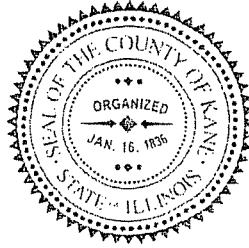


COUNTY OF KANE

Christopher J. Lauzen
Kane County Board Chairman



Kane County Government Center
719 South Batavia Avenue
Geneva, IL 60134
P: (630) 232-5930
F: (630) 232-9188
clauzen@kanecoboard.org
www.countyofkane.org

DOCUMENT VET SHEET

for
Christopher J. Lauzen
Chairman, Kane County Board

Name of Document: Easement Agreement with Autumn Green Animal Hospital

Keslinger Road and Bartelt Road

Submitted by: Linda Haines

Date Submitted: March 5, 2013

[Handwritten signature]
6-17-2013



Examined by: Pat Jaeger
(Print name)

[Handwritten signature]
(Signature)

03-22-13
(Date)

Post on the Web: YES NO Atty. Initials *[Handwritten initials]*

Comments:

Chairman signed: YES NO 6/24/13
(Date)

Document returned to: forwarded
CLERK'S OFFICE
(Name/Department)

EASEMENT AGREEMENT

THIS AGREEMENT is entered into as of this day of _____, 2013 by and between the **Commuter Rail Division of the Regional Transportation Authority**, a division of an Illinois municipal corporation ("**Metra**") and the County of Kane, a body corporate and politic of the State of Illinois ("**Grantee**"). Metra and Grantee are hereinafter sometimes individually referred to as a "**Party**" and jointly referred to as the "**Parties**."

RECITALS

A. Metra presently owns and/or controls the property identified by permanent index number 11-01-400-018, located adjacent to the Union Pacific Railroad right-of-way in La Fox, Illinois, an area consisting of 4050 square feet more or less, as delineated on **Exhibit A** attached to and made a part of this Agreement ("**Premises**").

B. Grantee has requested and Metra desires to grant to Grantee a nonexclusive right, easement, and privilege to enter upon the Premises ("**Easement**") for construction, installation, use, maintenance and renewal of a highway right turn lane ("**Improvement**").

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are hereby incorporated into and made a part of this Agreement, the mutual covenants and agreements set forth herein, Ten Dollars (\$10) and other good and valuable consideration, including the fair-market value of the Easement, the receipt and sufficiency of which are hereby acknowledged and accepted by the Parties, Metra does hereby grant to Grantee the Easement for the Improvement pursuant to the following terms covenants and conditions:

1. As one of the considerations for the grant of this Easement, Grantee agrees to pay to Metra the sum of \$1,500 for the cost of preparing this Agreement, payable in advance.

2. Grantee agrees that the Improvement shall be constructed in conformance to plans and specifications approved in advance by Metra whose approval shall not be unreasonably withheld. Grantee further agrees that any construction done on the Premises prior to Metra approval and execution of this Agreement by Metra's executive Director/CEO, is done at Grantee's sole risk. Should this Agreement remain unapproved by Metra for a period of one hundred and eighty (180) days from the date executed by Grantee, Metra, at Metra's sole discretion, may require Grantee, at Grantee's sole cost and expense, to remove any improvements performed on the Premises and return the Premises to a state the same as or better than that which existed prior to any work so performed. Any restoration mandated by this term shall be done to the reasonable satisfaction of Metra.

Prior to the construction and installation of the Improvement, Grantee's contractor performing the work shall execute and deliver to Metra's Right of Way Administrator a Right of Entry

Agreement (“ROE”) along with evidence of all of the insurance required by such ROE. AROE application may be obtained by accessing the “Metra & Business” Section of the metrail.com website or by contacting Metra’s Right of Way Administrator at (312) 322-8016.

3. Grantee shall at **all times** use and maintain the Improvement in such a manner so as not to interfere with the existing drainage of the Premises or any other Metra property (“**Property**”) and to protect any and all other improvements now or hereinafter located on the Premises or the Property.

4. Upon completion of any construction, replacement, repair or maintenance of the Premises, 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 the 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 Property to be restored to the reasonable satisfaction of Metra as provided for herein, Metra shall have, after 30 day notice to the Grantee, the right to restore 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.

5. Any rights to the Premises not specifically granted to Grantee are reserved to Metra and its successors and/or assigns. The Improvement shall be repaired, maintained, utilized 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 improvements at the location of the Improvement 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 Improvement 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 Improvement. 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 over, under, across or parallel to the said Improvement.

6. Grantee shall not place, keep, store or otherwise permit to be placed, kept or stored on or near 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 motorized vehicle of any kind on or near any track, provided, however, that Grantee shall not be prohibited from operating Grantee's and/or Grantee's invitees' or 'permittees' vehicles and equipment on the Improvement and any vehicular public crossing of Metra's tracks and rights of way.

7. Grantee agrees that it will pay all costs of any and all work performed upon the right

of way and tracks of Metra which shall be made necessary by any construction, maintenance, repair, replacement, renewal or presence thereon of said Improvement. Such costs will be payable to Metra within thirty (30) days of presentation of a bill by Metra.

8. Grantee shall provide to Metra reasonable advance written notice of the time when Grantee will commence any replacement, repair or maintenance of said Improvement in order that Metra may determine if railroad protective liability insurance would be required and, if it 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. Further, if any actual construction is done on the Premises or any modification of the Improvement affecting the drainage of the Metra property or in anyway potentially disturbing the tracks, Metra must first approve all plans and specifications.

9. Grantee shall at all times construct, replace, repair, maintain and operate said Improvement 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, when necessary, during periods of construction, reconstruction, replacement, repair, maintenance and operation of the Improvement. If the manner of constructing, repairing, maintaining, replacing or operating said Improvement shall at any time be in violation of any applicable law, rule, regulation or ordinance, then Grantee, at no cost or expense to Metra and upon receipt of appropriate notice from a governmental agency having enforcement jurisdiction over the Premises, shall 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 Easement, provided that it 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.

10. To the fullest extent permitted by law, the Grantee hereby assumes and agrees to release, acquit and waive any rights which Grantee may have against and forever discharge Metra, the RTA and the 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, and on account of damage to or destruction of property arising out of or in any way relating to or occurring in connection with the activities permitted under the terms and provisions of this Agreement or which may occur to or be incurred by the Grantee, its employees, officers, agents and all other persons acting on the Grantee's behalf while on the Premises or arising from the condition of the Premises during the term of this Agreement, whether or not such injuries or damages are caused by the negligence or willful misconduct of Metra, the RTA, or the NIRCRC. Notwithstanding anything in this Agreement to the contrary, the releases and waivers contained in this paragraph shall survive termination of this Agreement.

11. To the fullest extent permitted by law, the 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, without limitation, court costs and

attorneys' fees) for claims, demands, actions, suits, proceedings, judgments, settlements arising out of or in any way relating to or occurring in connection with: (i) the activities permitted under the

terms and provisions of this Agreement; (ii) the condition of the Premises; (iii) the failure to investigate claims; or (iv) which may occur to or be incurred, by the Grantee, its employees, officers, agents, and all other persons acting on its behalf while on the Premises, whether or not such injuries, liabilities, losses, damages, costs, payments or expenses are caused by the negligence of Metra, the RTA or the NIRCRC. Metra agrees to notify the Grantee in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision. The 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 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. The 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 Agreement 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 or willful misconduct of Metra, the RTA or the NIRCRC with respect to any construction work performed by the Grantee or those performing on behalf of or with the authority of the Grantee in violation of the Illinois Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq.

12. Further, Grantee agrees to furnish self-insurance in form and in such amounts as required by Metra's Risk Management Department (312-322-7093) or if acceptable self-insurance can not be provided, then Grantee agrees to 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. Such policies of insurance or self-insurance shall include commercial general liability, automobile, workers compensation, and when required, railroad protective liability insurance coverage as stated on **Exhibit B** attached to and made a part of this Agreement ("**Insurance Requirements**"). Metra reserves the right to make reasonable changes in the kinds and amounts of insurance required for continued occupancy of the Premises.

13. This Easement may be terminated by Metra effective immediately upon notice to Grantee if Grantee ceases to operate or maintain the Improvement or violates any of the terms, conditions or provisions set forth in this Easement. This Easement may be terminated by Grantee for any reason effective thirty (30) days after giving Metra notice of Grantee's intention to terminate. In case of termination by either of the Parties, Grantee shall remove the Improvement from the Premises and restore said Premises to the same or to a better condition than that which existed prior to the construction and installation of said Improvement, 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 thereof shall be paid by Grantee; or, if Metra shall so

elect, it may treat the said Improvement as abandoned by Grantee and may make such disposition thereof as it may see fit. In the event the Premises are needed for Metra or Railroad purposes, Metra shall use its best efforts to relocate the Improvement in close proximity to the Premises.

14. 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.

15. 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 (1½ %) per month or the highest amount permitted by Illinois law, whichever is less, from the date payment is due until paid.

16. 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: Director, Real Estate & Contract Management
Phone: (312) 322-8006
Fax: (312) 322-7098

(b) Notices to Grantee shall be sent to:

Carl Schoedel, P.E.
Director of Transportation / County Engineer
Kane County Division of Transportation
41W011 Burlington Road
St. Charles, IL 60175

17. 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.

18. This Agreement shall not be construed to create a joint venture, partnership, employment or any other kind of agency relationship of any kind between the Parties except to the specifically provided otherwise under the terms and provisions of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Easement Agreement as of this _____ day of _____, 20__.

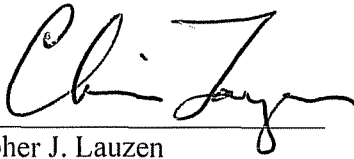
**COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION
AUTHORITY:**

By: _____
Alexander D. Clifford
Executive Director/CEO

ATTEST:

Assistant Secretary

COUNTY OF KANE:

By: 
Christopher J. Lauzen
County Board Chairman

ATTEST:

John A. Cunningham
County Clerk

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 Assistant Secretary of said Division, 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 and Assistant Secretary of said Division, they signed and delivered the said instrument in their official capacities pursuant to authority given by the Board of Directors of said Division and as the free and voluntary act and deed of said Division, for the uses and purposes therein set forth.

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

Notary Public

(SEAL)

My Commission expires _____, 20_____.

STATE OF ILLINOIS

)

) SS.

COUNTY OF KANE

)

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 KANE COUNTY DIVISION OF
 TRANSPORTATION, and
 _____, personally known to me to be the
 _____, of the KANE COUNTY DIVISION OF TRANSPORTATION,
 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 the KANE COUNTY
 DIVISION OF TRANSPORTATION, they signed and delivered the said instrument
 in their official capacities pursuant to authority given by the KANE COUNTY DIVISION
 OF TRANSPORTATION, and as the free and voluntary act and deed of said of the
 KANE COUNTY DIVISION OF TRANSPORTATION, for the uses and purposes therein
 set forth.

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

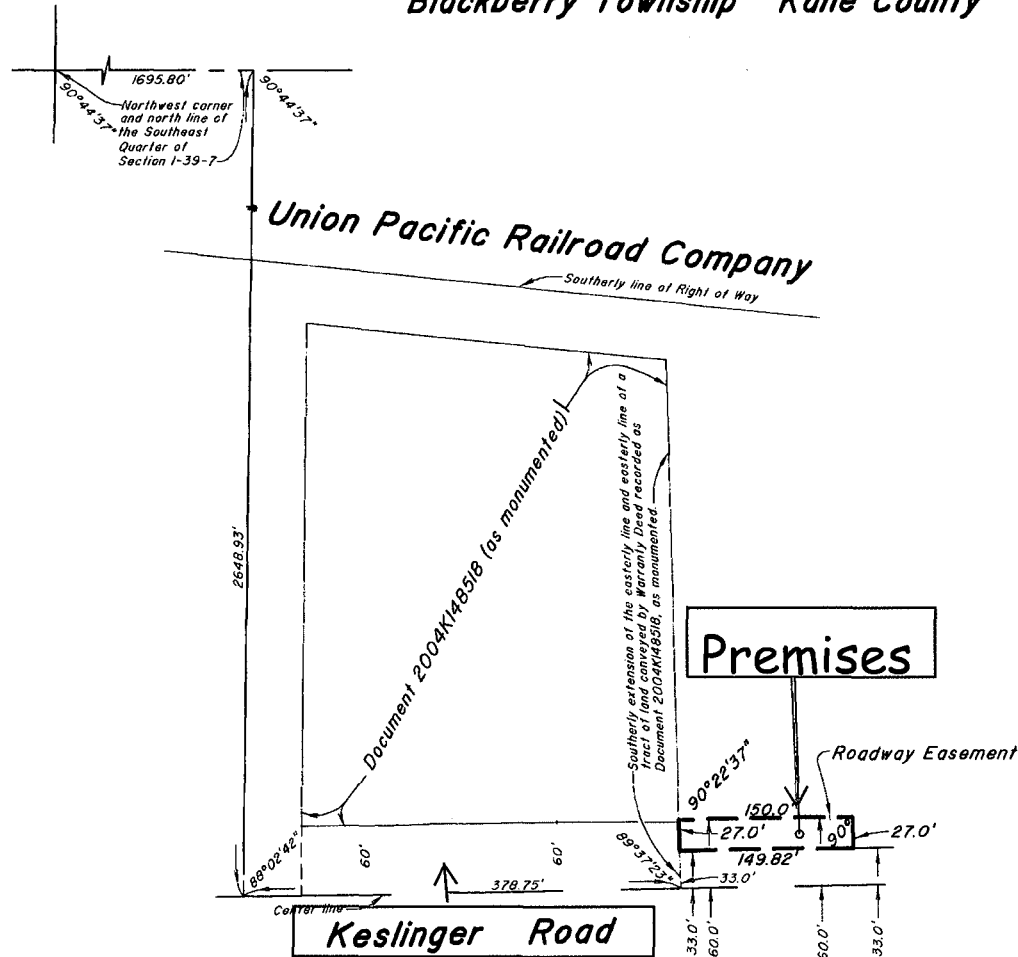
 Notary Public

(SEAL)

My Commission expires, 20_____.

Exhibit "A"

**Plat of Easement Across
Part of the Southeast Quarter of Section 1-39-7
Blackberry Township Kane County Illinois**



LEGAL DESCRIPTION OF ROADWAY EASEMENT

That part of the Southeast Quarter of Section 1, Township 39 North, Range 7 East of the Third Principal Meridian described as follows: Commencing at the northwest corner of said Southeast Quarter; thence easterly along the north line of said Southeast Quarter 1695.80 feet; thence southerly parallel with the west line of said Southeast Quarter 2648.93 feet to the center line of Keslinger Road; thence easterly along said center line 378.75 feet to the southerly extension of the easterly line of a tract of land conveyed by Warranty Deed recorded as Document 2004K148518, as monumented; thence northerly along said extended easterly line, forming an angle of 89°37'23" with said center line (measured clockwise therefrom) 33.0 feet to a line drawn parallel with and 33.0 feet northerly of said center line (measured at right angles thereto) for the point of beginning; thence continuing northerly along said extended easterly line and the easterly line of said tract 27.0 feet to a line drawn parallel with and 60.0 feet northerly of said center line (measured at right angles thereto); thence easterly parallel with said center line 150.0 feet; thence southerly at right angles to the last described course 27.0 feet to a line drawn parallel with said center line from the point of beginning; thence westerly parallel with said center line 149.82 feet to the point of beginning, in Blackberry Township, Kane County, Illinois.

Prepared by:
DONAHUE and THORNHILL, INC.
(Illinois Professional Design Firm No. 2713)
1321 Woodlawn Road
Lee, Illinois 60530
(630) 561-1567
August 10, 2012

EXHIBIT B
Insurance Requirements
Keslinger Real Estate Turn Lane for Use and Maintenance only

Commercial General Liability Insurance (ISO Broad Form) \$1,000,000 per occurrence for bodily injury or death to persons or persons and/or property damage with a \$2,000,000 aggregate and \$2,000,000 products/completed operations aggregate and remove 50 foot railroad exclusion from definition of insured contract.

Automobile Liability Insurance for any auto with limits of not less than \$1,000,000 combined single limit for bodily injury or death to person or persons and property damage per occurrence.

Workers' Compensation Insurance – Statutory amounts

Employers' Liability - \$1,000,000 each accident/\$1,000,000 each employee/\$1,000,000 policy limit

All policies must be on a Primary and Non-Contributory basis.

Provide Waiver of Subrogation for the Additional Insured in all policies including WC.

Provide the following Additional Insured wording in all policies including ongoing operations and products/completed operations for GL.

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 and other railroads operating on Metra's property and Union Pacific Railroad.