

## REAL ESTATE DONATION CONTRACT

The City of Appleton, Wisconsin, hereinafter called "Donee", hereby offers to acquire from **Wisconsin Central Ltd.**, an Illinois corporation, hereinafter called "Donor", the interest of Donor in the real estate and improvements described in Section 2 herein (called the "Premises"), on the following terms and conditions:

1. **Donation.**

- i.) Donor will donate and convey its interest the Premises, including all improvements located thereon, to Donee by Warranty Deed (or Bill of Sale where applicable) in accordance with the terms and conditions contained herein. No monetary consideration shall be paid by Donee to Donor for the Premises.
- ii.) Donee warrants and represents to Donor that Donee is a tax exempt entity which is qualified under the terms and provisions as set forth by the Internal Revenue Service (the "IRS") to receive tax deductible donations.
- iii.) Donee agrees to take all actions and execute all documents, including but not limited to, the Donee Acknowledgment section of IRS Form 8283, attached hereto as Exhibit B, and Charitable Contribution Receipt, attached hereto as Exhibit C.

2. **Interest in Property.** The property (the "Premises") for which Donor is conveying its real estate interest, is located in the City of Appleton, County of Outagamie, State of Wisconsin, and consists of the following:

- i.) Approximately 0.3 acres of vacant land as shown on the plat labeled Exhibit A, dated March 15, 2010, attached hereto and made a part hereof.
- ii.) Donor's southernmost trestle, and all appurtenances thereon, crossing the Fox River and extending from the east bank to the west bank of the Fox River, all as shown in red outline on said Exhibit A.

3. **Conveyance.** Donor shall convey or cause the Premises to be conveyed to Donee by Warranty Deed, hereinafter called the "Deed" or "Bill of Sale" where applicable, subject to the terms, conditions, and exceptions contained in this Contract.

DONOR, BY NATURE OF THE QUITCLAIM DEED, MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE CONDITION OF THE PREMISES OR ITS TITLE.

4. **Exceptions.** This Contract and the Deed shall be subject to and in accordance with the following exceptions, reservations and conditions:

- (A) standard exceptions of the Title Company in its title policies issued in the state in which the Premises are located.
- (B) special taxes or assessments for improvements not yet completed, if any.
- (C) installments not due at the date hereof of any special tax or assessment for improvements completed, if any.

- (D) general taxes, if any, for the tax year prior to the year in which the Deed is delivered and subsequent years. If the Premises are locally assessed for the year in which the Deed is delivered, the taxes for such year shall be prorated as of the date on which the Deed is delivered on the basis of the most recent tax bill, unless the payment of taxes has been assumed by a tenant. If the Premises is assessed as railroad operating property by the State in which the Premises is located, then the Donor agrees to pay, when due, taxes for the year in which the deed is delivered and prior years, assessed in Donor's name.
  - (E) building, building lines and use or occupancy restrictions, zoning and building laws or ordinances, and other laws, ordinances, requirements, limitations, restrictions, regulations and codes which are or may be imposed upon the Premises by any governmental authority having jurisdiction thereof.
  - (F) public roads and highways, if any.
  - (G) judgment liens; however, any judgment against Donor which may appear of record as a lien against the Premises shall be settled and satisfied by Donor if and when it is judicially determined to be finally valid, and Donor shall indemnify the Donee for all loss arising out of Donor's failure to have such judgment lien so settled and satisfied. This provision shall survive the Closing of this transaction and the delivery of the Deed.
  - (H) covenants, conditions, restrictions, licenses and easements of record.
  - (I) Existing leases: None identified
  - (J) The sale of the Premises is subject to all of the rights of the owner of the mineral estate in said Premises, if any. If, however, it is found that Donor has mineral right in the Premises, such rights will not be retained by Donor but will pass to Donee by the Quitclaim Deed from Donor as set forth in Section 4 herein.
  - (K) rights of any government agencies, public or quasi-public utilities for the use, maintenance, repair, replacement and reconstruction of existing driveways, roads and highways, conduits, sewers, drains, water mains, fiber optics cables and/or communications systems, gas lines, electric power lines, wires, and other utilities and easements.
  - (L) acts by, through or under Donee.
5. **Due Diligence.** During the forty-five (45) day period following acceptance of this Contract (the "Due Diligence Period"), Donee shall have the right, at Donee's expense, to enter onto the Premises at reasonable times for the purpose of inspecting, surveying and making environmental and engineering studies and soil tests. Donee agrees to indemnify and hold Donor harmless from all costs, expenses, liability and damages, including attorneys' fees, incurred or arising in connection with anything done or work performed by, through or under Donee pursuant to the provisions of this paragraph, regardless of Donor's negligence. In conducting any inspections, investigations or tests of the Premises, Donee and its agents and representatives shall: (i) maintain

comprehensive general liability (occurrence) insurance in form and amounts reasonably satisfactory to Donor, covering any accident arising in connection with the presence of Donee, its agents and representatives on the Premises and shall deliver a certificate of insurance verifying such coverage to Donor prior to entry upon the Premises; (ii) not permit any liens to attach to the Premises by reason of the exercise of its rights hereunder; (iii) fully restore the Premises to the condition in which the same was found before any such inspections or tests were undertaken; and (iv) not reveal or disclose any information obtained during such inspections, investigations or tests concerning the Premises to any third party, regardless of Donor's negligence except as required by law. Donee shall provide Donor with copies of all inspection reports, surveys, and environmental assessments obtained by Donee with respect to the Premises. In the event that Donee determines that the condition of the Premises is unsatisfactory and gives written notice of termination to Donor prior to the expiration of the Due Diligence Period, this Contract shall be terminated and the Deposit returned to Donee. If Donee fails to so terminate, Donee shall purchase the Premises and any improvements thereon in an "as is, where at" condition and subject to all faults of every kind and nature whatsoever, whether latent or patent and whether now or hereafter existing. Donee represents and warrants to Donor that Donee has not relied, and shall not rely, upon any representations or statements or the failure to make any representation or statement, by Donor or Donor's agents or employees or by any person acting, or purporting to act, on behalf of Donor. Donee specifically agrees that Donor shall not be obligated to do any restoration, repairs, remediation or other work in connection with the Premises, that Donor shall not be liable for any restoration, repairs, remediation or other work necessary to cause the Premises to meet any applicable laws, ordinances, requirements, limitations, restrictions, regulations or codes, or be suitable for any particular use, and that Donee shall indemnify and hold Donor harmless from all costs, expenses, liability and damages, including attorneys' fees, incurred or arising in connection with any such restoration, repairs, remediation or other work. ~~This provision shall not apply to any environmental remediation which may become necessary pursuant to any Federal or State hazardous material clean up.~~ This provision shall survive the closing of this transaction and the delivery of the Deed.

6. **Closing.** The Closing shall occur, via mail, within ten (10) days after expiration of the Due Diligence Period as set forth in Section 5 of this Contract, or at the time, date and location mutually agreeable to Donee and Donor. Donee shall apply for any lot splits or tax divisions with the appropriate local authorities at Donee's cost and expense. Donee shall be responsible for all costs associated with the recordation of said Deed.
7. **Real estate commission.** Donee agrees to indemnify, defend, and hold harmless Donor against any and all claims by any broker, attorney, or agent engaged by Donee for a fee or commission arising out of this Contract. Donor agrees to indemnify, defend, and hold harmless Donee against any and all claims by any broker, attorney, or agent engaged by Donor for a fee or commission arising out of this Contract. The provisions in this paragraph shall survive the Closing.
8. **Regulatory approval.** If Donor is required to obtain regulatory approval of this transaction by any agency, the Closing date shall be extended for the time required to obtain such approval. If such approval cannot be obtained within sixty days, either

party may terminate this Contract by written notice to the other and, upon termination, Donor shall return the Deposit to Donee.

9. **Liquidated damages.** Time is of the essence of this Contract. If Donee shall default or fail to perform the requirements of this Contract within the time limits herein specified, the Donor may retain the Deposit as liquidated damages and just compensation, and not as a penalty or forfeiture, and declare this Contract terminated. In the event of default by Donor, Donee's sole remedy shall be a return of the Deposit.
10. **Notices.** All notices and demands herein required shall be in writing sent by telecopier, overnight courier or certified or registered mail to the other party at the address shown herein. Notices sent by (i) telecopier shall be deemed made upon confirmed transmission; (ii) overnight courier shall be deemed made one business day after being sent; and (iii) certified or registered mail shall be deemed made three days after mailing.
11. **Condemnation or Casualty.** If, prior to the Closing of this sale, all or any portion of the Premises are condemned, damaged or destroyed, Donee shall have the option of either accepting an assignment of any condemnation or insurance proceeds or to terminate this Contract. Donee shall deliver written notice of its election to Donor within ten (10) days of the date Donor notifies Donee of such condemnation, damage or destruction. If Donee fails to notify Donor, Donee shall be deemed to elect to close and accept an assignment of the proceeds. If Donee terminates, the Deposit shall be returned to Donee.
12. **Legal Description and Survey.** The legal descriptions to be used in the Deed and easements shall be furnished by Donor to Donee within ten (10) business days following Donor's acceptance of this Contract. In the event a survey is required in order to prepare the legal description, Donor shall so notify the Donee and Donee shall, at Donee's expense, obtain and deliver to Donor a plat of survey within forty-five (45) days of Donor's notification to Donee as set forth above.
13. **Miscellaneous.**
  - (A) Time is of the essence in the performance of each and every one of the terms of this Contract. Whenever any determination is to be made or action to be taken on a date specified in this Contract, if such date shall fall upon a Saturday, Sunday or legal holiday, the date for such determination or action shall be extended to the first business day immediately thereafter.
  - (B) This Contract embodies the entire agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties concerning the Premises. No oral statements shall be of any force or effect. No variation modification or alteration of the terms hereof shall be binding upon either party unless set forth in an express and formal written amendment.
  - (C) This Contract shall be construed in accordance with the laws of the State of Wisconsin.

- (D) For the purposes of this Agreement, (i) "Hazardous Materials" include, without limit, any flammable explosives, radioactive materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (49 U.S.C. 1801, *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6901, *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. 2601, *et seq.*) and in the regulations adopted and publications promulgated pursuant thereto, as such laws or regulations now exist or may exist in the future, and (ii) "Other Conditions" include, without limit, methane and other gases, petroleum and any fraction thereof, nonhazardous wastes or materials, and any physical conditions or other subsurface conditions which arise out of or are in any way related to current or previous uses or activities on the Premises.
14. **Other Conditions.** This contract is subject to additional conditions and/or provisions as set forth in the Addendum attached hereto and made a part hereof which with this contract constitute the entire agreement between the parties.
15. **Acceptance.** This Contract, and any attached Addendum, when accepted and signed by the Donor, shall constitute the entire agreement between the parties and shall thereafter be binding upon and inure to the benefit of the Donor and the Donee, their heirs, administrators, successors and assigns. The execution and delivery of this Contract by Donee constitutes an offer to purchase the Premises on the terms described herein, which offer shall remain irrevocable and available for acceptance by Donor for a period of thirty (30) days after the date of Donee's signature below. **This offer shall not become binding upon Donor until executed by Donor and a duplicate original of this Contract is delivered to Donee.**

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IN WITNESS WHEREOF, the parties have executed this Contract as of the dates set forth below.

Donee: City of Appleton, Wisconsin

By: \_\_\_\_\_  
(Donee signature and title)

Donee's Address for notices:  
City of Appleton, Wisconsin  
Department of Community Development  
100 North Appleton Street  
Appleton, Wisconsin 54911  
Fax: 920-832-5994

Date of Donee's Offer \_\_\_\_\_

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Donor: **Wisconsin Central Ltd.**, an Illinois corporation.

By: \_\_\_\_\_  
Name:  
Title:

Donor's address for notices:  
Business Development & Real Estate Dept.  
CN  
17641 S. Ashland Avenue  
Homewood, IL 60430  
Attn: Regional Manager-Southern Region  
Fax: 708-332-3514

Contract accepted by Donor this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

## ADDENDUM TO REAL ESTATE DONATION CONTRACT

Donee: City of Appleton, Wisconsin

Donor: Wisconsin Central Ltd.

Property Location: Appleton, Outagamie County, Wisconsin

1. Donor shall obtain, on or before Closing, an independent appraisal of the Premises, under the provisions of IRS Form 8283. Donee shall reimburse Donor, at Closing, for the cost of said appraisal, said cost to Donee not to exceed \$4,500.00. Donee shall be provided a copy of said appraisal prior to reimbursement. Donor shall indemnify and hold harmless Donee for the contents of the appraisal or the market value set forth therein.
2. As an additional, non-monetary consideration to this transaction, Donor and Donee agree as follows:
  - i.) Donor shall grant to Donee two (2) private pedestrian grade crossings, one located in the general vicinity of the east end and the other located in the general vicinity of the west end of the railroad trestle to be donated herein, in the form of agreement marked Exhibit D, attached hereto and made a part hereof. The exact location of the aforesaid private pedestrian grade crossings shall be determined by mutual consent of Donor and Donee.
  - ii.) Donee has previously closed the crossings at Eighth Street and Superior Street in the City of Appleton, Wisconsin, including but not limited to, jointly petitioning for the closure of said public road crossings with the Office of the Commissioner of Railroads (OCR) for the State of Wisconsin.
  - iii.) Donee covenants and agrees to construct and maintain, at Donee's sole cost and expense, a six (6) foot high chain link fence, or other fencing agreeable to Seller's Division Superintendent, along the entire north boundary line and top deck of the railroad trestle to be acquired by the Donee herein, as well as along the trackside (north) boundary line of the 0.3 acre parcel to be acquired by the Donee herein. The construction of the fence shall be completed prior to any use of the Premises by the public for a recreational trail or any other public purpose.

The provisions as set forth in this Addendum shall survive the closing of this transaction.

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**EXHIBIT B / CHARITABLE CONTRIBUTION FORM 8283**



**EXHIBIT C**

**CHARITABLE CONTRIBUTION RECEIPT**

**Substantiation for Charitable Donations of \$250 or More**

Internal Revenue Code Section 170(f)(8) requires that the recipient (Donee) of any single charitable gift of \$250 or more give the donor written confirmation of the receipt of such a gift, including a description and a good faith estimate of the value of any goods and services provided by the recipient (Donee) in exchange for the donor making the gift.

In order to comply with this code section, \_\_\_\_\_ hereby certifies that we received the following contribution from

\_\_\_\_\_

Cash or check in the amount of: \$ \_\_\_\_\_

Or

Property consisting of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date contribution received: \_\_\_\_\_

Were any goods and/or services provided to \_\_\_\_\_ in return for this contribution?

Yes

No

If yes, a description of those goods and services is provided below with a statement of monetary value: \_\_\_\_\_

Value: \$ \_\_\_\_\_

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

\_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Organization Tax ID#: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

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

**Exhibit D / Private Pedestrian Grade Crossing Agreement**