

**Public Highway Easement No. 5081401**

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COVER SHEET FOR RECORDATION OF  
PUBLIC HIGHWAY EASEMENT No. 5081401  
FROM  
SOO LINE RAILROAD COMPANY  
TO  
WAUKESHA COUNTY

4434212

REGISTER OF DEEDS  
WAUKESHA COUNTY, WI  
RECORDED ON

November 07, 2019 02:09 PM  
James R Behrend  
Register of Deeds

13 PGS  
TOTAL FEE:\$30.00  
TRANS FEE:\$0.00

Book Page -



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This space is reserved for recording data

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**Return to:**

Karen Braun  
Waukesha County Department of Public Works  
515 W Moreland Blvd Room 220  
Waukesha WI 53188

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Parcel Identification Number/Tax Key Number  
N/A

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## PUBLIC HIGHWAY EASEMENT No. 5081401

Date: October 17, 2019. County of Waukesha

In consideration of the sum of Twenty Thousand and No/100 Dollars (\$20,000.00), the receipt whereof is hereby acknowledged,

**SOO LINE RAILROAD COMPANY**, a Minnesota corporation doing business as Canadian Pacific, of 120 South Sixth Street, Suite 700, Minneapolis, Minnesota 55402, ("**Grantor**")

hereby grants and conveys unto **Waukesha County** ("**Grantee**"),

an easement ("**Easement**") described and conditioned as follows:

1.0 **DESCRIPTION OF EASEMENT AREA:** The Easement is granted over, under, across and through the following parcel of land in all that part of the Northeast 1/4 of the Northeast 1/4 of Section 22, Township 7 North, Range 20 East, in the city of **Brookfield, Waukesha County, Wisconsin**,

described as follows:

Commencing at the Northeast corner of said Northeast 1/4; thence South 00°11'30" west along the east line of said Northeast 1/4, 70.03 feet; thence North 88°06'06" west parallel with the North line of said Northeast 1/4, 347.27 feet to the east line of the Soo Line Railroad Company lands and the point of beginning; thence South 59°38'35" east along the east line of said Soo Line Railroad Company lands 94.43 feet; thence North 88°06'06" west parallel with the North line of said Northeast 1/4, 209.85 feet to the west line of said Soo Line Railroad Company lands; thence North 59°38'35" west along the west

line of said Soo Line Railroad Company lands, 104.92 feet; thence South 88°06'06" east parallel with the North line of said Northeast 1/4, 209.85 feet to the east line of said Soo Line Railroad Company lands; thence South 59°38'35" east along the east line of Said Soo Line Railroad company lands, 10.49 feet to the point of beginning.

**CONTAINING 0.241 acres**, more or less and hereinafter referred to as the **"Easement Area."**

**2.0 PURPOSES:** The Easement shall be limited to:

- 2.1. The installation, construction, maintenance, repair, replacement, and use of a public highway (the **"Roadway"**) for public vehicular and pedestrian uses over, under, through and across the Easement Area.
- 2.2. The installation, construction, maintenance, repair, replacement, and use of State, county or City owned pipes, wires or other State, County or City-owned utilities (collectively **"Public Utilities"** or individually a **"Public Utility"**) provided that:
  - A. any such Public Utility installed or replaced after the date hereof, shall conform to the standards promulgated by the Grantor for the placement of such item upon, beneath or across operating railroad property;
  - B. No such Public Utility shall be installed without advance written approval of the Grantor and without submitting proposed plans at least 30 days in advance of planned construction, maintenance or replacement;
  - C. Subject to the preceding section 2.2(A) and (B), the installation, repair or replacement of any Public Utility shall be subject to the provisions of Section 5.2 herein;
  - D. The foregoing sections 2.2(A) through (C) shall not apply if railroad operations are abandoned across the Easement Area or if railroad tracks are permanently removed.
  - E. Nothing herein shall be construed to allow a non-government owned utility company to construct, maintain, repair or replace pipes wires or other items upon or across the Easement Area.

**3.0 RESERVATIONS:**

- 3.1 Grantor's railroad operations, tracks and facilities shall be deemed superior to the rights granted herein for Roadway purposes and Grantor reserves the right

and privilege to construct additional tracks or facilities as may be required for railroad traffic, operations or safety.

3.2 Grantor reserves:

- A. fee title to the Easement Area to itself; Grantee's maintenance and use of the Easement Area, however long continued, shall not vest in the Grantee rights adverse to those of the Grantor other than those granted by this Easement;
- B. the right to permit other parties to use the Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Easement Area pursuant to this Easement;
- C. the right of incidental use of the Easement Area in a manner that does not unreasonably interfere with the Grantee's use of the Easement Area pursuant to this Easement; and
- D. the right and privilege to use the Easement Area for any and all other purposes that are not inconsistent with the use thereof for the purpose or purposes permitted by this Easement or which do not unreasonably interfere with or restricts the rights granted to Grantee.

4.0 **TERM, TERMINATION AND EXPIRATION:**

4.1 This Easement shall remain in effect so long as required by Grantee for Roadway or Public Utility purposes. The Easement shall be subject to termination or expiration as follows:

4.1.1 **Abandonment:** In the event the Easement Area is not used for Roadway or Public Utility purposes for a period of twelve (12) consecutive months and Grantor serves upon Grantee a written notice alleging such non-use. If Grantee does not refute the allegation of non-use within 30 days following receipt of said written notice, then Grantee shall be deemed to have agreed with Grantor's allegations and the Easement shall therewith be extinguished.

4.1.2 **Removal:** In the event Grantee substantially removes the Roadway and Public Utilities with the intent of not replacing them, then the Easement shall therewith be extinguished.

4.1.3 **Breach:** If Grantee is unable or unwilling to cure a breach of any of the provisions of this Easement within thirty (30) days (or such longer period as may be reasonably required if Grantee promptly initiates the cure and

diligently prosecutes the cure to completion) following receipt of a written notice from Grantor detailing such breach, then this Easement shall therewith be terminated. The foregoing shall be subject, however, to reasonable seasonal accommodations for any physical work to the Roadway or Public Utilities required to cure a breach.

- 4.2 Upon termination or expiration of this Easement for any reason, except for portions of the Roadway within 10 feet of the centerline of any railroad track owned by Grantor, Grantee shall, at its sole expense, promptly remove the Roadway from the Easement Area and restore the Easement Area to substantially its former state. In the event that Grantee fails to remove the Roadway, within sixty (60) days following receipt by Grantee of a written notice from Grantor that it intends to remove the Roadway, the Roadway may be so removed. Upon receipt of a bill therefor, Grantee shall immediately pay to Grantor the costs incurred by Grantor in the removal of the Roadway.

5.0 **ROADWAY CONSTRUCTION, MAINTENANCE AND REMOVAL WORK:**

The provisions of this Section 5 shall apply to the extent the provisions of this Section 5 are not included in a separate written agreement between the parties.

- 5.1 Division of Responsibility: Grantee shall be responsible, at its cost and expense, for all work necessary to install, construct, maintain, repair, replace and remove the Roadway, except for those portions within 10 feet of the centerline of any railroad track owned by Grantor (the "Track Zones"). Grantor, unless it notifies Grantee to the contrary, shall install, maintain and remove those parts of the Roadway within the Track Zones at Grantee's expense; provided, that Grantor's expense shall in all circumstances be reasonable and customary in the railroad industry for the type of work undertaken. Unless reimbursement has been paid in advance, upon receipt of a bill therefor, Grantee shall reimburse Grantor for such work within the Track Zones.

5.2 Roadway and Public Utility work by Grantee:

- 5.2.1 Grantee, shall secure all necessary public approvals and permits for the construction, maintenance, operation or removal of the Roadway or Public Utilities from or in the Easement Area.

- 5.2.2 Grantor makes no representation by the granting of this indenture that the Easement Area is free of any such pipes, wires, conduits, sewers, pilings or other obstructions.

Prior to any construction, maintenance or removal of the Roadway or Public Utilities, Grantee shall be responsible for determining the location and existence of any pipes, wires, conduits, sewers, piling or other obstructions to the construction of the Roadway. Grantee expressly assumes the risk of

damage to the foregoing pipes, wires, conduits, sewers, piling or other obstructions, if any, and agrees to pay any claims arising from damage thereto in connection with the construction or maintenance of the Roadway.

5.2.3 Grantee shall not carry on any work in connection with the installation, maintenance, repair, changing or renewal of the Roadway or Public Utilities within 25 feet of the center line of any Grantor – owned track until:

5.2.3.1 it shall have given Grantor at least five (5) days' written notice, and

5.2.3.2 an authorized representative of Grantor shall, at Grantor's election, be present to supervise same. Upon bills being rendered for the authorized representative's supervision, Grantee shall promptly reimburse Grantor for all reasonable expenses incurred by it in connection with such supervision, including all labor costs for flagmen supplied by Grantor to protect railroad operations, and for the entire cost of the furnishing, installation and later removal of any temporary supports for said tracks, if any.

5.2.4 Prior to the commencement of work, the Grantee shall require any third party contractor acting on behalf of the Grantee pursuant to this Easement to:

5.2.4.1 to the extent permitted by law, execute and deliver to the Grantor a release of liability that shall provide that the contractor shall indemnify, hold harmless and defend the Indemnitees (as defined below) from and against all claims arising out of, resulting from or relating to any loss of (or damage to) any property or business or any injury to (or death of) any person, where such loss, damage, injury, or death actually or allegedly arises (whether directly or indirectly, wholly or in part) from any negligence or willful misconduct of the Contractor (or its employees, agents, or contractors) while on the Easement Area pursuant to this Easement. Indemnitees means Grantor, its subsidiaries, affiliated companies and parent companies, and their directors, officers, employees and agents, including without limitation, Soo Line Railroad Company, Delaware and Hudson Railroad Corporation, Dakota, Minnesota and Eastern Railroad Corporation, Soo Line Corporation, Wyoming, Dakota Railroad Properties, Inc., The Milwaukee Motor Transportation Company, Hiawatha Transfer Company, and Canadian and Pacific Railway Company. In no event will the Grantee be required to indemnify, hold harmless and defend the Indemnitees (as defined above) from and against any claim whatsoever.

5.2.4.2 maintain during any period of time that any of its employees or agents or equipment are upon the Property, policies of insurance with initial limits of coverage shown in brackets "[ ]" as follows:

- a) Worker's Compensation Insurance which fully meets the requirements of any Workers' Compensation law in force in Wisconsin, including the requirements of any Occupational Disease Law.
- b) Business Automobile Coverage Insurance covering all owned, non-owned and hired vehicles engaged in or on the Easement Area, with a combined single limit of \$[1,000,000.]
- c) Commercial General Liability insurance with a combined single limit of \$[2,000,000].

5.2.5 The above policies of insurance shall further be subject to the following:

5.2.5.1 The coverage limits of the foregoing policies shall be initially as shown in brackets, but such amounts shall after one year from the date hereof be such amounts as Grantor reasonably deems standard for work in close proximity to railroad operations.

5.2.5.2 Each such insurance policy shall name the Grantor as an additional Insured. Prior to commencement of any work upon the Easement Area, the Grantor must receive and approve a certificate or certificates of insurance for each such insurance policy stating that such coverage will not be canceled or materially changed without ten (10) days written notice being given to the Grantor. The certificate for the Commercial General Liability Policy of insurance shall include the following endorsement:

"It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with work to be performed in connection with the Roadway as set forth in the easement grant dated October 17, 2019 by Soo Line Railroad Company to Waukesha County, including work upon railroad property, within railroad right of way and in close proximity of operating railroad tracks."

5.2.6 Grantee shall, at its sole expense, do all necessary grading of the Roadway approaches to said grade crossing and install drainage culverts, if required by Grantor, all in a manner satisfactory to the Grantor's Division Engineer or other designated representative; provided that if such grading is completed according to approved plans, any such grading shall be deemed approved by Grantor.

5.2.7 Except repairs caused by Grantor's malicious acts, Grantee, at Grantee's sole expense, whenever notified in writing by Grantor to do so, shall promptly make such repairs to or changes in the Roadway, including reasonable changes in

- a) Worker's Compensation Insurance which fully meets the requirements of any Workers' Compensation law in force in Wisconsin, including the requirements of any Occupational Disease Law.
- b) Business Automobile Coverage Insurance covering all owned, non-owned and hired vehicles engaged in or on the Easement Area, with a combined single limit of \$[1,000,000].
- c) Commercial General Liability insurance with a combined single limit of \$[2,000,000].

5.2.5 The above policies of insurance shall further be subject to the following:

5.2.5.1 The coverage limits of the foregoing policies shall be initially as shown in brackets, but such amounts shall after one year from the date hereof be such amounts as Grantor reasonably deems standard for work in close proximity to railroad operations.

5.2.5.2 Each such insurance policy shall name the Grantor as an additional Insured. Prior to commencement of any work upon the Easement Area, the Grantor must receive and approve a certificate or certificates of insurance for each such insurance policy stating that such coverage will not be canceled or materially changed without ten (10) days written notice being given to the Grantor. The certificate for the Commercial General Liability Policy of insurance shall include the following endorsement:

"It is agreed that the policy or policies of insurance evidenced by this certificate covers the liability assumed by the insured in connection with work to be performed in connection with the Roadway as set forth in the easement grant dated October 17, 2019 by Soo Line Railroad Company to Waukesha County, including work upon railroad property, within railroad right of way and in close proximity of operating railroad tracks."

5.2.6 Grantee shall, at its sole expense, do all necessary grading of the Roadway approaches to said grade crossing and install drainage culverts, if required by Grantor, all in a manner satisfactory to the Grantor's Division Engineer or other designated representative; provided that if such grading is completed according to approved plans, any such grading shall be deemed approved by Grantor.

5.2.7 Except repairs caused by Grantor's malicious acts, Grantee, at Grantee's sole expense, whenever notified in writing by Grantor to do so, shall promptly make such repairs to or changes in the Roadway, including reasonable changes in



location as Grantor may require to accommodate changes in railroad operations or construction of railroad facilities.

5.2.8 Grantee, at Grantee's sole expense, whenever notified in writing by Grantor to do so, shall promptly make emergency repairs to the Roadway as Grantor and Grantee agree are necessary. If Grantee fails to make such repairs within a reasonable period, Grantor shall have the right, at its election, to make these emergency repairs to the Roadway and in such event Grantee, upon bills being rendered therefor, will promptly reimburse Grantor for all reasonable expenses incurred in connection therewith.

5.3 Roadway work by Grantor: Unless Grantee is notified to the contrary, on a case-by-case basis, Grantor shall construct, maintain and remove that part of the Roadway within the Track Zones at Grantee's expense; provided, that Grantor's expense shall in all circumstances be reasonable and customary in the railroad industry for the type of work undertaken. Grantee shall, upon receipt of an invoice therefor, pay Grantor for all costs and expenses incurred by Grantor in connection with:

5.3.1 The construction, maintenance or renewal of improvements necessary for rail bed, tracks, flanger signs, drainage, and road surface;

5.3.2 Flagging services as may be required by Grantor;

5.3.3 Any grading, paving installation of approach signs and the paving of the roadway approaches up to the edge of the rail ties performed by Grantor;

5.3.4 Incidental work and materials to construct, maintain, or renew any at-grade crossing, roadway or appurtenances thereto, other than signal or warning devices, including gates;

5.3.5 Other incidental expenses and reasonable administration or overhead charges not to exceed reasonable and customary expenses incurred or allocated under similar circumstances in the railroad industry.

6.0 **TAXES AND ASSESSMENTS:** Grantee shall assume and pay any taxes or assessments which may be levied by any competent authority by reason of the existence or use of said land for public highway purposes.

7.0 **LIABILITY:**

In consideration for the grant of the Easement, without which it would not be granted, Grantee assumes all risk of damage to or destruction of the Roadway or Public Utilities through any cause whatsoever while located upon and across the Easement Area, except as may result from Grantor's willful malicious misconduct.

8.0 **ENVIRONMENTAL:**

8.1 As used in this Section, the following terms have the following definitions:

- 8.1.1 **"Claim"** or **"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 attorney's fees, consultants' fees, response costs, remedial action costs, cleanup costs and expenses which may be related to any Claims);
- 8.1.2 **"Environmental Law"** or **"Environmental Laws"** 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 or hereafter enacted;
- 8.1.3 **"Hazardous Substance"** or **"Hazardous Substances"** means any petroleum product, distillate, or fraction, radioactive material, chemical known to the Federal Government or the State of Wisconsin to cause cancer or reproductive toxicity, polychlorinated biphenyl or any other chemical, substance or material listed or identified in or regulated by an Environmental Law of the United States or the State of Wisconsin including but not limited to Federal or Wisconsin hazardous waste laws;
- 8.1.4 **"Release"** or **"Released"** means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or spreading of any Hazardous Substance into the environment, as "Environment" is defined in CERCLA;
- 8.1.5 **"Response"** or **"Respond"** means action taken in compliance with Environmental Laws to correct, remove, remediate, cleanup, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Substance;
- 8.1.6 **"Use"** means to manage, generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of, or abandon a Hazardous Substance.

8.2 The Grantee:

- 8.2.1 shall be familiar with the requirements of, comply with, and secure at the Grantee's own expense any permits or licenses required by, all applicable laws, regulations, ordinances, and standards, including without limitation all Environmental Laws;
- 8.2.2 shall, upon written request by the Grantor (but only in such circumstances where Grantor has reasonably reliable information that the Easement Area has been contaminated by the Release of the Hazardous Substance), provide the Grantor with the results of appropriate reports and tests from a qualified engineer to demonstrate that the Grantee has complied with all Environmental Laws relating to the Easement Area;
- 8.2.3 shall not in any manner cause or allow the Easement Area to become a hazardous waste treatment, storage or disposal facility within the meaning of, or otherwise bring the Easement Area within the ambit of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. or any similar state statute or local ordinance;
- 8.2.4 shall not, without prior written disclosure to and approval by the Grantor, Use or authorize the Use of any Hazardous Substance on the Easement Area, except for the Roadway and other incidental and associated uses and such other utilization as may be in accordance with Environmental Laws;
- 8.2.5 shall not cause or allow the Release of any Hazardous Substance on, to, or from the Easement Area;
- 8.2.6 shall promptly notify the Grantor of any actual or suspected Release of any Hazardous Substance on, to, or from the Easement Area, regardless of the cause of the Release;
- 8.2.7 shall promptly provide the Grantor with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, causes of action, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, or other federal, state or local agency or authority, or any other entity or individual, concerning any Release of a Hazardous Substance on, to or from the Easement Area, or any alleged violation of or responsibility under any Environmental Law relating to the Easement Area; and
- 8.2.8 shall promptly take all necessary action in Response to any Release or Use of a Hazardous Substance by Grantee at the Easement Area that gives rise

to any liability, claim, cause of action, obligation, demand, fine, penalty, loss, judgment or expense under any Environmental Law, or causes a significant public health or workplace effect, or creates a nuisance.

8.2.9 By accepting delivery of this Easement, >the Wisconsin Department of Transportation, acting by and through its Commissioner of Transportation, 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 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 Easement Area. The foregoing shall apply to any condition of the Easement Area, known or unknown, contemplated or un contemplated, suspected or unsuspected, including without limitation the presence of any Hazardous Substance on the Easement Area , whether such Hazardous Substance is located on or under the Easement Area, or has migrated from or to the Easement Area, regardless of whether the foregoing condition of the Easement Area was caused in whole or in part by the Grantor's actions or inactions.


## 9.0 MISCELLANEOUS:

- 9.1 Grantee/Grantor: As used in this Easement, the terms “**Grantee**” and “**Grantor**” shall include the parties first named above and their respective successors or assigns.
- 9.2 Headings: The paragraph headings used in this Easement are used solely for the purpose of convenience. They are not intended to, and do not, modify or limit the wording of the paragraphs to which they are appended, and they shall not be used or construed as guides to the interpretation of said paragraphs.
- 9.3 Severability of Terms: Each provision, paragraph, sentence, clause, phrase, and word of this Easement shall apply to the extent permitted by applicable law and is intended to be severable. If any provision, paragraph, sentence, clause, phrase or word of this indenture is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the legality or validity of the remainder of this Easement.
- 9.4 No Waiver: Any act or omission constituting a breach of this Easement shall be limited to such act or omission and shall not be construed as a permanent or continuing waiver thereof;

- 9.5 Notices: Any notice given by a party pursuant to this Easement, shall be good if served upon the other party, or if deposited in a United States post office, certified mail, addressed to the other party at its last known address.
- 9.6 Entire Agreement: This Easement constitutes the entire agreement of the parties concerning the rights, responsibilities, and obligations of the parties hereto, and supersedes any and all prior agreements or oral understandings between the parties with respect thereto. Any modification to the terms of this Easement shall be in the form of a duly-executed addendum or supplement to this Easement.
- 9.7 No Warranty: Grantor does not warrant title to the Easement Area, and makes no representations or warranties, express or implied, as to the habitability of the Easement Area or the fitness of the Easement Area for Grantee's purpose or any other particular purpose.
- 9.8 Choice of Law: This y Easement and all claims relating to or arising therefrom, or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed and construed according to the laws of Wisconsin, excluding Wisconsin's choice-of-law principles.
- 9.9 Prior Appropriation: To the extent this Easement imposes obligations on Grantee that require the expenditure of funds by Grantee, such obligations are contingent upon and subject to the >Wisconsin Legislature appropriating funds for such obligations. If there is no appropriation of funding for all or part of any such obligation, Grantee shall make a good faith effort to secure funding to cover the obligation.

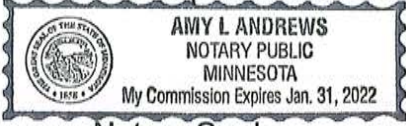
This Easement shall inure to the benefit of and be binding upon the successors and assigns of the Grantor and the Grantee.

**SOO LINE RAILROAD COMPANY**  
*doing business as Canadian Pacific*

By:   
 Nikol R. Daniels  
 Its: Manager Real Estate - U.S.

STATE OF MINNESOTA    )  
   ) ss:  
 COUNTY OF HENNEPIN    )

The foregoing easement was acknowledged before me this 17<sup>th</sup> day of December, 2019, by Nikol R. Daniels, Manager 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 Seal

Amy L. Andrews  
Notary Public

This instrument was drafted by:  
Real Estate Department  
Canadian Pacific  
700 Canadian Pacific Plaza  
120 South Sixth Street  
Minneapolis, Minnesota 55402