

No. 9451

AGREEMENT No. 3366

25450

THIS AGREEMENT, Made and entered into in duplicate this First day of April, A. D. 1921, by and between A. R. BALDWIN as Receiver of the property of THE DENVER AND RIO GRANDE RAILROAD COMPANY, hereinafter called the "Licensor," of the first part, and WALTER F. ROACH, of Spanish Fork, Utah County, State of Utah, hereinafter called the "Licensee," of the second part,

WITNESSETH, That the Licensor, for and in consideration of the covenants and agreements of the Licensee herein contained and upon the terms and conditions hereinafter set forth, hereby licenses and permits the construction, maintenance and use of a private way across the right of way and track of the railroad as herein specified, to-wit:

A private wagon road extending at grade across the right of way and main track of the Tintic Branch of The Denver and Rio Grande Railroad at mile post 4 plus 3239 feet of said Branch, in the northwest 1/4 of the northwest 1/4 of Section 24, Township 8 South, Range 2 East, Salt Lake Base and Meridian, near Spanish Fork, Utah County, Utah, as shown on attached blue print.

This license is expressly conditioned upon the performance by the Licensee of all and singular, the covenants and agreements hereinafter set forth to be by said Licensee kept and performed, each of said covenants and agreements being hereby made a condition; and it is also hereby stipulated that a waiver by the Licensor of any breach of any condition shall in no way impair the right of the Licensor to avail himself of any subsequent breach of the same or any other condition.

PRIVATE WAY as and wherever said term is employed herein, shall mean a way for travel for pedestrians, vehicles, implements and livestock, and its use shall be limited to the Licensee, his family and his employes and servants, and said term shall include such grading, approaches, planking, ditches, drains, tiling, drain boxes, culverts, cattle guards, wing fences and fences, gates with

NOT LEGIBLE FOR MICROFILM

BOOK 2006 PAGE 758

proper hinges and latches, and such signals, bells, sign posts, signs and other safety devices as shall in the particular instance be required by the Licensor, or which may now or hereafter be prescribed and required by any law, State or Federal, or by any order of any officer or regulatory board, State or Federal, having jurisdiction over such matters.

1. If the Licensor shall elect to construct said private way or a portion thereof, and shall so notify the Licensee, the Licensee agrees to pay the Licensor, in advance, such sum of money estimated to be \$\_\_\_\_\_, as shall be necessary to construct such portion or all of said private way, including the cost of all necessary material and the transportation thereof and the cost of all labor and superintendence. If the Licensor shall elect not to construct said private way, the Licensee shall furnish material for and construct said private way at the sole cost and expense of the Licensee, in such manner and according to such plans as the Licensor may deem best for the safety and proper protection of the track, roadbed and premises of the Licensor. If the amount to be advanced by the Licensee as hereinbefore provided should be in excess of the amount required, the excess shall be returned to the Licensee; if such amount should not be sufficient to cover the expense of work done by the Licensor, the Licensee shall pay such additional amount to the Licensor or his successors on demand.

2. The Licensee shall, at the sole cost and expense of the Licensee, maintain, repair and reconstruct, whenever necessary and when required so to do by the Licensor or his successors, said private way and all its appurtenances in accordance with plans and in manner satisfactory to the Licensor or his successors; the Licensor or his successors, however, shall have the right, if he or they so elect, at any time, though he or they shall be under no obligation whatever to do so, to make necessary or proper repairs or to reconstruct said private way, notwithstanding the obligation of the Licensee to maintain,

repair and reconstruct, and in the event the Licensor or his successors at any time elect to repair or reconstruct said private way, the Licensee shall, upon presentation of estimates, advance such sum of money as the Licensor or his successors may deem necessary for such repair or reconstruction, or upon bill being rendered for work already done, the Licensee shall reimburse the Licensor or his successors for the cost of such repair or reconstruction. The optional right of the Licensor or his successors to make repairs or to reconstruct said private way, shall in no manner or degree relieve the Licensee from responsibility to the Licensor or his successors or to other persons or corporations for the failure of the Licensee to properly maintain or reconstruct said private way, or any structure which the Licensee agrees, as aforesaid to maintain or reconstruct.

3. If at any time after the installation of said private way, any law, State or Federal, or any officer or regulatory board or commission, State or Federal, having jurisdiction, shall require any alterations, changes or improvements of said private way and of its appurtenances, as herein defined, or any additional safeguards, protection, signals or warnings, the same shall be constructed, maintained and operated at the sole expense of the Licensee, as herein provided with respect to maintenance, repair, reconstruction, etc., in this paragraph.

4. The Licensee shall not enter upon the premises for the purpose of constructing said private way nor for the purpose of repairing or renewing the same, without special written license or permit first had and obtained from the Licensor, his successors, or his or their duly authorized agent, except in cases of emergency when work is necessary to avert loss or damage to property. All work of construction, maintenance, operation or reconstruction shall be done by the Licensee in such manner as to cause no interference with the constant, continuous and uninterrupted use of the tracks and property of the Licensor as to operation, maintenance, renewals or possible new construction by the Licensor or his successors.

5. This license shall not be deemed to give the Licensee exclusive possession of any part of the premises described, but the Licensor or his successors shall have unimpaired right to retain his or their track or tracks as now owned and operated at the place of construction of such private way, and nothing shall be done or suffered to be done by the Licensee at any time that shall in any manner impair the usefulness or safety of said track or tracks of the Licensor or of any track or improvement to be hereafter constructed. The Licensor and his successors shall have the right at any and all times hereafter to construct, maintain and operate such additional tracks, structures and improvements where said private way is to be constructed and across the same, as he or they may from time to time elect; and in case of any change at any time in the arrangement, construction or plan of the tracks of the Licensor or his successors, or in case of the construction of any buildings or improvements by the Licensor or his successors, said private way shall be altered or entirely removed by the Licensee at the sole cost and expense of the Licensee, in such manner as may be necessary to conform to the tracks, buildings or improvements of the Licensor or his successors as so changed, altered or improved, and if the Licensee shall fail to do any of the things in this paragraph enumerated, the Licensor or his successors may do or cause the same to be done at the cost of the Licensee.

6. The Licensee assumes the entire burden and duty of keeping the gates at said private way locked when not in use, and the sole duty and burden of preventing the use of said private way by any persons, firms or corporations, other than those mentioned herein for whose benefit said private way is licensed, and assumes all liability for damage to or destruction of property, injury to or the death of persons resulting from the use of said private way by persons other than those for whose benefit said private way is licensed, or resulting from the failure on the part of the Licensee to keep the gates closed and locked and the said private way and all of its appurtenances in safe condition.

7. The Licensee shall at all times protect, indemnify and save harmless the Licensor and his successors from any and all claims, demands, judgments, costs, expenses, and all damage of every kind and nature made, rendered or incurred by or in behalf of any person or corporation whatsoever, in any manner due to or arising out of any injury to or death of any person, or damage to property of any person or persons whomsoever, including the parties hereto and their families and employes, or in any manner arising from or growing out of the construction, maintenance, operation, repair, extension, renewal, existence, use or removal of said private way, or the failure to properly construct, operate, maintain, renew or remove the same, and from all costs and expenses, including attorney's fees connected in anywise with the matters and things contained in this agreement. Neither the right of supervision by the Licensor or his successors of the location, installation, operation and maintenance of said private way, nor the exercise or failure to exercise said right, nor the approval or failure to disapprove by the Licensor or his successors of the location, installation, operation and maintenance of said private way, nor the election of the Licensor or his successors to construct or reconstruct the whole or any part or to repair said private way, shall be deemed a waiver of the obligations of the Licensee contained in this paragraph or a release therefrom, or from any other obligation of this agreement resting upon said Licensee that is hereinbefore or hereinafter expressed or implied.

8. If the Licensee shall fail to locate, construct, operate, repair, extend, renew or remove said private way in accordance with the terms of this agreement and to the entire satisfaction of the Licensor or his successors, or shall fail to pay to the Licensor or his successors any sum of money for the construction, repair, extension, renewal or removal of said private way, or shall fail to adjust the said private way to any changes made by the Licensor or his successors, or shall in any respect fail to keep and perform any of the conditions, stipulations, covenants and provisions of this agreement to be kept

and performed by the said Licensee, this agreement shall, at the option of the Licensor or his successors, be void and of no effect; and this license shall cease and the Licensor or his successors shall have the right to remove said private way and restore the right of way and premises of the Licensor at any time thereafter at the sole expense of the Licensee. Any forfeiture hereunder may be claimed by the Licensor or his successors without notice to the Licensee. Any notice herein provided for shall be sufficiently given and delivered if mailed in an envelope properly stamped and addressed to the Licensee at the last known post office address, or if no post office address is known, at the post office nearest to the place where the said private way is located.

9. Nonuser of such private way for the purpose for which it was originally constructed, continuing at any time for the period of six months, shall constitute an abandonment of this license. Unless so abandoned and terminated, as hereinabove or hereinafter provided, this license and agreement shall remain in full force and effect until terminated by written notice given by the Licensor or his successors not less than sixty days in advance of the date of such termination; but it is understood that if at any time the maintenance and operation of said private way shall be inconsistent with the use by the Licensor or his successors of the right of way for railroad purposes, this license shall immediately cease ipso facto.

10. The covenants, stipulations and conditions of this agreement shall extend to and be binding upon the Licensee and the heirs, administrators, executors, successors and assigns of the Licensee (as the context may admit), and the term "Licensee" used herein shall be held to include such persons, copartnerships or corporations as are mentioned in the title hereof as of the second part. The Licensee shall not assign this license or any interest therein directly or indirectly, nor incur the same without the written consent of the Licensor or his successors first had and obtained.

11. Notwithstanding anything elsewhere herein contained, it is expressly understood and agreed that this instrument may be cancelled and annulled at any time by said Receiver (party of the first part herein), or if the Receivership be terminated during the life of this agreement then by the person or corporation in whom the title to or possession of said property is then vested. In any event this agreement shall not be binding upon the Receiver after his discharge as such, or upon him in his personal capacity.

By the term "successors" to said Receiver as herein used, is meant the person or corporation in whom the title to and possession of the railroads now the property of The Denver and Rio Grande Railroad Company may from time to time be vested upon and after the termination of the existing receivership.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first hereinabove written.

*A. Baldwin*  
As Receiver of the property of  
THE DENVER AND RIO GRANDE RAILROAD COMPANY.

Witness:

*A. Garrison*

*Walter S. Broach*  
Licensee.

APPROVED:

*J. A. Russee*  
General Manager.

Form Approved
<i>E. A. Schottor</i>
Execution Approved
<i>E. A. Schottor</i>
General Schottor.

*W. H. ...*  
Asst. General Manager

*E. P. ...*  
General Auditor  
(RCK:N 4/26/21)

*J. H. ...*  
Gen'l. Superintendent

*...*  
Superintendent

RECORDED AT THE REQUEST OF  
1982 OCT 14 AM 9:24  
NINA B. HEID  
UTAH COUNTY RECORDER  
DEPUTY  
PR. ABS. IND.

*Walter S. Broach*  
Licensee

25450

Chief Engineer

NOT LEGIBLE FOR MICROFILM

BOOK 2006 PAGE 764

Chief Draftsman  
Checked and initialed

TRAIL BRANCH D.S.R.  
10714

NOT LEGIBLE FOR MICROFILM

BOOK 2006 PAGE 765

25450

