

**LEASE AGREEMENT
BETWEEN
STATE OF VERMONT, AGENCY OF TRANSPORTATION
AND
VERMONT ASSOCIATION OF SNOW TRAVELERS, INC.**

THIS AGREEMENT, entered into as of this 2nd day of October, 2006, by and between the STATE OF VERMONT, a sovereign state, acting by and through its Agency of Transportation, with its principal office at National Life Building, One National Life Drive, Montpelier, Vermont 05633-5001 (“STATE”) and the VERMONT ASSOCIATION OF SNOW TRAVELERS, INC., a Vermont non-profit corporation with its principal office at 26 VAST Lane/Berlin, Barre, Vermont 05641-5366 (“USER”).

WITNESSETH:

WHEREAS, the STATE is the owner of a line of railroad extending from St. Johnsbury to Swanton, Vermont; and

WHEREAS, in Sec. 16 of Act No. 141 of 2002 (eff. June 21, 2002), the General Assembly authorized the STATE to enter into a long-term lease with USER for the State-owned railroad line between valuation station 55+20 ± in the Town of St. Johnsbury and valuation station 4976+93 ± in the Town of Swanton (“the Line”); and

WHEREAS, in Sec. 17 of Act No. 56 of 2003 (eff. June 4, 2003), the General Assembly of the State of Vermont directed that the State-owned railroad corridor between St. Johnsbury and Swanton should be converted to a year-round, multi-use recreation path; and

WHEREAS, the Line is railbanked and is to be used for interim trail use, in accordance with authorization from the federal Surface Transportation Board in *Lamoille Valley R.R. Co. – Abandonment and Discontinuance of Trackage Rights Exemption – In Caledonia, Washington, Orleans, Lamoille and Franklin Counties, VT*, STB Docket No. AB-444 (Sub-No. 1X) (served Feb. 13, 2004); and

WHEREAS, the parties hereto desire to enter into a long-term lease to govern the USER’s usage of the Line as a year-round, multi-use recreational path (including associated parking areas within the trail corridor); and

WHEREAS, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Pub. L. No. 109-59, § 1702, 119 Stat. 1144, 1355 (SAFETEA-LU) (project number 2557) provides federal funding for USER to construct a trail along the Line;

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I DEFINITIONS; DESCRIPTION

1.1. Meaning of Terms Used in this Agreement. Except as otherwise specifically provided, the following capitalized terms shall have the meanings specified below whenever used in this Agreement:

“Agreement” shall mean this Lease.

“Article” shall mean the major divisions of this Agreement, which are composed of one or more Sections.

“Highway” shall mean a road open to public travel that is part of the state highway system or has been accepted by a town or other municipal corporation.

“Lease” shall mean this Agreement.

“Line” means the State-owned railroad corridor between valuation station 55+20 ± in the Town of St. Johnsbury and valuation station 4976+93 ± in the Town of Swanton.

“Multi-use” shall mean all forms of non-motorized transportation and recreation, as well as those forms of motorized transportation and recreation allowed under 23 U.S.C. § 217(h) (Bicycle and pedestrian walkways; use of motorized vehicles) and Federal Highway Administration (FHWA) regulations and guidelines for transportation enhancement activities;

“Party” or “Parties” shall mean the signatories to this Agreement, unless otherwise specified.

1.2. Description. The STATE hereby leases to the USER the following described premises (“the Demised Premises”) in “as is” condition:

Being a certain tract or parcel of the STATE’s land situated (approximately) between valuation station 55+20, in the Town of St. Johnsbury, Vermont, and extending westerly approximately 93.2 miles to valuation station 4976+93 in the Town of Swanton.

In aid of the foregoing description, reference also may be had to certain valuation plans, prepared in accordance with standards prescribed by the former Interstate Commerce Commission, and entitled in part:

RIGHT-OF-WAY AND TRACK MAP
THE ST. JOHNSBURY AND LAKE CHAMPLAIN R.R. CO.
OPERATED BY
THE ST. JOHNSBURY AND LAKE CHAMPLAIN R.R. CO.
SCALE: 1-IN. = 100-FT. JUNE 30, 1916

which are numbered V50/2 through V50/96.

**ARTICLE II
PERMITTED USE OF THE LINE**

2.1. Trail Use. Subject to the terms and conditions of this Agreement, the criteria of federal statutes and regulations governing transportation enhancement activities and pedestrian and bicycle accommodations on federal-aid projects, USER shall have the right to construct, operate, maintain, and replace a year-round, multi-use recreational trail along the Line for the entire term of this Agreement.

2.2. Reactivation of Rail Service. In accordance with 49 C.F.R. § 1152.29 (Prospective use of rights-of-way for interim trail use and rail banking), USER acknowledges that use of the Line's right-of-way is subject to possible reconstruction and reactivation of the right-of-way for rail service.

2.3. Exclusive Control and Management. Except as provided in this Agreement, USER shall have exclusive control and management of trail operations on the Line. The USER shall develop and submit a management plan for the trail that addresses the governing structure, trail management (to include law enforcement) and operations for the STATE'S review and approval every two years. The STATE and USER shall hold joint public meetings to review and receive comment on the trail management plan in conjunction with the public meetings as described in Section 6.3 (every two years during the initial term, and prior to any subsequent renewal) prior to approval. Decals may be required and fees imposed for use of the trail only upon approval of the STATE's Secretary of Transportation and review of federal statutes and regulations governing transportation enhancement activities and pedestrian and bicycle accommodation on federal-aid projects.

2.4. All-terrain Vehicle (ATV) Access. All-terrain vehicles (ATVs) will not be allowed to use or cross the Line except at pre-existing, authorized crossings (such as personal use of farm crossings or private driveway crossings, or use of town highway crossings involving town highways where ATV use is allowed by local authorities); or unless decided otherwise by the STATE, on a case-by-case basis, through a public decision making process that includes public hearings conducted by the STATE guided by pending policy and standards to be developed by the STATE that comply with federal statutes, regulations, and guidance governing

transportation enhancement activities and pedestrian and bicycle accommodations on federal-aid projects.

ARTICLE III RESTRICTIONS ON USE OF THE LINE

3.1. Restrictions on USER's Use of the Line. USER shall not, without prior written consent of STATE:

- a. Allow use of the Line by motorized vehicles other than snowmobiles, emergency vehicles, and authorized maintenance vehicles;
- b. Allow use of the Line by motorized vehicles other than emergency vehicles before 6:00 a.m. or after 11:00 p.m.;
- c. Grant any easement, lease, license or right of occupancy in, on, under, through, above, across or along the Line, or any portion thereof, to any third party; or
- d. Cause or knowingly allow the creation of any encumbrance or lien on the Line or any portion of the Line.

ARTICLE IV RENT

4.1 Rent. The STATE reserves as rent and USER covenants to pay or cause to be paid to the STATE as and for the annual rental of the premises, the sum of One and no/100 Dollars (\$1.00).

ARTICLE V ASSIGNMENT OF CONTRACTS

5.1. Third-Party Agreements; Assignment by STATE to USER. STATE shall assign to USER its rights in any easements, crossing agreements and other agreements ("Assigned Contracts") affecting the use, occupancy or possession of all or any portion of the Line, to the extent such rights are necessary for USER to conduct authorized USER operations on the Line. A schedule of Assigned Contracts is attached hereto as Exhibit A. USER shall be responsible for any and all liabilities under the Assigned Contracts and, except as provided in Article XIII, below, shall be entitled to any and all benefits under the Assigned Contracts, to the extent such liabilities and benefits are applicable to its authorized operations along the Line.

5.2. Third-Party Agreements; Assignment by USER to the STATE or the STATE's Designee. Upon expiration or termination of this Agreement, USER shall immediately

transfer, assign and/or convey to the STATE or the STATE's designee the USER's rights under (i) the Assigned Contracts and (ii) any easements, crossing agreements and other agreements entered into during the term of this Agreement and shall not be liable for any obligations or eligible for any benefits arising from the Assigned Contracts or any agreements entered into during the term of this Agreement that accrue after the date of termination or expiration.

**ARTICLE VI
TERM AND TERMINATION**

6.1. Effective Date. This Agreement shall become effective on October 2, 2006, unless the STATE finds it necessary, in its discretion, to postpone the effective date to allow completion of salvage and crossing restoration activities, in which event this Agreement shall become effective on the latter of October 2, 2006 or ten (10) days after the STATE notifies the USER of the completion of salvage and crossing restoration activities (the "Effective Date").

6.2. Initial Term. This Agreement shall continue in full force and effect for a period from the Effective Date through 11:59 p.m. on June 30, 2016 (the "Initial Term") unless sooner terminated for cause by STATE or for any reason by mutual agreement of the parties.

6.3. USER's Renewal Option. Every two years during the initial term, and prior to any subsequent renewal, the STATE and USER shall hold joint public meetings to review and receive comment regarding planning, construction, operation and maintenance of the multi-use trail. If USER performs all the agreements to be performed on its part, then it shall have the right, at the expiration of the current term (11:59 p.m. on June 30, 2016) to renew this Agreement for two (2) additional terms of ten (10) years each:

Description	Beginning Date	Ending Date
Initial term	Effective Date	June 30, 2016
First renewal term	July 1, 2016	June 30, 2026
Second renewal term	July 1, 2026	June 30, 2036

6.4. Survival of Obligations. Expiration or termination of this Agreement shall not relieve or release either party to this Agreement from any obligations assumed or from any liability which may have arisen or been incurred by either party under the terms of this Agreement prior to its termination.

6.5. Reactivation for Rail Service. Notwithstanding any other provision of this Agreement, the STATE reserves the right to terminate this Agreement upon one year's notice should the right-of-way be required for reactivation for rail service.

**ARTICLE VII
REPAIRS AND CAPITAL IMPROVEMENTS**

7.1. Cooperation with STATE Forces and Contractors. Notwithstanding that the STATE may have no obligation under this Agreement to do so, USER acknowledges that the STATE, as part of its general interest in improving Vermont's transportation infrastructure, mitigating flood hazards, and protecting water quality, may from time to time desire to make repairs and improvements to the Line, including but not limited to rehabilitation and upgrading of bridges and crossings and removal of flood-plain encroachments. Should the STATE undertake any such repair or improvement, USER agrees that it will cooperate fully with STATE forces or any STATE-authorized contractor toward the reasonable accomplishment of such work, including but not limited to, coordinating its maintenance and operational functions with those of STATE forces and/or any such STATE-authorized contractor, allowing joint use of facilities, providing personnel as required for technical inspection and providing storage for materials, all at reasonable rates. The STATE agrees that reconstruction of the trail surface required as a result of work done to remove flood-plain encroachments shall be the responsibility of the STATE and shall comply with the Vermont Pedestrian and Bicycle Facility Planning and Design Manual (Vermont Agency of Transportation, December 2002). The STATE further agrees that no undue property management costs shall accrue to USER as a result of the STATE's flood-plain encroachment mitigation activities. The STATE agrees that it will require the following of any such STATE-authorized contractor:

- a. When the contract involves work on, over or under the Line's right-of-way, the contractor shall carry, with respect to operations performed by the contractor and by the contractor's subcontractors, liability insurance in form and amount as specified in the specifications for the project.
- b. The contractor's liability insurance policy shall remain in force until all work required to be performed within the Line's right-of-way is completed to the satisfaction of the USER and the STATE's Director of Program Development (or other designee).
- c. The contractor shall defend, indemnify and save harmless the USER and its officers, employees and agents against any claim or liability arising from or based on activities or omissions of the contractor or the contractor's subcontractors within or affecting the Line's right-of-way.
- d. Unless otherwise agreed between STATE and USER, contractors will be required to furnish a labor and materials bond and a compliance bond, both with sufficient sureties, in accordance with 19 V.S.A. § 10(8). The bonds shall guarantee the faithful performance and completion of the work to be done under the contract and the payment in full of all bills and accounts for material and labor used in the work.