

CROSSING AGREEMENT
(MP 266.0)

This agreement is entered into this 8th day of October, 2009 by and between NORTH COAST RAILROAD AUTHORITY, a public agency (“NCRA”) and JACK NOBLE (“NOBLE”).

1. Premises. NCRA licenses to NOBLE use of NCRA real property located near Carlotta, the County of Humboldt, State of California as follows:

That certain property adjacent to the railroad track located at Mile Post 266.0 (E.S. 1306.45) traversing along the north side of the right of way approximately one mile to a point approximately 420 feet east of railroad Mile Post 265.0, together with a crossing at Mile Post 265.0, thence westerly approximately 3,000 feet to River Bar Road (E.P.S. 1226.40) as depicted in the attached Exhibit “A” (the “Premises”).

2. Term. The term of this Agreement shall commence on August 12, 2009 for a term of fifteen (15) years, unless sooner terminated as provided herein. However, either party may terminate this Agreement by giving thirty (30) days’ written notice of termination. NOBLE expressly waives any right he may have to receive benefits under federal and state Uniform Relocation Acts (United States Code § 7260, *et seq.*) as a result of NCRA’s use or possession of any portions of the Premises, or early termination of this Agreement. In the event of termination, all executory duties of each party shall survive termination.

3. Use.

- A. The Premises shall be used by NOBLE solely and exclusively for a private roadway to transport products from NOBLE’s appurtenant ranch. NOBLE shall not use the Premises for any other use without NCRA’s prior written consent, which consent may be withheld by NCRA for any reason.
- B. NOBLE shall be required to comply with the Contractor General Safety Requirements, Working Procedures attached as Exhibit “B” and incorporated herein by this reference.
- C. NOBLE at NOBLE’s sole expense shall arrange for filing of any map required under the Subdivision Map Act and of any costs incurred by NCRA in compliance with CEQA, or any other requirements imposed by any governmental body having jurisdiction in the matter.

D. NOBLE shall comply with all applicable laws, regulations, rules and orders with respect to NOBLE's use of the Premises and shall furnish satisfactory evidence of such compliance upon the request of NCRA.

4. Subordination. This Agreement is made subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Premises in effect as of the effective date of this Agreement and no covenants against the existence of any such impacts on title shall be deemed impliedly expressed.

5. Condition of Premises. NOBLE ~~leases~~ accepts the Premises subject to the license granted herein from NCRA on an "AS IS" basis and NOBLE acknowledges that NCRA has made no representations of any kind in connection with the Premises or their use and that NOBLE enters this Agreement based upon his own inspections and examinations and not upon any representations made by NCRA not expressly contained herein.

6. Rent. Fees.

A. Commencing on the effective operational date, NOBLE shall pay to NCRA for use of the Premises a one time license lease initiation fee of ONE THOUSAND, FIVE HUNDRED DOLLARS (\$1,500) ~~per month~~ and on each anniversary of the effective operational date FIVE HUNDRED DOLLARS (\$500), subject to the adjustment as provided herein below which shall be paid annually in advance to NCRA on the effective date anniversary of this Agreement

B. As Additional Rent License fee NCRA shall be paid twenty five fifteen cents (\$0.~~25~~ .15) per ton of material hauled over the Premises on the tenth (10th) day of January, April, July and September for the preceding quarter. It shall be deemed that all material removed from the appurtenant NOBLE property was hauled upon the Premises unless NOBLE provides advance written notice of a different intent for a specifically defined period.

C. NOBLE shall within sixty (60) days of ~~execution of this Agreement~~ the operational date deposit with NCRA the amount of TEN THOUSAND DOLLARS (\$10,000). ~~as a deposit against additional rent to be paid under this Section. This deposit shall be immediately available to NCRA for its unrestricted use, however, the deposit shall be returned to NOBLE in the event NOBLE is prevented from hauling material over the roadway which is the subject of this Agreement due to no fault of NOBLE, including, but not limited to breach by NCRA, act of God, or judicial or administrative intervention by third parties.~~ EIGHT THOUSAND DOLLARS (\$8,000.00) of said deposit shall be a deposit against the additional rent to be paid under this section. Should NOBLE, however, through no fault of his own, be prevented from removing enough material to generate a sufficient amount of additional license fees owed against which the full

deposit is credited and used, the balance of said deposit shall be returned to NOBLE. TWO THOUSAND DOLLARS (\$2,000.00) of said deposit shall be a security deposit to secure NOBLE'S obligation under this agreement and to surrender the premises in clean condition and in good repair upon termination of this agreement at which time said deposit shall be returned to NOBLE within thirty (30) days. NCRA may use and co-mingle the security deposit with other funds of NCRA with no interest to be paid on the deposit.

D. NOBLE shall provide NCRA on the tenth (10th) day of the first month of each quarter with a statement indicating the amount of material hauled over the Premises for the preceding quarter and the amount of Additional Rent due for such, together with a statement of certified weight tags in consecutive order specifying the tag number, gross weight, tare weight and net weight. In addition, NOBLE shall annually provide a copy of his annual reporting to the Department of Conservation of the amount extracted from NOBLE's appurtenant ranch property.

E. The operational date referenced herein shall be that date upon which NOBLE first transports product from NOBLE'S appurtenant ranch in conformance with paragraphs 3 and 8 of this agreement.

~~7. **Security Deposit.** NOBLE shall deposit with NCRA a security deposit in the amount of TWO THOUSAND DOLLARS (\$2,000) to secure NOBLE's obligation under this Agreement and to surrender the Premises in clean condition and good repair upon termination of this Agreement. NCRA may use and co-mingle the security deposit with other funds of NCRA with no interest to be paid on the deposit.~~

8.7. Notices. All notices, payments, or other communications by either party to the other under this Agreement shall be in writing and shall be deemed to have been given or made on the date of service if served personally or on the second business day after mailing if mailed to the party whom notice is given by first class mail, registered or certified, postage prepaid and properly addressed as follows:

To NCRA: North Coast Railroad Authority
419 Talmage Rd. Ste. M
Ukiah CA 95482
Attn: Executive Director

With a copy to: Christopher J. Neary
Attorney at Law
110 S. Main St. Ste. C
Willits CA 95490

To NOBLE: Jack Noble
 Van Duzen River Ranch
 PO Box 365
 Fortuna, Ca 95540

Either party may change its address by providing written notice to the other as provided herein.

9.8. Alterations. NOBLE may at its sole cost and expense complete the Alterations generally described in Exhibit C to this Agreement. Other than these improvements, NOBLE shall not make or suffer to be made any alterations, additions or improvements (collectively “Alterations”) in on or to the Premises without the prior written consent of NCRA, which consent shall not be unreasonably withheld or delayed. Any Alterations NOBLE is permitted to make shall be made at NOBLE’s sole cost and expense except as the parties may otherwise expressly agree in writing. Prior to commencement of construction of the Alterations, NOBLE shall deliver to NCRA, and obtain NCRA’s approval of, a detailed construction plan for the Alterations at least thirty (30) days prior to the intended date of commencement of construction, which approval shall not be unreasonably withheld or delayed. Prior to commencement of construction, NOBLE shall also obtain and deliver to NCRA copies of all city, county, and/or other regulatory permits required for construction of the Alterations. NOBLE shall also submit true copies of any amendments to said permits within ten (10) days of the issuance thereof. NOBLE shall keep the Premises ~~fee free~~ and clear of all liens of any kind. NOBLE shall give the NCRA at least ten (10) days’ prior written notice of commencement of any kind of work on Alterations, so that NCRA may post appropriate notices of non-responsibility, and NOBLE hereby grants permission to NCRA to enter onto Premises for that purpose. ~~NOBLE at its cost shall, upon request by NCRA, provide to NCRA a performance bond equal to 125% of the total estimated cost of any proposed Alterations prior to commencement of work thereon.~~ All work on Alterations shall be performed in a workman like manner and shall comply with all applicable governmental permits, laws, ordinances and regulations, including, but not limited to, any procedures promulgated by NCRA. All work on Alterations shall be completed by contractors licensed in the State of California which shall have in place prior to commencement of work the policies of insurance required of NOBLE as required by this Agreement, as evidenced by a certificate of insurance delivered to and approved by NCRA. NCRA shall have the right to enter onto the Premises and to inspect construction of the Alterations during construction. All Alterations and fixtures, whether temporary or permanent in character, made in or upon or added to the Premises by NOBLE shall be NCRA’s property at the end of the ~~Lease License~~ Term without compensation to NOBLE, subject to the provisions of this Agreement. Any alterations NOBLE makes is with the full knowledge of the risk of early termination.

10.9. Option to Renew. NOBLE may renew this Agreement for an additional fifteen (15) year term (“Renewal Term”) by giving written notice to NCRA of his election for such extension no earlier than one hundred eighty (180) days prior to the end of this Agreement, and no later than ninety (90) days prior to the end of this Agreement, provided NOBLE has complied with all the terms and conditions of this Agreement.

~~11.~~ 10. Maintenance and Repair. NOBLE shall keep the Premises, including any improvements located thereon, in safe condition and in good order, condition and repair at all times during the Lease License Term at NOBLE's sole cost and expense. NOBLE shall, at NOBLE's sole expense repair any area damaged by NOBLE, NOBLE's agents, employees and visitors. NOBLE acknowledges that NCRA is under no duty to repair or make improvements to the Premises for damages incurred by any and all means, including Acts of God. If NOBLE fails to perform NOBLE's obligations under this Section, NCRA may enter upon the Premises after ten (10) days' prior written notice to NOBLE (except in the case of an emergency, in which case no notice shall be required) and perform such obligations on NOBLE's behalf and expense as provided in this Agreement. At the end of the Lease License Term, NOBLE shall surrender the Premises to NCRA in the same condition as when received, ordinary wear and tear ~~accepted~~ excepted.

~~12.~~ 11. Liens. NOBLE shall not permit any mechanics' or material men's liens, stop orders or other liens (collectively, "Liens") to be filed against the Premises nor against the NOBLE's leasehold License interest therein by reason of such labor or materials furnished to the Premises at NOBLE's instance or request. If any such liens are filed against the Premises, NOBLE shall cause the same to be discharged of record either by payment of the claim or by posting and recording the bond contemplated by California Civil Code Section 3143, within twenty (20) days after demand by NCRA. NOBLE shall indemnify, hold harmless, and defend NCRA from and against any such liens.

~~14.~~ 12. Indemnification. Lessee shall indemnify, defend and hold harmless Lessor, the North Coast Railroad Authority, the successors and assigns of any of them, any railroad company operating on the premises, and their respective directors, officers, employees, agents, contractors (including but not limited to, any person that may be operating on Lessor's railroad tracks or providing Lessor services) and any other person acting on Lessor's behalf ("Indemnities") from all liabilities, penalties, losses, damages, costs, loss of rent, expenses, demands, causes of action, claims, penalties, losses, judgments (collectively, "Liabilities") arising out of or in connection with (a) the use, maintenance, occupation, alteration, or improvement of the Premises by Lessee, (b) any act, omission, or neglect of Lessee, Lessee's officers, employees, agents, servants, sub lessees, concessionaires, contractors or visitors, and/or (c) any breach or default by Lessee of any of the terms, covenants or conditions of this Lease; provided, however that with respect to any Liability under sub-sections (a) and/or (b) above, Lessee shall not be obligated to indemnify any Indemnities for any Liability caused by the negligence or willful misconduct of that Indemnities. The duty to defend established herein shall include payment of all reasonable legal costs and charges incurred by Indemnities. Except in the case of gross negligence, willful misconduct or pre-existing conditions of the premises, Lessee waives any and all rights to any type of express or implied indemnity against Lessor, its directors, officers or employees. The provisions of this Section shall survive the expiration or termination of this Lease.

15. 13. Environmental Compliance.

- ~~A.~~ ~~NOBLE represents that NOBLE has conducted a complete inspection of the Premises and, except as expressly noted herein, finds the Premises to be reasonably free from pollution-induced conditions.~~
- ~~B.~~ A. Without limiting any other provisions of this Agreement, NOBLE, at his expense, will at all times maintain and keep the Premises and all improvements and property now or hereafter erected or placed thereon, including but not limited to, the structures, equipment, and operations, in compliance with all federal, state, and local laws, rules and regulations designed to prevent or control the discharge of substances in the land, water, or air, and NOBLE agrees to indemnify, hold harmless and defend NCRA from and against any and all suits, actions, proceedings, fines, claims, or the cleanup, response, removal or remediation of any environmental condition arising from or alleged to arise from a Noble's use of the premises pursuant to this license which results in the alleged violation of any such environmental law, rule, or regulation, unless and except where such violation shall have been caused solely by the fault of NCRA.
- ~~C.~~ B. Without limiting any other provision of this Agreement, NCRA shall have the right to enter and inspect the Premises in order to determine whether NOBLE is complying with such laws, rules and regulations, but no such inspection or absence of inspection by NCRA shall be construed to relieve NOBLE of his obligations to comply with all such laws, rules, and regulations.
- ~~D.~~ C. In the event any cleanup, response, removal or remediation of any environmental condition is required by a governmental entity (hereinafter collectively referred to as "Response Action"), NOBLE shall not be entitled to any damages, actual or consequential, by reason of the Response Action's interference with NOBLE's use of the Premises. NOBLE shall not be entitled to an abatement in the ~~rent~~ license fees for any interference with NOBLE's use of the Premises due to a Response Action. NOBLE shall permit NCRA and its contractors full, unrestricted and unconditional access to the Premises for the purpose of completing or engaging in a Response Action for which NOBLE is responsible should NOBLE fail to diligently pursue and complete such Response Action to the satisfaction of NCRA. NCRA's completion of any of NOBLE's obligations hereunder shall not be deemed a waiver of NOBLE's obligations under this Agreement. NCRA shall have the right, but not the obligation, to conduct reasonable inspections of NOBLE's Response Action and NOBLE shall provide NCRA all information requested by NCRA regarding NOBLE's Response Action or any environmental condition for which NOBLE is responsible.

16. 14. Insurance.

- A. Policies of Insurance. NOBLE shall maintain in full force and effect during the term of this Agreement and any extension hereof, the following insurance:
- B. Workers Compensation. As required by Section 1860 of the California Labor Code (Chapter 1000, Statutes of 1965), or any subsequent amendments or successor acts thereto governing the liability of employers to their employees, NOBLE shall secure Workers' Compensation coverage with an Employer's Liability limit of \$2,000,000. NOBLE shall insure the procurement and maintenance of such insurance by all contractors or subcontractors engaged on the Premises.
- C. Commercial General Liability. NOBLE shall, at its own cost and expense, procure and maintain Commercial General Liability insurance. The policy shall include as additional insured the NCRA, the North Coast Railroad Authority, the successors and assigns of any of them, any railroad company operating on the Premises, and their respective directors, officers, employees, brokers and agents (collectively, "Insured"). The policy shall be primary and contain cross liability and severability of interest clauses.

The policy shall have a combined single limit of One Million Dollars for bodily injury and property damage per occurrence. This insurance shall include but not be limited to premises and operations; contractual liability covering the indemnity provisions contained in this Agreement; personal injury; explosion, collapse and underground coverage; products and completed operations and broad form property damage. The insurance shall include Automobile Bodily Injury and Property Damages Coverage including owned, hired and non-owned vehicles, on or off the Premises of NCRA.

If food or alcoholic beverages are to be served on the Premises, the policy shall include coverage of any claims founded upon the use of food or food products and liquor law liability with limits of not less than Two Million Dollars.

- D. Personal Property Insurance NOBLE shall obtain and maintain insurance coverage on all ~~of NOBLEs personal property, trade fixtures and~~ NOBLE owned alterations and utility installations associated therewith. Such insurance shall be full replacement cost coverage with a deductible not to exceed \$2,500 per occurrence. The proceeds from any such insurance shall be used by NOBLE for the replacement of ~~personal property, trade fixtures and~~ NOBLE owned alterations and utility installations.
- E. Railroad Protective Liability Insurance Upon request from NCRA, NOBLE shall obtain and maintain, with respect to the operations it or any subcontractors perform above the railroad tracks or within fifty (50) feet horizontally of the railroad tracks, Railroad Protective Liability Insurance with the Insurance Services Office (ISO)/Railroad

Insurance Management Association (RIMA) form with pollution coverage for job site fuels and lubricants. NCRA and any identified contract operator of NCRA shall be named as additional insured on said policy. The policy shall have limits of liability of not less than Two Million dollars (\$2,000,000) per occurrence, combined single limit, for losses arising out of injury to or death of all persons and for physical loss of or damage to or destruction of property, including the loss of use thereof.

F. Regulatory Compliance In addition to the requirements described above, NOBLE shall maintain any other insurance that may be required by law, statute or governmental regulations.

G. Evidence of Insurance Prior to entering onto the Premises, NOBLE shall file a Certificate(s) of Insurance with the NCRA evidencing the required coverage and endorsement(s) and upon request, a certified duplicate original of any of those policies. Said Insurance and Certificate(s) shall stipulate:

The insurance company(ies) issuing such policy(ies) shall give written notice to the NCRA of any material alteration, cancellation, non-renewal, or reduction in aggregate limits, if such limits apply, and provide at least thirty (30) days' notice of cancellation, and NOBLE shall, at least thirty (30) days prior to the expiration of such policies furnish NCRA evidence of renewal or insurance binders evidencing renewal or replacement thereof.

That the policy(ies) is Primary Insurance with respect to any policy of insurance maintained by any Insured, and the insurance company(ies) providing such policy(ies) shall be liable there under for the full amount of any loss or claim up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insured.

The policy(ies) shall also stipulate: Inclusion of the Insured as additional insured shall not in any way affect rights of Insured either as respects any claim, demand, suit, or judgment made, brought or recovered against NOBLE. Said policy shall protect NOBLE and the Insured in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance companies' liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been named as an insured.

The insurance policy(ies) shall be written by an insurance company or companies acceptable to the NCRA. Such insurance company shall be authorized to transact business in the State of California.

~~17.~~ 15. Noise Levels Near Railroad Tracks. NOBLE hereby recognizes and acknowledges that railroad tracks are located on or adjacent to the Premises, and that the operation of trains over the tracks does and shall produce noise levels, which may be considered objectionable by NOBLE or employees, agents, sublessees, or invitees of NOBLE. Therefore, NOBLE agrees that no legal action or complaint of any kind whatsoever shall be instituted against NCRA on NOBLE's behalf as a result of such noise levels including any claims of nuisance or trespass. NOBLE shall indemnify and save harmless NCRA against any loss, damage, liability or expense either might incur as a result of such action being taken by NOBLE's employees, agents, sublessees or invitees. PLEASE NOTE: as of the Effective Date of this agreement the rail is currently not used and no noise related to train operations is anticipated while this Agreement is in effect.

~~18.~~ 16. Reservations. NCRA hereby excepts and reserves the right, to be exercised by NCRA or by any other person who has obtained or may obtain permission or authority from NCRA, to (a) operate, maintain, review and relocate any and all existing pipe, track, power, signal and/or communication (including without limitation fiber optic) lines and appurtenances and other facilities of like character upon, over or under the surface of the Premises, and (b) construct, operate, maintain, review and relocate such additional facilities of the same character in a manner that does not reasonably interfere with NOBLE's use of the Premises.

~~19.~~ 17. Default. In the event of a breach or threatened breach by either party of any of the covenants, obligations or provisions hereof, the other party shall have the right to invoke any remedy allowed at law or in equity.

~~20.~~ 18. Indemnity from Procedural Challenge/Hold Harmless. NOBLE agrees to defend, indemnify and hold harmless NCRA from all costs and expenses, including reasonable attorney's fees, arising from any administrative or judicial CEQA challenge made by any third party, whether governmental or private party, to the execution of this Agreement and/or any uses by NOBLE of the Premises pursuant to the terms of this Agreement.

~~21.~~ 19. Attorneys' Fees. If either party brings any action against the other to enforce this Agreement, whether an action at law or in equity, the prevailing party shall be entitled to recover its costs, including reasonable attorney's fees in addition to any other remedies to which such party may be entitled.

~~22.~~ 20. Miscellaneous Provisions.

- A. Non Waiver. NCRA's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or of such provisions. Acceptance of **rent license fees** or any other sum shall not be a waiver of any preceding breach by NOBLE of any provision hereof, regardless of NCRA's knowledge or lack of knowledge of such preceding breach at the time of acceptance of such **rent fees**; nor shall such acceptance be a waiver in any way of

NCRA's right to terminate this agreement for any reason.

- B. Time of the Essence. Time is of the essence of each provision of this Agreement.
- C. Amendment. The parties may amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement.
- D. Merger. This agreement constitutes the final agreement between the parties. It is a complete and exclusive expression of the parties' agreement on the matters contained in this agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this agreement are expressly merged into and superceded by this agreement.
- E. California Law. This agreement shall be governed by and construed in accord with the laws of the State of California.
- F. Captions. All captions and headings in this agreement are for purposes of reference and convenience and shall not limit or expand the provisions in this agreement.
- G. Third Party Beneficiaries. This agreement is not intended to, nor may it be deemed to, create any rights and enforcement in any persons who are not signatories to this agreement.
- H. Counterparts. This agreement may be entered into in counterparts, each of which will be deemed an original, but both of which together shall be deemed a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first herein above written,

NORTH COAST RAILROAD
AUTHORITY

ALLAN HEMPHILL
Chairman of the Board of Directors

JACK NOBLE

Date:

Date:

Approved as to form:

CHRISTOPHER J. NEARY
General Counsel

Date: