

Prepared by E. Kenneth Friker  
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10-4-11 DRAFT

For Recorder's Use Only

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**AMENDMENT TO DEVELOPMENT AGREEMENT**  
**(SHEFFIELD SQUARE - 10700 W. 153RD STREET)**

THIS AMENDMENT, made and entered into this \_\_\_\_ day of October, 2011, by and between M/I HOMES OF CHICAGO, LLC, a Delaware limited liability company (“Owner”) and the VILLAGE OF ORLAND PARK, Cook and Will Counties, Illinois, an Illinois municipal corporation (“Village”).

WITNESSETH:

WHEREAS, on August 8, 2011, a certain Development Agreement (“Agreement”) between Owner and the Village was executed; and

WHEREAS, said Agreement related to the real estate (“Real Estate”) consisting of approximately 27.32 acres located on the south side of 153<sup>rd</sup> Street, east of 108<sup>th</sup> Avenue and west of the Metra railroad tracks, in the Village and legally described on Exhibit A attached hereto.

WHEREAS, the Owner must provide sanitary sewer service for the development of the Real Estate in accordance with SECTION FIVE of the Agreement and, in this connection, it will be necessary for Developer to construct and install an eight (8) inch sanitary sewer pipeline across, underneath and along the right-of-way and track of the Commuter Rail Division of the Regional Transportation Authority (“Metra”) located south of 153<sup>rd</sup> Street; and

WHEREAS, to construct and install said sanitary sewer pipeline, the Village (as ultimate owner of said sanitary sewer line) will obtain from Metra a perpetual non-exclusive easement five (5) feet in width which Metra is willing to grant pursuant to the “Pipeline Easement Agreement” in a form substantially as that attached hereto and made a part hereof as Exhibit B; and

WHEREAS, the Village is willing to execute the said Pipeline Easement Agreement to accommodate the Owner's proposed development provided Owner fully indemnifies and holds the Village harmless as to all costs and liabilities which may arise in connection with the construction, installation, maintenance, repair, and operation of said sanitary sewer pipeline, and the easement described in Exhibit B, until such time as the Village has accepted the sanitary sewer pipeline as having been built in accordance with all Village codes and ordinances and in accordance with the Agreement, including the Village-approved engineering plans.

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants herein contained, it is agreed by and between the parties hereto as an amendment to the Agreement as follows:

SECTION ONE:

The preambles set forth above are hereby incorporated into and made a part of this Amendment.

SECTION TWO:

The authorized representative(s) of the Village shall execute the said Pipeline Easement Agreement in a form substantially as that set forth in Exhibit B, attached hereto.

SECTION THREE:

Owner hereby agrees to fully indemnify and hold harmless the Village, its officers, agents, employees, representatives and assigns from any and all claims, lawsuits, liabilities, actions, costs (including reasonable attorneys' fees and defense costs) of any character, brought or asserted because of any death, personal injuries or property damage received or maintained by any person, persons or property on account of any act or omission, neglect or misconduct of the Owner, its officers, agents, employees and/or contractors arising out of, or in performance of any of the provisions or work undertaken pursuant to the Pipeline Easement Agreement and/or the construction, installation, maintenance, repair or operation of the said sanitary sewer pipeline prior to acceptance of said sanitary sewer line by the Village; or from any claims or amounts arising or recovered under the Illinois Workers Compensation Act or any other law, ordinance, order or decree. In connection with any such claims, lawsuits, liabilities or actions, the Village, its officers, agents, employees, representatives and their assigns shall have the right to defense counsel of their choice. The Owner shall be solely liable for all costs of such defense and for all expenses, fees, judgments, settlements and all other costs or expenses arising out of such claims, lawsuits, actions or liabilities. The indemnity and hold harmless provisions of this SECTION THREE shall survive and remain in effect following the acceptance by the Village of said sanitary sewer pipeline as having been built in accordance with all Village codes and ordinances and in accordance with the Agreement, including the Village's approved engineering plans.

SECTION FOUR:

Owner shall make the Village an additional insured under its general liability insurance policy and shall provide the Village with a Certificate of Insurance evidencing such coverage to the reasonable satisfaction of the Village.

SECTION FIVE:

All of the other terms, covenants and conditions of said Agreement, not deleted or amended herein shall remain in full force and effect during the effective term of said Agreement.

SECTION SIX:

This Amendment shall be binding upon and inure to the benefit of the parties hereto, successor owners of record of the Real Estate, and their assignees, lessees and upon any successor municipal authorities of said Village and successor municipalities, as provided in the August 8, 2011, Development Agreement.

SECTION SEVEN:

Notwithstanding any provision of this Amendment to the contrary, the Owner shall at all times during the term of this Amendment remain liable to the Village for the faithful performance of all obligations imposed upon Owner by this Amendment until such obligations have been fully performed or until Village, at its sole option, has otherwise released Owner from any or all of such obligations as provided elsewhere in the Agreement, as amended.

SECTION EIGHT:

It is understood and agreed to by the parties that, except as expressly set forth herein, the Village is not relinquishing any available rights or remedies under the previously entered into Agreement, as amended, and that a violation of this Amendment shall constitute a violation of the Agreement, as amended, as fully as if the violation was a violation of one of the original terms of the Agreement. Also, regardless of whether the Owner is in default hereunder, nothing herein shall be construed to excuse the Owner from any or all of its obligations under the Agreement except as specifically set forth herein.

SECTION NINE:

Failure of any party to this Amendment to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

SECTION TEN:

A copy of this Amendment or a memorandum of this Amendment shall be recorded by the Village.

SECTION ELEVEN:

The President and Clerk of the Village hereby warrant that they have been lawfully authorized by the Village Board of the Village to execute this Amendment. The Village shall, upon request, deliver to each other at the respective time such entities cause their authorized agents to affix their signatures hereto copies of all bylaws, resolutions, letters of direction, ordinances or other documents required to legally evidence the authority to so execute this Amendment on behalf of the respective entities.

SECTION TWELVE:

This Amendment may be executed in two or more counterparts, each of which taken together, shall constitute one and the same instrument.

SECTION THIRTEEN:

This Amendment shall be signed last by the Village, and the President of the Village shall affix the date on which he signs this Amendment, which date shall be the effective date of this Amendment.

IN WITNESS WHEREOF, the parties hereto, pursuant to the authority in each vested according to law and pursuant to duly enacted ordinances and resolutions of the Corporate Authorities, have hereunto caused this document to be signed by its duly authorized officers and the corporate seals to be properly affixed hereto.

VILLAGE OF ORLAND PARK,  
an Illinois municipal corporation

By: \_\_\_\_\_  
Village President

ATTEST:

By: \_\_\_\_\_  
Village Clerk

OWNER:

M/I HOMES OF CHICAGO, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Area President

ACKNOWLEDGMENTS

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF C O O K        )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that DANIEL J. MCLAUGHLIN, personally known to me to be the President of the Village of Orland Park, and DAVID P. MAHER, personally known to me to be the Village Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Board of Trustees of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2011.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
 )SS.  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, personally known to me to be the Area President of M/I HOMES OF CHICAGO, LLC, a Delaware limited liability company, and the same person whose name is subscribed to the foregoing instrument as said Area President of M/I HOMES OF CHICAGO, LLC, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as his free and voluntary act of said M/I HOMES OF CHICAGO, LLC for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2011.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Exhibit A  
TO DEVELOPMENT AGREEMENT  
(SHEFFIELD SQUARE – 10700 WEST 153RD STREET)

PARCEL 1:

THAT PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 36 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 17; THENCE NORTH 88 DEGREES 16 MINUTES 23 SECONDS EAST (SOUTH 89 DEGREES 50 MINUTES 57 SECONDS EAST RECORD) ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, 2,628.49 FEET, (2,639.23 FEET RECORD) TO THE NORTHEAST CORNER OF SAID NORTHEAST QUARTER; THENCE NORTH 87 DEGREES 50 MINUTES 01 SECONDS EAST (SOUTH 89 DEGREES 50 MINUTES 56 SECONDS EAST RECORD) ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 36 NORTH, RANGE 12 EAST 101.12 FEET, (88.44 FEET RECORD), TO THE WESTERLY LINE OF THE NORFOLK AND WESTERN RAILROAD (FORMERLY THE WABASH, ST. LOUIS AND PACIFIC RAILROAD); THENCE SOUTH 16 DEGREES 42 MINUTES 27 SECONDS WEST (SOUTH 18 DEGREES 45 MINUTES 55 SECONDS WEST RECORD) ALONG SAID WESTERLY LINE 218.89 FEET, (221.74 FEET RECORD) TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG A CURVE CONCAVE EASTERLY HAVING A RADIUS OF 4,283.00 FEET, (4061.00 FEET RECORD) AN ARC DISTANCE OF 651.57 FEET (634.25 FEET RECORD) AND CHORD BEARING SOUTH 12 DEGREES 20 MINUTES 58 SECONDS WEST (SOUTH 14 DEGREES 17 MINUTES 27 SECONDS WEST RECORD); THENCE SOUTH 07 DEGREES 59 MINUTES 28 SECONDS WEST (SOUTH 09 DEGREES 48 MINUTES 59 SECONDS WEST, RECORD) ALONG SAID WESTERLY LINE, 541.79 FEET TO A POINT ON THE SOUTH LINE OF 153<sup>RD</sup> STREET PER DOCUMENT NO. 0618045091 RECORDED JUNE 29, 2006, FOR THE POINT OF BEGINNING; THENCE SOUTH 07 DEGREES 59 MINUTES 28 SECONDS WEST (SOUTH 09 DEGREES 48 MINUTES 59 SECONDS WEST RECORD), CONTINUING ALONG SAID WESTERLY LINE 1,002.21 FEET; THENCE SOUTH 88 DEGREES 42 MINUTES 40 SECONDS WEST (NORTH 89 DEGREES 23 MINUTES 39 SECONDS WEST RECORD) 818.32 FEET (818.84 FEET RECORD); THENCE NORTH 39 DEGREES 34 MINUTES 39 SECONDS WEST (NORTH 37 DEGREES 39 MINUTES 03 SECONDS WEST RECORD), 555.89 FEET TO THE EAST LINE OF PROPERTY DESCRIBED IN SPECIAL WARRANTY DEED RECORDED MARCH 28, 2007 AS DOCUMENT NO. 0708715090 TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 180.00 FEET, AN ARC DISTANCE OF 119.24 FEET AND CHORD BEARING NORTH 20 DEGREES 36 MINUTES 02 SECONDS WEST; THENCE NORTH 01 DEGREE 37 MINUTES 25 SECONDS WEST, 354.32 FEET; THENCE NORTH 18 DEGREES 58 MINUTES 40 SECONDS WEST, 83.82 FEET TO SAID SOUTH LINE OF 153<sup>RD</sup> STREET; THENCE NORTH 88 DEGREES 22 MINUTES 35 SECONDS EAST, 1390.65 FEET ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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**PIPELINE EASEMENT AGREEMENT**

The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("**Metra**"), whose address is 547 West Jackson Boulevard, Chicago, Illinois 60661, hereby grants to The Village of Orland Park, a municipality of Illinois with offices located at 14700 South Ravinia Avenue, Orland Park, Illinois ("**Grantee**"), a non-exclusive easement, being five (5) feet in width for pipeline purposes ("**Easement**") and no other purpose, along the right of way and tracks (or track, as the case may be) of Metra located south of 153<sup>rd</sup> Street delineated on the plat attached to and made a part of this Easement as Exhibit "A" ("**Premises**") together with the right of reasonable access thereto for the purpose of exercising the rights and privileges granted in this Easement. Metra and Grantee are hereinafter sometimes individually referred to as a "**Party**" and collectively referred to as the "**Parties**".

That for and in consideration of payments to be made to Metra by Grantee, as hereinafter set forth, and also of the covenants and agreements hereinafter stated, Metra hereby grants to Grantee the right to install an eight (8) inch pipeline, for the purpose of transporting sanitary ~~water~~ <sup>sewer</sup> ("**Pipeline**") and thereafter to maintain, operate and renew the same during the continuance of this Easement, across, underneath or along the Premises.

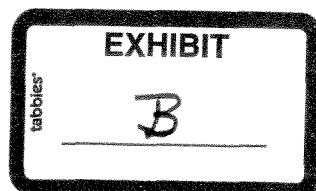
This Easement is granted upon the following express conditions, terms and covenants to be observed, kept and performed by Grantee:

1. (a) As one of the considerations for this Easement, Grantee agrees to pay to Metra the sum of \$1,500.00 for the cost of preparing this Easement, payable in advance.

(b) Additionally, Grantee shall pay to Metra as fair and reasonable compensation an Easement fee in the amount of \$55,000 ("**Easement Fee**").

(c) Metra's right to adjust the Easement Fee in accordance with the terms of this Agreement shall not be invalidated or waived, or deemed to be invalidated or waived, by reason of Metra's delay in giving any notice of such increase required under the terms and provisions of this Agreement or issuing an adjusted Easement Fee bill to Grantee and Metra's failure to send Grantee an adjusted Easement Fee bill shall be without prejudice to the right of Metra to send an adjusted Easement Fee bill to Grantee in subsequent years.

2. Said Pipeline shall be installed and constructed in accordance with the specifications and notes set forth on Exhibit "A". The installation of said Pipeline, including the digging and filling of any trench and the time and manner of doing all of the work or of any maintenance, repairs, replacements or renewals upon the Premises, shall be as directed by Metra's authorized representatives. All of said work shall be done at Grantee's sole cost and expense, in a good and workmanlike manner, and in accordance with plans, specifications, and profiles to be prepared by Grantee and submitted for approval to Metra's authorized





representatives, and until such approval is given, said work upon the Premises shall not be commenced by Grantee.

3. Upon completion of the initial installation and construction of the Pipeline, and upon completion of any subsequent installation, reconstruction, maintenance, repair or replacement of the Pipeline, Grantee, at its own cost and expense, shall remove any debris and restore, or cause to be restored to the reasonable satisfaction of Metra, the Premises and any other affected portion of Metra's property ("**Property**") as nearly as may be, to the same or better condition than that which existed immediately prior to commencement of such activities by Grantee. In the event Grantee fails to cause the Premises and the Property to be restored to the reasonable satisfaction of Metra as provided for herein, Metra shall have the right to restore the Premises and the Property and Grantee shall reimburse Metra for all costs and expenses incurred by Metra in its performance of the obligations imposed upon Grantee hereunder.

4. Metra shall permit Grantee reasonable right of entry to the Premises for the purpose of installing; constructing, replacing, repairing, maintaining and operating said Pipeline. Metra may, however, restrict the location of entry points or access on or over the Premises.

5. Any rights to the Premises not specifically granted to Grantee herein are reserved to Metra and its successors and/or assigns. The Pipeline shall be installed, constructed, repaired, maintained and operated in a manner so as not to interfere with efficient rail operations or any other business operations or activities being conducted by Metra or Metra's tenants or permittees on the Premises and so as not to prevent or unreasonably interfere with use and enjoyment of the Premises by Metra, its employees, agents or permittees for the purpose(s) to which the Premises is now, or may hereafter be committed by Metra. Metra shall have the right to retain the existing tracks and other improvements at the location of this Pipeline on or adjacent to the Premises and also shall have the right at any and all times in the future to construct, maintain and operate over, under, across or parallel to said Pipeline such additional track or tracks as it may from time to time elect. Nothing shall be done or caused to be done by Grantee that will in any manner impair the usefulness or safety of the tracks and other improvements of Metra, or such track or tracks and other improvements as Metra may in the future construct or cause to be constructed over, under, across, or parallel to said Pipeline. This Easement is expressly subject to the rights of third parties to maintain utility and other improvements permitted by Metra on the Premises and the Property. Metra reserves the exclusive right to grant future easements and licenses over, under, across or parallel to the said Pipeline, provided such easements and licenses do not interfere with the Pipeline and the rights granted Grantee pursuant to this Agreement, as determined by Metra in its sole discretion.

6. Grantee agrees that it will bear and pay the entire cost of constructing, maintaining, repairing, replacing and operating said Pipeline. Grantee shall install, construct, maintain, repair, replace, and operate the Pipeline in accordance with all applicable federal, state and local municipal laws, ordinances, rules and regulations promulgated by governmental authorities. Grantee shall not commence work upon the Premises until Metra shall have approved Grantee's plans, specifications and profiles, such approval not to be unreasonably withheld or

delayed. Metra's approval of Grantee's plans, specifications and profiles, shall not relieve Grantee of the duty to verify that the plans, specifications and profiles, and all amendments thereto, are in compliance with the requirements of this paragraph.

7. Grantee shall give to Metra reasonable advance written notice of the time when Grantee will commence any construction, replacement, repair or maintenance of said Pipeline in order that Metra may, if it so desires, have its representative(s) present for the purpose of directing said work so that the same may be done in a manner satisfactory to Metra. Metra in no way waives any rights by failing to have said representative present.

8. Grantee shall not place, keep, store or otherwise permit to be placed, kept or stored on the Premises or the Property any equipment or materials except during such time as Grantee's employees, agents or contractors are physically present and conducting activities permitted under the terms of this Easement. Grantee agrees that it shall not operate or cause to be operated any vehicle of any kind on the Premises, on any track or on the Property without prior authorization from Metra's authorized representative; provided, however, that Grantee shall not be prohibited from operating Grantee's vehicles and equipment on any public crossing of Metra's tracks and rights of way. To the extent that in the reasonable opinion of Metra or its designee, flagging and supervisory services are deemed necessary by reason of the installation, construction, repair, renewal, alteration or removal of said Pipeline, Grantee shall, upon receipt of a bill or invoice therefore, reimburse Metra or its designee for the reasonable cost and expense of furnishing such flagging and supervisory services.

9. Grantee agrees that before and during the installation, construction, replacement, repair, maintenance, or operation of said Pipeline, or at any other time, Metra shall have the right to provide such safe and temporary structures as it may deem necessary for safely caring for and preserving its tracks, buildings or other improvements and Grantee agrees to pay to Metra the entire cost of putting in or removing such temporary structures and of restoring the Premises and the Property as near as may be to the same condition that existed before the commencement of said work.

10. Grantee agrees that it will, immediately upon receipt of a statement showing the amount thereof, pay all costs of any and all work performed upon the right of way and tracks of Metra which shall be made necessary by the construction, maintenance, repair, replacement, renewal or presence thereon of said Pipeline.

11. Grantee agrees that should the construction, maintenance, operation, repair or presence of the Pipeline necessitate any change or alteration in the location or arrangement of any other pipelines, appurtenances or other improvements located on the Premises or the Property, the cost of such change or alteration shall be paid by Grantee within thirty (30) days of presentation of a bill by Metra. Grantee further agrees that if, at any time, Metra shall desire to change the location or grade of its track or tracks or shall desire to use or allow third party railroads to use its right of way at said point of crossing or at any point along a parallel course with the Pipeline for any purpose whatsoever, including but not limited to track installations by

Metra or third parties, Grantee, at its own cost and expense, shall alter, relocate or make all changes to the Pipeline required by Metra. If Grantee shall fail, neglect or refuse to relocate or make such change(s) to the Pipeline for a period of ninety (90) days after the receipt of written notice from Metra, then Metra may make or cause to be made such relocation or change(s) at the expense of Grantee.

12. Grantee shall at all times install, construct, replace, repair, maintain and operate said Pipeline in a secure, safe and sanitary condition and in accordance with all applicable laws, ordinances, rules and regulations. Grantee shall take all reasonable safety precautions to adequately secure the Premises, warn of risks and ensure the safety of the public during periods of construction, reconstruction, replacement, repair, maintenance and operation of the Pipeline. If the manner of installing, constructing, repairing, maintaining, replacing or operating said Pipeline shall at any time be in violation of any applicable law, ordinance, rule, or regulation promulgated by governmental authority, then Grantee shall, at no cost or expense to Metra, upon receipt of appropriate notice from a governmental agency having enforcement jurisdiction over the Premises, make such changes or repairs as shall be necessary. Failure or refusal of Grantee to make the required changes or repairs within the time prescribed by said agency shall terminate this Agreement, and Grantee's rights and interest shall revert to Metra; provided, however, that this Agreement shall not terminate as long as Grantee, in good faith and by pursuit of appropriate legal or equitable remedies, enjoins, defends against, appeals from or pursues other lawful measures to avoid the enforcement of said laws, ordinances, rules or regulations or so long as Grantee is diligently pursuing compliance..

13. To the fullest extent permitted by law, Grantee hereby assumes and agrees to release, acquit and waive any rights against and forever discharge Metra, the Regional Transportation Authority ("RTA") and the Northeast Illinois Regional Commuter Railroad Corporation ("NIRCRC"), their respective directors, administrators, officers, employees, agents, successors, assigns and all other persons, firms and corporations acting on their behalf or with their authority from and against any and all claims, demands or liabilities imposed upon them by law or otherwise of every kind, nature and character on account of personal injuries, including death at any time resulting therefrom, or on account of damage to or destruction of property arising out of or in any way relating to or occurring in connection with, the use of the Premises or the Property for the purposes set forth in this Agreement, or which may occur to or be incurred by Grantee, its employees, officers, agents and all other persons, firms and corporations acting on Grantee's behalf or with Grantee's authority while on the Premises or the Property, or arising from the condition of the Premises or the Property during the term of this Agreement, whether or not such injuries or damages are caused by the actions, omissions or negligence of Metra, the RTA, or the NIRCRC. Notwithstanding anything in this Easement to the contrary, the releases and waivers contained in this paragraph shall survive termination of this Easement.

14. To the fullest extent permitted by law, Grantee agrees to indemnify, defend and hold harmless Metra, the RTA and the NIRCRC, their respective directors, administrators, officers, agents, employees, successors, assigns and all other persons, firms and corporations acting on their behalf or with their authority, from and against any and all injuries, liabilities,

losses, damages, costs, payments and expenses of every kind and nature (including court costs and attorneys' fees) as a result of claims, demands, actions, suits, proceedings, judgments or settlements, arising out of or in any way relating to or occurring in connection with, the use of the Premises or the Property for the purposes set forth in this Agreement, or the condition of the Premises or the Property, or which may occur to or be incurred by Grantee, its employees, officers, agents, and all other persons, firms and corporations acting on Grantee's behalf or with Grantee's authority while on the Premises or the Property, whether or not such injuries, liabilities, losses, damages, costs, payments or expenses are caused by the actions, omissions or negligence of Metra, the RTA or the NIRCRC. Metra agrees to notify Grantee in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision. Grantee further agrees to defend Metra, the RTA, the NIRCRC, their respective directors, administrators, officers, agents and employees against any claims, suits, actions or proceedings filed against any of them with respect to the subject matter of this indemnity provision, whether such claims, suits, actions or proceedings are rightfully or wrongfully made or filed; provided, however, that Metra, the RTA and the NIRCRC, may elect to participate in the defense thereof at their own expense or may, at their own expense, employ attorneys of their own selection to appear and defend the same on behalf of Metra, the RTA, the NIRCRC, and their respective directors, administrators, officers, agents or employees. Grantee shall not enter into any compromise, or settlement of any such claims, suits, actions or proceedings without the consent of Metra, the RTA and the NIRCRC, which consent shall not be unreasonably withheld. Notwithstanding anything to the contrary contained in this Agreement, the indemnities contained in this paragraph shall survive termination of this Easement and the indemnification and hold harmless provisions set forth in this Agreement shall not be construed as an indemnification or hold harmless against and from the negligence of Metra, the RTA or the NIRCRC with respect to any construction work performed by Grantee or those performing on behalf of or with the authority of Grantee in violation of the Illinois Construction Contract Indemnification for Negligence Act.

15. Prior to entering upon the Premises, Licensee agrees to furnish insurance in form and in such amounts as required by Metra's Risk Management Department (312-322-6991) and shall deliver to Metra's Risk Management Department certificates of insurance or such other documentation acceptable to Metra's Risk Management Department evidencing the acquisition of the required insurance to construct, install, use, maintain, repair, replace, operate and renew the Pipeline in accordance with the terms of this Easement.

To the fullest extent permitted by law, during all periods that Grantee or those persons authorized by or acting on behalf of Grantee are on the Premises to perform or cause to be performed any installation, construction, maintenance, or repair with respect to the Pipeline, Grantee shall cause the Commuter Rail Division of the Regional Transportation Authority and its affiliated separate public corporation known as the Northeast Illinois Regional Transportation Authority, both operating under the service mark Metra, as now exists or may hereafter be constituted or acquired, including their interests in partnerships, and any other railroads operating on Metra property, to be designated as additional insureds on all insurance policies relating to the Premises and shall provide proof thereof to Metra prior to entering upon the Premises. At a

minimum, Grantee shall obtain and keep in force the following insurance relating to the Premises:

- a. Worker's Compensation (Coverage A) in an amount no less than required under State law. Additionally, Employer's Liability (Coverage B) in an amount no less than Five Hundred Thousand Dollars (\$500,000.00 – each accident, \$500,000.00 – each disease and \$500,000.00 policy limit-disease);
- b. Business Automotive Liability Insurance with coverage of no less than One Million Dollars (\$1,000,000) combined single limit;
- c. Commercial General Liability with coverage of no less than Two Million Dollars (\$2,000,000) per occurrence; and Four Million Dollars (\$4,000,000.00) aggregate. The Commercial General Liability insurance policy shall not include any exclusion for leakage, seepage or pollution emanating from the pipeline(s).
- d. Railroad Protective Public Liability Insurance (AAR-AASHTO form) in the name of The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra, as now exists or may hereafter be constituted or acquired, and the Regional Transportation Authority, an Illinois municipal corporation (additional railroad(s) at Metra's discretion), providing for a limit of no less than Five Million Dollars (\$5,000,000.00) single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of any person in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any on occurrence. Grantee will furnish such insurance with an aggregate of no less than Ten Million Dollars (\$10,000,000.00) for all damages as a result of more than one occurrence.

Grantee or its contractor(s) shall not commence any work until it has obtained and provided the required insurance and has received approval of same by Metra. All policies must be in full force at the time of submission and shall not be canceled, modified, limited or allowed to expire without having given Metra thirty (30) days prior written notice of such. Notice must be sent via certified mail to: Metra, Attention: Director, Risk Management, 15th Floor, 547 West Jackson Boulevard, Chicago, Illinois 60661.

Grantee's failure to obtain or to cause its contractors to obtain proper insurance coverage or to insure Metra, the NIRCRC or the RTA as additional insureds shall not, at any time, operate as a waiver of each Grantor's right to indemnification and defense against any claims, damages or injuries covered under the terms and provisions of this Agreement. During the term, Metra may make commercially reasonable increases in the amount of insurance required by Grantee or its contractor(s) and/or sub-contractor(s) under the terms and provisions of this Agreement.

16. This Easement may be terminated by Metra effective sixty (60) days after giving

notice to Grantee if the Premises, or any portion thereof, is needed for any Metra or railroad purposes as determined by Metra in its sole discretion or immediately upon notice to Grantee if Grantee ceases to operate or maintain the Pipeline or violates any of the terms, conditions or provisions set forth in this Easement. In case of termination, Grantee shall remove from the Premises said Pipeline and shall restore said Premises to the same or better condition than that which existed prior to the construction and installation of said Pipeline; or upon failure, neglect or refusal of Grantee to do so, Metra may make or cause to be made such removal and restoration, and the total cost hereof shall be paid by Grantee; or, if Metra shall so elect, it may treat the said Pipeline as abandoned by Grantee and may make such disposition thereof as it may see fit. All rights and interest in and to said Premises shall revert to Metra if Grantee vacates, abandons or ceases to use the Premises for a period of twelve (12) consecutive months. In such event, Grantee shall, upon Metra's request, execute appropriate documents releasing Grantee's interests.

17. This Easement and all of the terms, conditions, rights and obligations herein contained shall inure to and be binding upon the Parties, their respective legal representatives, lessees, permittees, successors and/or assigns whether hereinabove so stated or not; but it is distinctly agreed that Grantee shall not assign its rights under this Easement without first having received the prior written consent of Metra. It is Grantee's responsibility to give Metra notice of any change in the identity of the Grantee. In the event Grantee fails to obtain the required consent to assign its rights or fails to notify Metra of a change in the Grantee under this Agreement, Metra may terminate this Agreement or, alternatively, charge Grantee a fee of Fifty Dollars (\$50) per day from the date of the actual assignment or change in Grantee until the date Grantee furnishes to Metra the request for consent to the assignment or notice of the change in Grantee.

18. All payments required to be made by Grantee to Metra under the terms; conditions or provisions of this Easement shall be made within sixty (60) days of Grantee's receipt of any demand or invoice from Metra evidencing the amount of the indebtedness due. Payments not made within said sixty (60) day period shall accrue interest at a rate of one and one half percent (1 ½%) per month or the highest amount permitted by Illinois law, whichever is less, from the date payment is due until paid.

19. All notices, demands and elections required or permitted to be given or made by either Party upon the other under the terms of this Easement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by certified or registered mail, return receipt requested, with proper postage prepaid, facsimile transmission or hand delivered to the respective addresses shown below or to such other party or address as either Party may from time to time furnish to the other in writing. Such notices, demands, elections and other instruments shall be considered delivered to recipient on the second business day after deposit in the U.S. Mail, on the day of successful transmission if sent by facsimile transmission or on the day of delivery if hand delivered.

(a) Notices to Metra shall be sent to:

Commuter Rail Division  
547 W. Jackson Boulevard  
Chicago, Illinois 60661  
Attn: Law Department, General Counsel  
Phone: (312) 322-6699  
Fax: (312) 322-6698

(b) Notices to Grantee shall be sent to:

Village of Orland Park  
Attn: Village Manager  
14700 South Ravinia Avenue  
Orland Park, Illinois 60462  
Phone: (708) 403-6155  
Fax: (708) 349-4859

20. This Agreement shall be governed by the internal laws of the State of Illinois. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of either of the Parties. No waiver of any obligation or default of Grantee shall be implied from omission by Metra to take any action on account of such obligation or default and no express waiver shall affect any obligation or default other than the obligation or default specified in the express waiver and then only for the time and to the extent therein stated. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable. In the event the time for performance hereunder falls on a Saturday, Sunday or holiday, the actual time for performance shall be the next business day. This Easement constitutes the entire agreement between the Parties with respect to the subject matter hereof.

GRANTEE ACKNOWLEDGES THAT INSTRUMENTS OF RECORD, COURT DECISIONS, OR THE LAWS OF THE STATE IN WHICH THE EASEMENT PREMISES ARE LOCATED MAY LIMIT THE QUALITY OF METRA'S TITLE. GRANTEE FURTHER ACKNOWLEDGES THAT GRANTEE PURCHASES THE EASEMENT SUBJECT TO THESE POSSIBLE LIMITATIONS ON THE TITLE AND ASSUMES ALL RESPONSIBILITY FOR INVESTIGATING THE TITLE TO THE EASEMENT PREMISES AND THE APPLICABLE LAWS OF THE STATE.

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ATTEST: \_\_\_\_\_

**COMMUTER RAIL DIVISION OF THE  
REGIONAL TRANSPORTATION  
AUTHORITY:**

By: \_\_\_\_\_  
Executive Secretary

By: \_\_\_\_\_  
Alexander D. Clifford  
Executive Director/CEO

ATTEST: \_\_\_\_\_

**VILLAGE OF ORLAND PARK:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Alexander D. Clifford, personally known to me to be the Executive Director/CEO of the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and \_\_\_\_\_, personally known to me to be the Executive Secretary of said Corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as Executive Director/CEO and Executive Secretary of said Corporation, they signed and delivered the said instrument in their official capacities pursuant to authority given by the Board of Directors of said Corporation and as the free and voluntary act and deed of said Corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

(SEAL)

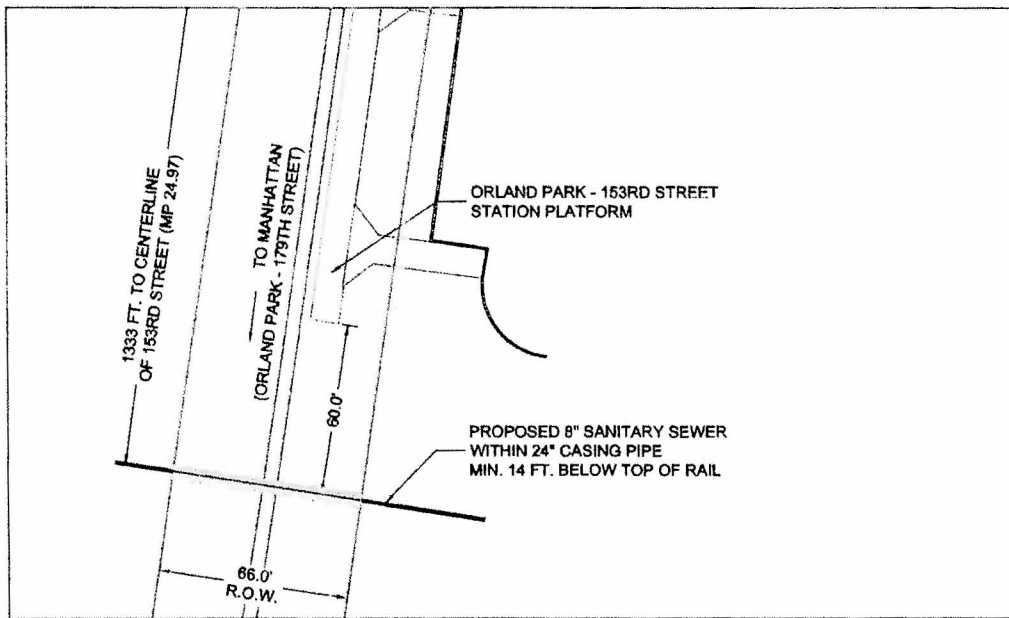
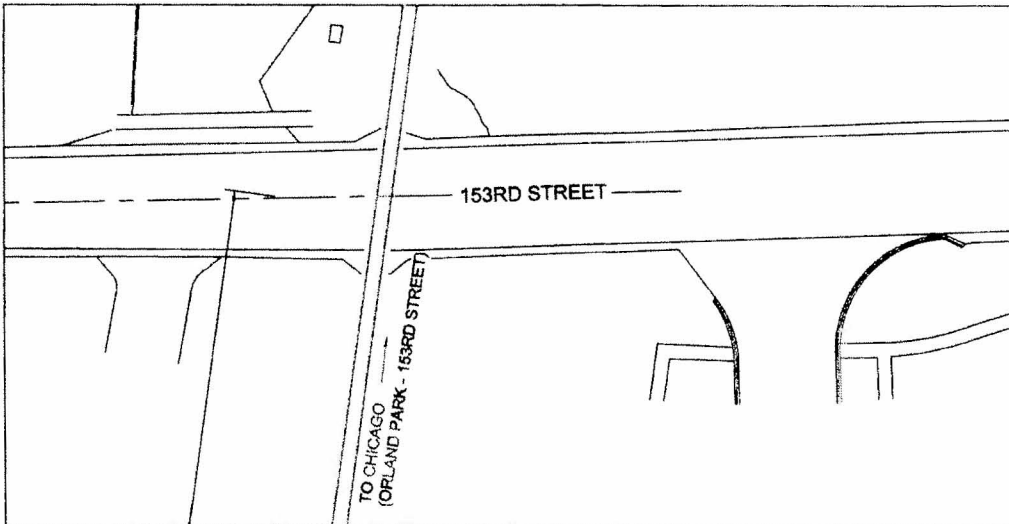
STATE OF ILLINOIS )  
  ) SS.  
COUNTY OF COOK )

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO  
HEREBY CERTIFY that \_\_\_\_\_, personally known to me  
to be the \_\_\_\_\_ of the \_\_\_\_\_, an  
\_\_\_\_\_ municipality, and \_\_\_\_\_ personally known to  
me to be the \_\_\_\_\_ of said Municipality, and  
personally known to me to be the same persons whose names are subscribed to the foregoing  
instrument, appeared before me this day in person and acknowledged that  
as \_\_\_\_\_ and \_\_\_\_\_ of said  
Municipality, they signed and delivered the said instrument in their official capacities pursuant to  
authority given by the Board of Directors and as the free and voluntary act and deed of said  
Municipality, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

(SEAL)



## METRA NOTES - IMPORTANT !!!

### CONTRACTOR SAFETY NOTES

Contractors to a railroad are governed by the provision of a Federal Regulation identified in the code of Federal Regulations Title 49 Part 214 (Roadway Worker Safety and Railroad workplace Safety Standards).

### SAFETY INSTRUCTIONS

Safety of Roadway Workers (including contractors) is of paramount importance in the performance of work being performed for the railroad. No work will be performed when there is the potential of fouling a track (i.e. when an individual or equipment is within four (4) feet of a track or could be struck by a moving train or equipment) until the following items have been completed:

1. A qualified railroad flagman (employee in charge) is present to provide necessary protection or authority.
2. Work (defined as inspection, testing, construction maintenance, or repair to a railroad facility) will begin only after the railroad's employee in charge has conducted a mandatory job briefing consisting of the following:

- Name of flagman (employee in charge)
- Name of lookout (if applicable)
- Type of track authority (explain)
- Track limits
- Time limits
- Protection if any, on adjacent tracks
- Methods of notification for the approach of trains
- Location to clear for trains
- Procedures to arrange for on-track safety on other tracks, if necessary
- Required personal protective equipment

Failure to comply with the provision established for clearing trains, will result in the contractors employee(s) being banned from railroad property and/or subject to personal fines as levied by the Federal Railroad Administration.

Follow-up job briefing will be conducted when:

- The working conditions or procedures change
- Other workers enter the working limits or;
- Track authority is changed, extended, or about to be released.

If any of the above situations occur, work will cease until the follow-up job briefing is conducted.

3. Contractors have the following responsibilities:

Work wear approved by Metra including:

- Highly visible orange vest
- Steel toed safety shoes
- A.N.S.I. approved hard hat (289.1 standards)
- A.N.S.I. meets or exceeds 287.1 eyewear standards
- Hearing protection (when required)
- Respirator protection (when required)
- Fall protection (when required) as specified in FRA Regulations 49 CFR, Part 214- Railroad Workplace safety Standards.

4. Heavy equipment shall be equipped with audible back up warning devices.

5. Contractors will keep the job site free from safety and health hazards.

6. Contractors will post MBDS sheets in the construction trailer.

7. Contractors will post these instruction in a conspicuous place in the construction trailer.

### GENERAL NOTES

None of the contractor's men or equipment may be worked upon Metra's property without a qualified railroad flagman (employee in charge) present. Contractor may work only when authorized to do so by the flagman (employee in charge).

Metra has a very limited number of flagmen. If Metra can not furnish a flagman for a particular date, contractor will not be allowed to work on Metra's property.

Copy of this drawing must be kept on the job site during all phases of construction.

Contractor must contact Cook County District Director of Engineering, at (708) 293-8184 at least 72 hours prior to work start up to arrange for flagging protection etc.

Grantee must have railroad engineering department representative inspect work to determine if slow order protection is required and how long slow order will be in effect.

Metra Signal and Communications Departments must locate any buried cables and/or equipment before digging may begin on railroad property, and must provide protection for any such facilities during the actual construction.  
Note: J.U.L.I.E. and D.I.G.G.E.R. do not locate Metra/Railroad Utilities/Facilities.

Extreme care must be exercised when working under or in proximity of Metra's signal and communication pole lines and wires. Poles must be specially braced if necessary.

The pipeline shall be bored and jacked into place. When jacking operation is stopped, proper, sufficient bulk heads must be placed to preclude any danger of cave-ins. If necessary, due to soil and water conditions encountered, jacking operation must be continuous to ensure safety of railroad tracks.

Any project requiring jacking pits, excavations and/or shoring must have the pit designs, shoring details and locations approved by Metra's Construction Department prior to the beginning of construction on railroad property.

All existing drainage and associated structures must be preserved or accommodated by the scope of this project's work.

No drainage condition shall be created or allowed to exist that is, or may be, adverse to Metra.

Space between carrier and casing pipes shall be blown full of dry sand and ends of casing pipe sealed.

Grantee is responsible for a one year extraordinary track maintenance period. This is to cover reimbursable railroad costs expended for future track surfacing and alignment that may become necessary as a result of settlement of track.

Underground installation(s) shall be prominently marked where they enter and leave the railroad right of way.

Minimum wall thickness shown are for pipes and conduits with protective coating and cathodic protection. Without this protection, wall thickness must be increased by 0.063 inches.



ENGINEERING DEPARTMENT

CHICAGO, ILLINOIS

EXHIBIT "A"  
ORLAND PARK, IL  
SANITARY SEWER CROSSING  
1333 FT. SOUTH OF 153RD STREET

CAD FILE: 08002-153rd san sewer.dwg

SCALE: AS NOTED

DATE: 01/18/08

PROJECT: 08002-153RD