

LEASE

To Operate LIRR G5s Steam Locomotive 39

by and between the
RAILROAD MUSEUM
of **LONG ISLAND**



and the
STRASBURG RAIL ROAD
COMPANY



INTRODUCTION/PREAMBLE

EXHIBIT A

THIS LEASE is entered into to define the successful operation of Pennsylvania Class G5s LIRR Steam Locomotive road number 39, (hereinafter referred to as the "**LOCOMOTIVE**"), between "the parties:" the Railroad Museum of Long Island, (hereinafter referred to as the "**RMLI**"), a New York State Recognized Museum with offices at 440 – 4th Street, P.O. Box 726, Greenport, NY 11944-0726 and the Strasburg Rail Road Company, (hereinafter referred to as the "**SRC**"), a private tourist railroad and shop facility with offices at PA Route 741, P.O. Box 96, Strasburg, PA 17578-0096.

THIS LEASE is the result of collective negotiations, September 26, 2012 through February 28, 2013, between the **RMLI** and the **SRC**, and may be changed only through mutual consent, in writing, by the **RMLI** and the **SRC**. To the extent that any matters are not otherwise covered by this agreement the **RMLI** and the **SRC** shall communicate, meet and negotiate a mutually acceptable agreement to the matter at hand.

THE LEASE

- 1.** The **RMLI** hereby leases to the **SRC** and the **SRC** hereby accepts the **LOCOMOTIVE**, on the effective date set forth at the end hereof.
- 2.** The **SRC** acknowledges that the **LOCOMOTIVE** is the property of the **RMLI** and shall remain the property of the **RMLI** throughout the term of **THE LEASE** and beyond.
- 3.** The **SRC** represents to the **RMLI** that it is fully familiar with the condition of the **LOCOMOTIVE**. **THE RMLI MAKES NO WARRANTY EXPRESS OR IMPLIED AS TO ANY MATTER WHATSOEVER INCLUDING THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR A PARTICULAR PURPOSE. THE SRC TAKES THE LOCOMOTIVE "AS IS"**.
- 4. TERM:** **THIS LEASE** shall be for a term of _____ years unless otherwise terminated in accordance with the provisions of this agreement.

5. **RENT:** the **SRC** agrees to pay the **RMLI** \$1.00 for each year of the lease as specified in paragraph 4. **TERM.** The full sum of the rent shall be paid to the **RMLI** at the time of lease signing.

6. **RETURN:**

- a) Upon the termination of this **LEASE**, the **LOCOMOTIVE** will be returned to the operation and control of the **RMLI**.
- b) The **LOCOMOTIVE** will be returned to the **RMLI**, in good working order with at least three hundred (300) "service days" remaining on the boiler tubes, in compliance with all then current FRA or other regulations applicable to the maintenance of the **LOCOMOTIVE**
- c) The **LOCOMOTIVE** will be delivered at an interchange point between **SRC** and a common carrier railroad at the **SRC's** sole cost and expense.
- d) Upon the failure of the **SRC** to return the **LOCOMOTIVE** to **RMLI** within a reasonable time, the **RMLI** or its representative is authorized to enter onto the property of the **SRC** and take control of the **LOCOMOTIVE**.

7. **USE OF THE LOCOMOTIVE:**

- a) The **SRC** shall have the exclusive right to operate the **LOCOMOTIVE** on its property for the length of **THE LEASE**. The **LOCOMOTIVE** shall not be moved off the property of **SRC** for any reason or purpose without the written consent of the **RMLI**. During **THE LEASE**, the **RMLI** and the **SRC** agree to communicate, meet and mutually agree to any movement of the **LOCOMOTIVE** off **SRC** property for any reason or purpose.
- b) The **LOCOMOTIVE** is leased to the **SRC** on a "net" basis, i.e., the **SRC** is responsible for all maintenance and repair to the **LOCOMOTIVE** during the term of **THIS LEASE** in accordance with the FRA Regulations. The **SRC** shall use the **LOCOMOTIVE** only in the manner for which designed and intended and so as to subject it only to ordinary wear and tear. The **SRC** will, at its sole expense, perform all repair and maintenance work, servicing, cosmetic care, lubrication, and inspection of the **LOCOMOTIVE** in accordance with FRA regulations and sound operating practices. The **SRC** agrees to perform all periodic FRA required tests and inspections to maintain necessary certifications for operation of the **LOCOMOTIVE** during the term of **THE LEASE**.

- c) During the term of **THE LEASE**, the **SRC** agrees to paint and letter the **LOCOMOTIVE** in the historic style of the Long Island Rail Road and with the road number 39. Occasionally it may be desirable to put the **LOCOMOTIVE** in another railroad's lettering and temporarily change the road number. When those occasions arise, the **RMLI** and the **SRC** shall communicate, meet and agree to a mutually acceptable period of time the locomotive will be out of Long Island livery.
- d) At all times herein the **LOCOMOTIVE** shall have the legend "Property of the Railroad Museum of Long Island" displayed in lettering of not less than 1 inch in height in contrasting color in clear view on the bottom of the cab on both sides of the **LOCOMOTIVE** and on the rear of the **LOCOMOTIVE** tender. The **SRC** shall also display this legend in type size equal to the surrounding text, on all written or electronic communication that contains images or reference to the **LOCOMOTIVE**.
- e) The **SRC** shall provide the **RMLI** in January of each year with a written report on the operation, maintenance and repairs to the **LOCOMOTIVE** during the prior year.
- f) The **RMLI** or its designee may inspect the **LOCOMOTIVE** once each year to determine that it is being operated and maintained in accordance with this agreement.
- g) The **SRC** shall immediately give the **RMLI** notice of any damage, other than normal wear and tear, failure or destruction of the **LOCOMOTIVE**.

8. INDEMNITY:

- a) The **SRC** shall indemnify and hold the **RMLI** harmless from and against any and all loss, cost, claim, expense or liability (including but not limited to counsel fees and expenses) which the **RMLI** may incur by reason of **THIS LEASE**, the **RMLI**'s ownership of, or arising from the use, operation, condition, delivery, rejection, storage, return of the **LOCOMOTIVE** or any accident, personal injury, death or property damage involving the **LOCOMOTIVE**, until such **LOCOMOTIVE** is returned to the **RMLI** in accordance with the terms of **THIS LEASE**, regardless of whether negligence on the part of the **RMLI** may have caused or contributed to said loss of life, personal injury or property loss or damage except to the extent caused directly by the gross negligence of the **RMLI** or the willful and wanton conduct of the **RMLI**. The indemnities in this Section shall survive payment or performance of all other obligations under **THIS LEASE** or the termination of **THIS LEASE**.

- b) IN NO EVENT SHALL THE **RMLI** HAVE ANY LIABILITY TO THE **SRC** UNDER ANY THEORY OF LAW, WHETHER IN CONTRACT, TORT OR OTHERWISE, FOR SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR OTHER SUCH DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, BUSINESS INTERRUPTION EXPENSES AND COST OF CAPITAL.

9. TAXES:

The **SRC** shall reimburse the **RMLI** for (or pay directly, but only if instructed by the **RMLI**) all taxes, fees, imposts or other governmental charges, together with any penalties, fines, additions to tax and interest thereon (collectively, "*Taxes*" and, individually, a "*Tax*") that may be imposed by any state or local government or other non-Federal taxing authority in the United States or by any foreign government or taxing authority on the **LOCOMOTIVE**, its ownership, delivery, possession, operation, rental or return to the **RMLI**; provided, however, that the **SRC** shall not be liable for any such Taxes

- (1) based on, or measured by, or imposed with respect to, the **RMLI**'s net or gross income, net or gross receipts, minimum tax or items of tax preference, franchise or privilege of doing business, capital or net worth or value added to the extent such value added taxes are in lieu of a tax based on, or measured by, or imposed with respect to, net or gross income, net or gross receipts, minimum tax or items of tax preference, franchise or privilege of doing business, or capital or net worth;
- (2) which are being contested during the pendency of such context;
- (3) resulting from the **RMLI**'s gross negligence or willful misconduct;
- (4) arising from any act, event or omission occurring after termination of **THE LEASE** or the return of the **LOCOMOTIVE**;
- (5) imposed by a governmental authority as a result of the **RMLI**'s activities within the jurisdiction of such authority unrelated to **THE LEASE**;
- (6) incurred by reason of any transfer by the **RMLI** of the **LOCOMOTIVE** or any part thereof or any interest arising under **THE LEASE** (including any deemed transfer under section 338 of the Internal Revenue Code of 1986, as amended);
- (7) to the extent of the excess of such Taxes over the amount of such Taxes that would have been imposed had there not been a transfer by the **RMLI** of an interest arising under **THE LEASE**; and

- (8) to the extent such Taxes are in substitution for any of the Taxes described in the preceding clauses (1) through (7). If the **SRC** is required by law or administrative practice to make any report or return with respect to such Taxes, the **SRC** shall promptly advise the **RMLI** thereof in writing and shall cooperate with the **RMLI** to ensure that such reports are properly filed and accurately reflect the **RMLI's** interest in the **LOCOMOTIVE**. If the **RMLI** receives notice of a claim for Taxes from any taxing authority that could result in an indemnity hereunder, the **RMLI** shall promptly give notice of such claim to the **SRC**. If so requested by the **SRC**, the **RMLI** shall, at the **SRC's** sole expense, cooperate fully with the **SRC** in contesting any claim for Taxes, provided that the **RMLI** shall have received an indemnity satisfactory to the **RMLI** for any liability, expense or loss arising out of or relating to such contest. The **SRC** shall not be obligated to pay any Tax which it is required to indemnify hereunder so long as such contest is pending unless payment is a precondition to such contest or is necessary to protect the **RMLI's** interest in the **LOCOMOTIVE** in which event the **SRC** shall advance the amount of such Tax to the **RMLI** as an interest-free loan until such contest is resolved. If the **RMLI** shall obtain a repayment of any Tax indemnified by the **SRC** hereunder, the **RMLI** shall promptly pay to the **SRC** the amount of such repayment together with any interest received by the **RMLI** thereon plus the benefit of any tax savings resulting from such repayment to the **SRC**.

10. **INSURANCE:**

- a) The **SRC** agrees to maintain a liability insurance policy of not less than two million dollars (\$2,000,000.00), adjusted every five years to the cost of living based on the Consumer Price Index - All Urban Consumers, "Northeast Urban," to protect against injury and property damage caused from the operation of the locomotive. The policy shall name the **RMLI** as additional insured to hold the **RMLI** harmless and indemnify the **RMLI** from exposure. Annually, a "certificate of insurance" shall be provided to the **RMLI** to show proof of insurance.
- b) The **SRC** agrees to maintain a comprehensive insurance policy of not less than two million dollars (\$2,000,000.00), adjusted every five years to the cost of living based on the Consumer Price Index - All Urban Consumers, "Northeast Urban," to protect the **LOCOMOTIVE** in case of physical damage, damage beyond repair or destruction. It is agreed that because of the unique nature of the **LOCOMOTIVE**, the value of the **LOCOMOTIVE** for insurance purposes is \$2,000,000.00, adjusted every five years to the cost of living based on the Consumer Price Index - All Urban Consumers, "Northeast Urban." Annually, a "certificate of insurance" shall be provided to the **RMLI** to show proof of insurance.

- c) If the **LOCOMOTIVE** is damaged beyond repair or destroyed during the **FIRST YEAR** of **THIS LEASE**, the **SRC** shall file a claim for the insurance and upon receipt of the payment, immediately turn fifty percent (50%) of the proceeds over to the **RMLI**. During the balance of **THE LEASE**, if the **LOCOMOTIVE** is damaged beyond repair or destroyed the **SRC** shall file a claim for the insurance and upon receipt of the payment, immediately turn a prorated amount of fifty percent (50%) of the proceeds, PLUS 1/ _____ of the remaining proceeds per year-of-lease-expired, over to the **RMLI**.

11. LIENS:

The **SRC** will not directly or indirectly create, incur, assume or suffer to exist any lien on or with respect to the **LOCOMOTIVE** or any part thereof, the **RMLI**'s title thereto, or any interest therein.

12. DEFAULT:

- a) The **RMLI** must provide the **SRC** with notice and opportunity to correct any alleged default, other than a default in payment of rent, before an event of default may be declared by the **RMLI**. Twenty (20) days' notice shall be given prior to any such declaration. If the alleged default is not corrected to the **RMLI**'s reasonable satisfaction within the aforementioned time period, the **RMLI** may declare an event of default. In that event, the **SRC** shall, at its expense, return the **LOCOMOTIVE** as provided for herein. The **RMLI** shall be entitled in addition to pursue any remedy it may have at law or in equity to recover the full amount of its damages from the **SRC** resulting from the **SRC**'s default including all costs, expenses and reasonable attorneys' fees
- b) The following shall be events of DEFAULT:
- (1) The unauthorized assignment or transfer by the **SRC** of **THIS LEASE** or of possession of the **LOCOMOTIVE**, or any part thereof.
 - (2) The failure of the **SRC** to observe or perform any of the covenants, conditions or agreements contained herein and such default shall continue for thirty (30) days after written notice from the **RMLI** to the **SRC** specifying the default and demanding the same to be cured.
 - (3) Any bankruptcy proceedings or assignment for the benefit of creditors shall be commenced by or against the **SRC**.

- (4) Any material representation made by the **SRC** to the **RMLI** shall prove to be false or materially incorrect on the date it was made.

13. ASSIGNMENT:

- a) The **RMLI** has entered into **THIS LEASE** with the **SRC** because of **SRC**'s unique skills and capabilities in the operation and maintenance of steam locomotives. **THE SRC MAY NOT ASSIGN THIS LEASE OR SUBLEASE THE LOCOMOTIVE WITHOUT THE PRIOR WRITTEN CONSENT OF THE RMLI.** Any purported assignment or sublease in violation hereof shall be void. In the event the **SRC** shall cease its normal operations, dissolve, merge or be sold to another entity, **THIS LEASE** shall terminate and the **LOCOMOTIVE** shall be returned to the **RMLI** as provided for herein,
- b) **THIS LEASE** shall not be assignable by **RMLI** except as part of a plan of dissolution. In this event, **RMLI** shall have the right to assign **THIS LEASE** to another entity by giving written notice to **SRC**. As an asset of the **RMLI**, as a New York State Chartered MUSEUM, the **RMLI** is subject to the laws and rules of the Education Department of the State of New York. In the event **RMLI** ceases operations and **SRC** is not given notice of its successor in interest, **SRC** shall send all further communications to the Charities Bureau of Attorney General of the State of New York and the Education Department of the State of New York at the addresses designated by such departments

14. NOTICES:

All notices shall be in writing and given by certified or registered mail or overnight express carrier at the addresses shown below or such other address as the parties may designate in writing;:

The **RMLI**: 440 – 4th Street, P.O. Box 726, Greenport, NY 11944-0726

The **SRC**: PA Route 741, P.O. Box 96, Strasburg, PA 17579-0096.

15. QUIET ENJOYMENT:

So long as an event of default has not occurred, the **SRC** shall be entitled to the quiet enjoyment, use and possession of the **LOCOMOTIVE**.

16. LAW GOVERNING:

THIS LEASE shall be governed by the laws of the State of New York.

17. ENTIRE UNDERSTANDING:

THIS LEASE represents the entire understanding of the parties and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of **THIS LEASE** and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized signatories for the **RMLI** and the **SRC**.

SIGNATORIES

THIS LEASE shall become effective on _____, and terminate on _____.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this _____ day of _____, _____.

For the RAILROAD MUSEUM of LONG ISLAND,

_____, President

_____, Vice President

For the STRASBURG RAIL ROAD COMPANY,

_____, President