RESOLUTION 1002

RESOLUTION AUTHORIZING THE EXECUTION OF MEMORANDUM OF AGREEMENT WITH CANADIAN NATIONAL RAILWAY COMPANY

WHEREAS, the Village of Barrington Hills (the "Village") and Grand Trunk Corporation, a wholly owned subsidiary of Canadian National Railway Company ("CN") desire to enter into an Memorandum of Agreement (the "Agreement") regarding mitigation of certain impacts to the Village resulting from the merger of CN with the EJ&E Railroad; and

NOW, THEREFORE, BE IT RESOLVED by the President and the Board of Trustees of the Village of Barrington Hills, Cook, Kane, Lake, and McHenry Counties, Illinois, as a home rule municipality the following:

Section One The Village President is hereby authorized to execute the Agreement, substantially on the terms set forth in the copy attached hereto and made a part hereof as Exhibit A with such modifications as may be deemed necessary or desirable by the Village President and the Village Attorney.

Section Two If any part or provision of this Resolution shall be held or deemed to be invalid, such invalidity shall not have the affect of rendering another part or provision of this Resolution invalid.

Section Three This Resolution shall be in full force and affect from and after its passage and approval as provided by law.

APPROVED THIS 25th day of January, 2010.

AYES: 4; NAYS: 2; ABSENT: 1.

Village President

ATTEST:

Dolores G. Stander
Village Clerk

Exhibit A

Agreement

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** ("Memorandum") is made and entered into this 30th day of April, 2010, by and between the Village of Barrington Hills, an Illinois municipal corporation ("Barrington Hills") and Grand Trunk Corporation, a wholly owned U.S. subsidiary and owner of the U.S. rail operating subsidiaries of Canadian National Railway Company ("CN") (collectively, "GTC"), and co-applicant in the filing before the Surface Transportation Board ("STB"). This Memorandum sets out certain commitments GTC is prepared to make to address the following issues resolved by the parties related to existing train traffic and changes in train traffic anticipated as a result of the CN/EJ&EW transaction ("Transaction"), authorized by the STB on December 24, 2008 in STB Finance Docket No. 35087, and the corresponding agreement by Barrington Hills that these commitments by GTC resolve any outstanding concerns Barrington Hills has related to the Transaction. The specific terms of this Memorandum between GTC and Barrington Hills are summarized below, and will be effective upon the execution of this Memorandum by duly authorized representatives of Barrington Hills and GTC.

A.

I. **Quiet Zones.** GTC will fund additional measures required to maintain the existing Quiet Zone designation on the EJ&EW line acquired by GTC within the limits of Barrington Hills should the retention of the designation be jeopardized by additional train volumes on the line resulting from the Transaction. This provision will be limited for a period of 10 years from the date of acquisition by GTC of control of EJ&EW.

II. **Operations**

(A) GTC will install appropriate warning signs at the intersection of State Route 59 and Penny Road notifying drivers of possible limited queues if the railroad gates are down.

(B) GTC will fund the removal of existing graffiti from the bridge abutment adjacent to the tracks located underneath Algonquin Road. GTC will commit up to $5,000 toward this effort upon receipt of a written request from Barrington Hills. Barrington Hills shall be responsible for any notice to and approval from IDOT.

III. **Safety Cameras.** GTC will provide up to $25,000 per location to Barrington Hills for the installation of CCTV cameras at the intersection of the EJ&EW and Otis/Penny Roads and at the grade separation at IL Rte. 62/68. These cameras will be owned and maintained by Barrington Hills. They are provided to the Village to plan the routing of emergency response vehicles.

IV. **Emergency Response Training.** GTC will provide training at no cost to Barrington Hills for the designated lead agency responsible for Barrington Hills's emergency response. All training will be completed within a 3-year span. This does not preclude additional training in subsequent years for new employees and as a refresher.

V. **Other**

(A) GTC has an existing license agreement providing for a concrete dam and floor attached to railroad wingwalls, designated as bridge 87 within Barrington Hills. GTC will terminate this agreement and grant an easement to Barrington Hills or a

homeowner's association that agrees to secure and keep in place GTC's then-standard insurance requirements at such time as requested by Barrington Hills in substantially the form attached hereto as Exhibit A. GTC will provide up to $100,000 to Barrington Hills to complete repairs to or replacement of the structure, which funds will be paid to Barrington Hills promptly upon receipt by GTC of invoices for the work performed.

(B) GTC and Barrington Hills , within thirty (30) days following Barrington Hills' request, will negotiate and enter into an Annexation Agreement with respect to GTC's railroad right-of-way described on the attached CN Railway Parcel Location Map that is in unincorporated Cook County (the "Unincorporated ROW"), substantially on the terms of the form Annexation Agreement attached hereto as Exhibit B. Should Barrington Hills determine that the Unincorporated ROW should be annexed in separate parcels or partially to Barrington Hills and partially to South Barrington, GTC shall cooperate with Barrington Hills in connection therewith.

B.

CONDITIONS FOR GTC'S OBLIGATIONS UNDER THIS MEMORANDUM OF AGREEMENT

I. The commitments of GTC set forth in this Agreement are conditioned upon the following:

(A) Acquisition by GTC of control of the EJ&EW, pursuant to STB authorization.
(B) Barrington Hills also agrees to withdraw from membership in the TRAC coalition and publicly acknowledge this action within 20 days of execution of this Memorandum.

II. Upon execution of this Memorandum and the acquisition of control of EJ&EW by GTC, GTC will fulfill its commitments contained in this agreement within a three-year period after acquisition of control.

III. Barrington Hills agrees that it shall not make further submissions in the STB proceeding (or in related appellate proceedings) without GTC's prior review and approval except in support of this agreement and/or the STB's decision approving the Transaction.

IV. **Confidentiality**

This negotiated Memorandum and its terms shall be confidential, except to the extent disclosure may be essential for consideration by the Barrington Hills corporate authorities at a public meeting and as otherwise required by the Illinois Freedom of Information Act ("FOIA"), and by law and, other than under FOIA, only after notice to, and consultation between GTC and Barrington Hills, and except that it may be submitted to the STB's Section of Environmental Analysis ("SEA"), subject to a request that it be kept confidential by SEA and the STB.

V. **Sole Remedy**

It is the intent of the parties to this Memorandum that the STB require GTC's compliance with this agreement in lieu of any additional or inconsistent mitigation that the STB might otherwise impose regarding environmental impacts in Barrington Hills. SEA has asked that CN provide copies of any formalized agreements between GTC and affected communities, and the parties agree that GTC shall provide a copy of this Memorandum to SEA upon execution.

[Signature page follows]

Agreed To:

GTC

By: Erin T. Johnson
CTC

Director Strategy
Title

Date: May 1, 2010

Agreed To:

Village of Barrington Hills

By:
President

Attest: Dolores G. Trendel
Deputy Village Clerk

Date: March 29, 2010

EXHIBIT A

EASEMENT AGREEMENT

EXHIBIT A

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is entered into this 30 day of April, 2010, by and between ELGIN, JOLIET AND EASTERN RAILWAY COMPANY, an Illinois corporation (hereinafter referred to as "GRANTOR") and VILLAGE OF BARRINGTON HILLS, ILLINOIS, an Illinois municipal corporation (hereinafter referred to as "GRANTEE").

RECITALS

WHEREAS, GRANTOR is the owner of certain real property depicted in Exhibit A, attached hereto and incorporated herein by reference (hereinafter referred to as the "Premises"); and

WHEREAS, there currently exists on the Premises a wooden spillway, weir or dam (the "Dam") that is governed by an October 10, 1936 License Agreement; and

WHEREAS, GRANTOR has agreed to grant GRANTEE an easement for the purposes set forth herein on the Premises, but only under the following terms and conditions.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, the parties hereby agree that:

1. RECITALS INCORPORATED. The foregoing recitals are incorporated herein by reference as though fully set forth.

2. EASEMENT GRANT. GRANTOR grants to GRANTEE an easement on, over, and across the Premises depicted in Exhibit A for the purposes of operation, maintenance, repair, replacement, and removal of the Dam. GRANTOR shall retain the right to use the Premises for any lawful purpose not inconsistent with the rights granted herein. Any construction, maintenance or repair work undertaken pursuant to this paragraph by GRANTEE shall not unreasonably interfere with GRANTOR'S railroad operations to the maximum practicable extent. Nothing herein shall obligate GRANTEE to operate, maintain, repair, replace or remove

the Dam and any rights exercised by GRANTEE under this Agreement to do so are exercised at the sole and absolute discretion of GRANTEE.

3. ADDITIONAL RIGHTS. In addition to the rights granted in Section 2 above, GRANTOR shall also allow GRANTEE and GRANTEE's contractors and licensees to access the Premises over GRANTOR's adjacent property ("Adjacent Property"), but only under the terms stated herein. Because the Adjacent Property includes an active rail line, GRANTEE will not exercise the access rights granted herein without first contacting GRANTOR as provided below at least seven (7) business days prior to seeking access over the Adjacent Property and providing GRANTOR with a complete description of when access is requested, how many personnel and what machines will be accessing the Adjacent Property, what work is to be performed on the Dam, and any other information reasonably requested by GRANTOR. GRANTOR shall provide reasonable cooperation to GRANTEE to allow GRANTEE to exercise the access rights, but in no event will GRANTOR be required to alter its train schedule to accommodate exercise of the access rights.

4. EASEMENT CONDITIONS. This grant of easement shall be subject to the following conditions:

a) No structures shall be constructed or reconstructed on the Premises until GRANTOR has reviewed and approved written plans for same, such approval not to be unreasonably withheld or delayed. Under no circumstance will GRANTOR be required to approve any work or design on the Premises that is reasonably likely to cause significant damage to the Premises, the Adjacent Property, GRANTOR's personal property and fixtures, or GRANTOR's employees or agents.

b) All work performed by GRANTEE on the Premises shall be performed in accordance with the requirements of municipal, county, state, and federal laws, ordinances, and regulations. In addition, any contractor hired by GRANTEE to perform any work on the Premises shall execute GRANTOR's then-standard right of entry agreement, which may include

terms requiring insurance, indemnity, and training for work adjacent to railroad tracks. GRANTEE shall not undertake any work on the Premises, and shall not access the Adjacent Property, in the absence of a flagman to be provided by GRANTOR at GRANTEE's expense.

c) GRANTEE shall not have the right to admit any other party to the Premises, other than contractors for the performance of construction, repair or maintenance work, and all such persons shall be considered to as GRANTEE for all purposes herein.

GRANTOR shall use best efforts to minimize any damage to the Dam in the course of operating its Adjacent Property and maintaining its nearby bridge.

5. RESTORATION. Upon the completion of any work authorized by this Agreement, GRANTEE shall restore the surface of the Premises and the Adjacent Property to the same or better condition than that which existed prior to the beginning of any work.

6. CONSTRUCTION FENCING. Prior to beginning any construction, repair or maintenance work authorized by this Agreement, GRANTEE shall erect a temporary construction fence around the Premises and the Adjacent Property (as reasonably required by GRANTOR) to ensure that all construction, repair or maintenance activities are confined within the Premises and the Adjacent Property until such time as said construction, repair or maintenance activities are completed.

7. CONSTRUCTION LIMITED TO PREMISES. During the construction, maintenance or repair of the Dam, all work activity shall be confined within the Premises and the Adjacent Property, including but not limited to, the movement and storage of equipment and materials. All debris resulting from the construction, maintenance or repair activities shall be legally disposed of from GRANTOR'S property by GRANTEE at GRANTEE's expense. No construction personnel shall be permitted on GRANTOR'S property outside the Premises and the permitted areas of the Adjacent Property.

8. NOTICE. GRANTEE shall notify GRANTOR in writing at least seven (7) days in advance of any construction, maintenance or repair work to be undertaken upon the Premises,

except in the event that emergency repairs are required within the Premises, in which event GRANTEE shall provide notice to GRANTOR as soon as practicable, but in no event will GRANTEE access the Adjacent Property with any form of construction equipment or tools without permission to enter same from GRANTOR. Any notice required to be given pursuant to this Agreement shall be by personal delivery, a nationally recognized overnight delivery service, or facsimile as follows:

To GRANTOR: Senior Manager - Engineering
Elgin, Joliet and Eastern Railway Company
17641 S. Ashland Avenue
Fax: (708) 332-4361

To GRANTEE: Village of Barrington Hills
112 Algonquin Road
Barrington Hills Illinois 60010
Attention: Village Administrator
Fax: (847) 551-3050

All notices shall be deemed given upon the time of delivery or transmission by facsimile. Either party by notice to the other may change or add persons and places where notices are to be sent or delivered pursuant to the provisions of this paragraph.

9. HOLD HARMLESS. GRANTEE shall indemnify, defend and hold GRANTOR harmless from any and all claims, causes of actions, damages, lawsuits and/or administrative proceedings, including attorney's fees, costs and expenses, now or hereafter existing and resulting from GRANTEE'S exercise of the rights granted herein, GRANTEE's breach of any term or condition of this Agreement, or GRANTEE's breach of any Federal, State or local law, rule, regulation or ordinance while exercising the rights granted herein. Further, GRANTEE shall not permit any liens to be placed on the Premises or the Adjacent Property resulting from the installation, repair, replacement, modification, or maintenance of the Dam, and GRANTEE will immediately cause such liens to be extinguished.

10. ENTIRE AGREEMENT. This instrument contains the entire agreement between the parties relating to the rights granted herein and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force and effect, and

modifications to this Agreement must be in writing and must be signed by all parties to this Agreement.

11. COVENANT RUNNING WITH THE LAND. This easement and the promises contained in this Agreement shall be a covenant running with the land and shall be binding upon GRANTEE, GRANTOR and any of their lessees, successors in interest, heirs, tenants, devisees and assigns from and after the date of execution by the parties hereto.

12. LAW GOVERNING. The laws of the State of Illinois shall govern the terms of this Agreement both as to interpretation and performance.

13. ASSIGNMENT. This Agreement may only be assigned by GRANTEE to a homeowner's association representing homeowners who own real property located in the vicinity of the Dam or the lake created thereby. GRANTOR shall have exclusive authority to approve any such assignment, and may condition such assignment on the designated homeowner's association demonstrating compliance with GRANTOR's then-standard insurance policies. Upon any assignment of this Agreement by GRANTEE, the assignor shall be released from any obligations accruing from and after the date of such assignment.

14. TERMINATION. The easement granted by this Agreement and the promises and obligations contained herein shall terminate and expire if for any reason GRANTEE serves notice upon GRANTOR that it no longer intends to use the Premises for the purposes herein set forth. Additionally, should the Dam be damaged by any cause, fall into a state of disrepair, or present an imminent threat of failing to accomplish its intended purpose, and should GRANTEE fail to (i) commence necessary and appropriate replacement, maintenance or repairs promptly (but in no event later than sixty (60) days) after receipt of notice from GRANTOR to effect same, and (ii) thereafter diligently prosecute same to completion, all at GRANTEE's sole cost and expense, GRANTOR may immediately terminate this Agreement and remove all or any portion of the Dam located on GRANTOR's property, with no recourse for GRANTEE.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the day and year first above written.

GRANTOR – ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

Attest:

By: _____
Robert G. Abboud
Village President

By: _____
Robert Kosin
Director of Administration

State of Illinois)
)
County of DuPage)

The foregoing instrument was acknowledged before me by Robert G. Abboud and Robert Kosin, this _____ day of _____, 2010, A.D.

- NOTARY SEAL -

Notary Public

GRANTEE – VILLAGE OF BARRINGTON HILLS, an Illinois home rule municipality

Attest:

By:_____
(Print Name)
(Title)

By:_____
(Print Name)
(Title)

State of Illinois)
)
County of Cook)

The foregoing instrument was acknowledged before me by _____ and _____, this _____ day of _____, 2010, A.D.

- NOTARY SEAL -

Notary Public

EXHIBIT A

DEPICTION OF Premises

[SEE ATTACHED]

GEWALT HAMILTON ASSOCIATES, INC.
820 LAKESIDE DRIVE, SUITE 5
GURNEE, ILLINOIS 60031
TEL (847) 855-1100
FAX (847) 855-1115

JOB 9355.097
SHEET NO. 1 OF
CALCULATED BY DJS DATE 3-5-10
CHECKED BY DATE
SCALE 1"=200'

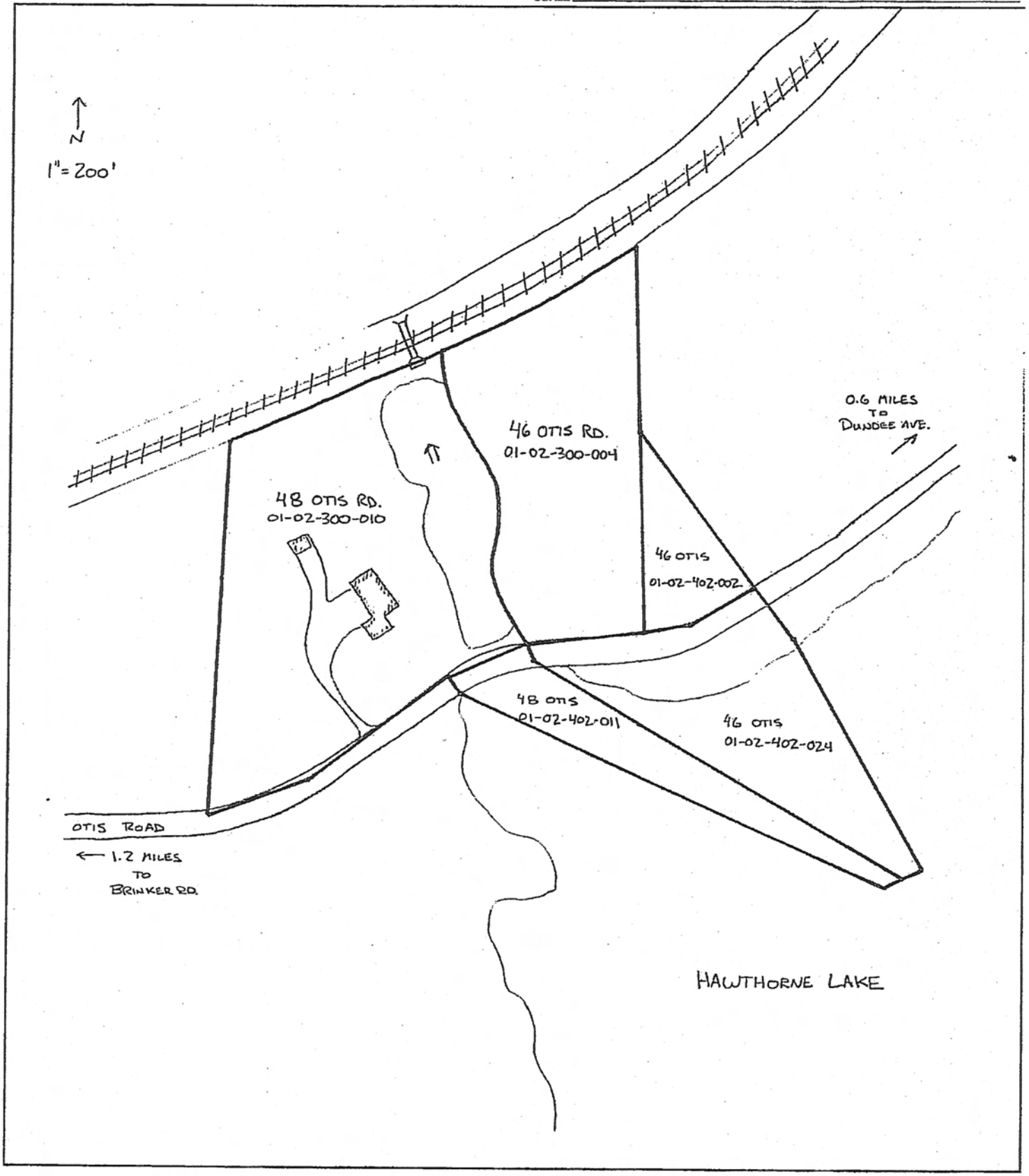


EXHIBIT B

ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT (the "Agreement") is made and entered into as of this _____ day of _____, 2010 by and between Elgin, Joliet and Eastern Railway Company ("Railroad"), and the Village of Barrington Hills, an Illinois home-rule municipal corporation ("Village").

RECITALS:

A. Railroad owns certain land lying outside of the corporate limits of the Village, which land is occupied by railroad facilities owned and operated by Railroad and is legally described in Exhibit A attached hereto and made a part hereof (the "Property")

B. Railroad utilizes the Property for railroad operations and other uses incidental or in any way related thereto or resulting therefrom (collectively, "Operations"), including without limitation the construction, installation, reconstruction, maintenance, repair, upgrade, expansion, addition, modification, renewal, replacement, relocation, removal, use and operation of railroad and related communications systems, equipment, structures, improvements and facilities, whether now existing or hereafter to be installed, in, at, over, under, along or across the Property (collectively, the "Facilities") or any related use and development of the Property by Railroad.

C. To the best of Railroad's knowledge, information and belief, the Property is not included within the corporate limits of any other municipal corporation, has no electors residing on it, and may be annexed to the Village as provided under Article 7 of the Illinois Municipal Code, 65 ILCS 5/7-1-1, et seq.

D. At the request of the Village, Railroad has agreed to have the Property annexed to the Village as an accommodation to the Village and solely in reliance upon the representations and assurances of the Village, as documented herein, that (1) annexation of the Property will not result in any additional restrictions (including without limitation any municipal regulations) or any financial burdens of any kind or nature whatsoever being imposed by the Village or third parties on Railroad's ownership, use, and operation of the Property, and (ii) the Village will fully and faithfully perform and observe during the terms of this Agreement of all of the terms and conditions to be performed or observed by the Village hereunder.

E. The President and members of the Board of Trustees of the Village (collectively, the "Corporate Authorities"), after due and careful consideration, have concluded that the annexation of the Property on the terms and conditions hereinafter set forth would further the growth and development of the Village and promote the best interests of the Village.

F. Pursuant to the provisions of 65 ILCS 5/11-15.1-1, et seq., a proposed annexation agreement substantially in substance and in form of this agreement was submitted to the Village Board, and after a public hearing was held thereon pursuant to notice as required by statute, said proposed annexation agreement was approved by ordinance passed by a vote of at least two-thirds of the Corporate Authorities.

G. The Village has notified each and every fire protection district, library district and other entity or person entitled to notice prior to the annexation of the Property in accordance with all requirements of applicable law.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, it is hereby agreed by the Village and Railroad as follows:

1. Recitals and Exhibit. All of the foregoing recitals and the Exhibits attached hereto are hereby incorporated into this Agreement as though fully set forth herein.

2. Annexation Petition. Concurrently with the execution of this Agreement by the parties hereto, Railroad will file with the Village Clerk a proper petition ("Petition"), which Petition is conditioned on the terms and provisions of this Agreement, to annex the Property to the Village. The Village hereby agrees to annex the Property upon the terms and conditions contained in the Petition and this Agreement. Railroad has filed with the Village Clerk an accurate map of the Property, a copy of said map is attached hereto and incorporated herein by reference as Exhibit B.

3. Additional Facts and Circumstances. Railroad reserves the right to add to this Agreement any terms and conditions it deems to be reasonably required, or to modify it as necessary, based on such additional facts and circumstances related to the annexation by the Village of the Property that become known to Railroad prior to its execution of this Agreement, subject to approval by the Corporate Authorities of the Village.

4. Jurisdiction. The Village hereby acknowledges and agrees that Railroad and the use of the Property are subject to the jurisdiction of the Illinois Commerce Commission and other applicable State and Federal regulatory agencies and that such jurisdiction fully pre-empts any and all jurisdiction, regulation or control that the Village may attempt to exercise over the Property. The Village hereby further agrees to the following jurisdictional matters and conditions regarding Railroad and the Property:

(a) Concurrently with the passage of the ordinance annexing the Property, the Village and its Corporate Authorities shall, in accordance with the recommendation of the Village Zoning Board of Appeals, adopt an ordinance zoning and classifying the Property as R-1 Residential with a special use as a railway right-of-way. The Village shall not change the zoning of the Property without Railroad's approval.

(b) To the extent pre-empted by Federal law, the Village hereby acknowledges and agrees that any ordinances, regulations, codes, resolutions, maps or other items having the force of law relating to zoning, subdivision controls, planning, land use, plats, fences, public safety or health, antennae, building or occupancy permits, parking, loading areas, hours of operation, the environment, emissions or other controls, wetlands, flood control, tree trimming or any related matter (together with any amendments thereto or replacements thereof and all additional laws or items having the force of law related to any such matters that may be adopted in the future by the Village, being referred to hereinafter collectively as the "Village Regulations") which restrict or are inconsistent with Operations shall not be applicable to the Property.

(c) In the event any Village Regulations existing at the time the Property is annexed to the Village, do not permit the use of the Property for the Operations, the Village shall promptly grant such variations as may be necessary to enable Railroad's use of the Property for the Operations.

(d) As long as the uses of the Property are for Operations, the Village will not suffer or permit any of the Village Regulations to be applied or enforced at any time or in any manner against all or any portion of the Property, irrespective of the source of the Village's authority. The Village acknowledges and agrees that, upon adoption of the Annexation Ordinance, its current Village Regulations will not prohibit, limit or otherwise affect in any manner Railroad's ownership, use or operation of all or any portion of the Property for the Operations.

(e) To the extent of any conflict, ambiguity or inconsistency between the terms, provisions or standards contained in this Agreement and the terms, provisions or standards, either presently existing or hereafter adopted, of the Village Regulations, the terms, provisions and standards of this Agreement shall govern and control. Notwithstanding the foregoing, if any Village Regulation is hereafter adopted, amended or interpreted so as to be less restrictive upon Railroad with respect to the Property than is the case under the existing law, then at the option of Railroad, such less restrictive amendment or interpretation shall control.

(f) In no event shall the Village condemn, take or exercise any power of eminent domain (or induce or encourage other entities to commence any such proceedings) relative to all or any portion of the Property, without the prior written consent of Railroad.

(g) Any and all roadways and driveways located on the Property shall be deemed to be private and not public roadways and the Village shall not have authority over their operation.

(h) Notwithstanding the foregoing and anything contained in this Agreement to the contrary, the Village acknowledges and agrees that in no event shall Railroad's entering into this Agreement be deemed to constitute a waiver of limitation of any right, claim (including, without limitation, any claim to exemption, pre-emption or non-applicability) or privilege which Railroad may have under applicable law, whether on account of its status as a utility or otherwise. Nothing contained herein shall be deemed to confer upon any State, Federal or local regulatory agency any jurisdiction, authority or control not otherwise conferred upon such body under applicable law.

(i) The provisions of this Agreement shall supersede any and all provisions of the Village Regulations that may be in conflict or inconsistent with the provisions of this Agreement.

5. No Further Annexation of Railroad Property. Except for the annexation of the Property pursuant to the terms of this Agreement, the Village shall not annex, nor take or support any action of activity that has, or could directly or indirectly have, the intent, purpose, effect or result of annexing or attempting to annex to the Village or to any other municipality or unit of local government any other portion of property owned by Railroad without the express prior written consent of Railroad.

6. Real Estate Taxes, Assessments and other Impositions.

(a) The Village hereby agrees to cooperate fully with Railroad and to exercise all reasonable efforts with the appropriate township assessor's office(s) in order to ensure that for the 2010 tax year and thereafter one or more separate property tax identification numbers will be issued for the Property to become effective immediately upon the annexation of the Property pursuant to this Agreement. The Village hereby agrees to cooperate fully with Railroad and to exercise all reasonable efforts with the appropriate township assessor's office in order to ensure that the Property shall be classified for assessment purposes as railroad operating property, assessed by the State on a unitary basis.

(b) The Village agrees to abate all property taxes and assessments that may otherwise be levied by the Village upon the Property. Without limiting the generality of the foregoing, the Village shall not, at any time, impose upon all or any portion of the Property any tax, assessment, charge or fee of any kind or nature whatsoever against the Property, irrespective of the source of the authority therefore; provided, however, that if the Village is prohibited by law from not assessing any such tax against Railroad, the Village expressly agrees to provide rebates or otherwise make payments to Railroad in the amount of such assessment.

7. Expense Reimbursement/Waiver. In connection with the matters described herein, the Village hereby waives any fees, impositions, charges, donations or other payments or exactions of any kind or nature whatsoever, including without limitation application fees, or other charges imposed for annexations or for processing applications for zoning amendments, it being acknowledges and agreed that no such charges shall be imposed on Railroad in connection with the subject matter of this Agreement.

8. Indemnity. The Village hereby agrees to indemnify, defend (with counsel acceptable to Railroad) and hold harmless Railroad, its respective affiliated entities, and the officers, directors, employees, agents, legal representatives, successors and assigns of each of them (collectively, the "Railroad Indemnities") from and against any and all losses, damages, claims, actions, proceedings, costs, expenses (including, without limitation, reasonable attorneys' fees and costs) and other liabilities incurred by any of the Railroad Indemnities or asserted by the Village or any other party against any or all of such Railroad Indemnities that result or arise from the annexation or proposed annexation or disconnection of the Property or the failure of the Village to observe any of its covenants or obligations under this Agreement. Without limiting the generality of the foregoing, the Village hereby agrees to pay for all reasonable legal costs and expenses incurred by Railroad or any of the Railroad Indemnitees in connection with (a) any challenge by the Village or any other party, other than a Railroad Indemnitee, to (i) the annexation or proposed annexation or disconnection of the property pursuant to the terms and conditions of the Agreement or (ii) the enforceability of all or any of the provisions of this Agreement, or (b) any other claims, controversies, negotiations, or transactions between Railroad and the village or any other party, whether or not a court action is filed, related to the subject matter of this Agreement. The Village acknowledges and agrees that the foregoing indemnity constitutes a material portion of the bargained for consideration received by Railroad in exchange for its agreement to have the Property annexed to the Village hereunder. The Village further acknowledges and agrees that it is contractually bound by the foregoing indemnity to appropriate such funds as may be required from time to time to satisfy the Village's obligations hereunder. The Village further agrees that it will, within a reasonable time after Railroad's request therefore, reimburse Railroad for all costs and expenses sustained

or incurred by Railroad in connection with the annexation of the Property (including, without limitation, reasonable attorneys fees) and any costs and expenses incurred in connection with the negotiation of this Agreement and any other documents or agreements connected with the annexation of the Property. This Section shall survive the termination of this Agreement.

9. Further Assurances. The Village and the Corporate Authorities agree to enact such resolutions and ordinances, do all things necessary or appropriate, or take such other action as may be necessary or desirable to enable the Village and the Corporate Authorities to comply with the terms of this Agreement and to permit Railroad to realize the full benefit hereof, including, without limitation, entering into, executing and delivering extensions to the term of this Agreement, as provided in Section 1 of this Agreement. In addition, the Corporate Authorities agree to do all things that may be necessary from time to time to enable Railroad to continue to use the Property and the structures and improvements located thereon for Operations.

10. No Third Party Beneficiaries. If Railroad elects not to file a petition for annexation to the Village pursuant to this Agreement, neither party shall have any continuing obligations to the other party, except the terms and conditions of Section 8 of this Agreement shall survive the expiration or termination of this Agreement. Railroad's consideration of and, if applicable, its execution of this Agreement all in no way be deemed to confer any rights on any third parties, and Railroad and the Village hereby disclaim the existence of any third party beneficiaries of this Agreement.

11. Defense and Enforcement of Agreement. The parties agree to the following terms and conditions regarding the defense and enforcement of their respective rights and obligations under this Agreement:

(a) Railroad, subjects to its right to indemnification under Section 8 hereof, and the Village shall take all actions necessary or appropriate to defend the validity of this Agreement and all actions taken and all documents executed pursuant to or in connection with this Agreement.

(b) This Agreement shall be enforceable in any court of competent jurisdiction by each of the parties hereto by any appropriate action at law or equity, including without limitation any action to secure the performance of the representations, promises, covenants, agreement and obligations contained herein, by mandamus, specific performance, injunction or otherwise, or by any action to obtain money damages for a breach of this Agreement. The parties acknowledge that any failure by either of them to perform their respective representations, promises, covenants, agreements or obligations under this Agreement will cause immediate and irreparable harm for which no adequate legal remedy will be available. Accordingly, each party waives all defenses to requests for equitable relief based on the purported absence of immediate, irreparable harm or the availability or adequate legal remedies.

(c) The failure of either party to insist upon the strict enforcement and prompt performance of the representations, promises, covenants, agreements and obligations set forth in this Agreement shall not constitute or be construed as a waiver or relinquishment of such party's right thereafter to enforce any such representation promise, covenant, agreement or obligation, but the same shall continue in full force and effect.

(d) The rights and remedies set forth in this Agreement are non-exclusive and cumulative in nature. Either party may exercise any one or more of the rights or remedies described herein or resort to any other remedy available to such party at law or in equity without first exhausting and without impairing any right or remedy afforded hereby.

12. Disconnection. If the Village breaches, in any material respect, or fails to perform any material obligation in a timely manner, any of the Village's representations, warranties, undertakings, indemnities, covenants, or agreements contained in this Agreement, and fails to correct said breach or failure to perform within ten (10) days of receipt of written notice from Railroad of said breach or failure to perform, Railroad may (without any obligation to do so) elect to pursue disconnection of the Property from the Village pursuant to Illinois law, and the Village agrees not to oppose said disconnection proceeding, except to the extent it is not in conformance with Illinois law.

13. Term of Agreement. This Agreement shall be valid and binding upon the Village and Railroad, and their respective successors and assigns, for a period ending on the later of (a) twenty (20) years from and after the date of its execution; or (b) the date which constitutes the maximum term permitted by applicable law as of the date of this Agreement, or such longer terms as may be subsequently allowed. Notwithstanding anything to the contrary contained in this Agreement, the terms and provisions of Section 8 of this Agreement shall survive the expiration or termination of this Agreement or otherwise permitted by law. The Village shall conduct any public hearing that may be required in connection with such extensions. In the event it is determined by a court of competent jurisdiction that any such extension is invalid under law made applicable to this Agreement, the term of this Agreement shall be extended for the maximum period of time permitted by applicable law. This Agreement shall survive the annexation of the Property and shall not be merged into or expunged in whole or in part by the annexation of the Property.

14. Binding Effect of Agreement/Amendments. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, assigns, lessees or licensees. The Village and Railroad agree that the benefits and burdens under this Agreement are not personal but run with the land comprising the Property. This Agreement may be amended in writing from time to time with the consent of the parties hereto pursuant to statute.

15. Severability/Invalidity. If any clause, phrase, provision or portion of this Agreement or the application thereof to any person or circumstance shall be held to be invalid or unenforceable under applicable law by a court of competent jurisdiction, such invalidity or unenforceability shall not affect, impair or render invalid or unenforceable any other provision of this Agreement, nor shall it affect the application of such clause, phrase, provision or portion hereof to any other persons or circumstances, and the parties agree to amend this Agreement by replacing the invalid or unenforceable term with such other terms and conditions as will give the fullest possible effect, within the limits of applicable law, to the intentions and understandings of the parties as set forth in this Agreement. Notwithstanding the foregoing, in the event that any of the terms and conditions contained in Sections, 3, 4, 5, 6, 6, 8A, 8B, 9, 10 or 11 hereof are determined by a court of competent jurisdiction to be invalid or unenforceable in any material respect, then, at Railroad's option, the Property may be declared to have been invalidly annexed, and in such event, Railroad shall be entitled to obtain an order disconnecting the Property from the Village as an invalidly annexed parcel in the manner provided under Section 7-1-48 of the Illinois Municipal Code, 65 ILCS5/7-1-48.

16. Regulatory Approval. This Agreement may be subject to the approval of one or more regulatory agencies. If this Agreement is subject to such approval, the parties agree to jointly seek such approval. If such approval is denied after the annexation of the Property hereunder, such annexation shall be null and void and Railroad shall have the right to seek disconnection of the Property, unless Railroad and the Village, in the exercise of their sole individual discretion, agree to any modifications of this Agreement that may be required to obtain the approval of the subject regulatory agency.

17. Authority. The Village hereby represents and warrants that this Agreement was authorized and approved by the Corporate Authorities pursuant to its Ordinance No. _____ adopted on _____, 20___ (the "Annexation Ordinance"), and that no further action is required in order for this Agreement to constitute the legally binding obligation of the Village, enforceable in accordance with the terms and conditions hereof. Each party to this Agreement hereby represents and warrants to the other that it has full power and authority to execute, deliver and perform their respective obligations under this Agreement in accordance with its terms and conditions.

18. Counterparts. This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement.

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

VILLAGE OF BARRINGTON HILLS

By:_____
Title: President

ATTEST:

_____
Village Clerk

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

By:_____

Title:_____

STATE of ILLINOIS)
) SS
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, the State aforesaid, do hereby certify that _____, the _____ of ABC RAILROAD COMPANY, an Illinois corporation, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer, appeared before me this day in person, and acknowledged that he signed and delivered the said instrument as her own free and voluntary act and as the fee and voluntary act of the company, for the uses and purposes set forth.

Given under my hand and notarial seal this _____ day of _____, 20___.

_____
Notary Public

STATE of ILLINOIS)
) SS
COUNTY OF _____)

I, _____, a Notary public in and for said County, in the State aforesaid, do hereby certify that Robert A. Abboud personally known to me to be the President of the Village of_____ Barrington Hills, and _____, personally known to me to be the clerk of the Village, both of whom are personally known to me to be the same persons whose names and subscribed to the acceptance of the foregoing instrument as such President and Village Clerk, appeared before me this day in person, and acknowledged that they signed and delivered such acceptance for and on behalf of said Village and caused the corporate seal of said village to be affixed thereto as their free and voluntary act, and as the free and voluntary act of the Village for the uses and purposes therein set forth, pursuant to a written resolution duly passed by the President and Board of Trustees of the Village on the _____ day of _____, 2010.

Given under my hand and notarial seal this _____ day of _____, 20___.

_____
Notary Public

EXHIBIT A

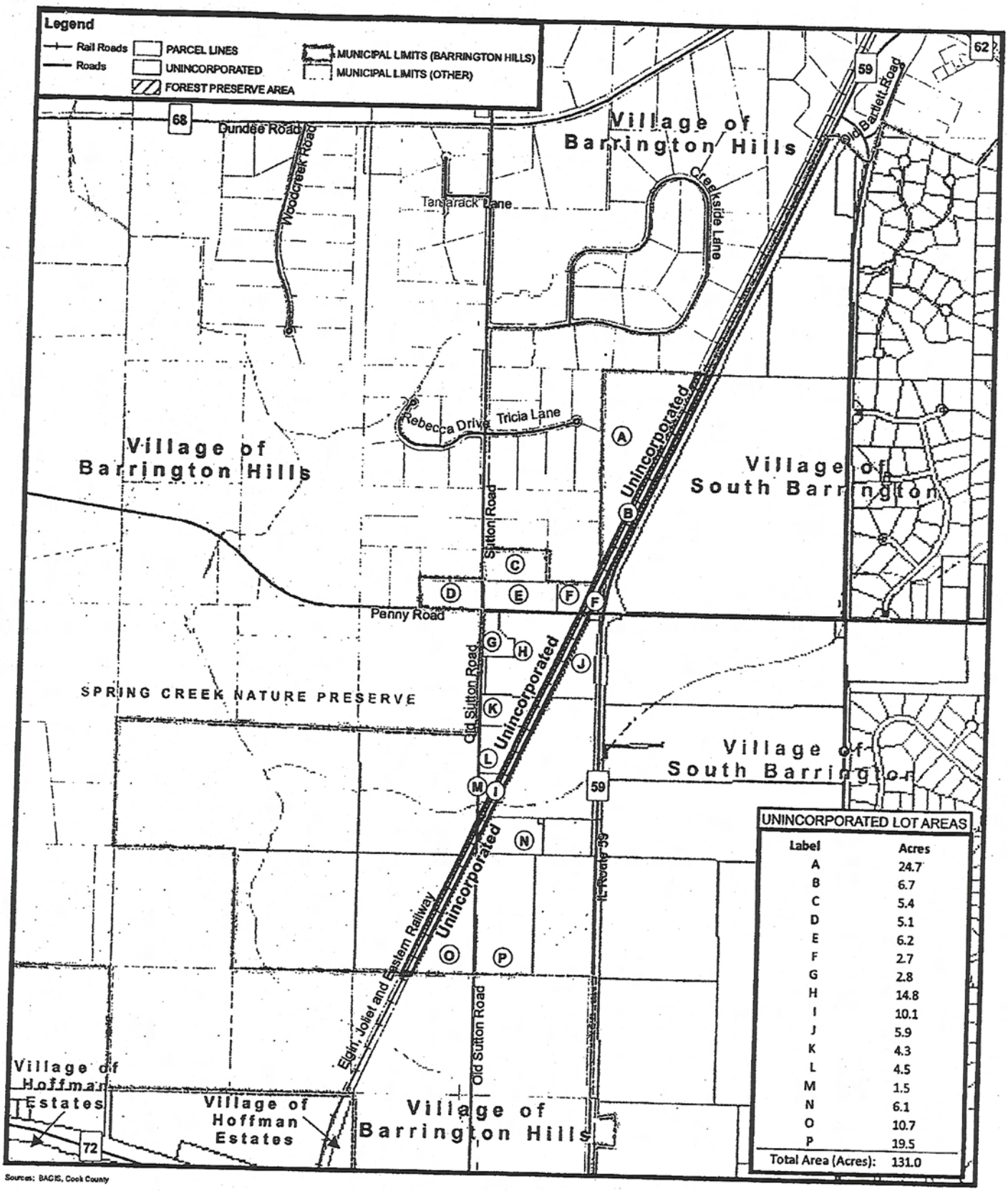
LEGAL DESCRIPTION

[TO COME]

EXHIBIT B

MAP

[SEE ATTACHED]



Sources: BAGIS, Cook County

CN Railway Parcel Location Map

N

1 in = 0.25 miles

GEWALT HAMILTON ASSOCIATES, INC.

Project: 9355.401
Map Code: 2614Bx11
DATE: 11/20/2009