

**READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY**

**LICENSE AGREEMENT FOR PRIVATE GRADE CROSSING**

This agreement, dated as of this 1<sup>st</sup> day of \_\_\_\_\_ between **READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY**, a Pennsylvania Corporation, which has a mailing address at **P.O. BOX 218, PORT CLINTON, PA 19549** ("Railroad") and \_\_\_\_\_ having a mailing address at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ ("Licensee").

**WITNESSETH:**

**WHEREAS**, Licensee has requested a private grade crossing across Railroad's property as set forth on Exhibit A hereto; and

**WHEREAS**, the parties have reached accord concerning the terms and conditions for Licensee's use of a private grade crossing across Railroad's property and desire to reduce them to writing.

**NOW, THEREFORE**, the parties hereto, intending to be legally bound, agree as follows:

**1. CROSSING**

(a) Railroad hereby grants to Licensee, insofar as it has the legal right and its present title hereby permits, the License to use \_\_\_\_\_ at grade, over the roadway and track of Railroad at **M.P.** \_\_\_\_\_, located at a point near the Town of \_\_\_\_\_, County of \_\_\_\_\_, State of **Pennsylvania**, more expressly shown on the plan hereto attached and made a part hereof, and known as Exhibit A, including any appurtenances thereto (hereinafter collectively referred to as the "Crossing").

(b) The Crossing shall be a private one, and Licensee shall not permit it to be used except by Licensee, its officers, employees, agents and other persons having business or visiting with Licensee. No lease, assignment of any type or transfer or conveyance of a real property interest is intended by this License.

(c) The Crossing shall be located in exact accordance with Exhibit A and no departure shall at any time be made therefrom except upon the prior approval of Railroad's Vice President Maintenance of Way.

**2. PAYMENT, RENTAL AND MAINTENANCE FEES**

(a) Licensee shall pay Railroad, upon execution of this License, the sum of **FIVE HUNDRED DOLLARS (\$500.00)** as reimbursement for the costs and expenses of preparing this License.

(b) Licensee shall pay Railroad \_\_\_\_\_ **DOLLARS (\$)** per year as minimum annual rental ("Rental"). Licensee shall have no right of refund for any cause whatsoever with respect to Rental payments paid to Railroad, which said sum shall be payable annually in advance commencing as of the **1ST** day of \_\_\_\_\_. Rental shall be adjusted in accordance with the terms of Section 2(f) hereof.

(c) Licensee shall pay Railroad a sum (TO BE DETERMINED BY USEAGE) per year as a minimum maintenance fee ("Maintenance Fee"). Licensee shall have no right of refund for any cause whatsoever with respect to Maintenance Fee payments paid to Railroad, which said sum shall be payable annually in advance commencing as of the **1ST** day of \_\_\_\_\_, \_\_\_\_\_. Maintenance Fee shall be adjusted in accordance with the terms of Section 2(d) hereof.

(d) Rental and Maintenance Fees ("Annual Charges") 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" (Price Index). In no event, however, shall the Annual Charges be less than the Annual Charges payable as of the effective date of this License.

Annual Charges shall be increased or decreased in accordance with the following:

- (1) Annual Charges shall be adjusted annually, commencing \_\_\_\_\_, \_\_\_\_\_.
- (2) 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).
- (3) 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 for this License (Base Price Index).
- (4) The percentage thus determined shall be multiplied by the then applicable Annual Charges, and the product thus determined shall

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represent the increase payable in addition to the Annual Charges until a subsequent adjustment shall be made under this section.

$$\frac{\text{Current Price Index}}{\text{Base Price Index}} \times \text{Annual Charges} = \text{Adjusted Annual Charges}$$

In the event the Price Index is converted to a different standard reference base or otherwise revised or changed, the determination of the percentage increase shall be made with the use of such conversion factor, formula or table for converting the Price 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.

**3. CONSTRUCTION**

- (a) All materials and work contemplated by this License shall be furnished and performed by Railroad (except as otherwise specifically set forth in this License) at the sole cost and expense of Licensee and billed to Licensee in accordance with the terms of Section 8 hereof.
- (b) The following work and materials shall be provided by Licensee subject to the prior approval of the Vice President Maintenance of Way or his designee:
  - (1) Licensee shall install, repair and maintain all asphalt material, together with all approach work, at its sole risk, cost and expense. Licensee shall paint appropriate highway warning markings on approaches to the crossing.
- (c) Licensee, before performing any work set forth in this License, shall give Railroad's Vice President Maintenance, or his designee, at least fourteen (14) days prior notice.
- (d) The Crossing shall also include adequate drainage facilities necessary or appropriate for the prevention of ponding and/or flooding or any other kind of water damage in the general area where the Crossing is located. Said drainage facilities shall be installed, repaired, maintained and cleaned by Licensee at the sole risk, cost and expense of Licensee.
- (e) Private Crossing must be protected on all four sides with Jersey Barriers situated in such a way as to prevent access to ATV riders and other trespassers.

**4. MAINTENANCE**

(a) Railroad shall perform all maintenance and repairs to the Crossing at the sole cost and expense of Licensee , except as specifically set forth in Section 3(b), 3(d) and 4(b) hereof.

(b) Licensee shall at all times keep the Crossing and the flangeways in the Crossing free and clear of dirt, ice, snow and debris, and shall in any event promptly, upon notice from Railroad, perform the above work, or Railroad, for the purpose of protecting and safeguarding its property, traffic, employees or patrons, may at any time, with or without prior notice to Licensee, remove any dirt, ice, snow, and debris from the Crossing and the flangeways in the Crossing and thereafter, bill Licensee in accordance with the terms of Section 8 hereof for all costs and expenses incurred by Railroad. Licensee, when performing any work at the Crossing, shall be responsible to ensure that people, equipment and materials are kept a safe distance away from the tracks on the approach or any moving equipment on the tracks.

**5. MAINTENANCE OF RIGHT-OF-WAY**

In the event Railroad shall be required, or may desire at any time, or from time to time, to change the grade or location of any of its tracks or facilities, or to remove, construct or add to any of its tracks or facilities upon land owned or used by Railroad, then Railroad shall, at the sole cost and expense of Licensee, make such adjustments or relocations in the Crossing and Licensee's facilities which may, in the opinion of Railroad, be necessary and bill Licensee for such costs and expenses in accordance with the terms of Section 8 hereof. In the event any of the work provided for in this Section 5 requires the adjustment or relocation of any facilities of Licensee not located on Railroad's property, then Licensee shall, at its sole cost and expense, promptly make all required adjustments and relocations to its facilities so affected.

**6. RAILROAD'S PARAMOUNT USE**

Railroad shall have the paramount right at all times to use its track(s), right-of-way and property at the Crossing. Licensee shall exercise the greatest care in the use of the Crossing and shall require all others permitted hereunder to use the Crossing to also exercise the greatest care in the use of the Crossing.

**7. CROSSING PROTECTION**

(a) Sole responsibility for protecting the Crossing from the standpoint of safety and policing the Crossing shall rest exclusively on Licensee at all times and under all circumstances.

(b) Licensee shall erect, maintain and renew appropriate signs, or notices, satisfactory to Railroad setting forth the fact that the Crossing is private and shall take whatever further

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steps as may be necessary to prevent unauthorized persons from entering upon or using the Crossing for any purpose whatsoever.

(c) Railroad may at any time install, maintain and renew railroad - highway grade crossing signs, and Licensee shall pay all costs and expenses of the installation, maintenance and renewal thereof in accordance with the terms of Section 8 hereof.

(d) Licensee shall, at its sole risk, cost and expense, erect, maintain, repair and renew appropriate lock-type gates on both sides of the Crossing satisfactory to Railroad, which shall be suitably situated and kept closed and locked at all times when the Crossing is not in actual use.

(e) If it is deemed necessary by Railroad or any federal, state, or municipal authority or other governing body, to install automatic protection at the Crossing, said automatic crossing protection shall be installed, maintained and ultimately removed by Railroad at the sole cost and expense of Licensee.

(f) In addition to the foregoing, but not in limitation thereof, if at any time Railroad should deem crossing flagmen or watchmen desirable or necessary to properly protect its operation near the Crossing, Railroad may place flagmen or watchmen at the Crossing and bill Licensee in accordance with the terms of Section 8 hereof for all costs and expenses incurred in placing such flagmen or watchmen. The furnishing or failure to furnish flagmen or watchmen by Railroad shall not release Licensee from any and all other liabilities assumed by Licensee under the terms of this License.

## **8. BILLING**

All costs and expenses in connection with the construction, adjustment, alteration, relocation and removal of the Crossing 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, adjustment, alteration, relocation or removal under any section hereof, Licensee shall pay Railroad the actual cost of material plus the current applicable overhead percentages for storage, handling, transportation, purchasing and other related materials 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. The aforementioned material and labor overhead charges shall be applied at rate which are effective at the time of the performance of any work by Railroad on the Crossing. Licensee shall pay all bills rendered pursuant to this License within thirty (30) days of presentation by Railroad.

## **9. TAXES**

Licensee shall assume and pay any and all taxes and assessments which may be levied upon the facilities afforded the Licensee under this License, and Licensee shall indemnify, defend and hold Railroad harmless therefrom.

**10. LIABILITY**

Licensee hereby releases and will protect, defend, indemnify, and save harmless Railroad from and against all claims, liabilities, demands, actions at law and equity (including without limitation claims and actions under the Federal Employers' Liability Act), judgments, settlements, losses, damages, and expenses of every character whatsoever (hereinafter collectively referred to as "Claims") for injury or death of any person or persons whomsoever and for damage to or loss or destruction of property of any kind by whomsoever owned, caused by, resulting from, arising out of, or occurring in connection with the construction, maintenance, alteration, repair, relocation, renewal, removal, use or presence of the Crossing, or incidental to or appertaining thereto, and regardless of whether or not such injury or death or such damage to or loss or destruction of property are due to or chargeable to, in whole or in part, any alleged active or passive negligence or participation in the wrong or upon any alleged breach of any statutory duty or obligation by Railroad.

**11. INSURANCE**

(a) Before Licensee may make use of the Crossing, Licensee shall, at its sole cost and expense procure and deliver to Railroad and thereafter maintain in effect during the term of this License public liability insurance, as well as contractual liability insurance covering all liabilities assumed by Licensee under Section 10 of this License, without exception or restriction of any kind. Said insurance shall be in limits of not less than **FIVE MILLION DOLLARS (\$5,000,000.00)** single limit, bodily injury, death and/or property damage whether of Licensee, Railroad, or others, and said insurance shall be in such companies and in such form as shall be acceptable to Railroad. Said insurance shall be endorsed to provide that Railroad shall be notified in writing by the insurance company at least thirty (30) days in advance of any cancellation or charges which modify the coverage provided thereunder. The providing of such insurance shall not be deemed a limitation on the liability of Licensee as provided in this License, but shall be additional security therefor. Railroad shall be named as an additional insured on all insurance policies required under the terms of this agreement.

(b) Railroad shall have the right to periodically conduct a review of the adequacy of the insurance requirements provided for in Section 11(a) and on (1) year intervals from the effective date of this License. In the event that Railroad should determine that the requirements of Section 11(a) no longer provide adequate protection to Railroad, at its sole option, may give Licensee notice ("Insurance Notice") that Licensee must immediately obtain such additional insurance as Railroad requires.

**12. EFFECTIVE DATE AND TERMINATION**

(a) This License shall become and be effective as of the **1ST day of** \_\_\_\_\_, \_\_\_\_\_, and shall be terminable upon not less than thirty (30) days' notice served or given by either party hereto to the other; provided, however, that this License may be immediately terminated upon violation of any of the terms hereof by Licensee. Prior to the termination of this License as set forth above, Railroad may remove the Crossing, in, upon or over its right-of-way or property and track, at the sole cost and expense of Licensee, which shall make payment to Railroad in accordance with the terms of Section 8 hereof; or Railroad may wreck and scrap or convert all of the Crossing, to its own use without liability to Licensee in any event for compensation or damages therefor.

(b) Notwithstanding any other terms of this License, in the event Licensee shall fail to fully, faithfully and strictly comply with the terms of Section 10 and 11 hereof, all rights and privileges of Licensee to use the Crossing herein granted shall automatically cease and terminate and Railroad shall have the immediate right (without notice to Licensee) to barricade and remove the crossing at the sole cost and expense of Licensee which shall make payment to Railroad in accordance with the terms of Section 8 hereof.

(c) Any obligation assumed and any liability which arose or may have arisen or been incurred by either party hereto prior to termination of this License shall survive the termination of this License.

**13. PERMITS AND APPROVALS**

Licensee, at its sole risk, cost and expense, shall obtain all permits and approvals which may be necessary or appropriate and 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 Railroad. Licensee hereby agrees to forward copies to the Railroad. Licensee hereby agrees to indemnify, defend and hold harmless Railroad therefrom.

**14. SUCCESSORS**

(a) This License shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, successors and assigns, subject, however, to the terms of Section 14(b) hereof.

(b) The permission and license hereby afforded shall be the personal privilege of Licensee, and no assignment or transfer thereof by operation of law or voluntary act of Licensee shall be made, or other use of the Crossing be permitted as herein provided, without the prior consent of Railroad which may be withheld for any reason or no reason.

**15. WAIVER**

The waiver by Railroad of any breach of any term, covenant, obligation or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or a waiver of any other term, covenant, obligation or condition herein contained.

**16. NOTICES**

(a) Every notice, approval, consent, or other communication desired or required under this License shall be effective only upon receipt and only if the same shall be in writing and sent postage prepaid by overnight mail or United States registered or certified mail (or a similar mail service available at the time), directed to the other party at its address as follows (or such other address as either party may designate by notice given from time to time in accordance with this Section):

If to Railroad:

READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY  
ATTN: REAL ESTATE MANAGER  
P.O. BOX 218  
PORT CLINTON, PA 19549

If to Licensee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Notwithstanding anything to the contrary set forth above, in the event Railroad is unable to locate Licensee, such notices may be posted at or near the Crossing.

**17. ENTIRE AGREEMENT**

The entire agreement between Railroad and Licensee is set forth in this License and there are no understandings, agreements, or representations of any kind between the parties, verbal or otherwise, other than as set forth in this License. No change or modification of any of the terms, obligations or provisions hereof shall be valid unless in writing and signed by the parties hereto.

**18. PARTIAL INVALIDITY**

If any term, obligation or condition of this License or the application thereof to any person

or circumstance shall be held invalid or unenforceable to any extent by a final judgment or award which shall not be subject to change by appeal, then the remainder of this License or the application of such term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant and condition of this License shall be valid and be enforced to the fullest extent permitted by law. Furthermore, each agreement, obligation and other provision of this License is and shall be deemed and construed as a separate and independent obligation of the party bound by, undertaking or making the same, and not dependent on any other provision of this License unless expressly so provided.

**19. THIRD PARTY BENEFICIARY**

Nothing contained in this License shall be construed as to confer upon any other party the rights of a third party beneficiary.

**20. GOVERNING LAW**

This License and the rights and obligations of the parties hereunder shall be construed in accordance with the laws of the Commonwealth of Pennsylvania.

**21. EXHIBITS AND ADDENDA**

Any exhibit or addendum to this License shall be deemed a part hereof.

**22. HEADINGS**

Section headings are inserted for convenience only and shall not affect the construction or interpretation of this License.

**23. TERMINOLOGY**

As used in this License, the terms "Railroad," "Licensee," and "Party" shall include the respective subsidiaries and affiliates of Railroad and Licensee and the directors, officers,

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agents and employees of Railroad and Licensee and such subsidiaries and affiliates.

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

**WITNESS:**

**READING BLUE MOUNTAIN & NORTHERN  
RAILROAD COMPANY**

\_\_\_\_\_

**BY:**

\_\_\_\_\_  
**Real Estate Manager**

**WITNESS:**

**(Lessee)**

\_\_\_\_\_

**BY:**

\_\_\_\_\_

## **ADDENDUM A**

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WHEREAS \_\_\_\_\_ realizes that as a general rule the Railroad does not grant crossing at grade because of the great and potential dangerous liability condition which are created when heavy trucks cross railroad tracks at grade.

THEREFORE, in consideration of this fact, this private railroad crossing is being granted to \_\_\_\_\_ solely to allow \_\_\_\_\_ to have access to \_\_\_\_\_ to be shipped by rail.

THEREFORE, in addition to the base rent of \_\_\_\_\_, an additional yearly rent of Nine Thousand Six Hundred Dollars (\$9,600.) per year will be due in advance on December 31 of each year this agreement remains in effect and is subject to CPI. However, \_\_\_\_\_ will be able to reduce this additional yearly rent by transporting \_\_\_\_\_ in car load quantity on the RBMN railroad originating on their siding at \_\_\_\_\_.

THEREFORE, although minimum rent will always be the base rent as stated previously in this agreement, the additional rent will be reduced by \$25.00 for every car load shipped so as additional rent (based on the reason for this agreement) should be reduced to \$0. No Credit shall be issued beyond this over additional rent is reduced to \$0 during a calendar year.

Example:

1 carload per year additional rent reduced by \$25. To \$9,575. 384 carloads per year - additional rent reduced to \$0.

## **ADDENDUM B**

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\_\_\_\_\_ at their cost and expense will pay to the  
Railroad on \_\_\_\_\_ the sum of \$22,000. in advance for the cost of  
installing electric flashers to protect crossing which Railroad will install.

## **ADDENDUM C**

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RAILROAD SPECS TO BE ADDED HERE

## **ADDENDUM D**

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This is the most important part of the Agreement.

Lessor recognizes that the rule and spirit of the Agreement are totally for the purpose of allowing the Lessee to get to \_\_\_\_\_ strictly to be loaded in railroad cars on Lessor's \_\_\_\_\_ siding. Lessee fully understands and agrees and supports the Railroad's right and safety obligation to remove this private crossing within the letter of the Agreement if rail car loading falls below \_\_\_\_\_ cars per calendar year.

Lessor and Lessee agree that this Private Crossing Agreement is very clear and straightforward in its entirety. Addendum D has been added for the purpose of clarification.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
READING BLUE MOUNTAIN  
& NORTHERN RAILROAD COMPANY

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
LESSEE