



## REQUEST FOR COUNCIL ACTION

**To: Honorable Mayor and Members of the City Council**

**From: Scott Moore, City Manager**

**AGENDA DATE REQUESTED:** May 11, 2010

### **ACTIONS REQUESTED:**

**(1) APPROVE THE ATTACHED KELLAR BRANCH PUBLIC USE CORRIDOR AGREEMENT FOR ASSIGNMENT OF LEASEHOLD PURCHASE AGREEMENTS FROM KELLAR BRANCH CORRIDOR CORPORATION TO THE CITY AND VILLAGE OF PEORIA HEIGHTS, SAID LEASE AGREEMENTS DATED NOVEMBER 17, 2008 FROM CENTRAL ILLINOIS RAILROAD AND OCTOBER 8, 2008 FROM PIONEER INDUSTRIAL RAILWAY COMPANY; AND**

**(2) AUTHORIZE ENTERING INTO THE ATTACHED INTERGOVERNMENTAL AGREEMENT FOR GRANT OF EASEMENT FOR RECREATIONAL TRAIL WITH THE PEORIA PARK DISTRICT, FOR THAT PORTION OF THE KELLAR BRANCH BETWEEN MILE POSTS 2.78 AND 8.50 LOCATED WITHIN THE CITY OF PEORIA, SUBJECT TO THE VILLAGE OF PEORIA HEIGHTS ENTERING INTO A SIMILAR AGREEMENT WITH THE PEORIA PARK DISTRICT FOR THAT PORTION OF THE RAIL SITUATED IN PEORIA HEIGHTS; AND**

**(3) AUTHORIZE THE TRANSFER OF THE PROCEEDS FROM THE PARK DISTRICT TO THE ESCROW AGENT TO FUND THE AMOUNTS DUE TO CENTRAL ILLINOIS RAILROAD AND PIONEER INDUSTRIAL RAILWAY COMPANY AND EXPENSES OF THE KELLAR BRANCH CORRIDOR CORPORATION; AND**

**(4) AUTHORIZE THE MAYOR TO EXECUTE THE NECESSARY DOCUMENTS.**

### **BACKGROUND:**

Since at least 1997, the City has been working toward the conversion of the middle portion of the Kellar Branch from a railroad to a recreational trail. Most recently, on July 28, 2009, the City Council approved the Trackage Rights Agreement between the City and Pioneer Industrial Railway (PIRY) and Central Illinois Railroad (CIRY), which agreement set forth the Railroads' right to operate on the portions of the Kellar Branch that remain and the right to utilize the connection from the UP line to the West.

After the Surface Transportation Board denied the adverse discontinuance sought by the City, the Kellar Branch Corridor Corporation (KBCC) was formed as a not-for-profit entity. It then negotiated Leasehold Purchase Agreements with both Railroads. Those Leasehold Purchase Agreements are now being assigned to the City because the Park District, as holder of certain grants for the acquisition and building of a recreational trail, needs to obtain the property from another governmental agency. In addition, the City and Village, as owners of the land, are necessary parties to provide the Park District with sufficient title to go forward with construction of a trail.

There is in place a fully funded Escrow Agreement. The City has not contributed to the funding of the escrow, which was in fact funded by a loan obtained by KBCC. Per the terms of the Escrow

Agreement, the Railroads filed a joint petition for discontinuance of service with the Surface Transportation Board and the City and Peoria Heights requested the issuance of a notice of interim trail use pursuant to the Railbanking Statute. On April 16, 2010, the Surface Transportation Board entered an order granting all requests. All of the requirements of escrow have now been met and the transaction is ready to close on May 20, 2010.

Per the attached Agreements, the total amount to be paid to the Escrow Agent by the City of Peoria and Peoria Heights is \$1,250,969, which includes payment of \$915,000 to PIRY, \$150,000 to CIRY and expenses incurred by KBCC of \$140,800 and interest on the loan funding the Escrow Agreement. The Peoria Park District has agreed to these sums and is prepared to pay to the City and Village of Peoria Heights the same amount so that the Village and the City can pass these proceeds through to the escrow agent who can close the transaction. The City has not had to expend funds for this process.

Because the Village of Peoria Heights owns that portion of the proposed Trail located within Peoria Heights, the Park District has prorated the fees to be paid, 74% to the City of Peoria and 26% to Peoria Heights. Those amounts reflecting the portion of the property located in each municipality. The City's share is \$925,717. This amount will then be transferred, with the balance from Peoria Heights, to the escrow agent to close the transaction.

The purchase price to be paid by the Park District is less than their appraisal. A requirement of their grant was that the entire property be appraised and that appraisal came to \$2,872,500. As part of the documents which the Mayor is authorized to sign by this document, the City will sign a letter stating that it agrees to accept less than the full appraised value being consistent with the understanding of the parties from the time that the project was entered into.

The escrow documents contain releases by the City of claims against both railroads. We are unaware of any claims affected by this release.

**FINANCIAL IMPACT:** The City is acting as a pass-through per paragraph 2 of the Assignment by the Kellar Branch Corridor Corporation (KBCC). The City is not obligated to use its own funds to pay into the escrow.

**NEIGHBORHOOD CONCERNS:** There have been a variety of opportunities over the years for the various neighborhoods along the route to express their concerns.

**IMPACT IF APPROVED:** The Park District will have a trail easement

**IMPACT IF DENIED:** A portion of the Kellar Branch would be in a state of legal limbo.

**ALTERNATIVES:** N/A

**EEO CERTIFICATION NUMBER:** N/A

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:** Consistent with promoting Peoria as a desirable place in which to live and work.

**REQUIRED SIGNATURES**

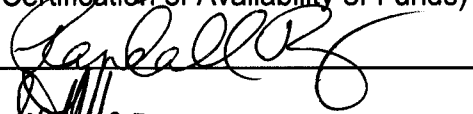
**Department Director**

  
\_\_\_\_\_  
Legal Department

**Finance Director**

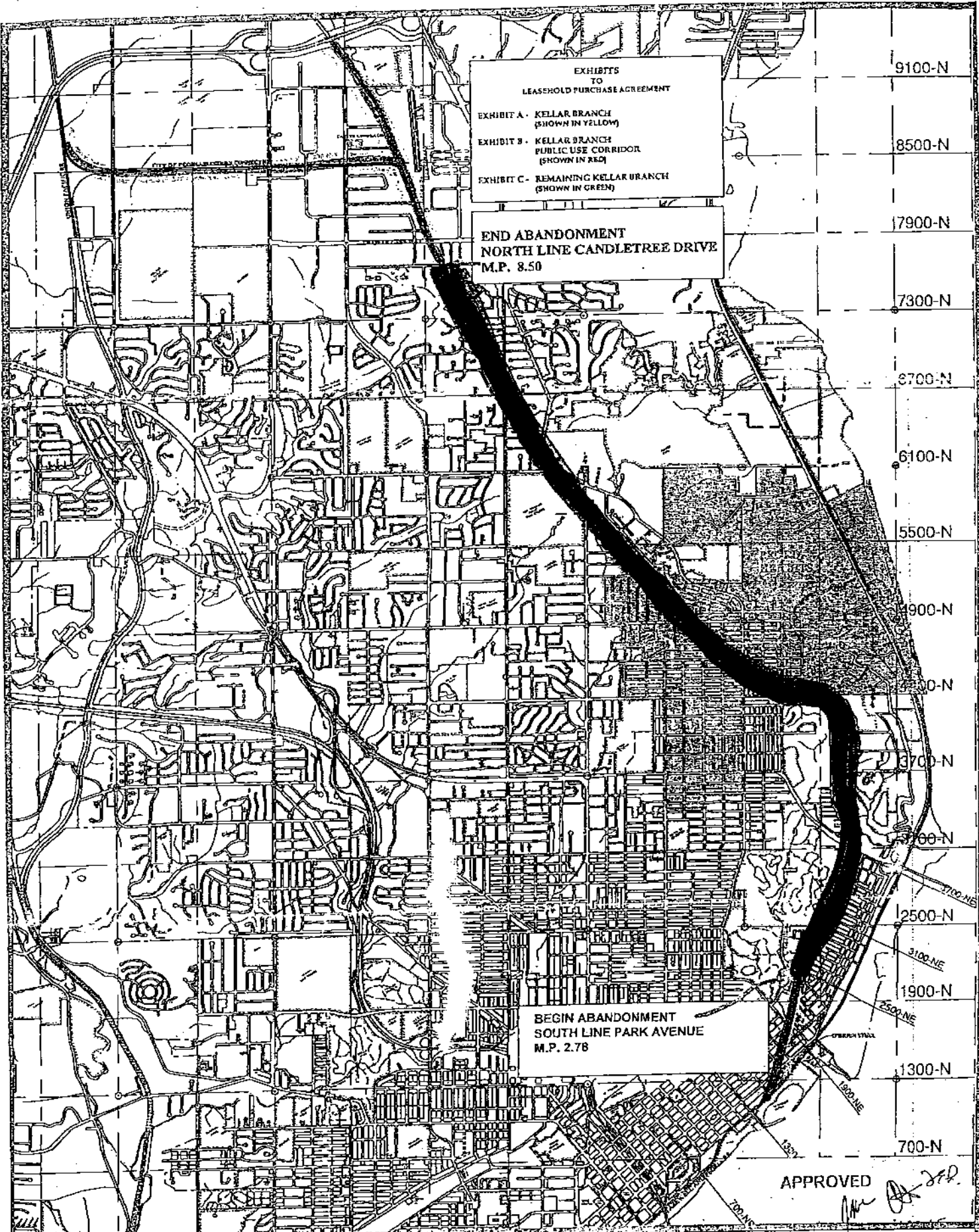
  
\_\_\_\_\_  
(Certification of Availability of Funds)

**Corporation Counsel**

  
\_\_\_\_\_

**City Manager**

  
\_\_\_\_\_



EXHIBITS  
TO  
LEASEHOLD PURCHASE AGREEMENT

EXHIBIT A - KELLAR BRANCH  
(SHOWN IN YELLOW)

EXHIBIT B - KELLAR BRANCH  
PUBLIC USE CORRIDOR  
(SHOWN IN RED)

EXHIBIT C - REMAINING KELLAR BRANCH  
(SHOWN IN GREEN)

END ABANDONMENT  
NORTH LINE CANDLETREE DRIVE  
M.P. 8.50

BEGIN ABANDONMENT  
SOUTH LINE PARK AVENUE  
M.P. 2.78

APPROVED *[Signature]*

**KELLAR BRANCH PUBLIC USE CORRIDOR  
AGREEMENT FOR ASSIGNMENT**

This Agreement for Assignment ("Assignment Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the Kellar Branch Corridor Corporation NFP ("KBCC") as Assignor and the City of Peoria, Illinois ("City") and the Village of Peoria Heights, Illinois ("Village") collectively as Assignee.

**RECTALS**

WHEREAS, KBCC is an Illinois Not for Profit corporation organized for the purpose of acquiring all of Pioneer Industrial Railway Co. ("PIRY") and Central Illinois Railroad Company ("CIRY") right, title and interest, including leasehold interests to the "Kellar Branch Public Use Corridor", being a portion of the Kellar Branch, a railroad line within the City of Peoria, Illinois and Village of Peoria Heights, Illinois to facilitate the construction of a recreational trail on the Kellar Branch Public Use Corridor; and

WHEREAS, in furtherance of KBCC's purpose, KBCC has entered into Leasehold Purchase Agreements ("Leasehold Purchase Agreements") with PIRY and CIRY attached hereto as Exhibit A (PIRY Agreement) and Exhibit B (CIRY Agreement); and

WHEREAS, pursuant to such Leasehold Purchase Agreements, the parties have entered into an Agreement titled "Kellar Branch Public Use Corridor Escrow Agreement" ("Escrow Agreement") attached hereto as Exhibit C; and

WHEREAS, the City and the Village have or contemplate entering into an "Intergovernmental Agreement for conveyance of Permanent Easement" with the Peoria Park District ("Park District") under the terms of which the Park District will acquire an easement in the Kellar Branch Public Use Corridor for the purpose of establishing a recreational trail over and upon the Kellar Branch Public Use Corridor ("Intergovernmental Agreement"); and

WHEREAS, it is necessary for the City and the Village to acquire all of PIRY's and CIRY's right, title and interest, including Leasehold interests in and to the Kellar Branch Public Use Corridor to allow the City and the Village to transfer an easement in the Kellar Branch Public Use Corridor to the Park District pursuant to the Intergovernmental Agreement; and

WHEREAS, KBCC is willing to assign to the City and the Village KBCC's right to acquire all of PIRY's and CIRY's right, title and interest, including leasehold interests to the Kellar Branch Public Use Corridor for an amount equal to KBCC's cost of acquisition as provided in this Agreement; and

WHEREAS, all Conditions Precedent described in the Leasehold Purchase Agreements (Exhibits A and B) and the Escrow Agreement (Exhibit C) have been satisfied, including the entry of an Order by the United States Surface Transportation Board (Exhibit D) approving the discontinuance of rail service and granting Interim Trail Use (Railbanking) to allow the Kellar Branch Public Use Corridor to be utilized for recreational trail purposes.

NOW, THEREFORE, in consideration of the mutual promises and covenants provided herein the parties agree as follows:

1. Assignment.

KBCC does hereby agree to assign to the City and the Village and the City and the Village do hereby agree to accept from KBCC, KBCC's right to acquire all of PIRY's and CIRY's right, title and interest, including leasehold interests to the Kellar Branch Public Use Corridor. At the time of closing hereafter described, KBCC shall cause PIRY and CIRY to convey their interests by Quit-Claim Deed to the City and Village in accordance with the Leasehold Purchase Agreements (Exhibits A and B) and the Escrow Agreement (Exhibit C). From the amounts to be paid to KBCC hereafter described, KBCC shall pay to PIRY and CIRY the amounts to be paid to them as described in the Confidential Memorandums attached to the Leasehold Purchase Agreements (Exhibits A and B). It is understood that CIRY has certain salvage rights and obligations described in Article II of the Confidential Memorandum attached to the CIRY Agreement (Exhibit B). The City and Village agree that the conveyance of CIRY's interest is subject to such salvage rights and obligations. At the time of closing, KBCC shall give notice as provided in the CIRY Agreement (Exhibit B) that KBCC has assigned its rights to the City and Village.

2. Acquisition Price.

At the time of closing, the City and the Village shall pay to KBCC the Acquisition Price for the rights to be assigned to the City and the Village as provided herein but subject to the payment conditions hereafter described. The payment to KBCC shall be in the amount of \$1,250,969.00 as described below representing KBCC's costs incurred in the acquisition of the Kellar Branch Public Use Corridor and transfer of the corridor for recreational trail purposes. \*

1. The amount of the Purchase Price setforth in the Confidential Memorandum attached to the PIRY Leasehold Purchase Agreement in the amount Nine Hundred Fifteen Thousand Dollars (\$915,000.00).
2. The amount of the Purchase Price setforth in Article I of the CIRY Leasehold Purchase Agreement in the amount One Hundred Fifty Thousand Dollars (\$150,000.00).

3. Expenses incurred by KBCC in connection with the Kellar Branch Public Use Corridor including organizational, legal, accounting, title and escrow expenses in the amount of \$140,800.00.
4. Interest expense incurred in funding the escrow described in the Escrow Agreement in the amount of 45,169.00.\*

\* Closing delayed beyond 5/20/2010 will add \$233.61 per diem interest. Closing disputes or delays may result in additional costs.

Payment Conditions.

The Acquisition Price shall be payable only from amounts received from the Park District under the Intergovernmental Agreement and the City and the Village shall have no general obligation for payment of the Acquisition Price. The City and the Village do, however, covenant that the Intergovernmental Agreement shall include a provision requiring payment from the Park District in an amount not less than the Acquisition Price described above.

3. Closing.  
Closing of this transaction shall be held contemporaneously with the closing described in the Leasehold Purchase Agreements and Escrow Agreement. At time of closing, the Acquisition Price shall be paid to KBCC and KBCC shall make the payments to PIRY and CIRY described in the Leasehold Purchase Agreements and shall cause PIRY and CIRY to execute and deliver the Quit-Claim Deeds attached hereto as Exhibits E and F. KBCC, the City and Village shall execute the Assignment attached hereto as Exhibit G.
4. Miscellaneous.
  - A. From and after date hereof and through closing, KBCC covenants that it will perform all of its obligations under the Leasehold Purchase Agreements and Escrow Agreement.
  - B. From and after date hereof and through closing, the City and the Village covenant that they will perform all of their obligations under the Escrow Agreement and those setforth in the Intergovernmental Agreement.
  - C. This Agreement shall be binding on and inure to the benefit of the successors and assigns of the parties hereto.

## **KELLAR BRANCH PUBLIC USE CORRIDOR ESCROW AGREEMENT**

The KELLAR BRANCH CORRIDOR CORPORATION, an Illinois not-for-profit corporation ("KBCC"); the CITY of PEORIA, ILLINOIS ("City"); the VILLAGE OF PEORIA HEIGHTS, ILLINOIS ("Village"); PIONEER INDUSTRIAL RAILWAY CO., a Iowa corporation ("PIRY"); CENTRAL ILLINOIS RAILROAD COMPANY ("CIRY") and LAND TITLE PROFESSIONALS, INC. ("Escrow Agent"), WITNESSETH THAT:

WHEREAS PIRY and CIRY (collectively, the "Railroads") have entered into agreements dated October 8, 2008 ("PIRY") and November 17, 2008 ("CIRY") such agreements each titled "Leasehold Purchase Agreement", respectively (the "Purchase Agreement(s)") involving the sale of certain assets, primarily involving the lease to a rail line in Peoria County, Illinois; and

WHEREAS the Purchase Agreements provide that certain documents and funds hereinafter described (the "Escrow") shall be held in Escrow until the Surface Transportation Board consents to the transactions contemplated by the parties in the Purchase Agreements and other agreements between the various parties;

### **IT IS HEREBY AGREED:**

In order to properly administer and distribute the Escrow, pursuant to the agreements between the parties, Escrow Agent will act as escrow agent for the Parties, and shall receive, hold and distribute the escrow deposits as provided herein.

#### **1. Documents. Agent shall accept and hold the following documents:**

A. As described in Exhibit A attached hereto.

2. Funds. Upon receipt of the documents described in Section 1, the Escrow Agent shall notify KBCC, which shall then deposit the funds, within 30 days, as required by Section 5(B) of the Purchase Agreements.

#### **3. Deposit of Funds.**

A. If the required funds are not deposited within 30 days, the Escrow shall terminate and the Escrow Agent shall notify the parties and forthwith return the documents to the respective party making such deposit.

B. If the funds are deposited, the Escrow Agent shall, upon receipt of the funds, notify the parties, who shall have thirty days to inspect the Escrow, as provided in Section 5(C) of the Purchase Agreements. If no objections are raised within such time period (or any extended period agreed to by the parties) the Escrow shall be closed, and the Escrow Agent shall hold the documents in a secure place, and invest the funds, in accordance with prudent business judgment for

fiduciaries, until notified that the Escrow Conditions have been fulfilled in accordance with Section 4, below.

**4. Escrow, Petition, Post Petition and Closing Conditions:**

Following the deposits into Escrow as described above the parties shall proceed with and be bound by the Escrow, Petition, Post Petition and Closing Conditions setforth in the Purchase Agreements. Such Purchase Agreements and the terms thereof are incorporated herein by reference and made a part hereof. The parties to this Escrow Agreement which are not otherwise bound to the Purchase Agreements hereby agree to be bound to such Purchase Agreements as they relate to the terms of the Escrow.

**5. Disputes.** In the event of a dispute between any of the parties concerning the Escrow or this Agreement, such dispute shall be resolved through binding arbitration pursuant to the Illinois Uniform Arbitration Act in accordance with the provisions setforth in the Purchase Agreements.

**6. All notices or other communications, shall be in writing, and shall be effective two business days after mailing by U.S. Mail (return receipt requested), or one day after being sent UPS, FEDEX, or similar courier service, to the following addresses:**

If to PIRY: Pioneer Industrial Railway Co.  
1318 S. Johanson Road  
Peoria, Illinois 61607  
ATTN: President

If to KBCC: Kellar Branch Corridor Corporation  
c/o The Leiter Group.  
309 A Main Street  
Peoria, Illinois 61602  
ATTN: Tom Leiter

If to CITY: City of Peoria  
Mr. Randy Ray  
City Hall  
419 Fulton, Suite 207  
Peoria, IL 61602

If to VILLAGE: Village of Peoria Heights  
Mr. Tom Trager  
Vonachen, Lawless, Trager & Slevin  
456 Fulton, Suite 325  
Peoria, IL 61602

If to CIRY: Central Illinois Railroad Co.

1861 Willow Creek Road  
Portage, Indiana 46368

With copy to: Toussaint and Carlson, LTD  
2500 South Highland Avenue  
Suite 360  
Lombard, Illinois 60148

Attn: Michael Ascher

If to Escrow Agent: Land Title Professionals, Inc.  
Attn: Cindy Weeden  
311 Main Street  
Peoria, IL 61602

or to such other addresses as the parties may from time to time give notice of.

7. Deliveries at Closing. At Closing, the Escrow Agent shall make the deliveries provided for in the Purchase Agreements.

8. Interest and Fees. KBCC shall be responsible for the payment of the usual and customary costs and expenses of the Escrow Agent in administering the Escrow Agreement. Interest earned on the Escrow funds shall accrue to the benefit of KBCC and the Escrow Agent shall be allowed to deduct the expenses of the Escrow from the interest earnings. Interest earnings in excess of the expenses of the Escrow Agent shall be distributed to KBCC at closing or at any earlier date in the event the Escrow is terminated and the principal deposit is returned to KBCC as provided herein.

9. Construction. This Agreement is intended to effect the intent of the parties under the Purchase Agreements, and is to be read in conjunction with the Purchase Agreements and the other agreements between the parties. This Agreement shall constitute the consent referred to in Paragraph 5A(3). No waiver, modification or amendment to this Agreement shall be of any force or effect unless manually signed by the parties. Except as otherwise may be provided in the Purchase Agreements, this Agreement shall not be assigned by any party without the prior written consent of the other parties. This Agreement was negotiated between the parties and shall not be construed in favor of or against any party regardless of which party may have drafted any part or all of this Agreement. Unless otherwise expressly provided or unless the context requires otherwise, words importing the singular number shall mean and include the plural number and vice versa.

10. Indemnification of Agent. KBCC, CITY, VILLAGE, PIRY and CIRY shall jointly indemnify, defend, and hold harmless Escrow Agent from any liability, demand, suit or action resulting from any action or inaction of Escrow Agent, so long as Escrow Agent is acting in good faith in accordance with this Agreement. Escrow Agent undertakes to

perform only such duties as are expressly set forth herein. Escrow Agent may rely and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed by or presented by the proper party or parties. Escrow Agent may resign and be discharged from its duties or obligations hereunder by giving not less than thirty (30) days notice in writing to the parties of such resignation, specifying a date when such resignation shall take effect.

11. The representative executing this Agreement warrant that they are the duly authorized representatives of the entities designated below, and are fully empowered to execute this Agreement on behalf of the respective parties.

Entered into this \_\_\_\_ day of October, 2009.

PIONEER INDUSTRIAL  
RAILWAY CO.

CENTRAL ILLIONIS RAILROAD  
COMPANY

By: \_\_\_\_\_  
J. Michael Carr, President

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

KELLAR BRANCH CORRIDOR  
CORPORATION NFP

CITY OF PEORIA

By: \_\_\_\_\_  
Name:  
Its:

By: \_\_\_\_\_  
Name:  
Its:

VILLAGE OF PEORIA HEIGHTS

LAND TITLE PROFESSIONALS, INC.

By: \_\_\_\_\_  
Name:  
Its:

By: \_\_\_\_\_  
Name:  
Its:

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## LEASEHOLD PURCHASE AGREEMENT

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This Leasehold Purchase Agreement ("Agreement") is made this 12<sup>th</sup> day of November, 2008, by and between CENTRAL ILLINOIS RAILROAD CO. ("CIRY" also referred to as "Seller") and the KELLAR BRANCH CORRIDOR CORPORATION ("KBCC" also referred to as "Buyer").

### RECITALS

WHEREAS, CIRY is an Illinois corporation with its principal offices at 123 Market Street, Suite 320, Willow Springs, Illinois 60480 and is in the business of providing railway transportation services; and

WHEREAS, KBCC is an Illinois not-for-profit corporation organized for the purpose of acquiring the Property described in this Agreement for the uses and purposes set forth herein; and

WHEREAS, CIRY entered into an Agreement ("Lease Agreement") with the City of Peoria, Illinois to provide railway transportation services over a rail line sometimes referred to as the Peoria, Peoria Heights and Western Railroad, being the former Kellar Branch of the Chicago, Rock Island and Pacific Railroad Company. Such rail line is herein referred to as the "Kellar Branch" and is illustrated in Exhibit A attached hereto. Such lease also includes the Western Connection as defined herein; and

WHEREAS, CIRY has authority to provide railway transportation services on the Kellar Branch and Western Connection pursuant to various orders and decisions of the Surface Transportation Board ("STB"); and

WHEREAS, KBCC desires to acquire all of CIRY's right, title and interest, including CIRY's leasehold interest ("Property") to a portion of the Kellar Branch, such portion being herein referred to as the "Kellar Branch Public Use Corridor" and is illustrated in Exhibit B attached hereto; and

WHEREAS, the KBCC and CIRY (the "Parties") acknowledge that the Property is a valuable property asset for which KBCC is willing to pay CIRY the amount set forth in this Agreement providing, however, that CIRY is granted STB authority to discontinue Common Carrier Rail Service over the Kellar Branch Public Use Corridor; and

WHEREAS, CIRY desires to sell the Property to KBCC but with the understanding that CIRY will continue to provide railway transportation services over the remaining portions of the

Kellar Branch, such remaining portions being referred to herein as the "Remaining Kellar Branch" as illustrated in Exhibit C, it being understood that the remaining Kellar Branch includes the "Western Connection" as provided herein; and

WHEREAS, the Parties acknowledge that other interested parties ("Other Interested Parties") have an interest in the subject matter of this Agreement, including: (1) the City of Peoria, Illinois ("City") and the Village of Peoria Heights, Illinois, ("Village") each of which claim ownership of a part of the Kellar Branch; (2) another company providing railway transportation services on the Kellar Branch known as Pioneer Industrial Railway Co. ("PIRY"), a rail carrier that provides common carrier service over the Kellar Branch, and (3) certain businesses receiving railway transportation services, including Carver Lumber Company, which is a customer of PIRY, and O'Brien Steel Corp. which is a customer of CIRY. The Parties acknowledge that the implementation of this Agreement is dependent on the consent and/or cooperation from such Other Interested Parties as provided for herein.

NOW, THEREFORE, in consideration of the promises and covenants provided herein, the Parties agree as follows:

1. **Definitions.** As used in this Agreement, the following definitions shall apply.
  - A. Agreement – This Leasehold Purchase Agreement.
  - B. Lease Agreement – Any and all agreements and amendments thereto under which CIRY has or claims a right to possess and/or operate on the Kellar Branch and extensions thereof.
  - C. PIRY – Pioneer Industrial Railway Co., an Iowa corporation.
  - D. CIRY – Central Illinois Railroad Co., an Illinois corporation.
  - E. KBCC – Kellar Branch Corridor Corporation, an Illinois not-for-profit corporation.
  - F. STB – United States Surface Transportation Board.
  - G. Kellar Branch – The rail line sometimes referred to as the Peoria, Peoria Heights, and Western Railroad in Peoria County, Illinois, being the former Kellar Branch of the Chicago, Rock Island, and Pacific Railroad Company. The Kellar Branch is illustrated in Exhibit A attached hereto.
  - H. Kellar Branch Public Use Corridor – That portion of the Kellar Branch as illustrated in Exhibit B attached hereto.
  - I. Property – All of CIRY's right, title and interest in and to the Lease Agreement as it pertains to the Kellar Branch Public Use Corridor and any

other claim or interest of CIRY or its successors or assigns in real estate or fixtures in the Kellar Branch Public Use Corridor.

- J. Remaining Kellar Branch – Those portions of the Kellar Branch, excluding the Kellar Branch Public Use Corridor, together with the “Western Connection,” as illustrated in Exhibit C attached hereto.
- K. Western Connection – That trackage currently owned by the City of Peoria that connects the Kellar Branch with the Union Pacific Railroad Company’s main line west of Pioneer Park.
- L. City – City of Peoria, Illinois
- M. Village – Village of Peoria Heights, Illinois
- N. Escrow Agent – The title insurance company doing business in Peoria County, Illinois known as Land Title Professionals, Inc. or such other escrow agent agreed to by the parties.
- O. Petition – The petition or petitions filed by PIRY and/or CIRY, with the STB, seeking discontinuance and abandonment of rail service over the Kellar Branch Public Use Corridor.

2. **Sale.**

- A. CIRY agrees to sell and KBCC agrees to purchase the Property on the terms and conditions provided for in this Agreement.
- B. Sale is subject to the satisfaction of all Conditions Precedent as described herein.

3. **Purchase Price.** Purchase Price for the Property shall be the sum specified in the Confidential Memorandum between CIRY and KBCC of even date herewith. Such Confidential Memorandum and all terms thereof are hereby incorporated in and made a part of this Agreement to the same extent as if fully enumerated herein.

4. **Closing.** Following execution of this Agreement, it is understood that certain conditions must be satisfied prior to Closing. These conditions (“Conditions Precedent”) are described as: “Pre-Petition Conditions”, “Escrow Conditions”, “Petition Conditions” and “Post-Petition Conditions”. Closing shall be held at the offices of the Escrow Agent at a time reasonably specified by Buyer in Peoria, Illinois no later than thirty (30) days after satisfaction of the Conditions Precedent.

5. **Conditions Precedent.**

The following Conditions Precedent must be satisfied as hereinafter described.

A. **Pre-Petition Conditions.**

The following Pre-Petition Conditions must be satisfied no later than December 30th, 2008, which date the Parties may mutually extend in order to obtain the necessary City and/or Village approvals. Failure to satisfy these Pre-Petition Conditions by such date shall cause this Agreement to be terminated and no longer of any force or effect. From and after the date of this Agreement, the Parties shall make every reasonable good faith effort to satisfy the Pre-Petition Conditions.

- (1.) The execution of a Leasehold Purchase Agreement between KBCC as Buyer and PIRY as Seller under the terms of which KBCC acquires all of PIRY's right, title and interest, including PIRY's leasehold interest in that portion of the Kellar Branch known as the Kellar Branch Public Use Corridor. Such Agreement between KBCC and PIRY shall obligate PIRY to petition the STB for discontinuance of its operating authority over the Kellar Branch Public Use Corridor according to the same timetable as provided in this Agreement. KBCC shall be responsible for procuring this agreement.
- (2.) The execution of an agreement(s) acceptable to CIRY, in its sole discretion, between the City and CIRY authorizing CIRY to provide or to continue to provide rail service over the Remaining Kellar Branch following discontinuance of rail service over the Kellar Branch Public Use Corridor. CIRY shall initiate discussions with the City promptly after the execution of this Agreement. It is understood that such Agreement will acknowledge that PIRY may also continue to provide rail service over the Remaining Kellar Branch. In addition, the City shall give CIRY a full release covering any claims the City may have against CIRY, including the maintenance, operation or occupation of the Kellar Branch by CIRY prior to the new agreement provided for herein.
- (3.) Consents executed by the City and the Village to the terms of this Agreement and the agreement between KBCC and PIRY. Such

consents shall specifically authorize the acquisition of the Leasehold interests of PIRY and CIRY as well as the filing of and consent to the Petition seeking discontinuance of rail service over the Kellar Branch Public Use Corridor. KBCC and CIRY shall jointly approach the City and the Village as to this Agreement.

- (4.) The execution by the Village of a release of CIRY covering any claims the Village may have against CIRY, including any related to the operation, maintenance, or occupation of the Kellar Branch by CIRY. KBCC and CIRY shall jointly approach the Village as part of the Consent described in subsection (3), above.
- (5.) The execution of consents by Carver Lumber Company and O'Brien Steel Corp. to the Petitions for discontinuance to be filed by PIRY and CIRY. PIRY shall request such consent from Carver, and CIRY shall request such consent from O'Brien.
- (6.) The execution of an Escrow Agreement between the parties and the other entities with the Escrow Agent, to facilitate Closing this Agreement. KBCC shall pay the costs and expenses of the Escrow Agent.

**B. Escrow Conditions**

Following satisfaction of the Pre-Petition Conditions, the Parties and other entities shall deposit with the Escrow Agent fully executed documents described in the Pre-Petition Conditions. Within thirty (30) days from the date of the deposit of such documents, KBCC shall deposit with the Escrow Agent the sum specified in the Confidential Memorandum. In the event the deposit of the documents or the money is not made as required, this Agreement shall terminate and be of no further force or effect and all documents and money so deposited shall be returned to the respective party making such deposit(s). Once the escrow deposits are made as provided, such deposits may not be withdrawn except as provided for at Closing, or in the event this Agreement is terminated as provided herein. The Parties shall make every reasonable and good faith effort to satisfy the Escrow Conditions.

**C. Petition Conditions.**

Within thirty (30) days of the date that the Escrow Agent confirms receipt of the escrow deposits as provided in Paragraph 5B above, the Parties and other entities shall have the opportunity to inspect the escrow deposits related to and confirm compliance with this Agreement and the various agreements ancillary to this Agreement. If no party objects, and all Pre-Petition Conditions and Escrow Conditions have been complied with, then, within thirty (30) days after the expiration of the inspection period, or any agreed extended inspection period, PIRY and CIRY shall file the Petition with the STB for authority to discontinue all of PIRY's and CIRY's rail common carrier obligations over the Kellar Branch Public Use Corridor. CIRY shall coordinate such Petition with the Petition to be filed by PIRY as provided for in the Agreement between KBCC and PIRY. If possible, PIRY and CIRY shall file a joint Petition. Such Petition shall include statements of consent executed by Carver Lumber Company and O'Brien Steel Corp. as provided herein.

**D. Post-Petition Conditions.**

- (1.) Following the filing of the Petition, CIRY shall pursue the proceeding with diligence and seek opportunities to expedite the proceedings for discontinuance. CIRY shall be responsible for its own filing fees and attorney fees. In the event any third party files an objection to the Petition, or PIRY fails to pursue its Petition or withdraws its Petition, or if PIRY's Petition is denied, then CIRY shall have the option to terminate this Agreement, and withdraw its Petition, at any time, without any liability whatsoever.
- (2.) In the event the STB denies the Petition and such Order of Denial becomes final, a certified copy of such Order shall be delivered to the Escrow Agent and the Escrow Agent shall thereupon return all of the escrow deposits to the party making such deposit and this Agreement shall thereupon be terminated and of no further force or effect. CIRY shall have no obligation to appeal or otherwise contest such denial.
- (3.) In the event the STB grants the Petition and such Order granting discontinuance becomes final, a certified copy of such Order shall be delivered to the Escrow Agent by CIRY, the Conditions

Precedent shall be deemed satisfied, and the Parties shall proceed to Closing as herein above provided. On or before Closing, CIRY shall cause a Notice of Consummation of Discontinuance Authority ("Consummation") to be filed with STB in accordance with 49C.F.R.1152.29. If said Notice has not been filed prior to Closing, CIRY shall deliver a full executed copy to the Escrow Agent, with irrevocable instructions to file same with STB immediately upon Closing, or shall supply same to the attorney for KBCC to file at STB upon Closing.

- (4.) It is understood and agreed that if CIRY elects not to withdraw its Petition as provided in Section 5(D)(1), above, and PIRY's Petition is not granted, KBCC shall have the option to terminate this Agreement and all Escrow Deposits shall be returned to the party making such deposit.

**6. Deliveries at Closing.** At Closing, the Escrow Agent shall make the following deliveries:

**A. Deliveries to CIRY.**

- (1.) The Purchase Price by cashier's check in accordance with the Confidential Memorandum.
- (2.) Closing statement executed by CIRY and KBCC
- (3.) The agreement(s) between the City and CIRY providing for CIRY's rail service operations on the Remaining Kellar Branch.
- (4.) The releases executed by the Village and the City releasing CIRY of all claims

**B. Deliveries to KBCC.**

- (1.) Executed documents quit-claiming the Property from CIRY to KBCC.
- (2.) Closing statement executed by CIRY and KBCC.
- (3.) Such filings on Consummation as is consistent with the Post-Petition Conditions set forth above in Paragraph 5D(3).

**7. Binding Effect and Enforcement.** Following satisfaction of Pre-Conditions numbers (1) and (2), this Agreement may be assigned by any party, without the prior written consent of the other party, provided that no assignment shall relieve the Parties (CIRY and

KBCC) of their obligations hereunder. Subject thereto, this Agreement shall be in full force and effect from and after the date hereof and shall be binding on the successors and assigns of the Parties hereto. No waiver, modification or amendment to this Agreement shall have any effect unless it is in writing and signed by the Parties. This Agreement shall be construed to have been executed in Springfield, Illinois. Any dispute involving this Agreement shall be resolved through binding arbitration, pursuant to the Illinois Uniform Arbitration Act. Such arbitration shall be before a single disinterested arbitrator, and shall take place in Springfield, Illinois, or such other location as the Parties may agree to. The arbitrator shall have the power to award expenses and reasonable attorney fees to the prevailing party, as the arbitrator shall deem just. If the Parties cannot agree on a single arbitrator, each party shall appoint one disinterested person, and those two appointees shall agree on a disinterested arbitrator who shall act as the single arbitrator hereunder. If either party fails to appoint such disinterested person, upon thirty days notice so to do, the other party may petition the Circuit Court of Sangamon County, Illinois to appoint such person. Any litigation involving this Agreement shall be filed and heard in the Circuit Court of Sangamon County, Illinois, only, and the Parties consent to jurisdiction and venue in that Court. The Parties shall agree to the costs of the Escrow Agent in the Confidential Memorandum, and shall, except as otherwise provided herein, be responsible for their own costs and attorney fees. The Parties agree that no broker or similar commission is due any person or entity on account of this transaction.

CENTRAL ILLINOIS RAILROAD CO.

By: [Signature]

Attest: [Signature]

KELLAR BRANCH CORRIDOR CORPORATION

By: [Signature]

Attest: [Signature]

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**CONFIDENTIAL MEMORANDUM**

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This Confidential Memorandum is made pursuant to Leasehold Purchase Agreement between CIRY and KBCC.

**ARTICLE I**

The purchase price to be paid by KBCC to CIRY totals One Hundred Fifty Thousand (\$150,000.00) Dollars U.S.D.

**ARTICLE II**

Following Closing, CIRY may elect to give to KBCC one (and only one) of the two (2) Notices hereafter described. Such Notices are described as:

- A. Notice to Elect Salvage Rights.
- B. Notice to Decline Salvage Rights.

Such Notice once given, shall be an irrevocable election by CIRY to proceed in accordance with the Notice given. If neither Notice is given as provided herein, the provisions of this Article II shall terminate and be of no further force or effect and neither party shall have any rights or obligations under this Article II. The Notice, if given, shall be given within four (4) months following Closing as follows.

Such Notice shall be in writing and sent by US postage prepaid certified mail return receipt requested, addressed as follows:

KBCC  
309-A Main Street  
Peoria, IL 61602

With copy to:

The Leiter Group  
309-A Main Street  
Peoria, IL 61602

In the event KBCC assigns its rights under this Agreement notice shall be given to the assignee, as KBCC shall direct. Notice of such assignment shall be sent by US postage prepaid certified mail, return receipt requested, addressed as follows:

Central Illinois Railway Co.  
123 Market Street, Suite 320  
Willow Springs, IL 60480

With copy to:

Roger Carlson, Esq.  
Toussaint & Carlson, LTD  
2500 South Highland Avenue  
Suite 360  
Lombard, IL 60148

**A. NOTICE TO ELECT SALVAGE RIGHTS**

The Notice to Elect Salvage Rights shall be an election by CIRY to remove all of the rail and ties from the Kellar Branch Public Use Corridor at CIRY's sole expense with the right to retain and dispose of such rail and ties and value thereof as salvage in accordance with the following conditions.

1. Removal of the rail and ties shall be completed within six (6) months after Closing. Such six (6) month period shall be extended to the extent (1) circumstances beyond CIRY's control have caused a delay in CIRY's performance, and (2) CIRY continues to make commercially reasonable efforts to complete the removal in a timely manner. For purposes of accomplishing the removal, KBCC grants to CIRY a non-exclusive license to access the Kellar Branch Public Use Corridor for the purpose of removing the rail and ties.
2. CIRY shall furnish KBCC a performance bond, security deposit or such other security as KBCC shall reasonably require to insure CIRY's removal of the rail and ties as provided for herein prior to removing any rail or ties from the Kellar Branch Public Use Corridor following which title to the rail and ties shall pass to CIRY on their removal.
3. Removal and disposal of the rail and ties by CIRY shall comply with all applicable laws, ordinances, codes and regulations.

**B. NOTICE TO DECLINE SALVAGE RIGHTS**

The Notice to Decline Salvage Rights shall be an irrevocable election giving up the rights otherwise available under the Notice to Elect Salvage Rights. However, giving such Notice to Decline Salvage Rights shall allow CIRY to provide contract services for the removal of the rail and ties on the Kellar Branch Public Use Corridor under a contract with KBCC or its assignee on the following conditions.

1. In the event KBCC or its assignee determines to enter into a contract for the removal of the rail and ties within twenty-four(24) months from the date of Closing, CIRY shall have the right but not the obligation, to serve as such contractor on such terms as are reasonably specified by KBCC or its assignee in accordance with market based rates at the time of the contract.
2. The contract price for the removal of the rail and ties shall be reasonably negotiated by CIRY and KBCC or its assignee provided that such negotiation is not barred by law. In the event any applicable law requires the contract to be competitively bid, CIRY shall be given the right to submit a bid in accordance with the bidding requirements.

C. INDEMNIFICATION

CIRY shall indemnify and hold KBCC and its assignees harmless of and from any and all claims of whatsoever kind arising from CIRY's activities, on or within the Kellar Branch Public Use Corridor; provided, however, that CIRY shall not be so obligated with respect to any claim arising from KBCC's negligence or gross negligence. CIRY shall maintain liability insurance reasonably satisfactory to KBCC with respect to its activities in removing the rail and ties.

KBCC and its assignees shall indemnify and hold CIRY and its assignees harmless of and from any and all claims of whatsoever kind arising from KBCC's activities occurring on or within the Kellar Branch Public Use Corridor; provided, however, that KBCC and its assignees shall not be so obligated with respect to any claim arising from CIRY's negligence or gross negligence.

ARTICLE III

KBCC shall be responsible for the payment of the usual and customary cost and expenses of the Escrow Agent in administering the Escrow Agreement. The Escrow shall be governed by the Escrow Agent's standard form Joint Order Escrow Agreement with such revisions to reflect the transactions described above as the Parties may reasonably agree. CIRY shall be responsible for its own filing fees and attorney's fee, including those relating to the necessary proceedings for obtaining the STB, City and Village approvals; provided, however, that CIRY shall not be required to bear more than \$10,000.00 with respect to such proceedings.

This Confidential Memorandum shall not be disclosed to any person or entity except as such disclosure may be necessary to a proposed assignee of either party and then only under such circumstances where such person or entity agrees to maintain the confidentiality of this Confidential memorandum as provided herein. This paragraph restricting disclosure shall terminate following satisfaction of Pre-Condition numbers (1) and (2) described in the Leasehold Purchase Agreement.

CENTRAL ILLINOIS RAILROAD CO.

By: [Signature]

Attest: Chris L. Stutz

KELLAR BRANCH CORRIDOR CORPORATION

By: [Signature]

Attest: Mary P. Sutherland

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## LEASEHOLD PURCHASE AGREEMENT

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This Leasehold Purchase Agreement ("Agreement") is made this 17<sup>th</sup> day of November, 2008, by and between CENTRAL ILLINOIS RAILROAD CO. ("CIRY" also referred to as "Seller") and the KELLAR BRANCH CORRIDOR CORPORATION ("KBCC" also referred to as "Buyer").

### RECITALS

WHEREAS, CIRY is an Illinois corporation with its principal offices at 123 Market Street, Suite 320, Willow Springs, Illinois 60480 and is in the business of providing railway transportation services; and

WHEREAS, KBCC is an Illinois not-for-profit corporation organized for the purpose of acquiring the Property described in this Agreement for the uses and purposes set forth herein; and

WHEREAS, CIRY entered into an Agreement ("Lease Agreement") with the City of Peoria, Illinois to provide railway transportation services over a rail line sometimes referred to as the Peoria, Peoria Heights and Western Railroad, being the former Kellar Branch of the Chicago, Rock Island and Pacific Railroad Company. Such rail line is herein referred to as the "Kellar Branch" and is illustrated in Exhibit A attached hereto. Such lease also includes the Western Connection as defined herein; and

WHEREAS, CIRY has authority to provide railway transportation services on the Kellar Branch and Western Connection pursuant to various orders and decisions of the Surface Transportation Board ("STB"); and

WHEREAS, KBCC desires to acquire all of CIRY's right, title and interest, including CIRY's leasehold interest ("Property") to a portion of the Kellar Branch, such portion being herein referred to as the "Kellar Branch Public Use Corridor" and is illustrated in Exhibit B attached hereto; and

WHEREAS, the KBCC and CIRY (the "Parties") acknowledge that the Property is a valuable property asset for which KBCC is willing to pay CIRY the amount set forth in this Agreement providing, however, that CIRY is granted STB authority to discontinue Common Carrier Rail Service over the Kellar Branch Public Use Corridor; and

WHEREAS, CIRY desires to sell the Property to KBCC but with the understanding that CIRY will continue to provide railway transportation services over the remaining portions of the

Kellar Branch, such remaining portions being referred to herein as the "Remaining Kellar Branch" as illustrated in Exhibit C, it being understood that the remaining Kellar Branch includes the "Western Connection" as provided herein; and

WHEREAS, the Parties acknowledge that other interested parties ("Other Interested Parties") have an interest in the subject matter of this Agreement, including: (1) the City of Peoria, Illinois ("City") and the Village of Peoria Heights, Illinois, ("Village") each of which claim ownership of a part of the Kellar Branch; (2) another company providing railway transportation services on the Kellar Branch known as Pioneer Industrial Railway Co. ("PIRY"), a rail carrier that provides common carrier service over the Kellar Branch, and (3) certain businesses receiving railway transportation services, including Carver Lumber Company, which is a customer of PIRY, and O'Brien Steel Corp. which is a customer of CIRY. The Parties acknowledge that the implementation of this Agreement is dependent on the consent and/or cooperation from such Other Interested Parties as provided for herein.

NOW, THEREFORE, in consideration of the promises and covenants provided herein, the Parties agree as follows:

1. **Definitions.** As used in this Agreement, the following definitions shall apply.
  - A. Agreement – This Leasehold Purchase Agreement.
  - B. Lease Agreement – Any and all agreements and amendments thereto under which CIRY has or claims a right to possess and/or operate on the Kellar Branch and extensions thereof.
  - C. PIRY – Pioneer Industrial Railway Co., an Iowa corporation.
  - D. CIRY – Central Illinois Railroad Co., an Illinois corporation.
  - E. KBCC – Kellar Branch Corridor Corporation, an Illinois not-for-profit corporation.
  - F. STB – United States Surface Transportation Board.
  - G. Kellar Branch – The rail line sometimes referred to as the Peoria, Peoria Heights, and Western Railroad in Peoria County, Illinois, being the former Kellar Branch of the Chicago, Rock Island, and Pacific Railroad Company. The Kellar Branch is illustrated in Exhibit A attached hereto.
  - H. Kellar Branch Public Use Corridor – That portion of the Kellar Branch as illustrated in Exhibit B attached hereto.
  - I. Property – All of CIRY's right, title and interest in and to the Lease Agreement as it pertains to the Kellar Branch Public Use Corridor and any

other claim or interest of CIRY or its successors or assigns in real estate or fixtures in the Kellar Branch Public Use Corridor.

- J. Remaining Kellar Branch -- Those portions of the Kellar Branch, excluding the Kellar Branch Public Use Corridor, together with the "Western Connection," as illustrated in Exhibit C attached hereto.
- K. Western Connection -- That trackage currently owned by the City of Peoria that connects the Kellar Branch with the Union Pacific Railroad Company's main line west of Pioneer Park.
- L. City -- City of Peoria, Illinois
- M. Village -- Village of Peoria Heights, Illinois
- N. Escrow Agent -- The title insurance company doing business in Peoria County, Illinois known as Land Title Professionals, Inc. or such other escrow agent agreed to by the parties.
- O. Petition -- The petition or petitions filed by PIRY and/or CIRY, with the STB, seeking discontinuance and abandonment of rail service over the Kellar Branch Public Use Corridor.

2. **Sale.**

- A. CIRY agrees to sell and KBCC agrees to purchase the Property on the terms and conditions provided for in this Agreement.
- B. Sale is subject to the satisfaction of all Conditions Precedent as described herein.

3. **Purchase Price.** Purchase Price for the Property shall be the sum specified in the Confidential Memorandum between CIRY and KBCC of even date herewith. Such Confidential Memorandum and all terms thereof are hereby incorporated in and made a part of this Agreement to the same extent as if fully enumerated herein.

4. **Closing.** Following execution of this Agreement, it is understood that certain conditions must be satisfied prior to Closing. These conditions ("Conditions Precedent") are described as: "Pre-Petition Conditions", "Escrow Conditions", "Petition Conditions" and "Post-Petition Conditions". Closing shall be held at the offices of the Escrow Agent at a time reasonably specified by Buyer in Peoria, Illinois no later than thirty (30) days after satisfaction of the Conditions Precedent.

5. **Conditions Precedent.**

The following Conditions Precedent must be satisfied as hereinafter described.

A. **Pre-Petition Conditions.**

The following Pre-Petition Conditions must be satisfied no later than December 30th, 2008, which date the Parties may mutually extend in order to obtain the necessary City and/or Village approvals. Failure to satisfy these Pre-Petition Conditions by such date shall cause this Agreement to be terminated and no longer of any force or effect. From and after the date of this Agreement, the Parties shall make every reasonable good faith effort to satisfy the Pre-Petition Conditions.

- (1.) The execution of a Leasehold Purchase Agreement between KBCC as Buyer and PIRY as Seller under the terms of which KBCC acquires all of PIRY's right, title and interest, including PIRY's leasehold interest in that portion of the Kellar Branch known as the Kellar Branch Public Use Corridor. Such Agreement between KBCC and PIRY shall obligate PIRY to petition the STB for discontinuance of its operating authority over the Kellar Branch Public Use Corridor according to the same timetable as provided in this Agreement. KBCC shall be responsible for procuring this agreement.
- (2.) The execution of an agreement(s) acceptable to CIRY, in its sole discretion, between the City and CIRY authorizing CIRY to provide or to continue to provide rail service over the Remaining Kellar Branch following discontinuance of rail service over the Kellar Branch Public Use Corridor. CIRY shall initiate discussions with the City promptly after the execution of this Agreement. It is understood that such Agreement will acknowledge that PIRY may also continue to provide rail service over the Remaining Kellar Branch. In addition, the City shall give CIRY a full release covering any claims the City may have against CIRY, including the maintenance, operation or occupation of the Kellar Branch by CIRY prior to the new agreement provided for herein.
- (3.) Consents executed by the City and the Village to the terms of this Agreement and the agreement between KBCC and PIRY. Such

consents shall specifically authorize the acquisition of the Leasehold interests of PIRY and CIRY as well as the filing of and consent to the Petition seeking discontinuance of rail service over the Kellar Branch Public Use Corridor. KBCC and CIRY shall jointly approach the City and the Village as to this Agreement.

- (4.) The execution by the Village of a release of CIRY covering any claims the Village may have against CIRY, including any related to the operation, maintenance, or occupation of the Kellar Branch by CIRY. KBCC and CIRY shall jointly approach the Village as part of the Consent described in subsection (3), above.
- (5.) The execution of consents by Carver Lumber Company and O'Brien Steel Corp. to the Petitions for discontinuance to be filed by PIRY and CIRY. PIRY shall request such consent from Carver, and CIRY shall request such consent from O'Brien.
- (6.) The execution of an Escrow Agreement between the parties and the other entities with the Escrow Agent, to facilitate Closing this Agreement. KBCC shall pay the costs and expenses of the Escrow Agent.

**B. Escrow Conditions**

Following satisfaction of the Pre-Petition Conditions, the Parties and other entities shall deposit with the Escrow Agent fully executed documents described in the Pre-Petition Conditions. Within thirty (30) days from the date of the deposit of such documents, KBCC shall deposit with the Escrow Agent the sum specified in the Confidential Memorandum. In the event the deposit of the documents or the money is not made as required, this Agreement shall terminate and be of no further force or effect and all documents and money so deposited shall be returned to the respective party making such deposit(s). Once the escrow deposits are made as provided, such deposits may not be withdrawn except as provided for at Closing, or in the event this Agreement is terminated as provided herein. The Parties shall make every reasonable and good faith effort to satisfy the Escrow Conditions.

**C. Petition Conditions.**

Within thirty (30) days of the date that the Escrow Agent confirms receipt of the escrow deposits as provided in Paragraph 5B above, the Parties and other entities shall have the opportunity to inspect the escrow deposits related to and confirm compliance with this Agreement and the various agreements ancillary to this Agreement. If no party objects, and all Pre-Petition Conditions and Escrow Conditions have been complied with, then, within thirty (30) days after the expiration of the inspection period, or any agreed extended inspection period, PIRY and CIRY shall file the Petition with the STB for authority to discontinue all of PIRY's and CIRY's rail common carrier obligations over the Kellar Branch Public Use Corridor. CIRY shall coordinate such Petition with the Petition to be filed by PIRY as provided for in the Agreement between KBCC and PIRY. If possible, PIRY and CIRY shall file a joint Petition. Such Petition shall include statements of consent executed by Carver Lumber Company and O'Brien Steel Corp. as provided herein.

**D. Post-Petition Conditions.**

- (1.) Following the filing of the Petition, CIRY shall pursue the proceeding with diligence and seek opportunities to expedite the proceedings for discontinuance. CIRY shall be responsible for its own filing fees and attorney fees. In the event any third party files an objection to the Petition, or PIRY fails to pursue its Petition or withdraws its Petition, or if PIRY's Petition is denied, then CIRY shall have the option to terminate this Agreement, and withdraw its Petition, at any time, without any liability whatsoever.
- (2.) In the event the STB denies the Petition and such Order of Denial becomes final, a certified copy of such Order shall be delivered to the Escrow Agent and the Escrow Agent shall thereupon return all of the escrow deposits to the party making such deposit and this Agreement shall thereupon be terminated and of no further force or effect. CIRY shall have no obligation to appeal or otherwise contest such denial.
- (3.) In the event the STB grants the Petition and such Order granting discontinuance becomes final, a certified copy of such Order shall be delivered to the Escrow Agent by CIRY, the Conditions

Precedent shall be deemed satisfied, and the Parties shall proceed to Closing as herein above provided. On or before Closing, CIRY shall cause a Notice of Consummation of Discontinuance Authority ("Consummation") to be filed with STB in accordance with 49C.F.R.1152.29. If said Notice has not been filed prior to Closing, CIRY shall deliver a full executed copy to the Escrow Agent, with irrevocable instructions to file same with STB immediately upon Closing, or shall supply same to the attorney for KBCC to file at STB upon Closing.

- (4.) It is understood and agreed that if CIRY elects not to withdraw its Petition as provided in Section 5(D)(1), above, and PIRY's Petition is not granted, KBCC shall have the option to terminate this Agreement and all Escrow Deposits shall be returned to the party making such deposit.

**6. Deliveries at Closing.** At Closing, the Escrow Agent shall make the following deliveries:

**A. Deliveries to CIRY.**

- (1.) The Purchase Price by cashier's check in accordance with the Confidential Memorandum.
- (2.) Closing statement executed by CIRY and KBCC
- (3.) The agreement(s) between the City and CIRY providing for CIRY's rail service operations on the Remaining Kellar Branch.
- (4.) The releases executed by the Village and the City releasing CIRY of all claims

**B. Deliveries to KBCC.**

- (1.) Executed documents quit-claiming the Property from CIRY to KBCC.
- (2.) Closing statement executed by CIRY and KBCC.
- (3.) Such filings on Consummation as is consistent with the Post-Petition Conditions set forth above in Paragraph 5D(3).

**7. Binding Effect and Enforcement.** Following satisfaction of Pre-Conditions numbers (1) and (2), this Agreement may be assigned by any party, without the prior written consent of the other party, provided that no assignment shall relieve the Parties (CIRY and

KBCC) of their obligations hereunder. Subject thereto, this Agreement shall be in full force and effect from and after the date hereof and shall be binding on the successors and assigns of the Parties hereto. No waiver, modification or amendment to this Agreement shall have any effect unless it is in writing and signed by the Parties. This Agreement shall be construed to have been executed in Springfield, Illinois. Any dispute involving this Agreement shall be resolved through binding arbitration, pursuant to the Illinois Uniform Arbitration Act. Such arbitration shall be before a single disinterested arbitrator, and shall take place in Springfield, Illinois, or such other location as the Parties may agree to. The arbitrator shall have the power to award expenses and reasonable attorney fees to the prevailing party, as the arbitrator shall deem just. If the Parties cannot agree on a single arbitrator, each party shall appoint one disinterested person, and those two appointees shall agree on a disinterested arbitrator who shall act as the single arbitrator hereunder. If either party fails to appoint such disinterested person, upon thirty days notice so to do, the other party may petition the Circuit Court of Sangamon County, Illinois to appoint such person. Any litigation involving this Agreement shall be filed and heard in the Circuit Court of Sangamon County, Illinois, only, and the Parties consent to jurisdiction and venue in that Court. The Parties shall agree to the costs of the Escrow Agent in the Confidential Memorandum, and shall, except as otherwise provided herein, be responsible for their own costs and attorney fees. The Parties agree that no broker or similar commission is due any person or entity on account of this transaction.

CENTRAL ILLINOIS RAILROAD CO.

By: [Signature]

Attest: [Signature]

KELLAR BRANCH CORRIDOR CORPORATION

By: [Signature]

Attest: [Signature]

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## LEASEHOLD PURCHASE AGREEMENT

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This Leasehold Purchase Agreement ("Agreement") is made this 8<sup>th</sup> day of October 2008, by and between PIONEER INDUSTRIAL RAILWAY CO. ("PIRY" also referred to as "Seller") and the KELLAR BRANCH CORRIDOR CORPORATION NFP ("KBCC" also referred to as "Buyer").

### RECITALS

WHEREAS, PIRY is an Iowa corporation with its principal offices at 1318 S. Johanson Road, Peoria, IL 61607, and is in the business of providing railway transportation services; and

WHEREAS, KBCC is an Illinois not-for-profit corporation organized for the purpose of acquiring the Property described in this Agreement for the uses and purposes set forth herein; and

WHEREAS, PIRY entered into an Agreement ("Lease Agreement") with the City of Peoria, Illinois to provide railway transportation services over a rail line sometimes referred to as the Peoria, Peoria Heights and Western Railroad, being the former Kellar Branch of the Chicago, Rock Island and Pacific Railroad Company. Such rail line is herein referred to as the "Kellar Branch" and is illustrated in Exhibit A attached hereto; and

WHEREAS, PIRY has authority to provide railway transportation services on the Kellar Branch pursuant to various orders and decisions of the Surface Transportation Board ("STB"); and

WHEREAS, KBCC desires to acquire all of PIRY's right, title and interest, including PIRY's leasehold interest ("Property") to a portion of the Kellar Branch, such portion being herein referred to as the "Kellar Branch Public Use Corridor" and is illustrated in Exhibit B attached hereto; and

WHEREAS, the KBCC and PIRY (the "Parties") acknowledge that the Property is a valuable property asset for which KBCC is willing to pay PIRY the amount set forth in this Agreement providing, however, that PIRY is granted STB authority to discontinue Common Carrier Rail Service over the Kellar Branch Public Use Corridor; and

WHEREAS, PIRY desires to sell the Property to KBCC but with the understanding that PIRY will continue to provide railway transportation services over the remaining portions of the Kellar Branch, such remaining portions being referred to herein as the "Remaining Kellar

Branch” as illustrated in Exhibit C, it being understood that the Remaining Kellar Branch includes the “Western Connection” as provided herein; and

WHEREAS, the Parties acknowledge that other interested parties (“Other Interested Parties”) have an interest in the subject matter of this Agreement, including: (1) the City of Peoria, Illinois (“City”) and the Village of Peoria Heights, Illinois, (“Village”) each of which claim ownership of a part of the Kellar Branch; (2) another company providing railway transportation services on the Kellar Branch known as Central Illinois Railroad Co. (“CIRY”), a rail carrier that provides common carrier service over the Kellar Branch and the Western Connection, and (3) certain businesses receiving railway transportation services, including Carver Lumber Company, which is a customer of PIRY, and O’Brien Steel Corp. which is a customer of CIRY. The Parties acknowledge that the implementation of this Agreement is dependent on the consent and/or cooperation from such Other Interested Parties as provided for herein.

NOW, THEREFORE, in consideration of the promises and covenants provided herein, the Parties agree as follows:

1. **Definitions.** As used in this Agreement, the following definitions shall apply.
  - A. Agreement – This Leasehold Purchase Agreement.
  - B. Lease Agreement – Any and all agreements and amendments thereto under which PIRY has or claims a right to possess and/or operate on the Kellar Branch and extensions thereof, including but not limited to the agreement made between the City of Peoria, Illinois and PIRY titled “Assignment Agreement” dated February 24, 1998, the agreement referred to therein dated July 10, 1984 between the City of Peoria, Illinois and the Peoria and Pekin Union Railway Company, and any agreements with the Village of Peoria Heights, Illinois relating to the Kellar Branch and extensions thereof.
  - C. PIRY – Pioneer Industrial Railway Co., an Iowa corporation.
  - D. CIRY – Central Illinois Railroad Co., an Illinois corporation.
  - E. KBCC – Kellar Branch Corridor Corporation NFP, an Illinois not-for-profit corporation.
  - F. STB – United States Surface Transportation Board.
  - G. Kellar Branch – The rail line sometimes referred to as the Peoria, Peoria Heights, and Western Railroad in Peoria County, Illinois, being the former Kellar Branch of the Chicago, Rock Island, and Pacific Railroad Company. The Kellar Branch is illustrated in Exhibit A attached hereto.

- H. Kellar Branch Public Use Corridor – That portion of the Kellar Branch as illustrated in Exhibit B attached hereto.
  - I. Property – All of PIRY’s right, title and interest in and to the Lease Agreement as it pertains to the Kellar Branch Public Use Corridor and any other claim or interest of PIRY or its successors or assigns in real estate or fixtures in the Kellar Branch Public Use Corridor.
  - J. Remaining Kellar Branch – Those portions of the Kellar Branch, excluding the Kellar Branch Public Use Corridor, together with the “Western Connection,” as illustrated in Exhibit C attached hereto.
  - K. Western Connection – That trackage currently owned by the City of Peoria that connects the Kellar Branch with the Union Pacific Railroad Company’s main line west of Pioneer Park.
  - L. City – City of Peoria, Illinois
  - M. Village – Village of Peoria Heights, Illinois
  - N. Escrow Agent – The title insurance company doing business in Peoria County, Illinois known as Land Title Professionals, Inc. or such other escrow agent agreed to by the parties.
  - O. Petition – The petition or petitions filed by PIRY and/or CIRY, with the STB, seeking discontinuance and abandonment of rail service over the Kellar Branch Public Use Corridor.
2. **Sale.**
- A. PIRY agrees to sell and KBCC agrees to purchase the Property on the terms and conditions provided for in this Agreement.
  - B. Sale is subject to the satisfaction of all Conditions Precedent as described herein.
3. **Purchase Price.** Purchase Price for the Property shall be the sum specified in the Confidential Memorandum between PIRY and KBCC of even date herewith. Such Confidential Memorandum and all terms thereof are hereby incorporated in and made a part of this Agreement to the same extent as if fully enumerated herein.
4. **Closing.** Following execution of this Agreement, it is understood that certain conditions must be satisfied prior to Closing. These conditions (“Conditions Precedent”) are described as: “Pre-Petition Conditions”, “Escrow Conditions”, “Petition Conditions” and “Post-Petition Conditions”. Closing shall be held at the

offices of the Escrow Agent at a time reasonably specified by Buyer in Peoria, Illinois no later than thirty (30) days after satisfaction of the Conditions Precedent.

5. **Conditions Precedent.**

The following Conditions Precedent must be satisfied as hereinafter described.

**A. Pre-Petition Conditions.**

The following Pre-Petition Conditions must be satisfied no later than November 21, 2008. Failure to satisfy these Pre-Petition Conditions by such date shall cause this Agreement to be terminated and no longer of any force or effect. From and after the date of this Agreement, the Parties shall make every reasonable good faith effort to satisfy the Pre-Petition Conditions.

- (1.) The execution of a Leasehold Purchase Agreement between KBCC as Buyer and CIRY as Seller under the terms of which KBCC acquires all of CIRY's right, title and interest, including CIRY's leasehold interest in that portion of the Kellar Branch known as the Kellar Branch Public Use Corridor. Such Agreement between KBCC and CIRY shall obligate CIRY to petition the STB for discontinuance of its operating authority over the Kellar Branch Public Use Corridor according to the same timetable as provided in this Agreement. KBCC shall be responsible for procuring this agreement.
- (2.) The execution of an agreement(s) acceptable to PIRY, in its sole discretion, between the City and PIRY authorizing PIRY to provide or to continue to provide rail service over the Remaining Kellar Branch following discontinuance of rail service over the Kellar Branch Public Use Corridor. PIRY shall initiate discussions with the City promptly after the execution of this Agreement. It is understood that such Agreement will acknowledge that CIRY may also continue to provide rail service over the Remaining Kellar Branch. In addition, the City shall give PIRY a full release covering any claims the City may have against PIRY, including the maintenance, operation or occupation of the Kellar Branch by PIRY prior to the new agreement provided for herein.

- (3.) Consents executed by the City and the Village to the terms of this Agreement and the agreement between KBCC and CIRY. Such consents shall specifically authorize the acquisition of the Leasehold interests of PIRY and CIRY as well as the filing of and consent to the Petition seeking discontinuance of rail service over the Kellar Branch Public Use Corridor. KBCC and PIRY shall jointly approach the City and the Village as to this Agreement.
- (4.) The execution by the Village of a release of PIRY covering any claims the Village may have against PIRY, including any related to the operation, maintenance, or occupation of the Kellar Branch by PIRY. KBCC and PIRY shall jointly approach the Village as part of the Consent described in subsection (3), above.
- (5.) The execution of consents by Carver Lumber Company and O'Brien Steel Corp. to the Petitions for discontinuance to be filed by PIRY and CIRY. PIRY shall request such consent from Carver, and CIRY shall request such consent from O'Brien.
- (6.) The execution of an Escrow Agreement between the parties and the other entities with the Escrow Agent, to facilitate Closing this Agreement. KBCC shall pay the costs and expenses of the Escrow Agent.

**B. Escrow Conditions**

Following satisfaction of the Pre-Petition Conditions, the Parties and other entities shall deposit with the Escrow Agent fully executed documents described in the Pre-Petition Conditions. Within thirty (30) days from the date of the deposit of such documents, KBCC shall deposit with the Escrow Agent the sum specified in the Confidential Memorandum. In the event the deposit of the documents or the money is not made as required, this Agreement shall terminate and be of no further force or effect and all documents and money so deposited shall be returned to the respective party making such deposit(s). Once the escrow deposits are made as provided, such deposits may not be withdrawn except as provided for at Closing, or in the event this Agreement is terminated as provided herein. The Parties shall make every reasonable and good faith effort to satisfy the Escrow Conditions.

**C. Petition Conditions.**

Within thirty (30) days of the date that the Escrow Agent confirms receipt of the escrow deposits as provided in Paragraph 5B above, the Parties and other entities shall have the opportunity to inspect the escrow deposits related to and confirm compliance with this Agreement and the various agreements ancillary to this Agreement. If no party objects, and all Pre-Petition Conditions and Escrow Conditions have been complied with, then, within thirty (30) days after the expiration of the inspection period, or any agreed extended inspection period, PIRY and CIRY shall file the Petition with the STB for authority to discontinue all of PIRY's and CIRY's rail common carrier obligations over the Kellar Branch Public Use Corridor. PIRY shall coordinate such Petition with the Petition to be filed by CIRY as provided for in the Agreement between KBCC and CIRY. If possible, PIRY and CIRY shall file a joint Petition. Such Petition shall include statements of consent executed by Carver Lumber Company and O'Brien Steel Corp. as provided herein.

**D. Post-Petition Conditions.**

- (1.) Following the filing of the Petition, PIRY shall pursue the proceeding with diligence and seek opportunities to expedite the proceedings for discontinuance. PIRY shall be responsible for filing fees and attorney fees not to exceed \$12,000. In the event that fees exceed \$12,000, or any third party files an objection to the Petition, or CIRY fails to pursue its Petition or withdraws its Petition, or if CIRY's Petition is denied, then PIRY shall have the option to terminate this Agreement, and withdraw its Petition, at any time, without any liability whatsoever.
- (2.) In the event the STB denies the Petition and such Order of Denial becomes final, a certified copy of such Order shall be delivered to the Escrow Agent and the Escrow Agent shall thereupon return all of the escrow deposits to the party making such deposit and this Agreement shall thereupon be terminated and of no further force or effect. PIRY shall have no obligation to appeal or otherwise contest such denial.

- (3.) In the event the STB grants the Petition and such Order granting discontinuance becomes final, a certified copy of such Order shall be delivered to the Escrow Agent by PIRY, the Conditions Precedent shall be deemed satisfied, and the Parties shall proceed to Closing as herein above provided. On or before Closing, PIRY shall cause a Notice of Consummation of Discontinuance Authority ("Consummation") to be filed with STB in accordance with 49C.F.R.1152.29. If said Notice has not been filed prior to Closing, PIRY shall deliver a full executed copy to the Escrow Agent, with irrevocable instructions to file same with STB immediately upon Closing, or shall supply same to the attorney for KBCC to file at STB upon Closing.
- (4.) It is understood and agreed that if PIRY elects not to withdraw its Petition as provided in Section 5(D)(1), above, and said Petition is granted, despite the fact that CIRY's discontinuance has not been granted, Closing shall not be delayed, and this Agreement shall be Closed and PIRY shall receive its payment for the Property, without regard for the status of any Petition filed by CIRY.

6. **Deliveries at Closing.** At Closing, the Escrow Agent shall make the following deliveries:

**A. Deliveries to PIRY.**

- (1.) The Purchase Price by cashier's check in accordance with the Confidential Memorandum.
- (2.) Closing statement executed by PIRY and KBCC
- (3.) The agreement(s) between the City and PIRY providing for PIRY's rail service operations on the Remaining Kellar Branch.
- (4.) The releases executed by the Village and the City releasing PIRY of all claims

**B. Deliveries to KBCC.**

- (1.) Executed documents quit-claiming the Property from PIRY to KBCC.
- (2.) Closing statement executed by PIRY and KBCC.

(3.) Such filings on Consummation as is consistent with the Post-Petition Conditions setforth above in Paragraph 5D(3).

7. **Binding Effect and Enforcement.** Following satisfaction of Pre-Conditions numbers (1) and (2), this Agreement may be assigned by any party, without the prior written consent of the other party, provided that no assignment shall relieve the Parties (PIRY and KBCC) of their obligations hereunder. Subject thereto, this Agreement shall be in full force and effect from and after the date hereof and shall be binding on the successors and assigns of the Parties hereto. No waiver, modification or amendment to this Agreement shall have any effect unless it is in writing and signed by the Parties. This Agreement shall be construed to have been executed in Springfield, Illinois. Any dispute involving this Agreement shall be resolved through binding arbitration, pursuant to the Illinois Uniform Arbitration Act. Such arbitration shall be before a single disinterested arbitrator, and shall take place in Springfield, Illinois, or such other location as the Parties may agree to. The arbitrator shall have the power to award expenses and reasonable attorney fees to the prevailing party, as the arbitrator shall deem just. If the Parties cannot agree on a single arbitrator, each party shall appoint one disinterested person, and those two appointees shall agree on a disinterested arbitrator who shall act as the single arbitrator hereunder. If either party fails to appoint such disinterested person, upon thirty days notice so to do, the other party may petition the Circuit Court of Sangamon County, Illinois to appoint such person. Any litigation involving this Agreement shall be filed and heard in the Circuit Court of Sangamon County, Illinois, only, and the Parties consent to jurisdiction and venue in that Court. The Parties shall agree to the costs of the Escrow Agent in the Confidential Memorandum, and shall, except as otherwise provided herein, be responsible for their own costs and attorney fees. The Parties agree that no broker or similar commission is due any person or entity on account of this transaction.

PIONEER INDUSTRIAL RAILWAY CO.

By: *J. Michael Gray*

Attest: *Daniel M. [Signature]*

KELLAR BRANCH CORRIDOR CORPORATION NFP

By: *J. [Signature], Pres.*

Attest: *[Signature] Sec.*

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**EXHIBITS**

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Exhibit A – Kellar Branch

Exhibit B – Kellar Branch Public Use Corridor

Exhibit C – Remaining Kellar Branch

CONFIDENTIAL MEMORANDUM  
TO LEASEHOLD PURCHASE AGREEMENT

This Confidential Memorandum is made pursuant to Leasehold Purchase Agreement between PIRY and KBCC.

The purchase price to be paid by KBCC to PIRY totals Nine Hundred Fifteen Thousand (\$915,000.00) Dollars USD which amount shall be distributed by PIRY as follows:

Seven Hundred Fifty Thousand (\$750,000.00) Dollars to PIRY and One Hundred Sixty-Five Thousand (\$165,000.00) Dollars to PIRY's customer, Carver Lumber Company.

KBCC shall be responsible for the payment of the usual and customary cost and expenses of the Escrow Agent in administering Escrow Agreement. Any and all cost and expenses of the Escrow Agent incurred as a result of a dispute, arbitration or litigation arising under this Agreement shall be paid by the parties as provided in the Escrow Agreement.

This Confidential Memorandum shall not be disclosed to any person or entity except as such disclosure may be necessary to a proposed assignee of either party and then only under such circumstances where such person or entity agrees to maintain the confidentiality of this Confidential Memorandum as provided herein. This paragraph restricting disclosure shall terminate following satisfaction of Pre-Condition numbers (1) and (2) described in the Leasehold Purchase Agreement.

PIONEER INDUSTRIAL RAILWAY CO.

By: *J. Michael Carr*

KELLAR BRANCH CORRIDOR CORPORATION U.F.P.

By: *J. E. [Signature]*, Pres.

ATTEST

*[Signature]*

*[Signature]* Sec.

Charles M. Hollis

**INTERGOVERNMENTAL AGREEMENT FOR GRANT OF  
EASEMENT FOR RECREATIONAL TRAIL**

THIS INTERGOVERNMENTAL AGREEMENT FOR GRANT OF EASEMENT FOR RECREATIONAL TRAIL dated this \_\_\_ day of \_\_\_\_\_, 2010 ("Agreement"), to be effective on the date of execution by the last of Grantor and Grantee to execute this instrument, is made by and between THE CITY OF PEORIA, Illinois, a Municipal Corporation, hereinafter referred to as "Grantor" or "City," and THE PLEASURE DRIVEWAY AND PARK DISTRICT OF PEORIA, ILLINOIS, a unit of local government organized under the Park District Code of the State of Illinois, hereinafter referred to as "Grantee" or "Park District."

RECITALS

WHEREAS, Grantor is the owner of that portion of certain real estate legally described on Exhibit 1 attached hereto which is located within the corporate boundaries of the Grantor, hereinafter the "Trail Property"; and

WHEREAS, in a Decision released on April 16, 2010, the Surface Transportation Board ("STB"), pursuant to the Joint Petition for Discontinuance of Service filed by Pioneer Industrial Railway Company ("PIRY") in STB Docket No. AB 1056(x) and Central Illinois Railroad Company ("CIRY") in Docket No. AB 1066 (Sub-No. 1X), granted (1) PIRY's request to discontinue service over 8.29 miles of rail line known as the Kellar Branch, between mileposts 1.71 and 10.0, located in and owned by the City and the Village of Peoria Heights ("Village"), and (2) CIRY's request to discontinue service over a 5.72 mile portion of the Kellar Branch, between mileposts 2.78 and 8.50; and

WHEREAS, the STB, in the April 16, 2010 Decision, considered the request by the Park District for the issuance of a notice of interim trail use ("NITU") for the 5.72-mile portion of the Kellar Branch between mileposts 2.78 and 8.50 under the National Trails System Act, 16 U.S.C. §1247(d) ("NTSA") to negotiate with the City and Village for acquisition of the Trail Property for use as a recreational trail; and

WHEREAS, because the STB determined that the Park District's request for issuance of a NITU complied with the requirements of 49 C.F.R. §1159.29 and the City and Village are willing to negotiate with the Park District for trail use, the STB issued a NITU for the Trail Property, permitting the City and Village to negotiate an agreement with the Park District for interim trail use between mileposts 2.78 and 8.50; and

WHEREAS, Grantor and Grantee wish to convert the Trail Property to a multi-use recreational trail and this Agreement furthers that goal for the parties; and

WHEREAS, Grantee is desirous of acquiring from Grantor an easement for interim trail use on the Trail Property pursuant to the provisions of the NTSA for the construction, operation and maintenance of a multi-use access trail intended to provide

recreational activities, including but not limited to, hiking, biking, and running (the "Park District Improvements") as an additional portion of the Rock Island Trail Extension/Pimiteoui Trail; and

WHEREAS, Grantor is willing to accept as a consideration for the conveyance of such easement for interim trail use to Grantee on the Trail Property a sum of money less than the certified fair market value of such easement as determined by an Illinois Department of Transportation approved appraisal, with the amount over and above the cash consideration received from the Grantee to be considered as a donation from Grantor to Grantee to assist the Grantee in the construction of the multi-use recreational access trail on the Trail Property; and

WHEREAS, Section 10 of Article VII of the Constitution of the State of Illinois and the Intergovernmental Cooperation Act (5 ILCS 220/1 et. seq.) authorize the City and Park District to contract with each other to perform any governmental service, activity or undertaking which either of them is authorized by law to perform.

#### AGREEMENTS

NOW, THEREFORE, for ONE DOLLAR (\$1.00) and other good and valuable consideration in hand received, plus the mutual covenants, obligations and undertakings detailed herein, it is agreed as follows:

1. RECITALS: The above recitals shall constitute a part of this Agreement to reflect the intent and purpose of this acquisition by Grantee and of the Grantor's donation back to Grantee to assist Grantee in its said acquisition of the easement for interim trail use on the Trail Property and the construction of the multi-use recreational access trail.

2. SALE AND PURCHASE OF EASEMENT: Grantor shall grant an easement for interim trail use on the Trail Property to Grantee and Grantee shall purchase the easement on the Trail Property from Grantor in accordance with the terms and conditions hereinafter detailed.

3. PURCHASE PRICE: Grantee shall pay to Grantor the sum of Nine Hundred Twenty-five Thousand Seven Hundred and Seventeen Dollars (\$925,717) for the easement on the Trail Property, as adjusted by any prorations and credits allowed the parties as detailed herein, which said sum shall be hereinafter referred to as the "Purchase Price."

4. PAYMENT TO KELLAR BRANCH PUBLIC USE CORRIDOR ESCROW AGENT: Grantor agrees, simultaneously with the closing and delivery of the Purchase Price to Grantor by Grantee, to pay the amount of the Purchase Price to the Escrow Agent designated by the Kellar Branch Public Use Corridor Escrow Agreement dated October 2, 2009 ("Escrow Agreement") to be distributed according to the terms and conditions of the documents referred to in Exhibit A to the Escrow Agreement, entitled "Leasehold Purchase Agreements Kellar Branch Public Use Corridor."

5. CLOSING: Closing shall be on or before May 20, 2010. The closing shall be held at the office of the Grantee's attorneys in Peoria, Illinois.

6. POSSESSION: Possession of the easement for interim trail use on the Trail Property shall be given to Grantee by Grantor at closing.

7. ACCESS EASEMENT: Grantor shall, as a part of this transaction, and without the payment of any additional consideration, provide Grantee prior to Grantee's commencement of construction of the Park District Improvements on the Trail Property, with ingress and egress access to the Trail Property from dedicated public roads, and which access shall thereafter remain in full force and effect for the benefit of the Grantee to construct, operate and maintain the Park District Improvements.

8. CONVEYANCE: Grantor's conveyance of an easement for interim trail use on that portion of the Trail Property located within the corporate boundaries of the City of Peoria shall be by recordable Grant of Easement in the form and content identical to Exhibit 2 attached hereto, to be delivered at the closing of this transaction upon Grantee's compliance with the terms of this Agreement.

9. NATIONAL TRAILS SYSTEM ACT: Interim trail use ("railbanking") will be established under the National Trails System Act, 16 U.S.C. §1247(d) as of the closing. This Agreement and any subsequent conveyance or agreement shall be interpreted to conform to Section 8(d) of the National Trails System Act, 16 U.S.C. §1247, and Grantee shall assume all financial, managerial and legal responsibility and liability for use of the Trail Property upon closing, and agrees to defend, indemnify and hold Grantor harmless therefore. It is agreed and understood that any trail/recreation use by Grantee shall not impair future restoration of rail service pursuant to the National Trails System Act.

10. TERM: The term of the easement for interim trail use shall expire upon restoration of rail service on the Trail Property pursuant to the NTSA and a STB final order granting the restoration of rail service.

11. NO WARRANTIES OF TITLE: Grantor makes no warranties of title to the Grantee regarding the Trail Property in connection with the grant of the easement for interim trail purposes.

12. GRANTEE OBLIGATIONS: Grantee shall, with reasonable diligence, undertake and complete the Park District Improvements to the Trail Property and maintain the same in good condition during the term of the easement for recreational use by the public.

13. ASSUMPTION OF OBLIGATIONS: Grantee shall assume Grantor's obligations set forth in that certain Confidential Memorandum made pursuant to the

Leasehold Purchase Agreement between CIRY and the Keller Branch Corridor Corporation (predecessor in interest to Grantor) dated November 17, 2008.

14. DEFAULT: If either party does not perform any obligation of that party under this Agreement, such failure to perform shall constitute a default. In the event of a default, the non-defaulting party shall give the defaulting party written notice of the default and a demand that the defaulting party cure such default. If such default is not cured within thirty (30) days of delivery of such notice, the non-defaulting party may, at such party's option, declare this Agreement terminated, or pursue any and all other remedies available at law or in equity including, but not limited to, damages or specific performance of this Agreement.

15. CONDITIONS TO OBLIGATIONS OF THE PARTIES: The obligations of the parties to be performed hereunder shall be subject to satisfaction (or waiver by the parties) on or before Closing of each of the following conditions:

(a) A final order of the STB granting the discontinuance of service exemptions jointly requested by the Pioneer Industrial Railway Company and the Central Illinois Railroad Company in a petition filed before the STB on December 29, 2009 in STB Docket No. AB-1056X and STB Docket No. AB-1066 (Sub. No. 1X).

(b) The delivery of a certified copy of the final order of discontinuance to the Escrow Agent.

(c) The STB issuing a Notice of Interim Trail Use (NITU) in STB Docket No. AB-1066 (Sub. No. 1X) for the Keller Branch from milepost 2.78 to milepost 8.50 permitting the railbanking of the Keller Branch from milepost 2.78 to milepost 8.50.

(d) Notice of Consummation of Discontinuance Authority filed with the STB by Pioneer Industrial Railway Company in accordance with 49 C.F.R. §1152.29.

(e) Notice of Consummation of Discontinuance Authority filed with the STB by Central Illinois Railroad Company in accordance with 49 C.F.R. §1152.29.

(f) Assignment of the Leasehold Purchase Agreements between the Keller Branch Corridor Corporation and the Pioneer Industrial Railway Co. and Central Illinois Railroad Company to the City of Peoria and the Village of Peoria Heights.

(g) The execution of an Intergovernmental Agreement for Grant of Easement for Recreational Trail between the Village of Peoria Heights and

the Park District for the Park District's interim trail use of the Trail Property located within the corporate boundaries of the Village.

16. REMOVAL OF RAILROAD PROPERTY: The Park District shall be responsible, at its sole cost and expense, for the removal and disposal of the existing rails, ties, and railroad signaling and crossing equipment ("Railroad Property") from that portion of the Trail Property which will be utilized by the Park District to construct the Park District Improvements. The City and the Park District shall coordinate access and possession of the Trail Property during the removal of the Railroad Property to facilitate the construction of the Park District Improvements. The Park District's employees, agents or contractors shall have the right to enter upon the Trail Property to remove the Railroad Property. The Park District shall repair any streets or alleys from which rails are removed by the Park District to a condition acceptable to the City.

Notwithstanding the above, the City shall have the right, at its expense, to remove and salvage signals and crossing equipment from Knoxville and Giles-Sheridan crossings. The City shall be responsible for the repair of any streets or alleys disturbed by the removal of the signals and crossing equipment from Knoxville and Giles-Sheridan crossings.

17. GENERAL PROVISIONS: The following general terms, conditions and definitions shall be applicable to the interpretation and construction of this Agreement.

- a. Applicable Law. This Agreement and the rights of the parties hereto shall be interpreted, construed and enforced in accordance with the laws of the State of Illinois. Any litigation concerning matters detailed herein shall be commenced in Peoria County, Illinois.
- b. Waiver. The waiver of any right, term, or condition detailed in this Agreement, or the forbearance of enforcement of any right in the event of a breach of any term of this Agreement, shall not be deemed to be a waiver of release of any future right or cause of action arising from the commission of any additional act or breach of a similar or dissimilar nature. Any delay in enforcement of rights arising from a particular breach shall not act as a waiver of the right to pursue all available remedies. Waiver of a right, term or condition in regards to a particular individual or entity shall not entitle any other individual or entity to a similar waiver.
- c. Timeliness of the Performance. Time shall be of the essence in regards to the performance of all duties, obligations, and payments detailed herein.
- d. Additional Documentation. The parties hereto shall execute and deliver such additional documentation as may be necessary to further the purpose and intent of this Agreement as appropriate.

- e. Severability. If any provision, term or condition of this Agreement or a part thereof shall be deemed invalid, illegal and/or unenforceable in any respect against any party hereto due to statute, rule of law, or court order, the remaining provisions of this Agreement shall remain in full force and effect with the interpretation of this Agreement, to the extent legally possible, to be in accordance with the general intent demonstrated herein.
- f. Agreement Binding. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, successors and assigns.
- g. Attorney's Fees. In the event of a default in regards to the performance of any of the duties and obligations herein, the non-defaulting party shall be entitled to recover all reasonable attorney's fees, court costs or related charges incurred in regards to the curing of such default, the protection of rights detailed herein, or the pursuit of any remedies. Such fees shall be recoverable whether incurred for general counsel, negotiations, trial, or appeal.
- h. Captions. All caption or headings contained within this Agreement are for convenience and reference only, and they shall not be construed as a modification, limitation, or definition of the contents of any provision or paragraph contained herein.
- i. Duplication of Agreement. This Agreement, including the Exhibits 1 and 2 attached hereto, may be executed in any number of duplicates or counterparts, each of which shall be deemed an original, but all of which shall comprise one and the same instrument.
- j. Notices. Any notice required to be given by the terms of this Agreement shall be in writing and shall be deemed to have been served the earlier of:
  - a) the date of personal delivery; or
  - b) three (3) days after the deposit of said written notice into the United States Mail, provided same is sent by registered or certified mail, return receipt requested, property stamped and addressed to the respective party at the address detailed herein, or such other reasonable address as may be periodically requested in writing, with said addresses detailed as follows:

The City of Peoria, Illinois  
c/o City Clerk  
City Hall  
419 Fulton Street, Rm. 401  
Peoria, IL 61602

Copy to:  
Randall Ray  
Corporation Counsel  
419 Fulton Street, Ste. 207  
Peoria, IL 61602

The Pleasure Driveway and Park District of Peoria, Illinois  
c/o Executive Director  
2218 N. Prospect Road  
Peoria, IL 61603

Copy to:  
James E. Konsky  
Vonachen, Lawless, Trager & Slevin  
456 Fulton Street, Ste. 425  
Peoria, IL 61602

- k. Entirety of Agreement. This Agreement, including Exhibits 1 and 2 attached hereto, represents the entire agreement of the parties hereto as of the date hereof. This Agreement is not modified or expanded by any oral representations or warranties, and any such prior oral representations or warranties are expressly waived if not detailed herein.
- l. Further Assurances. Each of the parties hereto will use its reasonable good faith efforts to take all actions and to do all things reasonably necessary, proper or advisable following the Closing to consummate and effectuate the transactions contemplated by this Agreement.
- m. No Third-Party Beneficiaries. With the exception of the parties to this Agreement, there shall exist no right of any person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.

IN WITNESS WHEREOF, the parties hereto have in each case caused this Agreement to be executed by its duly authorized officer signatories on the date written below each signature.

GRANTOR:

GRANTEE:

The City of Peoria, Illinois  
a Municipal Corporation

The Pleasure Driveway and Park  
District of Peoria, Illinois

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_