

AGENDA
VILLAGE OF PLEASANT PRAIRIE
PLEASANT PRAIRIE VILLAGE BOARD
PLEASANT PRAIRIE WATER UTILITY
PLEASANT PRAIRIE SEWER UTILITY
Village Hall Auditorium
9915 – 39th Avenue
Pleasant Prairie, WI
August 1, 2011
6:00 p.m.

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Minutes of Meetings – July 11, 2011
5. Citizen Comments (Please be advised per State Statute Section 19.84(2), information will be received from the public and there may be limited discussion on the information received. However, no action will be taken under public comments.)
6. Administrator's Report
7. Unfinished Business - **will be continued on August 15, 2011**
 - A. Consider Meadowdale Estates Addition #1 concrete paving project.
 - 1) Resolution #11-10- Final Resolution Authorizing Construction of Public Improvements and Levying Special Assessments against benefited property with the construction of a concrete paving project on 97th Street, 98th Street, Meadowdale Lane, 43rd Avenue and 96th Place in Meadowdale Estates Addition No. 1.
 - B. Consider Meadowdale Estates Addition #1 street and cul-de-sac landscaping project.
 - 1) Resolution #11-11 – Final Resolution Authorizing Construction of Public Improvements and Levying Special Assessments against benefited property with the construction of a street and cul-de-sac landscaping project on 97th Street, 98th Street, Meadowdale Lane, 43rd Avenue and 96th Place in Meadowdale Estates Addition No. 1.

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8. New Business

- A. Consider Resolution #11-26 – Final resolution authorizing the levying of a special assessment against the benefited property as security related to a collateral agreement with the Village of Pleasant Prairie and the State of Wisconsin for a 1993 Transportation Economic Assistance Rail Agreement.
- B. Consider Resolution #11-27 – Final resolution authorizing construction of public improvements and levying special assessments against benefited property with the construction of municipal storm water improvements located in the right-of-way at 11606 47th Avenue.
- C. Consider the request of Phil Godin, agent for Sunny Prairie, LLC for the First Amendment to the Declaration of Covenants, Conditions, Restrictions, and Easements for Sunny Prairie Subdivision.
- D. Consider the request of Thomas L. Richter or Richter Realty and Investments, Inc. receiver for Regency Hills-Creekside Crossing, LLC for the Second Amendment to the Declaration of Restrictions, Covenants and Easements for Creekside Crossing and Creekside Crossing Addition #1 Subdivisions.
- E. Consent Agenda (All items listed under the Consent Agenda are considered routine and will be enacted by one motion. There will be no separate discussion of these items unless a Board member so requests, in which event the item will be removed from the General Order of Business and considered at this point on the agenda.)
 - 1) Approve Operator License applications on file.
 - 2) Approve Operator License renewal late applications.

9. Village Board Comments

10. Adjournment

The Village Hall is handicapped accessible. If you have other special needs, please contact the Village Clerk, 9915 – 39th Avenue, Pleasant Prairie, WI (262) 694-1400

**VILLAGE OF PLEASANT PRAIRIE
PLEASANT PRAIRIE VILLAGE BOARD
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PLEASANT PRAIRIE SEWER UTILITY**

**9915 39th Avenue
Pleasant Prairie, WI
July 11, 2011
5:20 p.m.**

A Special Meeting of the Pleasant Prairie Village Board was held on Monday, July 11, 2011. Meeting called to order at 5:20 p.m. Present were Village Board members John Steinbrink, Monica Yuhas and Steve Kumorkiewicz. Clyde Allen and Mike Serpe were excused. Also present were Mike Pollocoff, Village Administrator; Tom Shircel, Assistant Village Administrator; Jean Werbie-Harris, Community Development Director; and Jane Romanowski, Village Clerk. Two citizens attended the meeting.

- 1. CALL TO ORDER**
- 2. PLEDGE OF ALLEGIANCE**
- 3. ROLL CALL**
- 4. CITIZEN COMMENTS**

Jane Romanowski:

No signups tonight, Mr. President.

John Steinbrink:

Anyone wishing to speak under citizens' comments?

- 5. NEW BUSINESS**
 - A. Consider Resolution #11-20 creating boundaries of Village wards within County Supervisory District boundaries.**

Jane Romanowski:

Mr. President and Board members, as you know redistricting takes place once every ten years in conjunction with the federal census so we're at that point again. First, the Kenosha County Board of Supervisors approves a tentative plan. They send it to us and we have 60 days to approve our tentative plan. It will go back to the County to make its final tweaks if there are any. And then when we get final approval through the County then we have the process of notifying everybody if the wards have, in fact, changed.

In doing this we use the same program we did ten years ago. The State gives us a program, it's called WISE-LR. It's a GIS mapping system and it makes it very easy to click and point and polygons which have population totals. So it does make it a lot easier to create a map such as the

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one that's on display. We did this—in creating wards you have to follow certain standards, and those are set forth by the statutes. In brevity I'll just say they are to be comprised of whole census blocks which is what the GIS mapping system gives me. They have to suit the convenience of the voters. Back in 2001 when we redistricted we needed to open some polling places as we were growing, and so we went from three polling places to five polling places, and I'm happy to say we do not have to create any more polling places as part of this plan. So the convenience of the voters, although some people will have to go to different voting places because of the way the wards are laid out, the five polling places will remain the same.

The wards have to be comprised of contiguous territory which we've done. We have to take into account the supervisory plan that was provided to us, and we have done that. As you can see we are now going to be dealing with supervisory districts 16, 17 and 18; 18 is the furthest west ward or supervisory district which goes across the Interstate into Bristol, whereas before we had three districts just in the Village alone. I've worked with their map. We had to consider the population and racial and ethnic characteristics. Once again, the GIS mapping system gives that to me as I'm preparing the maps so it shows what those are accumulating to.

We must comply with the population ranges specified by law. As a Village over 10,000 population we had to create our wards between the population of 600 and 2,100. The table that I provided shows you that with the five polling places what the total population is proposed with this plan. This is the same thing we did ten years ago and how each ward folds out within that range between the 600 and 2,100. The only ward that doesn't in our case is ward 11 which is just our ward west of the Interstate, and they say there's nine people living there, the population. That's because we have different school districts so that has to be a separate ward, and we're exempt from being within that 600 to 2,100 population range because of that.

We did have to add a ward only to stay within that range, so we now will have 14 wards instead of 13 wards, which the 14th ward is up right where the 12th and 13th ward is so it's not like it's down by the lake or whatnot. So we did create ward 14. And the wards must lie entirely within one municipality and one county. Not a problem for the Village.

When we were putting this plan together we considered two additional factors. As I stated, we didn't have to create any more polling places. One of the reasons we didn't have to do that, number one, we can stay within our population ranges. Number two it's kind of hard to find public buildings that are available in the whole entire Village rather than just in one concentrated area. But that wasn't to the fact we were looking at. We were looking at in the fall of this year I will be bringing to the Board a proposal to go to an absentee central count location which basically means rather than opening up a polling location, and I haven't quite figured out where this is going to happen yet and we'll get to that when the time comes, but one location will count all the absentee ballots. This is something that's been approved, and the law approved back in 2005. Kenosha does it, Appleton does it, Brookfield does it. The only reason I kind of shied away from it is because you have to do it for every single election. So you know you have an election with 200 absentees you still have to have it.

This is just an example. What could happen would be we'd have our polling location here but I may use the executive conference room. You just have one machine. You wouldn't need the

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accessibility machine. One machine, you have another poll book, and there's a whole system on how this happens. After the last presidential election when we have 4,400 absentee ballots, it would be nice to keep them in one spot. Ballots get dropped off at different places. Ballots get mixed up, so this is something I've been kind of watching for, and I think now is the time to do it. I'll bring that back to the Board this fall. I want that to be effective with the first election in 2012. It will eliminate a lot of the work at the polling places. You won't have to stop the people from voting to say, excuse me, I need a number for this absentee ballot.

Just even feeding them in the machine, the last presidential election at the RecPlex, we were able to do this, we were allowed to do it in a lot of municipalities, but we numbered most of our absentee ballots the day before. Didn't open them but gave them a number, had them in the book, and they worked from seven in the morning until eight at night and barely got theirs in and they were feeding them. So this would be very welcomed at the polling location. You basically have three inspectors. It's open if somebody wants to watch, but it's going to work out really well. Like I said, when the time comes I'll present that once I get everything in order.

And the second factor, in following the supervisory district plan, as you look at the map you'll see that some of the areas, well, you can see how the 16th, 17th and 18th supervisor districts lay out, and you can see how some of them kind of cut in between subdivisions. Like in Devonshire the supervisory district kind of comes up and cuts over. What we did is followed those lines. It would be very difficult to have just a small section of a ward needing to vote in a different supervisory district because we made the line different than the County did. This is going to be—the main reason we did it is obviously we will never have more than one ballot at a polling location at any time as far as I can see.

Because what we had before is Joe Clark is currently the Supervisor for wards 6, 7, 8 and 9, and Doug Noble is for 10, 12, 13. But wards 8, 9, 10, 11 vote at one spot. So 8 and 9 were Joe Clark, 10 was Doug Noble. So when those supervisory district races were on the ballot we had to have a separate ballot for 10 and a separate ballot for 8 and 9, and the poll workers had to watch when somebody came in to make sure that they got the right ballot for which ward they were voting in. They did a very good job at that, but I think as I looked at this plan it will be easier for the poll workers with all the new voting regulations that are coming down from the State Legislature that they concentrate just on having one ballot for each election and not worrying about having a multiple ballot election.

So it will take some education. Somebody is going to say why if I live on the west side of the road and I vote at the RecPlex but then I lived on the east side of the road and I vote at the Village Hall that's just the way it's going to be. Again, we'll do a lot of education on this, and I do have to do a mailing to everybody. So that's kind of how the lines if you see how they kind of follow the supervisor districts. We made it a point to follow those for the wards that we're proposing.

Also, with the absentee ballots just with the increased number, we've had a big increase with them, but there's also going to be some new regulations with those. Take those out of the polling place because with the new photo ID regulations there will be a lot more provisional ballots. So we'll have our poll workers on Election Day concentrating on the new laws and taking care of the way we have to administer siting the poll book, showing an ID and things like that. I know the

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poll workers are excited about this. I've talked to them briefly about it, and I kind of have in mind who I'd like to have work on our absentee voting location as well.

And if the resolution is adopted tonight I have five days to get a certified copy of it to the County Clerk as well as the Legislative Reference Bureau. I'll send them the resolution and the map. I have to print out a list of the blocks that were assigned to each ward. So basically once it's approved we'll find out and then we can begin our education on our part and get all the notifications out and such. So I'd be happy to answer any questions.

Steve Kumorkiewicz:

I think that you've got a mistake here. What happened is the convenience of the voters, two additional polling places were the RecPlex and Good Shepherd Lutheran Church . . . on Shepherd?

Jane Romanowski:

No, St. Anne's was just a change from Fire Station #2. That wasn't a new place. Instead of Fire Station #2 we moved it to St. Anne's because of the size of the location.

Steve Kumorkiewicz:

. . . the voting place.

Jane Romanowski:

Right, we've had the RecPlex for nine years, right. So when we had our last redistricting it was the Fire Station #2, the Prange and the Village Hall. Those are the only three we had. And then we ended up with Good Shepherd and RecPlex and the Fire Station and the Prange and Village Hall. But then we outgrew the Fire Station with all the development so we just moved that location to St. Anne's a couple years ago.'

Steve Kumorkiewicz:

That's good. I still vote in the same place.

Jane Romanowski:

That's good.

John Steinbrink:

Further comments or questions? Jane, what was the cost of doing all this?

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Jane Romanowski:

The program actually was free through the State. Last time ten years we had to pay \$100 for it, but I think they figured out they had the program already done and they just made a few updates to it. So basically right now it was just time and a little seminar and whatnot. The cost will come in mailing all the people notices and a cost indirectly but directly for the absentee central location.

John Steinbrink:

Are we provided any extra dollars to do that with?

Jane Romanowski:

No.

John Steinbrink:

So the State can spend millions on their redistricting and send nothing back to the local municipalities who really do what the work is taking place.

Jane Romanowski:

We were fortunate that the districts are at large. If we had to go through, which I kind of did a little work on the side seeing how it would work, to have equal representation for the Board, we could have multiple ballots at multiple wards and you would be splitting blocks, and you would have been spending a lot more time and money. So as the map was being drawn it kind of laid out pretty well. But I did take about four hours and kind of was working on a plan just see how it laid out for representative districts. Very difficult for us. We're very fortunate right now to remain at large representation.

John Steinbrink:

So the State spent \$7 or \$8 million on voter ID which solves the problem of five felons voting illegally but does nothing to help out with the lack of people working at the polls where the mistakes happen by accident.

Mike Pollocoff:

I can't tell you how much time and effort and work it's going to be to accommodate voter ID. When people come there it's not going to be as fast a process as it was. Again, I think it's an order of magnitude, if there were five that were found out of how many million that voted. We've got this election starting tomorrow and the JD is still issuing new rules and guidance on how to handle an election that's in fact happening. Again, that's coming with no financial assistance. It's redirecting a lot of municipal-

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John Steinbrink:

I guess my point is when the Governor says the State of Wisconsin is broke and travels around the State and country telling people that, then he spends \$7 or \$8 million on something. It's nice to have an ID card and that, but if you're broke is that your priority in life? And when the Governor spends \$8 million on capitol security and cuts your police back at home is that a priority? Somewhere something is a little screwed up. And when you send your tax dollar to Madison and only a really, really small portion of it comes back that's because we're broke. Wouldn't it be nice as a Village we could just not pay our bills and say we balanced our budget? I guess that's one of the perks of being the Governor.

Steve Kumorkiewicz:

You know, John, I think of 1911 when the . . . here in Wisconsin. The municipality kept 70 percent of the revenue, the County 20 and the State got 10 percent. Now it's the other way around. We get 10 percent.

John Steinbrink:

Thank you, Jane. You did a great job and I want to thank the poll workers because they do a great job out there. You get big elections and it's a lot of people and a lot of work, and unfortunately nobody is out there helping you. I guess on the local level you guys know what the priorities are and what you need to make it right. You talk to Madison and you tell them what the problem is and what the fix should be and nobody listens.

Jane Romanowski:

We do have our challenges.

John Steinbrink:

Apparently you're not a big enough lobbyist and you don't send enough money up there. When that day happens you'll get anything you want.

Monica Yuhas:

With that I'll make a motion to approve Resolution 11-20.

Steve Kumorkiewicz:

I second.

John Steinbrink:

Motion by Monica, second by Steve. Any further discussion?

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YUHAS MOVED TO ADOPT RESOLUTION #11-20 CREATING BOUNDARIES OF VILLAGE WARDS WITHIN COUNTY SUPERVISORY DISTRICT BOUNDARIES; SECONDED BY KUMORKIEWICZ; MOTION CARRIED 3-0.

- B. Consider Ordinance #11-17 amending Chapter 98 of the Municipal Code relating to voting wards.**

Jane Romanowski:

The only thing this ordinance does is add ward 14. It's exactly what it was in the book. I just had to add ward 14 so that's the only change on this one.

Monica Yuhas:

Motion to approve Ordinance 11-17.

Steve Kumorkiewicz:

Second.

John Steinbrink:

Motion by Monica, second by Steve. Any further discussion on this motion? \

YUHAS MOVED TO ADOPT ORDINANCE #11-17 AMENDING CHAPTER 98 OF THE MUNICIPAL CODE RELATING TO VOTING WARDS; SECONDED BY KUMORKIEWICZ; MOTION CARRIED 3-0.

- C. Consider Memorandum of Understanding Agreement between the Village, Wisconsin Department of Transportation and Lynch Dealership regarding access to STH 50 just west of the proposed 109th Avenue.**

Mike Pollocoff:

Mr. Chairman, I'll let Mike Spence, the Village Engineer, discuss this MOU with the State of Wisconsin.

Mike Spence:

Members of the Board, this memorandum basically summarizes the current and future State Highway 50 access agreement between the Village of Pleasant Prairie, the Wisconsin Department of Transportation and the Lynch Dealership. The development is to be located south of State Highway 50, 75th Street, between 104th Avenue and Kilbourn Ditch is where it's located, and just west of the proposed 109th Avenue in Pleasant Prairie.

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This MOU, this memorandum of understanding, details the conditions for which a temporary commercial driveway is to be permitted according to the State Statutes. The State and the Village have agreed to an access management vision over the past several years. These access management provisions deal with lane modifications, turning movements and so forth in the future reconstruction of Highway 50.

Lynch is proposing a new car dealership on the south side of 50 west of the proposed 109th Avenue. The dealership has requested a temporary commercial driveway at the intersection of approximately 110th Avenue. The commercial driveway is considered temporary, and it would be removed at which time that State Highway 50 is reconstructed in approximately 2018. The temporary commercial driveway, again, will terminate and the access for Lynch would be relocated to the new 109th Avenue when the construction of 109th Avenue is complete.

As far as the conditions with which this memorandum of understanding is operable is the Lynch Dealership is responsible for obtaining all the DOT permits as well as designing and constructing the commercial driveway. The DOT is responsible for performing construction of the temporary access or the reconstruction I should say. At that point the State will remove the temporary commercial driveway and restore the land with the removal of the temporary driveway within the right of way.

Finally, as far as the construction of 109th that's going to be in accordance with an agreement that's being formed between the State and the Village and any future amendments or revisions. Lynch is, again, responsible for ultimately constructing the commercial driveway off of 109th Street when that is built. I recommend approval of this agreement that's been formulated. Any questions?

John Steinbrink:

We don't really know if 109th is ever going to go across and connect with the other 109th until we get the rest of that area platted in?

Mike Pollocoff:

You mean north to the City?

John Steinbrink:

Going our direction south.

Mike Pollocoff:

Yeah, we do, because that's land that the Board adopted a relocation order on and we're acquiring it now. So as part of our agreement with DOT we have to acquire that property and then they'll build the road.

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Mike Spence:

And the proposed location, John, of 109th is directly across from the 109th that's platted.

John Steinbrink:

Right, but the 109th in the Village and then we have 109th in the subdivision over there. Is it ever going to make it across to that?

Mike Pollocoff:

Oh, no, because you still have that—

John Steinbrink:

There's a cul-de-sac but that's all going to be redone probably.

Mike Pollocoff:

We don't know that. I mean somebody might do it but the Village Board would have to agree to that plat redrawing. But I don't think that, especially dealing with the wetlands there.

John Steinbrink:

I see a large body of something there.

Mike Pollocoff:

I don't think that will ever connect.

Mike Spence:

With the storm water and the related planning of all that it seems unlikely that it would go further south to that subdivision.

Mike Pollocoff:

I think the Chateau plat governs. That's the reality we're dealing with.

Steve Kumorkiewicz:

When it's coming.

Mike Pollocoff:

It's up to the people who own the plat.

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Steve Kumorkiewicz:

Are we going to have a hearing again for that for the people?

Mike Pollocoff:

On the storm water?

Steve Kumorkiewicz:

Yes.

Mike Pollocoff:

There will be another hearing once we get—we're still doing some more engineering.

Steve Kumorkiewicz:

Okay, thank you.

Monica Yuhas:

I will move for approval of the memorandum of understanding agreement between the Village, the Wisconsin Department of Transportation and Lynch Dealership regarding access to State Highway 50 just west of the proposed 109th Avenue.

Steve Kumorkiewicz:

Second.

John Steinbrink:

Motion by Monica, second by Steve. Further comment or question?

YUHAS MOVED TO APPROVE A MEMORANDUM OF UNDERSTANDING AGREEMENT BETWEEN THE VILLAGE, WISCONSIN DEPARTMENT OF TRANSPORTATION AND LYNCH DEALERSHIP REGARDING ACCESS TO STH 50 JUST WEST OF THE PROPOSED 109TH AVENUE; SECONDED BY KUMORKIEWICZ; MOTION CARRIED 3-0.

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6. VILLAGE BOARD COMMENTS

Steve Kumorkiewicz:

After the big storm that we got last week, Friday night I went around the Village by the Lakeshore Drive area, and I noticed the amount of trees blocking Lakeshore Drive in three points . . . plus 3rd Avenue and 4th Avenue to the south. I had a chance to go back again this morning and check on the storm. Previous to that Saturday or Sunday I was talking to a lady on Lakeshore Drive and they were really happy with the job the crews did removing the trees from Lakeshore. The guys worked until 3:30 in the morning. All the neighbors were very happy about it in that area. So I passed it back to Steinbrink, Jr. to let you know how the people felt about that. Today this morning I was around, too, and I didn't hear one complaint. Everybody is very happy with the job the Village is doing during this time.

Mike Pollocoff:

Just to follow up on that, there's a chance that there's going to be some disaster assistance. If that's the case we're going to be able to bring on some—we've already rented additional chipping equipment, and it will reimburse the Village for overtime and if we want to bring a contractor in which is probably what we'd do to expedite the cleanup. They're working on it as quick as they can. As long as people are patient with us given the resources we have and what assistance we get we'll get it all buttoned up.

John Steinbrink:

Did today's weather cause any trouble, Mike?

Mike Pollocoff:

Yeah, we started catching the west end, and then anything that was in marginal condition from the previous storm took a beating this time, but it wasn't anything like the other one. We did have a lot of big branches and trees down, and we had power outages in spotty places throughout the Village. Again, we need to wait for We Energies to re-energize the lines or whatever before we go in and start working on it. I think anything that was blocking was cleared this morning.

John Steinbrink:

I heard a conversation today that Hospira suffered some windows blown in and a number of people went to the hospital. Anything on that.

Mike Pollocoff:

Not that I caught up with.

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John Steinbrink:

That was from St. Catherine's.

Monica Yuhas:

Mike, what is the policy real quick on a home that's been foreclosed on, is bank owned, but there's maybe a 200 year tree from today's storm that's laying in the yard, and there's a lot of tree damage.

Mike Pollocoff:

To the house?

Monica Yuhas:

I don't know about the house. But I know when you drive down 47th Avenue there's a house that's been foreclosed, and a huge tree it looks like 3rd Avenue their front yard right now.

Mike Pollocoff:

What we'd do is we'd contact the financial institution that owns it if it's a foreclosure and put them on notice that they need to clean up the debris in sight and get it in order. If that happens you're not going to be able to mow the side or do anything to care of it.

Steve Kumorkiewicz:

Are you talking the east side of 47th?

Monica Yuhas:

Yes.

7. ADJOURNMENT

**YUHAS MOVED TO ADJOURN THE MEETING; SECONDED BY KUMORKIEWICZ;
MOTION CARRIED 3-0 AND MEETING ADJOURNED AT 5:50 P.M.**

RESOLUTION #11-26

FINAL RESOLUTION AUTHORIZING THE LEVYING OF A SPECIAL ASSESSMENT AGAINST THE BENEFITED PROPERTY AS SECURITY RELATED TO A COLLATERAL AGREEMENT WITH THE VILLAGE OF PLEASANT PRAIRIE AND THE STATE OF WISCONSIN FOR A 1993 TRANSPORTATION ECONOMIC ASSISTANCE RAIL AGREEMENT

WHEREAS, on March 8, 1993, the Village of Pleasant Prairie ("Village") and the Wisconsin Department of Transportation ("WisDOT") entered into a certain Transportation Economic Assistance TEA-Rail Agreement to serve the then-Lawter site, n/k/a the EMCO Chemical Distributors, Inc. ("EMCO") site; and

WHEREAS, the EMCO property is located at 8601 95th Street, Pleasant Prairie, Kenosha County, Wisconsin, further described as Tax Parcel Number 92-4-122-212-0354 ("Property"); and

WHEREAS, on November 2, 1993, the Village and Lawter International, Inc. ("Lawter") entered into a certain Facility Use Agreement which provided the guidelines for the construction and use of a certain rail spur on the then-owned Lawter Property; and

WHEREAS, as of approximately February 11, 2010, Brems Realty, LLC ("Owner") is the owner of the Property; and

WHEREAS, as of approximately February 11, 2010, EMCO Chemical Distributors, Inc. ("EMCO") is in occupation of land and building(s) situated on the Property; and

WHEREAS, the Village owns certain trackage from Points C to E and Point F to G on Attachment I and EMCO owns certain trackage from Points H to I, Points J to K, Points L to M and Points N to O on Attachment I that connects to the Soo Line Railroad Company's (d/b/a Canadian Pacific, "CP"), railway line near Milepost 50 of the C&M Subdivision; and

WHEREAS, on December 14, 2009, the Village Plan Commission conditionally-approved Conditional Use Permit #09-08, including Site and Operational Plans, for EMCO to occupy the building and Property for an industrial chemical distribution business; and

WHEREAS, on February 7, 2011, the Village of Pleasant Prairie Board of Trustees ("Village Board") approved the *Agreement for Private Siding* between CP, the Village and EMCO, which sets forth the various parameters and provisions including, but not limited to, the use, maintenance, alterations, liability, insurance fees, termination and potential removal of the railroad siding; and

WHEREAS, on June 20, 2011, the Village Board approved the *Facility Use Agreement* between the Owner, EMCO and the Village. In general, by way of the Agreement the Village grants EMCO the right to use an existing industrial railroad spur for the purpose of shipping and receiving materials via railcar to and from the EMCO chemical distribution facility located on the Property; and

WHEREAS, pursuant to Section 6.2 entitled "Special Assessments" of the EMCO Facility Use Agreement, any amounts which EMCO is required to pay to the Village under Section 6.3 of said Agreement may be levied by the Village as a police power special assessment against the Property. EMCO, on behalf of itself and all present and future owners of the Property, hereby waives, pursuant to Subsection 66.0703(7) (b) of the Wisconsin Statutes, any and all requirements of the Wisconsin Statutes that must be

satisfied prior to the imposition of special assessments (including, but not limited to, the notice and hearing requirements of Section 66.0703(7) (a) and the notice requirements of Subsection 66.0715(3)). EMCO agrees that the Village may proceed to levy special assessments for the sum of \$147,500. EMCO, on behalf of itself and all present and future owners of the Industry Land, waives its right to object to or appeal from such special assessments, and agrees that the amount of the special assessments (i.e., amounts owed by EMCO to the Village under the EMCO Facility Use Agreement) has been determined on a reasonable basis and that the benefits to the Property from the industrial railroad spur constructed under the TEA-Rail Agreement exceeds the amount of the special assessments levied against the Property. In no event will such special assessment exceed the sum of \$147,500.00. The Village agrees that payment of the special assessment shall be deferred, without interest, until such time as EMCO owes any amounts to the Village under the EMCO Facility Use Agreement. Notwithstanding the foregoing provisions of Section 6.2 of the EMCO Facility Use Agreement, in no event will the amount of special assessments to be collected by the Village under Section 6.2 of said Agreement exceed amounts which the EMCO owes to the Village under the terms of Section 6.3 of said Agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Village Board of the Village of Pleasant Prairie, as follows:

1. The assessment as stated in the EMCO Facility Use Agreement, represents an exercise of the police power, has been determined on a reasonable basis and is hereby confirmed. The total amount assessed is \$147,500. The EMCO-occupied Property is the only land affected by this assessment.
2. Any interested property owner may object to this assessment for any purpose.
3. The activation of the assessment shall be deferred until one or more of the following events occur:
 - a. A condition of default for failure to use may be declared by the Village or WisDOT under Section 7.1 of the EMCO Facility Use Agreement upon occurrence of any one or more of the following events:
 - i. EMCO renders its loading docks or a track side facility unfit for use for rail service or ceases its operation of its plant.
 - ii. EMCO files a protection under bankruptcy laws.
 - iii. CP abandons the line haul track and/or industrial lead track to which the Project Facility is connected.
 - iv. CP ceases operation of line haul track and/or industrial lead track serving the Project Facility.
 - v. The Project Facility is rendered unfit for railroad freight service by the Village, EMCO, or CP.
 - b. Pursuant to Section 6.3. of the EMCO Facility Use Agreement entitled "Sale of Improved Property or Industry Land" - In the event EMCO sells or liquidates the Improved Property or Industry Land, or both, without the written approval of the Bureau of Railroads and Harbors of WisDOT (BORAH), EMCO shall pay to the Municipality an amount equal to \$147,500. In the event Industry sells or liquidates the Improved Property or Industry Land, or both, with the written approval of BORAH, Industry shall not owe any money to Municipality but the purchaser of the Improved Property or Industry Land shall continue to be bound by all provisions of the EMCO Facility Use Agreement.

4. The Clerk shall publish this Resolution as a Class 1 Notice and mail a copy of this Resolution and a statement of the final assessment against the benefited property to every interested person whose post office address is known or can with reasonable diligence be ascertained, including each property owner whose name appears on the assessment roll.

Passed and adopted this 1st day of August, 2011.

VILLAGE OF PLEASANT PRAIRIE

John P. Steinbrink, Village President

ATTEST:

Jane M. Romanowski, Village Clerk

Date Adopted: _____, 2011

Published: _____, 2011

Special Assessmet Final Res 11-26 EMCO



December 2010

Village of Pleasant Prairie
Kenosha County, Wisconsin

EMCO Rail Spur Improvements
Crossing 696383C, Milepost 0049.93

CRISPPELL-SNYDER, INC.
PROFESSIONAL CONSULTANTS

1 inch equals 200 feet

N



NOTICE OF PUBLIC HEARING ON SPECIAL ASSESSMENTS

PLEASE TAKE NOTICE that the Village Board of the Village of Pleasant Prairie, Kenosha County, Wisconsin has adopted a preliminary resolution declaring its intention to exercise its police power to levy special assessments pursuant to section 66.0703, Wis. Stats., upon property within the following proposed assessment district for benefits conferred upon the property in connection with authorizing the levying of a special assessment against the benefited property as security related to a collateral agreement with the Village of Pleasant Prairie and the State of Wisconsin for a 1993 Transportation Economic Assistance Rail Agreement.

A report, the estimated cost of improvements and a schedule of proposed assessments are on file at the Pleasant Prairie Village Hall, 9915 39th Avenue, and may be inspected there during any business day between the hours of 8:00 a.m. to 5:00 p.m.

You are further notified that the Governing body will hear all interested persons, or their agents or attorneys, concerning matters contained in the preliminary resolution authorizing the assessments and the above described report **at 6:00 p.m. on the 1st day of August, 2011** in the Pleasant Prairie Village Hall. All objections will be considered at this hearing and thereafter the amount of the assessments will be finally determined.

Dated this 20th day of July, 2011.

Vesna Savic
Deputy Village Clerk

Published: July 20, 2011



Wisconsin Department of Transportation

BUREAU OF RAILROADS AND HARBORS
4802 Sheboygan Avenue
P. O. Box 7914
Madison, WI 53707-7914

March 10, 1993

Telephone (608) 267-7348
FAX (608) 267-6748

Mr. Michael Pollocoff, Administrator
Village of Pleasant Prairie
P. O. Box 89
Pleasant Prairie, WI 53158

MAR 12 1993

Dear Mr. Pollocoff:

I am pleased to forward to you a fully executed copy of the Transportation Economic Assistance Supplemental Agreement - Rail for the Lawter International project. This agreement was signed March 8, 1993 by John Evans, Administrator, Division of Transporataion Assistance.

The additional agreements required under Section 5.1, Facility Use Agreement, Industrial Track Agreement and necessary easements, have not been submitted or approved as yet. These additional agreements must be submitted to the Bureau of Railroads and Harbors for approval prior any reimbursement being allowed.

In addition, the request for bids needs to be approved by the Bureau of Railroads and Harbors prior to advertising.

I am looking forward to the receipt of the additional agreements and the request for bids in the near future so that this project may proceed during the upcoming construction season. If you have any questions, please call me at 608/267-9284.

Sincerely,

A handwritten signature in cursive script that reads "Ronald E. Adams".

Ronald E. Adams, Chief
Rail Project Management Section

Enclosure

CC: Gati Grundmanis
George Busch
Tom Wildenborg

TRANSPORTATION ECONOMIC ASSISTANCE AGREEMENT - RAIL
(Rail Spur)

FOR

RAILROAD CONSTRUCTION

Identification Number 3738-03-50

By and Between

Village of Pleasant Prairie

and

Wisconsin Department of Transportation

5-17-93 copy to:
Terry Sheehan
Lawter

March 1993

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TRANSPORTATION ECONOMIC ASSISTANCE AGREEMENT - RAIL
Agreement No. 3738-03-50

RAIL SPUR TRACK - TEA GRANT

THIS AGREEMENT is made and entered into this 8th day of March, 1993 by and between the the Village of Pleasant Prairie, a municipal corporation (Municipality), and Wisconsin Department of Transportation ("WisDOT").

ARTICLE 1.0 DEFINITIONS

As used in this Agreement and also, unless otherwise more particularly defined, in other instruments referred to herein:

- a. "Operator" means the CP Rail System.
- b. "Municipality" means the Village of Pleasant Prairie, Kenosha County, Wisconsin.
- c. "WisDOT" or "Department" means the Wisconsin Department of Transportation.
- d. "FRA" means the Federal Railroad Administration of the United States Department of Transportation.
- e. "ICC" means the Interstate Commerce Commission or its successors, if any.

- f. "Industry" means the Lawter International, Inc.
- g. "Industry Land" means the corridor of real estate owned by Industry, subject to an easement to Municipality, upon which the Project Facility is located at the Industry plant site in the Village of Pleasant Prairie, Wisconsin and more fully described in Attachment IV.
- h. "Improved Property" means the rails, ties, ballast, track material, switches, and culverts acquired, used or installed with the proceeds of this Agreement.
- i. "Person" means an individual, a partnership, an association, and bodies politic or corporate.
- j. "Project Facility" means the industrial spur track constructed under this Agreement using Improved Property.
- k. "BORAH" means the Bureau of Railroads and Harbors of WisDOT.
- l. "Industry Track Agreement" means the agreement by and between the Operator and Municipality or Industry, or both, governing the provision of rail service over and the maintenance of the Project Facility.

- m. "Track Easement" means the agreement by and between Municipality and Industry granting Municipality a perpetual right for construction, operation and ownership of the Project Facility on Industry's land.
- n. "Facility Use Agreement" means the agreement by and between Municipality and Industry setting forth the terms and conditions under which Industry is allowed to use the Project Facility.
- o. "Direct job(s)" means the number of eligible jobs directly associated with the economic development project and listed on the application, as reviewed and approved by WisDOT under TRANS 510.

ARTICLE 2.0 THE APPROVED PROJECT

Section 2.1 General Description

Municipality shall construct the Project Facility on Municipality and Industry Land. The Project Facility is an industrial track spur approximately 1,060 feet in length and a connection to Operator at Pleasant Prairie, Wisconsin. Construction of the Project Facility shall be completed not later than September 30, 1993.

Section 2.2 Specific Description

The Project Facility shall be constructed according to the plans and specifications set forth in Attachment II titled Description of Construction Work to be Performed which is made a part of this Agreement as of the date Attachment II is accepted in writing by BORAH.

Section 2.3 Direct Job Guarantee

Municipality agrees to comply with the criteria established in the Transportation Economic Assistance Jobs Guarantee attached hereto as Attachment V.

ARTICLE 3.0 PROJECT FINANCES

Section 3.1 Assistance Amount

(a) In consideration of work performed by Municipality as set forth under this Agreement, WisDOT shall reimburse Municipality an amount equal to fifty percent (50%) of actual allowable Project Facility costs. The amount to be reimbursed to Municipality shall in no event exceed one hundred forty-seven thousand five hundred dollars (\$147,500).

(b) The assistance amount and the project budget are based upon an engineer's estimate provided with the assistance application. In the event accepted bids or actual allowable costs for work and materials are for amounts less than shown in the project budget, the corresponding budget item shall be automatically reduced by the amount(s) the accepted bids are less than the amounts set forth in Section 3.1(a) and Section 3.3 and the funds from the reduction shall be placed into the contingency fund. This reduction in the assistance amount, if any, shall be effective without compliance with Section 10.6 herein.

Section 3.2 Required Match Share

In consideration of the assistance provided by WisDOT, Municipality shall perform the work set forth under this Agreement and provide an amount equal to no less than fifty percent (50%) of actual allowable project costs. The amount to be provided by Municipality for the entire project is estimated to equal one hundred forty-seven thousand five hundred dollars (\$147,500).

Section 3.3 Project Budget

The project budget is set forth in Attachment I titled Project Budget which is hereby made a part of this Agreement.

Section 3.4 Payment of Assistance Amounts

Payment of assistance amounts by WisDOT to Municipality shall be governed by the terms and conditions of Attachment III titled Project Operations, Accounts, Reports, and Payments which is hereby made a part of this Agreement.

ARTICLE 4.0 PROJECT MANAGEMENT

Municipality shall appoint a Project Manager to oversee all aspects of this project. Project Manager shall qualify under Section 1.2(a) of Attachment III and shall carry out the duties and responsibilities identified in Section 1.2(b) of Attachment III.

ARTICLE 5.0 PROJECT FACILITY OPERATION

Section 5.1 Written Agreements

Municipality has entered into the following written agreement(s) with appropriate parties to assure its ability to comply with the requirements of this Agreement. These agreements shall be submitted by Municipality for BORAH acceptance prior to the execution of this Agreement. Assistance funds shall not be disbursed by BORAH unless its acceptance of these agreements is given.

(a) Municipality shall obtain for itself or its designee a Track Easement on Industry land.

(b) Municipality shall enter into a Facility Use Agreement with Industry or Operator, or both.

(c) Municipality shall provide an Industry Track Agreement with Operator governing the provision of rail freight service over and the maintenance of the Project Facility. In the event the Industry Track Agreement is by and between Industry and Operator, Municipality shall incorporate the Industry Track Agreement into its Facility Use Agreement with Industry.

(d) Municipality shall provide to BORAH and obtain from BORAH its prior written approval of the request for bid(s) to be issued for construction of the Project Facility.

Section 5.2 Maintenance of Project Facility

Municipality shall perform or arrange for performance of all maintenance of the Project Facility, the road bed of the Project Facility, drainage ways and any structures necessary for the safe operation of railroad service as determined by Operator or FRA, or both.

Section 5.3 Project Facility Use

(a) A defacto condition of default for failure to use may be declared by WisDOT upon occurrence of any one or more of the following events:

(i) Industry renders its Pleasant Prairie plant unfit for use or ceases its operation of its Pleasant Prairie plant.

(ii) Industry files for protection under bankruptcy laws.

(iii) Operator abandons the line haul track to which the Project Facility is connected.

(iv) Operator ceases operation of line haul track serving the Project Facility.

(v) The Project Facility is rendered unfit for railroad freight service by Municipality, Industry, or Operator.

(b) Municipality shall provide to BORAH not later than January 20 of each year a report of the number of rail cars shipped or received on the Project Facility by Industry. Municipality shall arrange for access by BORAH or its authorized agent to examine waybill, demurrage, or other appropriate records for purposes of validating reported car counts.

ARTICLE 6.0 PROJECT PROPERTY SECURITY, LIENS AND SALE

Section 6.1 Security for Borrowing

(a) Municipality shall not itself nor allow Industry or Operator to use the value of the Improved Property acquired or used for this project as security or collateral for any loan or other borrowing.

(b) Municipality shall contractually prohibit Industry from using Industry land as security or collateral for any loan or other borrowing which is not recorded in the Office of Register of Deeds of Kenosha County on the date of execution of this Agreement.

Section 6.2 Liens Against Improved Property

(a) The terms, provisions and conditions of this Agreement create a first priority lien in favor of WisDOT on the material purchased in whole or in part with the proceeds of this Agreement beginning with acceptance of delivery and continuing for the duration of their placement on Industry land.

(b) Municipality shall cause a legally sufficient notice of this lien to be recorded in the Office of Register of Deeds of Kenosha County and the Office of the Secretary of State and shall notify BORAH when recording is accomplished. Said notice shall be removed from the record only upon written waiver of lien by WisDOT. WisDOT shall remove said lien within five days after the expiration of this Agreement.

(c) Except for the liens authorized by Sections 6.2(a) and 6.2(b), Municipality shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Improved Property or any interest therein not in existence on the date of execution of this Agreement. Municipality shall promptly require Industry to take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim against

Improved Property not placed by Municipality if the same shall arise at any time.

Section 6.3 Sale of Improved Property or Industry Land

Sale of the Improved Property or Industry Land, or both, without the written approval of BORAH shall, at WisDOT's option, require Municipality to immediately repay to WisDOT the full grant amount.

ARTICLE 7.0 DEFAULT AND TERMINATION

Section 7.1 Declaration of Default

A condition of default exists under this Agreement when either party to this Agreement fails to abide by or perform according to any one or more of its terms and conditions. A declaration of default of this Agreement shall be made in writing and delivered to the alleged defaulting party by certified mail sent to the address shown in Section 10.3. The letter shall identify the action or inaction constituting the default and reference the portion of the Agreement under which the default occurs.

Section 7.2 Termination for Default

In the event of any substantial failure on the part of either party to perform its obligations under the terms of this Agreement, including but not limited to, transmittal of scheduled contractual payments under this Agreement, the other party shall have the right to give immediate notice of default and, at its option, after first giving ten (10) days written notice thereof by certified mail to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement, and the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages.

Section 7.3 Removal of a Condition of Default

WisDOT, Municipality or Industry shall have ten (10) calendar days from written notification of the default to remove or remedy the cause of the default. This remedy period may be waived by the party declared in default. Correction by Industry or Municipality shall be completed and ready for BORAH verification within the ten (10) day period. Upon written petition by Municipality, BORAH may extend the period for removal of a default condition. Municipality shall be notified of

satisfactory correction in writing.

Section 7.4 Expenses of Termination

Municipality shall itself and shall require Industry and Operator to mitigate the expenses of termination to the greatest extent possible, and shall pay those that do occur if default is caused by Municipality and shall require Industry to pay those that do occur if default is caused by Industry.

Section 7.5 Force Majeure

The parties hereto will be excused from performance of any of their respective obligations hereunder, for the duration of any interruption occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitation: Acts of God; strikes or other labor troubles or other causes beyond the reasonable control of the parties; interruption of service caused by accidents, explosions, fires, vandalism, or malicious mischief.

ARTICLE 8.0 REPRESENTATIONS AND WARRANTIES

Section 8.1 WisDOT

WisDOT represents and warrants that it has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

Section 8.2 Municipality

Municipality represents and warrants that it has the power and authority to enter into this Agreement and to carry out its obligations under this Agreement.

ARTICLE 9.0 HOLD HARMLESS

a. Municipality shall save and hold WisDOT, its officers, employees and agents harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of the Municipality, Industry or Operator, or the Municipality's, Industry's or Operator's agents, servants, subcontractors or employees, or which arises out of or is connected with, or is claimed to arise out of or be connected

with any accident or occurrence which happens or is alleged to have happened, in or about a place where such operation, act or omission is being performed or in the vicinity thereof (1) while Operator or Industry is performing its work, or (2) during the period this Agreement between WisDOT and Municipality is in effect, or (3) while any of the Operator's or Industry's property, equipment, or personnel, is in or about such place or the vicinity thereof by reason of or as a result of the performance of Operator's or Industry's operations including, without limiting the applicability of the foregoing: all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to WisDOT, its officers, employees, agents, subcontractors, or frequentors, or to any other person or legal entity whether based upon, or claimed to be based upon contract, tort, or having its basis in workers' compensation under federal or state statutes or having any other code, or statutory basis, or based upon administrative laws or other provisions, or other liability of WisDOT, Municipality, Industry or any other persons or entities, and whether or not caused or claimed to have been caused by the negligence, or other breach of duty by WisDOT, its officers, employees, agents, subcontractors, or frequentors, Municipality, its officers, employees, agents, subcontractors, or frequentors, or Industry, its officers, employees, agents, subcontractors or frequentors, or any other person or legal entity. Without

limiting the applicability of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever.

b. Municipality shall be considered to have met its obligation, under Article 9.0(a), with respect to holding WisDOT harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arise out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of the Operator by having Operator agree to hold WisDOT harmless in the Industrial Track Agreement between Municipality and Operator.

ARTICLE 10.0 GENERAL CONDITIONS

Section 10.1 Choice of Law

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of Wisconsin. Interpretation may be had in any court of record of the County of Kenosha.

Section 10.2 Notice

Any notice required or permitted under this Agreement shall be personally served or mailed by certified United States mail, return receipt requested, postage prepaid, to the following addressed persons at the following addresses and to such other persons and addresses as the following persons shall direct by notice pursuant to this Section:

Director
Bureau of Railroads and Harbors
Wisconsin Dept. of Transportation
P. O. Box 7914
Madison, WI 53707

Lawter International
Inc.
8601 95th Street
Pleasant Prairie,
WI 53158-7300

Administrator
Village of Pleasant Prairie
P. O. Box 89
Pleasant Prairie, WI 53158

CP Rail System
P. O. Box 530
Minneapolis, MN 55440

Section 10.3 Transfer of Rights Under This Agreement

This Agreement shall be binding upon and inure to the benefit of the parties hereto. Operator's or Municipality's or Industry's rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly.

Section 10.4 Severability

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, or remainder thereof, to parties or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 10.5 Amendment, Consents and Approvals

(a) No term or provision of this Agreement, or any of its attachments to or any of the agreements subject to WisDOT's written approval, may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by both parties to this Agreement.

(b) Consents and approvals required under this Agreement and interpretation of this Agreement may be made or granted by letter from one party to the other party hereunder or by an exchange of letters between the parties.

Section 10.6 Officials

(a) Officials authorized to execute amendments or modifications to this Agreement on behalf of WisDOT are the Secretary of Transportation, or the Deputy Secretary, or the Administrator of the Division of Transportation Assistance.

(b) Officials authorized to execute amendments or modifications to this Agreement on behalf of the Municipality are President and Administrator, Village of Pleasant Prairie.

Section 10.7 Handicapped

No otherwise qualified handicapped individual in the United States, as defined in Section 706(7) of Title 29 USC, and subchapter II of Chapter 111, Wis. Stats., shall solely by reason of the individual's handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

Section 10.8 Environmental Protection

(a) Facilities or equipment shall not be acquired, constructed, or improved as a part of the Project Facility unless

such facilities or equipment are designed and equipped to limit water and air pollution in accordance with all applicable state and federal standards, statutes, and regulations.

(b) Operations shall be conducted in compliance with all the requirements of Section 114 of the Clean Air Act, 42 USC Sec. 7414, and Section 308 of the Federal Water Pollution Control Act, 33 USC 1318, and all applicable regulations issued under said Acts.

(c) Municipality certifies that no facilities which will be utilized or improved as part of the Project Facility are listed on the Environmental Protection Agency ("EPA") List of Violating Facilities ("List").

(d) Municipality stipulates that it will notify BORAH as soon as it, Industry, Operator or any subcontractor receives any communication from the EPA indicating that any facility which will be utilized or improved as part of the Project Facility is under consideration to be listed on the EPA List.

(e) No publicly-owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from a

historic site of national, state, or local significance as so determined by such officials, may be used for the Project Facility without the prior concurrence of the Administrator of the EPA and the State Historical Preservation Officer.

Section 10.9 Prohibited Interests

(a) Conflicts of Interest:

(1) Neither Municipality, Industry nor Operator, nor any of their subcontractors shall enter into any contract, subcontract, or agreement in connection with the project or any property included or planned to be included in the Project Facility in which any director, officer or employee of Municipality during his tenure or for one (1) year thereafter has any interest, direct or indirect except as permitted under Sec. 946.13(2), Wis. Stats. (1989-1990).

(2) Municipality and Industry shall insert in all agreements entered into by it in connection with the Project Facility, the following provision:

"No director, officer, or employee of the Municipality, during their tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof

except as permitted under Sec. 946.13(2), Wis. Stats. (1989-1990)."

(3) No subcontractor of Municipality or Industry may enter into any contract, subcontract or other arrangements which may affect the activities for which assistance is available under this Agreement if any director, officer, any key salaried employee or official, or any member of the immediate family of one of the foregoing has any material interest in this Agreement.

(4) The provisions of this subsection shall not be applicable to any agreement between Municipality or Industry and its fiscal depositories or to any agreement for utility services for which rates are fixed by government regulation.

(b) No member of or delegate to Congress shall be admitted to any share of any benefit that may arise from this Agreement, but this subsection shall not restrict the making of any contract with a corporation for the general benefit of such corporation.

Section 10.10 Non-Discrimination

(a)(i) In connection with the performance of work under this Agreement, Municipality agrees not to discriminate against

any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s.51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. Municipality agrees to post in conspicuous places, available for employees and applicants for employment notices setting forth the provisions of the nondiscrimination clause.

ii. Contracts of \$10,000 or more require the submission of a written affirmative action plan within 15 days after notification of the contract award. Municipality shall require its or Industry's construction subcontractor to submit an affirmative action plan to WisDOT or Municipality within 15 days after notification of the award of the contract. If construction subcontractor has an annual work force of less than 10 employees, it is excluded from this requirement; however, Municipality must state this fact in writing to WisDOT.

(b) Municipality shall comply with the following laws, policies, regulations, and pertinent directions as may be applicable and will require their subcontractors through contractual agreement to similarly comply:

- i. Title VI of the Civil Rights Act of 1964, 78 Stats. 252, 42 U.S.C. 2000d et seq.
- ii. Subchapter II of Chapter 111, Wis. Stats.
- iii. Section 16.765, Wis. Stats.

(c) Municipality, in the procurement process, shall not discriminate against minority owned or operated firms qualified to bid and perform on contracts, subcontracts, or materials procurement connected with the work performed under this Agreement.

Section 10.11 Entire Agreement

This Agreement and the attachment(s) hereto contain the entire agreement of the parties and supersede any and all prior agreements or oral understandings between the parties.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the date and year designated in this Agreement.

Witness: Carol A. Semmin

Village of Pleasant Prairie
By: Thomas W. ...
President

Witness: Jennie Rukle

By: Michael R. ...
Administrator

Witness: Ronald E. Adams

WISCONSIN DEPARTMENT OF
TRANSPORTATION
By: John Evans
Administrator,
Division of Transportation
Assistance

RAILROAD SPUR
EASEMENT DESCRIPTION

Lawter International, Inc.
8601 - 95th Street
Pleasant Prairie, Wisconsin 53158

Tax No. 92-4-122-212-0354

All that part of the Northwest One-Quarter (1/4) of Section 21, Township 1 North, Range 22 East, in the Village of Pleasant Prairie, Kenosha County, Wisconsin bounded and described as follows:

Commencing at the concrete monument at the Southwest corner of said Northwest One-quarter (1/4); thence North 02° 59' 43" West, on and along the West line of said Northwest One-quarter (1/4), 465.05 feet to a point; thence North 89° 00' 44" East, 70.03 feet to a point on the East right-of-way line of C.T.H. "H", and the point of beginning; thence continuing North 89° 00' 44" East, 714.83 feet to a point on the West face of the existing Lawter International Building extended; thence South 00° 53' 36" East, on and along the West face of said building, 75.00 feet to a point; thence South 89° 00' 44" West, 712.08 feet to a point on said East right-of-way line; thence North 02° 59' 43" West, on and along said East right-of-way line, 75.05 feet to the point of beginning. (See attached Exhibit "A")

CRISPELL-SNYDER, INC.
Engineers and Architects

February 1994

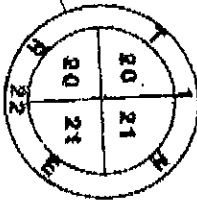
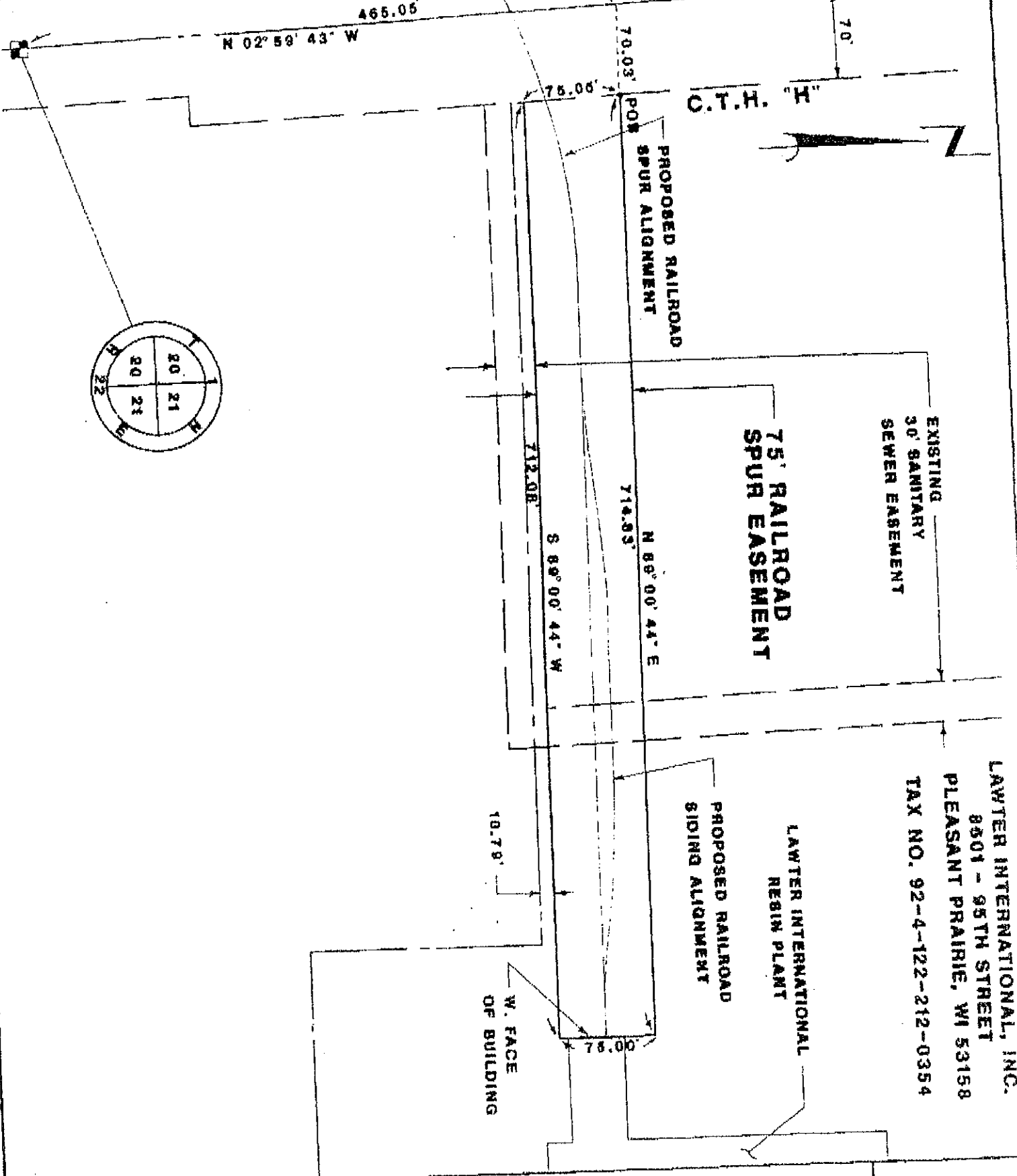


EXHIBIT "A"



CRISPELL-SNYDER, INC.
ENGINEERS & ARCHITECTS

Kilbuck, Wisconsin 53121
 (414) 725-0500

Kilbuck, Wisconsin 53121
 (414) 725-0500

| | |
|---------------------------------------|----------------|
| LOCATION: VILLAGE OF PLEASANT PRAIRIE | |
| KENOSHA COUNTY, WISCONSIN | |
| SCALE: 1" = 100' | DATE: FEB. '94 |
| DRAWN BY: RDD | |

LAWTER INTERNATIONAL, INC.
 8501 - 95TH STREET
 PLEASANT PRAIRIE, WI 53158
 TAX NO. 92-4-122-212-0354

LAWTER INTERNATIONAL
 RESIN PLANT
 PROPOSED RAILROAD
 SIDING ALIGNMENT

75' RAILROAD
 SPUR EASEMENT

EXISTING
 30' SANITARY
 SEWER EASEMENT

C.T.H. "H"

PROPOSED RAILROAD
 SPUR ALIGNMENT

465.05'
 N 02° 59' 43" W

70.03'

70'

75.00'

714.93'

N 88° 00' 44" E

S 88° 00' 44" W

712.08'

10.79'

W. FACE
 OF BUILDING

75.00'

ATTACHMENT I
PROJECT BUDGET

1.0 Project: Rail Spur Track - TEA Grant

This budget is for construction of an industrial rail spur approximately 1,060 feet in length and a connection to CP Rail System track in the vicinity of Pleasant Prairie, Wisconsin.

2.0 Budget Line Items

| <u>Item</u> | <u>Amount</u> |
|--|------------------|
| 2.1 Construction Work - CP Rail System | * |
| 2.2 Construction Work - _____ Co. | * |
| 2.3 Excavation | * |
| 2.4 Engineering and Administration | * |
| 2.5 Contingency | * |
| Total | <u>\$295,000</u> |

* To be filled in following award of bids.

| <u>3.0 Funding Source</u> | <u>Total Project</u> |
|---------------------------|----------------------|
| 3.1 WisDOT 50% | \$147,500 |
| 3.2 Local: 50% | <u>147,500</u> |
| Total Project | \$295,000 |

4.0 Use of Contingency

The item identified as contingencies included in the overall project budget may only be expended when specifically authorized by BORAH in writing.

ATTACHMENT II

DESCRIPTION OF CONSTRUCTION WORK TO BE PERFORMED

1.0 Project Description

The construction work shall consist of the work set forth in the bid proposal accepted by Municipality, and the work proposal, if any, by the Operator and accepted by Municipality, and the project design and management work performed by Municipality or its Engineer.

2.0 Changes to Specifications

The specifications outlined in Part 4.0 of this attachment shall be met under the construction project. Any variance from these specifications shall be requested in writing to BORAH. Approval of a variance shall be issued in writing to the Municipality and the Operator, prior to the terms of the variance being effective and any costs incurred being allowable for reimbursement under this Agreement.

3.0 Work Schedule and Inspections

3.1 The entire project is estimated to take 60 work days to complete. This Agreement covers the work to be accomplished under the entire project. The timetable for completing the project may be extended upon mutual agreement of WisDOT and Municipality, provided however that the total amount of grant expenditures will not be increased by reason of such extension of time. The project shall be completed by September 30, 1993.

3.2 Progress Inspection Procedure

In addition to inspections conducted by Municipality, WisDOT may conduct its own project inspections.

3.3 Final Inspection and Acceptance

Final inspection shall be conducted within 30 days following a request by the Municipality, unless snow cover makes such inspection impractical. These final inspections shall include the Operator, Contractor and BORAH personnel. Defects in workmanship discovered upon final inspection shall be deemed defective work. WisDOT shall not accept project as complete until outstanding defects are corrected.

4.0 Project Specifications

The construction work performed shall meet the Wisconsin Department of Transportation's Specifications for Industrial Track Construction, except as may be otherwise agreed to, in writing, by WisDOT.

ATTACHMENT III

PROJECT OPERATIONS, ACCOUNTS AND REPORTS

1.0 Project Performance and Management

1.1 Method of Performance

Municipality shall appoint a qualified project manager to plan, direct and supervise the performance of Operator and Construction Contractor in the performance of the construction work accomplished under this Agreement and the performance of any subcontractors.

1.2 Project Manager

(a) Designation and Qualification - The Project Manager must be qualified in all phases of work to be performed under this Agreement. Before any work is started, the Municipality shall identify the Project Manager by name and provide a statement of qualifications of the Project Manager to BORAH. BORAH shall have the right to accept or reject the use of the selected Project Manager or any subsequent Project Manager on this project. BORAH shall review and accept or reject the contract, if any, between the Municipality and Project Manager.

(b) Responsibilities -

(1) The Project Manager is required to perform inspection of the work, daily if necessary, to assure that the work program is performed in compliance with the terms of this Agreement.

(2) The Project Manager shall document both the quantity and quality of all work performed whether by the Operator's own forces or a Construction Contractor or a subcontractor. Documentation shall be made in a manner and using forms supplied or approved by WisDOT.

(3) The Project Manager shall be responsible for the preparation of all progress reports, invoices for reimbursement, requests for change orders, variances or amendments affecting the project scope of work or funding.

(4) The Project Manager shall retain all project documents (vendor invoices, time sheets, specifications, etc.) at a project office. Said documents shall be made accessible to BORAH or its representative during normal business hours.

(5) The Project Manager shall be responsible for preparation and revision of schedules, worker productivity, and inspecting material.

2.0 Fiscal Control

2.1 Financial Management, Audit, and Records

(a) Municipality financial management and records systems shall include records and procedures for determining the allowability of costs incurred on the approved project.

(b) Municipality shall maintain and shall ensure that each recipient of funds under this Agreement, except funds received under a competitive bid process, whether in the form of contracts, subcontracts or other arrangements, maintains the following until the expiration of three years after the date of the submission and acceptance of the final close out accounting which shall include:

(1) Records that identify the sources and applications of funds for the approved project or tasks and contain information pertaining to financial assistance awards, draw downs, obligations, unobligated balances, assets, liabilities, outlays, and income;

(2) Supporting source documents;

(3) All documentation underlying the preparation of the financial reports; and

(4) All accounting documents of Municipality pertaining to the approved projects or tasks shall be clearly identified and readily accessible to WisDOT and its designee. Municipality shall impose this requirement upon each of its contractors and ensure that it is imposed on each subcontractor.

(c) Municipality and its subcontractors shall make available to the auditors of WisDOT the records of revenues and costs related to this Agreement. All such records will be kept for a period of at least three (3) years after the issuance of final inspection and acceptance report by BORAH, and any such records that are the subject of an auditing dispute shall be kept for the term of the dispute. Municipality shall allow inspection by the authorized agents of WisDOT of the above described records and similar records of its subcontractor(s). Inspections shall be made during regular business hours and upon reasonable notice.

2.2 Allowable Costs

(a) Costs of this project are not allowable for reimbursement under this Agreement if they are incurred prior to the execution of this Agreement unless specifically authorized in writing by WisDOT to be incurred prior to execution of this Agreement except that costs of engineering incurred after approval of Municipality's application and prior to execution of this agreement shall be eligible for reimbursement following execution of this agreement.

(b) The costs incurred by Municipality to carry out the project are allowable if they are covered by this Agreement or a contract approved by BORAH in accordance with this Agreement.

2.3 Defective Work

If BORAH determines that any material or workmanship is deficient, Municipality, without reimbursement under this Agreement, shall promptly require the replacement of materials or correction of workmanship necessary to cure the deficiency.

2.4 Acceptance, Storage and Protection of Materials

All materials delivered to Municipality or its subcontractors for use in performing the work set forth in Attachment II shall be inspected and accounted for upon delivery and protected from theft or damage. The Project Manager shall conduct inspections and shall reject defective material prior to shipment by the supplier or at the time of delivery to the project stockpile or work site or as soon thereafter as defects are discovered. Replacement of damaged or stolen or defective material is not an eligible cost under this Agreement. Damage or theft of material is not an acceptable reason for non-performance of Municipality's obligations under this Agreement.

2.5 Use of Contingency Funds

Contingency funds may only be expended when expenditure is authorized by BORAH. The request for use of contingency funds shall be made in writing to BORAH. Written approval shall be obtained by Municipality or its subcontractor prior to release of contingency funds. Verbal approval may be given by BORAH, but only after written request has been received. The verbal approval shall be verified by follow-up written approval.

3.0 Accounting

3.1 Financial Record Keeping and Pre-Award Audit

Municipality shall establish and maintain a separate set of accounts showing receipts and disbursements of all funds provided under this Agreement and all other funds accruing to or received on account of the project and shall require subcontractors to maintain a like set of accounts. This system of accounts shall permit the clear differentiation of charges to the project from expenditures made by Municipality for non-project work. Subcontractor's awarded contracts on the basis of sealed bid are exempt from this requirement.

3.2 Interim and Project Close-Out Audits

(a) All costs charged to this project shall be supported by documents evidencing in detail the nature and propriety of the charges. All accounting documents pertaining to the project shall be clearly identified and readily accessible to WisDOT. Copies of all vendor invoices shall be submitted to the project inspector when reimbursement is being claimed.

(b) WisDOT may conduct an audit of project costs at such times during the progress of project work as it deems appropriate.

(c) WisDOT may conduct a project close-out audit following completion of final project inspection and acceptance of project work.

4.0 Scheduling and Reporting

4.1 Construction Scheduling

Prior to starting construction on the project, Municipality shall provide BORAH with a schedule of anticipated work progress. The schedule shall be updated as needed or reported as needing no change and included with the invoice for payment.

4.2 Immediate Reporting

Municipality, Industry or Operator shall report to BORAH immediately in writing whenever there is any change in conditions or in State or Local law, or any other event, that may significantly affect: (a) Municipality's, or Industry's, or Operator's ability to perform the projects or

tasks in accordance with the provisions of this Agreement, or (b) Municipality's continuing eligibility for financial assistance under this Agreement.

4.3 Routine Reporting

(a) If during any month Operator or Contractor has performed work on the approved project, a performance report shall be filed with the invoice for payment and include the following information:

(1) the costs incurred to the end of the month and the estimated costs to complete the project;

(2) for work performed other than under a fixed price contract, unit costs of materials and labor charged to the project for the period covered by the report;

(3) the percentage of completion of each major element of the project and the estimated date of its completion;

(4) a narrative description of any difficulties or delays encountered, including an explanation of any cost overruns or high unit costs, and any corrective action taken or to be taken;

(5) an explanation of any anticipated difficulties or delays until the end of the project and the action to be taken in an effort to avoid such difficulties or delays; and

(6) any additional narrative necessary to explain any major change that has been made during the month to the monthly schedule of work.

(b) Financial reports shall be on the same basis as Municipality's or Construction Contractor's accounting records.

5.0 Payment of Assistance Amounts

5.1 Payment Schedule

(a) Invoices for payment of eligible project costs may be submitted not more frequently than once per month and no less frequently than once per quarter.

(b) Original invoices shall be submitted to Thomas R. Wildenborg, BORAH, P.O. Box 7914, Madison, WI 53707.

(c) Invoices and supporting documentation shall be in a format acceptable to WisDOT.

5.2 Payment Process

(a) Invoice Submittal

(1) Municipality shall prepare and submit original invoices to BORAH (see 5.1(b)) along with any supporting documentation.

(2) BORAH shall review the submitted invoice for payment and shall discuss with Municipality or its subcontractor any exception BORAH may take to the amounts billed.

(b) Payment

(1) Municipality shall invoice only for work completed or materials installed.

(2) Upon approval of the invoice by BORAH, WisDOT shall pay to Municipality the amounts due, less any amounts subject to exceptions.

(3) Municipality shall have paid Vendor or Contractor invoices or shall pay them immediately following receipt of WisDOT's payment.

5.3 Payment Amount

(a) WisDOT shall pay to Municipality 50% of each invoiced amount less a project completion retainage on construction items equal to 5% of the total invoiced amount, less exceptions under Section 5.4 of this Attachment.

(b) WisDOT shall pay to Municipality the project completion percentage amount determined in accordance with Section 5.3(a) of Attachment III or as much thereof as is due Municipality, following receipt from Municipality of the TEA PROJECT COMPLETION CERTIFICATE (Attachment VI) and WisDOT's final inspection and acceptance of the work performed.

5.4 Payment Delays

(a) Should any element of cost billed on any invoice be questioned as to its allowability or accuracy, WisDOT may except that cost from payment until the eligibility of the cost item(s) is determined and shall pay the remainder of the invoiced amount per schedule.

(b) Payment shall be made to Municipality only for work already completed or for materials installed. Unless billed under a fixed price contract, Operator's invoices for labor and equipment costs shall be verified by use of time cards and equipment use logs.

(c) Payment by WisDOT of amounts which may become due under this Agreement shall be made only following Municipality's full and complete compliance, to the satisfaction of WisDOT, with Section 5.1 of the Agreement.

TEA-RAIL
Agreement No. 3738-03-50

ATTACHMENT IV

EASEMENT

TEA-RAIL
Agreement No. 3738-03-50

ATTACHMENT V
TEA JOBS GUARANTEE

TRANSPORTATION ECONOMIC ASSISTANCE

JOB GUARANTEE

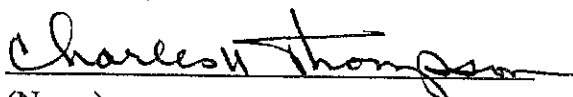
The VILLAGE OF PLEASANT PRAIRIE, KENOSHA COUNTY hereby agrees to authorize inclusion and be bound by this repayment provision in the Project Agreement that will be executed between the applicant and the Wisconsin Department of Transportation as part of the Department's approval of the applicant's request for assistance under the Transportation Facilities Economic Assistance and Development program.

The VILLAGE OF PLEASANT PRAIRIE agrees, in this repayment provision, to reimburse the Department up to the full grant amount if employment within the economic development project (PLEASANT PRAIRIE 2 /LAWTER INTERNATIONAL, INC., RAIL SPUR CONSTRUCTION) fails to meet the following goals: (1) expansion of 50 jobs within three years after the Project Agreement is executed; and, (2) retention of these 50 jobs for another 4 years (verifications to be made at 3 and 7 years after project agreement is executed).

For purposes of this provision, a job is defined to be consistent with Trans. 510 of the Wisconsin Administrative Code. It will include all new non-retail jobs and exclude jobs obtained through geographic job transfers within Wisconsin except those that would be lost to the state. Eligible jobs may include full time equivalents (FTE's).

If the job guarantee is not satisfied, the Department will evaluate the job benefits that have been obtained in order to determine if reimbursement of either the full grant amount or reimbursement of a reduced amount based on a prorated share related to the number of jobs that have materialized as a result of the economic development project.

The full grant amount involved here, of which partial or total reimbursement may be required, is \$147,500.

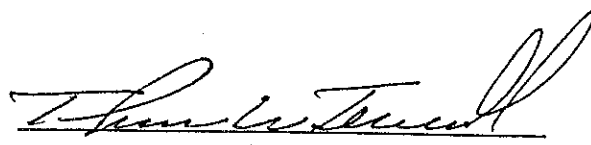


(Name)

CHARLES H. THOMPSON
SECRETARY,
WISCONSIN DEPARTMENT
OF TRANSPORTATION

January 5, 1993

(Date)



(Name)

THOMAS W. TERWALL
PRESIDENT
VILLAGE OF PLEASANT PRAIRIE
53158-0343/
0089

DECEMBER 22, 1992

(Date)

TEA-RAIL
Agreement No. 3738-03-50

*Do not
have yet*

ATTACHMENT VI
TEA PROJECT COMPLETION CERTIFICATE

BELL, BOYD & LLOYD

Gregory R. Andre
Direct Dial: (312) 807-4254

THREE FIRST NATIONAL PLAZA
70 WEST MADISON STREET, SUITE 3200
CHICAGO, ILLINOIS 60602-4207

312 372-1121
FAX 312 372-2098

WASHINGTON, D.C.
202 466-6300
FAX 202 463-0678

November 17, 1993

Village of Pleasant Prairie
Attn: Mr. Michael Pollocoff
P.O. Box 89
Pleasant Prairie, Wisconsin 53158-0089

NOV 19 1993

Re: Lawter International, Inc.

Dear Mr. Pollocoff:

Enclosed please find two copies of the Facility Use Agreement and one copy of the Railroad Spur Track Easement Agreement, both of which are between the Village of Pleasant Prairie and Lawter International, Inc. and have been fully executed.

Please note, however, that the Railroad Spur Track Easement Agreement which is attached to each of the enclosed copies of the Facility Use Agreement as an exhibit and a separate copy of which is enclosed have not been notarized by the Village of Pleasant Prairie. Please have all of the enclosed copies of the Railroad Spur Track Easement Agreement notarized and return the enclosed separate copy of the Spur Track Easement Agreement to me for our files. We have retained one fully executed copy of the Facility Use Agreement for our files. Therefore, you may retain the two enclosed copies of the Facility Use Agreement.

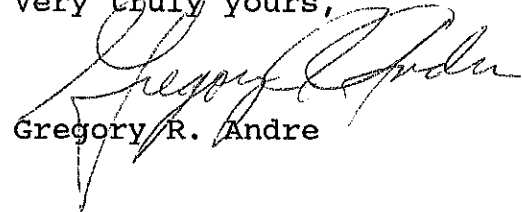
✓ In addition, please have a fully executed of the Railroad Spur Track Easement Agreement recorded with your local recorder's office and forward a copy of the recorded document to me for our files.

✓ To complete our files, we would also appreciate receiving a fully executed copy, preferably an original, of the TEA-Rail Agreement between the Village of Pleasant Prairie and Wisconsin DOT.

Mr. Michael Pollocoff
November 17, 1993
Page 2

If you have any questions or comments, please do not hesitate to contact me. It has been a pleasure working with you on this transaction. Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Gregory R. Andre". The signature is written in dark ink and is positioned above the printed name.

Gregory R. Andre

GRA:hkd
Enclosure
cc: Mr. William S. Russell (w/o encl.)

FACILITY USE AGREEMENT

No. 3738-03-51

THIS AGREEMENT, made this 2nd day of Nov., 1993, by and between the Village of Pleasant Prairie, Kenosha County, Wisconsin (Municipality), a municipal corporation, and Lawter International, Inc., (Industry).

ARTICLE 1.0 - DEFINITIONS

- a. "Operator" means the CP Rail System.
- b. "Municipality" means the Village of Pleasant Prairie, Kenosha County, Wisconsin.
- c. "WisDOT" means the Wisconsin Department of Transportation.
- d. "Industry" means Lawter International, Inc.
- e. "Industry Land" means the corridor of real estate owned by Industry upon which the project facility is located at the Industry plant site in Pleasant Prairie, Wisconsin and more fully described in Attachment II.

- f. "Improved Property" means the rails, ties, ballast, track material, switches, and culverts acquired, used or installed with the proceeds received by the Municipality from the TEA-Rail Agreement.
- g. "Person" means an individual, a partnership, an association, and bodies politic or corporate.
- h. "Project Facility" means the industrial railroad spur constructed under the TEA-Rail Agreement using improved property and providing Industry's plant with access to the Operator's track.
- i. "BORAH" means the Bureau of Railroads and Harbors of WisDOT.
- j. "Industry Track Agreement" means the agreement by and between the Operator and Industry, governing the provision of rail service over and the maintenance of the project facility.
- k. "TEA-Rail" means the agreement by and between the Municipality and WisDOT, Identification No. 3738-030-50, setting forth the terms of the Municipality's receipt of a Transportation Economic Assistance-Rail grant to construct the project facility.

1. "Direct Job(s)" means the number of eligible jobs directly associated with the economic development project and listed on the application, as reviewed and approved by WisDOT under TRANS 510.

ARTICLE 2.0 - PROJECT DESCRIPTION

The Project Facility to be constructed by the Municipality on Industry Land consists of a single track railroad spur of 1,060 feet from the point of the switch on the Operator's track to the end of the track at Industry's plant site.

ARTICLE 3.0 - USE, TERM AND JOB GUARANTEE

(a) The Municipality grants to Industry the right to use the Project Facility for the purpose of shipping and receiving materials from and at Industry's plant, provided Industry complies with the terms and conditions set forth in this Agreement. Industry's right to use the Project Facility shall continue until terminated pursuant to this Agreement.

(b) Industry shall comply with the criteria established in the Direct Jobs Guarantee attached hereto as Attachment I.

ARTICLE 4.0 - PROJECT FACILITY LIQUIDATION

In the event the Project Facility is liquidated at any time, the net proceeds (equal to the sales price minus reasonable costs incurred in connection with the sale) received from

disposition of the Improved Property included in the Project Facility shall be distributed as follows: 50% thereof shall be paid to Municipality for reimbursement to WisDOT, and 50% thereof shall be paid to Industry.

ARTICLE 5.0 - PROJECT FACILITY OPERATION

Section 5.1. Written Agreements

Industry has entered or shall enter into the following written agreements with appropriate parties to assure its ability to comply with the requirements of this Agreement. These agreements shall be submitted in approvable form to the Municipality by December 31, 1993, so the Municipality may submit them to BORAH for acceptance. If Industry fails to comply with this provision or BORAH does not accept said written agreements, this Agreement is automatically terminated.

(a) Industry shall furnish a track easement to the Municipality on Industry Land (as described in Attachment II) granting the Municipality a perpetual right for construction, operation and ownership of the Project Facility on said land.

(b) Industry shall provide an Industry Track Agreement by and between Industry and Operator. Said Industry Track Agreement shall be attached hereto as Attachment III and made a part of this Agreement as of the date Attachment III is accepted in writing by BORAH.

Section 5.2. Maintenance of Project Facility

Industry shall, at its expense, perform or arrange for performance of all maintenance and repairs of the Project Facility, the road bed of the Project Facility, drainage ways and any structures necessary for the safe operation of railroad service as determined by Operator or the Federal Railroad Administration, or both.

Section 5.3. Project Facility Use

(a) A condition of default for failure to use may be declared by Municipality or WisDOT upon occurrence of any one or more of the following events:

- (i) Industry renders its loading docks or track side facilities unfit for use for rail service or ceases its operation of its plant.
- (ii) Industry files for protection under bankruptcy laws.
- (iii) Operator abandons the line haul track and/or industrial lead track to which the Project Facility is connected.
- (iv) Operator ceases operation of line haul track and/or industrial lead track serving the Project Facility. *

(v) The Project Facility is rendered unfit for railroad freight service by Municipality, Industry, or Operator.

(b) Industry shall provide to BORAH within forty-five (45) days following the last day of December a report of the number of loaded rail cars shipped or received on the Project Facility by Industry. Industry shall arrange for access by BORAH or its authorized agent to examine waybill, demurrage, or other appropriate records for purposes of validating reported car counts.

Section 5.4. Payment for Construction Costs

On or before the date of this Agreement, Municipality has furnished Industry with, and Industry has approved, a good faith estimate of the project cost. Industry shall pay to the Municipality an amount equal to fifty percent of the estimated project cost when billed by the Municipality. Upon completion of the project, that amount will be adjusted, either higher or lower, after an audit of the final construction costs is completed.

Section 5.5. Defective Work

If it is reasonably determined by Industry, Municipality or WisDOT that any material or workmanship is deficient, Industry/Municipality, without reimbursement, shall promptly require the replacement of materials or correction of workmanship necessary to cure the deficiency.

ARTICLE 6.0 - PROJECT PROPERTY SECURITY, LIENS AND SALE

Section 6.1. Security for Borrowing

(a) Industry shall not itself nor shall it allow Operator to use the value of the Improved Property acquired or used for this project as security or collateral for any loan or other borrowing.

(b) Industry shall not use Industry Land as security or collateral for any loan or other borrowing which is not recorded in the Office of Register of Deeds of Kenosha County on the date of execution of this Agreement.

Section 6.2. Liens Against Improved Property

(a) Industry acknowledges that the TEA-Rail Agreement creates a first priority lien in favor of WisDOT on the material purchased in whole or in part with the proceeds of the TEA-Rail Agreement beginning with acceptance of delivery and continuing for the duration of their placement on Industry Land, and that the Municipality shall cause a legally sufficient notice of this lien to be recorded in the Office of Register of Deeds of Kenosha County and the Office of the Secretary of State. Said notice shall be removed from the record only upon written waiver of lien by WisDOT.

(b) Industry shall not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or

with respect to the Improved Property or any interest therein not in existence on the date of execution of this Agreement. Industry shall immediately take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim against Improved Property if the same shall arise at any time.

Section 6.3. Sale of Improved Property or Industry Land

In the event Industry sells the Improved Property or Industry Land, or both, without the written approval of BORAH, which approval shall not be unreasonably withheld or delayed, Industry shall immediately pay to the Municipality an amount equal to the amount the Municipality is required to repay to WisDOT from the TEA-Rail grant as a result of said sale which is an amount equal to fifty percent (50%) of the original project cost. In the event Industry sells the Improved Property or Industry Land, or both, with the written approval of BORAH, Industry shall not owe any money to Municipality.

ARTICLE 7.0 - DEFAULT AND TERMINATION

Section 7.1. Declaration of Default

A condition of default exists under this Agreement when either party to this Agreement fails to abide by or perform according to any one or more of its terms and conditions. A declaration of default of this Agreement shall be made in writing and delivered to the alleged defaulting party by certified mail sent to the address shown in Section 10.2. The letter shall identify the action or inaction constituting the default and reference the portion of the

Agreement under which the default occurs. The date of default shall be the date of delivery of notice or the date insurance coverage fails to meet requirements or the date of filing for bankruptcy by Industry, whichever first occurs.

Section 7.2. Termination of Default

In the event of any failure on the part of either party to perform its obligations under the terms of this Agreement, including, but not limited to, transmittal of required payments under this Agreement, the other party shall have the right to give immediate notice of default and, at its option, after first giving ten (10) days written notice thereof by certified mail to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this Agreement, and the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages.

Section 7.3. Removal of a Condition of Default

The Municipality or Industry shall have ten (10) calendar days from written notification of the default to remove or remedy the cause of the default. This remedy period may be waived by the party declared in default. Correction by the defaulting party shall be completed and ready for verification by the other party within the ten (10) day period. Upon written petition by the defaulting party, the other party may extend the period for removal of a default condition. The defaulting party shall be notified of satisfactory correction in writing. Notwithstanding the forgoing provisions of this paragraph, in the event that such

default cannot reasonably be cured within such ten (10) day cure period and the defaulting party is diligently attempting to cure such default within such ten (10) day period, the ten (10) day cure period shall be extended to such period of time as is reasonably necessary to cure the default, provided the defaulting party continues to diligently attempt to cure the default.

Section 7.4. Expenses of Termination

The parties shall themselves, and Industry shall require Operator, to mitigate the expenses of termination to the greatest extent possible, and the Municipality shall pay those that do occur if default is caused by Municipality, and Industry shall pay those that do occur if default is caused by Industry.

Section 7.5. Vacating the Property

Upon the reasonable determination by the Municipality that remedial action has not removed the default condition caused by Industry within the applicable cure period, the Municipality shall provide written notice to Industry and Operator for Industry and Operator to vacate and stop using the Project Facility within fourteen (14) days of delivery of such notice.

Section 7.6. Force Majeure

The parties hereto will be excused from performance of any of their respective

obligations hereunder, for the duration of any interruption occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitations: Acts of God; strikes or other labor troubles or other causes except the unavailability of insurance coverage in full accordance with Section 9.2 of this Agreement or any amendment thereto, beyond the reasonable control of the parties; interruption of service caused by accidents, explosions, fires, vandalism, or malicious mischief. To the extent reasonably permitted by WisDOT, the parties will be excused from the performance of their obligations hereunder if the parties' failure to use the Project Facility is due to the economic or business conditions of Industry or the failure of Operator to provide freight cars or switching service.

ARTICLE 8.0 - REPRESENTATIONS AND WARRANTIES

The parties hereto represent and warrant that they have the power and authority to enter into this Agreement and to carry out their obligations under this Agreement.

ARTICLE 9.0 - LIABILITY AND INSURANCE

Section 9.1. Hold Harmless

Industry shall save and hold the Municipality and WisDOT, their officers, employees and agents harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arises out of or are connected with, or are claimed to arise

out of or be connected with, any act, omission or operation of Industry or Operator, or Industry's or Operator's agents, servants, subcontractors or employees, or which arises out of or is connected with, or is claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened, in or about a place where such operation, act or omission is being performed or in the vicinity thereof (1) while Operator or Industry is performing its work, or (2) during the period this Agreement between Industry and Municipality is in effect, or (3) while any of the Operator's or Industry's property, equipment, or personnel, is in or about such place or the vicinity thereof by reason of or as a result of the performance of Operator's or Industry's operations including, without limiting the applicability of the foregoing: all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to the Municipality or WisDOT, their, officers, employees, agents, subcontractors, or frequenters, or to any other person or legal entity whether based upon, or claimed to be based upon contract, tort, or having its basis in workers' compensation under federal or state statutes or having any other code, or statutory basis, or based upon administrative laws or other provisions, or other liability of the Municipality or WisDOT, Industry or any other persons or entities, and whether or not caused or claimed to have been caused by the negligence, or other breach of duty by the Municipality or WisDOT, their officers, employees, agents, subcontractors, or frequenters or Industry, its officers, employees, agents, subcontractors or frequenters, or any other person or legal entity. Without limiting the applicability of the foregoing, the liability, damage, loss, claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of

any kind whatsoever.

Section 9.2. Insurance

(a) Required Coverage - During the term of this Agreement, Industry shall maintain, at its own cost and expense, a Comprehensive General Liability Policy in an amount of not less than \$1,000,000.00 single limit coverage, and for matters of liability arising from the existence and use of the Project Facility, shall name the Municipality and WisDOT, their officers, employees, and agents as additional insureds on all Primary and Excess Comprehensive General Liability insurance documents. Industry shall in addition maintain and keep in force worker's compensation and employer's liability insurance, to the extent, if any, that worker's compensation and employer's liability is not covered under the Comprehensive General Liability Policy.

(b) Validation of Coverage and Notice of Cancellation - Upon initial inclusion of the Municipality and WisDOT as additional insureds and on each renewal of insurance coverage required by Section 9.2(a), the insurance carrier shall provide to the Municipality and WisDOT written documentation from the insurance carrier or its authorized representative of the terms and effective date of coverage. In the event of insurance coverage suspension or insurance cancellation by any insurance carrier, both the insurance carrier and Industry shall provide the Municipality and WisDOT with notification of such suspension or cancellation of insurance coverage required by Section 9.2(a) no less than 10 days prior to such suspension or cancellation.

(c) Reporting of Incidents and Claims - During the term of this Agreement, any damage or injury to person or property occurring on the Project Facility or from the operation of the equipment of Operator or Industry or by the employees of Operator or Industry (herein referred to as an "incident") shall be reported to the Municipality and WisDOT at such time as said incident is reported to Industry or Industry's insurance carrier. Industry shall forthwith furnish the Municipality and WisDOT with copies of any notice of injury or claim of damage made to Industry. Thereafter, Industry shall provide the Municipality and WisDOT access to copies of any further instruments, reports and records involving such matter and shall report, at least quarterly, to the Municipality and WisDOT as to further happenings regarding the incident including the final disposition of the matter. Notice of court dates shall be given to the Municipality and WisDOT upon receipt.

ARTICLE 10.0 - GENERAL CONDITIONS

Section 10.1. Choice of Law

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of Wisconsin. Interpretation may be had in any court of record of the County of Kenosha.

Section 10.2. Notice

a. Any notice required or permitted under this Agreement shall be personally served or mailed by certified United States mail, return receipt requested, postage prepaid, to the

following addressed persons at the following addresses and to such other persons and addresses as the following persons shall direct by notice pursuant to this Section:

Administrator
Village of Pleasant Prairie
P. O. Box 89
Pleasant Prairie, WI 53158

Lawter International, Inc.
8601 95th Street
P. O. Box 343
Pleasant Prairie, WI 53158-0343

b. Any notice provided under Section 10.2(a) shall be provided to the following by first class mail.

Director, Bureau of Railroads & Harbors
WI Dept. of Transportation
P.O. Box 7914
Madison, WI 53707-7914

CP Rail System
P. O. Box 530
Minneapolis, MN 55440

Section 10.3. Transfer of Rights Under This Agreement

This Agreement shall be binding upon and inure solely to the benefit of the parties hereto. Industry's or Operator's rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly without the Municipality's prior written consent, which consent shall not be unreasonably withheld or delayed.

Section 10.4. Severability

If any term, covenant, condition or provision (or part thereof) of this Agreement, or

the application thereof to any party or circumstance, shall at any time or to any extent be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision, or remainder thereof, to parties or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 10.5. Amendment, Consents and Approvals

(a) No term or provision of this Agreement, or any of its attachments, may be changed, waived, discharged or terminated, except by an instrument in writing signed by both parties to this Agreement.

(b) Consents and approvals required under this Agreement and interpretation of this Agreement may be made or granted by letter from one party to the other party hereunder or by an exchange of letters between the parties.

Section 10.6. Officials

(a) Officials authorized to execute amendments or modifications to this Agreement on behalf of the Municipality are the Village President and Administrator.

(b) The official authorized to execute amendments or modifications to this Agreement on behalf of Industry is the General Manager.

Section 10.7. Handicapped

No otherwise qualified handicapped individual in the United States, as defined in Section 706(7) of Title 29 USC, and subchapter II of Chapter 111, Wis. Stats., shall solely by reason of the individual's handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

Section 10.8. Environmental Protection

(a) Facilities or equipment shall not be acquired, constructed, or improved as a part of the Project Facility unless such facilities or equipment are designed and equipped to limit water and air pollution in accordance with all applicable state and federal standards, statutes, and regulations.

(b) Operations shall be conducted in compliance with all the requirements of Section 114 of the Clean Air Act, 42 USC sec. 7414, and Section 308 of the Federal Water Pollution Control Act, 33 USC 1318, and all applicable regulations issued under said Acts.

(c) Industry certifies that no facilities which will be utilized or improved as part of the Project Facility are listed on the Environmental Protection Agency ("EPA") List of Violating Facilities ("List").

(d) Industry shall notify the Municipality as soon as it, the Operator or any

subcontractor receives any communication from the EPA indicating that any facility which will be utilized or improved as part of the Project Facility is under consideration to be listed on the EPA list.

Section 10.9. Prohibited Interests

(a) Conflicts of Interest:

(1) Neither Municipality, Industry nor Operator, nor any of their subcontractors shall enter into any contract, subcontract, or agreement in connection with the project or any property included or planned to be included in the Project Facility in which any director, officer or employee of Municipality during his or her tenure or for one (1) year thereafter has any interest, direct or indirect, except as permitted under Sec. 946.13(2), Wis. Stats. (1991-1992).

(2) No director, officer, or employee of the Village of Pleasant Prairie, during his or her tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof except as permitted under Sec. 946.13(2), Wis Stats. (1991-1992).

(3) No subcontractor of Municipality or Industry may enter into any contract, subcontract or other arrangements which may affect the activities for which assistance is available to the Municipality under the TEA-Rail Agreement if any director, officer, any key salaried employee or official, or any member of the immediate family of one of the foregoing has any material interest in said Agreement.

(4) The provisions of this subsection shall not be applicable to any agreement between Municipality or Industry and its fiscal depositories or to any agreement for utility services for which rates are fixed by government regulation.

Section 10.10. Non-Discrimination

(a) In connection with the performance of work under this Agreement or the TEA-Rail Agreement, Industry agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Sec. 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the contractor further agrees to take affirmative action to ensure equal employment opportunities. Industry agrees to post in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

(b) Municipality shall comply with the following laws, policies, regulations and pertinent directions as may be applicable and will require their subcontractors through contractual agreement to similarly comply:

- i. Title VI of the Civil Rights Act of 1964, 78 Stats. 252, 42 U.S.C. 2000d et seq.

- ii. Subchapter II of Chapter 111, Wis. Stats.
- iii. Section 16.765, Wis. Stats.

(c) Municipality in the procurement process, shall not discriminate against minority owned or operated firms qualified to bid and perform on contracts, subcontracts, or materials procurement connected with the work performed under this Agreement or the TEA-Rail Agreement.

Section 10.11. Assurance

Municipality shall require its construction contractor to acquire a performance and payment bond or an irrevocable letter of credit in the full amount of the grant to the Municipality under the TEA-Rail Agreement in favor of Municipality for the duration of the construction work set forth under said Agreement.

Section 10.12. Specific Performance

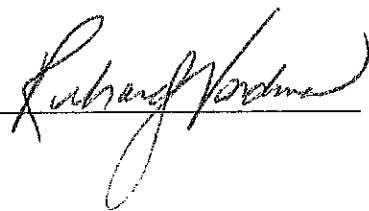
The Municipality and Industry shall have the right, as provided by law, to require specific performance by the other party of that party's obligations under this Agreement. This right may be asserted at any time after thirty (30) days of the party notifying the other party of its obligation to perform.

Section 10.13. Entire Agreement

This Agreement and the attachments hereto contain the entire agreement of the parties and supersede any and all prior agreements or oral understandings between the parties.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the date and year designated in this Agreement.


WITNESS: 

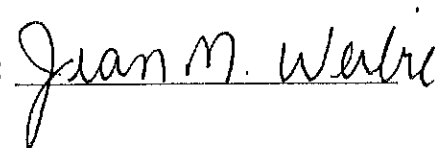
Lawter International, Inc.


(Name and Title)

WITNESS: 

Village of Pleasant Prairie


President

WITNESS: 


Clerk

ATTACHMENT I
JOBS GUARANTEE

ATTACHMENT II

EASEMENT

RAILROAD SPUR TRACK EASEMENT AGREEMENT

THIS RAILROAD SPUR TRACK EASEMENT AGREEMENT is made as of this 2nd day of November, 1993 by and between Lawter International, Inc., a Delaware corporation ("Grantor"), and Village of Pleasant Prairie, a municipal corporation ("Grantee"), under the following circumstances:

A. Grantor is the owner of certain real property located in Kenosha County, Wisconsin and described in Exhibit "A" attached hereto and made a part hereof (the "Servient Estate").

B. Grantor and Grantee are parties to that certain Facility Use Agreement dated as of November 2, 1993 incorporated herein by this reference and made a part hereof and providing for, among other things, the execution hereof for Grantee to construct, operate and own a single track railroad spur of 1,060 feet on, over and across a portion of the Servient Estate (the "Project Facility").

C. The Project Facility shall adjoin certain real property located in Kenosha County, Wisconsin and described in Exhibit "B" attached hereto and made a part hereof (the "Dominant Estate") owned by SOO Line Railroad Company ("Operator").

D. The Project Facility shall provide access between Grantor's business conducted on the Servient Estate and Operator's railroad track situated on the Dominant Estate.

E. Grantor and Operator are parties to that certain Industry Track Agreement dated as of November 2, 1993 providing for, among other things, rail service over and maintenance of the Project Facility.

F. Grantee desires to obtain and Grantor desires to grant an easement on, over and across that portion of the Servient Estate described in Exhibit "C", attached hereto as a part hereof (the "Easement Area"), pursuant to the Facility Use Agreement referenced above and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the receipt of which is hereby acknowledged, the mutual agreements and covenants herein contained and other good and valuable consideration paid by Grantee to Grantor, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Easement.** Grantor hereby grants to Grantee a non-exclusive and perpetual easement on, over and across the Easement Area to construct, operate and own the Project Facility. Such construction of the Project Facility shall be performed by Grantee in a good and workmanlike manner and in conformity with drawings and specifications approved by Grantor in writing prior to the commencement of any work pursuant thereto, which approval shall not be unreasonably withheld or delayed. Such construction, operation and ownership by Grantee shall be in accordance with all applicable laws, ordinances, rules, regulations and orders of all governmental authorities having jurisdiction over the Easement Area.

2. **Lien.** Grantee shall not permit or suffer any lien to be put upon or to arise or to accrue against the Easement Area or the Servient Estate in favor of any person or persons, individual or corporate, furnishing either labor or material in connection with any work

undertaken by Grantee pursuant to the rights herein granted. Grantee shall hold harmless and defend Grantor, the Easement Area and the Servient Estate from and against any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Grantee, and in the event any such lien shall arise or accrue against the Easement Area and/or the Servient Estate, Grantee shall promptly cause such lien to be released of record by payment thereof or posting of an appropriate bond with Grantor.

3. **Reservation.** Grantor reserves the right to use the Easement Area and the entirety of the Servient Estate in any manner that will not prevent or materially interfere with the exercise by Grantee of the rights herein granted.

4. **Indemnity.** Grantee shall indemnify, defend and hold harmless Grantor, and its employees, agents and assigns, from any and all claims, penalties, demands, actions, proceedings, liability or losses of any nature whatsoever (including reasonable attorneys' fees and expenses and court costs) for injury or death to person(s) or for damage or loss to property, or for claims, penalties, demands, actions, proceedings, liability or losses of any nature whatsoever (including reasonable attorneys' fees and expenses and court costs), arising out of or caused by the negligence or willful misconduct by Grantee, or its employees, agents, contractors or assigns, in exercising any of Grantee's rights hereunder or from use of the Easement Area and/or the Servient Estate in any manner whatsoever by any of them.

Grantor shall indemnify, defend and hold harmless Grantee, and its employees, agents and assigns, from any and all claims, penalties, demands, actions, proceedings, liability or losses of any nature whatsoever (including reasonable attorneys' fees and expenses and court costs) for injury or death to person(s) or for damage or loss to property, or for claims, penalties, demands, actions, proceedings, liability or losses of any nature whatsoever (including reasonable attorneys' fees and expenses and court costs), arising out of or caused by the negligence or willful misconduct by Grantor, or its employees, agents, contractors or assigns, in exercising any of Grantor's rights hereunder or from use of the Easement Area and/or the Servient Estate in any manner whatsoever by any of them.

5. **Successors.** The term "Grantor's Successors" shall mean and include each of Grantor's successors in title to the Servient Estate, or any part thereof or interest therein. The easements, rights and privileges herein granted to Grantee and reserved to Grantor, and all of the covenants and agreements of the parties herein:

(a) are hereby declared to be and shall be easements, rights, covenants and agreements running with the land;

(b) shall be binding upon, inure to the benefit of and be enforceable in actions at law or in equity by Grantee; and

(c) shall be binding upon, inure to the benefit of and be enforceable in actions at law or in equity by Grantor and each of Grantor's Successors, but only during and/or with respect to such periods of time as Grantor, or each such Grantor's Successor, shall respectively own an interest in the Servient Estate, or any part thereof.

6. **Exceptions.** The Easement is granted subject to all covenants, easements and restrictions of record, building and zoning ordinances, resolutions and regulations, questions of survey, and rights of any parties which would be revealed by a physical inspection of the Easement Area.

7. Grantee. Grantee joins in the execution of this Agreement for purposes of evidencing its agreement to be bound by Grantee's covenants and agreements herein set forth.

8. Termination. This Agreement may be terminated only by an instrument in writing executed by both Grantor and Grantee or issued by a court having jurisdiction hereof after all rights of appeal have expired or been exhausted and recorded in the Recorder of Deeds Office of Kenosha County, Wisconsin.

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

LAWTER INTERNATIONAL, INC., a
Delaware corporation

By: William S. Russell
Its: W. S. Russell

ATTEST:

By: Richard W. ...
Its: Richard W. ... President

VILLAGE OF PLEASANT PRAIRIE, a
municipal corporation

By: Thomas ...
Its: VILLAGE PRESIDENT

ATTEST:

By: Carol A. ...
Its: VILLAGE CLERK

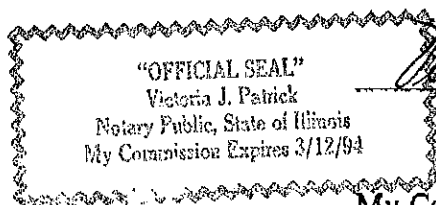
This Instrument Prepared By:

Bell, Boyd & Lloyd
Attn: Gregory R. Andre
70 W. Madison Street
Suite 3200
Chicago, Illinois 60602
(312) 807-4254

STATE OF ILLINOIS }
COUNTY OF COOK } SS

I, the undersigned, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY that William S. Russell and Richard D. Nordman as Vice President and President, respectively, of Lawter International, Inc., a Delaware corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such W. Russell and R. Nordman, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation.

GIVEN under my hand and notarial seal this 10th day of November, 1993.



Victoria J. Patrick
Notary Public
My Commission Expires: 3-12-94

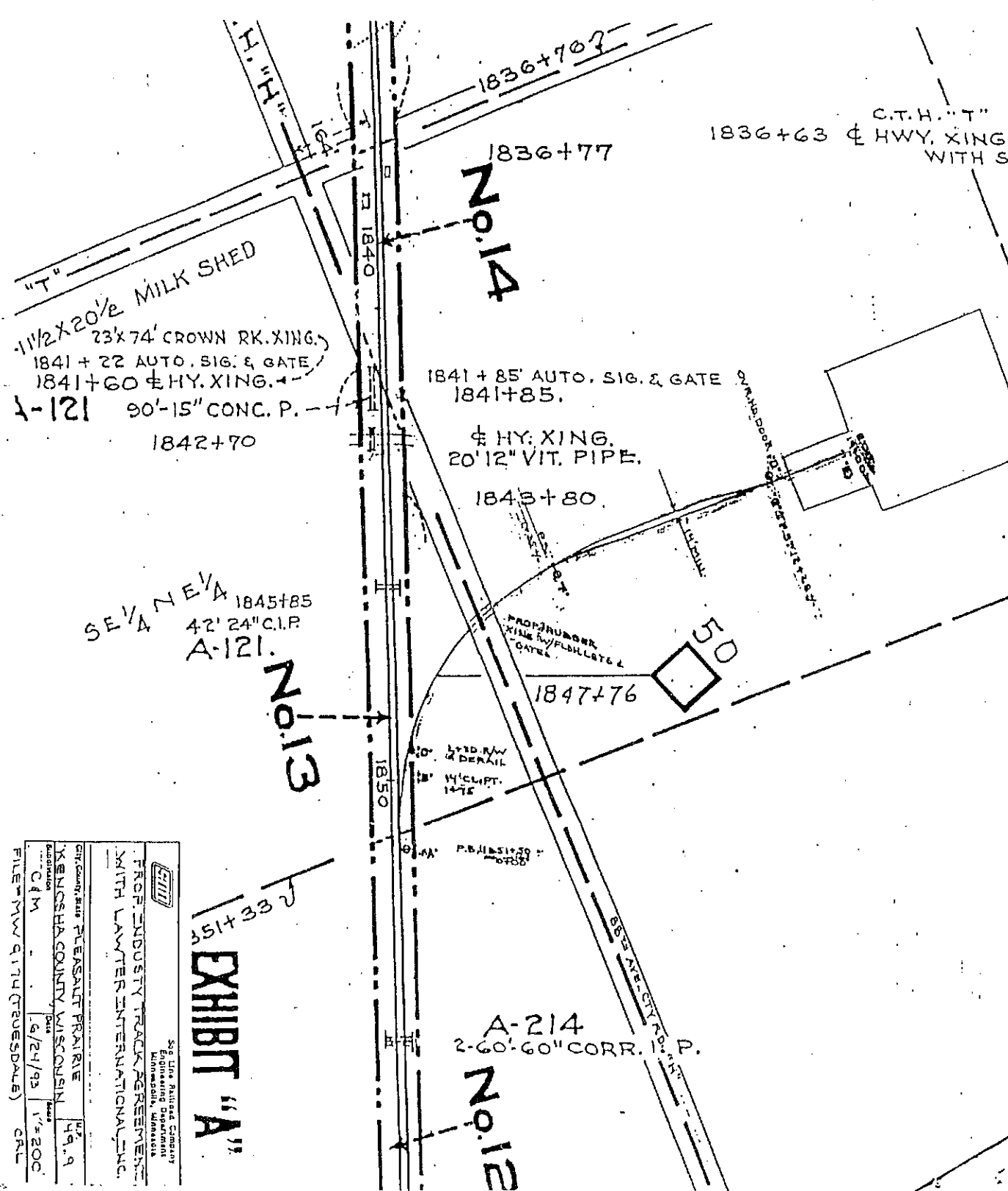
STATE OF WI }
COUNTY OF KENOSHA } SS

I, the undersigned, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY that THOMAS W. TERWALL and CAROL A. LAMMINEN as VILLAGE PRESIDENT and VILLAGE CLERK of Village of Pleasant Prairie, a municipal corporation, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such PRESIDENT and CLERK, appeared before me this day in person and acknowledged that they signed and delivered said instrument as their own free and voluntary act and as the free and voluntary act of said Corporation.

GIVEN under my hand and notarial seal this 10TH day of NOVEMBER, 1993.

Jean M. Anderson
Notary Public

My Commission Expires: 8-18-96



| | |
|---|-------------------------------------|
| | |
| FROM INDUSTRY TRACK AGREEMENT WITH LAWYER INTERNATIONAL, INC. | |
| City/County/State WENOSHA COUNTY, WISCONSIN | Project Name SE 1/4 NE 1/4 A-121 |
| Date 6/24/93 | Scale 1" = 200' |
| File # MW 9174 (TUESDALE) | CRL |

EXHIBIT "A"

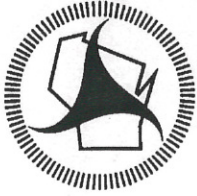
SE 1/4 NE 1/4 1845+85
 42' 24" C.I.P.
 A-121.

No. 13

A-214
 2-60'-60" CORR. 1" P.

No. 12

C.T.H. "T"
 1836+63 & HWY. XING.
 WITH S



Wisconsin Department of Transportation

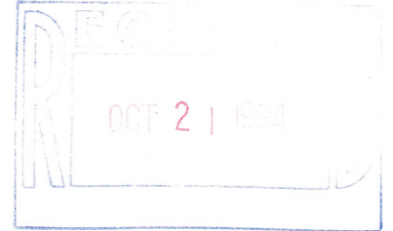
Division of Transportation Assistance
DT79

BUREAU OF RAILROADS AND HARBORS
4802 Sheboygan Avenue, Rm 155B
P.O. Box 7914
Madison, WI 53707-7914

Telephone: (608) 267-7348
FAX: (608) 267-3567
TDD: (608) 266-3351

October 18, 1994

Mr. Michael R. Pollocoff, Administrator
Village of Pleasant Prairie
P. O. Box 89
Pleasant Prairie, WI 53158-0089



Dear Mr. Pollocoff:

I'm pleased to return a fully executed copy of Amendment One to our Transportation Economic Assistance Agreement - Rails No. 3738-03-50 to you.

Sincerely,

Ronald E. Adams

Ronald E. Adams, Chief
Rail Project Management Section

Enclosure

CC: Gati Grundmanis (w/ enclosure)
Tom Wildenborg (w/ enclosure)
George Busch (w/ enclosure)
Debbie Sunde (w/ enclosure)
Clayton Loomis (w/ enclosure)

AMENDMENT 1

This Amendment One to Agreement Number 3738-03-50 dated 8 March 1993 is made and entered into to this 10th day of October, 1994 by and between the Wisconsin Department of Transportation (WisDOT) and the Village of Pleasant Prairie (Municipality)

WHEREAS, construction conditions at the site of the Transportation Economic Assistace project involving Lawter International resulted in unforeseen costs; and

WHEREAS, the Village of Pleasant Prairie has requested additional funding be provided for the Transportation Economic Assistace project involving Lawter International; and

WHEREAS, the Secretary of Transportation has approved the request submitted by Pleasant Prairie; and

WHEREAS, Section 10.4 requires amendments to be in writing;

NOW THEREFORE, the parties hereto agee as follows:

1. Pages i and ii are deleted and replaced by pages iA and iiA respectfully.
2. Page 4 is deleted and replaced by Page 4A.
3. Page 5 is deleted and replaced by Page 5A.
4. Page I-1 is deleted and replaced by Page I-1A.

All other provisions of Agreement remain as written.

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Section 2.2 Specific Description

The Project Facility shall be constructed according to the plans and specifications set forth in Attachment II titled Description of Construction Work to be Performed which is made a part of this Agreement as of the date Attachment II is accepted in writing by BORAH.

Section 2.3 Direct Job Guarantee

Municipality agrees to comply with the criteria established in the Transportation Economic Assistance Jobs Guarantee attached hereto as Attachment V.

ARTICLE 3.0 PROJECT FINANCES

Section 3.1 Assistance Amount

(a) In consideration of work performed by Municipality as set forth under this Agreement, WisDOT shall reimburse Municipality an amount equal to fifty percent (50%) of actual allowable Project Facility costs. The amount to be reimbursed to Municipality shall in no event exceed two hundred thousand dollars (\$200,000).

(b) The assistance amount and the project budget are based upon an engineer's estimate provided with the assistance application. In the event accepted bids or actual allowable costs for work and materials are for amounts less than shown in the project budget, the corresponding budget item shall be automatically reduced by the amount(s) the accepted bids are less than the amounts set forth in Section 3.1(a) and Section 3.3 and the funds from the reduction shall be placed into the contingency fund. This reduction in the assistance amount, if any, shall be effective without compliance with Section 10.6 herein.

Section 3.2 Required Match Share

In consideration of the assistance provided by WisDOT, Municipality shall perform the work set forth under this Agreement and provide an amount equal to no less than fifty percent (50%) of actual allowable project costs. The amount to be provided by Municipality for the entire project is estimated to equal two hundred thousand dollars (\$200,000).

Section 3.3 Project Budget

The project budget is set forth in Attachment I titled Project Budget which is hereby made a part of this Agreement.

IN WITNESS THEREOF, the parties hereto have caused their authorized representative to sign this Amendment One. This Amendment shall be effective from the date indicated above.

Village of Pleasant Prairie

Witness: Geneva M. Matheny By: [Signature]
President

Witness: [Signature] By: [Signature]
Administrator

WISCONSIN DEPARTMENT OF
TRANSPORTATION

Witness: Ronald E. Adams By: [Signature]
Administrator,
Division of Transportation
Assistance

FACILITY USE AGREEMENT
No. 3738-03-51

THIS AGREEMENT, made this 20TH day of JUNE, 2011, by and between the Village of Pleasant Prairie, Kenosha County, Wisconsin (“Municipality”), a municipal corporation, and Brems Realty LLC and EMCO Chemical Distributors, Inc., (collectively the “Industry”).

WHEREAS, on March 8, 1993, the Municipality and WisDOT entered into a certain TEA-Rail Agreement;

WHEREAS, on November 2, 1993, Municipality and Lawter International, Inc. (“Lawter”) entered into a certain Facility Use Agreement which provided the guidelines for the construction and use of a certain rail spur on Industry Land;

WHEREAS, as of approximately February 11, 2010, Industry is the owner of or in occupation of land situated at 8601 95th Street, Pleasant Prairie, Wisconsin; and

WHEREAS, Municipality owns certain trackage from Points C to E and Point F to G on Attachment I and Industry owns certain trackage from Points H to I, Points J to K, Points L to M and Points N to O on Attachment I that connects to the Operator’s railway line near Milepost 50 of the C&M Subdivision;

NOW THEREFORE, the parties agree as follows:

ARTICLE 1.0 – DEFINITIONS

- a. “Operator” means Soo Line Railroad Company, d/b/a Canadian Pacific.
- b. “Municipality” means the Village of Pleasant Prairie, Kenosha County, Wisconsin.
- c. “WisDOT” means the Wisconsin Department of Transportation.
- d. “Industry” means EMCO Chemical Distributors, Inc. and Brems Realty, LLC.
- e. “Industry Land” means the corridor of real estate owned by Industry upon which the Project Facility is located at the Industry plant site in Pleasant Prairie, Wisconsin and more fully described in Attachment II.
- f. “Improved Property” means the rails, ties, ballast, track material, switches, and culverts acquired, used or installed with the proceeds received in part by the Municipality from the TEA-Rail Agreement (only Points C to E and Point F to G on Attachment I).
- g. “Person” means an individual, a partnership, an association, and bodies politic or corporate.
- h. “Project Facility” means the industrial railroad spur constructed under the TEA-Rail Agreement using Improved Property and providing Industry’s plant with access to the Operator’s track (only Points C to E and Point F to G on Attachment I).

- i. "BORAH" means the Bureau of Railroads and harbors of WisDOT or its successor as the regulatory agency with authority over the TEA-Rail Agreement.
- j. "Agreement for Private Siding" means the agreement by and between the Operator, Industry, and the Municipality, governing the provision of rail service over and the maintenance of the Project Facility (as well as the rest of the Private Siding) .
- k. "TEA-Rail Agreement" means the agreement dated March 8, 1993, by and between the Municipality and WisDOT, Identification No. 3738-030-50, setting forth the terms of the Municipality's receipt of a Transportation Economic Assistance-Rail grant to construct the Project Facility in 1993 - 1994.
- l. "Private Siding" shall mean the track or tracks described as the "Private Siding" in the Agreement for Private Siding.

ARTICLE 2.0 – PROJECT DESCRIPTION

The Project Facility was constructed by the Municipality on Industry Land in 1993 -1994 and consists of a single track railroad spur of 1,060 feet from the point of the switch on the Operator's track to the end of the track at Industry's plant site. The Project Facility does not include all other trackage now in existence on Industry Land (See Attachment I, Points H to I, Points J to K, Points L to M and Points N to O).

ARTICLE 3.0 – USE AND TERM

The Municipality grants to Industry the right to use the Project Facility for the purpose of shipping and receiving materials from and at Industry's plant, provided Industry complies with the terms and conditions set forth in this Agreement. Industry's right to use the Project Facility shall continue until terminated pursuant to this Agreement.

ARTICLE 4.0 – PROJECT FACILITY LIQUIDATION

INTENTIONALLY DELETED.

ARTICLE 5.0 – PROJECT FACILITY OPERATION

Section 5.1. Written Agreements

(a) Industry shall maintain an existing track easement to the Municipality on Industry Land (as described in Attachment II) granting the Municipality a perpetual right for construction, operation and ownership of the Project Facility on said Land.

(b) Industry shall maintain an existing track easement from the Municipality on Municipality Land (as described in Attachment III) granting Industry a perpetual right for construction, operation and ingress/egress of the Project Facility on said land.

(c) Industry shall provide an Agreement for Private Siding by and between Industry, Operator and the Municipality. Said Agreement for Private Siding shall be attached hereto as Attachment IV and made part of this Agreement.

Section 5.2. Maintenance of Project Facility

Industry shall, at its expense, perform or arrange for performance of all maintenance and repairs of the Project Facility, the road bed of the Project Facility, drainage ways and any structures necessary for the safe operation of railroad service as determined by Operator or the Federal Railroad Administration, or both.

Section 5.3. Project Facility Use

A condition of default for failure to use may be declared by Municipality or WisDOT under Section 7.1 below upon occurrence of any one or more of the following events:

- (i) Industry renders its loading docks or a track side facility unfit for use for rail service or ceases its operation of its plant.
- (ii) Industry files a protection under bankruptcy laws.
- (iii) Operator abandons the line haul track and/or industrial lead track to which the Project Facility is connected.
- (iv) Operator ceases operation of line haul track and/or industrial lead track serving the Project Facility.
- (v) The Project Facility is rendered unfit for railroad freight service by Municipality, Industry, or Operator.

ARTICLE 6.0 – PROJECT PROPERTY SECURITY, LIENS AND SALE

Section 6.1. Security for Borrowing

Industry shall not give its permission or authorization for Operator to use the value of the Improved Property acquired or used for this project as security or collateral for any loan or other borrowing.

Section 6.2. Special Assessments.

Any amounts which Industry is required to pay to the Municipality under Section 6.3 of this Agreement may be levied by the Municipality as a police power special assessment against the Industry Land. The Industry, on behalf of itself and all present and future owners of the Industry Land, hereby waives, pursuant to Subsection 66.0703(7) (b) of the Wisconsin Statutes, any and all requirements of the Wisconsin Statutes that must be satisfied prior to the imposition of special

assessments (including, but not limited to, the notice and hearing requirements of Section 66.0703(7) (a) and the notice requirements of Subsection 66.0715(3)). The Industry agrees that the Municipality may proceed, immediately following the execution of this agreement on behalf of Industry, to levy special assessments for the sum of \$147,500.00. The Industry, on behalf of itself and all present and future owners of the Industry Land, waives its right to object to or appeal from such special assessments, and agrees that the amount of the special assessments (i.e., amounts owed by the Industry to the Municipality under this Agreement) has been determined on a reasonable basis and that the benefits to the Industry Land from the Project Facility exceeds the amount of the special assessments levied against the Industry Land. In no event will such special assessment exceed the sum of \$147,500.00. The Municipality agrees that payment of the special assessment shall be deferred, without interest, until such time as the Industry owes any amounts to the Municipality under this Agreement. Notwithstanding the foregoing provisions of this Section 6.2, in no event will the amount of special assessments to be collected by the Municipality under this Section 6.2 exceed amounts which the Industry owes to the Municipality under the terms of Section 6.3 of this Agreement.

Section 6.3. Sale of Improved Property or Industry Land

In the event Industry sells or liquidates the Improved Property or Industry Land, or both, without the written approval of BORAH, Industry shall pay to the Municipality an amount equal to \$147,500. In the event Industry sells or liquidates the Improved Property or Industry Land, or both, with the written approval of BORAH, Industry shall not owe any money to Municipality but the purchaser of the Improved Property or Industry Land shall continue to be bound by all provisions of this Agreement.

ARTICLE 7.0 – DEFAULT AND TERMINATION

Section 7.1. Declaration of Default

A condition of default exists under this Agreement when either party to this Agreement fails to abide by or perform according to any one or more of its terms and conditions. A declaration of default of this Agreement shall be made in writing and delivered to the alleged defaulting party as provided in Section 10.2. The letter shall identify the action or inaction constituting the default and reference the portion of the Agreement under which the default occurs. The date of default shall be the date of delivery of notice or the date insurance coverage fails to meet requirements or the date of filing for bankruptcy by Industry, whichever first occurs.

Section 7.2. Termination of Default

In the event of a failure on the part of either party to perform its obligations under the terms of this Agreement, including, but not limited to, transmittal of required payments under this Agreement, the other party shall have the right to give immediate notice of default and, at its option, after first giving ten (10) days written notice as provided in Section 10.2 to the party in default and notwithstanding any waiver by the party giving notice of any prior breach thereof, to terminate this

Agreement, and the exercise of such right shall not impair any other rights of the party giving notice under this Agreement or any rights of action against the defaulting party for the recovery of damages.

Section 7.3. Removal of a Condition of Default

The Municipality or Industry shall have ten (10) calendar days from written notification of the default to remove or remedy the cause of the default. This remedy period may be waived by the party declared in default. Correction by the defaulting party shall be completed and ready for verification by the other party within the ten (10) day period. Upon written petition by the defaulting party, the other party may extend the period for removal of a default condition. The defaulting party shall be notified of satisfactory correction in writing. Notwithstanding the forgoing provisions of this paragraph, in the event that such default cannot reasonably be cured within such ten (10) day cure period and the defaulting party is diligently attempting to cure such default within such ten (10) day period, the ten (10) day cure period shall be extended to such period of time as is reasonably necessary to cure the default, provided the defaulting party continues to diligently attempt to cure the default.

Section 7.4. Expenses of Termination

The parties shall themselves mitigate the expenses of termination to the greatest extent possible, and the Municipality shall pay those that do occur if default is caused by Municipality, and Industry shall pay those that do occur if default is caused by Industry. Said expenses of termination may include, without limitation, any amount which the Municipality or the Industry is required to pay to WisDOT under the terms of the TEA Rail Agreement or this Agreement; provided, however, in no event shall the total amount paid by Industry exceed the sum of \$147,500.00.

Section 7.5. Cessation of Service

Upon the reasonable determination by the Municipality that remedial action has not removed the default condition caused by Industry within the applicable cure period, the Municipality shall provide written notice to Industry and Operator for Industry and Operator to stop using the Project Facility within fourteen (14) days of delivery of such notice.

Section 7.6. Force Majeure

The parties hereto will be excused from performance of any of their respective obligations hereunder, for the duration of any interruption occasioned by any event beyond their respective control (not due to their own fault or actions), which shall include, without limitations: Acts of God; strikes or other labor troubles or other causes except the unavailability of insurance coverage in full accordance with Section 9.2 of this Agreement or any amendment hereto, beyond the reasonable control of the parties; interruption of service caused by accidents, explosions, fires, vandalism, or malicious mischief. To the extent reasonably permitted by WisDOT, the parties will be excused from the performance of their obligations hereunder if the parties' failure to use the Project Facility is due to the economic or business conditions of Industry or the failure of Operator to provide freight cars or switching service.

ARTICLE 8.0 – REPRESENTATIONS AND WARRANTIES

The parties hereto represent and warrant that they have the power and authority to enter into this Agreement and to carry out their obligations under this Agreement.

ARTICLE 9.0 – LIABILITY AND INSURANCE

Section 9.1. Hold Harmless

Industry shall save and hold the Municipality, the county of Kenosha and WisDOT, their officers, employees and agents harmless from and against all liability, damage, loss, claims, demands and actions of any nature whatsoever which arises out of or are connected with, or are claimed to arise out of or be connected with, any act, omission or operation of Industry or Operator, or Industry's or Operator's agents, servants, subcontractors or employees, or which arises out of or is connected with, or is claimed to arise out of or be connected with any accident or occurrence which happens or is alleged to have happened on the Industry Land or on Points A to H of the Private Siding, as well as within thirty (30) feet on either side of the Private Siding, (1) while Operator or Industry is performing its work, or (2) during the period this Agreement between Industry and Municipality is in effect, or (3) while any of the Operator's or Industry's property, equipment, or personnel, is in or about such place or the vicinity thereof by reason of or as result of the performance of Operator's or Industry's operations including, without limiting the applicability of the foregoing: all liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to the Municipality, the county of Kenosha or WisDOT, their, officers, employees, agents, subcontractors, or frequenters, or to any other person or legal entity whether based upon, or claimed to be based upon contract, tort, or having its basis in workers' compensation under federal or state statutes or having any other code, or statutory basis, or based upon administrative laws or other provisions, or other liability of the Municipality, the county of Kenosha or WisDOT, Industry or any other persons or entities, and whether or not caused by the negligence, or other breach of duty by the Municipality, the county of Kenosha or WisDOT, their officers, employees, agents, subcontractors, or frequenters or Industry, its officers, employees, agents, subcontractors or frequenters, or any other person or legal entity. Without limiting the applicability of the foregoing, the liability, damage, loss claims, demands and actions indemnified against shall include all liability, damage, loss, claims, demands and actions for trademark, copyright or patent infringement, for unfair competition or infringement of any so-called "intangible" property right, for defamation, false arrest, malicious prosecution or any other infringement of personal or property rights of any kind whatsoever.

Section 9.2. Insurance

(a) Required Coverage – During the term of this Agreement, Industry shall maintain, at its own cost and expense, a Comprehensive General Liability Policy in an amount of not less than \$1,000,000.00 single limit coverage, and for matters of liability arising from the existence and use of the Project Facility, shall name the Municipality and WisDOT, their officers, employees, and agents as additional insured's on all Primary and Excess Comprehensive General Liability insurance documents. Industry shall in addition maintain and keep in force worker's compensation and employer's liability

insurance, to the extent, if any, that worker's compensation and employer's liability is not covered under the Comprehensive General Liability Policy.

(b) Validation of Coverage and Notice of Cancellation – Upon initial inclusion of the Municipality and WisDOT as additional insured's and on each renewal of insurance coverage required by Section 9.2(a), the insurance carrier shall provide to the Municipality and WisDOT written documentation from the insurance carrier or its authorized representative of the terms and effective date of coverage. In the event of insurance coverage suspension or insurance cancellation by any insurance carrier, Industry shall provide the Municipality and WisDOT with notification of such suspension or cancellation of insurance coverage required by Section 9.2(a) no less than 10 days prior to such suspension or cancellation.

(c) Reporting of Incidents and Claims – During the term of this Agreement, any damage or injury to person or property occurring on the Project Facility or from the operation of the equipment of Operator or Industry or by the employees of Operator or Industry herein (referred to as an "incident") on the Private Siding shall be reported to the Municipality and WisDOT at such time as said incident is reported to Industry or Industry's insurance carrier. Industry shall forthwith furnish the Municipality and WisDOT with copies of any notice of injury or claim of damage made to Industry. Thereafter, Industry shall provide the Municipality and WisDOT access to copies of any further instruments, reports and records involving such matter and shall report, at least quarterly, to the Municipality and WisDOT as to further happenings regarding the incident including the final disposition of the matter. Notice of court dates shall be given to the Municipality and WisDOT upon receipt.

ARTICLE 10.0 – GENERAL CONDITIONS

Section 10.1. Choice of Law

This Agreement shall be interpreted in accordance with the statutes and laws of the United States of America and the State of Wisconsin. Interpretation may be had in any court of record of the County of Kenosha.

Section 10.2. Notice

a. Any notice required or permitted under this Agreement shall be personally served, mailed by certified United States mail, return receipt requested, postage prepaid, or sent by established overnight carrier such as UPS or Federal Express, fees prepaid, for overnight delivery, to the following addressed persons at the following addresses and to such other persons and addresses as the following persons shall direct by notice pursuant to this Section:

Village of Pleasant Prairie
Attention: Village Administrator
9915 39th Avenue
Pleasant Prairie, WI 53158

EMCO Chemical Distributors, Inc.

Attention: Edward Polen, President
2100 Commonwealth Avenue
North Chicago, IL 60064

BREMS Realty LLC

Attention: Edward Polen, Manager
2100 Commonwealth Avenue
North Chicago, IL 60064

Any notice personally served shall be deemed delivered on the date of personal service, any notice sent by an established overnight carrier for overnight delivery shall be deemed delivered on the day after the notice is delivered to the overnight carrier and any notice sent by certified United States Mail shall be deemed delivered three (3) days following the date the notice is deposited in the United States Mails.

b. Any notice provided under Section 10.2(a) shall be provided to the following by first class mail.

WI - Department of Transportation

Investment Management

WisDOT Railroads & Harbors Section

Mr. Peter A. Bradley, Real Estate Specialist
4802 Sheboygan Ave., Room 701
PO Box 7914
Madison, WI 53707-7914

Canadian Pacific Railway

Attention: Area Manager - Business Manager
501 Marquette Avenue South
Suite 1510
Minneapolis, MN 55402
Fax #: (612) 904-5952

Section 10.3. Transfer of Rights Under This Agreement

This Agreement shall be binding upon and inure solely to the benefit of the parties hereto. Industry's rights hereunder shall not be assignable whether by way of assignment, sublease, license or otherwise, directly or indirectly, without the Municipality's prior written consent, which consent shall not be unreasonably withheld or delayed.

Section 10.4. Severability

If any term, covenant, condition or provision (or part thereof) of this Agreement, or the application thereof to any party or circumstance, shall at any time or to any extent be held to be invalid

or unenforceable, the remainder of this Agreement, or the application of such term or provision, or remainder thereof, to parties or circumstances other than those as to which it is held to be invalid or unenforceable, shall not be affected thereby, and each term, covenant, condition and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 10.5. Amendment, Consents and Approvals

(a) No term or provision of this Agreement, or any of its attachments, may be changed, waived, discharged or terminated, except by an instrument in writing signed by both parties to this Agreement.

(b) Consents and approvals required under this Agreement and interpretation of this Agreement may be made or granted by letter from one party to the other party hereunder or by an exchange of letters between the parties.

Section 10.6. Officials

(a) Officials authorized to execute amendments or modifications to this Agreement on behalf of the Municipality are the Village President and Administrator.

(b) The official authorized to execute amendments or modifications to this Agreement on behalf of Industry is the General Manager.

Section 10.7. Handicapped

No otherwise qualified handicapped individual in the United States, as defined in Section 706(7) of Title 29 USC, and subchapter II of Chapter 111, Wis. Stats., shall solely by reason of the individual's handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving benefits under this Agreement.

Section 10.8. Environmental Protection

(a) Facilities or equipment shall not be acquired, constructed, or improved as a part of the Project Facility unless such facilities or equipment are designed and equipped to limit water and air pollution in accordance with all applicable state and federal standards, statutes, and regulation.

(b) Operations shall be conducted in compliance with all the requirements of Section 114 of the Clean Air Act, 42 USC sec. 7414, and Section 308 of the Federal Water Pollution Control Act, 33 USC 1318, and all applicable regulations issued under said Acts.

(c) Industry certifies that no facilities which will be utilized or improved as part of the Project Facility are listed on the Environmental Protection Agency (“EPA”) list of Violating Facilities (“List”).

(d) Industry shall notify the Municipality as soon as it receives any communication from the EPA indicating that any facility which will be utilized or improved as part of the Project Facility is under consideration to be listed on the EPA list.

Section 10.9. Prohibited Interests

(a) Conflicts of Interest:

(1) Neither Municipality nor Industry nor any of their subcontractors shall enter into any contract, subcontract, or agreement in connection with the project or any property included or planned to be included in the Project Facility in which any director, officer or employee of Municipality during his or her tenure or for one (1) year thereafter has any interest, direct or indirect, except as permitted under Sec. 946.13(2), Wis. Stats. (1991-1992).

(2) No director, officer, or employee of the Village of Pleasant Prairie, during his or her tenure or for one (1) year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof except as permitted under Sec. 946.13(2), Wis. Stats. (1991-1992).

(3) No subcontractor of Municipality or Industry may enter into any contract, subcontract or other arrangements which may affect the activities for which assistance is available to the Municipality under the TEA-Rail Agreement if any director, officer, any key salaried employee or official, or any member of the immediate family of one of the foregoing has any material interest in said Agreement.

(4) The provisions of this subsection shall not be applicable to any agreement between Municipality or Industry and its fiscal depositories or to any agreement for utility services for which rates are fixed by government regulation.

Section 10.10. Non-Discrimination

(a) In connection with the performance of work under this Agreement, Industry agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Sec. 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

(b) Municipality shall comply with the following laws, policies, regulations and pertinent directions as may be applicable and will require their subcontractors through contractual agreement to similarly comply:

- i. Title VI of the Civil Rights Act of 1964, 78 stats. 252, 42 U.S.C. 2000d et seq.
- ii. Subchapter II of Chapter 111, Wis. Stats.
- iii. Section 16.765, Wis. Stats.

(c) Municipality, in the procurement process, shall not discriminate against minority owned or operated firms qualified to bid and perform on contracts, subcontract, or materials procurement connected with the work performed under this Agreement or the TEA-Rail Agreement.

Section 10.11. Assurance

Municipality shall require its construction contractor to acquire a performance and payment bond or an irrevocable letter of credit in the full amount of the grant to the Municipality under the TEA-Rail Agreement in favor of Municipality for the duration of the construction work set forth under said Agreement.

Section 10.12. Specific Performance

The Municipality and Industry shall have the right, as provided by law, to require specific performance by the other party of that party's obligations under this Agreement. This right may be asserted at any time after thirty (30) days of the party notifying the other party of its obligation to perform.

Section 10.13. Entire Agreement

This Agreement and the attachments hereto contain the entire agreement of the parties and supersede any and all prior agreements or oral understandings between the parties.

Section 10.14 Obligations to Run with Land; Successors and Assigns.

This Agreement shall bind the parties hereto and their respective successors and assigns. The obligations of the Industry under this Agreement are obligations which are deemed to run with the land and shall apply to all future owners of the Industry Land. Nothing contained herein shall be construed to allow any assignment of rights by the Industry, except in accordance with the terms of Section 6.3 and 10.3 above.

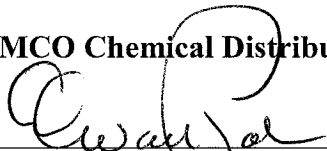
Section 10.15. Recording

The parties agree that this Facility Use Agreement may be recorded with the Kenosha County Register of Deed's office against the Industry Land. All parties agree that upon termination of this Facility Use Agreement, and the completion of all obligations of the parties under this Agreement, each party will, upon request of the other, sign any documents reasonably necessary and appropriate to effect the termination of this Agreement, in recordable form.

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the date and year designated in this Agreement.

EMCO Chemical Distributors, Inc.

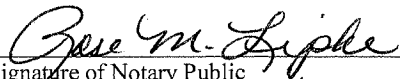


Edward Polen, President

STATE OF ILLINOIS)
) ss:
LAKE COUNTY)

This Agreement was acknowledged before me this 3rd day of June, 2011 by Edward Polen as President of EMCO Chemical Distributors, Inc.





Signature of Notary Public
Rose M. Lipke

Typed or Printed Name of Notary Public
Notary Public, State of Illinois

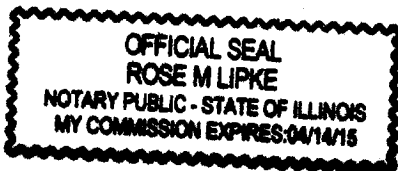
Brems Realty LLC

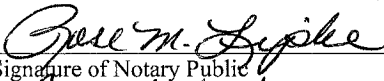


Edward Polen, Manager

STATE OF ILLINOIS)
) ss:
LAKE COUNTY)

This Agreement was acknowledged before me this 3rd day of June, 2011 by Edward Polen as Manager of Brems Realty, LLC.





Signature of Notary Public
Rose M. Lipke

Typed or Printed Name of Notary Public
Notary Public, State of Illinois

Village of Pleasant Prairie

J.P. Steinbrink
John P. Steinbrink, Village President
Jane M. Romanowski
Jane M. Romanowski, Village Clerk

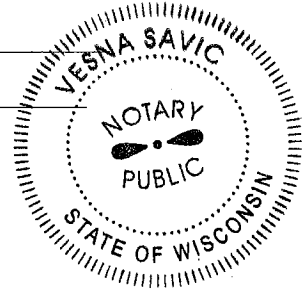
STATE OF WISCONSIN)
) ss:
KENOSHA COUNTY)

This Agreement was acknowledged before me this 20th day of June, 2011 by John P. Steinbrink and Jane M. Romanowski as President and Clerk of the Village of Pleasant Prairie.

Vesna Savic

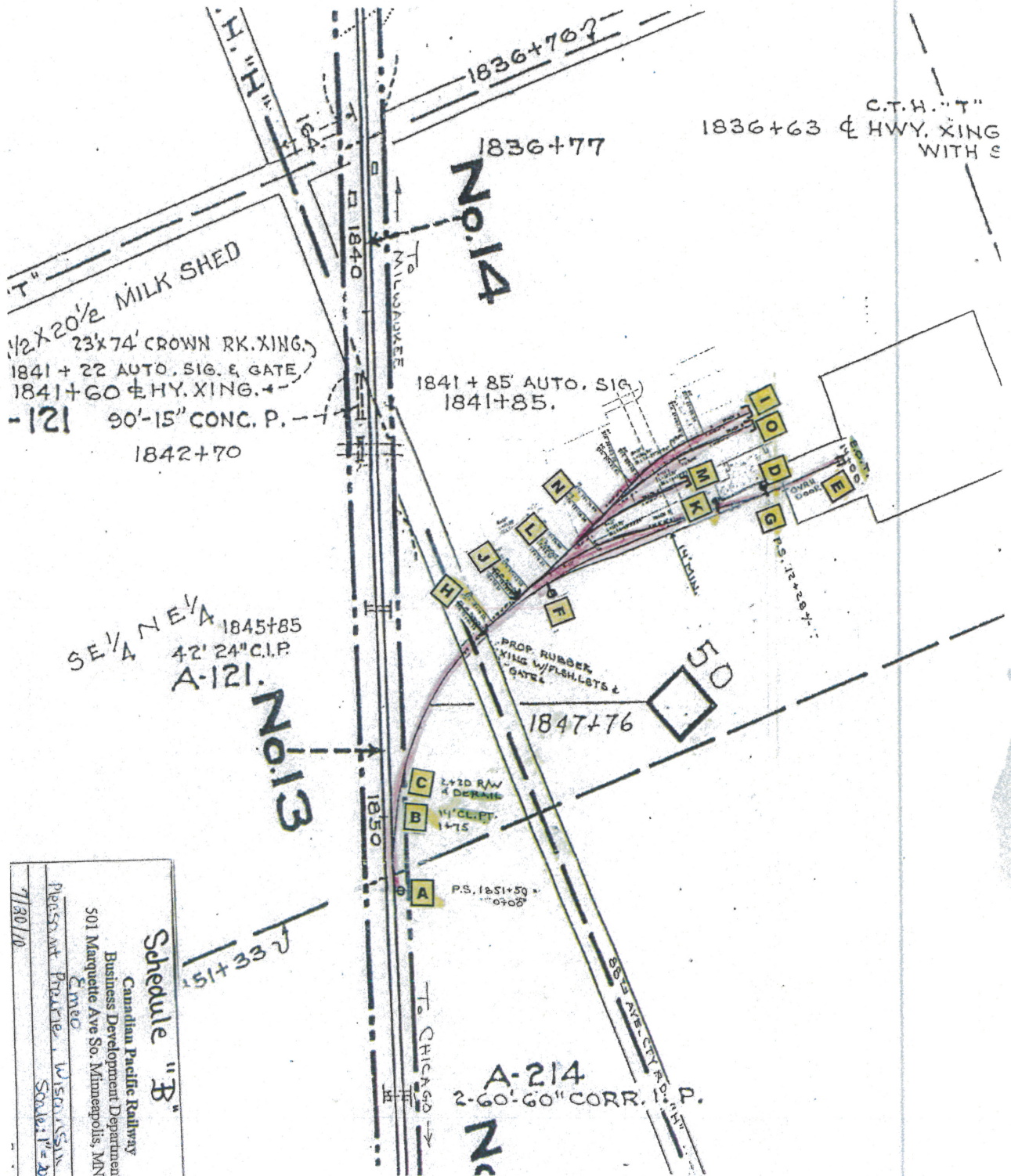
Signature of Notary Public
Vesna Savic

Typed or Printed Name of Notary Public
Notary Public, State of Wisconsin



This instrument was drafted by:
Attorney Timothy J. Geraghty
Godin Geraghty Puntillo Camilli, SC
6301 Green Bay Road
Kenosha, WI 53142
Tel: (262) 657-3500

ATTACHMENT I



1/2 x 20 1/2 MILK SHED
 23' x 74' CROWN RK. XING.
 1841 + 22 AUTO. SIG. & GATE
 1841 + 60 C.H.Y. XING.
 -121 90'-15" CONC. P.
 1842 + 70

SE 1/4 NE 1/4 1845 + 85
 42' 24" C.I.P.
 A-121.

1841 + 85 AUTO. SIG.
 1841 + 85.

C.T.H. "T"
 1836 + 63 C HWY. XING
 WITH S

1836 + 77

1836 + 76 1/2

1847 + 76

P.S. 1851 + 59
 0'00"

A-214
 2-60'-60" CORR. P.

Schedule "B"
 Canadian Pacific Railway
 Business Development Department
 501 Marquette Ave So. Minneapolis, MN
 EMB
 Pleasant Prairie, Wisconsin
 Scale: 1" = 20'
 7/30/10

ATTACHMENT II

RAILROAD SPUR
EASEMENT DESCRIPTION

Lawter International, Inc.
8601 - 95th Street
Pleasant Prairie, Wisconsin 53158

Tax No. 92-4-122-212-0354

All that part of the Northwest One-Quarter (1/4) of Section 21, Township 1 North, Range 22 East, in the Village of Pleasant Prairie, Kenosha County, Wisconsin bounded and described as follows:

Commencing at the concrete monument at the Southwest corner of said Northwest One-quarter (1/4); thence North 02° 59' 43" West, on and along the West line of said Northwest One-quarter (1/4), 465.05 feet to a point; thence North 89° 00' 44" East, 70.03 feet to a point on the East right-of-way line of C.T.H. "H", and the point of beginning; thence continuing North 89° 00' 44" East, 714.83 feet to a point on the West face of the existing Lawter International Building extended; thence South 00° 53' 36" East, on and along the West face of said building, 75.00 feet to a point; thence South 89° 00' 44" West, 712.08 feet to a point on said East right-of-way line; thence North 02° 59' 43" West, on and along said East right-of-way line, 75.05 feet to the point of beginning. (See attached Exhibit "A")

CRISPELL-SNYDER, INC.
Engineers and Architects

February 1994

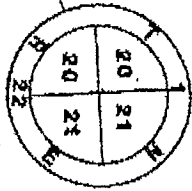
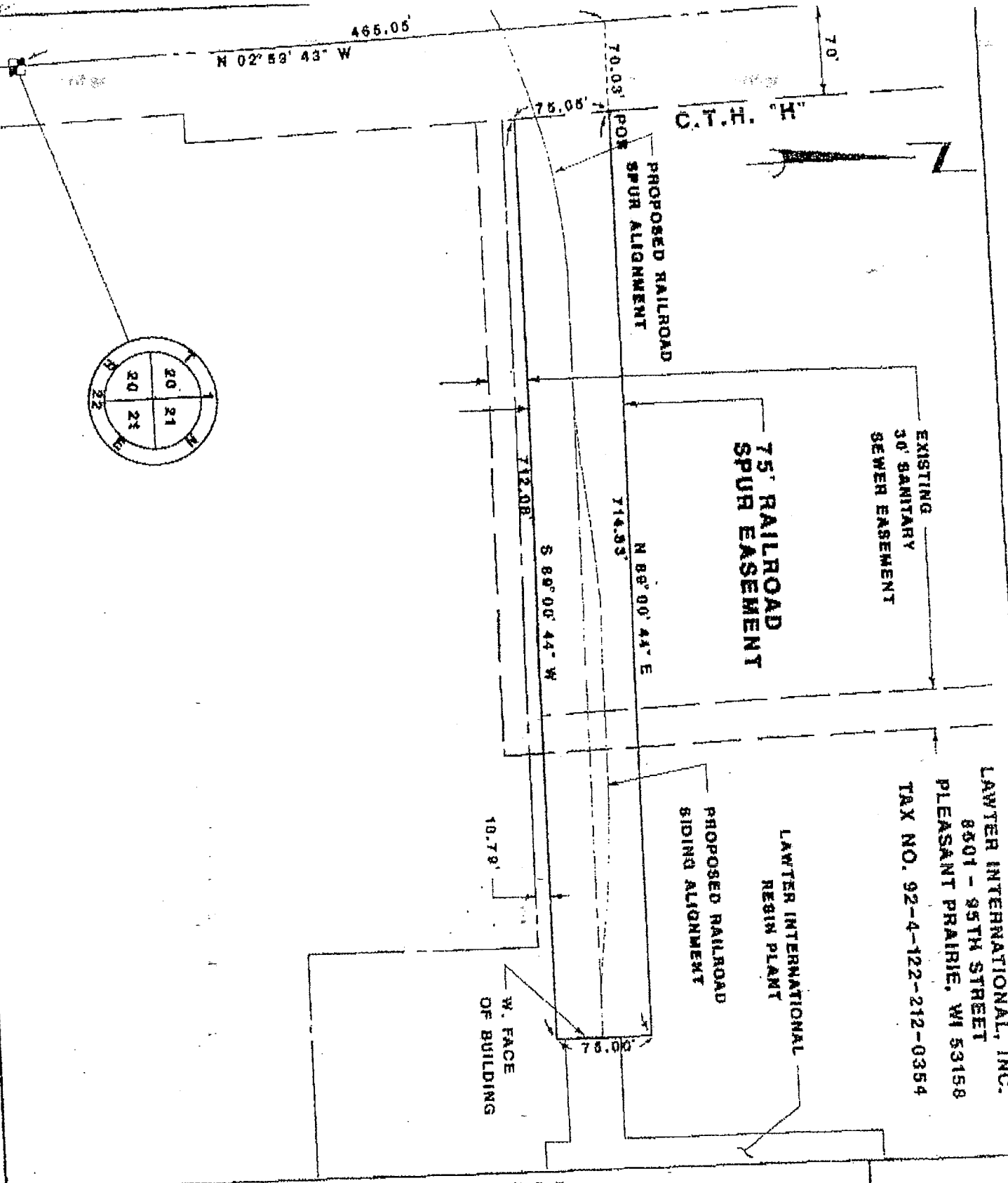


EXHIBIT "A"



CRISPELL-SNYDER, INC.
ENGINEERS & ARCHITECTS

Kenosha, Wisconsin 53102
414 723-0294

LOCATION: VILLAGE OF PLEASANT PRAIRIE
KENOSHA COUNTY, WISCONSIN

SCALE: 1" = 100' DATE: FEB. '94

DRAWN BY: RDD

ATTACHMENT III

1-3

Document Number

**EASEMENT
RAILROAD ACCESS AND MAINTENANCE**

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, in hand paid, the receipt of which is hereby acknowledged, the **Village of Pleasant Prairie**, herein referred to as "Grantor", does bargain, sell, convey, transfer, and deliver to **Brems Realty, LLC**, owners of 8501-95th Street further identified as tax parcel 92-4-122-212-0354, herein referred to as "Grantee", its successors and assigns forever, a perpetual Railroad Access and Maintenance Easement on those portions of the property described on Exhibit A, attached hereto and incorporated herein referred to as "easement area".



DOCUMENT

1647867

RECORDED
At Kenosha County, Kenosha, WI 53140
Louise I. Principe, Register of Deeds
on 6/21/2011 at 3:43PM
110020566 \$30.00

JENF

REGDEED3

RETURN TO:
Michael R. Pollocoff
Village of Pleasant Prairie
9915-39th Avenue
Pleasant Prairie, WI 53158

92-4-122-201-0125
(Parcel Identification Number)

1. **Purpose:** The purpose of this easement area is to access, maintain, and operate the railway spur including the right of ingress / egress of rail cars through and across the easement area.
2. **Access:** Grantee or its agents shall have the right to enter the grantor's land for the purpose of exercising its rights in the easement area including the full right of ingress and egress over and across the easement area.
3. **Buildings or Other Structures:** The grantee agrees that no buildings or other structures will be erected in the easement area, without prior approval from the Grantor, and that any utility structure installed will not interfere with the Grantor's continuous use of the property.
5. **Easement Area Maintenance:** Grantee agrees to restore or cause to have restored the grantor's land, as nearly as is reasonably possible, to the condition existing prior to such entry, or to a better condition, by the grantee or its agents due to any easement right maintenance or operation activities. Grantee agrees not use the easement area for storage of rail cars or other goods or equipment in which the easement purpose was not intended.
7. **Binding on Approved Successor or Assigns:** The easement area provided herein is a perpetual easement which shall be binding upon and inure to the benefit of the Grantee and their successors and assigns. The easement area provided herein shall run with the land and shall be binding upon the Owners and their personal representatives, heirs, successors, transferees, assigns, and all future owners of the Property.
8. **Indemnification and Hold Harmless:** The grantee shall indemnify the grantor and hold the grantor harmless from any and all liability, bodily injury, property damage, loss or claims which the grantee or their successors and assigns may suffer, or for which any third party makes claim, arising out of the use of the aforementioned easement.

Grantor:

VILLAGE OF PLEASANT PRAIRIE

By: John P. Steinbrink

John P. Steinbrink

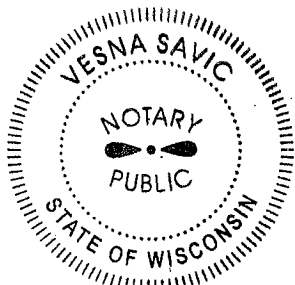
Title: Village President

By: Jane M. Romanowski

Jane Romanowski

Title: Village Clerk

This Agreement was acknowledged before me in Kenosha County, Wisconsin on this 20th day of June, 2011, by the above named Grantor(s) John P. Steinbrink and Jane Romanowski, pursuant to approval of the Village Board on June 20, 2011.



(NOTARY STAMP/SEAL)

Vesna Savic
Signature Notary Public, State of Wisconsin

Vesna Savic
Notary Public Name (Typed or Printed)

My commission expires 11-9-2014

This instrument was drafted by:
Michael R. Spence
Village of Pleasant Prairie
9915-39th Avenue
Pleasant Prairie, WI 53158

EXHIBIT A

**RAILROAD ACCESS AND MAINTENANCE EASEMENT
LOCATED IN THE VILLAGE OF PLEASANT PRAIRIE
KENOSHA COUNTY, WISCONSIN**

**FROM:
VILLAGE OF PLEASANT PRAIRIE
Tax Parcel Number: 92-4-122-201-0125**

**TO:
BREMS REALTY, LLC**

Description of a 60' Wide Railroad Access and Maintenance Easement: That part of the Northeast ¼ of Section 20, Township 1, North, Range 22 East in the Village of Pleasant Prairie, Kenosha County, Wisconsin described as follows: Commence at a point on the East-West ¼ line of said Section 20 located S89°32'53"W 290.39 feet from the East ¼ corner of said Section, said point also being on the C.P. Rail System's East right-of-way line; thence N18°09'30"E 96.35 feet along said East line to the point of beginning of this Easement; continue thence N18°09'30"E 222.76 feet along said East line to a point on a curve of Northerly convexity whose radius is 508.70 feet and whose chord bears N52°10'06"E 127.86 feet; thence northeasterly 128.20 feet along the arc of said curve to the West right-of-way line of C.T.H. "H" (88th Avenue); thence S02°59'43"E 69.00 feet along said West line to a point on a curve of Northerly convexity whose radius is 448.70 feet and whose chord bears S41°33'24"W 213.20 feet; thence Southwesterly 215.25 feet along the arc of said curve; thence S27°48'48"W 69.73 feet to the point of beginning of this Easement.

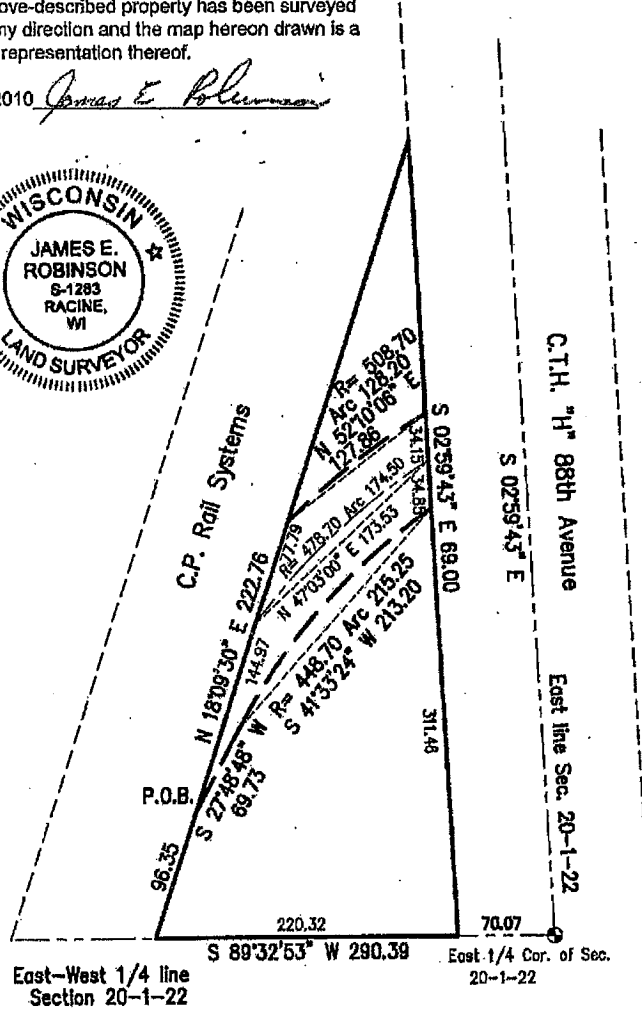
EXHIBIT A

Description of a 60' Wide Railroad Access and Maintenance Easement: That part of the Northeast 1/4 of Section 20, Township 1, North, Range 22 East in the Village of Pleasant Prairie, Kenosha County, Wisconsin described as follows: Commence at a point on the East-West 1/4 line of said Section 20 located S89°32'53"W 290.39 feet from the East 1/4 corner of said Section, said point also being on the C.P. Rail System's East right-of-way line; thence N18°09'30"E 96.35 feet along said East line to the point of beginning of this Easement; continue thence N18°09'30"E 222.76 feet along said East line to a point on a curve of northerly convexity whose radius is 508.70 feet and whose chord bears N62°10'48"E 127.86 feet; thence Northeasterly 128.20 feet along the arc of said curve to the West right-of-way line of C.T.H. "H" (88th Avenue); thence S02°59'43"E 69.00 feet along said West line to a point on a curve of Northerly convexity whose radius is 448.70 feet and whose chord bears S41°33'24"W 213.20 feet; thence Southwesterly 215.25 feet along the arc of said curve; thence S27°48'48"W 69.73 feet to the point of beginning of this Easement.

Certificate

The above-described property has been surveyed under my direction and the map hereon drawn is a correct representation thereof.

08/23/2010 *James E. Robinson*



NOTES

BEARING BASE: GRID NORTH, WISCONSIN COORDINATE SYSTEM, SOUTH ZONE.

ALL ELEVATIONS REFER TO NATIONAL GEODETIC DATUM OF 1929.

LEGEND

- = SET 1" IRON PIPE
- = IRON STAKE FOUND
- ⊙ = P.K. NAIL
- ⊗ = SET CHISEL "V"

FIELD WORK 8-19-2010 BY JWP/JER
 DRAWN 8-23-2010 BY JER
 SCALE 1" = 100'
 SHEET 1 OF 1 SHEETS
 JOB NO. 2010.0081.01



Nielsen Madsen & Barber S.C.
 Civil Engineers and Land Surveyors

1339 Washington Ave. Racine, WI. 53403 Tele: (262)834-5588 Fax: (262)834-5024 Website: www.nmbc.net

ATTACHMENT IV

AGREEMENT FOR PRIVATE SIDING

THIS AGREEMENT made the 16th day of February, 20 11, to be effective as of the first day of February, 20 11. (the "Effective Date")

BETWEEN:

**SOO LINE RAILROAD COMPANY
d/b/a Canadian Pacific
("CP");**

AND

**VILLAGE OF PLEASANT PRAIRIE, WISCONSIN
("Village")**

AND

**EMCO CHEMICAL DISTRIBUTORS, INC.
(the "Applicant")**

WHEREAS Applicant is the owner or in occupation of land situated at **8601 95th Street** at or near Pleasant Prairie, in the State of Wisconsin;

WHEREAS Village owns trackage from Points C to E and Points F to G and Applicant occupies trackage from Points H to I, Points J to K, Points L to M and Points N to O (collectively (the "**Private Siding**") as described herein) that connects with CP's railway line near Milepost 50 of the C&M Subdivision;

WHEREAS Applicant desires to use its own employees to move railroad cars over the Private Siding and CP is willing to allow Applicant to use its own employees and equipment over that portion of the Private Siding;

AND WHEREAS the parties hereto have agreed that such Private Siding shall be subject to the terms, covenants and conditions hereinafter mentioned.

NOW THEREFORE, the parties agree as follows:

ARTICLE 1 - DEFINITIONS

"**Applicant**" means the party or parties of the third part as set out above, both jointly and severally, and his, her, its and their executors, administrators, successors and assigns.

1.1 "**FRA**" means the Federal Railroad Administration or any successor.

1.2 "**Hazardous Substance**" means any substance identified in or regulated by any Environmental Law, including without limitation the Comprehensive Environmental

Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. ss 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. ss 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. ss 1251 et seq., the Clean Water Act, 33 U.S.C. ss 1251 et seq., all as amended from time to time, and any other federal, state, local or other governmental statute, regulation rule, law or ordinance dealing with the protection of human health, safety, natural resources or the environment now existing or hereafter enacted.

- 1.3 **"Point A"** identifies the beginning of the Private Siding on CP's right of way at the point of the switch.
- 1.4 **"Point B"** identifies the fourteen foot (14") clearance point from CP's right-of-way.
- 1.6 **"Point C"** identifies the derail located at or near the property line between CP's right-of-way and Village's land (unless otherwise identified in Schedule B attached to this Agreement) which is an intermediate location between Points A and Points E, I, M, and O and identified for purposes of determining responsibilities of the parties.
- 1.7 **"Points E, I, M, and O"** identify the end of track of the Private Siding (unless otherwise identified in Schedule B attached to this Agreement);
- 1.8 **"Private Siding"** means the entire track or tracks which comprise the Private Siding (Points A and Points E, I, M, and O identify the extreme limits) and includes turnouts, track, Track Materials, ballast, sub-ballast, crossing materials, crossing protection apparatus, signals, circuitry, fencing, structures such as culverts, bridges and retaining walls, land improvements or alterations required to accommodate the track such as cuts, embankments and ditches, and the land occupied and required to accommodate all of the features of the Private Siding including the foregoing.
- 1.9 **"Schedule A"** – The insurance schedule marked Schedule A that is attached hereto forms part of this Agreement.
- 1.10 **"Schedule B"** – The plan marked Schedule B that is attached hereto depicting the Private Siding and identifying Points A, B, C, D, E, F, G, H, I, J, K, L, M, N, and O forms part of this Agreement.
- 1.11 **"Track Materials"** means and includes rails, rail anchors, fastenings, spikes, switch materials, derails, bumping posts, the plates and track and switch ties.

ARTICLE 2 - PROVISION OF PRIVATE SIDING AND SECURING OF RIGHT OF WAY

- 2.1 Applicant has provided the right of way for the Private Siding, except for that portion of CP's right of way which is required to accommodate the Private Siding. Applicant has secured the right of way over all other land on which the Private Siding has been built outside of the land or property of CP used for the right of way.

- 2.2 If any roadway is or will be crossed or otherwise affected by the Private Siding, Applicant shall be responsible for securing the approval of the party or agency with jurisdiction and for any improvements required in connection with such approval.
- 2.3 Applicant shall assume and pay all taxes and assessments that may be lawfully levied or assessed by any public authority against the Private Siding.

ARTICLE 3 – CONSTRUCTION, MAINTENANCE AND OWNERSHIP

- 3.1 Applicant, at its expense, shall maintain, the Private Siding between Points C and E, Points F and G, Points H and I, Points, J and K, Points L and M, and Points N and O in good repair and condition, clear of grass, weeds, combustible material, snow and ice, as required to ensure good and safe operation on the Private Siding and that the Private Siding is open for traffic. CP, acting reasonably, shall determine whether the condition of the Private Siding is satisfactory. CP shall have the right to require Applicant to carry out such repairs as are, in the opinion of CP, necessary to properly maintain the Private Siding between Points C and E, Points F and G, Points H and I, Points, J and K, Points L and M, and Points N and O. Applicant must employ a CP-approved contractor for any such repairs.
- 3.2 CP, at Applicant's expense, shall inspect and maintain the Private Siding between Points A and C. However, CP, at its option and with prior written reasonable notice to Applicant as to the estimated amount of expenses to be incurred, shall have the right to require Applicant to maintain the Private Siding at Applicant's expense, between Points A and C (or any portion thereof). Applicant shall pay to CP the cost of such inspection and maintenance within thirty (30) days after receipt of a written statement of such actual cost.
- 3.3 CP owns the Private Siding between Points A and C; Village owns the Private Siding between Points C and E and Points F and G; and Applicant occupies the Private Siding between Points H and I, Points, J and K, Points L and M, and Points N and O.
- 3.4 Applicant shall furnish routine inspections of any warning devices (*i.e.*, cross bucks or crossing signals) present at the Private Siding. Any work required to be performed on the warning devices shall be done at Applicant's expense. Applicant shall pay CP for such work within thirty (30) days after receipt of a written statement of such actual cost.
- 3.5 CP acknowledges that Applicant is not located in an area where a third-party initiated "high speed" rail project is presently planned. In the event that existing rail infrastructure must be modified to accommodate future "high speed" rail operations, CP will take reasonable efforts to ensure that the project is designed to minimize delays to deliveries during construction and to allow future deliveries to be made on a timely basis.

ARTICLE 4 - ALTERATIONS

- 4.1 Should CP make such changes in the track to which the Private Siding connects, in railway structures or facilities, or in the characteristics of the engines and other equipment to be operated on the Private Siding, as would in the opinion of CP necessitate the moving, alteration or strengthening of the Private Siding in whole or in part, or should orders or regulations issued by the FRA, Surface Transportation Board or other authority having jurisdiction in relation thereto necessitate the moving, alteration or strengthening of the Private Siding in whole or in part, Applicant, at its expense and under the supervision of CP, shall employ a CP-approved contractor to move, alter or strengthen the Private Siding between Points C and E, Points F and G, Points H and I, Points, J and K, Points L and M, and Points N and O as required. In such event, CP shall provide Applicant with 120 days prior written notice with an estimate of the expenses to be incurred.
- 4.2 CP, at Applicant's expense, shall move, alter or strengthen the Private Siding between Points A and C as required. In such event, CP shall provide Applicant with 120 days prior written notice with an estimate of the expenses to be incurred. However, CP, at its option and with prior written reasonable notice to Applicant, shall have the right to require Applicant to move, alter or strengthen the Private Siding, at Applicant's expense, between Points A and C. In the event that CP moves, alters, or strengthens the Private Siding or any portion thereof, Applicant shall pay to CP the cost of such moving, alteration or strengthening within thirty (30) days after receipt of a written statement of such actual cost.
- 4.3 CP acknowledges that Applicant is not located in an area where a third-party initiated "high speed" rail project is presently planned. In the event that existing rail infrastructure must be modified to accommodate future "high speed" rail operations, CP will take reasonable efforts to ensure that the project is designed to minimize delays to deliveries during construction and to allow future deliveries to be made on a timely basis.

ARTICLE 5 - USE

- 5.1 CP shall have the right, free of charge, to use the Private Siding for railway purposes.
- 5.2 Applicant acknowledges that CP standards currently require all turnouts to be at least #9s, but due to space constraints and track geometry at Applicant's facility, Applicant's predecessor in interest installed two #8s at Points L and N as shown on Schedule B. CP approved the installation of these two #8 turnouts by Applicant's predecessor in interest with the stipulation that if in the future CP changes the type of engines used for switching Applicant's facility, this equipment may not be capable of negotiating the curvature found in #8 turnouts. Therefore, CP may elect not to operate on or over the tracks between Points L and M and Points N and O.

- 5.3 With Applicant's prior consent, CP may permit the use of the Private Siding by other parties upon reasonable compensation to be paid to Applicant, such compensation to be determined by CP and Applicant.
- 5.4 Applicant may use its own employees and equipment to move rail cars over the Private Siding between Points C and E, Points F and G, Points H and I, Points, J and K, Points L and M, and Points N and O for loading and unloading. Applicant's use of the Private Siding shall not interfere with CP's operations and shall not occur within 25 feet of the centerline at CP's main track.
- 5.5 When Applicant's operations involve movements across public grade crossings, an employee of Applicant shall be in position to warn traffic of approaching cars, trains or engines, including those on adjacent tracks.
- 5.6 Applicant confirms that it, and all employees involved in the use of the Private Siding, will comply with CP's "Customer Safety Handbook".

ARTICLE 6 - CLEARANCES

- 6.1 Applicant shall in the provision, alteration, if any, use and operation of the Private Siding and of any building or other structure erected or to be erected over the Private Siding or on adjoining lands, observe and fully comply with all the laws, orders, regulations, rules and CP or other engineering standards in force as amended from time to time or which may hereafter come into force relating to railways or private sidings or buildings or structures over private sidings or adjacent thereto, including without limitation, clearance requirements defined in CP's Customer Safety Handbook.
- 6.2 Applicant shall notify CP in advance, in writing, if a building or structure over or beside the Private Siding will encroach within clearance requirements ("**Restricted Clearance**"), and shall submit to CP for review and approval, detailed plans and designs stamped by a Professional Engineer as well as detailed information regarding the reasons for less than standard clearance, operations over the trackage and any other information that CP may require. Any Restricted Clearance must be approved by CP, and CP may require Applicant to modify its plans and designs.
- 6.3 Applicant shall be responsible for providing, installing and maintaining signage regarding any Restricted Clearances, on Applicant's property at or near Point B of the Private Siding. In the event that Applicant fails to install and/or maintain such signage, CP may provide, install or replace the signage at Applicant's cost and expense; however, CP shall not be obligated or responsible to provide, install or maintain same.

ARTICLE 7 - LIABILITY

- 7.1 Except where and to the extent CP is negligent, Applicant shall make no claim or demand against CP for any injury, including injury resulting in death, loss or damage to property

suffered or sustained by Applicant or its employees, officers or agents which arises out of or is connected with the use of the Private Siding or this Agreement.

- 7.2 Except where and to the extent that CP is negligent, Applicant shall indemnify and save harmless CP:
- a) from and against any and all claims, demands, awards, actions and proceedings by whomsoever made, brought or prosecuted, and
 - b) from and against any and all loss, damages or expenses, including reasonable attorney's fees, suffered or incurred by CP including injuries, as well as those resulting in death, and damage to or destruction of CP property or third party property (including without limitation, engines, rolling stock and all other equipment and their contents), or against any taxes or local improvements assessed with respect to the Private Siding;

which are based upon, arise out of or are connected with the use of the Private Siding by Applicant or this Agreement.

- 7.3 Where CP is moving equipment on the Private Siding for any person other than Applicant, the waiver and indemnity given by Applicant in Article 7.1 and 7.2 shall not apply to the extent that such claims, demands, awards, actions, proceedings, loss, damages or expenses arise without any negligence of Applicant or its employees.
- 7.4 Notwithstanding any other provision of this Agreement, Applicant shall indemnify and save harmless CP from any and all loss, costs and damages, including attorney's fees, caused by Applicant's non-compliance with any of the provisions of this Agreement.
- 7.5 For purposes of this Section 7, "CP" shall mean CP, its parents and corporate affiliates, and each of their officers, directors, employees, agents and insurers.
- 7.6 The provisions of Section 7 shall survive the termination of this Agreement.

ARTICLE 8 - INSURANCE

- 8.1 Applicant agrees to maintain the insurance coverage set out in Schedule A.

ARTICLE 9- FEES

- 9.1 Applicant shall pay a license fee of \$546.00 (the "Private Siding License Fee") per year to CP for the use of the CP's right-of-way (between Points A and C) to accommodate the Private Siding. The Private Siding License Fee shall be payable, in advance, on the first day of February in each year during the Term of this Agreement.
- 9.2 The Private Siding License Fee shall be increased each year during the Term on the anniversary of the Effective Date by three (3%) percent.

ARTICLE 10 – TERM AND TERMINATION

- 10.1 This Agreement shall commence on the Effective Date and continue until termination by either party, at any time, on giving not less than ninety (90) days' written notice to the other party.
- 10.2 If Applicant fails to pay any amount due under this Agreement, or is in breach of any term of this Agreement then Applicant shall be in default under this Agreement. Should such default occur, CP may terminate this Agreement, after giving written notice thereof to Applicant and allowing thirty (30) days to elapse after such notice, unless in the meantime such default shall have been remedied or Applicant is making diligent and good faith efforts to remedy such breach.
- 10.3 With the exception of Applicant's obligations pursuant to Article 11 (Removal of Private Siding), from and after the termination date, Applicant shall cease to have any right to pass upon CP's right of way.

ARTICLE 11 - REMOVAL OF PRIVATE SIDING

- 11.1 Upon termination of this Agreement, unless Applicant provides CP with written notice within fifteen (15) days of the termination date that Applicant will reimburse CP's inspection and maintenance costs for the Private Siding between Points A and C during the one year period following the termination date, CP may remove the Private Siding from CP's right of way between Points A and C including all Track Materials and restore any pavement, sidewalks or other improvements at Applicant's expense. All Track Materials on the portion of the Private Siding on CP land not removed after one (1) year shall be the property of CP and subject to removal thereafter at CP's expense and discretion.
- 11.2 In the event that CP removes the Private Siding from CP's right of way or any portion thereof, Applicant shall pay to CP the cost of such removal within thirty (30) days after receipt of a written statement of such cost. For greater certainty, such cost shall include the cost of transportation and of loading and unloading the Track Materials.

ARTICLE 12 - ASSIGNMENT

- 12.1 In the event that Applicant's land is sold or possession is transferred to another entity, all rights, obligations and privileges of Applicant under this Agreement shall be transferred and assigned to the new owner or tenant. Applicant shall provide written notice to CP within fifteen (15) days of such assignment, and include the address for notice for the new assignee.

ARTICLE 13 - NOTICE

- 13.1 All notices or communications required hereunder shall be given by courier or facsimile, or if mailed by registered mail, postage prepaid, and addressed to the other party as follows:

To CP: **Canadian Pacific Railway**
501 Marquette Avenue South
Suite 1510
Minneapolis, MN 55402
Attention: Area Manager - Business Manager
Fax #: (612) 904-5952

To Applicant: **EMCO Chemical Distributors**
2100 Commonwealth Avenue
North Chicago, IL 60064
Attention: Edward Polen, President
Fax #: 847-689-8470

To Village: **VILLAGE OF PLEASANT PRAIRIE**
9915 39th Avenue
Pleasant Prairie, Wisconsin 53158
Attention: Village Administrator
Fax#: 262-694-4734

or such other address as may be furnished from time to time by either party. Any notice, if delivered by courier or facsimile, shall be deemed to have been given or made on the date delivered or the date that a confirmation of receipt of the facsimile was recorded by the sender and if mailed correctly, shall be deemed to have been received on the third (3rd) business day after mailing. In the event of an actual or imminent disruption in postal service, any notice shall be delivered by courier.

ARTICLE 14- MISCELLANEOUS

- 14.1 Applicant shall, at its own expense, comply with all applicable laws, by-laws, rules, orders, directions, ordinances, and regulations, including without limitation, applicable environmental laws.
- 14.2 Termination of this Agreement, for any reason, including default shall not release the parties from any obligations of liabilities incurred prior to termination of this Agreement.
- 14.3 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- 14.4 This Agreement shall be construed in accordance with the laws of the state in which the Private Siding is situated.

- 14.5 Time shall be of the essence of this Agreement.
- 14.6 This Agreement may not be modified or amended except in writing signed by the parties.
- 14.7 No term, covenant or provision in this Agreement or right hereunder or in respect of will be deemed to have been waived by CP, except by express waiver in writing signed by CP.
- 14.8 The headings and numbering introducing sections in this Agreement are inserted for convenience only and in no way define or construe the scope or intent of such section.
- 14.9 This Agreement contains the entire agreement of the parties with respect to the Private Siding and, supersedes and cancels all prior agreements and understandings, oral or written, with respect thereto; provided however that payment terms may be supplemented or amended by CP's invoices which may be amended from time to time at CP's discretion.

The parties hereto have executed this Agreement on the date first above written.

**SOO LINE RAILROAD COMPANY,
d/b/a CANADIAN PACIFIC**

Per: *Linda J. Hartner*
Title: *Area Manager - ID*

EMCO CHEMICAL DISTRIBUTORS, INC.

Per: *Al Wagner*
Title: *President*

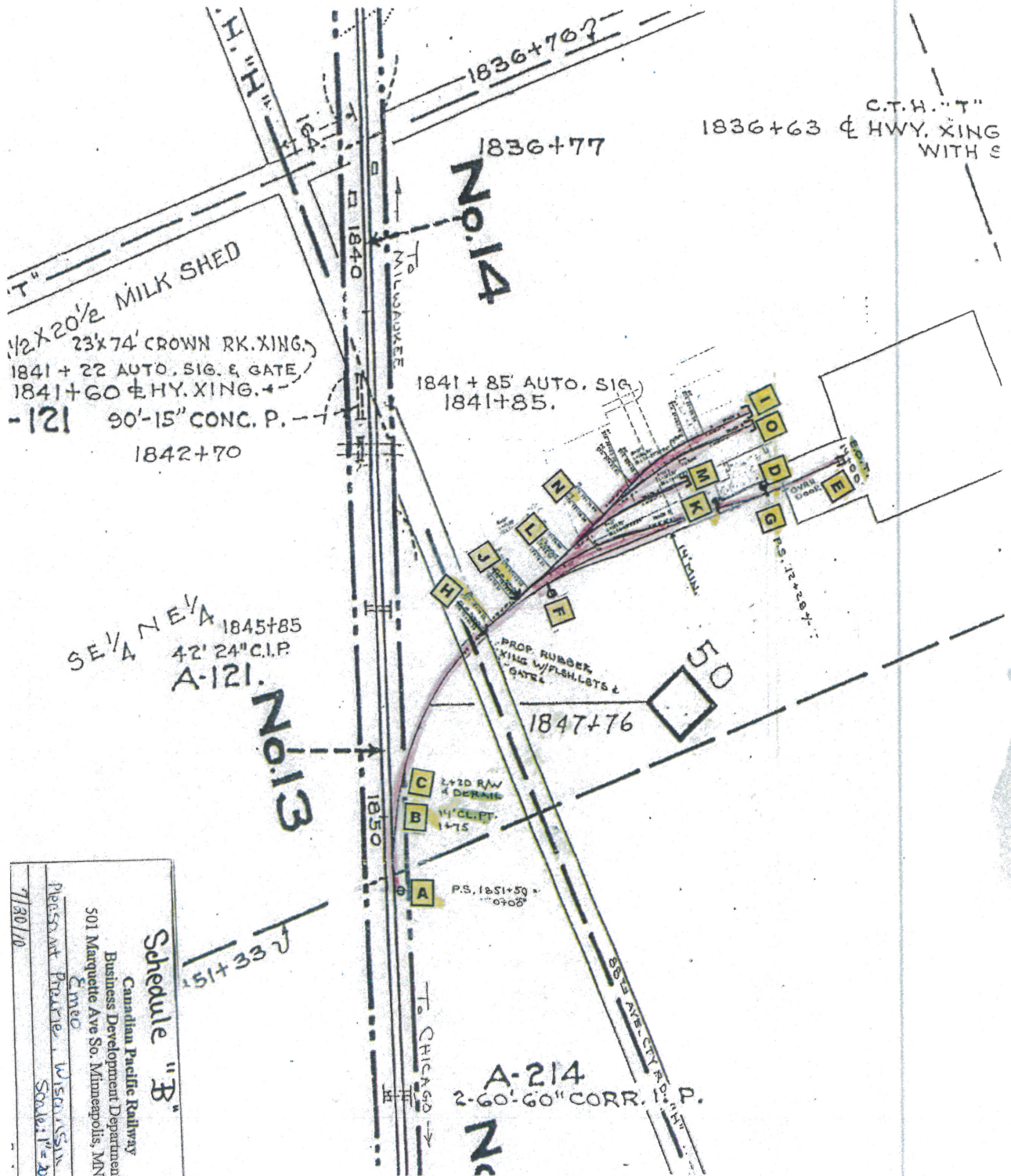
VILLAGE OF PLEASANT PRAIRIE

Per: *J.P. Stott*
Title: *VILLAGE PRESIDENT*

SCHEDULE A – INSURANCE

1. Applicant shall at its own cost and expense, take out and keep in full force and effect a Commercial General Liability Insurance policy with an inclusive limit of not less than **Five Million Dollars (\$5,000,000)** per occurrence for bodily injury and property damage, or any other increased amount as CP may reasonably require upon conducting reviews from time to time. Such insurance shall specifically state by its wording or by endorsement:
 - (a) the policy extends to cover the contractual obligations assumed by Applicant under this Agreement with CP;
 - (b) the policy shall name CP, its subsidiaries and affiliates as an additional insured;
 - (c) the policy shall contain a “cross-liability” clause which shall have the effect of insuring each person firm or corporation insured thereunder in the same manner and to the same extent as if a separate policy had been insured to each;
 - (d) the policy shall not be cancelled or materially altered unless written notice is given by Applicant to CP thirty (30) days before the effective date of such cancellation or material alteration;
 - (e) shall not contain any provision which excludes railway operations.
2. If Applicant is loading or unloading Hazardous Substances on the Private Siding, Applicant shall maintain a Commercial General Liability Insurance policy with an inclusive limit of not less than **Fifteen Million Dollars (\$15,000,000)** per occurrence for bodily injury and property damage or any other increased amount as CP may reasonably require upon conducting reviews from time to time, and in addition to meeting the requirements in Section 1 a) through e), it shall extend to cover sudden and accidental discharge or release of Hazardous Substances.
3. In the event Applicant carries, transports or stores Poisonous Inhalation/Toxic Inhalation Hazardous materials, Applicant shall increase the amount of the insurance described under Section 2 to an amount not less than One Hundred Million (\$100,000,000) Dollars. Poison Inhalation Hazard (PIH)/Toxic Inhalation Hazard (TIH) materials means any product considered poisonous or toxic by inhalation in the Canadian Transportation of Dangerous Goods Regulations, the United States Hazardous Materials Regulations, or the Association of American Railroads circular OT-55i (<http://boe.aar.com/boe-download.htm>). The terms PIH and TIH are used interchangeably.
4. Applicant shall, prior to the effective date of this Agreement, and upon the insurance renewal date thereafter, furnish to CP or Certificates of Insurance evidencing the above coverages. Upon request, Applicant shall provide CP with certified copies of the insurance policies Applicant shall not make or cause to be made any material modification or alteration to the insurance, or to do or leave undone anything, which may invalidate the insurance coverage.

5. The acquisition and maintenance of insurance policies by Applicant shall in no manner limit or restrict the liabilities incurred by Applicant under the provisions of this Agreement.



1/2 x 20 1/2 MILK SHED
 23' x 74' CROWN RK. XING.
 1841 + 22 AUTO. SIG. & GATE
 1841 + 60 C.H.Y. XING.
 -121 90'-15" CONC. P.
 1842 + 70

SE 1/4 NE 1/4 1845 + 85
 42' 24" C.I.P.
 A-121.

C.T.H. "T"
 1836 + 63 C. HWY. XING
 WITH S

7/30/10
 Pleasant Prairie, Wisconsin
 Scale: 1" = 20'
Schedule "B"
 Canadian Pacific Railway
 Business Development Department
 501 Marquette Ave So. Minneapolis, MN
 E: mco

A-214
 2-60'-60" CORR. P.
 N

RESOLUTION #11-27

**FINAL RESOLUTION AUTHORIZING CONSTRUCTION
OF PUBLIC IMPROVEMENTS AND LEVYING
SPECIAL ASSESSMENTS AGAINST BENEFITED PROPERTY
WITH THE CONSTRUCTION OF MUNICIPAL STORM WATER IMPROVEMENTS
LOCATED IN THE RIGHT-OF-WAY AT 11606 47TH AVENUE**

WHEREAS, the Village Board of the Village of Pleasant Prairie, Kenosha County, Wisconsin, on the 20th day of June, 2011, adopted a Preliminary Resolution #11-18 declaring its intention to levy special assessments pursuant to Section 66.0703, Wisconsin Statutes, upon the property benefited by the construction of municipal storm water improvements located in the right-of-way at 11606 47th Avenue.

WHEREAS, the Village Board held a public hearing at Pleasant Prairie Village Hall, 9915 39th Avenue, Pleasant Prairie, WI at 6:00 p.m. on the 1st day of August, 2011 for the purpose of hearing all interested persons concerning the preliminary resolution and the report relating to the proposed improvements and assessments, and heard all persons who desired to speak at the hearing; and

WHEREAS, the Village Board has examined the report relating to the improvements and assessments (including the schedule of proposed assessments contained therein) and has considered the statements of those persons appearing at the public hearing;

NOW, THEREFORE, BE IT RESOLVED, by the Village Board of the Village of Pleasant Prairie, as follows:

1. The report pertaining to the construction of the above described public improvements, including plans and specifications therefore, is determined to be correct and is finally adopted and approved.
2. The improvements will be carried out in accordance with such report, and payment for the improvements shall be made by assessing the cost to the property benefited as indicated in the report.
3. The assessments shown on the report, representing an exercise of the police power, have been determined on a reasonable basis and are hereby confirmed. The total amount assessed is \$4,162.79. The amount assessed against each of the affected properties is listed on Schedule A.
4. The assessments for all projects included in the report are hereby combined as a single assessment but any interested property owner may object to each assessment separately or all assessments jointly for any purpose.
5. The property owners may, at their option, pay the assessments to the Treasurer in cash or in ten equal, annual installments, with interest from November 1, 2011 at the rate of 9% per annum on the unpaid balance. All assessments will be collected in installments as

provided in the preceding sentence, except assessments with respect to which the property owner shall within 30 days from the date of the Installment Assessment Notice referred to in Section 6 below elected to pay the assessment in full as provided in such Notice.

6. The Clerk shall publish this resolution as a Class 1 Notice and mail a copy of this resolution and a statement of the final assessment against the benefited property to every interested person whose post office address is known or can with reasonable diligence be ascertained, including each property owner whose name appears on the assessment roll.

Passed and adopted this 1st day of August, 2011.

VILLAGE OF PLEASANT PRAIRIE

John P. Steinbrink, Village President

Attest:

Jane M. Romanowski, Village Clerk

Date Adopted:

Published:



NOTICE OF PUBLIC HEARING ON SPECIAL ASSESSMENTS

PLEASE TAKE NOTICE that the Village Board of the Village of Pleasant Prairie, Kenosha County, Wisconsin has adopted a preliminary resolution declaring its intention to exercise its police power to levy special assessments pursuant to section 66.0703, Wis. Stats., upon property within the following proposed assessment district for benefits conferred upon the property for the construction of public storm water improvements located in the right-of-way at 11606 47th Avenue.

A report, the estimated cost of improvements and a schedule of proposed assessments are on file at the Pleasant Prairie Village Hall, 9915 39th Avenue, and may be inspected there during any business day between the hours of 8:00 a.m. to 5:00 p.m.

You are further notified that the Governing body will hear all interested persons, or their agents or attorneys, concerning matters contained in the preliminary resolution authorizing the assessments and the above described report **at 6:00 p.m. on the 1st day of August, 2011** in the Pleasant Prairie Village Hall. All objections will be considered at this hearing and thereafter the amount of the assessments will be finally determined.

Dated this 18th day of July, 2011.

Jane M. Romanowski
Village Clerk

Published: July 18, 2011

ASSESSMENT REPORT

47th Avenue Stormwater Improvement Project

In accordance with the preliminary resolution of the Village Board of the Village of Pleasant Prairie, Kenosha County, Wisconsin adopted on June 6, 2011 with respect to special assessments to be levied on properties benefited by the 47th Avenue Stormwater Improvement Project, the undersigned reports as follows:

1. Plan. Attached, as Schedule A, location and parcel map for the improvements described above;
2. Cost of Improvements / Assessment Method & Rate Calculation. Attached, as Schedule B is an estimate of the entire cost of the improvements and the assessment rate calculation;
3. Schedule of Proposed Assessments. Attached, as Schedule C, is a schedule of proposed assessments against each parcel of property benefited by the improvements. I have found in making this report that each parcel listed on said Schedule C is benefited by the construction of the improvements;
4. The new improvements include new stormwater piping and inlets. The improvements will provide public stormwater service and protect the public health and welfare of the citizens of the community;

The assessments set forth on Schedule C were determined on the following basis:

- Per lot. The assessment method and rate calculation is attached in Schedule B.

Dated this 20th day of July, 2011.



Michael R. Spence, P.E., Village Engineer

47th Ave Storm Water Map



 **New Storm Sewer**

SCHEDULE B

COST OF IMPROVEMENTS/ASSESSMENT METHOD AND RATE CALCULATION

1. The 47th Avenue Stormwater Improvement Project assessment rate is based on a per lot basis for benefited lots having frontage to the stormwater improvements.
2. The assessable project cost was determined to be the total 47th Avenue Stormwater Improvement Project Cost.

Assessment Rate Calculation

| Stormwater Materials: | Quantity | Unit | Unit Cost | Total |
|--------------------------------------|----------|------|-----------|-------------------|
| 24 inch CMP Pipe | 310 ft. | | \$18.48 | \$5,728.80 |
| Yard inlets-15" CMP | 2 ea. | | \$10.00 | \$20.00 |
| Inlet Covers-15" beehive | 2 ea. | | \$100.00 | \$200.00 |
| <i>Subtotal Materials:</i> | | | | \$5,948.80 |
| Labor Cost: | | | | \$2,376.78 |
| <i>Total Project Cost:</i> | | | | \$8,325.58 |
| 50% Clean Water Utility Cost Share: | | | | \$4,162.79 |
| Assessable Project Cost: | | | | \$4,162.79 |
| Assessable Cost per Property: | | | | \$1,387.60 |

Schedule C
47th Avenue Stormwater Improvement Project
Assessment Schedule

| Property Owner and Parcel No. | Project Cost/Parcel | CWU Portion | Final Assessment |
|--|----------------------------|--------------------|-------------------------|
| REEVES, ROBERT R 11606 47TH AVE Pleasant Prairie, WI 53158 92-4-122-352-0155 | \$2,775.19 | \$1,387.60 | \$1,387.60 |
| WEST, GREGORY C DIANE M 11616 47TH AVE Pleasant Prairie, WI 53158 92-4-122-352-0160 | \$2,775.19 | \$1,387.60 | \$1,387.60 |
| YUHAS, JEFFREY MONICA 11626 47TH AVE Pleasant Prairie, WI 53158 92-4-122-352-0165 | \$2,775.19 | \$1,387.60 | \$1,387.60 |

Total Assessment:

\$4,162.79

Consider the request of Phil Godin, agent for Sunny Prairie, LLC for the **First Amendment to the Declaration of Covenants, Conditions, Restrictions, and Easements** for Sunny Prairie Subdivision.

Recommendation:

Village staff recommends approval of the **First Amendment to the Declaration of Covenants, Conditions, Restrictions, and Easements** for Sunny Prairie Subdivision as presented on August 1, 2011 subject to the petitioner recording said amendment at the Kenosha County Register of Deeds Office and providing a recorded copy to the Village within 30 days of final approval.

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR SUNNY PRAIRIE, LLC**

THIS FIRST AMENDMENT is entered into this ____ day of _____, 2011, by Sunny Prairie, LLC, a Wisconsin limited liability company (“Developer”).

RECITALS

A. Developer recorded a Declaration of Covenants, Conditions, Restrictions and Easements for Sunny Prairie, LLC with the Kenosha County Register of Deed’s office on October 17, 2007 as Document No: 1537357 (the “Declaration”), which subjected certain property in the Village of Pleasant Prairie, Wisconsin described on Exhibit A attached hereto and incorporated herein by reference (the “Lots”) to the conditions, restrictions, covenants and reservations contained in the Declaration.

B. Section 8.1 of the Declaration provides that the Declaration may be amended, subject to the approval of the Village of Pleasant Prairie, solely by the Developer, before the Developer has conveyed all Lots to other owners and, thereafter, by owners of 75% of the Lots. The Developer continues to own, and has never conveyed, any of the Lots in the Subdivision except for Lot 4 of the Subdivision which was previously conveyed to John Modory and Kimberly Modory.

C. Attached hereto and incorporated herein by reference is the written approval of the Village of Pleasant Prairie of this First Amendment.

NOW, THEREFORE, the Developer hereby makes the following amendments to the Declaration.

1. Section 3.14(e) of the Declaration is amended and restated to read in its entirety as follows:

“(e) Garage doors may be located at the front or side of the residence. The location of garage door(s), whether front or side entry, or location of any driveway and its intersection with the street, shall be subject to the approval of the ACC.”

2. Section 3.16(a) of the Declaration is amended and restated to read in its entirety as follows:

“(a) All dwellings proposed to be erected, altered or modified shall, on the construction plans, denote natural exterior material(s), i.e. brick,

stone, stucco, wood and other similar materials acceptable to the ACC and the construction shall be carried out in accordance with the material(s) as approved by the ACC. Aluminum and steel are permitted only for soffits, windows and doors. Vinyl siding may be used on the exterior surface only as approved by the ACC; provided, however, in no event may the vinyl siding be used to cover more than fifty percent (50%) of the exterior of the front of the dwelling, including the garage portion, and the other fifty percent (50%) of the exterior of the front of the dwelling, including the garage portion, shall be covered by brick, stone or wood. All exterior walls shall be constructed with building materials to create an integrated character for the neighborhood.”

3. The following Section 3.20 shall be added to the Declaration:

“3.20. **Outbuildings and Temporary Structures.** Other than dwelling units and other structures approved in advance by the ACC, no structure or improvement of any kind, including but not limited to basketball standards, sport courts, any shed, gazebo, skateboard ramp, stable, barn or kennel shall be moved on to or constructed upon any Lot within the Subdivision. Notwithstanding the foregoing, the ACC may, in its discretion, approve of any such outbuilding on such terms and provisions as are determined by the ACC, which may include, without limitation, that any such outbuilding be constructed of materials that are harmonious with the materials used in the construction of the dwelling.”

This First Amendment is executed on behalf of the Developer this ____ day of _____, 2011.

SUNNY PRAIRIE, LLC
A Wisconsin limited liability company

By: _____
Phillip R. Godin, Member

By: _____
Linda A. Godin, Member

EXHIBIT A

Lot 1 in Sunny Prairie Subdivision, of part of the Southwest Quarter of the Northeast Quarter and part of the Northwest Quarter of the Southeast Quarter of Section 25, Town 1 North, Range 22 East of the Fourth Principal Meridian, lying and being in the Village of Pleasant Prairie, County of Kenosha and State of Wisconsin

Parcel No: 92-4-122-261-0511

Lot 2 in Sunny Prairie Subdivision, of part of the Southwest Quarter of the Northeast Quarter and part of the Northwest Quarter of the Southeast Quarter of Section 25, Town 1 North, Range 22 East of the Fourth Principal Meridian, lying and being in the Village of Pleasant Prairie, County of Kenosha and State of Wisconsin

Parcel No: 92-4-122-261-0512

Lot 3 in Sunny Prairie Subdivision, of part of the Southwest Quarter of the Northeast Quarter and part of the Northwest Quarter of the Southeast Quarter of Section 25, Town 1 North, Range 22 East of the Fourth Principal Meridian, lying and being in the Village of Pleasant Prairie, County of Kenosha and State of Wisconsin

Parcel No: 92-4-122-261-0513

Lot 4 in Sunny Prairie Subdivision, of part of the Southwest Quarter of the Northeast Quarter and part of the Northwest Quarter of the Southeast Quarter of Section 25, Town 1 North, Range 22 East of the Fourth Principal Meridian, lying and being in the Village of Pleasant Prairie, County of Kenosha and State of Wisconsin

Parcel No: 92-4-122-261-0514

Lot 5 in Sunny Prairie Subdivision, of part of the Southwest Quarter of the Northeast Quarter and part of the Northwest Quarter of the Southeast Quarter of Section 25, Town 1 North, Range 22 East of the Fourth Principal Meridian, lying and being in the Village of Pleasant Prairie, County of Kenosha and State of Wisconsin

Parcel No: 92-4-122-261-0515

Consider the request of Thomas L. Richter or Richter Realty and Investments, Inc. receiver for Regency Hills-Creekside Crossing, LLC for the **Second Amendment to the Declaration of Restrictions, Covenants and Easements** for Creekside Crossing and Creekside Crossing Addition #1 Subdivisions.

Recommendation:

Village staff recommends approval of the **Second Amendment to the Declaration of Restrictions, Covenants and Easements** for Creekside Crossing and Creekside Crossing Addition #1 Subdivisions as presented on August 1, 2011 subject to the petitioner recording said amendment at the Kenosha County Register of Deeds Office and providing a recorded copy to the Village within 30 days of final approval. In addition, at such time as a developer has been determined for the property, an Assignment of Development Agreement responsibilities will be considered by the Village Board.

SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS,
COVENANTS AND EASEMENTS

This Second Amendment to Declaration of Restrictions, Covenants and Easements (this "Second Amendment") is made as of this ___ day of July, 2011 by Thomas L. Richter/Richter Realty & Investment, Inc. ("Richter") as receiver for Regency Hills-Creekside Crossing, LLC, a Wisconsin limited liability company ("Developer").

RECITALS

A. The property described on Exhibit A (the "Property") attached hereto is subject to that certain Declaration of Restrictions, Covenants and Easements dated August 16, 2005 and recorded in the office of the Register of Deeds of Kenosha County, Wisconsin on August 18, 2005 as Document No. 1446158, as amended by an Amendment to the Creekside Crossing Declaration of R,C&E dated March 24, 2006 and recorded in the Office of the Register of Deeds of Kenosha County, Wisconsin on March 24, 2006 as Document No. 1473779 (collectively, the "Declaration") and supplemented by a Supplemental Declaration of Restrictions, Covenants and Easements for Creekside Crossing Addition No. 1 dated July 17, 2007 and recorded in the Office of the Register of Deeds of Kenosha County, Wisconsin on July 18, 2007 as Document No. 1527620 (the "Supplemental Declaration"). Collectively, the Declaration and the Supplemental Declaration are hereinafter referred to as the "Restrictions."

B. The Declaration provides that the Restrictions can be amended prior to August 18, 2020, subject to approval by the Village of Pleasant Prairie, solely by the Developer until such time as the Developer conveys all Lots to other Owners.

C. On _____, 2011, the Honorable Judge Bruce E. Schroeder of the Kenosha County Circuit Court issued an order in Kenosha County, Wisconsin foreclosure Case No. 10-CV-1799 clarifying that Richter, as receiver for Developer, has all requisite power to amend the Restrictions on behalf of Developer.

D. Richter, as receiver for Developer now wishes to amend the Restrictions as set forth in this Second Amendment.

AMENDMENTS

Now therefore, the Restrictions are hereby amended as follows:

1. Section 1.1 of the Declaration is hereby amended and restated in its entirety as follows:

"Developer' shall mean Regency Hills-Creekside Crossing, LLC, a Wisconsin limited liability company and its successors (including, SB1 Creekside Crossing LLC ("SB1"), if SB1 takes title to any portion of the Property pursuant to foreclosure of the Developer's interest in the Property) and assigns permitted pursuant to paragraph 7 below. The "Developer" may also mean the Architectural Control Committee and vice versa, with respect to any required approval and review process under the Declaration."

2. The second sentence of Section 3.2 of the Declaration and the second sentence of Section 1 of the Supplemental Declaration are hereby deleted and replaced in their entirety as follows:

"Outlots 7, 8 and 9 of Creekside Crossing Addition No. 1 shall be used for residential purposes as permitted by the Village zoning ordinances."

The foregoing amendment to the Declaration shall not be interpreted as being an amendment to the current zoning of the Property.

3. Section 3.3 of the Declaration is hereby deleted in its entirety.

4. The second sentence of Section 3.4 of the Declaration is hereby amended and restated in its entirety as follows:

"Notwithstanding anything to the contrary, as long as Developer owns one or more Lots or Outlots, the Developer reserves the right to carry out the functions of the ACC."

5. The first and second sentences of Article IV of the Declaration are hereby amended and restated in their entirety as follows:

"So long as the Developer, or its successors and assigns, own one (1) or more Lots or Outlots, the authority and functions of the Architectural Control Committee shall remain and be exercised solely by the Developer or its successors and assigns. When the Developer, or its successors and assigns, no longer own one (1) or more Lots or Outlots, or at the end of fifteen (15) years from the date of sale of the first Lot to be sold by the Developer, whichever occurs first, the Developer shall promptly select three (3) Owners to serve as the ACC until their successors have been duly appointed."

6. Section 7.1 of the Declaration is hereby amended and restated in its entirety as follows:

"Term and Amendment. Unless amended as herein provided, this Declaration shall run with the Property and be binding upon all persons

claiming under the Developer and shall be for the benefit of and be enforceable solely by the Association for a period of fifty (50) years from the date this Declaration is recorded and shall automatically be extended for successive periods of fifty (50) years unless an instrument signed by the Owners of two-thirds (2/3) of the Lots has been recorded, agreeing to terminate this Declaration in whole or in part. For the first fifteen (15) years following the date this Declaration is recorded, this Declaration may be amended, subject to the Village's written approval, at any time by written declaration, executed in such manner as to be recordable, setting forth such annulment, waiver, change, modification, or amendment executed: (a) solely by the Developer until such time as Developer conveys all Outlots (including, without limitation, Outlots 7, 8 and 9 of Creekside Crossing Addition No. 1) and Lots to other Owners (other than by multiple sale of Lots to a successor developer), and thereafter (b) by owners of seventy-five percent (75%) of the Lots. Subsequent to such fifteen (15) year period, this Declaration may be amended by written declaration executed by at least seventy-five percent (75%) of the Lots subject to this Declaration provided that (a) the prior written approval of the Village is obtained and (b) the prior written approval of the Developer or its successors and assigns is obtained, so long as Developer or its successors or assigns owns one or more Lots or Outlots. Such written declaration shall become effective upon recording in the office of the Register of Deeds of Kenosha County, Wisconsin. All amendments shall be consistent with the general plan of development embodied in this Declaration."

7. Assignment. Developer may assign its rights pursuant to the Restrictions, as such may be amended from time to time, to any successor developer, provided, however, that any such assignment is subject to the prior written consent of the Village.

8. Except as modified hereby, all remaining terms and conditions of the Restrictions shall remain in full force and effect and are hereby ratified and confirmed. All terms which are capitalized but not defined in this Second Amendment shall the meanings attributed to them by the Restrictions.

[SIGNATURE PAGE FOLLOWS]

This Second Amendment is approved by the Village of Pleasant Prairie as of this ____ day of June, 2011.

VILLAGE OF PLEASANT PRAIRIE

By _____
John Steinbrink, Village President

By _____
Jane M. Romanowski, Village Clerk

State of Wisconsin)
 : SS
Kenosha County)

This instrument was acknowledged before me on the ____ day of July, 2011, by John Steinbrink as Village President of the Village of Pleasant Prairie and by Jane M. Romanowski as Village Clerk of the Village of Pleasant Prairie.

[Seal]

Notary Public, State of Wisconsin
My commission expires on _____

EXHIBIT A
LEGAL DESCRIPTION
[TO BE INSERTED]

**CLERK'S CERTIFICATION OF
BARTENDER LICENSE APPLICATIONS**

Period Ending: July 27, 2011

I, Jane M. Romanowski, Village Clerk of the Village of Pleasant Prairie, Kenosha County, Wisconsin, do hereby certify the following persons have applied for bartender licenses and **each applicant is in compliance with the guidelines set forth in Chapter 194 of the Municipal Code**. I recommend approval of the applications for each person as follows:

| <u>NAME OF APPLICANT</u> | <u>LICENSE TERM</u> |
|---------------------------|---------------------|
| 1. Thomas P. Christy | thru June 30, 2013 |
| 2. Katie J. Harris | thru June 30, 2013 |
| 3. Nicholas P. Kulunski | thru June 30, 2013 |
| 4. Matthew G. Nedweski | thru June 30, 2013 |
| 5. Elizabeth A. Whiteside | thru June 30, 2013 |

Jane M. Romanowski
Village Clerk

**CLERK'S CERTIFICATION OF
RENEWAL BARTENDER LICENSE APPLICATIONS
Period Ending: July 27, 2011**

I, Jane M. Romanowski, Village Clerk of the Village of Pleasant Prairie, Kenosha County, Wisconsin, do hereby certify the following persons have applied for a renewal bartender license, and **each applicant is in compliance with the guidelines set forth in Chapter 194 of the Municipal Code.** I recommend approval of the application for each person as follow:

| <u>NAME OF APPLICANT</u> | <u>LICENSE TERM</u> |
|--------------------------|---------------------|
| 1. Leah M. Blough | June 30, 2013 |
| 2. Megan J. Shaff | June 30, 2013 |

NOTE: ALL LICENSEES LISTED ABOVE HAVE SUBMITTED RENEWAL APPLICATIONS AND THE POLICE DEPARTMENT HAS SEARCHED ITS RECORDS. FOLLOWING PAST PRACTICE DUE TO THE NUMBER AND TIME REQUIRED, THE RENEWAL APPLICATIONS WERE NOT COPIED FOR THE BOARD MEETING.

Jane M. Romanowski
Village Clerk