



VIA ELECTRONIC MAIL

August 21, 2018

Ms. Heather Baker
Jackson County Public Works
401 Grindstaff Cove Road
Suite A-212
Sylva, NC 28779

RE: Blue Ridge Southern Railroad, LLC
License Agreement BBLU475171 and Assignment of License Agreement 143847

Dear Ms. Baker,

Attached please find the documents as referenced above. After you have had an opportunity to review the same, please arrange for the appropriate official to execute the documents in **duplicate original** by affixing his or her signature, printed name and title as well as the signature and printed name of a witness. You should return (1) both original documents (please print documents on one-side of paper, not front and back), (2) the required insurance as outlined in Alicia Vallarta's email to you dated April 2, 2018, (3) payment for the outstanding 2016 and 2017 invoices to agreement 143847 which total \$1,224.21, (4) payment of the \$2,000.00 undocumented encroachment fee for agreement BBLU475171, and (5) first annual license fee payment of \$1,000.00 for agreement BBLU475171. Per your request, all invoices are attached hereto. Please make payment totaling \$4,224.21 and forward to:

Omega Rail Management, Inc.
4721 Trousdale Dr., Ste. 206
Nashville, TN 37220-1322
Attn: David Arnholter

Upon receipt of the above items, I will arrange to fully execute the documents and return an original document to you for your file.

If you have any questions or concerns, I can be reached at 1-800-990-1961 or darnholter@omegarail.com. Thank you for your assistance with these matters.

Sincerely,

David Arnholter

David Arnholter
Contracts Administrator

Enc.

cc: Kim A. Williams – ORM

Innovative Property Management Solutions

THIS ADDENDUM, to that Agreement dated October 19, 2000 by and between Norfolk Southern Railway Company, now assigned to Blue Ridge Southern Railroad, L.L.C. (hereinafter "Railway") and Stovall Lumber Company d/b/a Southern Lumber Company (hereinafter "Assignor");

WITNESSETH THAT:

WHEREAS, Assignor entered into an Agreement, dated October 19, 2000, to maintain, use and remove one private road crossing at Mile Post T-44.71 at or near Sylva, County of Jackson, State of North Carolina, more particularly described and shown in said Agreement (hereinafter "Agreement") with Norfolk Southern Railway Company; and

WHEREAS, Jackson County Public Works, a North Carolina Municipality, whose billing address is 401 Grindstaff Cove Road, Suite #A, Sylva, North Carolina 28779, Attention Jackson County Finance Officer, and whose corporate address for notices is 768 Skyland Drive, Suite #4, Sylva, North Carolina 28779, Attention Director of Public Works, (hereinafter "Assignee") represents to Railway that it has, subject to the approval of Railway, succeeded to all right, title and interest which Assignor had in and to the Agreement and desires to be accepted as party to the Agreement in the place and stead of said Assignor, and

NOW, THEREFORE, Assignee and Railway (hereinafter, collectively, "the Parties"), in consideration of their mutual promises contained herein desire to amend the Agreement effective February 14, 2008 as follows:

1. Assignee agrees to assume the Agreement obligations of the Assignor for the above referenced Agreement. Railway hereby consents to the Assignment of the Agreement from Assignor to Assignee.

2. The rent assessed under the terms of the Agreement shall be and is hereby changed from Six Hundred Sixteen and 63/100 Dollars (\$616.63) annually to One Thousand Four Hundred and No/100 Dollars (\$1,400.00) annually beginning October 19, 2018 for the period of October 19, 2018 through October 18, 2019.

The annual license fee specified above shall be adjusted annually (beginning with the payment due October 19, 2019) and shall be changed by the greater of (i) 3% or (ii) the 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") as described below.

If applicable, the current base rent payable shall be changed in accordance with the following:

- (a) The current base rent shall be adjusted annually, commencing October 19, 2019.
- (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 change of the then Current Price Index over the price Index for the full calendar month of October 2018 ("Base Price Index").
- (d) 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.
- (e) 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 of 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 Railway. Railway shall provide prior notice to Assignee of all increases in rent and, upon request from Assignee, shall provide the calculation used to determine the current base rent.

3. Any Notice required or permitted to be served under the terms of the Agreement shall be sent by certified mail, postage fully prepaid, and return receipt requested, to the parties at the following addresses:

To Railway: Blue Ridge Southern Railroad, L.L.C.
315 West 3rd Street
Pittsburg, Kansas 66762
Attn: Real Estate Manager

To Assignee: Jackson County Public Works
768 Skyland Drive, Suite #4
Sylva, North Carolina 28779
Attn: Director of Public Works

or at such other address as the respective parties may from time to time give notice of.

4. Upon execution hereof, Assignee shall pay to Railway a document processing fee of Seven Hundred Fifty and No/100 Dollars (\$750.00).

All other terms and conditions of said Agreement shall continue in full force and effect until terminated as provided therein.

IN WITNESS WHEREOF, the Parties hereto have caused this Addendum to be executed in duplicate as of this ____ day of _____ 2018.

BLUE RIDGE SOUTHERN RAILROAD, L.L.C. JACKSON COUNTY PUBLIC WORKS

By: _____
Name: Kim A. Williams
Its: Manager - Real Estate

Witnessed by:

Name:

By: _____
Name: Brian Thomas McMahan
Its: Chairman of the Jackson County Commissioners

Witnessed by:

Name: Angela M. Winchester, Clerk to the Board

BLUE RIDGE SOUTHERN RAILROAD, L.L.C.

LICENSE AGREEMENT FOR PRIVATE ROAD CROSSING

This agreement, dated as of this _____ day of _____, 2018 between Blue Ridge Southern Railroad, L.L.C., which has a mailing address at 315 West 3rd Street, Pittsburg, Kansas 66762 ("Railroad") and Jackson County Public Works having a mailing address at 768 Skyland Drive, Suite #4, Sylva, North Carolina 28779 ("Licensee").

WHEREAS, this Agreement is intended to cover an existing crossing at grade in place prior to the effective date of this Agreement; and

WHEREAS, Licensee and Railroad agree, subject to the terms hereof, to enter into a License Agreement for the protection of the property and rights of both parties;

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions herein contained, it is agreed as follows:

WITNESSETH:

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 an existing crossing at grade, measuring 23 feet in width, over the roadway and track of Railroad, at a location 900 feet east of Mile Post 45 in the vicinity of Harris Circle, located in Sylva, County of Jackson, State of North Carolina.

(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.

2. PAYMENT

The Licensee shall pay to Railroad upon the execution hereof, the sum of SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$750.00) as a one-time document processing fee, the further sum of TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00) as a one-time undocumented encroachment fee, and an annual license fee of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) on August 1st for the term of the Agreement, beginning upon execution hereof for the period August 1, 2018 through July 31, 2019 (annual fees to be adjusted as follows). Railroad reserves the right to make adjustments in these charges.

The annual license fee specified above shall be adjusted annually (beginning with the

payment due August 1, 2019) and shall be changed by the greater of (i) 3% or (ii) the 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") as described below.

If applicable, the current base rent payable shall be changed in accordance with the following:

- (a) The current base rent shall be adjusted annually, commencing August 1, 2019.
- (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 change of the then Current Price Index over the price Index for the full calendar month of the effective date of this License ("Base Price Index").
- (d) 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.
- (e) 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 of 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 Railroad. Railroad shall provide prior notice to Licensee of all increases in rent and, upon request from Licensee, shall provide the calculation used to determine the current base rent.

3. CONSTRUCTION

- (a) All materials and work contemplated by this License shall be furnished and performed by Licensee at the sole cost and expense of Licensee.
- (b) The following work and materials shall be provided by Licensee subject to the prior approval of Railroad's Property Manager, or his designee:
- (c) Licensee shall install, repair and maintain all asphalt material, together with all approach work, at its sole risk, cost and expense.

- (d) Licensee, before performing any work set forth in this License, shall give Railroad's Property Manager, or his designee, at least four (4) days prior notice.
- (e) 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.
- (f) 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) Licensee shall perform all maintenance and repairs to the Crossing at the sole cost and expense of Licensee.
- (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 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

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. The aforementioned material and labor overhead charges shall be applied at rate, which is 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 the insurance company shall notify Railroad in writing at least thirty (30) days in advance of any cancellation or charges which modify the coverage provided hereunder. 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 therefore.

- (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 date first written above 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 therefore.
- (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 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.

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 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:

Blue Ridge Southern Railroad, L.L.C.
315 West 3rd Street
Pittsburg, KS 66762
Attn: Manager – Real Estate

If to Licensee:

Jackson County Public Works
768 Skyland Drive, Suite #4
Sylva, NC 28779
Attn: Director of Public Works

- (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 state wherein the Crossing is located.

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

24. CANCEL AND SUPERSEDE

This Agreement shall cancel and supersede prior agreements, if any, by and between Railroad and Licensee, or the predecessors of either, covering any of the Facilities herein.

Signatures on Following Page

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.

BLUE RIDGE SOUTHERN RAILROAD, L.L.C.
(as Railroad)

By: _____
Name: Kim A. Williams
Title: Manager – Real Estate

Witness as to Railroad

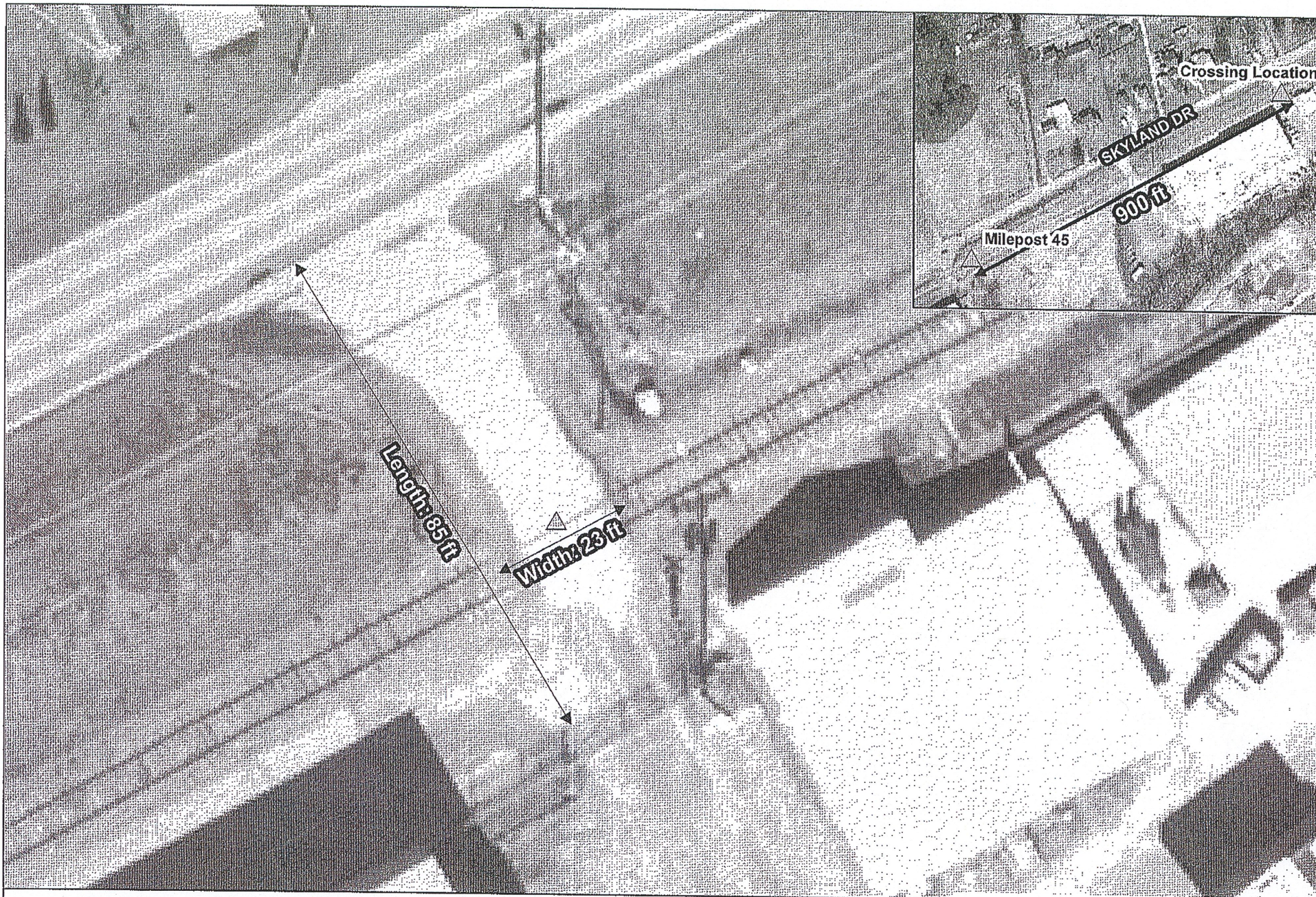
By: _____
Name: _____

JACKSON COUNTY PUBLIC WORKS
(as Licensee)

By: _____
Name: Brian Thomas McMahan
Title: Chairman of the
Jackson County Commissioners

Witness as to Licensee

By: _____
Name: Angela M. Winchester
Title: Clerk to the Board



**Skyland Services Center
Second Railroad Crossing**

83°12'31.192"W 35°23'17.403"N

1 inch = 20 feet

EXHIBIT A
LICENSE #BBLU475171
JACKSON COUNTY PUBLIC WORKS
One private 23 ft wide at grade crx
900 ft E of MP 45 near Harris Cr