



Real Estate Department

17641 S. Ashland Avenue  
Homewood, Illinois 60430

708-332-3514 (Fax)

**PEDESTRIAN CROSSING AGREEMENT**

License No. \_\_\_\_\_

THIS AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between

Wisconsin Central Ltd.:-  
17641 S. Ashland Avenue  
Homewood, IL 60430

and

City of Appleton, Wisconsin  
100 North Appleton Street  
Appleton, Wisconsin 54911

("RAILROAD")

("LICENSEE")

1. **LICENSEE.** In the event there is more than one LICENSEE, that term, wherever used in this Agreement, shall be interpreted in the plural and all rights and obligations of such named LICENSEES hereunder shall be joint and several.
2. **Grant of License.** The RAILROAD, for and in consideration of the payments and covenants hereinafter made and subject to the terms and conditions herein provided, agrees that a PEDESTRIAN GRADE CROSSING FOR A RECREATIONAL TRAIL ("Crossing"), may be constructed and, thereafter during the term hereof, maintained at the sole cost and expense of the LICENSEE, for LICENSEE's exclusive use and benefit, except as otherwise herein provided across the RAILROAD's right-of-way at \_\_\_\_\_ (Station), Mile Post \_\_\_\_\_, which location is outlined on the map dated \_\_\_\_\_, hereto attached, marked "Exhibit A" and described in Exhibit "B" and made a part hereof.
3. **Payments by the Licensee.**  
  
The LICENSEE agrees to pay an Annual License Fee of \$1.00, the receipt of which is acknowledged by Railroad, in advance of the execution of this Agreement.
4. **Construction and Maintenance, Repair and Renewal of Crossing.** The LICENSEE, at LICENSEE's sole cost and expense, shall install, maintain, repair and renew the Crossing. In the event the RAILROAD, at LICENSEE's request, undertakes to install, maintain, repair or renew the Crossing, the RAILROAD shall render bills to the LICENSEE for all costs and expenses incurred in installations, maintaining, repairing or renewing the Crossing, which LICENSEE agrees to, and shall, pay within thirty (30) days following receipt thereof. Said bills shall include the actual costs of labor and materials. Assignable costs, not capable of exact ascertainment, shall be added to those direct

costs in accordance with then current billing practices. All material used and all work performed hereunder by the LICENSEE or LICENSEE's contractor shall be of a quality acceptable to, and approved by, the RAILROAD's Chief Engineer. Subsequent maintenance of Crossing by LICENSEE shall be of a quality acceptable to the RAILROAD's Chief Engineer. Approvals required from the Railroad's Chief Engineer shall not be unreasonably withheld.

5. **Removal of Weeds and Other Vegetation.** The LICENSEE, at LICENSEE's sole cost and expense, shall keep the weeds, brush and other vegetation on each side of the Crossing cut and mowed to provide adequate visibility at the Crossing.
6. **Use of Crossing.** LICENSEE's use of the Crossing shall be limited to the following purposes, and for no other purpose whatsoever: as a part of LICENSEE's Recreational Trail for all forms of non-motorized recreational purposes. LICENSEE shall not allow or permit any motorized vehicles whatsoever.
7. **Licensee's Rights Subordinate to Railroad.** The LICENSEE's use of the Crossing shall at all times be subordinate to the rights of the RAILROAD and shall not in any way interfere with or impair the use of the right-of-way, tracks or other facilities of the RAILROAD or interfere with, obstruct or endanger railroad operations, whether such use or operation be that of the RAILROAD or any other railroad companies permitted by the RAILROAD to use the said right-of-way, tracks or facilities of the RAILROAD ("Other Users").
8. **Indemnification by Licensee.**

A. General:

The LICENSEE assumes all risk of, and agrees to protect, ~~defend~~, indemnify and save harmless the RAILROAD, and any other railroad or railroad companies permitted by the RAILROAD to use the right-of-way, tracks or facilities of the RAILROAD ("Other Users"), of and from any claim, liability, loss, cost or expense (including reasonable attorneys' fees) for:

- (a) loss of or damage to property by whomsoever owned including, but not limited to, the property of the LICENSEE, RAILROAD and Other Users, their respective employees, licensees and invitees; and
- (b) injury to or death of person or persons whomsoever including, but not limited to, the employees, licensees and invitees of the LICENSEE, RAILROAD and Other Users;

resulting from, arising out of, or in any way related to the installation, repair, maintenance, renewal or existence of the Crossing, including injury and resulting death or loss of or damage to property caused by or resulting in any way from any negligent act, negligent omission or strict liability of RAILROAD, its employees, directors, officers or agents, unless such injury, loss or damage is caused ~~solely~~ by the ~~gross~~-negligence or willful or wanton or reckless acts of the

RAILROAD. The liability of LICENSEE hereunder shall remain in full force and effect until such time as the Crossing is removed.

B. Environmental

LICENSEE shall comply with all applicable ordinances, rules, regulations, requirements and laws of any governmental authority having jurisdiction of environmental standards and conditions. If LICENSEE shall violate any such ordinance, rule, regulation, requirement or law, LICENSEE agrees to, and shall, protect, save harmless, defend and indemnify the RAILROAD from and against any and all penalties, fines, costs and expense (including reasonable attorneys' fees and costs of defense) imposed upon or incurred by RAILROAD caused by, arising out of, resulting from or in any way connected with such violation or violations. The liability of LICENSEE hereunder shall survive termination of this Agreement.

9. **Insurance.** Prior to implementation of this Agreement, the LICENSEE shall furnish the RAILROAD with a Certificate(s) of Insurance, from a company(ies) satisfactory to the RAILROAD, evidencing that the LICENSEE has obtained Comprehensive General Liability in an amount not less than \$5,000,000 combined single limit. In the event the policy(ies) is a Claims Made policy(ies), coverage shall include an aggregate of \$10,000,000. The policy(ies) must name Wisconsin Central Ltd., Attn: Real Estate, 17641 S. Ashland Ave., Homewood, IL 60430 as an Additional Insured and contain no exclusions related to: (1) doing business on, near or adjacent to railroad facilities.

Upon request LICENSEE shall deliver a certified, true and complete copy of the policy(ies). The above policy(ies) shall: (1) remain in full force and effect during the life of this Agreement and so long as the Crossing remains in place, whichever is later; (2) ~~shall provide for at least 10 days prior written notice to RAILROAD in the event the policy(ies) is cancelled or materially changed should any of the above policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions;~~ and (3) contain a waiver of right of subrogation.

It is understood that the aforesaid insurance is not intended to, and shall not, relieve the LICENSEE from, nor serve to limit, LICENSEE's liability under the provisions of Paragraph 8 above.

It is further understood and agreed that, so long as this Agreement shall remain in force or the Crossing shall remain, whichever shall be later, the RAILROAD shall have the right, from time to time, to revise the amount or form of insurance coverage provided herein as circumstances or changing economic conditions may require. The RAILROAD shall give the LICENSEE written notice of any such requested change at least sixty (60) days prior to the date of expiration of the then existing policy or policies, which notice constitutes an amendment to this Agreement and shall become a part hereof; and the LICENSEE agrees to, and shall, thereupon provide the RAILROAD with such revised policy or certificate therefor, as the case may be.

10. **Termination.** This Agreement constitutes and is a license only and:

- A. The RAILROAD shall have the right to forthwith terminate the same for any breach by the LICENSEE of any covenant herein contained, upon written notice to the LICENSEE. Such right shall be in addition to any other right at law or in equity arising by reason of such breach. The failure of the RAILROAD to terminate said license for any such breach shall not constitute a waiver of any other or future breach.
  - B. In addition, either the RAILROAD or the LICENSEE shall have the right, without cause, at any time hereafter to terminate this Agreement upon one hundred eighty (180) days prior written notice to the other.
11. **Termination - Removal of Crossing, Approaches, etc.** Upon termination of the rights, license and privileges herein granted, the LICENSEE, at the sole cost and expense of the LICENSEE, shall remove the Crossing at RAILROAD's discretion and restore the premises of the RAILROAD to its former condition. Upon failure of the LICENSEE to do so, the RAILROAD may perform such work and the LICENSEE shall promptly reimburse the RAILROAD therefor.
12. **Order for Additional Crossing Warning.** If by order of competent authority having jurisdiction, the RAILROAD is required to provide additional crossing warning at the Crossing, the cost thereof shall be borne by the LICENSEE, and shall be paid by the LICENSEE promptly upon receipt of a statement from the RAILROAD of the cost therefor.
13. **No Assignment.** The LICENSEE shall not assign this Agreement, or any rights granted hereby. Any assignment of this Agreement by the LICENSEE shall constitute a material breach of this Agreement and shall be null and void.
14. **Notices.** All notices herein provided for shall be deemed served if mailed, by registered or certified mail, return receipt requested, to the address of each of the parties as stated on page one (1) of this Agreement, or to such other address as either party shall notify the other, from time to time in writing.
15. **Miscellaneous.**
- A. If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but it shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
  - B. This Agreement may not be changed, altered or amended except in writing, signed by the RAILROAD and the LICENSEE.

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IN WITNESS WHEREOF, the RAILROAD and the LICENSEE have duly executed this Agreement as of the day and year first above written.

LICENSEE

RAILROAD

City of Appleton, Wisconsin

Wisconsin Central Ltd.

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

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

Print Name:

Print Name:

Title:

Title:

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