

MEMORANDUM OF UNDERSTANDING

This MEMORANDUM OF UNDERSTANDING (“**MOU**”), dated as of the Effective Date, is made by and between Soo Line Railroad Company, a Minnesota corporation doing business as Canadian Pacific (“**CP**”), and the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic under the laws of Minnesota (“**Authority**”). CP and the Authority are referred to collectively as the “**Parties**.”

WITNESSETH:

WHEREAS, the Authority owns certain real property in Dakota County, Minnesota legally described on **Exhibit A** attached hereto (the “**Land**”); and

WHEREAS, CP holds an easement for railway purposes over that portion of the Land (the “**Track Easement**”) legally described on **Exhibit B** attached hereto (the “**Track Easement Area**”); and

WHEREAS, CP uses the Track Easement Area for parking commercial, equipment and passenger vehicles, and for accepting deliveries of track materials; and

WHEREAS, the Authority would like to construct a 100-space bituminous parking lot (the “**Lot**”) upon the Track Easement Area to serve the Red Rock Corridor Transitway (the “**Project**”). To accommodate the Project, Authority wishes CP to (i) develop and use alternative locations for parking commercial and equipment vehicles, and for accepting deliveries of track materials, and (ii) release the Track Easement pursuant to the “**Release of Track Easement**” attached hereto as **Exhibit C**; and

WHEREAS, the Parties have agreed to enter into this non-binding, MOU which outlines the terms and guiding principles for releasing the Track Easement and implementing the Project; and

WHEREAS, the Parties have discussed the foregoing issues and agree in principle to the matters hereinafter set forth.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements of the Parties set forth in this MOU, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to negotiate in good faith mutually acceptable terms and conditions for an agreement embodying the terms described in this MOU:

ARTICLE 1: CONSIDERATION

A. In consideration of CP’s release of the Track Easement Area, the Authority agrees that:

- (i) the Authority shall grant to CP, its respective directors, officers,

employees, agents, affiliates, subsidiaries, predecessors, successors and assigns, or anyone acting on its behalf or their behalf, a mutually agreeable easement to park passenger vehicles on the Lot (as currently exists before construction or as finished) in substantially the form attached hereto as Exhibit D, at no cost to them or CP and without assessment of fees or violations, metered or otherwise (the “**Lot Easement**”);

(ii) the Authority shall accommodate CP’s passenger vehicle parking requirements, without cost to CP, while construction of the Lot is underway;

(iii) CP shall not be liable for damage to streets, sidewalks, or curbs due to the reasonable re-routing of delivery trucks and commercial and equipment vehicles necessitated by the Project; and

(iv) the Authority agrees to approve any curb-cut permitting applications, subject to compliance with ordinances for the City of Hastings, and waive any fees associated with such applications, submitted by CP for areas intended to be used by CP as alternate locations for parking commercial and equipment vehicles and accepting deliveries of track materials via semi or tractor-trailer.

ARTICLE 2: TERMINATION OF TRACK EASEMENT

CP shall, within fifteen (15) days after (i) a suitable alternative location, in CP’s sole discretion, is developed for parking passenger vehicles during construction of the Lot, and (ii) the Lot Easement is finally negotiated, execute and record at the Authority’s expense the Release of Track Easement.

ARTICLE 3: BREAK UP FEE

In the event that this MOU is fully executed and the Authority does not proceed with the Project for any reason, the Authority shall reimburse CP for all out-of-pocket expenses incurred by CP related to this transaction to the date of termination, not to exceed \$2,500.00.

ARTICLE 4: PROJECT TIMELINE

The finished Lot is expected to be complete by December 31, 2012.

ARTICLE 5: EFFECTIVE DATE

The effective date of this MOU shall be the date on which the last Party hereto executes this MOU.

ARTICLE 6: THIRD PARTIES

The Parties agree that the terms and conditions discussed in this MOU are for their mutual or sole benefit and not for the benefit of any third party.

ARTICLE 7: AS IS; ALL FAULTS

The following provision shall be included in any agreement entered into pursuant to this MOU:

The Authority agrees to accept the condition of the Track Easement Area, as released by CP, including specifically without limitation, the environmental and geological condition of the Track Easement Area, in an “AS-IS” and with “ALL FAULTS” condition. The Authority acknowledges and agrees that, except as expressly set forth in this MOU: (i) CP has not made any written or oral representation or warranty of any kind with respect to the Track Easement Area (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose); (ii) the Authority has not relied on any written or oral representation or warranty made by CP, its agents or employees with respect to the condition or value of the Track Easement Area; (iii) the Authority has had an adequate opportunity to inspect the condition of the Track Easement Area, including without limitation, any environmental testing, and to inspect documents applicable thereto, and the Parties are relying solely on such inspection and testing or the rights related thereto contained in this MOU; and (iv) the condition of the Track Easement Area is fit for its intended use as contemplated by the Authority. This Article 7 shall survive the termination of any agreement entered into pursuant to this MOU.

ARTICLE 8: COVENANT NOT TO SUE

The following provisions shall be included in any agreement entered into pursuant to this MOU:

A. By executing this MOU, the Authority, for itself, its directors, officers, agents, affiliates, predecessors, successors and assigns, and anyone acting on its behalf covenants and agrees not to sue CP or its respective directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, grantors or anyone acting on its behalf or their behalf with respect to any Claims (including without limitation all Claims arising under any Environmental Law), existing and contingent, known and unknown, that the Authority had, has or may have, whether arising at common law, in equity, or under a federal, state or local statute, rule or regulation, arising out of, resulting from, or relating to the condition of the Track Easement Area. The foregoing shall apply to any condition of the Track Easement Area, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the property, whether such Hazardous Substance is located on or under the Track Easement Area, or has migrated from or to the Track Easement Area, regardless of whether the foregoing condition of the Track Easement Area was caused in whole or in part by CP’s actions or inactions. This Article 8A shall survive the termination of any agreement entered into pursuant to this MOU.

B. As used in this MOU, “**Claims**” means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorneys’ fees, consultants’ fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims); “**Environmental Law**” means the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42

U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 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 and hereafter enacted; and “**Hazardous Substance**” means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.

C. Notwithstanding any other provisions of this MOU or any agreement entered into pursuant to this MOU, nothing shall: (1) prevent the Authority from reporting the existence of any Hazardous Substance discovered within the Track Easement Area to any governmental authority having jurisdiction under the Environmental Law, including but not limited to the Minnesota Pollution Control Agency, the Environmental Protection Agency, the Minnesota Department of Agriculture, or Dakota County; or (2) prevent the Authority from seeking injunctive relief to enjoin CP, its divisions, agents, affiliates, subsidiaries, successors and assigns, grantors or anyone acting on its behalf or their behalf from allowing ongoing releases of Hazardous Substances in violation of the Environmental Law which may materially and unreasonably impact the Track Easement Area or other real property owned or occupied by the Authority.

ARTICLE 9: NOTICES

Whenever in this MOU it shall be required or permitted that notice and/or demand be given or served by any Party to this MOU to or on any other Party, such notice and/or demand shall be given or served by deposit in the United States Mail, postage prepaid, by Certified Mail, Return Receipt Requested addressed as to the addresses set forth below. In the alternative, such notice may be made by electronic transmission (if a hard copy is sent as provided above or below) or national overnight delivery service. Delivery shall be deemed to be the date of deposit in the mail, as to Certified mail, the date of pick up for delivery, as to national overnight delivery service and the date an electronic transmission is sent as to electronic transmission. Receipt shall be deemed to be the date of delivery (or attempted delivery) as evidenced by the return receipt, as to Certified mail, the date of the electronic transmission, as evidenced by the transmittal report, as to electronic transmission (provided that the hard copy is sent as provided) and the date of receipt, as to national overnight delivery service, as evidenced by the written confirmation of the overnight delivery service. A Party may change such address by written notice to the other Parties delivered in accordance herewith.

CP

Address	Contact Info	
Real Estate Department 900 Canadian Pacific Plaza 120 S. Sixth Street	Name:	Kristine Williams
	Phone:	(612) 851-5791
	Fax:	(612) 904-6147

Minneapolis, MN 55402	Email:	kristine_williams@cpr.ca
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With Copy to:

Leonard, Street and Deinard
150 South Fifth Street, Suite 2300
Minneapolis, Minnesota 55402
Attention: Jim R. Wilson
Phone: 612-335-1875
Fax: 612-335-1657
Email: jim.wilson@leonard.com

AUTHORITY

Address	Contact Info	
Hastings City Hall 101 E. 4th Street Hastings, MN 55033	Name:	John Hinzman, Director
	Phone:	651-480-2350
	Office:	651-480-2378
	Email:	JHinzman@ci.hastings.mn.us

ARTICLE 10: MISCELLANEOUS PROVISIONS

- A. All references in this MOU to specific locations of parcels, easements and improvements are and shall be understood to be approximations and shall be finalized in the individual agreements envisioned by the MOU.
- B. The Parties agree that to the extent that, by its breach of this MOU or commission of fraud or illegal action, a Party has caused direct damage to the other by a violation of this MOU, such Party shall be liable, in law and/or equity, for the damages caused, and the Party so harmed may seek injunctive relief, if appropriate.
- C. This MOU and the transactions contemplated herein shall be governed by the laws of the State of Minnesota.
- D. No Party may assign this MOU or any of its rights or obligations hereunder (including without limitation, rights and duties of performance) to any third party, without the prior written consent of the other Parties hereto. Notwithstanding any such assignment, assignor shall remain liable for the performance of all of its obligations hereunder.
- E. In the event that any provision hereof is found invalid or unenforceable pursuant to a judicial decree, the remainder of this MOU shall remain valid and enforceable according to its terms.
- F. This MOU and any other agreements between the Parties executed concurrently herewith, if any, constitute the entire understanding and contract between the parties hereto and

supersede any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof, all of which are contained and merged herein. This MOU shall not be modified, amended or in any way altered except by an instrument in writing signed by all Parties. All amendments or modifications of this MOU shall be binding upon the Parties despite any lack of consideration so long as the same shall be in writing and executed by all Parties.

- G. This MOU may be executed by facsimile or scanned and e-mailed .pdf image, in two or more counterparts, and by the Parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which when taken together shall constitute one and the same document.

EXHIBITS:

A – LEGAL DESCRIPTION OF LAND

B – LEGAL DESCRIPTION OF TRACK EASEMENT AREA

C – FORM OF RELEASE OF TRACK EASEMENT

D – FORM EASEMENT IN FAVOR OF CP

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be duly executed by their duly authorized representatives as of the dates set forth below, as evidence of their agreement to bound by the terms hereof.

Soo Line Railroad Company
doing business as Canadian Pacific

By: _____

Its Director, Real Estate Marketing, U. S.

Date _____

**Hastings Economic Development and
Redevelopment Authority**

By: _____

Name: _____

Title: _____

Date _____

EXHIBIT A

LEGAL DESCRIPTION OF LAND

Block 16, Town of Hastings, Dakota County, Minnesota.

EXHIBIT B

LEGAL DESCRIPTION OF TRACK EASEMENT AREA

All that part of Lots 1, 2, 7, and 8, Block 16, of the Original Town of Hastings, Dakota County, Minnesota, as described in Corrective Deed No. 36, also known as all of Market Square, according to the original recorded plat thereof.

EXHIBIT C

RELEASE OF TRACK EASEMENT

THIS AGREEMENT, made this _____ day of _____, 20____ between **SOO LINE RAILROAD COMPANY**, a Minnesota corporation, doing business as Canadian Pacific Railway, hereinafter called "Grantor", and **HASTINGS ECONOMIC DEVELOPMENT AND REDEVELOPMENT AUTHORITY**, a public body corporate and politic under the laws of the State of Minnesota, "Grantee",

W I T N E S S E T H:

WHEREAS, by virtue of Corrective Deed No. 36, between CMC Real Estate Corporation and Soo Line Railroad Company, the Grantor did acquire an easement for track purposes upon property in Hastings, Dakota County, Minnesota;

WHEREAS, the parties have abandoned and removed said track;

NOW, THEREFORE, in consideration of Two Thousand, Five Hundred Dollars (\$2,500.00) and other good and valuable consideration, the Grantor does hereby release, remit, and quitclaim and sell to the said Grantee, its successors and assigns forever, all easement rights, title and interest in and upon the following real property:

All that part of Lots 1, 2, 7, and 8, Block 16, of the Original Town of Hastings, Dakota County, Minnesota, as described in Corrective Deed No. 36, also known as all of Market Square, according to the original recorded plat thereof.

The Grantee agrees to accept the condition of the real property, as released by Grantor, including specifically without limitation, the environmental and geological condition of the real property, in an "AS-IS" and with "ALL FAULTS" condition. The Grantee acknowledges and agrees that, except as expressly set forth in this release of track easement: (i) Grantor has not made any written or oral representation or warranty of any kind with respect to the real property (including without limitation express or implied warranties of title, merchantability, or fitness for a particular purpose); (ii) the Grantee has not relied on any written or oral representation or warranty made by Grantor, its agents or employees with respect to the condition or value of the real property; (iii) the Grantee has had an adequate opportunity to inspect the condition of the real property, including without limitation, any environmental testing, and to inspect documents applicable thereto, and the Parties are relying solely on such inspection and testing or the rights related thereto contained in this release of track easement; and (iv) the condition of the real property is fit for its intended use as contemplated by the Grantee.

By executing this release of track easement, the Grantee, for itself, its directors, officers, agents, affiliates, predecessors, successors and assigns, and anyone acting on its behalf covenants

and agrees not to sue Grantor or its respective directors, officers, stockholders, divisions, agents, affiliates, subsidiaries, predecessors, successors and assigns, grantors or anyone acting on its behalf or their behalf with respect to any Claims (including without limitation all Claims arising under any Environmental Law), existing and contingent, known and unknown, that the Grantee had, has or may have, whether arising at common law, in equity, or under a federal, state or local statute, rule or regulation, arising out of, resulting from, or relating to the condition of the real property. The foregoing shall apply to any condition of the real property, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the real property, whether such Hazardous Substance is located on or under the real property, or has migrated from or to the real property, regardless of whether the foregoing condition of the real property was caused in whole or in part by Grantor's actions or inactions.

As used in this release of track easement, "Claims" means any and all liabilities, suits, claims, counterclaims, causes of action, demands, penalties, debts, obligations, promises, acts, fines, judgments, damages, consequential damages, losses, costs, and expenses of every kind (including without limitation any attorneys' fees, consultants' fees, costs, remedial action costs, cleanup costs and expenses which may be related to any claims); "Environmental Law" means the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Water Act, 33 U.S.C. § 1321 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 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 and hereafter enacted; and "Hazardous Substance" means any pollutant, contaminant, hazardous substance or waste, solid waste, petroleum product, distillate, or fraction, radioactive material, chemical known to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by any Environmental Law.

Notwithstanding any other provisions of this release of track easement, nothing contained herein shall: (1) prevent the Grantee from reporting the existence of any Hazardous Substance discovered within the released track easement area to any governmental authority having jurisdiction under the Environmental Law, including but not limited to the Minnesota Pollution Control Agency, the Environmental Protection Agency, the Minnesota Department of Agriculture, or Dakota County; or (2) prevent the Grantee from seeking injunctive relief to enjoin Grantor, its divisions, agents, affiliates, subsidiaries, successors and assigns, grantors or anyone acting on its behalf or their behalf from allowing ongoing releases of Hazardous Substances in violation of the Environmental Law which may materially and unreasonably impact the released track easement area or other real property owned or occupied by Grantee.

[Signatures and notaries on following page]

The Grantor has caused this release of track easement to be duly executed, as of the day and year first above written.

SOO LINE RAILROAD COMPANY

By: _____

Its: Director, Real Estate - U.S.

STATE OF MINNESOTA

)SS

COUNTY OF HENNEPIN

The foregoing quitclaim Release of Track Easement was acknowledged before me this _____ day of _____ 20____ by David S. Drach the Director, Real Estate U.S. of Soo Line Railroad Company, a corporation under the laws of the State of Minnesota, on behalf of the corporation.

Notary Public

The Grantee has caused this release of track easement to be duly executed, as of the day and year first above written.

**HASTINGS ECONOMIC DEVELOPMENT
AND REDEVELOPMENT AUTHORITY**

By: _____
Its: _____

STATE OF MINNESOTA)
)SS
COUNTY OF DAKOTA

The foregoing quitclaim Release of Track Easement was acknowledged before me this _____ day of _____ 20__ by _____ the _____ of the Hastings Economic Development and Redevelopment Authority, a public body corporate and politic under the laws of Minnesota, on behalf of the body corporate and politic.

Notary Public

This instrument was drafted by:

Nikol R. Daniels
Canadian Pacific Railway
120 South Sixth Street, Suite 900
Minneapolis, MN 55402

EXHIBIT D

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT, made this _____ day of _____, 20____ between **HASTINGS ECONOMIC DEVELOPMENT AND REDEVELOPMENT AUTHORITY**, a public body corporate and politic under the laws of the State of Minnesota "Grantor", and **SOO LINE RAILROAD COMPANY**, a Minnesota corporation, doing business as Canadian Pacific Railway, "Grantee".

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property described as: Block 16, Town of Hastings, Dakota County, Minnesota. ("Grantor Owned Land"); and

WHEREAS, Grantor desires to grant to Grantee a non-exclusive easement over the Grantor Land ("Easement Area") as depicted on Exhibit A attached hereto (i) to allow Grantee to park passenger motor vehicles in the marked parking spaces in the Easement Area, and (ii) to use the Easement Area for vehicular and pedestrian access to and from the Grantee's property adjacent to the Easement Area.

NOW THEREFORE, in consideration of Ten Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I - GRANTS OF EASEMENTS

SECTION 1.1 Grant of Easement. Grantor hereby conveys and grants to Grantee, its successors, assigns, tenants and invitees, a non-exclusive (for the joint use with Grantor) easement over the Easement Area (i) for the purpose of parking passenger motor vehicles in the marked parking spaces in the Easement Area, and (ii) to use the Easement Area for vehicular and pedestrian access to and from the Grantee's property adjacent to the Easement Area.

SECTION 1.2 Construction and Maintenance. The Easement Area shall be constructed and maintained (which maintenance shall include snow removal and any necessary restripping, repairing, replacing) by Grantor in a clean, sightly and safe manner. Grantor shall perform such maintenance so as to minimize any interference with the rights and benefits granted under this Agreement.

SECTION 1.3 Indemnification. Grantee hereby agrees to indemnify, defend and hold harmless Grantor from any and all claims, liabilities, costs or expenses (including attorney's fees) arising from claims by third parties for injuries to any person and damage or loss of property occurring on the Grantor Land and arising from the use of the Easement Area by Grantee or any other act of Grantee, her customers, employees, contractors and invitees.

SECTION 1.4 Parking Fee. No fee shall be charged for the use of the Easement Area.

SECTION 1.5 Termination. This Parking Easement shall terminate on the date that Grantee records an instrument in the land records terminating said easement.

ARTICLE II - OTHER PROVISIONS

SECTION 2.1. Run With Land. The easement rights and privileges under this Agreement constitute covenants running with the land and shall be binding upon and inure to the benefit of Grantor and Grantee, respectively, and their respective heirs, executors, personal representatives, successors and assigns.

SECTION 2.2. Severability. If any provision of this Agreement is held to be invalid by any Court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

SECTION 2.3. Construction. The provisions of this Agreement shall be reasonably construed to confer a commercially usable right of enjoyment on the owners benefitted hereby and to otherwise effectuate the purposes of this Agreement.

SECTION 2.4. No Dedication. Nothing herein contained shall be deemed to be a dedication of any part of the Grantor Land to the general public, or for the general public or for any public purposes whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

[Signatures and notaries on following page]

The Grantee has caused this Easement Agreement to be duly executed, as of the day and year first above written.

SOO LINE RAILROAD COMPANY

By: _____

Its: Director, Real Estate - U.S.

STATE OF MINNESOTA

)SS

COUNTY OF HENNEPIN

The foregoing Easement Agreement was acknowledged before me this _____ day of _____ 20____ by David S. Drach the Director, Real Estate U.S. of Soo Line Railroad Company, a corporation under the laws of the State of Minnesota, on behalf of the corporation.

Notary Public

