block 2, "Chamberlain Addition to Minneapolis", according to the recorded plat thereof, Hennepin County, Minnesota; thence easterly, along the south line of said Lot 6, a distance of 80.00 feet to the point of beginning of the land to be described; thence continue easterly, along the south line of said Lot 6, a distance of 20.00 feet; thence southerly, deflecting 90 degrees 00 minutes 00 seconds to the right, a distance of 15.00 feet; thence deflecting 90 degrees 00 minutes 00 seconds to the right, a distance of 20.00 feet; thence northerly, deflecting 90 degrees 00 minutes 00 seconds to the right, a distance of 15.00 feet, to the point of beginning.



(Former Chicago, Milwaukee, St. Paul and Pacific Railroad Right of Way)

HENNEPIN COUNTY REGIONAL RAILROAD AUTHORITY

SOUTHERLY EXTENSION OF THE WEST LINE OF BLOCK 2, CHAMBERLAIN ADDITION TO THE CITY OF MINNEAPOLIS

I hereby certify that this survey was prepared under my supervision and that I am a Licensed Land Surveyor under the laws of the State of Minnesota.

Daniel G. Nickols
 Daniel G. Nickols

Date: 6/19/2007 License No. 19839

This drawing has been checked and reviewed this 19th day of June, 2007, by DGN

EXHIBIT D
DEPICTION OF STAIRWAYS PROPERTY