

**PEDESTRIAN OVERPASS CROSSING AGREEMENT  
RJCC2022013**

This Pedestrian Overpass Crossing Agreement (the “Agreement”), made and effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between R. J. Corman Railroad Company/Central Kentucky Lines, a Kentucky Limited Liability Company, whose mailing address is PO Box 788, Nicholasville, KY 40356, hereinafter called "Railroad," and LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT, an urban county government of the Commonwealth of Kentucky, whose mailing address is 200 East Main Street, Lexington, KY 40507, hereinafter called "City".

**WITNESSETH:**

WHEREAS, Railroad and City entered into that certain Construction Agreement dated April 24, 2024 (the “Construction Agreement”) detailing the terms and conditions associated with the performance of work necessary to construct a pedestrian overhead grade crossing, identified as (the “Crossing”) above the railroad track owned by Railroad at or near Railroad Milepost 91.7 in Lexington, Fayette County, Kentucky as shown in Exhibit “A” attached hereto and made a part hereof;

WHEREAS, the City desires to construct the pedestrian overhead grade crossing above the track; and

WHEREAS, the Crossing will become a part of the Town Branch Trail and used by the public solely as a recreational resource for pedestrian travel; and

WHEREAS, upon completion of construction as provided in the Construction Agreement, City desires to use, maintain, repair, reconstruct, relocate or remove the Crossing as provided herein.

NOW, THEREFORE, the foregoing recitals are hereby incorporated into this Agreement by this reference and Railroad, subject to the limitations herein, for and in consideration of the fee(s) to be paid by City and of the covenants, terms, conditions and agreements herein to be kept and performed by City, hereby grants to City the right or license to use, maintain, renew and ultimately remove the Crossing.

**1. DEFINITIONS:**

1.1 The term "City" herein shall include the undersigned corporation, association, partnership, governmental body or individual, as the case may be. The term "City" shall also include City's agents, employees, servants, sublicensees and invitees. All words herein referring to City shall be taken to be of such number and gender as the context may require.

1.2 The term "Railroad" herein shall include any other company or companies whose property at the aforesaid location may be leased or operated by the undersigned Railroad, and any parent, subsidiary or affiliated system companies of Railroad and the servants, agents or employees of each.

1.3 The term "satisfactory" or "satisfaction" herein shall mean approval by Railroad's Division Engineer or his designated representative.

1.4 The term "Crossing" herein shall include the proposed bridge, walkway, decking, joists, beams, girders, piers, pilings, footings, supports, trusses, support cables, and also shall include track crossings, approaches, sidewalks, stairways, stairwells, warning devices, signal lines, gates, barricades, signs, appliances and ancillary facilities to said pedestrian overhead grade crossing, and approaches.

1.5 The term "public trail" or "public trail system" shall mean the Town Branch Trail, as well as roadways, trails, pathways, or sidewalks which are connected to the Crossing and available to the public for recreational non-motorized vehicle, bicycle and pedestrian travel.

## **2. USE, LIMITATIONS:**

2.1 This license is subject to: (a) all encumbrances, conditions, covenants and easements applicable to Railroad's title to or rights in the subject property; (b) any existing public utilities and other pipe or wireline facilities located in, on, over, under or across the Crossing; (c) all instruments, easements, agreements and rights therefor, recorded or not; and (d) compliance by City with terms and conditions herein.

2.2 The Crossing shall be used solely for public pedestrian travel along the Town Branch Trail for access to/from City's adjacent land and facilities.

2.3 RESERVED.

2.4 RESERVED.

2.5 RESERVED.

2.6 Railroad reserves and accepts unto itself the paramount right to continue to occupy, possess and use the area of the Crossing(s) for any and all railroad purposes. Railroad shall not be obligated to make cuts in its trains for the Crossing.

2.7 No expressed or implied means of ingress and egress or way of necessity upon, across or over or adjacent lands of Railroad is granted by this Agreement. City, at its own expense, will secure and maintain any necessary means of ingress and egress to the Crossing across lands of others.

## **3. FEES:**

3.1 a. On each anniversary of the date first written above, City shall pay Railroad SEVEN THOUSAND AND 00/100 U.S. DOLLARS (\$7,000.00) annual license fee ("License Fee").

b. The License Fee shall be subject to periodic review and adjustment by Railroad, but cannot be adjusted more than 25% under this subsection in any five year period without the approval of the City. City shall have no right of refund for any cause whatsoever with respect to License Fee paid to Railroad, which shall be payable in advance commencing as of the date first written above.

c. In addition to the periodic review and adjustment referred to in Section 3.1 b. above, the License Fee shall be adjusted on an annual basis by three percent (3%) per annum.

3.2 Payment by City of any License Fee shall not be held to create an irrevocable license for any period.

3.3 City shall, to the extent permitted by law, also indemnify Railroad against, and shall pay or reimburse Railroad for, any additional taxes and assessments levied solely on account of the existence of said Crossing.

3.4 In the event this Agreement is terminated by notice of either party (other than for breach or cause), Railroad shall refund to City the proration of any prepaid Fee plus any taxes paid in advance; PROVIDED, however, such refund shall not be made when the cumulative total involved is less than One Hundred Dollars (\$100.00).

#### **4. CONSTRUCTION, MAINTENANCE:**

4.1 Crossing, including the pedestrian overhead grade crossing, and all necessary appurtenances, positive train control requirements, approaches, footings, slabs, supports, girders, trusses, decking, sidewalks, railings, fencing, curbs, gutters, shoulders, slopes, fills and cuts and drainage thereof) shall be constructed in accordance with the Construction Agreement, and thereafter maintained as provided herein, at the sole cost and expense of City.

4.2 RESERVED.

4.3 Before commencing any work to maintain, repair, reconstruct, relocate or remove said Crossing, City shall deposit with Railroad the sum of the minimum estimated cost and expense of Railroad's portion of construction work and materials (including any work on Railroad's signal and communication facilities deemed necessary by Railroad). Should Railroad's costs and expenses exceed said deposit, City shall promptly pay such excess upon receipt from Railroad of a bill therefor.

4.4 RESERVED.

4.5 Prior to any reconstruction, repair, relocation or removal City shall furnish all other labor and materials required to perform any such work to the Crossing and do any necessary grading for the approaches.

4.6 City, at its sole cost and expense, shall keep the Crossing, including the walkway and approachways, at all times free and clear of all spilled materials, ice, snow, mud, debris and all obstructions to the satisfaction of Railroad.

4.7 City shall perform or cause all City's maintenance, repair, reconstruction, relocation or removal under this Agreement to be performed in a prudent and workmanlike manner, in conformity with any applicable statutes, orders, rules, regulations and specifications of any public authority having jurisdiction over the Crossing and under conditions satisfactory to and approved by Railroad. Said construction and maintenance shall be performed at such times and in such manner as not to interfere with the movement of Railroad's trains.

4.8 During any maintenance, repair, reconstruction, relocation or removal under this Agreement, the City shall observe and abide by, and shall require its contractors ("Contractors") to observe and abide by the terms, conditions and provisions of this Agreement. City further agrees that, prior to the commencement of any such Crossing work by any third party Contractor, such Contractor shall execute and deliver to Railroad Exhibit B to this Agreement to acknowledge Contractor's agreement to observe and abide by the terms and conditions of this Agreement.

4.9 In the event City fails, in the judgment of Railroad, to comply with any maintenance, repair, reconstruction, relocation or removal requirement of this Agreement, Railroad, without waiving any other provision of this Agreement, may either furnish the labor and materials required to do such work, at the sole cost and expense of City, or terminate this Agreement in accordance with Article 12 hereof.

4.10 City shall be solely responsible for any relocation or protective encasement of any subsurface pipe or wire lines (telephone, electrical power transmission or distribution, fiber optic, cable television, water, sewer, gas or petroleum products, et al.) and for necessary relocation of surface structures or facilities (fences, towers, poles, etc.) incident to City's construction (or reconstruction) of the Crossing.

## **5. DRAINAGE:**

5.1 City shall not interfere with, or permit its Contractors to interfere with, the existing drainage facilities within the approachways or underneath said Crossing.

5.2 City shall furnish, install and maintain, at City's sole expense and in a manner satisfactory to Railroad, necessary drainage pipe within the approachways and underneath said Crossing, on each side of the track(s), to accept drainage from the roadbed and keep drainage from the track(s), structures and right-of- way of Railroad as necessary. Any such drainage facilities required as a part of the Crossing must be covered separately by Railroad's standard Facility Encroachment (drainage) Agreement.

## **6. PERMITS:**

6.1 Before any maintenance, reconstruction or removal hereunder is performed, or before use by City of the Crossing, City, at its sole cost and expense, shall obtain any necessary permits or licenses from all Federal, State or local public authorities having jurisdiction over the Crossing or Railroad's right-of-way and shall thereafter observe and comply with said licenses and permits, with the requirements of such public authorities, and with all applicable laws, rules and regulations and modifications thereof.

6.2 Railroad shall cooperate with City in securing and complying with any Federal, State or local permits relative to City's Crossing.

6.3 City shall, to the extent permitted by law, defend, protect and hold Railroad harmless for failure to obtain permits and licenses, for any violation thereof, or for costs or expenses of compliance or remediation.

**7. BARRICADES, GATES; SIGNALS: RESERVED.**

**8. OPERATIONAL SAFETY:**

8.1 City shall use and shall cause its agents, employees (family), servants, sublicensees and invitees to use the highest degree of care in the operation and use of said Crossing so as to avoid collisions and/or interference with operations of Railroad.

8.2 RESERVED.

**9. FLAGGING, CONSTRUCTION:**

9.1 If Railroad deems it advisable during any period of reconstruction, maintenance, repair, renewal, alteration, change, or removal of said Crossing, to place temporary watchmen, flaggers, inspectors or supervisors, for protection of operations of Railroad or others on Railroad's right-of-way at the Crossing, Railroad shall have the right to do so, at the expense of City, but Railroad shall not be liable for its failure to do so. Railroad may, at its discretion, require advance deposit(s) for estimated costs and expenses.

**10. EXPLOSIVES:**

10.1 In the reconstruction and/or maintenance of said Crossing, City shall not use explosives of any type or perform or cause any blasting without the separate express prior written consent of Railroad. In the event such consent is extended, a representative will be assigned by Railroad to monitor, and City shall reimburse Railroad for the entire cost and/or expense of furnishing said monitor.

10.2 Neither City nor City's contractor(s), agent(s) or employee(s), may transport, carry or haul any explosive, flammable, combustible or other hazardous or dangerous materials, goods or commodities across track(s) of Railroad without separate prior written consent of Railroad.

## **11. ALTERATIONS; TRACK CHANGES:**

11.1 Whenever any repairs or changes are made to Railroad's right-of-way or track, or if additional track(s) are laid at the site of the Crossing, necessitating repairs to, alteration of, or relocation of the Crossing, City shall pay for or shall furnish labor and materials to make such repairs to, alterations of, or relocation of the Crossing.

11.2 In the event that Railroad's operating and/or maintenance needs or uses require any change (including any raising, lowering, or additions to), relocation or improvement in its right-of-way, track(s), structures, roadbed, rail communication or other facilities (including fiber optic cable), which necessitate any change of location, height or depth of Crossing, City shall make such changes in Crossing and/or the grading, approaches or drainage, within thirty (30) days after notice in writing from Railroad, all at City's sole cost and expense, and upon plans and specifications approved by Railroad. It is the understanding of the parties that no operating or maintenance need or use is currently contemplated to occur in the next year which would require the City to move or change the Crossing.

11.3 If City desires to revise, relocate or change in all or any part of said Crossing, or if City is required to change or alter Crossing, drainage or approachways, plans therefor shall be submitted to Railroad for approval before any such change is made.

11.4 After change or alteration, the terms and conditions of this Agreement shall apply thereto.

## **12. TERM, TERMINATION, REMOVAL:**

12.1 This Agreement shall be and remain in effect unless terminated for (i) breach as provided in Section 16, (ii) in the event of impacts to safety or rail operations as determined by Railroad or (iii) \*City's cessation of use of the Crossing for the purpose permitted herein for a consecutive period of one hundred eighty (180) days, whichever shall first occur, by either party giving to the other thirty (30) days written notice of such termination.

12.2 Upon failure of City to perform or comply with any term, covenant, clause, or condition herein contained, this Agreement may be terminated immediately upon notice by Railroad. After such notice of breach, Railroad may barricade or otherwise block said Crossing until removed by City, at sole risk and expense of City.

12.3 Within thirty (30) days after termination of this Agreement, unless the parties hereto otherwise agree, said Crossing shall be removed, all approaches barricaded, and right-of-way of Railroad restored in a manner satisfactory to Railroad, all at the sole cost and expense of City.

12.4 If City fails to make removal as in Section 12.3, Railroad may remove same, by Railroad employee or contract forces, at City's sole risk, cost and expense.

12.5 All rights which City may have hereunder shall cease and end upon the termination date so specified; provided, however, that termination of this Agreement shall not in any manner affect any claims and liability which may have arisen or accrued hereunder prior to termination, and which, at the time of termination, have not been satisfied.

### **13. RAILROAD FORCE ACCOUNT COSTS:**

13.1 Railroad's expense for wages of Railroad's employees ("force account" charges) and materials for any work performed at the expense of City pursuant to this Agreement shall be paid by City within thirty (30) days after receipt of bill therefor.

13.2 Such expense shall include, but not be limited to: cost of labor and supervision under "force account" rules, plus current applicable overhead charges (traveling expense, Federal Railroad Retirement and Unemployment Taxes, vacation allowances); the actual cost of materials; and insurance and freight and handling charges on all material used. Equipment rentals, if any, shall be in accordance with Railroad fixed applicable rates.

### **14. RISK, LIABILITY, INDEMNITY:**

14.1 To the extent permitted by law, City, recognizing that Railroad's operations and any use of Railroad's property, tracks and right-of-way involves increased risks, expressly assumes all risk of loss and damage to, and waives any right to ask or demand damages for, Property of City, or any part thereof, at the Crossing, including loss of or interference with the use of service thereof, regardless of cause, including: (A) any fault, failure or negligence of Railroad in the construction, operation or maintenance of the Crossing or in rail operations on or over the Crossing; and/or (B) any fire, regardless of the source or origin thereof. For this Section, the term "Property of City" shall include property of third parties situated or placed upon Railroad's right-of-way by City or by such third parties at request of or for the sole benefit of City.

14.2 City, with the recognition above, and as further consideration for the grant of this crossing right, to the fullest extent permitted by State law (Constitutional or Statutory, as amended) also assumes all liability for, and releases and agrees to defend, indemnify, protect and save Railroad harmless from and against:

a. All loss of or damage to any other property, including property in the care, custody or control of Railroad and of third parties, now situated or which may be placed at the Crossing or adjacent thereto, and the loss of or interference with any use or services thereof; and

b. All loss and damage on account of injury to or death of any and all person (including but not limited to employees, agents, servants, tenants, patrons, and/or invitees of the parties hereto) on the Crossing; and

c. All claims and liability for such loss and damage and cost and expenses thereof; arising out of, resulting from, or connected in any manner with the construction, reconstruction, maintenance, existence, use, condition, repair, change, relocation or subsequent removal of said Crossing, any parts thereof or appurtenant structures, regardless of cause, even if occurring or

resulting from the sole or joint fault, failure or negligence of Railroad, including such loss, damage or injury: (i) caused in whole or in part by the fault, failure or negligence of Railroad; or (ii) caused in whole or in part by the fault, failure or negligence of City; or (iii) resulting from the creation of this license and additional hazards that this Crossing imposes upon Railroad's operations.

14.3 For the purposes of these Liability and Indemnity provisions only, all persons, including the employees of Railroad (flaggers, supervisors, etc.) and of City, or employees of any independent or subcontracting third parties engaged in any construction or maintenance activities at the Crossing, in any of the work described in this Agreement, shall be deemed to be the sole contractors of City while so engaged.

14.4 All obligations of City hereunder to release, indemnify and hold Railroad harmless shall also extend to officers, agents and employees of Railroad, and to companies and other legal entities that control, or are controlled by, subsidiaries of or are affiliated with Railroad, as well as any railroad that operates over the right-of-way on which the Crossing is located, and their respective officers, agents and employees.

14.5 City shall promptly (within thirty (30) days) advise Railroad in writing, by Certified Mail of any claims made against City and/or Railroad, and/or its operating lessee, under this Agreement or from use of the Crossing.

14.6 Nothing contained in this section is intended to be, nor shall it be, a waiver of any defense, including that of sovereign immunity, City may have as to any third party.

## **15. INSURANCE:**

15.1 Prior to commencement of any use of the Crossing, City shall procure and shall maintain during the continuance of this Agreement, at its sole cost and expense, a policy of;

(i) Statutory Worker's Compensation and Employers Liability Insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00), which must contain a waiver of subrogation against Railroad and its Affiliates;

(ii) Commercial General Liability coverage (inclusive of contractual liability) with available limits of not less than FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00), and in combined single limits for bodily injury and property damage and covering the contractual liabilities assumed under this Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to Railroad, or its designee, prior to cancellation or modification of any policy.

(iii) Automobile liability insurance with available limits of not less than ONE MILLION AND 00/100 U.S. DOLLARS (\$1,000,000.00) combined single limit for bodily injury and/or property damage per occurrence;

(iv) Such other insurance as Railroad may reasonably require.



15.2 If City's existing CGL policy(ies) do(es) not automatically cover City's contractual liability during the use of the Crossing, a specific endorsement adding such coverage shall be purchased by City. If said CGL policy is written on a "claims made" basis instead of a "per occurrence" basis, City shall arrange for adequate time for reporting losses. Failure to do so shall be at City's sole risk.

15.3 Railroad, or its designee, may at any time request evidence of insurance purchased by City to comply with this Agreement. Failure of City to comply with Railroad's request shall be considered a default by City.

15.4 Securing such insurance shall not limit City's liability under this Agreement, but shall be security therefor.

15.5 In the event City finds it necessary to perform construction or demolition operations within fifty feet (50') of any operated railroad track(s) or affecting any railroad bridge, trestle, tunnel, track(s), roadbed, overpass or underpass, City shall: (a) notify Railroad; and (b) require its contractor(s) performing such operations to procure and maintain during the period of construction or demolition operations, at no cost to Railroad, Railroad Protective Liability (RPL) Insurance, naming Railroad, and/or its designee, as Named Insured, written on the current ISO/RIMA Form (ISO Form No. CG 00 35 01 96) with limits of FIVE MILLION AND 00/100 U.S. DOLLARS (\$5,000,000.00) per occurrence for bodily injury and property damage, with at least TEN MILLION AND 00/100 U.S. DOLLARS (\$10,000,000.00) aggregate limit per annual policy period, with Pollution Exclusion Amendment (ISO CG 28 31 11 85) if an older ISO Form CG 00 35 is used. The original of such RPL policy shall be sent to and approved by Railroad prior to commencement of such construction or demolition. Railroad reserves the right to demand higher limits.

15.6 Notwithstanding the provisions of Sections 15.1, 15.2 and 15.5, City, pursuant to State Statute(s), may self-insure or self-assume, in any amount(s), any contracted liability arising under this Agreement, under a funded program of self-insurance, which fund will respond to liability of City imposed by and in accordance with the procedures established by law.

## **16. BREACH, WAIVER:**

16.1 Any waiver by either party at any time of its rights as to anything herein contained shall not be construed as a permanent waiver of such covenant or condition, or any subsequent breach thereof, unless such covenant or breach is waived in writing by said party.

16.2 Neither the failure of Railroad to object to any work done, material used, or method of construction or maintenance of said Crossing, nor any approval given or supervision exercised by Railroad, shall be construed as an admission of liability or responsibility by Railroad, or as a waiver by Railroad of any of the obligations, liability and/or responsibility of City.

16.3 The proper and complete performance of the terms and conditions of this Agreement shall be deemed of the essence thereof, and in the event City fails or refuses to fully and completely perform as provided herein or remedy any breach within thirty (30) days after receiving written notice from Railroad to do so (or within forty-eight (48) hours in the event of notice of a railroad emergency), Railroad shall have the option of immediately terminating this Agreement and the privileges and powers hereby conferred, regardless of Fees having been paid in advance for any annual or other period. Upon such termination, City shall make removal in accordance with Article 12.

**17. NOTICE(S):**

17.1 Before doing any work on Railroad's right-of-way, City shall give Railroad's Division Engineer, at least thirty (30) days' written notice, except that in cases of emergency repairs shorter notice may be given. The rail operations emergency phone number for Railroad is: 1-800-722-9091. The emergency phone number for City is: 1-\_\_\_\_\_.

17.2 All other notices and communications concerning this Agreement shall be addressed to City at the address above, and to Railroad at the address shown on Page 1, c/o Railroad Real Estate; or at such other address as either party may designate in writing to the other.

17.3 Unless otherwise expressly stated herein, all such notices shall be in writing and sent via Certified or Registered Mail, Return Receipt Requested, or by courier, and shall be effective upon (a) actual receipt or (b) addressee's refusal of delivery.

**18. TITLE:**

18.1 City understands that Railroad occupies, uses and possesses lands, rights-of-way and rail corridors under all forms and qualities of ownership rights or facts, from full fee simple absolute to bare occupation. Accordingly, nothing in this Agreement shall act as or be deemed to act as any warranty, guaranty or representation of the quality of Railroad's title for any particular Right-of-Way in Crossing(s) occupied, used or enjoyed in any manner by City under any rights created in this Agreement. It is expressly understood that Railroad does not warrant title to any Right-of-Way in Crossing(s), and City will accept the grants and privileges contained herein, subject to all lawful outstanding existing liens, mortgages and superior rights in and to the Right-of-Way, and all leases, licenses and easements or other interests previously granted to others herein.

18.2 The term "license," as used herein, shall mean with regard to any portion of the Right-of-Way which is owned by Railroad in fee simple absolute, or where the applicable law of the State where the Crossing is located otherwise permits Railroad to make such grants to City, a "permission to use" the Right-of-Way, with dominion and control over such portion of the Right-of-Way remaining with Railroad, and no interest in or exclusive right to possess being otherwise granted to City. With regard to any other portion of Right-of-Way occupied, used or controlled by Railroad under any other facts or rights, Railroad merely waives its exclusive right to occupy the Right-of-Way and grants no other rights whatsoever under this Agreement, such waiver continuing only so long as Railroad continues its own occupation, use or control. Railroad does

not warrant or guarantee that the license granted hereunder provides City with all of the rights necessary to occupy any portion of the Right-of-Way. City further acknowledges that it does not have the right to occupy any portion of the Right-of-Way held by Railroad in less than fee simple absolute without also receiving the consent of the owner(s) of the fee simple absolute estate. Further, City shall not obtain, exercise or claim any interest in the Right-of-Way that would impair Railroad's existing rights therein.

18.3 City agrees it shall not have nor shall it make, and hereby completely and absolutely waives its right, to any claim against Railroads for damages on account of any deficiencies in title to the Right-of-Way in the event of failure or insufficiency of Railroad's title to any portion thereof arising from City's use or occupancy thereof.

18.4 City agrees, to the extent permitted by law, to fully and completely indemnify and defend all claims or litigation for slander of title, overburden of easement, or similar claims arising out of or based upon the construction or existence of the Crossing.

18.5 City shall not at any time own or claim any right, title or interest in or to Railroad's property occupied by the Crossings(s), nor shall the exercise of this Agreement for any length of time give rise to any right title or interest in License to said property other than the license herein created.

## **19. GENERAL PROVISIONS:**

19.1 Neither this Agreement nor any provision hereof or agreement or provision included herein by reference shall operate or be construed as being for the benefit of any third person.

19.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and the successors and assigns of Railroad, and the heirs, legal representatives, successors or assigns of City, as the case may be, but, this license is a personal privilege granted to City and therefore no assignment sublease or sublicense hereof or of any rights or obligations hereunder shall be valid for any purpose without the prior written consent of Railroad.

19.3 This Agreement contains the entire understanding between the parties hereto, and cannot be changed, altered, amended or modified, except by written instrument subsequently executed by the parties hereto.

19.4 Neither the form nor any language of this Agreement shall be interpreted or construed in favor of or against either party hereto.

19.5 This Agreement is executed under current interpretation of applicable Federal, State, County, Municipal or other local statute, ordinance or law. Each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status from each other separate division for the determination of legality, so that if any separate division is determined to be void, voidable, invalid or unenforceable for any reason,

such determination shall have no effect upon the validity or enforceability of each other separate division herein contained, or any other combination thereof.

19.6 If any amount due pursuant to the terms of this Agreement is not paid by the due date, it will be subject to Railroad's standard late charge and will also accrue interest at eighteen percent (18%) per annum, unless limited by local law, and then at the highest rate so permitted.

19.7 City agrees to reimburse Railroad for all reasonable costs (including attorney's fees) incurred by Railroad for collecting any amount due under the Agreement.

19.8 The provisions of this License are considered confidential and may not be disclosed to a third party without the consent of the other party(s), except: (a) as required by statute, regulation or court order, (b) to a parent, affiliate or subsidiary company, or (c) to an auditing firm or legal counsel that are agreeable to the confidentiality provisions.

*(Signature Page to Follow)*

IN WITNESS WHEREOF, the parties hereto have executed all originals of this Agreement, each of which shall be evidence of this Agreement but which shall constitute but one agreement, as of the effective date of this Agreement.

**Witness:**

\_\_\_\_\_

**R. J. CORMAN RAILROAD COMPANY/  
CENTRAL KENTUCKY LINE**

By: \_\_\_\_\_

Print/Type  
Name: \_\_\_\_\_

Print/Type  
Title: \_\_\_\_\_

**Witness:**

\_\_\_\_\_

**LEXINGTON FAYETTE URBAN COUNTY  
GOVERNMENT**

By: \_\_\_\_\_

Print/Type  
Name: \_\_\_\_\_

Print/Type  
Title: \_\_\_\_\_

EXHIBIT A

Final Approved Pedestrian Crossing Plans

EXHIBIT B

ENTRY PERMIT

RJ \_\_\_\_\_

This agreement, made as of \_\_\_\_\_, by and between the R.J. Corman Railroad Company/Central Kentucky Lines, hereafter referred to as "Railroad" whose mailing address is P.O. Box 788, Nicholasville, Kentucky 40340, and \_\_\_\_\_, hereafter referred to as "Company" whose mailing address is \_\_\_\_\_.

The Railroad agrees to allow Company to enter its property at or near city of \_\_\_\_\_, county of \_\_\_\_\_, state of \_\_\_\_\_ near mile post \_\_\_\_\_ at \_\_\_\_\_ for the purpose of \_\_\_\_\_. Company has permission to enter the railroad property but is not to cross the track(s) with any equipment without first notifying the Railroad of its intent to do so. The Railroad may elect to have a representative present should any equipment need to cross the track. Should the Railroad incur any costs or suffer services interruption associated with Company's entry, all costs will be reimbursed by Company to Railroad within 30 days.

In consideration for this access, Company agrees to the following:

1. Payment of \$\_\_\_\_\_ to be paid to R. J. Corman Railroad Company/\_\_\_\_\_ and returned with this signed agreement.
2. To obtain all necessary permits and licenses from any Federal, State, or local public authority at its sole cost and expense. Agrees to observe and comply with all applicable laws, regulations and codes governing work. Shall defend, protect, and hold railroad harmless for failure to do so.
1. To assume, and shall at all times hereafter release, indemnify, defend and save harmless from and against any and all liability, loss, claim, suit, damage, charge or expense which Railroad may suffer, sustain, incur or in any way be subjected to, on account of death or injury to any person whomsoever (including officers, agents, employees or invitees of Railroad), and for damage to or loss of or destruction of any property whatsoever, arising out of, resulting from, or in any way connected with the entry of Permittee and its employees, invitees, contractors and affiliates on Railroad property.
2. To provide certificate of **Railroad Protective Liability Insurance** with a limit of not less than TWO MILLION DOLLARS (\$2,000,000) Combined Single Limit per occurrence and SIX MILLION DOLLARS (\$6,000,000) aggregate, if working within fifty (50) feet of the railroad tracks. Railroad must be named as insured on certificate.
5. To provide certificate of **General Liability Insurance** with a coverage limit of not less than ONE MILLION DOLLARS (\$1,000,000.00) Combined Single Limit per occurrence. Railroad must be named as additional insured on certificate.
6. Permittee will be responsible for flagging costs of \$65.00 per hour with 1½ times the rate over 8 hours and 2 times the rate over 10 hours per day should flagging be needed. Flagging must be scheduled in advance with Railroad contact below.
7. Ditches and construction site must be left free of trash and debris. If you traverse our right of way to get to your job site, said right of way is to be left in the same condition as it was prior to entry.
8. Must be suitable dressed and wearing appropriate personal protective equipment such as, but not limited to, steel toed boots, hard hats, safety glasses and safety vest.

**SIGNATURE PAGE TO FOLLOW**

Witnessed by: \_\_\_\_\_ Company \_\_\_\_\_

\_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_

Witnessed by: \_\_\_\_\_ R.J. Corman Railroad Company/Central Kentucky Lines

\_\_\_\_\_ By: \_\_\_\_\_

Deborah J. Hawley

Title: Director - Contracts & Real Estate

**\*The Railroad must always be notified of the date you plan to enter the property.  
Failure to notify Railroad can result in STOP WORK.**

**Railroad Contact Information: Jimmy Overbey (859-537-1096)**

This Entry Permit expires on at completion of work.