

# TRAIL EASEMENT AGREEMENT

THIS TRAIL EASEMENT AGREEMENT dated 04.03.2018 (the "Easement Date") is by and between Midland Railway Historical Association ("the undersigned Owner or Owners") and City of Baldwin City (the "Holder").

## Article 1. Background

### 1.01 Property

The undersigned Owner or Owners are the sole owners in fee simple of the property described in exhibit A (the "Property"). The Property is also described as the Midland Railway.

### 1.02 Purpose

This agreement establishes the easements (collectively, the "Trail Easement") described in articles 2 and 3, details rules regarding the Trail Easement, and identifies rights and responsibilities of Holder and Owners.

### 1.03 Consideration

In consideration of the grant of easements to Holder under this agreement, the undersigned Owner or Owners acknowledge:

- (a) receipt of the sum of \$172,500 due at the signing of this agreement,
- (b) an additional \$172,500 payable at the time of the easement filing with the register of deeds in the respective counties,
- (c) annual utility credit equal to Owner's last five years (2013-2017) average annual consumption for electric, water and sewer,
  - (1) if the easement is released or Midland Railway is no longer in business, this term shall be eliminated,
  - (2) any excess in annual credits shall not carry over to the next calendar year, and
- (d) for the sum of \$1, the City of Baldwin City shall lease the property located at 1515 High St, Baldwin City, KS 66006 to Santa Fe Historical Society for the term of the easement (see 3.01 for easement term). Lessee may change if agreed upon in writing by the parties.

## Article 2. Grant of Easement for Trail Facilities

### 2.01 Grant

The undersigned Owner or Owners grant and convey to Holder the perpetual right to create the Trail identified below; to enter the Easement Area at any time to construct, install, maintain, and repair the items (collectively, with the Trail, the "Trail Facilities") described in paragraph (a) and, subject to the prior written consent of the Owner, those described in paragraph (b) below.

#### (a) Permitted Trail Facilities

- (1) A trail not to exceed approximately 15 feet in clear tread width (the "Trail").
- (2) Signs to mark the Trail, to provide information related to the Trail, and for interpretive purposes.
- (3) Fencing, gates, trash receptacles, benches, restroom facilities and barriers to control access.

#### (b) Trail Facilities Requiring Prior Written Consent of Owners

- (1) The location of restroom facilities

### 2.02 Exercise of Rights

Construction, installation, maintenance, and repair of the Trail may include trailblazing; grading; building retaining walls, steps, railings, boardwalks, and bridges; cutting vegetation; application of gravel, crushed stone, wood chips, or paving; and identifying the Trail's path. These activities may include vehicular use.

## Article 3. Grant of Easement for Public Access

### 3.01 Grant

The undersigned Owner or Owners grant and convey to Holder the right to make available to the public a perpetual easement and right-of-way over the trail and the right to use Trail Facilities for the purposes described in paragraph (a) below:

- (a) **Permitted Trail Uses.** Use of the Trail as a right-of-way for (1) walking, hiking, jogging, bicycling, horseback riding, bird watching, nature study; (2) power-driven mobility devices for use by persons who have mobility impairments; and (3) emergency vehicles in the case of emergency within the Easement Area.
- (b) If a trail is not built by the end of the 50<sup>th</sup> year, the easement will be released and returned to Midland Railway. If a trail is built before the 50-year deadline, the easement shall become irrevocable.

### 3.02 No Charge for Access

No non-government entity is permitted to charge a fee for access to the Trail or use of the Trail Facilities.

## Article 4. Rights of Owners/ Holders

### 4.01 Owner Improvements

Owners must not construct, install, or maintain facilities or improvements within the Easement Area except:

- (a) **Existing Items.** Items existing within the Easement Area as of the Easement Date and listed in the attached schedule (if any) entitled "Existing Improvements."
- (b) **Potential Items.** Items listed in the attached schedule (if any) entitled "Permitted Other Improvements."
- (c) **Fencing.** Fencing along the boundary of the Easement Area not impeding access to the Easement Area for the purposes of such access described in articles 2 and 3.
- (d) **Other.** Items to which Holder, without any obligation to do so, gives its consent in writing.

### 4.02 Owner Uses and Activities

Except as limited under this article, Owners have all the rights recognized under applicable law to use the Easement Area for purposes consistent with and not interfering with the easement rights granted to Holder. Owners' rights include those set forth below:

- (a) **Mitigating Risk.** Cut trees or otherwise disturb resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to Persons on or about the Easement Area.
- (b) **Grants to Others.** Grant leases, licenses, easements, and rights-of-way affecting the Easement Area to Persons other than Holder but only for those facilities, improvements, activities, and uses permitted to Owners under this article.
- (c) **Enforcement Rights.** Remove or exclude from the Property Persons who are (1) in locations other than the Trail or other Trail Facilities or (2) not engaged in permitted trail uses.

### 4.03 Holder Rights

In addition to any other rights granted in this agreement, Holder's rights also include those set forth below:

- (a) **Mitigating Risk.** Cut trees or otherwise disturb resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to Persons on or about the Easement Area.
- (b) **Grants to Others.** Holder may grant or assign all or part of this easement to another government entity.
- (c) **Enforcement Rights.** Remove or exclude from the Property Persons who are (1) in locations other than the Trail or other Trail Facilities or (2) not engaged in permitted trail uses.

## Article 5. Enforcement; Liability Issues

### 5.01 Enforcement

Holder may, in addition to other remedies available at law or in equity, compel Owners to make the Easement Area available for the purposes set forth in articles 2 and 3 by exercising any one or more of the following remedies, without need to show that a civil action for damages is not available to furnish compensation:

- (a) **Injunctive Relief.** Seek injunctive relief to specifically enforce the terms of this agreement; to restrain present or future violations of this agreement; or to compel restoration of Trail Facilities or other resources destroyed or altered as a result of the violation.
- (b) **Self Help.** Enter the Property to remove any barrier to the access provided under this agreement and do such other things as are reasonably necessary to protect and preserve the rights of Holder under this agreement.

### 5.02 Public Enters at Own Risk

Use of any portion of the Easement Area by members of the general public is at their own risk. Neither Holder nor Owners by entering into this agreement assume duty to or for the benefit of the general public for defects in the location, design, installation, maintenance, or repair of the Trail Facilities; for unsafe conditions within the Easement Area; or for the failure to inspect for or warn against possibly unsafe conditions; or to close the Trail Facilities to public access when unsafe conditions may be present. Holder will endeavor to repair damaged Trail Facilities but has no duty to do so unless and until Holder receives notice given in accordance with article 6 of the need to repair an unreasonably dangerous condition.

### 5.03 Costs and Expenses

All costs and expenses associated with Trail Facilities are to be borne by Holder except for items included in Owner Responsibility Claims (defined below in this article).

### 5.04 Responsibility for Losses and Litigation Expenses

- (a) **Public Access Claims; Owner Responsibility Claims.** If a claim for any Loss for personal injury or property damage occurring within the Easement Area after the Easement Date (a "Public Access Claim") is asserted against either Owners or Holder, or both, it is anticipated that they will assert such defenses (including rights under K.S.A. Chapter 58, Art. 32) as are available to them under applicable law. The phrase "Public Access Claim" excludes all claims (collectively, "Owner Responsibility Claims") for Losses and Litigation Expenses arising from, relating to or associated with (1) personal injury or property damage occurring prior to the Easement Date; (2) activities or uses engaged in by Owners, their family members, contractors, agents, employees, tenants, and invitees, or anyone else entering the Property by, through, or under the express or implied invitation of any of the foregoing; or (3) structures, facilities, and improvements within the Easement Area (other than improvements installed by Holder).
- (b) **Indemnity.** If immunity from a Public Access Claim is for any reason unavailable to Owners, Holder agrees to indemnify, defend, and hold Owners harmless from any Loss or Litigation Expense if and to the extent arising from a Public Access Claim. Owners agree to indemnify, defend, and hold the Holder harmless from any Loss or Litigation Expense if and to the extent arising from an Owner Responsibility Claim.
- (c) **Loss; Litigation Expense**
  - (1) The term "Loss" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees, and penalties or other charge other than a Litigation Expense.
  - (2) The term "Litigation Expense" means any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this agreement including, in each case, attorneys' fees, other professionals' fees, and disbursements.

## Article 6. Miscellaneous

### 6.01 Binding Agreement

This agreement is a servitude running with the land binding upon the undersigned Owner or Owners, and, upon recordation in the Public Records, all subsequent Owners of the Easement Area or any portion of the Easement Area are bound by its terms whether or not the Owners had actual notice of this agreement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this agreement. This agreement binds and benefits Owners and Holder and their respective personal representatives, successors, and assigns.

### 6.02 Governing Law

The laws of the State of Kansas govern this agreement.

### 6.03 Definition and Interpretation of Capitalized and Other Terms

The following terms, whenever used in this agreement, are to be interpreted as follows:

- (1) "Owners" means the undersigned Owner or Owners and all Persons after them who hold an interest in the Easement Area.
- (2) "Person" means an individual, organization, trust, or other entity.
- (3) "Public Records" means the public records of the office for the recording of deeds in and for the county in which the Easement Area is located.
- (4) "Including" means "including, without limitation."
- (5) "May" is permissive and implies no obligation; "must" is obligatory.

### 6.04 Incorporation by Reference

Each exhibit or schedule referred to in this agreement is incorporated into this agreement by this reference.

### 6.05 Amendments; Waivers

No amendment or waiver of any provision of this agreement or consent to any departure by Owners from the terms of this agreement is effective unless the amendment, waiver, or consent is in writing and signed by an authorized signatory for Holder. A waiver or consent is effective only in the specific instance and for the specific purpose given. An amendment must be recorded in the Public Records.

### 6.06 Severability

If a provision of this agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this agreement remain valid, binding, and enforceable. To the extent permitted by applicable law, the parties waive any provision of applicable law that renders any provision of this agreement invalid, illegal, or unenforceable in any respect.

### 6.07 Counterparts

This agreement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

### 6.08 Entire Agreement

This is the entire agreement of Owners and Holder pertaining to the subject matter of this agreement. The terms of this agreement supersede in full all statements and writings between Owners and Holder pertaining to the transaction set forth in this agreement.

### 6.09 Notices

Notice to Holder under this agreement must be in writing and given by one of the following methods: (1) personal delivery; (2) certified mail, return receipt requested and postage prepaid; or (3) nationally recognized overnight courier, with all fees prepaid. In an emergency, notice may be given by phone or electronic communication followed by one of the methods in the preceding sentence.

### 6.10 Warranty

The undersigned Owner or Owners warrant to Holder that:

- (a) **Liens and Subordination.** The Easement Area is, as of the Easement Date, free and clear of all liens or, if it is not, that Owners have obtained and attached to this agreement as an exhibit the legally binding subordination of any lien affecting the Easement Area as of the Easement Date.

- (b) **Existing Agreements.** No one has the legally enforceable right (for example, under a lease, easement, or right-of-way agreement) to prevent the installation or public use of Trail Facilities.
- (c) **Hazardous Materials.** To the best of their knowledge, the Easement Area is not contaminated with hazardous or toxic materials, and no such materials have been stored or generated there.

INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners and Holder, by their respective duly authorized representatives, have signed and delivered this agreement as of the Easement Date

Witness/Attest:

Laura E. Hartman

Timothy A. Doherty (SEAL)

Owner's name:

President, Midland Railway Historical Association



\_\_\_\_\_

\_\_\_\_\_ (SEAL)

Owner's name:

[NAME OF HOLDER]

Laura E. Hartman

By:

Name of signatory:

Title of signatory:

Cassidy A. Simons  
Mayor



STATE OF KANSAS:

COUNTY OF Douglas :

ON THIS DAY 04.09.2018, before me, the undersigned officer, personally appeared Casey Simonau, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



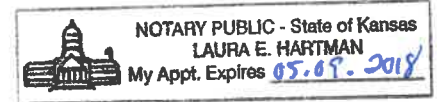
Laura E. Hartman Notary Public

Print Name: Laura E. Hartman

STATE OF KANSAS:

SS

COUNTY OF Douglas :



ON THIS DAY 04.10.2018 before me, the undersigned officer, personally appeared Timothy A. DeMatt \*, who acknowledged him/herself to be the Representative of Midland Railway, and being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Laura E. Hartman Notary Public

Print Name: Laura E. Hartman

\* President, Midland Railway Historical Association

## AMENDMENT TO THE TRAIL AGREEMENT

Midland Railway Historical Society and the City of Baldwin City entered into an agreement on April 3, 2018 for the purchase of an easement. The parties are agreeing to the following amendments to the original agreement.

The parties request section 2.01(c) be added as follows:

### Article 2. Grant of Easement for Trail Facilities

#### 2.01 Grant

The undersigned Owner or Owners grant and convey to Holder the perpetual right to create the Trail identified below; to enter the Easement Area at any time to construct, install, maintain, and repair the items (collectively, with the Trail, the "Trail Facilities") described in paragraph (a) and (c) and, subject to the prior written consent of the Owner, those described in paragraph (b) below.

##### (a) Permitted Trail Facilities

- (1) A trail not to exceed approximately 15 feet in clear tread width (the "Trail").
- (2) Signs to mark the Trail, to provide information related to the Trail, and for interpretive purposes.
- (3) Fencing, gates, trash receptacles, benches, restroom facilities and barriers to control access.

##### (b) Trail Facilities Requiring Prior Written Consent of Owners

- (1) The location of restroom facilities

##### (c) Permitted Utility Facilities

- (1) Water lines
- (2) Electrical lines
- (3) Internet or Fiber lines

The parties request section 3.03 be added as follows:

### Article 3. Grant of Easement for Public Access

#### 3.01 Grant

The undersigned Owner or Owners grant and convey to Holder the right to make available to the public a perpetual easement and right-of-way over the trail and the right to use Trail Facilities for the purposes described in paragraph (a) below:

- (a) **Permitted Trail Uses.** Use of the Trail as a right-of-way for (1) walking, hiking, jogging, bicycling, horseback riding, bird watching, nature study; (2) power-driven mobility devices for use by persons who have mobility impairments; and (3) emergency vehicles in the case of emergency within the Easement Area.
- (b) If a trail is not built by the end of the 50<sup>th</sup> year, the easement will be released and returned to Midland Railway. If a trail is built before the 50-year deadline, the easement shall become irrevocable.

#### 3.02 No Charge for Access


No non-government entity is permitted to charge a fee for access to the Trail or use of the Trail Facilities.

#### 3.03 Utility Grant

The undersigned Owner or Owners grant and convey to Holder the right to install water lines, electrical lines and internet lines on the easement.

INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners and Holder, by their respective duly authorized representatives, have signed and delivered this agreement as of the Easement Date.

Witness/Attest:


  
Laura E. Hartman



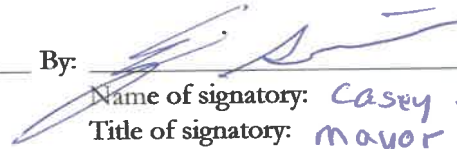
Owner's name:  
Timothy A DeMott  
President, Midland Railway Historical Association



[NAME OF HOLDER]

  
Laura E. Hartman

By:



Name of signatory: Casey Simoncau  
Title of signatory: mayor





STATE OF KANSAS:

COUNTY OF Douglas :

ON THIS DAY 04.10.2018, before me, the undersigned officer, personally appeared Timothy A De Matt, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



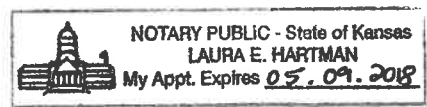
Laura E Hartman Notary Public

Print Name: Laura E Hartman

STATE OF KANSAS:

COUNTY OF Douglas :

SS



ON THIS DAY 04.17.2018 before me, the undersigned officer, personally appeared Casey Simoneau, who acknowledged him/herself to be the Mayor of City of Baldwin City, and being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Laura E Hartman Notary Public

Print Name: Laura E. Hartman

## EXHIBIT A

A right-of-way for railroad purposes in and across the following Sections of land in Franklin County, Kansas, to wit: Sections 26, 23, 24, 13, 12 and 1 of Township 16 South, Range 19 East; also Sections 36, 25, and 24 of Township 15 South, Range 19 East; also Section 19 of Township 15 South, Range 20 East; also across the following Sections in Douglas County, Kansas, to wit: Sections 18, 17, 8, 5, and 4 of Township 15 South, Range 20 East; all of the above described Sections lying in the Sixth Principal Meridian, more particularly described as follows:

Beginning at a point at Ottawa Junction, Kansas where the Baldwin District tract crosses Grantor's northerly line of right of way (150 feet wide approximately 70 feet Northerly of centerline of Grantor's second subdivision ICC track number 143);

Thence in a Northeasterly direction with a right of way 100 feet in width to the South Line of the North half of the Northeast Quarter of Section 36 of Township 15 South, Range 19 East;

Thence continuing with a right of way 200 feet in width through the old Norwood Station for a distance of 1280 feet, more or less;

Thence continuing with a right of way 100 feet in width to the Southerly limit of Baldwin Station;

Thence continuing through the Baldwin Station with a right of way of various widths to the Northerly limits of Baldwin Station;

Thence continuing with a right of way 100 feet in width to milepost 14.95 (located in the Southeast Quarter of the Northwest Quarter of Section 4 of Township 15 South, Range 20 East).

Also, all of that certain 3.5 acre parcel of land described first in deed dated March 7, 1870 from Jacob C. Switzer and Hannah M. Switzer, recorded April 11, 1870, in Book "M" of Deeds at Page 75 of the Records of Franklin County.