

READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY

SIDETRACK AGREEMENT ON RAILROAD PROPERTY

THIS LEASE, dated as of this 1ST day of _____, by and between **READING BLUE MOUNTAIN AND NORTHERN RAILROAD COMPANY**, a Pennsylvania corporation, having a mailing address at **P.O. BOX 188, PORT CLINTON, PA 19549** ("Lessor"), and _____ having a mailing address at _____, _____, _____ ("Lessee").

WITNESSETH:

The parties intending to be legally bound, agree as follows:

1. Premises

Lessor hereby leases to Lessee the premises and track (sometimes hereinafter referred to as the "Tracks") located at M.P. ___ on the _____ Track, County of _____, and State of **Pennsylvania** being in length _____ ft. as hereinafter more fully described on Exhibit A to this Lease (collectively hereinafter referred to as the "Tracks").

2. Term

The term of this Lease ("Lease Term") shall commence on _____ ("Commencement Date") and shall end upon THIRTY (30) day's notice from either party ("Termination Date"), except as otherwise specifically set forth in this Lease.

3. Rent

3.1 Rent for the Premises ("Base Rent"), shall be _____ **DOLLAR (\$)** per YEAR, payable **ANNUALLY** subject to increases as provided for in Section 3.5 hereof. Lessee shall send Base Rent and Additional Rent with the Rent Account Number to **1 North 4th Street, Hamburg, PA. 19526**, or to such other address as Lessor may indicate by notice to Lessee. Lessee shall pay to Railroad upon the execution hereof, the sum of **SIX HUNDRED DOLLARS (\$600.00)** as reimbursement for the costs and expenses incidental to the preparation of this Agreement.

- 3.2 All other amounts, liabilities and obligations which Lessee agrees to pay or cause to be paid pursuant to this Lease, shall constitute rent payable hereunder ("Additional Rent") in addition to the Base Rent specified in Section 3.1. Lessee shall pay Lessor such Additional Rent **WITHIN FIFTEEN (15) DAYS** after receipt of invoices from Lessor, unless Lessor, in the case of taxes, directs payment be made to the taxing or assessing authority.
- 3.3 Lessee shall pay Base Rent and Additional Rent without prior demand, setoff, or counterclaim. Lessor may apply each payment of Base Rent or Additional Rent when received in such order as Lessor may determine, regardless of any rule, law, practice or custom between Lessor and Lessee. No payment shall operate as an accord and satisfaction, notwithstanding any statement or endorsement accompanying such payment.
- 3.4 If Lessee does not pay Base Rent or Additional Rent for a period of ten (10) days from the day same shall have been due and payable, then Lessee shall pay a service charge at the rate of 1.5% per month (or at the legal maximum in the jurisdiction in which the Premises are located, whichever is less) on the amount of any such Base Rent or Additional Rent unpaid; provided, however, that such service charge shall, in no event, be less than \$25.00 for any month or portion thereof.
- 3.5 The rent provided in Section 4 as the current Base Rent shall, on an annual basis, be changed by the same percentage increase 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 (the "Index"). In no event, however, shall the rent be less than the then applicable Base Rent.

The current Base Rent payable shall be changed in accordance with the following:

- (i) The current Base Rent shall be adjusted annually, commencing One Year from above date.
- (ii) Each adjustment shall be made with reference to the price index for the fourth month immediately proceeding the effective date of each adjustment (Current Price Index).
- (iii) Each such adjustment shall be made by determining the percentage change of the then Current Price Index over the price index for the full

calendar month of the effective date of this Lease ("Base Price Index").

- (iv) Such percentage shall be computed by (i) obtaining the difference between the Current Price Index and the Base Price Index and (ii) dividing such difference by the Base Price Index.
- (v) The percentage thus determined shall be multiplied by the then applicable current Base Rent hereinabove set forth, and the product thus determined shall represent the change payable in addition to the current Base Rent until a subsequent adjustment shall be made under this Section.

In the event the Index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the percentage change 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 Lessor.

4. Use

- 4.1 Lessee shall use the Premises solely for _____ and for no other purpose.
- 4.2 Lessor shall have the right to use the Tracks, but may not unreasonably interfere with the use thereof by Lessee.
- 4.3 Neither party shall permit use of the Tracks by any other person or firm without the prior written consent of the other party.
- 4.4 The parties shall comply with (i) all applicable federal, state, and local laws, rules, regulations or orders pertaining to shipments originating or terminating on the Tracks, and (ii) Lessor's Engineering and Operating Criteria for Industrial Sidings.
- 4.5 Lessee shall not allow any vehicular or pedestrian grade crossings over the Tracks without the prior consent of Lessor.
- 4.6 Lessee shall not make any changes in the Tracks without the prior written consent of Lessor. Changes in the Tracks necessary to comply with the requirements of a public authority shall, following receipt of thirty (30) days notice from Lessor, be made at Lessee's sole expense. If Lessor incurs any expense in connection with any such change, such expense shall be billed to Lessee which shall reimburse Lessor.

- 4.7 Lessee shall not construct or permit any obstruction over the Tracks less than the statutory limit or 23'0" above top of rail, whichever is greater, or alongside thereof less than the statutory limit or 8'6" from center of track, whichever is greater, with the necessary additional clearances on curves, without the prior approval of Lessor and any public authority having jurisdiction.
- 4.8 The minimum clearances specified in Section 4.7 may be changed by Lessor to meet legal requirements and Lessee shall, at its sole expense, following receipt of thirty (30) days notice from Lessor, make such changes in the Tracks as may be necessary.
- 4.9 Lessee shall not install any underground storage tanks or related structures on the Premises without the prior approval of Lessor.

5. **Reserved Facilities**

- 5.1 Lessor reserves the right to operate, maintain, repair, replace, augment, or relocate (provided that said relocation does not unreasonably interfere with Lessee's use of the Premises for the purposes set forth in Section 4) any Reserved Facilities existing within or adjacent to the Premises. This Lease is subject and subordinate to any right which Lessor or any easement holder, Lessee, or licensee of Lessor may have in the Reserved Facilities. Lessee shall not interfere with the maintenance or operation of the Reserved Facilities, or the rights of any easement holders, lessees, or licensees with respect thereto.
- 5.2 "Reserved Facilities" means existing tracks, pipes, conduits, thoroughfares, roads, tunnels, electric communication and signal transmission lines and poles and guys for such lines, and any other facilities of similar nature on, above or below the ground, belonging to any party whomsoever.

6. **Taxes and Assessments**

Lessee shall pay all taxes (including without limitation real estate, transfer, sales and use taxes), assessments (including without limitation all assessments for public improvements or benefits, whether or not to be completed during the Lease Term), water, sewer and other rents, rates and charges, excises, levies, license fees, permit fees, inspection fees and other charges (including all interest and penalties thereon) which at any time during the Lease Term may be assessed, levied, confirmed or imposed against the Premises or against any improvements made by Lessee, or other property of Lessee, real or personal, located on the Premises. Lessee agrees to forward copies of all required permits to the Lessor. If the Premises are not taxed as a parcel but are taxed as part of a

larger parcel, Lessee shall pay an equitable portion, as fixed by Lessor, of the taxes and the assessments upon the whole tract or parcel of which the Premises are a part. Notwithstanding anything to the contrary set forth above, Lessee shall not be responsible for income, succession, transfer or franchise taxes imposed against Lessor.

7. Utilities

Lessee, at its sole cost and expense (including fees for permits and similar documents), shall obtain all utility services required or desired by Lessee, including the installation of meters and submeters if none exist. Lessee shall be responsible for all charges for utilities consumed by, and supplied to, Lessee by the provider thereof. Lessee shall not obtain any utility service from any of Lessor's facilities without first obtaining the prior consent of Lessor.

8. Condition of Premises and Maintenance

8.1 Lessee has fully inspected and accepts the Premises in "as is" condition. Lessor makes no representations as to the zoning, condition, utility, or fitness of the Premises for any use. Lessee shall perform all maintenance (including without limitation snow and ice removal) and repairs necessary to keep the Premises and any improvements now or hereafter existing thereon (including without limitation any adjacent walkways, roads, and parking areas) in good order and in safe condition. Lessor shall have no obligation whatsoever to maintain or repair the Premises.

8.2 Lessee shall keep the Tracks free of all hazardous materials and obstructions, and as necessary repair, maintain, replace and renew and remove the Tracks as follows: **WHEN VACATING THE PREMISES, LEAVE THE PREMISES IN THE SAME CONDITION IT WAS IN PRIOR TO YOUR OCCUPATION.** All maintenance of the Tracks shall be to a minimum of Federal Railroad Administration Class II track standards, which shall be the responsibility of Lessee.

9. Signs and Improvements

Lessee shall not place any sign, advertising, or improvements on the Premises without the prior consent of Lessor. Lessee shall completely remove all improvements made by it upon the Premises within ten (10) days of the expiration or sooner termination of this Lease and restore the Premises to the condition existing prior to placing such improvements, or other property, upon same. If Lessee fails to completely remove such improvements and other property of Lessee and of any other party, Lessor may elect to retain such improvements or property, or enter the Premises and raze or remove same and

Lessee hereby waives any claim or right of action with respect thereto. Lessee shall pay Lessor all Lessor's costs related to such razing or removal, including without limitation storage and transportation. Lessee shall indemnify, defend and save harmless Lessor from and against any claim or action by any party brought or asserted against Lessor with respect to such retention, razing, or removal. Lessee shall not change, or permit any change of, the existing grade or topography of the Premises without the prior approval of Lessor.

10. Compliance With Law

Lessee shall, at its own cost and expense, promptly comply with all present and future laws, regulations, and orders of all governmental authorities affecting the Premises whether or not Lessor shall be responsible primarily for such compliance. Lessee shall indemnify, defend and save harmless Lessor from and against, and shall pay, all expenses, damages, penalties, and claims, including without limitation reasonable counsel fees, that may arise from, or be imposed because of, the failure of Lessee to comply with this Section.

11. Assignment and Subletting

Lessee shall not assign, hypothecate, license or transfer any portion of Lessee's interest in this Lease or the Premises without the prior consent of Lessor, and any attempt to do so without such consent shall render same null and void. Lessee shall not permit any security interest in any third party to attach to the Premises or any part thereof, or any improvements or any personal property now or hereafter placed or kept thereon, without the prior consent of Lessor, and any attempt to do so without such consent shall render same null and void.

12. Liability

12.1 Lessee shall relieve, indemnify, and defend Lessor against and from all expenses, damages, actions, fines, penalties, claims, judgements, settlements, and demands of every kind or nature, including reasonable counsel, investigator and expert fees, arising out of any failure by Lessee to perform any of the agreements, terms, covenants, or conditions of this Lease, and any bodily injury, death, or property loss or damage to or of any person or entity that comes upon the Premises or appurtenances thereto, or on or under the walkways, roadways, sidewalks, curbs, or loading areas contiguous thereto, however occurring, and also for any matter growing out of the condition, occupation, maintenance, alteration, repair, use, or operation of the Premises or appurtenances thereto or any part thereof, or of the walkways, roadways, sidewalks, curbing, and loading areas contiguous thereto, unless caused directly by the sole negligence of Lessor.

- 12.2 The negligence of any tenant, invitee, licensee or grantee of Lessee occurring on the Premises shall be deemed the negligence of the Lessee.

13. Environmental Compliance

- 13.1 Responsibility for Environmental Claims (as defined in Section 13.5) as between the parties shall be borne as follows:

- (i) Lessor shall be responsible for Environmental Claims arising from: (a) environmental conditions existing on the Premises prior to the date of this Lease, or (b) use of the Premises by Lessor or its licensees or contractors from and after the date of this Lease pursuant to Section 5 unless such Environmental Claims arise from Lessee's negligence in which event Lessee shall be liable as set forth in Sections 13.1 (ii) or 13.1 (iii), or (c) its failure, or that of its licensees or contractors, to comply with its obligations under this Lease when such failure is a contributing cause to such Environmental Claims.
- (ii) Lessee shall be responsible for Environmental Claims arising from: (a) environmental conditions on the Premises from and after the date of this Lease, or (b) the use of or presence upon the Premises of Lessee, or that of its contractors, invitees or any unauthorized third party; or (c) its failure, or that of its licensees or contractors, to comply with its obligations under this Lease when such failure is a contributing cause to such Environmental Claims.
- (iii) The parties hereto shall bear in equal shares responsibility for Environmental Claims arising from the joint responsibility of Lessor and Lessee as set forth in Sections 13.1 (i) and 13.1 (ii).

- 13.2 Lessee shall have the burden of proving by a preponderance of the evidence that any Environmental Claims are entirely or partially Lessor's responsibility as set forth in Sections 13.1 (i) and 13.1 (iii).

- 13.3 Except as otherwise provided in Section 13.1 (iii), the party which is responsible shall release the other party from all responsibility for such Environmental Claims and shall defend, indemnify, protect and save harmless the other party from and against all such Environmental Claims.

- 13.4 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"), Lessee shall not be entitled to any damages, actual or consequential, by reason of the Response Action's interference with Lessee's use of the Premises. If any Response Action results in a portion of the Premises being rendered unusable by Lessee for the purposes set forth in Section 4 for a period in excess of 5 consecutive days, the Base Rent shall be reduced pro rata to reflect the portion of the Premises rendered unusable; however, there shall be no abatement in the Base Rent for any interference with Lessee's use of the Premises due to a Response Action for which Lessee is either partially or wholly responsible pursuant to Sections 13.1 (ii) or 13.1 (iii). Lessee shall permit Lessor and its contractors full, unrestricted and unconditional access to the Premises for the purpose of completing or engaging in a Response Action for which Lessor has any responsibility or, at Lessor's option, a Response Action for which Lessee is responsible pursuant to Sections 13.1 (ii) or 13.1 (iii) should Lessee fail to diligently pursue and complete such Response Action to the satisfaction of Lessor. Lessor's completion of any of Lessee's obligations hereunder shall not be deemed a waiver of Lessee's obligations under this Lease. Lessor shall have the right, but not the obligation, to conduct reasonable inspections of Lessee's Response Action and Lessee shall provide Lessor all information requested by Lessor regarding Lessee's Response Action or any Environmental Claims for which Lessee is responsible.

- 13.5 The term "Environmental Claims" means any cleanup, response, removal or remediation required by a governmental entity, related to any environmental conditions affecting the air, soil, surface waters, ground waters, streams, sediments and similar environmental conditions caused by, resulting from, arising out of, or occurring in connection with this Lease.

14. Insurance

- 14.1 Lessee shall maintain continuously in effect a policy of comprehensive general liability insurance, including contractual liability covering the liability assumed by Lessee under the provisions of Sections 12 and 13 hereof. Such insurance shall be in limits of not less than **\$1,000,000.00** combined single limit, bodily injury and property damage liability each occurrence. Lessee shall furnish to Lessor certificates evidencing such insurance in companies and form acceptable to Lessor and providing not less than thirty (30) days notice of cancellation or any material change in coverage.
- 14.2 If the Premises consists of a building or other similar improvements owned by Lessor, Lessee shall maintain continuously in effect a commercial all-risk policy insuring such building, improvements and all major systems therein for full

replacement cost or actual cash value, the former if obtainable for the Premises. Lessee shall furnish to Lessor the original policy evidencing such coverage in companies and form acceptable to Lessor and providing not less than thirty (30) days notice of cancellation or any material change in coverage.

- 14.3 All risk insurance on the property of the Lessee, or in Lessee's care, custody and control shall contain a waiver of subrogation against Lessor.
- 14.4 If requested by Lessor, Lessee shall furnish additional coverage against such other hazards as Lessor may require. The providing of said insurance shall not be deemed a limitation on the liability of Lessee as provided in this Lease, but shall be additional security therefor.
- 14.5 In the event of any substantial (of which fact Lessor shall be the sole judge) loss, damage to, or destruction of the Premises (if the Premises consist of a building or other similar improvements owned by Lessor), or any major system thereof, by any cause whatsoever, Lessor shall have the option, within thirty (30) days from the date thereof, of terminating this Lease by notice to Lessee, or, in the alternative, of requiring Lessee to repair such loss, damage, or destruction. If Lessor elects to terminate this Lease, such termination date shall be set forth in the notice from Lessor as aforesaid and Lessee shall forthwith endorse all insurance proceeds to Lessor. In the event Lessor elects to have Lessee repair such loss, damage or destruction, Lessee shall, within thirty (30) days of the date of Lessor's notice as aforesaid, submit plans to Lessor for its approval prior to the commencement of any repair work. If Lessor elects to have such loss, damage or destruction repaired, and if the Premises shall have been rendered wholly untenable by reason thereof, Base Rent shall abate from the date of such loss, damage or destruction until the date of completion of repairs. In the event the Premises are rendered only partially untenable by such loss, damage or destruction, Base Rent shall continue in full force and effect for that portion of the Premises which remain tenantable, and Lessee shall proceed to repair the Premises after submitting plans within thirty (30) days following such loss, damage or destruction to Lessor for its approval. Upon approval by Lessor of any repair plans of Lessee, Lessee shall proceed immediately to commence such repairs and to diligently and continuously make same until completed at the earliest practicable date. In the event of a termination of this Lease by Lessor as aforesaid, all rent shall end as of the date of such loss, damage, or destruction, and any Base Rent paid beyond such date shall be refunded on a pro-rata basis to Lessee. Notwithstanding anything to the contrary set forth above, no loss, damage to or destruction of the Premises, either in whole or in part, shall relieve Lessee from its obligations to pay any Additional Rent due and payable on the Premises.

15. Condemnation

If all or any part of the Premises shall be acquired or taken under eminent domain proceedings, or transferred to a public authority in lieu of such proceedings, Lessor may terminate this Lease as of the date when possession is taken. All damages awarded for such taking shall belong to and be the property of Lessor. Lessee shall have no claim against Lessor by reason of such taking or termination and shall not have any claim or right to any portion of the amount that may be awarded or paid to Lessor as a result of any such taking. Lessee may, however, make claims against the condemning authority for moving expenses, loss of fixtures, or other matters which do not affect the award otherwise payable to Lessor so long as such claim does not reduce the award otherwise payable to Lessor.

16. Defaults and Remedies; Waiver of Redemption

16.1 Should Lessee default in: (1) fulfilling any of the covenants or obligations of this Lease other than the covenants for the payment of Base Rent or Additional Rent; or (2) if the Premises become vacant or deserted; or (3) if the Premises are damaged by reason of negligence or carelessness of Lessee, its and, then, in any one or more of such events, upon Lessor serving a ten (10) day notice upon Lessee specifying the nature of said default, and upon the expiration of said ten (10) days, if Lessee shall have failed to remedy such default, or if the said default or omission complained of shall be of such a nature that the same cannot be completely cured or remedied within said ten (10) day period and Lessee has not diligently commenced curing such default within such ten (10) day period and shall not thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, then Lessor may serve a three (3) day notice of termination of this Lease upon Lessee, and upon the expiration of said three (3) days, this Lease and the Lease Term hereunder shall end and expire and Lessee shall then quit and surrender the Premises to Lessor.

16.2 If the notice provided for in Section 16.1 hereof shall have been given, and the term shall have expired as aforesaid; or (i) if Lessee shall default in the payment of the Base Rent or any item of Additional Rent or any part of either or in making any other payment herein provided; or (ii) if any execution or attachment shall be issued against Lessee or any of Lessee's property whereupon the Premises shall be taken or occupied or attempted to be taken or occupied by someone other than Lessee; or (iii) if there occurs a Bankruptcy Default as defined in Section 17.1 hereof; then, and in any of such events, Lessor may, without notice, re-enter the Premises either by force or otherwise, and dispossess Lessee and the legal representatives of Lessee or other occupant of the Premises, by summary

proceedings or otherwise, and remove their effects. Lessee hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end. If Lessee shall default hereunder prior to the date fixed as the commencement of any renewal or extension of this Lease, Lessor may cancel and terminate such renewal or extension agreement by notice.

- 16.3 In the case of any such default, re-entry, expiration, and/or dispossession by summary proceedings or otherwise, (i) the Base Rent and Additional Rent shall become due thereupon and be paid to the time of such re-entry, dispossession, and/or expiration, together with all expenses Lessor incurs for putting the Premises in good order or for preparing the same for re-rental; (ii) Lessor may relet the Premises or any part hereof, either in the name of Lessor or otherwise, for a term or terms, which may, at Lessor's option, be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease, and may grant concessions or free rent; and/or (iii) Lessee or the legal representative of Lessee shall also pay Lessor as liquidated damages for the failure of Lessee to observe and perform said Lessee's covenants herein contained, any deficiency between the Base Rent and Additional Rent hereby reserved and/or to be collected on account of the lease or leases of the Premises for each month of the period which would otherwise have constituted the balance of the term of this Lease. The failure or refusal of Lessor to relet the Premises or any party or parts thereof shall not release or affect Lessee's liability for damages. In computing such damages, there shall be added to the said deficiency such expenses as Lessor may incur in connection with reletting, such as without limitation, legal expenses, attorneys' fees, brokerage fees and other expenses for keeping the Premises in good order or for preparing the same for reletting. Lessor may immediately accelerate such deficiency for the entire balance of the term, discounted to the date of termination at the "prime" rate of interest in effect at the First Union Bank, on the day following the date of default. Lessor, at Lessor's option, may make such alterations, repairs, replacements, and/or decorations in the Premises as Lessor in Lessor's sole judgment considers advisable and necessary for the purpose of reletting the Premises; and the making of such alterations and/or decorations shall not operate or be construed to release Lessee from liability hereunder as aforesaid. Lessor shall in no event be liable in any way whatsoever for failure to relet the Premises, or in the event that the Premises are relet, for failure to collect the rent thereof under such reletting. Any such action may be an action for the full amount of all rents and damages suffered or to be suffered by Lessor. In the event of a breach or threatened breach by Lessee of any of the covenants, obligations or provisions hereof, Lessor shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings, and other remedies were not herein provided for. Mention in this Lease of any particular remedy shall not preclude Lessor from

any other remedy, in law or in equity. The foregoing remedies and rights of Lessor are cumulative. Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Lessee's being evicted or dispossessed of the Premises by reason of the violation by Lessee of the covenants and conditions of this Lease, or otherwise.

- 16.4 Lessor may, in addition to any other remedies set forth in this Section, suspend rail service in the event Lessee breaches any of the covenants in this Lease, and such suspension may continue until such breach is remedied.

17. **Bankruptcy**

- 17.1 If, at the date fixed as the Commencement Date or at any time during the Lease Term, there shall be filed by or against Lessee in any court, pursuant to any statute either of the United States or of any state, a petition in bankruptcy, or there shall be commenced a case by or against Lessee under the Bankruptcy Code, or a petition filed in insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Lessee's property, and within sixty (60) days thereafter Lessee fails to secure a discharge thereof, or if Lessee makes an assignment for the benefit of creditors or petitions for or enters into an arrangement with its creditors (all the hereinabove collectively referred to as a "Bankruptcy Default"), Lessor may terminate this Lease in which event neither Lessee nor any person claiming through or under Lessee by virtue of any statute or of an order of any court shall be entitled to possession or to remain in possession of the Premises, and shall immediately surrender the Premises to Lessor. Lessor, in addition to the other rights and remedies Lessor has by virtue of any other provision contained herein or elsewhere in this Lease or by virtue of any statute or rule of law, may retain as liquidated damages any rent, security, deposit, or monies received by it from Lessee or others on behalf of Lessee.

18. **Discontinuance**

Lessor shall not be responsible for any loss or damage sustained by Lessee in consequence of any temporary or permanent elimination of the Tracks, or service thereof, due to circumstances beyond Lessor's reasonable control.

19. **Inability to Perform**

Lessee's liability for all Base Rent, Additional Rent and all other covenants, obligations and conditions of this Lease shall not be affected or reduced by the failure of Lessor to perform any of its obligations under this Lease or to supply any service, whether specifically required herein or not.

20. No Waiver

The waiver by Lessor of any breach by Lessee 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. The subsequent acceptance by Lessor of any Base Rent or Additional Rent due hereunder or any or all other monetary obligations of Lessee hereunder, whether or not denoted as Base Rent or Additional Rent hereunder, shall not be deemed to be a waiver of any preceding breach by Lessee, of any term, covenant, obligation or condition of this Lease, other than the failure of Lessee to make the particular payment so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rent. No covenant, term, obligation or condition of this Lease shall be deemed to have been waived by Lessor, unless such waiver be in a notice to Lessee executed by Lessor.

21. Notices

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

22. Binding on Successors

The covenants and agreements herein contained shall inure to the benefit of and be binding upon the successors, heirs, personal representatives, and assigns of the parties hereto, subject, however, to the provisions of Section 11 of this Lease.

23. Quiet Enjoyment

Nothing herein contained shall imply or import a covenant on the part of Lessor for quiet enjoyment.

24. Entire Agreement

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

25. Headings

The heading of each section of this Lease is for convenience only and it shall not affect any construction or interpretation of this Lease.

26. Right to Inspect and Exhibit

Lessor shall have the right to enter the Premises at reasonable hours in the day or night to examine and inspect the Premises, make such repairs, additions or alterations as it may deem necessary for the safety, preservation or restoration of the Premises and the improvements, if any, located thereon (there being no obligation, however, on the part of Lessor to make any such inspections, repairs, additions or alterations), or to exhibit the Premises to prospective purchasers and lessees for three (3) months prior to the expiration of the Lease Term.

27. Mechanics' Liens

In the event any mechanics' lien is filed against the Premises as a result of alterations, additions or improvements made by Lessee, Lessor, at its option, upon thirty (30) days notice to Lessee, may terminate this Lease and may pay said lien, without inquiring into the validity thereof, and Lessee shall forthwith reimburse Lessor the total expense incurred by Lessor in discharging said lien.

28. Recording

Lessee shall not record this Lease without the prior consent of Lessor.

29. Joint and Several Liability

If two or more individuals, corporations, partnerships or other business associations (or any combination of two more thereof) shall sign this Lease as Lessee, the liability of each individual, corporation, partnership or other business association to perform all covenants, obligations or conditions hereunder shall be deemed to be joint and several, and all notices, payments and agreements given or made by, with or to any one of such individuals, corporations, partnerships or other business associations shall be deemed to have been given or made by, with or to all of them. In like manner, if Lessee shall be a partnership or other business association, the members which are, by virtue of state or federal law, subject to personal liability, the liability of each such member shall be joint and several.

30. Partial Invalidity; Separate Covenants

If any term, covenant, obligation or condition of this Lease 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 Lease or the application of such term, covenant 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 Lease shall be valid and be enforced to the fullest extent permitted by law. Furthermore, each covenant, agreement, obligation and other provision of this Lease is and shall be deemed and construed as a separate and independent covenant of the party bound by, undertaking or making the same, and not dependent on any other provision of this Lease unless expressly so provided.

31. **Brokerage Commission**

Lessee represents and warrants to Lessor that Lessee has had no dealings, negotiations or consultations with respect to the Premises or this transaction with any broker or finder, and that no broker or finder called the Premises to Lessee's attention for Lease. In the event any broker or finder claims to have submitted the Premises, or to have taken part in any dealings, negotiations or consultations with respect to the Premises or this transaction, then Lessee shall be responsible for and will defend, indemnify and save Lessor harmless from and against all costs, fees (including without limitation attorneys' fees), expenses, liabilities and claims incurred or suffered by Lessor as a result thereof.

32. **Holding Over**

Should Lessee hold over in possession of the Premises or any portion thereof after the expiration of the Lease Term or sooner termination as provided by this Lease without the execution of a new lease agreement or renewal agreement, Lessee, at the option of Lessor, shall be deemed to be occupying the entire Premises from month to month, subject to such occupancy being terminated by either party upon thirty (30) days notice to the other party, at a monthly rental equal to 200% of Base Rent due for the month immediately preceding the termination of this Lease, and otherwise subject to all the other terms, covenants, obligations and conditions of this Lease insofar as the same may be applicable to a month to month tenancy, including the payment of all Additional Rent as defined in this Lease. The acceptance of rent by Lessor shall not be evidence that Lessor has exercised its option to treat Lessee as a holdover tenant pursuant to the option set forth above.

33. **Third Party Beneficiary**

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

34. **Applicable Law**

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

35. Survival

Any covenant, obligation or liability which arose, may have arisen or was incurred by either party hereto prior to the termination of this Lease shall survive the termination of this Lease.

36. Terminology

As used in this Lease, the terms "Lessor," "Lessee" and "Party" shall include the subsidiaries, affiliates, directors, officers, agents and employees of Lessor and Lessee.

37. Additional Provisions, Exhibits and Addendum

The provisions typed on this page and any exhibit or addendum to this Lease shall be deemed a part hereof.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

WITNESS:

**READING BLUE MOUNTAIN AND
NORTHERN RAILROAD COMPANY
(LESSOR)**

BY: _____
Real Estate Manager

WITNESS:

**(COMPANY)
(LESSEE)**

BY: _____

ADDENDUM B

The provisions published herein will, if effective, not result in an effect on the quality of the human environment.

RBMN 1111

READING BLUE MOUNTAIN AND NORTHERN RAILROAD

FREIGHT TARIFF RBMN 1111

LOCAL AND JOINT FREIGHT TARIFF
RULES, REGULATIONS AND CHARGES

GOVERNING

MISCELLANEOUS SERVICES
AND THE HANDLING OF TRAFFIC
APPLYING AT STATIONS

ON THE

READING BLUE MOUNTAIN & NORTHERN RAILROAD

This Tariff is also applicable on intrastate traffic except where expressly provided to the contrary in connection with particular items or rates.

MISCELLANEOUS SERVICES TARIFF

Governed, except as otherwise provided herein, by Uniform Freight Classification, and by Exceptions to said Classification (Item 5).

ISSUED: September 2, 1998

EFFECTIVE: September 2, 1998

REVISED: December 26, 2007

**ISSUED BY:
DANIEL R. GILCHRIST
VICE PRESIDENT – MARKETING & SALES
READING BLUE MOUNTAIN & NORTHERN RAILROAD COMPANY
P.O. BOX 218
PORT CLINTON, PA 19549**

RULES AND OTHER GOVERNING PROVISIONS

SPECIAL RULES AND REGULATIONS - UNLIMITED

A ITEM 1111

MAINTENANCE CHARGE FOR INDUSTRIAL SWITCH CONNECTIONS

DEFINITION OF TERMS

An industrial switch connection is a switch located upon RBMN property and maintained by RBMN for access to privately owned sidetracks.

CHARGE FOR MAINTENANCE OF INDUSTRIAL SWITCH CONNECTION

The charge for maintaining each industrial switch connection is \$1,500 per year. This charge is payable by the owner of the sidetrack served by the industrial switch connection within thirty (30) days of invoice date and for each succeeding year.

EXEMPTIONS

The charge will not apply as to any calendar year in which the privately owned sidetrack served by the industrial switch connection originates or terminates seven (7) or more carloads.

The charge will not apply where specific terms of an executed Sidetrack Agreement so provide.

The charge will not apply if the owner of the sidetrack served by the industrial switch connection request, before the June 30 payable date of the charge, that RBMN remove the industrial switch connection.

MULTI-SIDINGS

Where more than one privately-owned sidetrack is served by a single industrial switch connection, each of the individual owners of the private sidetrack will be liable for an equal share of the charge. The total number of carloads originated or terminated on all of the private sidetracks served by the industrial switch connection will determine whether the exemption above applies.

RBMN is under no obligation to provide service to or from those private sidetracks for which any part of the applicable charge is unpaid.