

## **THIRD INTERIM TRAIL USE AND REAL ESTATE**

### **DONATION AGREEMENT**

#### **(Rails to Trails)**

THIS THIRD INTERIM TRAIL USE AND REAL ESTATE DONATION AGREEMENT (this "Agreement") is entered into as of this 17 day of, December, 2019 (the "Effective Date"), by and between Missouri Central Railroad Company, a Delaware corporation ("Railroad"), and the Missouri Department of Natural Resources, an agency of the State of Missouri ("the Department").

#### **WITNESSETH:**

WHEREAS, Railroad and the Department, as Licensor and Licensee, respectively, entered into a Trail Use License Agreement, as amended by that certain First Amendment to Trail Use License Agreement dated October 25, 2012 (as amended, the "License Agreement"), pursuant to which Railroad conveyed to the Department a non-exclusive license over a portion of the Railroad Right of Way (as defined in the License Agreement), consisting of the 46-mile portion from a point at approximately the intersection with the existing Katy Trail State Park in Windsor, Missouri, to Pleasant Hill, Missouri at the Cass County Fairgrounds Park, from mile post 217 to mile post 263 (defined more fully in the License Agreement as the "License Premises");

WHEREAS, Railroad is a Class III common carrier railroad, as defined by the United States Surface Transportation Board ("STB");

WHEREAS, the Department, an executive agency of the State of Missouri, pursuant to its authority in Section 640.010.3, RSMo, administers and operates the Division of State Parks whose mission is to preserve and interpret the finest examples of Missouri's natural landscapes and cultural landmarks, and to provide healthy and enjoyable outdoor recreation opportunities for all Missourians and visitors to Missouri;

WHEREAS, Railroad is or was the owner of the former Rock Island railway corridor running approximately from Vigus, Missouri to Pleasant Hill, Missouri, and is the owner of the portion defined below as Interim Trail Use Portion Number 3, which includes (1) the corridor between approximately Windsor, Missouri and Beaufort, Missouri, and (2) an approximately 0.6-mile segment near Pleasant Hill, Missouri;

WHEREAS, capitalized terms provided herein shall have the same definitions as provided in the License Agreement unless otherwise provided herein;

WHEREAS, notwithstanding the License Agreement, the Department requested that Railroad seek abandonment authority for portions of former Rock Island railway corridor (1) between milepost 262.906 and milepost 257.283 ("Interim Trail Use Portion Number 1") and (2) between milepost 257.283 and milepost 215.325 ("Interim Trail Use Portion Number 2");

WHEREAS, Railroad did obtain such abandonment authority from the Surface Transportation Board (“STB”) for Interim Trail Use Portion Number 1 in STB Docket No. AB-1068X, and for Interim Trail Use Portion Number 2 in STB Docket No. AB-1068 (Sub-No. 1X);

WHEREAS, Central Midland Railway Company (“CMR”) obtained discontinuance authority from the STB for Interim Trail Use Portion Number 1 in STB Docket No. AB-1070X and for Interim Trail Use Portion Number 2 in STB Docket No. AB-1070 (Sub-No. 1X);

WHEREAS, the Department requested and obtained authorization from the STB to be the interim trail user under the National Trails System Act, 16 U.S.C. § 1247(d), for Interim Trail Use Portion Number 1 in STB Docket No. AB-1068X and for Interim Trail Use Portion Number 2 in STB Docket No. AB-1068 (Sub-No. 1X);

WHEREAS, Railroad and the Department executed an Interim Trail Use and Real Estate Purchase Agreement and related documents on or about October 25, 2012 in order to effect transfer of the Interim Trail Use Portion Number 1 from Railroad to the Department, enabling the Department to develop a trail thereon;

WHEREAS, Railroad and the Department executed the Second Interim Trail Use and Real Estate Purchase Agreement and related documents on or about February 20, 2015 in order to effect transfer of the Interim Trail Use Portion Number 2 from Railroad to the Department, enabling the Department to develop a trail thereon;

WHEREAS, the Department requested that the Railroad seek abandonment of a further portion of the former Rock Island railroad corridor consisting of two segments: (1) between milepost 215.325 and milepost 71.6, and (2) between milepost 263.5 and milepost 262.906 (collectively, “Interim Trail Use Portion Number 3”);

WHEREAS, Railroad has sought such abandonment authority for Interim Trail Use Portion Number 3 in STB Docket No. AB-1068 (Sub-No. 3X);

WHEREAS, CMR has sought and received discontinuance authority from the STB for Interim Trail Use Portion Number 3 in STB Docket No. AB-1070 (Sub-No. 3X);

WHEREAS, the Department has requested interim trail use rights under the National Trails System Act, 16 U.S.C. § 1247(d) for Interim Trail Use Portion Number 3, and the Railroad has acceded to this request;

WHEREAS, after conducting proceedings required by law, including the National Trails System Act Amendments of 1983, 16 United States Code Sections 1241 et. seq. (the “Trails Act”) and 49 U.S.C. § 10903 and 49 CFR § 1152.50, the STB issued a Notice of Interim Trail Use (“NITU”) for Interim Trail Use Portion Number 3 as requested by the Department in a decision served February 26, 2015 in Docket Number AB-1068 (Sub-No. 3X);

WHEREAS, the STB retains jurisdiction over Interim Trail Use Portion Number 3 because Railroad has not, to date, consummated the abandonment of all or any portion of said right-of-way;

WHEREAS, a Memorandum of Agreement (“MOA”), among the Surface Transportation Board, the Railroad, the Department, and the Missouri State Historic Preservation Office, with the City of Stover and the Osage Nation as concurring parties, dated June 1, 2015, applied to Interim Trail Use Portion Number 3 and the properties thereon that are designated, or eligible to be designated, under the National Historic Preservation Act (“NHPA”);

WHEREAS, (1) the terms of the MOA created several conditions for the salvage of the steel assets and other Salvage Materials from Interim Trail Use Portion Number 3, and (2) the STB established various environmental conditions in its decisions in Docket No. AB-1068 (Sub-No. 3X);

WHEREAS, Railroad, through its contractor, has completed salvaging the steel assets and other Salvage Materials from Interim Trail Use Portion Number 3 and the environmental conditions have been lifted and the MOA has terminated;

WHEREAS, the Department seeks to obtain via donation, pursuant to the National Trails System Act, all of Railroad’s right, title, and interest in and to the former Rock Island railroad corridor and all track structures (with some exceptions herein defined) on Interim Trail Use Portion Number 3, and Railroad has agreed to the same;

WHEREAS, Railroad and the Department seek to agree to the terms and conditions of such donation;

NOW, THEREFORE, in consideration of the foregoing, the payment by the Department to Railroad of Ten Dollars (\$10.00), and the following mutual covenants, terms, and conditions, Railroad and the Department agree as follows:

**1. DONATION.**

(a) Railroad will donate and convey to the Department, and the Department will accept from Railroad, all of Railroad’s rights, title and interest in Interim Trail Use Portion Number 3, as described in **Exhibit 1** (the “Description of Interim Trail Use”), subject to reactivation of Interim Trail Use Portion Number 3 for rail use as provided by the Trails Act. Railroad shall convey such property by Quitclaim Deed, in the form attached hereto as **Exhibit 2** (the “Quitclaim Deed”), invoking section 8(d) of the Trails Act, and subject to all rights, easements, reservations, and other matters in place or of record, including, without limitation, that certain Amended and Restated Transmission Easement dated September 24, 2014 between Railroad and Ameren Development Company (“AED”), recorded at (i) Book 3833, Page 596 of the records of the Cass County, Missouri Recorder of Deeds, (ii) Book 485, Page 101 of the records of the Osage County, Missouri Record of Deeds, (iii) Book 485, Page 103 of the records of the Osage County, Missouri Record of Deeds, (iv) Document No. 2014-5067 of the records of the Pettis County, Missouri Record of Deeds, (v) Book 21201, Page 1063 of the records of the St. Louis County, Missouri Record of Deeds, (vi) Book 628, Page 3121 of the records of the Benton County, Missouri Record of Deeds, (vii) Book 647, Page 615 of the records of the Cole County, Missouri Record of Deeds, (viii) Document No. 1412908 of the records of the Franklin County, Missouri Record of Deeds, (ix) Document No. 2014-2671 of the records of the Gasconade County, Missouri Record of Deeds, (x) Book 705, Page 3986 of the records of the

Henry County, Missouri Record of Deeds, (xi) Book 3525, Page 100 of the records of the Johnson County, Missouri Record of Deeds, (xii) Book 357, Page 177 of the records of the Maries County, Missouri Record of Deeds, (xiii) Book 357, Page 193 of the records of the Maries County, Missouri Record of Deeds, (xiv) Book 2014, Page 3899 of the records of the Miller County, Missouri Record of Deeds, (xv) Instrument No. 201400004436 of the records of the Morgan County, Missouri Record of Deeds, amending and restating that certain Transmission Line Easement granted from Railroad to AED dated July 14, 2011 (as amended and restated, the "Transmission Easement"), and that certain Amended and Restated Gas Pipeline Easement dated September 24, 2014 between Railroad and AED, recorded at (i) Book 3833, Page 604 of the records of the Cass County, Missouri Recorder of Deeds, (ii) Book 485, Page 102 of the records of the Osage County, Missouri Record of Deeds, (iii) Book 485, Page 104 of the records of the Osage County, Missouri Record of Deeds, (iv) Document No. 2014-5068 of the records of the Pettis County, Missouri Record of Deeds, (v) Book 21201, Page 1072 of the records of the St. Louis County, Missouri Record of Deeds, (vi) Book 628, Page 3129 of the records of the Benton County, Missouri Record of Deeds, (vii) Book 03833, Page 0604 of the records of the Cass County, Missouri Record of Deeds, (viii) Book 647, Page 616 of the records of the Cole County, Missouri Record of Deeds, (ix) Document No. 1412909 of the Franklin County, Missouri Record of Deeds, (x) Document No. 2014-2672 of the records of the Gasconade County, Missouri Record of Deeds, (k) Book 705, Page 3994 of the records of the Henry County, Missouri Record of Deeds, (xi) Book 3525, Page 101 of the records of the Johnson County, Missouri Record of Deeds, (xii) Book 357, Page 185 of the records of the Maries County, Missouri Record of Deeds, (xiii) Book 357, Page 201 of the records of the Maries County, Missouri Record of Deeds, (xiv) Book 2014, Page 3900 of the records of the Miller County, Missouri Record of Deeds, (xv) Instrument 201400004437 of the records of the Morgan County, Missouri Record of Deeds, and any other easement agreements, transmission line easements, gas line easements, other zoning ordinances, subdivision ordinances, and claims, including prescriptive rights and claims of adverse possession, and in accordance with the other terms, conditions and reservations contained herein and excepting therefrom any and all portions of the property now owned by GRC Holdings Corporation ("GRC"). The property to be quitclaimed shall include all bridges, culverts, and other structures within Interim Trail Use Portion Number 3, but the parties agree that the donated property does not include the former railroad depot in Eldon (in Miller County) described as Parcel B (see Attachment A), which Railroad has determined is not needed for any future rail service, and the Department acknowledges that the depot will be donated to the City of Eldon prior to Closing. The parties also agree that the following (the "Excluded Property") has already been removed and therefore is not included in Interim Trail Use Portion Number 3:

- i. rails, tie plates, signals, wires, joint bars, turnout materials, anchors, bolts, spikes, washers, and other steel (collectively, "Salvage Materials") located on Interim Trail Use Portion Number 3.

## **2. Closing.**

- (a) The closing of title for the donation of Interim Trail Use Portion Number 3 pursuant to this Agreement (the "Closing") shall occur on a mutually acceptable date ("Closing

Date”) as soon as reasonably practicable after all Conditions Precedent (as defined below) have been satisfied. If the Department is not prepared to close by four (4) months after Railroad provides notice that all Conditions Precedent have been satisfied, then Railroad may terminate this Agreement at any time thereafter with no further obligation to the Department. If Closing has not occurred by December 31, 2021 (“Closing Deadline”), then either Railroad or the Department may terminate this Agreement on twenty (20) days’ written prior notice to the other party, in which case neither party shall be obligated to close on the transaction described herein. In the event this Agreement is terminated, the Parties agree to work together to notify the STB and the Department will cooperate in any filings needed to substitute the trail sponsor. Nothing herein shall prohibit the parties from Closing prior to the Closing Deadline if the parties mutually agree to waive any Conditions Precedent.

(b) Closing of the conveyance hereunder shall occur by mutual exchange, by mail or electronic mail, of (a) a properly executed Quitclaim Deed in the form given at Exhibit 2 hereto, (b) a properly executed Bill of Sale for Personal Property, and (c) a properly executed Memorandum of Third Interim Trail Use and Real Estate Donation Agreement for recordation.

(c) Possession of Interim Trail Use Portion Number 3 shall be transferred to the Department at Closing. Railroad and the Department agree that no trail or portion thereof shall be constructed or developed on Interim Trail Use Portion Number 3 until Closing has occurred unless the parties mutually agree in writing. The Department acknowledges that Railroad previously entered into temporary trail agreements with certain entities, including but not necessarily limited to the City of Belle, but that, based on the knowledge of Railroad and the Department, no trail building was authorized or completed pursuant to such agreements.

(d) The Department and Railroad acknowledge that execution of this Third Interim Trail Use and Real Estate Donation Agreement will require that notice be provided to the STB within ten (10) days as required by 49 CFR § 1152.29(h). The parties agree to use this notice to also inform the STB that transfer of Interim Trail Use Portion Number 3 will occur at a future date. Both parties also agree to provide a second notice to the STB immediately after Closing, informing the STB that transfer of Interim Trail Use Portion Number 3 to the Department has occurred.

(e) Until Closing occurs, control and management of Interim Trail Use Portion Number 3 shall remain wholly with Railroad. As a means of clarification and not limitation regarding the foregoing control and management, the Department agrees that Railroad may enter into Right of Entry agreements with third parties or otherwise take steps before Closing to manage Interim Trail Use Portion Number 3 and/or control weeds thereon. Execution of this Agreement shall not provide the Department with any property right, license, right of entry, or any other right to use or access Interim Trail Use Portion Number 3.

(f) The parties agree that within thirty (30) days after Closing, Railroad will assign and the Department will accept the assignment of a Trail Use License Agreement that Railroad entered into with V and S Railway LLC in 2015 for a non-exclusive license of varying width over an approximately 12.6 mile portion of rail right-of-way between approximately Highway

185 near Beaufort, MO eastward toward the intersection of Highway 47, near Union, MO (approximately mile post 71.6 to mile post 59) for the development of a rail-with-trail.

**3. Conditions Precedent.** The parties shall have no obligation to close the transaction under this Agreement until all of the following conditions have been fulfilled:

(a) A Phase II Environmental Site Assessment (ESA) or analysis has been completed for all recognized environmental conditions identified by the Department's Phase I ESA report within Interim Trail Use Portion Number 3. The Department acknowledges that any boring or soil sampling will only occur on Railroad property. Railroad agrees to be responsible for all costs associated with obtaining this Phase II ESA and Railroad may use the Phase I and II ESA reports however it sees fit in the event this Agreement is terminated. The Phase II ESA will be conducted only for assessing the baseline environmental condition of Interim Trail Use Portion Number 3 and for purposes of the 60-day termination right described in Section 3(a). Railroad shall provide the Department a copy of the Phase II ESA report for review. If, based on the Department's review of the Phase II ESA report, the Department does not approve the condition of Interim Trail Use Portion Number 3, the Department must give a written notice to Railroad within sixty (60) days of receipt of the Phase II ESA report in order to terminate this Agreement otherwise the Agreement will remain in full force and effect; and

(b) Unrestricted donations totaling at least nine million, seven hundred ninety-two thousand, four hundred ninety dollars and thirty-five cents (\$9,792,490.35) have been deposited into the Rock Island Trail State Park Endowment Fund established pursuant to Section 253.177, RSMo for the purpose of assisting the Department with initial development costs arising out of the Department's acceptance of Interim Trail Use Portion Number 3. Such initial development costs include, but are not limited to, boundary fencing maintenance costs; bridge, tunnel, and crossing closure costs; sign installation costs; operations, maintenance, and law enforcement labor costs; site preparation; equipment needs; and structure stabilization costs. The parties agree to work cooperatively to facilitate the accumulation of funds needed to meet this condition precedent. The Department agrees to notify Railroad within thirty (30) days of this condition precedent being satisfied.

**4. Use Restriction.** This Agreement and any subsequent authorized conveyance or agreement shall be interpreted to conform to Section 8(d) of the Trails Act, and the Department shall assume full responsibility for management of Interim Trail Use Portion Number 3 and for the payment of any and all taxes that may be levied or assessed against Interim Trail Use Portion Number 3 upon Closing hereunder. Consistent with 49 CFR § 1152.29(a)(2), the Department also agrees to indemnify Railroad against any potential liability arising out of the transfer or use of Interim Trail Use Portion Number 3 on and after the date of Closing. No use by the Department (and permitted assignees) shall impair future restoration of rail service pursuant to the Trails Act. In the event that the STB determines that reactivation of rail service on the premises is necessary for the public convenience and necessity, the Department agrees to transfer said premises to the acquiring entity in accordance with any lawfully applicable STB decision provided, however, that should the Railroad, pursuant to order of the STB, desire to purchase Interim Trail Use Portion Number 3, Railroad agrees to pay the Department the sum of all capital

improvements and maintenance costs expended by the Department during the term of its possession of Interim Trail Use Portion Number 3.

**5. Quit Claim Conveyance; Disclaimer by Railroad and Acknowledgements by the Department.** The Department acknowledges that:

(a) Railroad has not made, and does not make hereby, any representations or warranties whatsoever as to the effect of the NITU and the Department acknowledges that the STB may revoke the NITU once issued, in accordance with the provisions of the Trails Act;

(b) Interim Trail Use Portion Number 3 is subject to reactivation for rail use to the extent permitted by law, including in the event that rail service is required under the Trails Act.

**6. Assignment of Beneficial Rights Serving Interim Trail Use Portion Number 3.** At Closing, Railroad shall assign to the Department, all rights, title and interest in any leases, licenses, permits, easements and other agreements of any kind whatsoever benefitting solely Interim Trail Use Portion Number 3, whether or not of record, and the Department shall assume all of the obligations thereunder. Any income derived from such beneficial rights or agreements bearing annual, semi-annual, quarterly or monthly rental shall be prorated as between Railroad and the Department. The proration shall be calculated based upon the ratio of the portion of the current rental period remaining pursuant to the agreement as of the date of Closing over total length of current rental period times the income, collected for current rental period. For purposes of emphasis and not limitation, such assignment shall not include any beneficial rights of Railroad serving property other than Interim Trail Use Portion Number 3, even if such rights include Interim Trail Use Portion Number 3, such as longitudinal utility easements crossing Interim Trail Use Portion Number 3. Within 30 days of the Effective Date, Railroad shall provide to the Department copies of all leases, licenses, permits, easements, and other agreements in its possession existing on Interim Trail Use Portion Number 3. These agreements may relate partially to property other than Interim Trail Use Portion Number 3, such as longitudinal utility easements where Railroad's rights include but are not limited to Interim Trail Use Portion Number 3. The foregoing is intended and shall be deemed to be as a disclosure only and nothing in this paragraph or in the materials provided by Railroad hereunder is intended or shall be deemed to be (a) a contingency to the Department's obligations hereunder or (b) a representation or warranty of any kind, including, without limitation, the completeness or accuracy of the documents supplied by Railroad, if any.

**7. Bill of Sale.** At Closing, Railroad shall complete the donation by conveying title to the Department by Bill of Sale, with no warranties, as provided more fully in this Agreement, to all personal property located on Interim Trail Use Portion Number 3, excepting the Excluded Property.

**8. Covenants of the Department.** The Department covenants to, on and after the date of Closing:

(a) assume full responsibility for management of Interim Trail Use Portion Number 3 and for any legal liability arising out of the transfer or use of Interim Trail Use Portion Number 3

unless the Department is immune from liability, then it shall indemnify Railroad against any potential liability consistent with 49 CFR § 1152.29(a)(2), and to pay all taxes that may be levied or assessed against Interim Trail Use Portion Number 3, including, without limitation, property taxes as provided by law; and

(b) ratify, confirm, and re-convey the Transmission Line Easement and the Gas Pipeline Easement within 30 days of written demand by Railroad, for no additional consideration to Railroad.

**9. Salvage Materials.**

(a) Railroad, at its sole cost and expense, has removed the Excluded Property (collectively, "Salvage Materials") prior to Closing, but Railroad has not removed and shall not remove any ballast from Interim Trail Use Portion Number 3.

(b) Any Salvage Materials not removed by Closing shall be deemed to be abandoned, and the Department immediately shall be the owner thereof and Railroad shall have no further ownership rights with respect thereto.

(c) Railroad shall have the obligation, at its sole cost and expense, to undertake any repairs to any public street crossings disrupted by any salvage operation, to the extent such repairs are required by an applicable governmental safety ordinance cited in an enforcement notice received by Railroad before Closing.

**10. Quitclaim Sale; Disclaimer of Warranties; Title Matters.**

(a) By way of emphasis and not limitation of the Quitclaim nature of this sale, this Agreement and the rights granted hereunder are subject and subordinate in all respects to (i) the matters provided in Section 1 above and in the Quitclaim Deed; (ii) any and all portions of the property now owned by GRC; and (iii) the rights of Railroad's existing lessees, licensees, encroachments, and all other encumbrances, existing roads and highways, the rights of all utilities, all railroad rights-of-way, water courses and drainage rights, and the specific rights of third parties in the Railroad Right of Way (whether recorded or unrecorded), and, to the extent that any of the foregoing arises out of rights previously granted by Railroad or its predecessors in title or otherwise, in accordance with the terms of such grants by Railroad; provided, however, that nothing in this Agreement, including this Section, is intended by the parties to consent to or concede the validity of such claims or matters and the Department shall have and reserves the right and remedies of Railroad, if any, to defend against and contest, extinguish or terminate any such matters. If required by the terms of such grants, if any, or by applicable law, the Department shall secure the engineering consent of such prior grantees as a prerequisite to exercising its rights hereunder and provide Railroad with a copy of the same.

Notwithstanding anything to the contrary herein, however, title to Interim Trail Use Portion Number 3 shall be free of recorded mortgages or other monetary encumbrances at Closing.



(b) Railroad represents and warrants that, based on the actual knowledge of Railroad's President as of January 1, 2019:

- i. In connection with Railroad's ownership, use, operation or maintenance of Interim Trail Use Portion Number 3, no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against it alleging any failure so to comply. Without limiting the generality of the preceding sentence, Railroad has obtained and been in compliance with substantially all of the terms and conditions of all permits, licenses, and other authorizations that are required under, and has substantially complied with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables that are contained in, all environmental, health, and safety laws applicable to Railroad's ownership, use, operation, or maintenance of Interim Trail Use Portion Number 3; and
- ii. [intentionally omitted]
- iii. All properties and equipment, excluding any ties, used in the business of Railroad in connection with its ownership, use, operation, or maintenance of Interim Trail Use Portion Number 3 have been free of Hazardous Substances as that term is defined in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively, "CERCLA") and any corresponding state or local law or regulation; and
- iv. Railroad has delivered or made available to the Department all of its records regarding the size, contents, and location of any existing underground storage tanks located within Interim Trail Use Portion Number 3, including any registration records and any reports of inspection and testing of such tanks to determine any possible leakage from the tanks. Further, Railroad has delivered or made available to the Department all of its records regarding underground storage tanks that have been removed by Railroad from Interim Trail Use Portion Number 3, including the size, former contents and location of such tanks and any registration records and any reports of inspection and testing of the same to determine any prior leakage. All underground storage tanks containing hazardous substances located within Interim Trail Use Portion Number 3 have been registered as required by law; and
- v. Railroad has not acquired, incurred, or assumed any material contingent liability in connection with the discharge or release of any extremely hazardous substances into the environment in connection with Railroad's ownership, use, operation, or maintenance of Interim Trail Use Portion Number 3.

(c) EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES EXPRESSED IN PARAGRAPH 10(b), RAILROAD HAS MADE NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE WHATSOEVER, WHETHER WRITTEN OR ORAL, AND BY WAY OF EMPHASIS AND NOT BY WAY OF LIMITATION, RAILROAD EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES CONCERNING (I) THE SUITABILITY OF INTERIM TRAIL USE PORTION NUMBER 3 FOR THE DEPARTMENT'S USE, OR (II) ANY RIGHT, TITLE OR INTEREST OF RAILROAD IN INTERIM TRAIL USE PORTION NUMBER 3 OR OTHER REAL PROPERTY, OR OTHER TITLE MATTERS RELATED TO INTERIM TRAIL USE PORTION NUMBER 3, INCLUDING, WITHOUT LIMITATION, CLAIMS OF ADVERSE POSSESSION, PRESCRIPTIVE EASEMENTS, COMMON LAW ABANDONMENT, OR TAKING BY REASON OF THE NATIONAL TRAILS ACT. IN ENTERING INTO THIS AGREEMENT, THE DEPARTMENT HAS RELIED SOLELY UPON SUCH INDEPENDENT INVESTIGATION OF THE TITLE TO AND CONDITION OF INTERIM TRAIL USE PORTION NUMBER 3, AS THE DEPARTMENT HAS DEEMED NECESSARY OR APPROPRIATE IN ITS DISCRETION, AND THE DEPARTMENT HAS NOT RELIED UPON ANY STATEMENTS, REPRESENTATIONS OR AGREEMENTS OF RAILROAD, ITS EMPLOYEES, AGENTS, CONTRACTORS OR REPRESENTATIVES, REGARDING THE CONDITIONS OF INTERIM TRAIL USE PORTION NUMBER 3. THIS AGREEMENT AND THE OTHER RIGHTS GRANTED TO THE DEPARTMENT HEREUNDER ARE GRANTED OVER INTERIM TRAIL USE PORTION NUMBER 3 IN ITS "AS-IS, WHERE-IS CONDITION, WITH ALL FAULTS".

11. **Indemnity.** Except to the extent prohibited by law, and except as otherwise provided in this Agreement, the Department shall indemnify and hold the Railroad harmless from any and all liabilities, costs, or expenses, including attorneys' fees, incurred by or assessed against the Railroad arising after the date of Closing on account of injuries, death, or property loss or damage and (1) resulting from the transfer of Interim Trail Use Portion Number 3 to the Department, or (2) arising out of the use, operation, or maintenance of Interim Trail Use Portion Number 3. The foregoing indemnity shall survive the termination of or Closing under this Agreement. Except to the extent prohibited by law, and except as otherwise provided in this Agreement, Railroad will indemnify and hold the Department harmless from any and all liabilities, costs, or expenses, including attorneys' fees, incurred by or assessed against the Department arising before the date of Closing on account of injuries, death, or property loss or damage resulting from Railroad's acts or omissions in connection with Railroad's use, operation or maintenance of Interim Trail Use Portion Number 3.

12. **Waiver and Release by the Department; Limitation of Liability of Railroad.** The Department hereby waives and releases all claims against the Railroad, which the Department or any person or entity claiming by, through or under the Department may now or at any time in the future have for injury or damage to persons, property, or business sustained in or about Interim Trail Use Portion Number 3, arising from matters (i) included within the indemnity by the Department provided in Section 11 above or (ii) any conditions existing on Interim Trail Use Portion Number 3, including in both cases (i) and (ii) allegations of the negligence of Railroad, but excepting only matters arising solely out of Railroad's willful misconduct. Railroad shall not be liable to the Department for any injury, loss or damage to persons, property

or business sustained by the Department, its representatives, employees, agents, contractors or invitees in connection with this Agreement, except to the extent that such loss or damage results from Railroad's willful misconduct.

**13. Environmental Matters.**

(a) The term "Hazardous Substances" shall have the same meaning as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 et seq., and regulations promulgated thereunder (collectively, "CERCLA") and any corresponding state or local law or regulation.

(b) The Department shall construct any improvements on Interim Trail Use Portion Number 3, and use, operate and maintain the same and Interim Trail Use Portion Number 3, in compliance with all federal, state and local environmental, health and/or safety laws and regulations in existence or as amended or adopted in the future. Except for Hazardous Substances expressly approved by Railroad in writing, the Department shall not use or dispose of any Hazardous Substances on Interim Trail Use Portion Number 3. Any approved Hazardous Substances on Interim Trail Use Portion Number 3 shall be stored and disposed of in accordance with all applicable environmental laws.

(c) In the event of any release of Hazardous Substances on, or contamination of, Interim Trail Use Portion Number 3 arising out of the Department's ownership, use, operation, or maintenance of Interim Trail Use Portion Number 3, the Department, at its sole expense, shall promptly take all actions necessary to clean up the affected property. For purposes of this Agreement, the Department identifying, disturbing, or unearthing a preexisting Hazardous Substance shall not be deemed a "release" arising out of the Department's ownership, use, operation, or maintenance of Interim Trail Use Portion Number 3. The Department shall return the affected property to the prior condition before any release arising out of the Department's ownership, use, operation, or maintenance of Interim Trail Use Portion Number 3, to the satisfaction of any governmental authorities having jurisdiction. In all cases, the Department shall promptly notify Railroad of any release or contamination of Hazardous Substances on Interim Trail Use Portion Number 3 arising out of the Department's ownership, use, operation, or maintenance of Interim Trail Use Portion Number 3.

**14. Notices.** All notices, demands, consents, approvals and other communications which are required or desired to be given by either party to the other hereunder shall be in writing and shall be hand delivered, sent by United States registered or certified mail, postage prepaid, return receipt requested to the appropriate party at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered or three days after mailing; provided, however, that if any such notice or other communication shall also be sent by telefax machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending party receives a written send verification on its machines.

To the Department:

DNR/Division of State Parks  
Real Estate Section

P.O. Box 176  
Jefferson City, MO 65102

To Railroad: Missouri Central Railroad Company  
c/o Ameren Services  
P.O. Box 66149, Code 700  
St. Louis, Missouri 63166-6149  
Attention: Director, Real Estate

With a copy to: Ameren Corporation  
One Ameren Plaza  
1901 Chouteau Avenue  
St. Louis, Missouri 63103  
Attention: General Counsel

**15. Assignment; Transfers Subject to License.** The Agreement is not intended to, and shall not run with the land. Nevertheless, the parties agree that this Agreement and the rights and obligations of the parties hereto shall be binding and inure to the benefit of the parties and their respective permitted successors, legal representatives and permitted assigns.

In the event of any assignment of the Department's rights hereunder, the Department shall not be released from any of its duties, obligations or liabilities hereunder, whether arising or accruing prior to, on or after the date of any such assignment, unless the Department seeks and obtains STB approval for a substitution of trail sponsor pursuant to 49 CFR § 1152.2 9(f). After Closing, Railroad may assign, sell or transfer any right, title or interest it has under this Agreement with notice to the Department. This right to assign, sell or transfer any right, title or interest shall specifically include, but is not limited to, the right to reactivation for rail use pursuant to the Trails Act.

**16. Miscellaneous.**

(a) All portions of this Agreement which require the Department to perform or undertake any obligations shall survive the termination of this Agreement.

(b) There are no representations or understandings of any kind related to the subject matter hereof that are not fully set forth in this Agreement. Any amendments to this Agreement must be in writing and executed by Railroad and the Department.

(c) This Agreement shall be construed in accordance with the laws of the State of Missouri.

(d) On or before Closing, Railroad will provide the Department with all original documents, maps, records, deeds, and drawings which are pertinent to Interim Trail Use Portion

Number 3 and which the Railroad deems to be available and unnecessary for retention by Railroad. If Railroad deems it necessary to retain any original documents, Railroad shall provide the Department with legible copies of same.

(e) A Memorandum of this Agreement shall be signed by the Department and signed and recorded by Railroad within 15 days of written request by Railroad to the Department.

(f) Railroad is not a foreign person as that term is defined in Section 1445 of the U.S. Internal Revenue Code.

(g) Time is of the essence with respect to all provisions of this Agreement.

(h) In the event that any court of competent jurisdiction determines that any covenant, term or condition of this Agreement as applied to any particular facts or circumstances is wholly or partially invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect such covenant, term or condition as applied to other facts or circumstances (unless the effect of such determination precludes the application of such covenant, term or condition to other facts or circumstances) or the validity, legality or enforceability of the other covenants, terms and conditions of this Agreement. In the event any provision of this Agreement is held to be invalid, illegal or unenforceable, the parties shall promptly and in good faith negotiate new provisions in substitution therefor to restore this Agreement to its original intent and effect.

(i) Nothing in this Agreement is intended or shall be construed as making the parties hereto partners, members, agents, joint venturers or members of a joint enterprise.

(j) In any dispute between Railroad and the Department arising out of this Agreement or brought by or against any third party arising out of this Agreement, Railroad and the Department shall each bear its own attorneys' fees and expenses.


(k) The Department represents and warrants that (i) it has full power and authority to enter into this Agreement and undertake the responsibilities and obligations contemplated by it in accordance with its terms; and (ii) the execution and performance of this Agreement has been duly authorized by all necessary governmental or corporate actions and that pursuant to such actions, this Agreement constitutes a valid and binding obligation of the Department and is enforceable against the Department in accordance with its terms.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the Effective Date.


**Railroad:**

MISSOURI CENTRAL RAILROAD COMPANY

By:   
Mark Birk  
President

**The Department:**

MISSOURI DEPARTMENT OF NATURAL  
RESOURCES

By:   
Dru Buntin  
Acting Director

## EXHIBIT 1

### Description of Interim Trail Use

#### Portion Number 3

All that portion of the Railroad's existing rail property, if any, located in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri, between milepost 215.325, near Windsor, Missouri, and milepost 71.6 near Beaufort, Missouri, and between mileposts 263.5 and 262.906 near Pleasant Hill, Missouri, more particularly described as follows:

**A strip of land of varying widths consisting of fee simple and right-of-way interests constituting a corridor consisting of two segments: (1) beginning at milepost 215.325, near Windsor in Pettis County, Missouri extending in a generally eastern direction to milepost 71.6 near Beaufort in Franklin County, Missouri, a distance of 143.7 miles, more or less, and (2) beginning at milepost 263.5 near Pleasant Hill in Cass County, Missouri extending in a generally southeastern direction to milepost 262.906 near Pleasant Hill in Cass County, Missouri, a distance of 0.6 miles, more or less, together with all rights-of-way, station grounds and other real property associated therewith, not excluded and excepted herein, and all improvements and fixtures located thereon, including all buildings, bridges and trestles, including the ties located thereupon, and all mile post markers, culverts, ballasts and similar structures and improvements, but not including the former railroad depot in Eldon described as Parcel B in Attachment A, and not including rails, tie plates, signals, wires, joint bars, turnout materials, anchors, bolts, spikes, washers and other steel, excepting therefrom, any and all that portion of said land owned by GRC Holdings Corporation.**

**ATTACHMENT "A"**

**Parcel "B" (eastern) part of former Railroad Depot Building Parcel, Eldon, Missouri.**

**ORIGINAL SURVEY BOUNDARY DESCRIPTION:** A parcel of land being part of the former Rock Island, Chicago and Pacific Railroad right-of-way which contains part of the former railroad depot building, said parcel also being a part of Block No. 107 of the City of Eldon, all in the Northeast Quarter of Section 04, Township 41 North, Range 15 West, City of Eldon, Miller County, Missouri, with the boundary of said parcel being further described as follows:

Commencing at the southeast corner of Block No. 97 of said City of Eldon per previous survey by G. J. Harms filed in Survey Record Book 2, page 25 of the Miller County records; thence S.00°01'43"W, on the extension of the west right-of-way of South Maple Street for a distance of 60.01 feet to the northeast corner of Block No. 98 of said City of Eldon, said point also being on the north right-of-way line of the former Chicago, Rock Island and Pacific Railroad; thence N.88°54'48"E, along the south line of East 6<sup>th</sup> Street, also being the north line of said railroad, for 60.01 feet to the northwest corner of Block No. 107 of said City of Eldon, and the point of "Beginning" for this property boundary description; thence continuing N.88°54'48"E, along said north line of Block No. 107 for 58.12 feet; thence departing said common right-of-way line S.01°05'12"E for 69.00 feet, thence S.88°54'48"W for 59.43 feet, more or less, to the west line of said Block No. 107, also being the east right-of-way line of said South Maple Street; thence N.00°01'43"W, more or less, along said west line of Block No. 107 for 69.01 feet, more or less, to the point of "Beginning", containing 0.093 acres, (4,055 S.F.), more or less, and being subject to or having the benefit of easements and/or restrictions of record or not of record. (See also the plat of survey filed in the Miller County Records.)

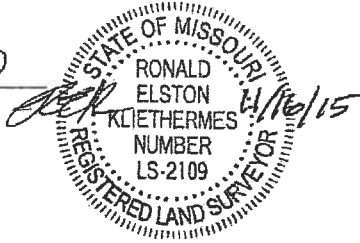
**SURVEYORS CERTIFICATE:** This description, and the survey plat regarding same, depict the results of my original property boundary survey, conducted and prepared under my direct supervision, and completed on the date below written, all of which I certify to be true and correct, and that said survey was executed in accordance with the current "Missouri Standards" for property boundary surveys 20 CSR 2030-16.



Ronald E. Kliethermes, PLS

Missouri Surveyor No. LS-2109

Date: Nov. 16, 2015



Prepared by: MECO Engineering Company, Inc.

2701 Industrial Drive, Jefferson City, Missouri 65109

Survey No. 487-018 for the City of Eldon



**EXHIBIT 2**

**Form of Quitclaim Deed**

*[The remainder of this page is intentionally left blank.]*

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Space Above for Recorder's Use Only

**DOCUMENT COVER SHEET**

**TITLE OF DOCUMENT:** Quit Claim Deed

**DATE OF DOCUMENT:** \_\_\_\_\_

**GRANTOR:** Missouri Central Railroad Company

**Mailing Address:**

c/o Ameren Services  
P.O. Box 66149, Code 700  
St. Louis, Missouri 63166-6149  
Attention: Director, Real Estate

**GRANTEE:** Missouri Department of Natural Resources

**Mailing Address:**

DNR/Division of State Parks  
Real Estate Section  
P.O. Box 176  
Jefferson City, Missouri 65102

**LEGAL DESCRIPTION:** See Exhibit A Attached Hereto

**REFERENCE BOOK & PAGE:** N/A

## QUIT CLAIM DEED

**THIS DEED** is made and entered into to be effective as of this \_\_\_\_ day of \_\_\_\_\_, 201\_, by and between **Missouri Central Railroad Company**, a Delaware corporation (“Grantor”), with a mailing address of c/o Ameren Services, P.O. Box 66149, Code 700, St. Louis, Missouri 63166-6149, Attention: Director, Real Estate, and the **Missouri Department of Natural Resources**, an agency of the state of Missouri (“Grantee”) with a mailing address of DNR/Division of State Parks, Real Estate Section, P.O. Box 176, Jefferson City, Missouri 65102.

**WITNESSETH**, that Grantor, for and in consideration of the sum of One Dollar and other valuable considerations paid by Grantee, the sufficiency and receipt of which is hereby acknowledged, does by these presents, pursuant to Section 8(d) of the United States National Trails System Act Amendments of 1983, 16 U.S. Code Sections 1241 et seq., **REMISE, RELEASE AND FOREVER QUIT CLAIM** unto Grantee, the following described real estate in the Counties of Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin, State of Missouri:

See **Exhibit A** attached hereto and incorporated by reference herein (the “Property”).

**SUBJECT, HOWEVER, TO THE RESERVATIONS AND OTHER MATTERS SHOWN ON EXHIBIT B HERETO.**

**TO HAVE AND TO HOLD** the same, together with all rights and appurtenances to the same belonging, unto Grantee, and to the successors and assigns of Grantee forever. So that neither Grantor, nor Grantor’s successors, or assigns, nor any other person or persons for Grantor or in Grantor’s name or behalf, shall or will hereafter claim or demand any right or title to the Property, or any part thereof, but they and every one of them shall, by these presents, be excluded and forever barred.

**IN WITNESS WHEREOF**, Grantor and Grantee have executed these presents the day and year first above written.

Grantor:  
Missouri Central Railroad Company

By: \_\_\_\_\_  
Mark Birk, President

STATE OF MISSOURI     )  
  )   SS.  
CITY OF ST. LOUIS     )

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 202\_ before me,  
\_\_\_\_\_ a Notary Public in and for said state,  
personally appeared Mark Birk, President of Missouri Central Railroad Company, a Delaware corporation, known to me to be the person who executed the within deed in behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid on the day and year above written.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

Grantee:

Missouri Department of Natural  
Resources

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MISSOURI    )  
  )   SS.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 202\_ before me,  
\_\_\_\_\_, a Notary Public in and for said state,  
personally appeared \_\_\_\_\_, \_\_\_\_\_ of  
the \_\_\_\_\_, known to me to be the person who executed the within deed in  
behalf of said agency and acknowledged to me that he executed the same for the purposes therein  
stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in  
the County and State aforesaid on the day and year above written.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT A**  
**(to Quit Claim Deed)**

**Description of Interim Trail Use**  
**Portion Number 3**

All that portion of the Railroad's existing rail property, if any, located in Cass, Pettis, Benton, Morgan, Miller, Cole, Osage, Maries, Gasconade, and Franklin Counties, Missouri, in either of the two segments: (1) between milepost 215.325, near Windsor, Missouri, and milepost 71.6 near Beaufort, Missouri, and (2) between mileposts 263.5 and 262.906 near Pleasant Hill, Missouri, more particularly described as follows:

**A strip of land of varying widths consisting of fee simple and right-of-way interests constituting a corridor consisting of two segments: (1) beginning at milepost 215.325, near Windsor in Pettis County, Missouri extending in a generally eastern direction to milepost 71.6 near Beaufort in Franklin County, Missouri, a distance of 143.7 miles, more or less, and (2) beginning at milepost 263.5 near Pleasant Hill in Cass County, Missouri extending in a generally southeastern direction to milepost 262.906 near Pleasant Hill in Cass County, Missouri, a distance of 0.6 miles, more or less, together with all rights-of-way, station grounds and other real property associated therewith, not excluded and excepted herein, and all improvements and fixtures located thereon, including all buildings, bridges and trestles, including the ties located thereupon, and all mile post markers, culverts, ballasts and similar structures and improvements, but not including the former railroad depot in Eldon described as Parcel B in Attachment A, and not including rails, tie plates, signals, wires, joint bars, turnout materials, anchors, bolts, spikes, washers and other steel, excepting therefrom, any and all that portion of said land owned by GRC Holdings Corporation.**

**ATTACHMENT "A"**

**Parcel "B" (eastern) part of former Railroad Depot Building Parcel, Eldon, Missouri.**

**ORIGINAL SURVEY BOUNDARY DESCRIPTION:** A parcel of land being part of the former Rock Island, Chicago and Pacific Railroad right-of-way which contains part of the former railroad depot building, said parcel also being a part of Block No. 107 of the City of Eldon, all in the Northeast Quarter of Section 04, Township 41 North, Range 15 West, City of Eldon, Miller County, Missouri, with the boundary of said parcel being further described as follows:

Commencing at the southeast corner of Block No. 97 of said City of Eldon per previous survey by G. J. Harms filed in Survey Record Book 2, page 25 of the Miller County records; thence S.00°01'43"W, on the extension of the west right-of-way of South Maple Street for a distance of 60.01 feet to the northeast corner of Block No. 98 of said City of Eldon, said point also being on the north right-of-way line of the former Chicago, Rock Island and Pacific Railroad; thence N.88°54'48"E, along the south line of East 6<sup>th</sup> Street, also being the north line of said railroad, for 60.01 feet to the northwest corner of Block No. 107 of said City of Eldon, and the point of "Beginning" for this property boundary description; thence continuing N.88°54'48"E, along said north line of Block No. 107 for 58.12 feet; thence departing said common right-of-way line S.01°05'12"E for 69.00 feet, thence S.88°54'48"W for 59.43 feet, more or less, to the west line of said Block No. 107, also being the east right-of-way line of said South Maple Street; thence N.00°01'43"W, more or less, along said west line of Block No. 107 for 69.01 feet, more or less, to the point of "Beginning", containing 0.093 acres, (4,055 S.F.), more or less, and being subject to or having the benefit of easements and/or restrictions of record or not of record. (See also the plat of survey filed in the Miller County Records.)

**SURVEYORS CERTIFICATE:** This description, and the survey plat regarding same, depict the results of my original property boundary survey, conducted and prepared under my direct supervision, and completed on the date below written, all of which I certify to be true and correct, and that said survey was executed in accordance with the current "Missouri Standards" for property boundary surveys 20 CSR 2030-16.



Ronald E. Kliethermes, PLS

Missouri Surveyor No. LS-2109

Date: Nov. 16, 2015



Prepared by: MECO Engineering Company, Inc.

2701 Industrial Drive, Jefferson City, Missouri 65109

Survey No. 487-018 for the City of Eldon

**EXHIBIT B**  
**(to Quit Claim Deed)**

The foregoing quitclaim conveyance is subject, however, and shall not include, Grantor's rights in and to the following:

The Right of Grantor to reactivate the Property for rail use to the extent permitted by law, including, without limitation, in the event that rail service is required under the United States National Trails System Act Amendments of 1983, 16 United States Code Sections 1241 et seq. (the "Trails Act"), or 49 Code of Federal Regulations Section 1152 or 1150. This Deed shall be interpreted to conform to Section 8(d) of the Trails Act, and pursuant to the Third ITUA and the Trails Act, Grantee has assumed full responsibility for management of the Property and for any legal liability arising out of such transfer or use of the Property, unless Grantee is immune from liability, then Grantee has agreed to indemnify Grantor against any potential liability arising out of the transfer or use of the Property by Grantee consistent with 49 CFR § 1152.29(a)(2), and has assumed full responsibility for the payment of any and all taxes that may be levied or assessed against the Property. No use of the Property by Grantee shall impair future restoration of rail service pursuant to the Trails Act. In the event that the United States Surface Transportation Board ("STB") determines that reactivation of rail service on the Property is necessary for the public convenience and necessity, Grantee shall transfer the Property to the acquiring entity in accordance with any lawfully applicable STB decision.