

READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY

LICENSE AGREEMENT FOR WIRE, PIPE AND CABLE TRANSVERSE CROSSINGS AND LONGITUDINAL OCCUPATIONS

THIS AGREEMENT, made this 1st day of _____, _____ between **READING BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY**, a Pennsylvania Corporation, which has a mailing address at **P.O. BOX 188, PORT CLINTON, PA 19549** party of the first part (hereinafter called "Railroad"), and _____, having a mailing address at _____ as party of the second part (hereinafter called "Licensee").

WITNESSETH, that said Railroad (which when used herein shall include any lessor, successor or assignee of or operator over its railroad) insofar as it has the legal right and its present title permits, and in consideration of the covenants and conditions hereinafter stated on the part of Licensee to be kept and performed, hereby permits, as a temporary license, Licensee to construct, maintain, repair, alter, renew, relocate and ultimately remove:

- (1) _____ as hereinafter more fully described on the attached Exhibit "A."

LOCATION: under/over the tracks, right of way and property owned by Railroad at **M.P.** __ in the Township of _____, County of _____, State of Pennsylvania.

In accordance with construction plans, submitted by Licensee to and approved by the Chief Engineer of Railroad, incorporated herein by reference; also in accordance with current issues of Railroad Specifications Nos. RB 4 and/or RB 8; all and any part thereof being hereinafter referred to as the "**FACILITIES**"; said license, however, shall be under and subject to the following terms, covenants and conditions as hereinafter recited, which are hereby accepted and agreed to, by Licensee, to wit:

- 1. The Licensee shall pay to Railroad upon the execution hereof, the sum of **SIX HUNDRED DOLLARS (\$600.00)** as reimbursement for the costs and expenses incident to the preparation of this Agreement, together with the further sum of _____ (\$) per year as minimum annual rental, which said sum shall be payable annually in advance, commencing as

of _____. Railroad reserves the right to make adjustments in these rental charges subject to Section 18.

2. (a) The Facilities shall be located, constructed and maintained in exact accordance with said construction plans and for the purpose as outlined in Page 1. No departure shall be made at any time therefrom except upon permission in writing granted by the Chief Engineer of Railroad, or his designee, provided, however, that if any commission or other regulatory body duly constituted and appointed in compliance with the laws of the State in which the crossing or occupancy herein provided is situated, and having jurisdiction in the premises, has by ruling or other general order determined and fixed the manner and means of construction, maintenance, repair, alteration, renewal, relocation or removal thereof, then said ruling or general order shall prevail for the crossing or occupancy herein mentioned.

(b) The work of constructing, maintaining, repairing, altering, renewing, relocating or removing the said Facilities shall be done under such general conditions as will be satisfactory to and approved by the Chief Engineer of Railroad, or his designee, and as will not interfere with the proper and safe use, operation and enjoyment of the property of Railroad. Licensee, at its own cost and expense, shall, when performing any work in connection with the Facilities, furnish any necessary inspectors, flagmen or watchmen to see that men, equipment and materials are kept a safe distance away from the tracks of Railroad.

(c) In addition to, but not in limitation of any of the foregoing provisions, if at any time Railroad should deem inspectors, flagmen or watchmen desirable or necessary to protect its operations or property, or its employees, patrons or Licensees during the work of construction, maintenance, repair, alteration, renewal, relocation or removal of said Facilities, of Licensee, Railroad shall have the right to place such inspectors, flagmen, or watchmen at the sole risk, cost and expense of Licensee, which covenants and agrees to bear the full cost and expense thereof and to promptly reimburse Railroad upon demand. The furnishing or failure to furnish inspectors, flagmen, or watchmen by Railroad, however, shall not release Licensee from any and all other liabilities assumed by Licensee under the terms of this Agreement.
3. If Licensee desires or is required, as herein provided, to revise, renew, add to or alter in any manner whatsoever the aforementioned Facilities, it shall submit plans to Railroad and obtain the written approval of the Chief Engineer of Railroad thereto before any work or alteration of the structure is performed and the terms and conditions of this Agreement with respect to the original construction shall apply thereto. Railroad reserves the right to make adjustments in the rental charges.

4. (a) Licensee shall at all times be obligated to promptly maintain, repair and renew said Facilities; and shall, upon notice in writing from Railroad and requiring it so to do, promptly make such repairs and renewals thereto as may be required by Railroad; or Railroad, for the purpose of protecting and safeguarding its property, traffic, patrons or employees from damage or injury, may with or without notice to Licensee at any time make such repairs and renewals there to and furnish such material therefor as it deems adequate and necessary all at the sole cost and expense of Licensee.

(b) In the event of an emergency, Licensee will take immediate steps to perform any necessary repairs, and in the event Licensee fails so to do, Railroad will perform said necessary repairs at the sole cost and expense of Licensee.
5. (a) The supervision over the location of the construction work and inspection of the Facilities and the approval of the material used in construction, maintenance, repair, alteration, renewal, relocation and removal of the aforesaid Facilities covered by this Agreement shall be within the jurisdictional rights of Railroad.

(b) The right of supervision over the location of the construction work and inspection of the Facilities from time to time thereafter by Railroad, shall extend for an appropriate distance on each side of the property of Railroad as the method of construction and materials used may have an important bearing upon the strength and stability of the Facilities over, under, upon or in the property of Railroad.
6. Licensee shall comply with all Federal, State and Local laws, and assume all cost and expense and responsibility in connection therewith, without any liability whatsoever on the part of the Railroad.
7. (a) It is understood between the parties hereto that the operations of Railroad at or near the Facilities involve some risk, and Licensee as part of the consideration for this license hereby releases and waives any right to ask for or demand damages for or account of loss of or injury to the Facilities (and contents thereof) of Licensee that are over, under, upon or in the property and facilities of Railroad including the loss of or interference with service or use thereof and whether attributable to the fault, failure or negligence of Railroad or otherwise.

(b) And Licensee also covenants and agrees to and shall at all times indemnify, protect and save harmless Railroad from and against all cost or expense resulting from any and all losses, damages, detriments, suits, claims, demands, costs and charges which the said Railroad may directly or indirectly suffer, sustain or be subjected to by reason or on account of the construction, placement, attachment, presence, use, maintenance, repair,

alteration, renewal, relocation or removal of said Facilities in, on, about or from the premises of Railroad whether such losses and damages be suffered or sustained by Railroad directly or by its employees, patrons or licensees, or be suffered or sustained by other persons or corporations, including Licensee, its employees and agents who may seek to hold Railroad liable therefor, and whether attributable to the fault, failure or negligence of Railroad or otherwise, except when proved by Licensee to be due directly to the sole negligence of Railroad.

(c) If a claim or action is brought against either party and for which the other party may be responsible hereunder in whole or in part, such other party shall be notified and permitted to participate in the handling or defense of such matter.

8. All cost and expenses in connection with the construction, maintenance, repair, alteration, renewal, relocation and removal of said Facilities shall be borne by Licensee, and in the event of work being performed or material furnished by Railroad under the stipulated right to perform such work of construction, maintenance, repair, alteration, renewal, relocation or removal under any section hereof, Licensee agrees to pay to Railroad the actual cost of material plus the current applicable overhead percentages for storage, handling, transportation, purchasing and other related material management expenses and the actual cost of labor plus the current applicable overhead percentages as developed and published by the accounting department of Railroad for fringe benefits, payroll taxes, administration, supervision, use of tools, machinery and other equipment, supplies, employers liability insurance, public liability insurance and other insurance, taxes and all other indirect expenses. It is to be understood that the aforementioned material and labor overhead charges are to be applied at the rates which are effective at the time of the performance of any work by employees of Railroad on the said Facilities. Licensee agrees to pay such bills within thirty (30) days of the presentation thereof by Railroad.
9. Licensee shall, at its sole cost and expense, upon request in writing of Railroad, promptly change the location of said Facilities covered by this Agreement, where located over, upon or in the property and facilities of Railroad, to another location, to permit and accommodate changes of grade or alignment and improvement in or additions to the facilities of Railroad upon land now or hereafter owned or used by Railroad to the intent that said construction shall at all times comply with the terms and conditions of this Agreement with respect to the original construction; or in the event of the lease, sale or disposal of the premises or any part thereof encumbered by this license, then said Licensee shall make such adjustments or relocations in its Facilities as are over, upon or in the property and facilities of Railroad as may be required by said Railroad or its grantee; and if Licensee shall fail or refuse to comply therewith, then the duly authorized agents of Railroad

may make such repairs or adjustments or changes in location and provide necessary material therefore.

10. Upon termination of this Agreement or upon the removal or abandonment of the Facilities covered hereby, all the rights, title and interest of Licensee hereunder shall cease and determine, and this instrument shall thereupon become and be null and void, without any liability on the part of either party to the other party except only as to any rentals and liability accrued prior thereto, and Licensee shall remove its said Facilities and appurtenances from Railroad property, and right of way and all property of Railroad shall be restored in good condition and to the satisfaction of Railroad. If Licensee fails or refuses to remove its Facilities and appurtenances under the foregoing conditions, Railroad shall be privileged to do so at the cost and expense of Licensee, and Railroad shall not be liable in any manner to Licensee for said removal.
11. In the event the Facilities consist of an underground occupation, Licensee will be responsible for any settlement caused to the roadbed, right of way and/or tracks, facilities and appurtenances of Railroad arising from or as a result of the installation of the said Facilities for a period of one (1) year subsequent to the date of completion of the installation, and Licensee agrees to pay to Railroad on demand the full cost and expense therefore.
12. In the event the said Facilities consist of electrical power or communication wires and/or appurtenances, Licensee shall at all times be obligated promptly to remedy any inductive interference growing out of or resulting from the presence of its Facilities; and if Licensee should fail so to do, then Railroad may do so, and Licensee agrees to pay to Railroad on demand the full cost and expense therefore.
13. As part of the consideration of the within Agreement, Licensee covenants and agrees that no assessments, taxes or charges of any kind shall be made against Railroad or its property by reason of the construction of said Facilities of Licensee, and Licensee further covenants and agrees to pay to Railroad promptly upon bills rendered therefor the full amount of any assessments, taxes or charges of any kind which may be levied, charged, assessed or imposed against Railroad or its property by reason of the construction and maintenance of said Facilities of Licensee.
14. The rights conferred hereby shall be the privilege of Licensee only, and no assignment or transfer hereof shall be made, or other use be permitted than for the purpose stated on page 1 without the consent and agreement in writing of Railroad being first had and obtained.
15. This Agreement with the rights granted may be terminated at any time by either party hereto upon not less than thirty (30) days' written notice to the

other; and upon the expiration of the said thirty (30) days after service of such notice, this Agreement and the permission and privileges hereby granted shall absolutely cease and terminate.

16. This Agreement shall take effect as of the 1st day of _____.

17. Automobile mileage charges incurred by aforementioned Railroad inspectors, flagmen or watchmen in connection with the installation, maintenance, etc., of said Facilities will be based on allowances approved by the United States Government in effect at the time the expenses are incurred.

18. The charges provided in Article "1" as fixed minimum annual rent, shall on an annual basis, be increased or decreased by the same percentage of increase or decrease as reflected in the "Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) (1967 = 100) specified for All Items - United States compiled by the Bureau of Labor Statistics of the United States Department of Labor." In no event, however, shall the rent be less than the fixed minimum rent payable as of the effective date of this Agreement.

This fixed minimum rent payable shall be increased or decreased in accordance with the following:

- (a) The fixed minimum rent shall be adjusted annually commencing _____.
- (b) Each adjustment shall be made with reference to the price index for the fourth month immediately preceding the effective date of each adjustment (Current Price Index).
- (c) Each such adjustment shall be made by determining the percentage increase of the then Current Price Index divided by the price index for the full calendar month of the effective date of this lease (Base Price Index).
- (d) The percentage thus determined shall be multiplied by the then applicable fixed minimum rent hereinbefore set forth, and the product thus determined shall represent the increase payable in addition to the fixed minimum rent until a subsequent adjustment shall be made under this section.

$$\begin{array}{r}
 \text{Current Price Index} \\
 \text{-----} \\
 \text{Base Price Index}
 \end{array}
 \times
 \begin{array}{l}
 \text{Fixed Minimum Rent} \\
 \text{Payable} = \text{Rent}
 \end{array}$$

In the event the index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the percentage increase shall be

made with the use of such conversion factor, formula or table for converting the index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then as shall be reasonably determined by Railroad.

19. Environmental Compliance

- 19.1 Licensee represents that it has conducted a complete inspection of the Facilities and except as noted herein, finds the Facilities to be reasonably free from pollution-induced conditions.
- 19.2 Without limiting any other provisions of this Agreement, Licensee, at its expense, will at all times maintain and keep the Facilities and all improvements and property now or hereafter erected or placed thereon, including but not limited to, the structures, equipment, and operations, in compliance with all federal, state, and local laws, rules and regulations designed to prevent or control the discharge of substances in the land, water, or air, and Licensee agrees to indemnify, hold harmless and defend Railroad from and against any and all suits, actions, proceedings, fines, claims, or the cleanup, response, removal or remediation of any environmental condition arising from or alleged to arise from a violation of any such environmental law, rule, or regulation, unless and except where such violation shall have been caused solely by the fault of the Railroad.
- 19.3 Without limiting any other provision of this Agreement, Railroad shall have the right to enter and inspect the Facilities in order to determine whether Licensee is complying with such laws, rules, and regulations, but no such inspection or absence of inspection by Railroad shall be construed to relieve Licensee of its obligations to comply with all such laws, rules and regulations.
- 19.4 In the event any cleanup, response, removal or remediation of any environmental condition is required by a governmental entity (hereinafter collectively referred to as "Response Action"), Licensee shall not be entitled to any damages, actual or consequential, by reason of the Response Action's interference with Licensee's use of the Facilities. Licensee shall not be entitled to an abatement in the rent for any interference with Licensee's use of the Facilities due to a Response Action. Licensee shall permit Railroad and its contractors full, unrestricted and unconditional access to the Facilities for the purpose of completing or engaging in a Response action for which Licensee is responsible should Licensee fail to diligently pursue and complete such Response Action to the satisfaction of Railroad. Railroad's completion of any Licensee's obligations hereunder shall not be deemed a waiver

LICENSE NUMBER: _____

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of Licensee’s obligations under this Agreement. Railroad shall have the right, but not the obligation, to conduct reasonable inspections of Licensee’s Response Action and Licensee shall provide Railroad all information requested by Railroad regarding Licensee’s Response Action or any environmental condition for which Licensee is responsible.

- 20. Licensee shall maintain a policy of comprehensive general liability insurance for at least **\$1,000,000.00** combined single limit, bodily injury and property damage per occurrence. The Railroad must be a “named” or “additional” insured. Licensee shall furnish certificates to Railroad and provide not less than 30 days notice of cancellation or materials change in coverage.
- 21. Lessee shall not record this Lease without the prior consent of Lessor.

The terms of this Agreement shall be binding and effective upon all the parties hereto, and unless and until terminated, as hereinbefore provided, this Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, subject, however, to the provisions of Article “14” of this Agreement.

IN WITNESS WHEREOF, the said parties hereto have caused this Agreement to be duly executed and delivered as of the day and year first above written.

WITNESS:

**READING BLUE MOUNTAIN AND
NORTHERN RAILROAD COMPANY**

BY: _____
Real Estate Manager

WITNESS:

(COMPANY)

BY: _____