

RESOLUTION NO. 2017-69

**A RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF
A PERMANENT EASEMENT FOR THE UNION PACIFIC RAILROAD COMPANY
AS PART OF THE UNION PACIFIC RAILROAD COMPANY'S THIRD RAIL LINE PROJECT
(.031 ACRES OR 1,341 SQUARE FEET OF EXISTING PUBLIC RIGHT-OF-WAY
FOR RAILROAD IMPROVEMENTS)**

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 "Permanent Easement" for the benefit of the Union Pacific Railroad Company ("UPRR") as part of UPRR's Third Rail Line Project. The permanent easement area applies to approximately .031 Acres or 1,341 square feet of existing Village public right-of-way and is for the purpose of allowing the UPRR to construct any reasonably necessary railroad improvements and for access to maintain such improvements. The parties agree that permanent buildings, improvements and other obstructions shall not be placed in, upon, under or over the easement area by the Village without the prior written consent of UPRR. The easement has a perpetual duration (i.e., no expiration date, unless UPRR ceases to do business and no successor assumes its business activities). The easement fee to be paid by UPRR to the Village in exchange for granting approval of the Permanent Easement is One Thousand Seven Hundred and No/100 Dollars (\$1,700.00) (the "Easement Fee"). A copy of the Permanent Easement is attached hereto as **Exhibit "A"** and made a part hereof; and

WHEREAS, UPRR desires to enter into the Permanent Easement with the Village for the purposes stated in the attached Permanent Easement, agrees to pay the Easement Fee to the Village as set forth in the above Whereas paragraph, and agrees to comply with the terms, conditions and obligations as set forth in the attached Permanent 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 Permanent Easement 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 Permanent 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 "Permanent Easement" for the benefit of the Union Pacific Railroad Company ("UPRR") as part of UPRR's Third Rail Line Project ("Permanent Easement"), a copy of the Permanent 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 Permanent Easement and all other instruments and documents that are necessary to fulfill the Village's obligations under the Permanent 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"

**Permanent Easement For The Union Pacific Railroad Company
As Part Of The Union Pacific Railroad Company's Third Rail Line Project
(.031 Acres or 1,341 Square Feet Of Existing Public Right-Of-Way For Railroad Improvements)**

(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 PERMANENT EASEMENT FOR THE UNION PACIFIC RAILROAD COMPANY
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(.031 ACRES OR 1,341 SQUARE FEET OF EXISTING PUBLIC RIGHT-OF-WAY
FOR RAILROAD IMPROVEMENTS)**

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.: 303467
P.I.N.: No PIN Assigned

**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

EASEMENT

THIS EASEMENT is made as of this ____ day of _____, 20____ by and between **THE VILLAGE OF MAYWOOD**, an Illinois municipal corporation (the "*Grantor*") and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, along with its successors and assigns (the "*Grantee*"), under the following circumstances:

RECITALS

WHEREAS, Grantor represents that Grantor owns fee simple title to certain property in the City of Maywood, 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 (the "*Metra-UPRR West Line Project*"); and

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

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

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 Easement.** Grantor hereby grants to Grantee the Easement on, over, under and across the Easement Area as may be used by Grantee and as is reasonably necessary for railroad improvements. Grantor further agrees that Grantee may, at any time in the future, enter upon said Easement Area to maintain improvements. Grantor agrees that permanent buildings, improvements and other obstructions shall not be placed in, upon, under or over the Easement Area without the prior written consent of Grantee.

3. **Easement to Run With Land.** This Easement is a permanent right and easement, and unless it is otherwise specifically terminated and released in writing by Grantee, the easement is perpetual, shall run with the land and is binding upon and shall inure to the benefit of the successors and assigns of Grantor and Grantee.

4. **Consideration.** In consideration of Grantor entering into this Easement, Grantee shall pay to Grantor, at the notice address set forth for Grantor in Section 7 hereof, the sum of Ten and 00/100 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 easement have been settled, including without limitation, any diminution in value to any other property of Grantor.

5. **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.

6. **Modification.** This Agreement may be modified only by an instrument in writing executed by both Grantor and Grantee.

7. **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: The Village of Maywood
Attn: Mayor Edwenna Perkins
125 S. 5th 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.

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

9. **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:

THE VILLAGE OF MAYWOOD,
an Illinois 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 COOK)

I, _____, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that _____ as _____ and _____ as _____ of The 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

PART OF LOT 33 IN BLOCK 36 IN PROVISIO LAND ASSOCIATION'S ADDITION TO MAYWOOD, A SUBDIVISION OF PART OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS, THE PLAT OF WHICH WAS RECORDED AS DOCUMENT 2045186, LYING EAST OF THE WEST LINE OF 19TH AVENUE, SITUATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF 19TH AVENUE WITH THE NORTHEASTERLY LINE OF SAID LOT 33, SAID NORTHEASTERLY LINE BEING ALSO THE SOUTHWESTERLY LINE OF UNION PACIFIC RAILROAD (FORMERLY CHICAGO AND NORTHWESTERN RAILROAD); THENCE SOUTHEASTERLY ON THE NORTHEASTERLY LINE OF SAID LOT 33 SOUTH 81 DEGREES 51 MINUTES 12 SECONDS EAST (BASIS OF BEARING THE ILLINOIS STATE PLANE COORDINATE SYSTEM WEST ZONE (NAD83) 2011 ADJUSTMENT), 85.94 FEET TO THE POINT OF BEGINNING.

FROM SAID POINT OF BEGINNING THENCE CONTINUE SOUTH 81 DEGREES 51 MINUTES 12 SECONDS EAST ON THE NORTHEASTERLY LINE OF SAID LOT 33, A DISTANCE OF 66.07 FEET; THENCE SOUTH 53 DEGREES 10 MINUTES 18 SECONDS WEST, 33.81 FEET; THENCE NORTH 81 DEGREES 51 MINUTES 12 SECONDS WEST, 46.23 FEET; THENCE NORTH 18 DEGREES 06 MINUTES 57 SECONDS EAST, 24.27 FEET TO THE POINT OF BEGINNING. SITUATED IN THE COUNTY OF COOK, IN THE STATE OF ILLINOIS.

SAID PROPOSED PERMANENT EASEMENT PARCEL CONTAINS 0.031 ACRES OR 1341 SQUARE FEET, MORE OR LESS.

PERMANENT TAX NUMBER(S): No PIN assigned

EXHIBIT B

DESCRIPTION AND DEPICTION OF EASEMENT AREA

Part of Lot 33 in Block 36 in Proviso Land Association's Addition to Maywood, a subdivision of part of Section 10, Township 39 North, Range 12 East of the Third Principal Meridian, Cook County, Illinois, the plat of which was recorded as Document 2045186, lying east of the west line of 19th Avenue, situated in the County of Cook, State of Illinois, described as follows:

Commencing at the intersection of the west line of 19th Avenue with the northeasterly line of said Lot 33, said northeasterly line being also the southwesterly line of Union Pacific Railroad (formerly Chicago and Northwestern Railroad); thence southeasterly on the northeasterly line of said Lot 33 South 81 degrees 51 minutes 12 seconds East (basis of bearing the Illinois State Plane Coordinate System West Zone (NAD83) 2011 Adjustment), 85.94 feet to the Point of Beginning.

From said Point of Beginning thence continue South 81 degrees 51 minutes 12 seconds East on the northeasterly line of said Lot 33, a distance of 66.07 feet; thence South 53 degrees 10 minutes 18 seconds West, 33.81 feet; thence North 81 degrees 51 minutes 12 seconds West, 46.23 feet; thence North 18 degrees 06 minutes 57 seconds East, 24.27 feet to the Point of Beginning.

Said Proposed Permanent Easement Parcel contains 0.031 acres or 1341 square feet, more or less.