

SANGAMON BRIDGE TRAIL
LEASE AGREEMENT
Railroad Street to County Farm Road

THIS LEASE is entered into this ____ day of _____, 2007, by HEARTLAND PATHWAYS, INC., an Illinois not-for-profit corporation, as Lessor (hereinafter "Lessor") and the CITY OF MONTICELLO, ILLINOIS, a unit of local government (hereinafter "Lessee").

Whereas, Heartland Pathways, Inc., owns the former 100 ft. wide Illinois Central railway corridor which begins at Railroad Street on the western side of Monticello, Illinois, including the railroad bridge which crosses the Sangamon River, and extends to Cisco, Illinois (the "Railroad Corridor");

Whereas the City of Monticello wishes to acquire certain lease rights for the establishment of an Interim Trail on a portion of the Railroad Corridor; and

Whereas the parties wish to maintain rail-banking rights on the corridor for potential restoration to railroad use; and use portion of the Railroad Corridor for an Interim Trail.

Now therefore, the parties agree as follows:

1. Lease: (a) In consideration of the warranties and covenants contained in this lease, Lessor hereby leases to Lessee, for the term set forth in Section 2, the following real estate (hereinafter "the Premises"): The portion of the Railroad Corridor commencing where said corridor crosses the road commonly known as Railroad Street on the western side of Monticello, and extending westward from Railroad Street approximately one (1) mile by 20 ft wide, (10 ft on each side of the center line of the 20 ft right of way), to County Farm Road, Monticello, Illinois per the legal description attached hereto and incorporated herein by reference as Exhibit A.

(b) The Premises shall be used for an Interim Trail as defined in the Federal Rail Banking Act (16 U.S.C. section 1247 (d))

(c) Lessor reserves the right to modify the lease as follows:

- (i) If Lessor or Lessee receives an offer to lease the right-of-way of the railroad bed to a railroad seeking active use of the bed, this lease will be modified or replaced to permit said railroad use ("Railroad Lease"), subject to the provisions of Paragraph #9 below.
- (ii) If railroad use of the Premises occurs, Lessee agrees to cooperate with the incoming railroad. All costs for modifications on the Premises for railroad use must be borne by the railroad and/or Lessor. Costs for modifications for continued trail use above and beyond railroad use will be borne by the Lessee.

- (iii) Such modifications shall include engineering and safety measures designed to permit joint use.
- (iv) The Lessee shall cooperate with any agency providing reimbursement to the City of Monticello for the development of the Interim Trail.
- (v) A third party railroad, shall bear close out costs and reimbursement to the Lessee, on a prorated basis, for the Interim Trail use lost by the Lessee to an incoming railroad or for modification costs incurred by joint use.

2. Term: (a) Unless earlier terminated in accordance with the provisions of this lease or by mutual agreement of the parties, the term of this lease is 25 years, commencing on _____, 2007, and ending on that date exactly 25 years later.

3. Use of the Premises:

(a) Lessee may use the Premises for an Interim Trail Use for the purpose of developing a trail, to be eight foot wide, four feet on either side of the center line of the 20' right of way, for pedestrians and bicyclists, including all uses incidental thereto. Without the written permission of Lessor, Lessee may not use the Premises for other purposes, including the storage of equipment and materials, except such storage as may be incidental to the development and maintenance of the Premises. In addition, Lessee may use the Premises for its service and maintenance vehicles provided that such use does not cause harm to the Premises.

(b) Lessee agrees to insure against damages to the structural integrity of the bridge on the Premises. Bridge, trestle, embankment and corridor structures will not be modified to the detriment of the possible future use of the corridor for railroading.

(c) The use of the Premises shall be consistent with and serve to maintain the integrity of the contiguous railroad bed which lies to the east and west of the Premises.

(d) Lessee agrees to form a community-based Sangamon Bridge Trail Board (SBTB). The Sangamon Bridge Trail Board will apply for a 501(c)3 not for profit corporation status and sales tax exemption. The SBTB will act as in an advisory capacity to the Lessee. The SBTB will formulate policy regarding the development and use of the Premises for trail and/or potential joint trail and railroad purposes. The SBTB shall consist of seven non-managerial personnel selected by a steering committee of three individuals mutually agreed upon by the Lessee and Lessor including:

- one (1) Heartland Pathways representative,
- one (1) Monticello City representative,
- two (2) Community representatives,
- one (1) Monticello Railway Museum representative,
- one (1) University of Illinois representative.
- one (1) Regional Representative

The Sangamon Bridge Trail Board (SBTB) will develop and maintain a safe recreational and educational trail linking Railroad St. and County farm Road across the Sangamon River in Monticello, Illinois which represents a typical riparian/transportation corridor in East Central Illinois.

(e) The Sangamon Bridge Trail Board (SBTB) will seek assistance from managerial personnel and agencies dedicated to the Sangamon Bridge Trail's development and use. These could include personnel from the City of Monticello, the Piatt County Forest Preserve, the Railway Museum, Monticello Township, the Grand Prairie Friends, the University of Illinois, bikeway consultants and other interested individuals and groups.

(f) The Lessor and Lessee will cooperate with the Sangamon Bridge Trail Board regarding regional railroad, trail, and pathway opportunities and uses including applications for governmental funding for use of the Premises and/or the Railroad Corridor for further rail and trail development.

4. Rental: As consideration for leasing the Premises, Lessee shall pay as the rental fee for the term of the lease \$62,500, to be paid upon Lessee's assumption of the occupancy of the premises.

5. Warranties: (a) Lessor warrants that it has the legal capacity to enter into this lease and that the execution of the lease has been duly authorized by its Board of Directors. (refer to Warranty of Title in Paragraph # 14).

(b) Lessee warrants that it has the legal capacity to enter into this lease and that the lease's execution and performance have been authorized under applicable state and local laws.

(c) Lessee acknowledges that it has inspected the real estate and the improvements thereon, that it is acquainted with the condition thereof, and that it accepts the same in their present condition without reliance upon any oral representation by Lessor. Lessor makes no warranty, express or implied, as to the condition of the Premises or its suitability for the intended use by the Lessee.

6. Condition of Premises: Improvements by Lessee; Rental Credits:

(a) Lessee agrees to accept the Premises in its current condition, as is.

(b) Lessee may undertake to create a temporary trail immediately upon execution of this Agreement by removal of brush and debris from the Premises and with the application of a temporary surface material such as chipped limestone to allow partial use of the pathway, prior to full development of an Interim Trail, subject to the provisions of Paragraph 7.

(c) After prior notification to Lessor, Lessee will undertake to improve and make safe the

Premises so that they are suitable for public use as an Interim Trail, up to eight foot wide for all public uses that Lessee permits to occur there.

(d) In order to meet bridge safety standards, Lessee agrees to engage a licenced structural engineer to verify the bridge structure meets code for hikers, bikers, and service vehicle use.

(e) Safety fences, and security measures as determined by the Lessee and the Sangamon Bridge Trail Board (SBTB) should meet AASHTO (American Association of State Highway and Transportation Officials) hiking and biking standards to protect users of the Premises.

(f) All parties shall consider incorporating 10 inch x 10 inch x 10 foot railroad bridge ties owned and stored by Lessor for the purpose of re-decking truss bridges to the degree that engineering plans make such a move feasible and cost effective for the Lessee and Lessor. Remuneration for such ties is negotiable.

(g) Lessee agrees to develop the pathway on either end of the bridge in such a way as to make the Right of Way (R.O.W.) safe for public use, and agrees further to:

- (i) maintain appropriate drainage for the Premises;
- (ii) protect the Premises against artificial or unnatural drainage from adjacent properties; and
- (iii) undertake measures, if any, that might hereafter become necessary to stabilize the railroad embankments.

(h) After prior notification to Lessor, as part of its improvements, Lessee may provide a hard surface, up to 8 feet wide, including the use of crushed limestone, oil and chip, asphalt, or other surface, on the Premises.

(i) Lessor agrees to the creation of a temporary trail to facilitate immediate use.

(j) If and when the Premises are to be shared with a third party freight and/or tourist railroad, the pathway will be modified in such a way as to facilitate that use. Such use could include occasional late night railroad scheduling, bridge lights for traffic control, locked railroad barricades, the raising of the trail bed to the level of the steel rails and the use of flange protectors on the rails at no cost to Lessee.

(k) The third party railroad shall be expected to negotiate a use agreement which are fair to all parties, and which will compensate, on a pro-rated basis, the Lessee for any loss of trail use that might be incurred by the third party use. Lessee acknowledges the possibility that government and other agencies are positioned to ensure that the Lessee is adequately compensated for the loss of use of the trail and the cost to Lessee of building a trail the use of which has been curtailed.

(l) In conjunction with the Sangamon Bridge Trail Board, Lessee shall have the right to make improvements to the Premises, including but not limited to the installation of pavement, benches, and signage for the convenience and safety of users. ASHTO the (American Society of Highway and Transportation Officials) hike and bikeway standards should be adhered to.

(m) Lessee in conjunction with the Sangamon Bridge Trail Board shall notify and consult with Lessor regarding major structural improvements, such as bridge modification.

(n) In any proposed railroad use, the parties in consultation with SBTB, shall cooperate with the Federal Surface Transportation Board (STB) and the Illinois Department of Transportation, (IDOT) Division of Railroads and the Illinois Division of Natural Areas (IDNR) Similarly, Lessee agrees to negotiate with local government and/or private entities as to any proposed railroad use.

(o) The parties shall cooperate in seeking agreements for the preservation of adjacent habitat with environmental or governmental groups dedicated to the conservation of the natural habitat.

(p) Lessee agrees to:

(i) maintain the Premises and appurtenances in clean, sanitary and safe condition;

(ii) provide adequate and appropriate receptacles for garbage and rubbish and remove all rubbish, garbage and other waste in a clean and sanitary manner from the Premises to refuse facilities;

(iii) prevent any person on the Premises with Lessee's permission from violating any of the foregoing Lessee obligations;

(iv) not destroy, modify, damage, impair, nor remove any part of the right of way, forest and natural prairie along the pathway except under reasonable principles for the preservation and expansion of the pathway.

7. Maintenance and Rebuilding: (a) Lessee shall be responsible for all improvements to the Premises which it deems necessary for the establishment of the Interim Trail Use contemplated hereunder including any rebuilding, painting, structural work, and drainage measures needed to maintain the Premises. Lessee shall repair damages caused by users and vandals, including repairs and replacements covered by the Lessee's insurance policies. The Lessee agrees to add the bridge to the list of items covered under its current policy. This duty to maintain shall include compliance with applicable laws, including inspection laws, as well as the performance of needed mowing and the trimming of vegetation. Lessor shall have no obligation to pay for any actions required by this section.

(b) All construction, including fencing, will be made in accordance with the safety guidelines appropriate to said uses and all insurance requirements. Lessee shall try to retain a view of the river as part of its construction and maintenance.

(c) With the exception of trees, Lessee shall give any plants and top soil removed from the habitat where such removal is necessary to Lessor to be delivered within a five mile area from the site at the direction of Lessor.

(d) At its expense, Lessee shall install and maintain attractive signage identifying the pathway. These signs shall recognize the ownership of Lessor and stewardship of the Lessee and shall expressly state that all public use of the Premises is undertaken with permission of Lessor.

8. Preservation of Habitat: (a) Lessor and Lessee shall cooperate in plans for maintenance of the present habitat and other natural vegetation, and shall work to obtain assistance from and coordination with interested third parties, particularly the University of Illinois, for retention and maintenance of the natural vegetation.

(b) Lessee shall retain the present habitat and other natural vegetation where possible to protect genetic material and provide ambiance and character. Untoward trees that interfere with the effective operation and drainage of the corridor will be removed. Herbiciding should be modest and confined as much as possible to spot application.

9. Joint Use: (a) Should a railroad desire to use the bridge, subject to engineering plans which determine that such use is possible, and subject to an appropriate Railroad Lease and financing by said third party, Lessee agrees to cooperate with Lessor in developing such a joint use, subject to the preservation of the pathway for its purposes.

(b) Dependent upon the type of use proposed by the railroad, Lessee reserves the right to terminate this lease.

(c) Lessee agrees to consider alternate plans for joint use including "parallel trails" or onbridge "restricted access" such as no public use of bridge during the hours of 1:00 a.m. to 3:00 a.m. to allow limited rail use. The latter use would depend on raising the bed and bridge decking to rail level and the use of safety technology to ensure that flange grooves do not cause liability challenges. It is anticipated that new technologies will evolve that will permit joint use of the corridor in a safe, pleasing and aesthetic manner. It is anticipated that future developments will be implemented by third-party or by outside grants available for such purposes.

10. Compliance with Law: Lessee agrees that, in carrying out its obligations under this lease and otherwise making use of the Premises, it will comply with all applicable laws and shall respect the property rights of holders of utility easements on the Premises.

11. Liens: Lessee shall pay for all materials and labor used in improving and maintaining the Premises, and it shall otherwise keep the Premises free of liens arising directly or indirectly out of its actions or omission.

12. No Dedication: Under this lease, Lessee possesses the right to grant access to the

public for limited use of the Premises as defined in this Lease Agreement. The parties agree that this lease does not permit or dedicate any portion of the Premises for public use except for Interim Trail Use, and the public's use shall not be construed as an express or implied dedication for any other purpose. Lessee shall not claim that any such dedication beyond the terms of this Lease Agreement has occurred; if requested by Lessor, it shall take reasonable steps to ensure the continued legal validity of Lessor's rights in the Premises.

13. Coordination with Other Government Units: As appropriate, Lessee shall coordinate its use of the Premises and the performance of its obligations under this lease with Piatt County and Monticello Township governments, attempting to obtain such cooperation and assistance as may be needed to fully perform its lease obligations.

14. Title: Lessor is the current owner of all property rights in the Premises formerly held by the Illinois Central Railroad Company in 1988. Lessor's title is subject to the guidelines of the Federal Surface Transportation Board, the Federal Landbank Statutes, and the Federally granted right-of way as originally granted to the Illinois Central Railroad Company. The parties shall cooperate in any action necessary for the clearing of title which may be undertaken from time to time by Lessor.

15. Easement: The Lessor had previously granted to SPRINT an easement for installation and maintenance of fiber optics. This Lease is subject to the continued rights held by SPRINT.

16. Responsibility to Third Parties: Indemnity: Insurance: Lessee shall be solely responsible to third parties in the event of any liability arising out of the use or condition of the Premises. It shall also be solely responsible for any disruption of or damage to the rights of holders of utility easements. Lessee agrees that it will hold harmless and indemnify Lessor from and against any such liability. In the event that any third party makes a claim arising out of the use or condition of the Premises, Lessee shall undertake to defend Lessor as needed; in the event that a conflict of interest requires separate legal representation for Lessor, Lessee agrees that it shall promptly pay all reasonable legal fees incurred by Lessor in defense of such action. Lessee shall maintain liability insurance covering the Premises in and to the same extent that it maintains such insurance for other real property and easements leased or owned by Lessee.

17. Taxes: The Premises currently are exempt from real property taxes. To the extent possible, Lessee shall take such steps as may be needed to help maintain this tax exemption.

18. Rules, Regulations and Laws: Lessee also agrees to observe and comply with all rules, regulations and laws now in effect or which may be enacted during the continuance of this lease by any municipal, county, state or federal authorities having jurisdiction over the Premises, and to indemnify Lessor from any damage caused by the violation thereof.

19. Default: If Lessee fails to promptly keep and perform any affirmative covenant of

this lease strictly in accordance with the terms of this lease, then in that event, as often as any such event shall occur, the Lessor may serve Lessee written notice of default and intent to terminate, and if such default is not corrected within 45 days (unless the default involves a hazardous condition which shall be cured forthwith), the Lessor may terminate the lease and take action to regain occupancy of the Premises.

20. Assignment and Subletting: Without the expressed written permission of Lessor, which shall not be unreasonably withheld, Lessee has no right to assign this lease or sublet or any portion of the Premises except as necessary to cooperate in the development of this Interim Trail Use with the Piatt County and Monticello Township governments. Lessor shall have the right to transfer ownership of the Premises or assign this lease to any affiliate organization, including an organization dedicated to rail use and development, upon prior written notice to Lessee. Any assignee of Lessor shall take title subject to the terms and conditions of this lease.

21. Remedies for Breach: Except as otherwise provided in the lease, the parties shall be entitled to normal legal and equitable remedies for breach.

22. Lease Extension: At the end of the term of this lease, the parties shall negotiate in good faith for an extension of the term and conditions of the lease. In determining the fair rental value of the Premises for this purpose, Lessee shall not pay a higher rental on account of the improvements to the Premises made by Lessee. Among factors to be considered in such negotiations shall be the effect of the Consumer Price Index (CPI).

23. Notices: Any notice hereunder shall be given in writing to the party to whom it is intended in person with a written receipt or by registered mail at the following address, or such future address as may be designated in writing: To the Lessor, Heartland Pathways, 115 N. Market St., Champaign Illinois, 61820; to the Lessee, City of Monticello, 210 N. Hamilton, P.O. Box 437, Monticello, Illinois, 61856; to any successor or assignee of any party, at the address stated in notice of succession or assignment.

24. Binding on Successors: All the agreements, conditions and undertakings herein contained shall extend to and be binding on the representatives, administrators, successors and assigns of the respective parties hereto as if they were in all cases named.

25. Construction: The singular shall include the plural. Caption headings are included merely as a convenience and shall be in no way construed as a limitation on the subject matter of any paragraph.

26. Severability: If any clause, phrase, provision or portion of this Lease Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or unenforceable the remainder of this Agreement, nor any other clause, phrase, provision or portion hereof, nor shall it affect the application of any clause, phrase, provision or portion hereof to other persons or circumstances.

27. No Waiver: (a) Failure of either party to insist on the strict performance of the terms, agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of the party's right thereafter to enforce any such term, agreement or condition, but the same shall continue in full force and effect.

(b) No waivers, alterations, or modifications of this contract or any agreements in connection with it shall be valid unless in writing and duly executed by both the Lessor and the Lessee.

28. Survival of Enforcement Rights: Heartland Pathways, Inc., or the successor to its rights expressed herein, shall have the right to enforce the covenants as to the use of the Premises through injunctive relief and the courts of the State of Illinois. Lessor shall be entitled to reasonable attorney's fees and costs for enforcement of any default of Lessee hereunder. Lessee shall be entitled to reasonable attorney's fees and costs for enforcement of any default of the Lessor.

29. Further Agreements: No oral agreements between the Lessor and the Lessee are binding on either party. This agreement is the only contract between these parties as to the Lease of the Premises.

Executed in triplicate on _____, 2007.

HEARTLAND PATHWAYS, INC. CITY OF MONTICELLO

By _____ By _____

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Exhibit A
Legal Description