

STIPULATION OF SETTLEMENT AND RELEASE

This Stipulation of Settlement and Release (“the Agreement”) dated as of April 19, 2016, is entered into by and among the Catskill Mountain Railroad Company, Inc. (hereinafter referred to as “CMRR”) and the County of Ulster (hereinafter referred to as “the County”) or (collectively referred to herein as “the Parties”).

WHEREAS, disputes and differences have arisen between the Parties as reflected in the claims, counterclaims, and defenses asserted in an action commenced in the Supreme Court of the State of New York, County of Ulster, Index No. 13-2352, entitled “Catskill Mountain Railroad Company, Inc. v. County of Ulster” (hereinafter referred to as “the Litigation”). In addition, during the course of the Litigation, certain other disputes have arisen which have been identified as claims or potential claims, including, but not limited to, payment of professional fees incurred by the County arising out of the Lease, payment of the 2014-15 annual rent and the rehabilitation of rail structures and incidental items (collectively, the “Unasserted Claims”).

WHEREAS, the Parties desire to fully and finally resolve and to settle the Litigation and the Unasserted Claims upon the terms and conditions set forth in this Agreement.

WHEREAS, the subject of this Litigation and the Unasserted Claims is a certain twenty-five year lease (hereinafter referred to as “the Lease”) entered into between the County, as lessor, and the Ulster County Industrial Development Agency, as lessee, dated May 29, 1991, and having been assigned by the Ulster County Industrial Development Agency to CMRR, said Lease and Lease Assignment commencing on June 1, 1991, and ending on May 31, 2016 (“Lease Term”).

WHEREAS, the leased premises consists of approximately 38 miles of track and right-of-way of the Catskill Mountain Branch of the former Ulster and Delaware Railroad (hereinafter referred to as “the track” or “the right-of-way”), said leased premises beginning on the east side of Downs Street in the City of Kingston, County of Ulster and ending at the Delaware County Line (hereinafter referred to as the “Leased Premises”).

WHEREAS, the Parties have agreed to resolve and settle the Litigation and the Unasserted Claims on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and of the conditions, covenants and agreements set forth below, the amount and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Releases.

- A. Except as otherwise set forth in this Agreement, the County’s rights and remedies under the Lease shall be reserved and not waived during the term of the Lease; and except as otherwise agreed upon herein, the Parties shall fulfill their remaining obligations under the Lease as of the date of this Agreement.

- B. This release shall relate solely to the claims and causes of action set forth in the County's Notice of Default/Demand to Cure and the pleadings in the pending Litigation and the Unasserted Claims.
- C. The Parties acknowledge and agree that these releases are General Releases. The Parties expressly waive and assume the risk of any and all claims for damages which exist as of the date of this Agreement, but which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect his or her or its decision to enter into this Agreement. The Parties expressly acknowledge that this waiver of claims includes any claims for any alleged fraud, deception, concealment, misrepresentation or any other misconduct of any kind in procuring this Agreement. The Parties specifically do not, however, waive or release any claim that may arise for breach of this Agreement.
- D. Except as otherwise set forth in this Agreement, the Parties, on behalf of themselves, and all persons or entities claiming by, through or under them, and their respective heirs, successors and assigns, hereby fully, completely and finally waive, release, remise, acquit, and forever discharge and covenant not to sue the other Party, as well as the other Party's respective officers, employees, directors, shareholders and representatives with respect to any and all claims, demands, suits, manner of obligation, debt, liability, tort, covenant, contract, or causes of action of any kind whatsoever, at law or in equity, including without limitation, all claims and causes of action arising out of or in any way relating to this specific action and the Unasserted Claims from the date of this Agreement to the end of time.
- E. CMRR acknowledges and agrees that it shall not be released from any liability whatsoever for any environmental contamination upon or adjacent to the Leased Premises, including CMRR's use and occupancy of the rail yard situated between Cornell Street and O'Neil Street in the City of Kingston, County of Ulster and State of New York, caused by CMRR during the Lease Term as well as any and all environmental damages incurred by or to be incurred by the County as a result of environmental contamination caused by CMRR during the Lease Term.
- F. The Parties warrant and represent that they have not assigned or otherwise transferred any claim or cause of action released by this Agreement.
- G. The Parties specifically do not, however, waive or release any claim that may arise for breach of this Agreement or any obligations that arise under the Lease from the date of this Agreement through May 31, 2016.

II. Special Terms and Relief Provided

- A. The Lease Term between the County and CMRR shall terminate on May 31, 2016; and this Agreement shall not extend the Lease beyond that date.

- B. The County will grant CMRR permission to solely store its equipment upon the Leased Premises and remove its equipment from the Leased Premises subsequent to termination of the Lease for a period of no more than 60 days following the termination of the Lease, specifically no later than July 30, 2016, and subject further to the following conditions:
1. CMRR shall fully vacate what is known as the Cornell Street Railyard, which is situated between Cornell Street and O'Neil Street in the City of Kingston, Ulster County, on or before May 1, 2016; and CMRR shall leave it free and clear of any and all of its equipment and property as well as any trash or debris. CMRR may store the equipment and property removed from the Cornell Street Railyard and all of its equipment used in connection with operations on the east end of the Lease at or near milepost (six) 6 of the right-of-way and on the west end of the Lease at the location where the equipment is currently stored, but only until July 30, 2016, at which time CMRR shall remove all of its equipment and property from the entire right-of-way. The County shall have complete and unfettered access to the Cornell Street Railyard commencing May 2, 2016; and CMRR shall relinquish any and all rights that it claims to have to the Cornell Street Railyard on May 2, 2016.
 2. CMRR shall not operate at any time subsequent to the termination date of the Lease nor perform any maintenance upon any of its equipment on the County right-of-way; and
 3. CMRR shall provide the County with continued insurance in the same limits currently in effect while CMRR's equipment remains upon the County right-of-way.
 4. CMRR shall continue to indemnify the County under the same terms and conditions set forth in the paragraph in the Lease under the heading of "Indemnification" while CMRR's equipment remains upon the County right-of-way.
- C. Upon the execution of this Agreement, CMRR shall release to the County as and for a settlement payment, the entire Seventy-Five Thousand Dollar (\$75,000.00) cash bond it provided to the County on or about November 29, 2013 in full satisfaction of the Litigation and the Unasserted Claims.
- D. The County shall waive payment of \$14,697.67 which represents the additional rent due and outstanding for the period June 1, 2014 through May 31, 2015, and which is considered an Unasserted Claim. In addition, the County shall waive any requirement of the Lease for CMRR to remove brush from the right-of-way and CMRR shall cease and desist from removing brush from the right-of-way as of the effective date of this Agreement.

- E. CMRR shall not be relieved or released of its obligation under the Lease to pay rent to the County for the term June 1, 2015 through May 31, 2016. For purposes of rent payment, the terms and conditions set forth in the Lease shall be adhered to and remain enforceable.
- F. Within one (1) week of execution of this Agreement by CMRR, CMRR shall post an additional cash bond of Twenty-Five Thousand Dollars (\$25,000.00) ("Bond") with the Ulster County Commissioner of Finance for the purpose of ensuring subject to the determination and satisfaction of the Ulster County Commissioner of Public Works:
1. CMRR has fully vacated the Cornell Street Railyard by May 1, 2016; and
 2. The entire right-of-way has been fully vacated by CMRR by July 30, 2016; and
 3. CMRR's equipment has been removed from the entire right-of-way no later than July 30, 2016; and
 4. The entire right-of-way is left completely free of any and all debris papers and trash by May 31, 2016; and
 5. CMRR will remove all of the discarded railroad ties that remain along the entire right-of-way at its sole expense no later than May 16, 2016.

If the Ulster County Commissioner of Public Works determines that CMRR has not satisfied the conditions set forth in Section "II(F)(4) or (5)," the County shall provide written notice to CMRR identifying the defects with specificity resulting in the unsatisfied condition(s). CMRR shall then have ten (10) days from receipt of said notice to cure the identified defects. Upon the completion of its curative efforts, CMRR shall notify the Ulster County Commissioner of Public Works of the same and, within three (3) days of being notified, said Commissioner shall inspect the right-of-way and make a determination relative to the condition being satisfied.

Upon the satisfaction of the conditions referenced above, which determination shall occur no later than September 15, 2016, the Ulster County Commissioner of Finance shall release the Bond to CMRR within ten (10) days of said determination regardless of whether there are any claims by the County against CMRR unrelated to the conditions referenced above.

- G. In addition to the Bond set forth in Section "II(F)" herein, should CMRR fail to meet any of the conditions set forth in Section "II(F)" as determined by the Ulster County Commissioner of Public Works, subject to CMRR's ability to cure as set forth in Section "II(F)(4) or (5)", CMRR shall give an additional security interest in its equipment notwithstanding the Bond set forth in Section "II(F)" herein as follows:

1. The security interest shall be in the rolling stock equipment on the east end of the Lease, currently located at the Cornell Street Railyard, to wit: five (5) passenger cars, two (2) passenger flat cars, one (1) side dump car, two (2) box cars, one (1) caboose, and one (1) RS-1 engine; and
 2. On or before May 31, 2016, CMRR shall provide to the County a proposal(s) from a scrap metal vendor(s) that provides for the removal of the rolling stock equipment identified herein by the vendor and payment by the vendor of the market value of the rolling stock to CMRR; and
 3. On or before May 31, 2016, CMRR shall enter into an agreement with the scrap metal vendor(s) to remove the rolling stock equipment identified herein and pay to the CMRR the proceeds resulting therefrom; and
 4. Should the Ulster County Commissioner of Public Works determine at any time that CMRR has failed to meet any of the conditions set forth in Section "II(F)" herein, subject to CMRR's ability to cure as set forth in Section "II(F)(4) or (5)," the Bond shall be forfeited by CMRR, and CMRR shall also pay to the County the entire proceeds of the sale received from the scrap metal vendor, or the sum of Twenty-Five Thousand Dollars (\$25,000.00), whichever is greater.
- H. CMRR shall be released from any responsibility under the Lease to rehabilitate those portions of the track and right-of-way currently not in use during the term of the Lease.
- I. Upon the execution of this Agreement, CMRR shall not be required to nor shall CMRR install, upgrade, rehabilitate, repair or perform any operations whatsoever on any portion of the right-of-way that the County has deemed as trail only per its policy as specifically set forth in Resolution No. 488 of the County of Ulster, dated December 15, 2015, entitled "Amending Resolution No. 275 of 2014, Establishing A Policy For a 'Rail With Trail' Along the County Owned Ulster and Delaware Railroad Corridor." This does not apply for those portions of the track and right-of-way currently in use.
- J. As it relates to the track and right-of-way currently in use during the remaining term of the Lease:
1. CMRR shall engage, at its sole expense, a Federal Railroad Administration delegated inspector ("Inspector") to perform an inspection prior to commencing any tourism/passenger activities; and
 2. CMRR shall continue to maintain, during the remaining term of the Lease, those sections of the track and right of way in use to "Class 1 Conditions" as described by such classification under the standards of the United States Department of Transportation.

These maintenance requirements shall apply to those sections of track from Kingston to west of Hurley Mountain Road and from Milepost 23.3 to Phoenicia; and

3. The County shall have the right to perform its own inspections as set forth and under the terms and conditions of the Lease, including inspections performed by a professional engineer selected by the County and paid for by CMRR. Should the Ulster County Commissioner of Public Works determine that a safety issue exists, CMRR shall not use those portions of the track or right-of-way unless and until they are remedied by CMRR at its sole expense and deemed safe by the Ulster County Commissioner of Public Works;
 4. Upon notice thereof, CMRR shall have the right to have an Inspector inspect the track or right-of-way and remedy any defects identified in said inspection subject to the satisfaction of the Ulster County Commissioner of Public Works; and
 5. The Ulster County Commissioner of Public Works determination shall be final and binding upon the Parties, and no activity by CMRR shall take place whatsoever until such time as the defects have been remedied to the satisfaction of the Ulster County Commissioner of Public Works.
- K. CMRR shall give an exit statement in a form approved by the Ulster County Executive and which may be published by the Ulster County Executive.
- L. CMRR and its officers, directors, agents, employees and volunteers shall support and shall not, now or in the future, oppose, interfere or promote any action that would hinder or delay the conversion of railroad segments to trail including the removal of tracks and ties in railroad corridor segments for future trail use per the County's policy as set forth in Resolution No. 488 of the County of Ulster, dated December 15, 2015, entitled "Amending Resolution No. 275 of 2014, Establishing A Policy For a 'Rail With Trail' Along the County Owned Ulster and Delaware Railroad Corridor". Notwithstanding the above, CMRR shall only be required to use its best efforts to ensure its volunteers' support. Best efforts shall be defined as CMRR distributing a communication to all of its volunteers as of the date of this agreement stating CMRR is requiring all of its volunteers to not interfere or oppose the applicable County action and if CMRR is notified by the County that a volunteer is interfering or opposing said County action, then the volunteer will no longer be allowed to volunteer or be associated with CMRR ("Best Efforts"). CMRR shall provide a copy of said communication to the County.
- M. CMRR and its officers, directors, agents, employees and volunteers shall support and not take any action now or in the future to delay or oppose the County's efforts or applications related to rail banking. Notwithstanding the above, CMRR shall only be required to use its Best Efforts to ensure its volunteers' support, and if CMRR is notified by the County that a volunteer is interfering or opposing said

County action, then the volunteer will no longer be allowed to volunteer or be associated with CMRR.

- N. CMRR and its officers, directors, agents, employees and volunteers shall actively assist and work cooperatively with the County in regard to the FEMA funds disaster application. This shall include providing any documentation in regards to the inspections, maintenance, work and use of the right-of-way including the Boiceville Trestle and other FEMA related damaged areas in the right-of-way. Notwithstanding the above, CMRR shall only be required to use its Best Efforts to ensure its volunteers' support.

III. Additional Terms.

- A. The County shall immediately withdraw its Notice of Default/Demand to Cure, dated June 12, 2013, and its pending appeal with the Supreme Court, Appellate Division, Third Department, Case No. 521525. The Parties shall immediately discontinue the pending Litigation and shall take whatever additional steps that may be necessary to voluntarily discontinue this Litigation with prejudice.
- B. CMRR shall immediately withdraw, in its entirety and with prejudice, its Notice of Appeal, dated March 1, 2016, regarding the Amended Decision/Order of the Hon. Richard J. Mott, J.S.C, dated February 3, 2016.
- C. Neither the payment of any sums nor the execution of this Agreement shall be construed as an admission of liability or fault by any Party.
- D. By signing below, each Party warrants and represents that the person signing this Agreement on its behalf has full authority to bind that Party and that the Party's execution of this Agreement is not in violation of any By-Laws, Covenants and/or other restrictions placed upon them by their respective entities. The Parties further represent they possess full authority to lawfully and effectively release the opposing Party as set forth herein, free of any rights of settlement, approval, subrogation, or other condition or impediment. This undertaking includes specifically, without limitation, the representation and warranty that no third party has now acquired or will acquire rights to present or pursue any claims arising from or based upon the claims that have been released herein.
- E. The Parties represent and agree that no promise, inducement, or agreement other than as expressed herein has been made to them and that this Agreement is fully integrated, supersedes all prior agreements and understandings, including without limitation, and any other agreement between the Parties that may now exist, and contains the entire Agreement between the Parties.
- F. In entering into this Agreement, the Parties acknowledge that they have relied upon the legal advice of the their respective attorneys, and they represent that they each have read and fully understand this Agreement, that they are fully competent to enter into and sign this Agreement, and that they are executing this Agreement voluntarily, free of any duress or coercion. The Parties further

represent and acknowledge that in executing this Agreement they did not rely upon any representation or statement, whether oral or written, made by either party or by the other Party's agents, representatives or attorneys with regard to the subject matter, basis or effect of this Agreement or otherwise.

- G. The laws of the State of New York shall apply to and control any interpretation, construction, performance or enforcement of this Agreement. The Parties agree that the exclusive jurisdiction for any legal proceeding arising out of or relating to this Agreement shall be in the Supreme Court of the State of New York, County of Ulster, and all Parties hereby waive any challenge to subject matter or personal jurisdiction or venue in that court.
- H. This Agreement shall be construed as if the Parties jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any one Party.
- I. No oral agreement, statement, promise, undertaking, understanding, arrangement, act or omission of any Party, occurring subsequent to the date hereof may be deemed an amendment or modification of this Agreement unless reduced to writing and signed by the Parties hereto or their respective successors or assigns.
- J. The Parties agree that if, for any reason, a provision of this Agreement is held unenforceable by any court of competent jurisdiction, this Agreement shall be automatically conformed to the law, and otherwise this Agreement shall continue in full force and effect.
- K. Whenever applicable within this Agreement, the singular shall include the plural and the plural shall include the singular.
- L. The headings of paragraphs herein are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.
- M. Unless the Court requires otherwise, this Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all of the Parties are not signatories to the original or the same counterpart. A photocopy of this Agreement may be used in any action brought to enforce or construe this Agreement.
- N. No failure to exercise and no delay in exercising any right, power or remedy under this Agreement shall impair any right, power or remedy which any Party may have, nor shall any such delay be construed to be a waiver of any such rights, powers or remedies or an acquiescence in any breach or default under this Agreement, nor shall any waiver of any breach or default of any Party be deemed a waiver of any default or breach subsequently arising.
- O. The terms of this Agreement will be effective when a fully executed copy of this Agreement is delivered by counsel for the County to counsel for CMRR.

IN WITNESS WHEREOF, this Agreement is entered into as of the date first written above.

Dated: 4/19/16

Catskill Mountain Railroad Company, Inc.

By: *Ernest Hunt*
Ernest Hunt
President

Dated: 4/19/16

County of Ulster

By: *Dorraine Whitney*
Dorraine Whitney
Ulster County Insurance Officer

State of New York)
) SS:
County of Albany)

On the 19th day of April in the year 2016, before me personally came **Ernest Hunt**, to me known, who, being by me duly sworn, did depose and say that he resides in New York, NY; that he is the President of the Catskill Mountain Railroad Company, Inc., the corporation described in and which executed the above instrument; and that he signed his name thereto by authority of the board of directors of said corporation.

Theresa M. Kaczor
Notary Public

THERESA M. KACZOR
Notary Public, State of New York
No. 01KA6332465
Qualified in Schenectady County
Commission Expires November 2, 2019

State of New York)
) SS:
County of Ulster)

On this 19 day of April in the year 2016, before me, the undersigned, personally appeared **Dorraine Whitney**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Beatrice Havranek
Notary Public

BEATRICE HAVRANEK
NOTARY PUBLIC STATE OF NEW YORK
NO. 02HA5024263
QUALIFIED IN ULSTER COUNTY
COMMISSION EXPIRES MARCH 7, 2018