

①

FILED

2007 5894  
BOOK PAGE

2007 SEP 24 AM 9:56

Carol Hivens  
DODGE COUNTY  
REGISTER OF DEEDS  
COMPARE INDEX FEE \$3.50

lots 1-62 + outlot A-E

PLEASE INDEX AGAINST: All Lots and Outlots of Riverview Shores Subdivision, part of Section 11, 12, 13 & 14 all in Township 17 North, Range 5 East of the Sixth P.M., Dodge County, Nebraska

AUDIT 245390

PRX 880805 (Revised April 2005)  
Standard Form Approved, AVP-Law

Folder: 02461-44

## PRIVATE COMMERCIAL ROAD CROSSING AGREEMENT

Mile Post 55.86, Columbus Subdivision/Branch  
Location: North Bend, Dodge County, Nebraska

THIS AGREEMENT is made September 01, 2007, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, to be addressed at 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690 (hereinafter "Licensor"), and RIVERVIEW SHORES HOMEOWNERS ASSOCIATION, INC., whose Address is 1446 County Road 3, North Bend, Nebraska 68649 (hereinafter "Licensee").

### RECITALS:

The Licensee desires the maintenance and use of private commercial road crossing (hereinafter "Road Crossing"), consisting of a existing private road crossing and all appurtenances thereto, including but not limited to any gates, cattle guards, stop signs or identification signs, drainage facilities, on, over and across the Licensor's right-of-way on the Columbus Subdivision trackage at Mile Post 55.86, DOT 816837H at or near North Bend, Dodge County, Nebraska, in the location shown on the attached print marked Exhibit A.

The Licensor is willing to grant the Licensee the right to cross its right-of-way and tracks at the location shown on Exhibit A subject to the terms set forth below.

NOW, THEREFORE, the parties agree as follows:

#### Article 1. LICENSOR GRANTS RIGHT.

The Licensor grants the Licensee the right to cross its right-of-way and tracks at the location shown on Exhibit A subject to the terms set forth herein and in Exhibit B and C, attached hereto and hereby made a part hereof, together with the right of entry to control and remove from the Licensor's right-of-way, on each side of the Road Crossing, weeds and vegetation which may obstruct the view of motorists approaching the crossing area to any trains that may also be approaching the crossing area.

#### Article 2. ADMINISTRATIVE HANDLING CHARGE.

The Licensee agrees to pay to the Licensor an administrative handling charge in the amount of Five Hundred dollars (\$500.00) for clerical, administrative and handling expense in connection with processing this Agreement.

#### Article 3. ONE-TIME PAYMENT.

In consideration of the license and permission granted herein, the Licensee agrees to observe and abide by the terms and conditions of this Agreement and to pay to the Licensor a one-time license fee of Ten Thousand Dollars (\$10,000.00).

**Article 4. WORK TO BE PERFORMED BY LICENSEE.**

The Licensee, at its sole cost and expense, shall construct the Roadway approaches and all other Roadway appurtenances and work that will not be performed by Licensor as set forth in Article IV.

**Article 5. IF WORK IS TO BE PERFORMED BY CONTRACTOR.**

If a contractor is to do any of the work performed on the Road Crossing (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Licensor's form Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of Contractor's Right of Entry Agreement and understands its terms, provisions and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Licensor's premises without first executing the Contractor's Right of Entry Agreement.

**Article 6. NOTICE OF COMMENCEMENT OF WORK - FLAGGING.**

A. The Licensee or its contractor agrees to notify the Railroad Representative at least ten (10) working days in advance of commencing its work and at least ten (10) working days in advance of proposed performance of any work in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of the Licensor's track(s) at any time, for any reason, unless and until a Licensor flagman is provided to watch for trains. Upon receipt of such ten (10)-day notice, the Licensor Representative will determine and inform the Licensee or its contractor whether a flagman need be present and whether the Licensee or its contractor needs to implement any special protective or safety measures. If the Licensor performs any flagging, or other special protective or safety measures are performed by the Licensor, the Licensee or its contractor agrees that it is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

B. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between the Licensor and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Licensee or its contractor (or the governmental entity, as applicable) shall pay on the basis of the new rates and charges.

C. Reimbursement to the Licensor will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Licensor work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Licensor work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which

the Licensor is required to pay the flagman and which could not reasonably be avoided by the Licensor by assignment of such flagman to other work, even though Licensee or its contractor may not be working during such time. When it becomes necessary for the Licensor to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, the Licensee or its contractor must provide the Licensor a minimum of five (5) days' notice prior to the cessation of the need for a flagman. If five (5) days' notice of cessation is not given, the Licensee or its contractor will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional ten (10) days' notice must then be given to the Licensor if flagging services are needed again after such five day cessation notice has been given to the Licensor.

D. Arrangements for flagging are to be made with the Licensor's Manager of Track Maintenance. His name and phone number are as shown:

Charles A. Zelasney, MTM, Phone 402-501-3817

**Article 7. INSURANCE.**

A. Before commencing any Roadway construction work on any portion of the Licensor's property, the Licensee shall obtain the insurance coverage described in Exhibit C, attached hereto and hereby made a part hereof and to provide to the Licensor, the insurance policies, certificates, binders and endorsements described therein.

B. All insurance correspondence shall be directed to:

Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, Nebraska 68179  
Attn.: Folder No. 02461-44

**Article 8. TERM.**

This Agreement shall be effective as of the date first herein written, and shall continue in full force and effect until terminated as provided in Exhibit B.

**Article 9. SPECIAL PROVISIONS.**

None.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

RIVERVIEW SHORES HOMEOWNERS  
ASSOCIATION

By: 

Director - Contracts

By: 

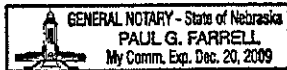
Title: President


### ACKNOWLEDGMENT

STATE OF NEBRASKA                   )  
COUNTY OF DOUGLAS                 ) ss  
  )

On September 1, 2007, before me, a Notary Public in and for said County and State, personally appeared GREGORY L. PINKER, who is the Director of Real Estate Contracts of Union Pacific Railroad Company, a Delaware corporation, and who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to in the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



  
Notary Public

(Seal)

### BUSINESS ACKNOWLEDGMENT

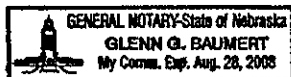
STATE OF NEBRASKA )  
COUNTY OF SAUNDERS )

This instrument was acknowledged on the 1st day of September, 2007 by:

Timothy Reznicek, President on behalf of Riverview Shores Homeowners Association Inc., a Nebraska Association, who personally appeared before me.

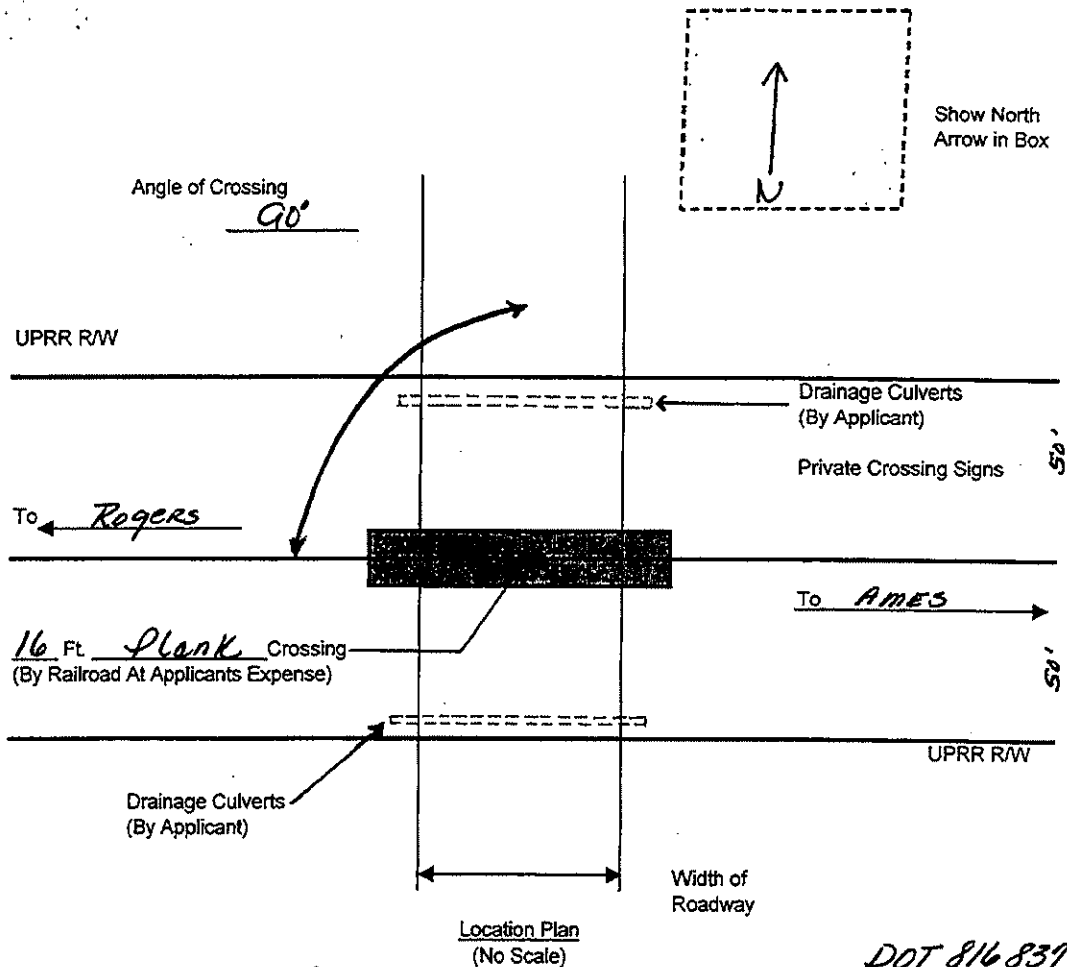
In witness whereof, I hereunto set my hand and, if applicable, official seal.

My Commission Expires: \_\_\_\_\_



Henri Bant

(Official Seal)



*DOT 816837A*

NOTES:

- 1) Applicant to perform all grading, drainage, paving & utility adjustments at applicants expense.
- 2) Applicant to remove all vegetation from UPRR right of way for 500 ft. each side of the centerline of the crossing
- 3) Applicant to provide locking gates at Railroad right of way line(s)

FIBER  
OPTIC  
CABLE



Call Before You  
Work or Dig  
1-800-336-9193

EXHIBIT "A"

UNION PACIFIC RAILROAD

Proposed Private Crossing For

Riverview Shores Home-  
OWNERS ASSN.  
Location: NORTH BEND, NE  
M.P. 55.86  
Subdivn Columbus  
Date: \_\_\_\_\_

Legend

Railroad Owned Track  
Railroad Right of Way

## EXHIBIT B

### SECTION 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) The rights granted to the Licensee are subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire railroad right of way, and are also subject to the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication, fiber optics or other wire lines, pipelines and other facilities upon, along or across any or all parts of said right of way, any of which may be freely done at any time by the Licensor without liability to the Licensee or to any other party for compensation or damages.

(b) The Licensee's rights are also subject to all outstanding superior rights (including those in favor of licensees, lessees of said right of way, and others) and the right of the Licensor to renew and extend the same, and are granted without covenant of title or quiet enjoyment.

(c) It is expressly stipulated that the Road Crossing is to be a strictly private one and is not intended for public use. The Licensee, without expense to the Licensor, will take any and all necessary action to preserve the private character of the Road Crossing and prevent its use as a public road.

### SECTION 2. MAINTENANCE AND USE.

(a) The Licensor, at the sole expense of the Licensee, shall maintain the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; provided, however, that such maintenance work shall be limited to that required for the safe and efficient operation of its tracks, and such other maintenance as the Licensor has agreed to perform on specific request of the Licensee. The Licensee, at its own expense, shall maintain the remaining portion of the Road Crossing and shall keep the rail flangeways clear of obstructions.

(b) The Licensee shall, at its sole expense, maintain, repair, renew and replace any gates, cattle guards, drainage facilities, traffic signs or devices, identification signs approved by the Licensor or other appurtenances shown on Exhibit "A". The Licensee shall, at its own expense, install and thereafter maintain any such appurtenances that may subsequently be required by the Licensor, by law, or by any public authority having jurisdiction. The Licensee shall control vegetation along the right of way on each side of the crossing so that the Licensee's line of sight to approaching trains is not impaired or obstructed by vegetation. All work performed by the Licensee on the right of way shall be done to the satisfaction of the Licensor.

(c) The Licensee shall require all vehicles approaching the crossing to stop a safe distance from the tracks before crossing the tracks. The Licensee shall keep any gate affording access to the Road Crossing closed and locked at all times except during the time of actual passage through it onto or from the Road Crossing. The Licensee shall not do, suffer or permit anything which will or may obstruct, endanger or interfere with, hinder or delay the maintenance and operation of the Licensor's railroad tracks or appurtenant facilities or the facilities or equipment of others lawfully using the Licensor's property. The Licensee shall adequately supervise and police use of said Road Crossing so that no person, vehicle or livestock stops or stands on the Licensor's tracks or attempts to cross the Licensor's railroad tracks when a railroad train, engine, equipment, or car is approaching or occupying the Road Crossing.

### SECTION 3. MODIFICATION OR RELOCATION OF ROAD CROSSING.

Whenever the Licensor deems it necessary or desirable in the furtherance of its railroad operating requirements or for the improvement and use of its property to modify or relocate the Road Crossing:

- (1) the Licensor shall, at the sole expense of the Licensee, modify or move the portion of the Road Crossing lying between the rails of the tracks and for one (1) foot on the outside of each rail; and
- (2) the Licensee shall, at the Licensee's sole expense, modify or move the remaining portion of the Road Crossing and the appurtenances thereto.

All the terms of this agreement shall govern the continued maintenance and use of the Road Crossing as modified or relocated pursuant to this section.

#### **SECTION 4. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

(a) Fiber optic cable systems may be buried on the Licensor's property. Licensee shall telephone the Licensor at 1-800-336-9193 (a 24-hour number) to determine if fiber optic cable is buried anywhere on the Licensor's premises to be used by the Licensee. If it is, Licensee will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Licensor's premises.

(b) In addition to the liability terms elsewhere in this Agreement, the Licensee shall indemnify and hold the Licensor harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorneys' fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of the Licensee, its contractor, agents and/or employees, that causes or in any way or degree contributes to (1) any damage to or destruction of any telecommunications system by the Licensee, and/or its contractor, agents and/or employees, on Licensor's property, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Licensor's property, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of, such telecommunication company(ies).

#### **SECTION 5. INDEMNITY.**

The Licensee assumes the risk of and shall indemnify and hold harmless the Licensor and other railroad companies which use the property of the Licensor, their officers, agents and employees, against and from any and all loss, damages, claims, demands, actions, causes of action, costs, attorneys' fees, fines, penalties and expenses of whatsoever nature (hereinafter "Loss") which may result from: (1) injury to or death of persons whomsoever, (including officers, agents and employees of the Licensor and of the Licensee, as well as other persons); (2) loss of or damage to property whatsoever (including damage to property of or in the custody of the Licensee and damage to the roadbed, tracks, equipment or other property of or in the custody of the Licensor and such other railroad companies, as well as other property); or (3) the Licensee's failure to comply with any federal, state or local law, regulation, or enactment; when such Loss is due to or arises in connection with or as a result of:

- (a) the construction of the Road Crossing;
- (b) any work done by the Licensee on or in connection with the Road Crossing;
- (c) the use of said Road Crossing by the Licensee, or the officers, agents, employees, patrons or invitees of the Licensee, or by any other person;
- (d) the use of said Road Crossing by the Licensee's successors or assigns or the officers, agents, employees, patrons or invitees of the Licensee's successors or assigns until the Licensee either complies with the provisions of Section 8 or terminates the agreement as provided in Section 6; or

(e) the breach of any covenant or obligation assumed by or imposed on the Licensee pursuant to this agreement, or the failure of the Licensee to promptly and fully do any act or work for which the Licensee is responsible pursuant to this agreement;

regardless of whether such Loss is caused solely or contributed to in part by the negligence of the Licensor, its officers, agents or employees.

**SECTION 6. TERMINATION ON BREACH OR ON NOTICE.**

(a) It is agreed that the breach of any covenant, stipulation or condition herein contained to be kept and performed by the Licensee shall, at the option of the Licensor, forthwith work a termination of this agreement and all rights of the Licensee hereunder. A waiver by the Licensor of a breach by the Licensee of any covenant or condition of this agreement shall not impair the right of the Licensor to avail itself of any subsequent breach thereof.

(b) This agreement may be terminated by either party on thirty (30) days' written notice to the other party.

**SECTION 7. REMOVAL OF ROAD CROSSING.**

(a) Upon termination of this agreement howsoever, the Licensor shall, at the sole expense of the Licensee, remove said Road Crossing and restore the premises of the Licensor to a condition comparable to that existing immediately prior to the construction of said Road Crossing.

(b) In the event of the removal of the Road Crossing as in this section provided, the Licensor shall not be liable to the Licensee for any damage sustained by the Licensee for or on account of such removal, and such removal shall not prejudice or impair any right of action for damage, or otherwise, which the Licensor may have against the Licensee.

**SECTION 8. ASSIGNMENT.**

The Licensee shall not assign this agreement, or any interest therein to any purchaser, lessee or other holder of the property served by the crossing or to any other person, without the written consent of the Licensor. If the Licensee fails to secure the Licensor's consent to any assignment, the Licensee will continue to be responsible for obligations and liabilities assumed herein.

**SECTION 9. SUCCESSORS AND ASSIGNS.**

Subject to the provisions of Section 8 hereof, this agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns.



## **EXHIBIT C**

### **Union Pacific Railroad Contract Insurance Requirements**

#### **Public/Commercial/Industrial/Licensee's Grade Crossing and/or Encroachment**

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$5,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. **Umbrella or Excess** insurance. If Licensee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

#### **Other Requirements**

D. All policy(ies) required above (except worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Licensee's liability under the indemnity provisions of this Agreement.

E. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless the law governing this Agreement prohibits all punitive damages that might arise under this Agreement.

---

F. Licensee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees. This waiver must be stated on the certificate of insurance.

G. Prior to entering upon Railroad property, Licensee shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

H. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

I. The fact that insurance is obtained by Licensee, or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

---