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CONSERVATION EASEMENT

Dated: January 8, 2015

Grantor: BNSF RAILWAY COMPANY, a corporation

Grantee: MIDWEST MITIGATION OVERSIGHT ASSOCIATION,
INC., a corporation

Grantee's Address: PO Box 480271
Kansas City, MO 64148

Legal Descriptions: See Exhibit "A"

CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is given this 8th day of January 2015, by **BNSF RAILWAY COMPANY**, a corporation ("Grantor"), having an address of 2650 Lou Menk Drive, P.O. Box 961051, Ft. Worth, Texas 76161-0051, to **MIDWEST MITIGATION OVERSIGHT ASSOCIATION, INC.**, a corporation (Grantee), having an address of PO BOX 480271 Kansas City, Missouri 64148. As used herein, the term "Grantor" shall include any and all heirs, successors, or assigns of the Grantor, and all subsequent owners of the Property (as hereinafter defined), and the term "Grantee" shall include any successor or assignee of Grantee.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple title of certain lands situated in Johnson County, Kansas more particularly described in Exhibit A, attached hereto and incorporated herein ("Property"), and

WHEREAS, Department Permit No. 2006-1014 of the U.S. Army Corps of Engineers, Kansas City District ("Corps") (hereinafter referred to as the "Permit") authorizes certain activities which affect waters of the United States ("Permitted Activity"); and

WHEREAS, the Permit requires that Grantor preserve, enhance, restore, or mitigate wetlands or uplands located on the Property and under the jurisdiction of the Corps; and

WHEREAS, Grantor, in consideration of the issuance of the permits to construct and operate the Permitted Activity, and as an inducement to Grantee and the Corps to issue the Permit, is willing to grant a perpetual Conservation Easement, pursuant to the Kansas Conservation Easement Act, K.S.A. 58-3810, *et seq.* (the "Act"), over the Property; and

NOW THEREFORE, in consideration of the above and mutual covenants, terms conditions, and restrictions contained herein, together with other good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, Grantor hereby voluntarily grants and conveys a perpetual Conservation Easement for and in favor of Grantee upon the property, which shall run with the land and be binding upon the Grantor, and shall remain in full force and effect forever.

The scope, nature, and character of this Conservation Easement shall be as follows:

1. **Purpose:** The purpose of this Conservation Easement is to retain and maintain land or water areas on the Property in their natural, vegetative, hydrologic, scenic, open, agricultural, or wooded condition and to retain such areas as suitable habitat for fish, plants, or wildlife. Those stream, wetland or upland areas that are to be restored, enhanced, or created pursuant to the Permit shall be retained and maintained in the restored, enhanced, or created condition required by the Permit.

2. Rights of Grantee: The following rights are conveyed to Grantee and the Corps by this easement:

a. The right to take action to preserve and protect the environmental value of the Property consistent with this Easement;

b. The right to prevent any activity on or use of the Property that is inconsistent with the purpose of this Conservation Easement, and to require the restoration of areas or features of the Property that may be damaged by any inconsistent activity or use;

c. The right to enter upon and inspect the Property in a reasonable manner, at reasonable times and upon reasonable notice to the Grantor to determine if Grantor is complying with the covenants and prohibitions contained in this Conservation Easement; and

d. The right to proceed at law or in equity to enforce the provisions of this Conservation Easement, and to prevent the occurrence of any of the prohibited activities hereinafter set forth.

3. Prohibited Uses: Except for restoration, creation, enhancement, maintenance, and monitoring activities, or surface water management improvements, which are permitted or required by the Permit, the following activities are prohibited on the Property:

a. Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground, or the construction or placing of structures below the ground that may impact the surface of the Property;

b. Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or unsightly or offensive materials;

c. Removal or destruction of trees, shrubs, or other vegetation, except as may be permitted by the Permit, and except for the removal of nuisance, exotic, or non-native vegetation in accordance with a maintenance plan approved by Grantee;

d. Planting of nuisance, exotic, or non-native plants as listed by the State of Kansas;

e. Exploration for, or extraction of, oil or gas in such a manner as to affect the surface, or excavation, dredging, or removal of coal, loam, peat, gravel, soil, rock, or other material substance, except as may be permitted or required by the Permit;

f. Use of motorized and non-motorized vehicles, the keeping or riding of horses, grazing, livestock confinement, or other surface use that affects the natural condition of the Property, except for vehicle use for purposes of maintenance and upkeep, or as otherwise may be permitted or required by the Permit;

g. Tilling, plowing, planting of crops, digging, mining or other activities that are or may be detrimental to drainage, flood control, water quality, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation including, but not limited to, ditching, diking, and fencing, except as permitted or required by the Permit;

h. The extraction of water from the Property, or the impoundment of water on the Property in a manner that materially affects the hydrology of the Property;

4. **Reserved Rights:** Grantor reserves all rights as owner of the Property, including the right to engage in uses of the Property that are not prohibited herein and that are not inconsistent with any Corps rule, criteria, permit applicable to Grantor's use of the Property, or the intent, and purposes of this Conservation Easement.

5. **Taxes:** Grantor shall pay any and all applicable real property taxes and assessments levied by competent taxing authority on the Property.

6. **Maintenance:** Grantor shall, at Grantor's sole expense, operate, maintain and keep up the Property consistent with the purpose of this Conservation Easement. Grantor shall remove from the Property any nuisance, exotic, or non-native plants as listed by the State of Kansas and shall maintain the hydrology of the Property as it currently exists or as otherwise required by the Permit.

7. **Hazardous Waste:** Grantor covenants that if any hazardous substances or toxic waste exist or has been generated, treated, stored, used, disposed of, or deposited in or on the Property, or there are or have been any underground storage tanks on the Property, Grantor shall be responsible for any and all necessary costs of remediation.

8. **Public Access:** No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement, and Grantor further covenants not to hold any portion of the Property open to general use by the public except with the written permission of the Corps and Grantee.

9. **Liability:** Grantor shall continue to retain all liability it has for any injury or damage to the person or property of third parties that may occur on the Property arising from ownership of the Property.

10. **Recording Requirements:** Grantor shall record this Conservation Easement in the official records of Johnson County, Kansas, and shall re-record it at any time Grantee or the Corps may require to preserve their rights. Grantor shall pay all recording costs, fees and taxes necessary at any time to record this Conservation Easement in the public records. Grantor shall thereafter insert the terms, and restrictions of this Conservation Easement in any subsequent deed or other legal instrument by which Grantor divests itself of any interest in the Property, and shall provide a photocopy of the recorded Conservation Easement to the new owner(s).

11. **Enforcement:** The terms and conditions of this Conservation Easement may be

enforced in an action at law or equity by the Grantee or the Corps against the Grantor or any other party violating or attempting to violate these Restrictions. Venue for any such action shall be in Johnson County, Kansas. Enforcement of this Conservation Easement shall be at the reasonable discretion of the Grantee or the Corps, and any forbearance on behalf of Grantee or the Corps to exercise its or their rights hereunder in the event of any breach by Grantor shall not be deemed or construed to be a waiver of rights. Any costs incurred in enforcing, judicially or otherwise, the terms, provisions, and restrictions of this Conservation Easement, including without limitation, the costs of suit, and attorney's fees, shall be borne by and recoverable against the non-prevailing party in such proceedings, except that such costs shall not be recoverable against the Corps. In addition, if the Grantee or the Corps shall prevail in an enforcement action, such party shall also be entitled to recover that party's cost of restoring the land to the natural vegetative and hydrologic condition existing at the time of execution of these Restrictions or to the vegetative and hydrologic condition required by the Permits.

12. Assignment of Rights: Grantee shall hold this Conservation Easement exclusively for conservation purposes. Grantee will not assign its rights and obligations under this Conservation Easement, except to another legal entity qualified to hold such interests under applicable state and federal laws and committed to holding this Conservation Easement exclusively for the purposes stated herein. Grantee shall notify the Corps in writing of any intention to reassign this Conservation Easement to a new grantee at least sixty (60) days in advance thereof, and the Corps must accept the assignment in writing. The new grantee shall then deliver a written acceptance to the Corps. The assignment instrument must then be recorded and indexed in the same manner as any other instrument affecting title to real property and a copy of the assignment instrument shall be furnished to the Corps. Failure to comply with the assignment procedure herein stated shall result in invalidity of the assignment. In the event of dissolution of the Grantee or any successor, or failure for 60 days or more to execute the obligations of this Conservation Easement, the Grantee shall transfer this Conservation Easement to a qualified and willing grantee. Upon failure of the Grantee or any successor to so transfer the Conservation Easement, the Corps shall have the right to sue to force such an assignment to a grantee to be identified by the Court.

13. Successors: The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.

14. Notices: All notices, consents, approvals, or other communications hereunder shall be in writing and shall be deemed properly given if sent by United States certified mail, return receipt requested, addressed to the appropriate party or successor-in-interest.

15. Severability: If any provision of this Conservation Easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this Conservation Easement shall not be affected thereby, as long as the purpose of the Conservation Easement is preserved.

16. Alteration: This Conservation Easement may be amended or altered only by written

agreement between the parties hereto or their heirs, assigns, or successors in interest, which shall be filed in the public records of Johnson County, Kansas. No action shall be taken, however, without advance written approval thereof by the Corps. No amendment or alteration shall materially and negatively affect the purpose of this Conservation Easement, as set forth in Paragraph 1 above. Corps approval shall be by letter attached as an exhibit to the document amending or altering this Conservation Easement, and said letter shall be informal and shall not require notarization. It is understood and agreed that Corps approval requires a minimum of sixty (60) days written notice, and that the Corps may require substitute or additional mitigation, a separate conservation easement or alternate deed restrictions, or other requirements as a condition of approval. Any amendment or alteration together with written Corps approval thereof shall then be filed in the public records of Johnson County, Kansas, within 30 days thereafter.

17. Controlling Law: The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Kansas.

TO HAVE AND TO HOLD unto Grantee forever. The covenants, terms, conditions, restrictions, and purpose imposed with this Conservation Easement shall be binding upon Grantor, and shall continue as a servitude running in perpetuity with the property.

IN WITNESS WHEREOF, the Grantor has executed this Conservation Easement this 8th day of January, 2015

*[Remainder of page left blank intentionally
Signature pages to follow]*

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: 

Name: Mark D. Ude
AVP-Corporate Real Estate Development

Title: _____

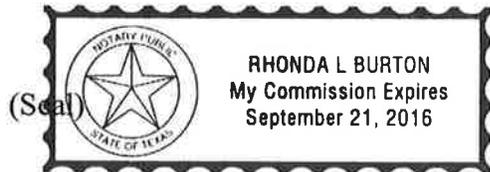
STATE OF Texas)

)
COUNTY OF Tarrant)

On this 8th day of January, 2015, before me, a Notary Public in and for said state, personally appeared Mark D. Ude, who stated that he/she is the AVP-Corp. Real Estate Development of **BNSF RAILWAY COMPANY**, a corporation, known to me to be the person who executed the within instrument on behalf of said corporation and acknowledge to me that he/she executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.


Notary Public



My appointment expires: 9/21/2016

GRANTEE:

**MIDWEST MITIGATION OVERSIGHT
ASSOCIATION, INC.**, a corporation

By: *James D. Drake*

Name: *James D. Drake*

Title: *Director*

STATE OF *Missouri*

§

§

COUNTY OF *Jackson*

§

On this *11* day of *December*, 20*14*, before me, a Notary Public in and for said state, personally appeared *James D. Drake*, who stated that he/she is the *Director* of **MIDWEST MITIGATION OVERSIGHT ASSOCIATION, INC.**, a corporation, known to me to be the person who executed the within instrument on behalf of said corporation and acknowledge to me that he/she executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Kathy Reynolds
Notary Public

(Seal)

KATHY REYNOLDS
Notary Public-Notary Seal
State of Missouri
Commissioned for Jackson County
My Commission Expires *June 15, 2018*
Commission Number: 14985331

My appointment expires: *June 15, 2018*

EXHIBIT "A"
"Property"
LEGAL DESCRIPTION

A tract of land over a portion of the Southeast Quarter of Section 27, a portion of the East Half of Section 33 and a portion of the Northeast Quarter, Northwest Quarter and Southwest Quarter of Section 34, all being in Township 14 South, Range 22 East in Johnson County, Kansas, being more particularly described as follows:

Commencing at the Southeast Corner of the Southeast Quarter of said Section 27, being also the Northeast corner of the Northeast Quarter of said Section 34; thence South 88 degrees 29 minutes 15 seconds West along the common line between said Sections 27 and 34, a distance of 1,082.89 feet to a point on the Northwesterly right-of-way line of the B.N.S.F. Railway through said Sections 27, 33 and 34 and the Point of Beginning of the tract of land to be herein described; thence Southwesterly along the Northwesterly right-of-way line of said B.N.S.F. Railway, the following courses and distances; thence South 55 degrees 20 minutes 16 seconds West, 5,360.94 feet; thence Southwesterly along a curve to the left, tangent to the last described course, having a radius of 5,779.58 feet and a central angle of 05 degrees 07 minutes 10 seconds, an arc length of 516.41 feet; thence South 50 degrees 13 minutes 06 seconds West, tangent to the last described curve, a distance of 1,062.34 feet; thence Southwesterly along a curve to the left, tangent to the last described course, having a radius of 5,779.58 feet and a central angle of 09 degrees 45 minutes 12 seconds, an arc length of 983.84 feet; thence North 19 degrees 08 minutes 23 seconds East, departing from the Northwesterly right-of-way line of said B.N.S.F. Railway, not tangent to the last described curve, a distance of 708.45 feet; thence Northeasterly along a curve to the right, tangent to the last described course, having a radius of 1,000 feet and a central angle of 36 degrees 11 minutes 53 seconds, an arc length of 631.78 feet to a point 421.73 feet Northwesterly of the Northwesterly right-of-way line of said B.N.S.F. Railway as measured perpendicular to said Northwesterly right-of-way line; thence North 55 degrees 20 minutes 16 seconds East, tangent to the last described curve, a distance of 1,532.73 feet; thence South 34 degrees 39 minutes 44 seconds East, perpendicular to the last described course, a distance of 10.00 feet to a point 313.00 feet Northwesterly of the Northwesterly right-of-way line of said B.N.S.F. Railway as measured perpendicular to said Northwesterly right-of-way line; thence North 55 degrees 20 minutes 16 seconds East, perpendicular to the last described course and being 313.00 feet Northwesterly of and parallel with the Northwesterly right-of-way line of said B.N.S.F. Railway, a distance of 5,001.27 feet; thence North 75 degrees 14 minutes 39 seconds East, 919.28 feet to a point on the Northwesterly right-of-way line of said B.N.S.F. Railway, said point being 658.15 feet Northeasterly of the South line of said Section 27 as measured along said Northwesterly right-of-way line; thence South 55 degrees 20 minutes 16 seconds West along the Northwesterly right-of-way line of said B.N.S.F. Railway, a distance of 658.15 feet to the Point of Beginning.

Subject to all covenants, restrictions, reservations and easements now of record thereon. Containing a gross area of 2,566,182 square feet or 58.911 acres, more or less.