

RESOLUTION NO. 2017-68

**A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF
A TEMPORARY CONSTRUCTION EASEMENT FOR THE UNION PACIFIC RAILROAD COMPANY
AS PART OF THE UNION PACIFIC RAILROAD COMPANY'S THIRD RAIL LINE PROJECT
(.055 ACRES / 2,402 SQUARE FEET OF EXISTING PUBLIC RIGHT-OF-WAY FOR TRACK CONSTRUCTION)**

WHEREAS, the President and Board of Trustees of the Village of Maywood (the "Village") desire to grant, approve and authorize the execution of a document entitled "Temporary Construction Easement" for the benefit of the Union Pacific Railroad Company ("UPRR") as part of the UPRR's Third Rail Line Project. The temporary construction easement area applies to approximately .055 acres or 2,402 square feet of existing Village public right-of-way and is for the purpose of railroad track construction, such as allowing construction activities and staging of related equipment and materials. The duration of the temporary easement is five (5) years from the execution date of the Temporary Construction Easement. The easement fee to be paid by UPRR to the Village in exchange for granting approval of the Temporary Construction Easement is Five Thousand and No/100 Dollars (\$5,000.00) (the "Easement Fee"). A copy of the "Temporary Construction Easement" is attached hereto as **Exhibit "A"** and made a part hereof; and

WHEREAS, UPRR desires to enter into the Temporary Construction Easement with the Village for the purposes stated in the attached Temporary Construction Easement, agrees to pay the Easement Fee to the Village as set forth above in the foregoing Whereas paragraph, and agrees to comply with the terms, conditions and obligations as set forth in the attached Temporary Construction Easement; and

WHEREAS, the President and Board of Trustees of the Village of Maywood, a home rule Illinois municipal corporation, have the authority to enter into the attached Agreement pursuant to their home rule powers as provided by Article VII, Sections 6 and 10(a) of the Illinois Constitution of 1970, and the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*), and find that entering into the attached Temporary Construction Easement is in the best interests of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MAYWOOD, ILLINOIS, PURSUANT TO ITS HOME RULE POWERS AS PROVIDED BY ARTICLE VII, SECTIONS 6 AND 10(a) OF THE ILLINOIS CONSTITUTION OF 1970, AND THE INTERGOVERNMENTAL COOPERATION ACT (5 ILCS 220/1 *et seq.*) AS FOLLOWS:

SECTION 1: Each Whereas paragraph above is incorporated by reference into this Section 1 and made a part hereof as material and operative provisions of this Resolution.

SECTION 2: The President and Board of Trustees of the Village of Maywood approve and authorize the execution of a document entitled "Temporary Construction Easement" for the benefit of the Union Pacific Railroad Company ("UPRR") as part of UPRR's Third Rail Line Project ("Temporary Construction Easement"), a copy of the Temporary Construction Easement being attached hereto as **Exhibit "A"** and made a part hereof, and authorize and direct the Village President and the Village Clerk, or their designees, to execute and deliver the Temporary Construction Easement and all other instruments and documents that are necessary to fulfill the Village's obligations under the Temporary Construction Easement.

ADOPTED this 19th day of December, 2017, pursuant to a roll call vote as follows:

AYES: Mayor Perkins, Trustee(s) H. Yarbrough, I. Brandon, K. Wellington,
M. Lightford and R. Rivers

NAYS: None

ABSENT: A. Sanchez

APPROVED this 20th day of December, 2017, by the Village President of the Village of Maywood,
and attested by the Village Clerk, on the same day.

Village President

ATTEST:

Village Clerk

EXHIBIT "A"

**Temporary Construction Easement For The Union Pacific Railroad Company
As Part Of The Union Pacific Railroad Company's Third Rail Line Project
(.055 Acres / 2,402 Square Feet Of Existing Public Right-Of-Way For Track Construction)**

(attached)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CLERK'S CERTIFICATE

I, Viola Mims, Clerk of the Village of Maywood, in the County of Cook and State of Illinois, certify that the attached document is a true and correct copy of that certain Resolution now on file in my Office, and is entitled:

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A TEMPORARY CONSTRUCTION EASEMENT FOR THE UNION PACIFIC RAILROAD COMPANY
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(.055 ACRES / 2,402 SQUARE FEET OF EXISTING PUBLIC RIGHT-OF-WAY FOR TRACK CONSTRUCTION)**

which Resolution was passed by the Board of Trustees of the Village of Maywood at a Village Board Meeting on the 19th day of December, 2017, at which meeting a quorum was present, and approved by the President of the Village of Maywood on the 19th day of December, 2017.

I further certify that the vote on the question of the passage of said Resolution by the Board of Trustees of the Village of Maywood was taken by Ayes and Nays and recorded in the minutes of the Board of Trustees of the Village of Maywood, and that the result of said vote was as follows, to-wit:

AYES: Mayor Perkins, Trustee(s) H. Yarbrough, I. Brandon, K. Wellington, M. Lightford and R. Rivers

NAYS: None

ABSENT: A, Sanchez

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Village of Maywood, this 20th day of December, 2017.

Village Clerk

[SEAL]

Route: UPRR, Vale to 25th
County: Cook
Parcel No.: 289070
P.I.N.: 15-11-136-008 & 15-11-136-009

**THIS INSTRUMENT WAS PREPARED
BY AND SHOULD BE RETURNED
AFTER RECORDATION TO:**

Union Pacific Railroad Company
Attn: Mr. Greg Brigham
1400 Douglas Street
Omaha, Nebraska 68179

TEMPORARY CONSTRUCTION EASEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT is made as of this ___ day of _____, 20__ by and between **VILLAGE OF MAYWOOD**, a Municipal Corporation (the "*Grantor*") and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (the "*Grantee*"), under the following circumstances:

RECITALS

WHEREAS, Grantor owns certain property in the County of Cook, Illinois ("*Grantor's Parcel*"), as such is more particularly described on Exhibit A, attached hereto and made a part hereof; and

WHEREAS, Grantee is in the process of participating in the construction of the Metra-UPRR West Line project in the state of Illinois; and

WHEREAS, the temporary use of a portion of Grantor's Parcel is needed by Grantee to allow Grantee to engage in construction and related activities with respect to the Metra-UPRR West Line Project and Grantee desires to obtain a temporary construction easement ("*Temporary Construction Easement*") for the purpose of having access on, over and across the areas legally described and depicted in Exhibit B attached hereto and made a part hereof (the "*Temporary Construction Easement Area*") on the terms and conditions expressly set forth herein; and

WHEREAS, Grantor now finds it agreeable to grant the Temporary Construction Easement to Grantee, and Grantee finds it agreeable to accept such grant of Temporary Construction Easement from

Grantor in order to complete construction and related activities in connection with the Metra-UPRR West Line Project;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are incorporated herein by this reference and made a part hereof.

2. **Grant of Temporary Construction Easement.** Grantor hereby grants to Grantee the Temporary Construction Easement on, over and across the Temporary Construction Easement Area as is reasonably necessary for the staging of construction equipment and materials necessary for the construction related to the Metra-UPRR West Line Project, as well as for conducting all work and other activities in connection with construction related to the Metra-UPRR West Line Project (the "*Metra-UPRR West Line Work*"). Grantor agrees that permanent buildings, improvements and other obstructions shall not be placed in, upon, under or over the Temporary Construction Easement Area without the prior written consent of Grantee. Grantor and Grantee agree that Metra-UPRR West Line Work may be performed by employees of Grantee or by third party contractors hired by Grantee.

3. **Expiration.** This Temporary Construction Easement is a temporary easement, and unless it is extended, this temporary easement shall expire, without any action by either party, upon the earlier of completion by Grantee of the Metra-UPRR West Line Work, or five (5) years from the execution date of this Temporary Construction Easement.

4. **Restoration.** If the ground over which the Temporary Construction Easement Area lies is disturbed by Grantee's use, Grantee shall commence restoration, weather permitting, within thirty (30) days after completion of the Metra-UPRR West Line Work and will reasonably continue restoration work until the Temporary Construction Easement Area is restored.

5. **Consideration.** In consideration of Grantor entering into this Temporary Construction Easement, Grantee shall pay to Grantor, in addition to other consideration, the sum of **Ten and No/100 Dollars (\$10.00)**. Grantor, without limiting the interest above granted and conveyed, acknowledges that upon payment of the agreed consideration, all claims arising out of the above grant of temporary easement have been settled, including without limitation, any diminution in value to any other property of Grantor.

6. **Indemnity.** Grantee shall indemnify, defend, and hold harmless Grantor and its officers, agents, employees, successors or assigns (individually, an "*Indemnitee*" and collectively, the "*Indemnitees*"), against and from any and all liability, claims, demands, actions, causes of action, costs and expenses of whatsoever nature including, without limitation, court costs and reasonable attorneys' fees, which may result from personal injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, including contamination of Grantor's Parcel caused by Grantee only in connection with the Metra-UPRR West Line Work, when such personal injury, death, loss, destruction or damage grows out of or arises from the exercise by Grantee of any of the easement rights herein granted, except to the extent caused by the negligence or willful misconduct of an Indemnitee. Notwithstanding anything to the contrary contained herein, Grantor hereby waives claims against Grantee for, and this indemnity does not apply to, punitive, special, indirect, consequential and exemplary damages arising out of or relating to the Metra-UPRR West Line Work and this Agreement.

7. **Modification or Termination.** This Agreement may be modified or terminated only by an instrument in writing executed by both Grantor and Grantee.

8. **Notices.** All notices to be given hereunder shall be personally delivered; sent via certified mail, return receipt requested with postage prepaid; or mailed via a reputable overnight courier to the parties at the following addresses (or to such other or further addresses as the parties may have or hereafter designate by like notice similarly sent):

If to Grantor: Village of Maywood
Attn: Mayor Edwenna Perkins
115 S. Fifth Avenue
Maywood, IL 60153

If to Grantee: Real Estate Department
1400 Douglas Street
Mail Stop 1690
Omaha, Nebraska 68179
Telephone: (402) 544-8568
Telecopy: (402) 501-0340
Attention: Director - Acquisitions
Email: sjsand1@up.com

With copies to: Law Department
1400 Douglas Street
Mail Stop 1580
Omaha, Nebraska 68179
Telephone: (402) 544-5761
Telecopy: (402) 997-3603
Attention: Patrick R. McGill
Email: prmcgill@up.com

All notices sent by mail shall be deemed effectively given on the fourth (4th) business day following the date of such mailing. All notices sent by overnight courier shall be deemed effectively given on the first (1st) business day following the date of such mailing. All notices personally delivered shall be deemed effectively given on the date of delivery.

9. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of Illinois.

10. **Enforcement.** In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs of litigation.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the day and in the year first written above.

GRANTEE:

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____

Its: _____

Name: _____

GRANTOR:

VILLAGE OF MAYWOOD,
a Municipal Corporation

By: _____

Its: _____

Name: _____

ATTEST:

By: _____

Its: _____

Name: _____

STATE OF NEBRASKA)
) SS
COUNTY OF DOUGLAS)

I, _____, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____, the _____ of Union Pacific Railroad Company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed and delivered the said instrument on behalf of said entity for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of _____, 20__.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF)

I, _____, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____ as _____ and _____ as _____ of Village of Maywood, appeared before me this day in person and acknowledged that they signed and delivered the said instrument on behalf of said entity for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of _____, 20__.

Notary Public

EXHIBIT A

GRANTOR'S PARCEL

LOT 10 AND THE NORTH 1/2 OF LOT 11 IN BLOCK 194 IN MAYWOOD, A
SUBDIVISION IN SECTION 14, TOWNSHIP 19 NORTH, RANGE 12 EAST OF
THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

SITUATED IN THE COUNTY OF COOK AND STATE OF ILLINOIS.

PERMANENT TAX NUMBER(S): 15-11-136-008

THE SOUTH 1/2 OF LOT 11 AND ALL OF LOTS 12 AND 13, IN BLOCK 194 IN
MAYWOOD IN SECTIONS 2, 11 AND 14, TOWNSHIP 39 NORTH, RANGE 12
EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

SITUATED IN THE COUNTY OF COOK AND STATE OF ILLINOIS.

PERMANENT TAX NUMBER(S): 15-11-136-009

EXHIBIT B

**LEGAL DESCRIPTION AND DEPICTION OF THE
TEMPORARY CONSTRUCTION EASEMENT AREA**

Part of Lots 10, 11, 12 and 13 of Block 194 in Maywood, a subdivision in Sections 2, 11 and 14, Township 39 North, Range 12 East of the Third Principal Meridian, situated in the County of Cook, State of Illinois, described as follows:

Beginning at the southwest corner of Block 194 in said subdivision, thence North 02 degrees 04 minutes 58 seconds West on the west line of said Block 194, a distance of 95.71 feet; thence North 87 degrees 34 minutes 36 seconds East, 8.56 feet; thence South 02 degrees 00 minutes 37 seconds West, 83.20 feet; thence North 87 degrees 27 minutes 31 seconds East, 18.97 feet; thence South 77 degrees 27 minutes 29 seconds East, 78.44 feet; thence South 64 degrees 38 minutes 13 seconds East, 23.56 feet; thence South 08 degrees 04 minutes 53 seconds West, 4.50 feet to the south line of said Block 194; thence North 81 degrees 48 minutes 08 seconds West on said line, 125.45 feet to the Point of Beginning.

Said Proposed Temporary Easement Parcel contains 0.055 acres or 2402 square feet, more or less.

EXHIBIT B CONTINUED

**LEGAL DESCRIPTION AND DEPICTION OF THE
TEMPORARY CONSTRUCTION EASEMENT AREA**

