LEASE AND OPERATING AGREEMENT

THIS LEASE AND OPERATING AGREEMENT, made this 17th day of March, 2010, by and between the COUNTY OF YORK, a political subdivision of the Commonwealth of Pennsylvania, hereinafter referred to as “County”,

and

STEAM INTO HISTORY, a not-for-profit corporation organized and existing in accordance with the laws of the Commonwealth of Pennsylvania, hereinafter referred to as “Steam”.

WITNESSETH:

WHEREAS, County by virtue of a certain Transfer Agreement dated March 28, 1990, by and between County and the Commonwealth of Pennsylvania, is the owner of railroad property formally known as the Northern Central Railroad Line, hereinafter “Railroad” or “Line”; and

WHEREAS, Railroad extends from the Maryland-Pennsylvania border in New Freedom Borough, York County, to a point near the City of York, York County; and

WHEREAS, parties hereto have agreed to a lease of the said Railroad by Steam, under and subject to certain terms and conditions as are more fully set forth herein as well as those terms and conditions contained in a document entitled “Operating Regulations for Northern Central Railroad Corridor” (Exhibit “A”).

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained and intending to be legally bound hereby, the parties agree as follows:

1. **Lease of Railroad:** County hereby leases to Steam and Steam hereby leases from County, for the operation of a railroad excursion, passenger and freight transportation services, the “Railroad” Line as hereinafter described:

   All that certain portion of the right-of-way demised to the County pursuant to certain Agreement No. 822077 by and between the Commonwealth of Pennsylvania as Grantor and the County of York as Grantee consisting of the railroad track from Hyde (M.P. 54.17) to New Freedom Borough at the Maryland-Pennsylvania border (M.P. 35.6), together with any and all appurtenant railroad equipment and such portions of the underlying ground and bridges as are reasonably necessary for railroad operations.

2. **Warranty of Title:** This lease is granted insofar as the County’s title permits, but the County specifically disavows any warranty of title to Steam, and the County shall not be liable to Steam for any defect or encumbrance upon the title to the leased property or premises hereby demised.
3. **Term:** This lease shall commence upon the execution of all parties hereto and extend for a period of fifteen (15) years, terminating at twelve o'clock a.m. on the fifteenth (15th) year anniversary hereof, with the right and option in Steam to extend the lease, under the same terms and conditions as set forth herein, for an additional term of fifteen (15) years. Said option must be exercised, in writing, by Steam and delivered to County not later than one hundred eighty (180) days prior to the expiration of the initial term.

4. **Right of Entry:** County retains a right to enter upon the leased premises for the purpose of inspecting the premises, and carrying out rehabilitation, repair or maintenance of the leased premises, and for the purpose of providing security in the corridor. County shall have no obligation to Steam to provide security or track inspections, and shall have no specific obligations to Steam as to rehabilitation, repair or maintenance except as specifically set forth below.

5. **Line Rehabilitation and Maintenance:** County shall not be required to perform any rehabilitation or maintenance to or for the benefit of the Line or any appurtenant railroad equipment. Steam shall be solely responsible for any and all costs of rehabilitation and maintenance of the track, railbeds and equipment. Steam agrees that the repair and rehabilitation to the Line, initially from New Freedom Station to a point approximately 400 yards north of Hanover Junction Station, shall be such as to bring the Line into FRA class condition necessary for the operation of a railroad excursion train. Steam shall provide all future maintenance for said portion of the Line as required by federal or state rules and regulations and as further required by County. Steam shall also be responsible for the rehabilitation and maintenance of that portion of the Line extending from Hanover Junction to the City of York at such time as Steam extends its operations to said point, subject to the provisions of Paragraph 8 below.

6. **Current Condition of Leased Premises:** County makes no representation or warranty as to the current condition of the leased premises. Steam agrees to accept the leased premises, "as is". County makes no representation that the leased premises are fit for the intended use.

7. **Shared Use of Line and Corridor:** Steam agrees that its use of the Line and appurtenant facilities shall not interfere with the recreational trail adjacent to the leased premises and the conduct of its operations will be such as to minimize any negative impact on the trail. Steam acknowledges that the adjacent recreational trail crosses railroad tracks at various places and that bike riders, horse riders and pedestrians will be using the recreational trail. Steam agrees that only duly licensed and competent operators shall be allowed to operate the trains and that the trains will travel at such speeds so as to accommodate the adjacent trail use and not endanger the individuals so using. Steam agrees that the trains will be operated safely at all times.

8. **Exclusivity:** During the term of this lease and so long as Steam is not in default of any of the terms and conditions hereunder, County warrants that the lease shall be exclusively for Steam. Steam hereby acknowledges that the provisions of the agreements by and between County and the Commonwealth of Pennsylvania, as above referenced, require that upon submission of a bonafide proposal for freight rail service, County must cooperate in the establishment of the same. Steam agrees that if such a proposal is received by County and if at
such time Steam is not providing freight service, it will cooperate with County to accommodate such proposal, and will agree to sublease to such acceptable rail freight operator under terms and conditions as County, Steam and the operator can agree. Under no circumstances will Steam be responsible for any repairs or upgrades to the railroad in order to facilitate or accommodate freight utilization by any third party carrier or operator. All such costs of repairs and/or upgrades shall be at the sole expense of either County or the freight operator. In any case, the lease with the Commonwealth of Pennsylvania shall supersede the obligations of the County to this Agreement to the extent there is a conflict.

Steam further acknowledges that it is cognizant of the retransfer provisions of the Commonwealth of Pennsylvania Agreements and upon such transfer, this lease could be terminated. In that event, County agrees that it will expend its best efforts, in conjunction with Steam, to seek agreement from the Commonwealth of Pennsylvania to make any such retransfer subject to this lease agreement.

County and its designees may use the lease premises from time to time for governmental purposes (high rail vehicles, motor cars, inspections) so long as such uses do not unreasonably interfere with Steam operations and activities.

9. **New Freedom and Hanover Junction Stations:** In addition to the Railroad, this lease may extend to the New Freedom and Hanover Junction Stations for the purposes of allowing Steam to establish facilities therein subject, however, to the terms and conditions that are otherwise agreeable to the County Parks Department and to other parties with any interest in said facilities.

10. **Other Users:** Steam agrees that it may not allow other parties or carriers to use any portion of the leased premises for any purpose without the prior written consent of County.

11. **Additions:** County agrees that Steam may construct additional rail facilities (siderings, switches, turntables) which may attach to the existing facilities, such additions to be at the sole expense of Steam. All plans for such additions must be submitted to and approved by the County. Upon termination of this lease, such facilities remain the property of Steam and, if required by County, shall be removed within one hundred and eighty (180) days of written notification of same. Upon removal, all adjacent facilities must be restored to their original condition. All additional rail facilities, if approved, shall be constructed and placed in such a way so as to impact operations of the adjacent recreational trail in a minimal way as possible. All additional rail facilities must meet local, municipal standards for zoning.

12. **Liability:** Steam shall hold and save the County harmless from all claims, damages, suits, judgments or causes of action on account of injury to or death of persons or loss or damage to property which may result from, or arise in any manner out of the management, control, use, or operation for the term of this agreement. In this connection, Steam will acquire public liability and property damage insurance, in the amount of Two Million Dollars ($2,000,000.00), in a form satisfactory to County, and including as additional insureds, the County of York, Pennsylvania, The York County Rail Trail Authority, and York County Parks and Recreation Department, for protection from any liability above described, at no expense to
County or the other named insureds. Steam shall provide County with a certificate of insurance at least annually.

13. Approvals: Steam will be responsible for the acquisition of any and all approvals or permits necessary from, or required by, and compliance with any validly existing orders from the Interstate Commerce Commission or its successors, the Public Utility Commission of Pennsylvania, or any other regulatory body or agency having jurisdiction over the railroad operations contemplated hereunder.

14. Force Majeure: In the event that either party shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, acts of God, or war, or any other reason beyond its control, then this agreement may be terminated by written notice of either party.

15. Occupancies: County will be entitled to retain all income from any existing occupancy agreements during the term of this lease and agreement, or any extensions thereof. County may, during the term of this lease and agreement, or any extensions thereof, sell, lease, grant easements or licenses, or develop or otherwise utilize the corridor or portions thereof. County shall notify Steam in advance of any such action, and in cases where there could reasonably be any interference or negative effect on railroad operations, County shall first submit to Steam its plans therefore for approval, which approval shall not be unreasonably withheld by Steam. Such uses shall include, without limitation, transverse and longitudinal occupancies for public improvements (e.g., roads, sewers, etc., at, above or below grade) pipelines, power lines and energy corridors, the recreational trail), commercial development of air, subterranean and surface rights. In the event that Steam reasonably determines the need for the same, Steam can require any and all contractors working in the corridor to hire a flagman or flagmen from Steam (at reasonable cost) to ensure that no work is performed in a manner which would compromise Steam's ability to provide rail service over the affected area. In any case, nothing in this clause shall be construed to the County's obligations under this Lease and Operating Agreement are superceded by County's obligations under the County's agreement with the Commonwealth of Pennsylvania. In the event the County is performing repair work that would require a flagman for the rail line, the County has the right to use its own flagman at its own expense.

16. Return of Leased Premises: If Steam shall violate any covenant of this lease and agreement, or if the leased premises shall be used for any purpose other than as above stated or in the event of the termination of this lease and agreement, or by expiration of the term, then and in such event Steam agrees to quit and deliver up peaceable possession of the leased premises to County and County may thereupon reenter upon and take possession of the leased premises and of every part thereof, either by force or otherwise, without any liability therefore, and have and enjoy the leased premises as of its former estate, free, clear and discharges of this lease and agreement and of all rights of Steam. Except as set forth herein, Steam, for itself and any sublessee, agrees to and does hereby waive all notices to quit now or hereafter required by any law or laws previous to proceedings to recover possession of the leased premises.

17. Successors and Assigns: The terms and conditions of this lease and agreement shall extend to and be binding upon the respective successors and assigns of the parties thereto as
their respective interest may appear, as though in each case herein they had been specifically mentioned, provided however, that this agreement may not be assigned by Steam unless written consent from County is first obtained therefore.

18. Records: Steam shall maintain full and accurate records with respect to all matters covered by this agreement at its principal office or place of business. County and appropriate representatives of County will be permitted, during regular business hours and at all reasonable times during the period of this agreement and for three (3) years thereafter, to have access to original instruments, including records and copies thereof, to have access to original instruments, including records and copies thereof, in possession, custody or control of Steam, and to examine and audit the same, including the right to make and carry away transcripts therefrom and to inspect all data, documents, proceedings and records or notes of activities. The above notwithstanding, County will not permit such records to be made public, except where required by law. Steam acknowledges that any records in the possession of the County may be subject to an open records request.

19. Operations Schedule: Steam agrees to use reasonable efforts to provide County with a written schedule, in advance, of its railroad operations. Steam shall make reasonable efforts to notify County or its designee in advance of any unscheduled railroad operations on the leased premises. County shall make reasonable efforts to notify Steam of its activities which might reasonably interfere with Steam’s railroad operations.

20. Alcoholic Beverages: County agrees that the leased premises shall be exempt from Code of the County of York §75-27 (A), prohibiting the possession and transportation of alcoholic beverages. Open containers of alcohol are permitted only in trains. Steam shall make reasonable efforts to see that open containers of alcohol are kept on the train. Individual possessors of alcoholic beverages are subject to prosecution for violations of this provision. Steam shall be solely responsible for obtaining the right to sell alcoholic beverages or to permit consumption of alcoholic beverages on the train. Steam shall be solely responsible for ensuring compliance with laws of the Commonwealth of Pennsylvania and local municipalities with regard to the sale or consumption of alcoholic beverages. Repeated violations of laws pertaining to the sale and consumption of alcoholic beverages with regard to Steam’s operation could result in termination for cause without having to provide the notices required by paragraph 26 below.

21. Compliance with Law. Steam agrees to conduct its operations and activities on the leased premises in compliance with all valid and applicable federal, state and local statues, regulations and ordinances.

22. Existing Rights of MCI Telecommunications Corporation: Steam acknowledges and agrees that its rights in the leased premises shall be at all times subordinate to the rights of MCI Telecommunications Corporation (MCI) as set forth in certain agreement between County and MCI, dated October 19, 1994 and October 12, 2995. Steam is prohibited from doing or permitting any act which would interfere with any MCI Facility, and shall hold harmless MCI from all liability, claims, damage, loss, costs and expenses, including attorneys’ reasonable fees, arising out of Steam’s interfering with the use, operations, or maintenance of MCI facilities.
23. **Governing Law:** This agreement is to be construed in accordance with the laws of the Commonwealth of Pennsylvania.

24. **Severability:** If any term, covenant, condition or provision (or part thereof) of this agreement or the application thereof to any person or circumstances shall, at any time or to any extent, be invalid or unenforceable, the remainder of this agreement or the application of such term or provision (or remainder thereof) to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereof, and each term, covenant, condition and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.

25. **Captions:** The paragraph headings in this agreement are for convenience only and are without legal effect upon the terms hereof.

26. **Termination for Cause:**

   A. If, through any cause, either party shall fail to fulfill in a timely and proper manner its obligations under this lease and agreement, or if either party shall violate any of the covenants or stipulations of this lease and agreement, the other may thereupon give notice to the breaching party, specifying the failure or violation and demanding cure of the same within thirty (30) days of receipt of notice.

   B. If the breaching party does not correct the failure or violation to the reasonable satisfaction of the other within the specified time period, the other may terminate this lease and agreement by giving written notice thereof to the breaching party and specifying the date of termination, which shall be at least five (5) days after receipt of the termination.

   C. Upon termination the rights of removal set forth in Paragraph 11 above shall apply.

27. **Dispute Resolution.** All disputes surrounding this Agreement shall be resolved by a non-jury trial in the York County Courts of Common Pleas.

   IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, attested, and ensealed by their proper officials, pursuant to due and legal action authorizing the same to be done the day, month and year first above written.

   **ATTEST:**

   [Signature]

   Charles R. Noll
   Administrator/Chief Clerk

   **COUNTY OF YORK, PENNS YLVANIA**

   [Signature]

   Steve Chronister, President

   [Signature]

   Christopher B. Reilly, Vice President
ATTEST:

Doug Hoke, Commissioner

STEAM INTO HISTORY

By: William H. Simpson

ITS: President
OPERATING REGULATIONS FOR
NORTHERN CENTRAL RAILROAD CORRIDOR

1. No vehicle operating on the track shall travel at a speed in excess of 15 miles per hour. Within one hundred (100) yards of the Hanover Junction Station, New Freedom Station and Howard Tunnel, no vehicle operating on the track shall exceed a speed of 5 miles per hour.

2. Steam shall copy County or its designee with reports made by Steam to its insurer of any incidents involving personal injury or property damage occurring on the leased premises.

3. In the event that Steam should extend the use of the trail to include Howard Tunnel, any train operating on the track shall come to a stop before entering the tunnel and make reasonable efforts to ascertain that the tunnel is empty of trail users before entering.

4. Regular scheduled train utilization shall cease by 9 p.m. each day. Occasional extended excursions beyond that time are permitted.

5. All trains or other vehicles operating on the track shall give appropriate warnings in advance of trail crossings and bridges.

6. Maintenance by Steam of the leased premises shall include weed control.

7. Steam shall insure that all discarded railroad ties or other items or equipment shall be removed from the area of the trail/tracks within thirty (30) days of said items being taken out of their original position.

Exhibit “A”
8. Railroad maintenance operations shall be conducted so as to minimize impact on the trail and trail use. Any damage to the trail from railroad maintenance operations shall be restored to the prior condition of said trail within twenty-four (24) hours of occurrence. Ties and other track materials shall not be stored on the trail side of the track at any time. Whenever possible, track repairs shall be performed from the non-trail side of the track. Steam shall designate construction or track repair areas using cones, safety tape or other similar designations or devices. Steam shall make reasonable efforts to insure that passage by trail users is not obstructed.

9. Steam shall insure that when trains or other vehicles operating on the track which are under its control approach trail users riding horses, such trains or vehicles shall approach with extreme caution. In all cases, trains and vehicles shall approach any horse and rider to assure that the rider can continue to keep control of or dismount from the horse. Horns and bells shall not be sounded in the vicinity of trail users on horses unless absolutely necessary.

10. Steam shall maintain the leased premises and its equipment and rolling stock in a neat and well kept condition.

11. Steam shall not dispose of any human waste or refuse on or near the leased premises.

12. Steam shall not perform restoration or reconstruction work upon the engine or railcars while they are on the tracks.