

LEASE EXTENSION AND MODIFICATION AGREEMENT

THIS AGREEMENT, made this 12th day of March 2009, is entered into by and between the ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency") having its principal place of business at 153 Brooks Road, Rome, New York 13441, and GENESEE & MOHAWK VALLEY RAILROAD CO., INC. (the "Railroad"), having its principal place of business at One Mill Street, Suite 101, Batavia, New York 14020.

WHEREAS, the Railroad and the Agency entered into a Lease Agreement dated December 29, 1995 (the "Lease Agreement") pursuant to which the Agency leased back to the Railroad certain real property located in the County of Oneida, first conveyed by the Railroad to the Agency pursuant to Deed recorded in the Oneida County Clerk's Office (the "Real Property"); and

WHEREAS said Lease Agreement expired by its terms on February 28, 2006; and

WHEREAS the term of said Lease Agreement has been extended informally by the parties; and

WHEREAS the Agency and the Railroad intend by this Agreement (the "Extension and Modification Agreement") to memorialize the extension of the Lease and to agree upon certain additional terms which shall modify the terms of the Lease Agreement.

NOW THEREFORE is it agreed as follows:

1. The Lease Agreement is hereby extended through and including April 15, 2012.
2. Section 7.2 of the Lease Agreement is replaced in its entirety by the following:

"The Railroad shall pay in lieu of taxes from which the Real Property is exempt by reason of the Agency's fee ownership of the Real Property (the 'Exempt Taxes') a sum equal to

 - i. Zero percent (0%) of such Exempt Taxes; plus
 - ii. all non-exempt taxes and charges upon the Real Property."
3. The Railroad agrees not to unreasonably withhold or unreasonably condition access or crossing or utility rights (the "Rights") to any municipality located in the County of Oneida, and to charge no more for existing and future Rights than actual and reasonable out-of-pocket costs incurred by the Railroad attendant with the portion of tracks to which the Rights pertain; it being further agreed that charges to the municipalities outstanding as of the date of this Agreement shall be recomputed and resubmitted by the Railroad to reflect only such actual and reasonable out-of-pocket costs;
4. The Railroad agrees not to unreasonably withhold or unreasonably condition easement or license agreements for utilities or access to private property owners provided however that the Railroad may charge such private property owners the actual costs incurred by the Railroad for creating and maintaining such easements

and licenses and further provided that the Railroad may charge private developers a market price for easements and licenses where other access is available to such private developers but access through and over the Railroad properties is financially and practically advantageous to such private developers.

5. The Railroad agrees to be responsible for regular maintenance and clean up of the Railroad Property, provided, however, that nothing shall preclude the Railroad from requiring the municipalities to maintain and keep clean the specific areas covered by their easements or licenses.
6. The obligations of the Railroad with respect to charges for easements, licenses, etc. shall continue so long as the Railroad enjoys tax exemptions for the Real Property by reason of legal ownership of the Real Property by the Agency or otherwise.
7. All track materials, including but not limited to rail and ties, whether now or hereafter located on, or part of, the Railroad Property, may be repaired, replaced, removed and/or disposed of by the Railroad in its sole discretion without accounting therefore to the Agency.
8. Section 3.3 of the Lease Agreement is replaced in its entirety by the following new Section 3.3:

“Section 3.3. RE-CONVEYANCE OF RAILROAD PROPERTIES. Upon the termination and/or expiration of this Lease Agreement and/or any extension thereof, the Issuer shall promptly re-convey to the Operator all right, title land interest in and to the Railroad Properties.”
9. Exhibit “C” to the Lease Agreement is deleted. All other terms of the Lease Agreement shall remain in full force and effect.
10. Notwithstanding other provisions in the Lease Agreement to the contrary, the Agency and the Railroad agree that the foregoing terms shall be deemed amendments and modifications to the Lease Agreement as extended hereby, effective as of February 28, 2006, and shall prevail in the event of any conflict between this Extension and Modification Agreement and the Lease Agreement or any other Payment in Lieu of Tax Agreement between the parties.
11. The parties represent to each other that all necessary corporate action has been undertaken in order to authorize and effect this Agreement.
12. Each party to this Agreement hereby release and forever discharges the other party (including its affiliated corporations, present and former officers, directors, agents, employees, successors and assigns) from all claims, demands, actions, liabilities, causes of action and obligations of any kind whatsoever, whether known or unknown, which the releasing party may now have or ever have had against the other party from the beginning of time through the date of this Extension and Modification Agreement, and including, but not limited to, claims

for breach of contract, failure to perform and all other claims otherwise arising from or out of the Lease Agreement.

- 13. This Extension and Modification Agreement constitutes the entire agreement with respect to its subject matter and may not be altered or modified except by an agreement in writing signed by each party.

IN WITNESS THEREOF, the parties have signed this Extension and Modification Agreement effective as of February 28, 2006.

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

GENESEE & MOHAWK VALLEY RAILROAD CO., INC.

By: David C. Grow
David C. Grow
Chairman

By: John S. Herbrand
John S. Herbrand
Secretary

STATE OF NEW YORK)
)ss.:
COUNTY OF ONEIDA)

On the 13th day of March 2009, before me, the undersigned, personally appeared DAVID C. GROW, 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 he executed the same in his capacity as Chairman of ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, and that by his signature on the instrument, ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY executed the instrument.

Connie P. Stephens
Notary Public

CONNIE P. STEPHENS
Notary Public, State of New York
No. 4964591
Qualified in Oneida County
Commission Expires April 2, ~~19~~ 2010

STATE OF NEW YORK)
 MONROE)ss.:
COUNTY OF ONEIDA)

On the 17th day of March 2009 before me, the undersigned, personally appeared JOHN S. HERBRAND, 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 he executed the same in his capacity as Secretary of GENESEE & MOHAWK VALLEY RAILROAD CO., INC., and that by his signature on the instrument, GENESEE & MOHAWK VALLEY RAILROAD CO., INC. executed the instrument.

Rachael E. Enes
Notary Public

RACHAEL E. ENES
Notary Public in the State of New York
MONROE COUNTY
Reg. No. 01EN6113683
Commission Expires August 2, 2010