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City of Racine, Wisconsin  
**COMMON COUNCIL**

**AGENDA BRIEFING MEMORANDUM**

**COMMITTEE:** Finance and Personnel Committee/Common Council    **LEGISLATION ITEM #:** 0035-19

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**AGENDA DATE:** Finance and Personnel Committee – January 7, 2019

Common Council – January 8, 2019

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**DEPARTMENT:** City Attorney’s Office

Prepared By: City Attorney Scott R. Letteney

Reviewed By: N/A

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**SUBJECT:** Communication from the Director of City Development requesting that the City release any and all interest it may have in certain real estate pursuant to two leases, specifically as to an abandoned railroad right-of-way at or near Packard Avenue south of Seventeenth Street in the City of Racine.

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**EXECUTIVE SUMMARY:** The City has a beneficial interest in two leases respecting the former Chicago, Milwaukee, Saint Paul, and Pacific Railroad right-of-way South of Seventeenth Street, at Packard Avenue, in the City of Racine. The City’s interest in those leases has created a cloud on the title of 1701 Packard Avenue and is preventing J. Jeffers & Co., LLC, from closing on its purchase of such property for use in the Gold Medal Lofts project. Administration and staff recommend the City release its interest in such leases.

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**BACKGROUND & ANALYSIS:**

As you are aware, Lutheran Social Services and J. Jeffers & Co, LLC, intend to co-develop “Gold Medal Lofts”, a conversion of the former Gold Medal Furniture Building, located at 1701 Packard Avenue, in the City of Racine, into 77 one-, two-, and three-bedroom apartments. The project is proceeding. However, there is an issue with regard to the title to the real property that requires resolution. That issue specifically relates to the adjacent former railroad right-of-way.

30 The Chicago, Milwaukee, Saint Paul, and Pacific Railroad (CMSP&P RR) formerly owned a right-  
31 of-way South of Seventeenth Street, at Packard Avenue, in the City of Racine. In the early 1980s, the  
32 land constituting the former CMSP&P RR right-of-way adjacent to 1701 Packard Avenue was sold to  
33 Gold Medal, Inc. In 1983, Gold Medal, Inc., leased certain real estate (“the lease”), including a portion of  
34 the former CMSP&P RR right-of-way to Walker Forge, Inc. The language in the lease can be interpreted  
35 to mean that the lease was of indefinite duration.

36 The City of Racine was the recipient of a grant from the Wisconsin Department of  
37 Transportation grant to aid in the improvement of the CMSP&P RR right-of-way in 1986. A condition of  
38 that grant was that the City must have a “beneficial interest” in the land constituting the right-of-way.  
39 Therefore, Walker Forge, Inc., assigned its interest in the lease to the City. This lease between Gold  
40 Medal Lofts, Inc., and Walker Forge, Inc., and the assignment of interest to the City, was recorded with  
41 the Racine County Register of Deeds.

42 The lease between Gold Medal Lofts, Inc., and Walker Forge, Inc., includes a reference to a 1982  
43 lease for the property between the Trustee of the property of CMSP&P RR and Walker Forge, Inc. A copy  
44 of that 1982 lease does not seem to exist. Further, that 1982 lease was not recorded with the Register of  
45 Deeds.

46 Apparently, the memory that these two lease interests existed has been lost to time and  
47 changes in staffing within the City. However, the lease interests were discovered by Knight Barry Title  
48 Group when it was preparing to issue a Commitment for Title Insurance to J. Jeffers & Co., for 1701  
49 Packard Avenue. These lease interests constitute a cloud on the title of the property and will prevent J.  
50 Jeffers & Co., from closing on the purchase.

51 Therefore, the administration and staff recommend that the Common Council authorize the  
52 release of the interest the City has in each of these two leases. Specifically, the administration and staff  
53 recommend that the Common Council authorize the Mayor and the City Clerk to execute a release in  
54 substantially the following form:

55 WHEREAS, the City is the successor tenant under that certain Railroad Right-Of-Way Lease dated  
56 November 1, 1983 and recorded on February 24, 1984 and recorded as Document No. 1142377,  
57 as amended by Amendment #1 to Railroad Right-Of-Way Lease dated as of June 4, 1984 and  
58 recorded on June 4, 1984, as Document No. 1148458, as assigned by Assignment of Railroad  
59 Right-Of-Way Lease dated as of June 4, 1984 and recorded on June 4, 1984, as Document No.  
60 1148752, as further amended by Railroad Right-Of-Way Lease Declaration dated April 17, 1986  
61 and recorded April 18, 1986, as Document No. 1191456 (collectively, the “Railroad Lease”),  
62 affecting the property described on Exhibit A attached hereto and made a part of (the  
63 “Property”).

64 WHEREAS, the Railroad Lease contains references to an unrecorded lease by and between  
65 Richard B. Ogilvie, as Trustee of the property of Chicago, Milwaukee, St. Paul and Pacific  
66 Railroad company, as landlord and Walker Forge, Inc., as tenant dated August 26, 1982, as  
67 supplemented on April 8, 1983 and further supplemented on May 24, 1983 (“Unrecorded  
68 Lease”).

69 WHEREAS, City desires to release any and all interest it may have in the Property by reason of  
70 the Railroad Lease and the Unrecorded Lease.

71 NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is  
72 hereby acknowledged, the City hereby releases any and all interest it may have in the Property  
73 pursuant to the Railroad Lease and the Unrecorded Lease and confirms the terms of the  
74 Railroad Lease and the Unrecorded Lease have expired and said leases are no longer in effect.

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76 **BUDGETARY IMPACT:** None, except minimal staff time to prepare the documents.

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78 **OPTIONS/ALTERNATIVES:** Decline to release the City's interest in the two leases.

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80 **RECOMMENDED ACTION:** The City of Racine release any and all interest it may have in the certain real  
81 estate described in the Railroad Lease and the Unrecorded Lease.

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83 **ATTACHMENT(S):** None.