

ORDINANCE NO. 4-2012

AN ORDINANCE OF THE VILLAGE OF EVERGREEN PARK APPROVING A LICENSE FOR UNDERGROUND STORM SEWER AND CATCH BASINS BETWEEN THE GRAND TRUNK WESTERN RAILROAD COMPANY AND THE VILLAGE OF EVERGREEN PARK

BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Evergreen Park, Cook County, Illinois, as follows:

Section 1

That the License for Underground Storm Sewer and Catch Basins between the Grand Trunk Western Railroad Company and the Village of Evergreen, in substantially the form attached hereto, is hereby approved for and on behalf of the Village. The Mayor is hereby authorized to execute the same for and on behalf of the Village.

Section 2

All statutes of the State of Illinois or any parts thereof which are in conflict with the provisions of this ordinance are hereby superseded by this ordinance enacted under the home rule power of the Village of Evergreen Park.

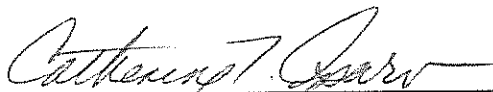
Section 3

This ordinance shall be immediately in full force and effect after passage and approval.

This ordinance was passed and deposited in the office of the Village Clerk of the Village of Evergreen Park, this 19th day of March, 2012.



APPROVED by me this 19th
day of March, 2012.



CATHERINE T. APARO, Village Clerk



JAMES J. SEXTON, Mayor

LICENSE FOR UNDERGROUND STORM SEWER AND CATCH BASINS

THIS AGREEMENT made this _____ day of _____, 2012, between GRAND TRUNK WESTERN RAILROAD COMPANY (“Railroad”) and the VILLAGE OF EVERGREEN PARK (“Licensee”).

In consideration for the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Railroad and Licensee agree and covenant as follows:

WITNESSETH:

1. The Railroad, and so far as it lawfully may, hereby grants to the Licensee, license and permission to construct and maintain a storm sewer main, catch basins and appurtenances (collectively “storm sewer”) across, along and underneath the property owned or operated by the Railroad at approximately Railroad Milepost 15.03 to Milepost 15.53 on Railroad’s Elsdon Subdivision_ between 99th Street and 103rd Street in the Village of Evergreen Park, said sewer main, catch basins and appurtences more particularly shown upon the exhibits attached hereto and made apart hereof, subject to the terms and conditions provided for in this Agreement.

2. The license and permission herein granted to Licensee are subject and subordinate; however, to the rights in Railroad, its successors and assigns, its grantees, lessees and licensees, to construct, reconstruct, operate, use, maintain, repair and renew on, beneath or above the property covered hereby, any structures, improvements or facilities of similar or

different character as are now or in the future may be located on, beneath or above said properties.

3. Licensee shall, except in emergencies, give not less than 72 hours written notice to Railroad of the day, hour and location that it proposes to undertake any construction or maintenance work and in the event of an emergency shall notify Railroad as soon as possible.

The Licensee represents that its employees will perform all work involving the installation and maintenance of the storm sewer. To the extent that the Licensee retains contractors and subcontractors, Licensee shall require each of its contractors and subcontractors to observe and conform to the conditions and requirements specified herein; and for the purposes of the safety, protective and indemnification provisions hereof, such contractors and subcontractors, their agents, servants and employees, and other persons on the Railroad property at the invitation of the Licensee, its contractors or subcontractors, shall be deemed the agents or employees of the Licensee.

4. Licensee shall, at no expense to Railroad, obtain all permits and approvals required to exercise this license and Licensee shall install, maintain and operate its facilities in accordance with all requirements of lawful public authority. Licensee shall be responsible for any taxes, assessments and charges made against the pipeline or other of Licensee's facilities on Railroad's property or the operation of any of them.

5. The storm sewer shall be installed consistent with the exhibits attached hereto and any engineering drawings agreed to by the Railroad and the License. The sewer main shall be installed at least one and one-half feet below natural ground. The storm sewer shall be constructed of such material and in such a manner as will assure the safety of Railroad. Railroad's authorized representative shall have the right, but not the duty, to require certain materials or procedures to be used or to supervise the construction, maintenance, restoration or other work on Railroad's property. If in the opinion of Railroad's authorized representative casing of the pipeline is required at the time of installation or at any time subsequent thereto, Licensee shall promptly arrange for such casing at its own risk and expense.

6. If, in the opinion of the authorized representative of Railroad the work to be done by the Licensee pursuant to this agreement will make necessary or desirable any change in the Railroad's facilities, or those of the Railroad's tenants or licensees, on the Railroad's property, the Railroad shall have the right, but not the duty, to make such changes, the expense thereof to be borne by the Licensee.

Except as otherwise provided herein, Railroad shall have the right, but not the duty, to furnish flagging or other protection or to perform work to support its tracks or otherwise protect its property or facilities at any time, at Licensee's sole risk and expense.

7. Licensee agrees at any time, or from time to time, at its own risk and expense, upon request of the authorized representative of the Railroad, to make such change or changes as may be necessary in the opinion of said representative to accommodate any change or

improvements which Railroad may desire to make in or upon its property. In case Licensee shall fail within thirty (30) days after notice from Railroad to make such change or changes, Railroad shall have the right, but not the duty, to make such change or changes, or remove Licensee's facilities from said property at the risk and expense of Licensee.

8. Licensee shall at its expense take such measures as may be necessary and adequate in connection with its property or the property of railroad to protect facilities of Railroad and those of others using Railroad's property from interference by induction, conduction, physical contact or otherwise attributable to the exercise by Licensee of the license granted to it.

In the event Railroad advises Licensee to take any action to protect Railroad, its facilities or facilities on Railroad's property, Licensee shall promptly take the indicated action, including, but not limited to, stopping the operation of the pipeline. If licensee fails to do so, Railroad shall have the right, but not the duty, to perform on behalf of Licensee at the sole risk and expense of Licensee.

9. Reserved.

10. Railroad agrees to furnish flagging for five days during the Licensee's installation of the storm sewer. The Licensee agrees to prepay the Railroad for any subsequent flagging. Railroad also agrees, upon presentation of a bill, to remit the payment of \$20,400 to the Licensee, said amount representing the expense of upsizing the sewer main, increase cost

resulting from upsizing the sewer main. Otherwise, the Licensee is solely responsible for all costs relating to the installation of the sewer system as provided for in the attached exhibit and any engineering plans submitted to the Railroad by the Licensee.

11. Licensee, as a further consideration and as a condition without which this license would not have been granted, agrees to indemnify and save harmless Railroad, its officers, employees and agents and to assume all risk, responsibility and liability for death of, or injury to, any persons, including, but not limited to, officers employees, agents, patrons and licensees of the parties hereto, and for loss, damage or injury to any property, including but not limited to, that belonging to the parties hereto (together with all liability for any expense, attorneys' fees and costs incurred or sustained by the Railroad, whether in defense of any such claims, demands, actions and causes of action or in the enforcements of the indemnification rights hereby conferred) arising from, growing out of, or in any manner or degree directly or indirectly caused by, attributable to, or resulting from the grant or exercise of this license or the construction, maintenance, repair, renewal, alteration, change, relocation, existence, presence, use, operation, or removal of any structure incident thereto, or from any activity conducted on or occurrence originating on the area covered by the license regardless of the negligence of Railroad, its officers, employees and agents. Licensee further agrees to release and indemnify and save harmless Railroad, its officers, employees, agents, patrons or invitees from all liability to Licensee, its officers, employees, agents or patrons, resulting from railroad operations at or near the area in which the license is to be granted whether or not the death, injury or damage resulting therefrom may be due to the negligence of the Railroad, the Licensee, upon receipt of notice to

that effect, shall assume or join in the defense of any claim based upon allegations purporting to bring said claim within the coverage of this section.

12. Licensee shall secure, and maintain in place so long as this agreement is in effect, Commercial General Liability Insurance (Occurrence Form) in an amount not less than \$5 per occurrence, with an aggregate of not less than \$10 per annual period. The policy must name Railroad and its parent company, Canadian National Railway Company, as additional insured's in the following form:

Grand Trunk Western Railroad Company,
and its Parent Corporation CN
17641 S. Ashland Ave.
Homewood, IL 60430

The policy must not contain any provisions excluding coverage for injury, loss or damage arising out of or resulting from (a) doing business on, near, or adjacent to railroad track or facilities, or (b) surface or subsurface pollution, contamination or seepage, or from handling, treatment, disposal or dumping of waste materials or substances. Before commencing work, Licensee shall deliver to Railroad a certificate of insurance evidencing the foregoing coverage's and true and complete copies of the policies described above. Each policy shall include a waiver by the insurer of any right of subrogation against any recovery by or on behalf of any insured. Each policy shall provide for not less than thirty days prior written notice to Railroad of cancellation of or any material change in that policy.

13. It is expressly understood Railroad does not warrant title to the premises and Licensee accepts the grant of privileges contained herein subject to all lawful outstanding existing liens and superior rights. Licensee agrees it shall not have to make any claim against Railroad for damages on account of any deficiency in title and agrees that in the event of failure or insufficiency of such title the sole remedy of Licensee shall be the right to return of the consideration paid in advance, provided for herein, or a proportionate part thereof in the event of a partial deficiency or insufficiency of title. Licensee further agrees to indemnify and save harmless the Railroad and to assure all risk, responsibility and liability (including any expenses, attorneys' fees and costs incurred or sustained by Railroad) arising from, growing out of, or in any manner or degree directly or indirectly attributable to or resulting from any deficiency or insufficiency of its title affecting the right of the Railroad to make this grant.

14. This agreement shall continue in force indefinitely from and after the date hereof, subject, however, to the right of either party to terminate this agreement as to the storm sewer and all of the facilities of Licensee, or any part thereof, at any time or from time to time, as it may require, upon giving the other party ninety (90) days notice in writing of its desire to terminate this agreement, and indicating in said notice the extent of said line and facilities to which such termination shall apply. When this agreement shall be terminated as to the entire line and all of the facilities of Licensee or as to any part thereof, Licensee within thirty (30) days after the expiration of the time stated in said notice, agrees at its own risk and expense to remove said facilities from the property of Railroad, or such portion thereof as Railroad shall require removed, and to restore the railroad premises to a neat and safe condition, and if Licensee shall fail to do so within said time Railroad shall have the right, but not the duty, to remove and

restore the same, at the risk and expense of Licensee, Nothing herein contained shall be construed as conferring any property right on Licensee.

15. In case Railroad shall at any time, or from time to time, require the removal of only a portion of the storm sewer, this agreement shall continue in force and be applicable to the portion of portions of the storm sewer and other facilities remaining from time to time until the storm sewer has been removed and the rental shall be adjusted accordingly.

16. Nothing in this agreement shall be construed to place any responsibility on Railroad for the quality of the construction, maintenance or other work performed on behalf of Licensee hereunder or for the condition of any of Licensee's facilities.

Any approval give or supervision exercised by the Railroad hereunder, or failure of Railroad to object to any work done, material used or method of construction, reconstruction or maintenance, shall not be construed to relieve Licensee of its obligations under this Agreement.

17. This Agreement shall not be binding on either party hereto until all parties have executed the space provided below.

18. This Agreement shall be binding on the successors and assigns of the parties hereto, but no assignment hereof by the Licensee, its successors, legal representatives or assigns, shall be binding upon the Railroad without its written consent in each instance.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed
in duplicate, the day and year first above written.

GRAND TRUNK WESTERN RAILROAD COMPANY

By: _____

Title: _____

VILLAGE OF EVERGREEN PARK, ILLINOIS

By: _____

Title: _____