

PREMISES USE AGREEMENT

THIS AGREEMENT is made this ____ DAY OF JUNE, 2020 by and between THE LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT (“LFUCG”), ZAMBELLI FIREWORKS INTERNATIONALE (“Vendor”) and R. J. CORMAN RAILROAD COMPANY/CENTRAL KENTUCKY LINES, LLC (“Railroad”).

WHEREAS, LFUCG and Vendor wish to set up and execute a fireworks display (“Display”) relating to the city of Lexington, Kentucky’s Fourth of July celebration at Railroad’s Lexington Yard in Lexington, Kentucky (the “Yard”); and

WHEREAS, both LFUCG and Vendor employees will need to enter Railroad’s property to perform a variety of activities during the course of five days, from July 1, 2020 through July 5, 2019, upon the showing of sufficient identification as determined by LFUCG’s security staff; and

WHEREAS, Railroad is amenable to allowing such Display to occur on its property, but only in accordance with and on the following terms and conditions;

NOW, THEREFORE, in consideration of the covenants and conditions hereafter set forth, it is agreed by the parties hereto:

1. **General Provisions:** Railroad hereby permits the Display in accordance with the following, general provisions:

a. Neither the operations of Railroad nor those of Railroad’s lessees will be disrupted on any of the above dates when the Yard is open for business and in operation.

b. Railroad’s access to emergency equipment in the Yard will not be denied in the event of any rail-related emergency.

c. Railroad Agrees to cease any operations during the time of the Display, provided, however, that the Display must occur on July 4, 2020.

d. LFUCG agrees to provide sufficient police, fire, and other protection to cover the perimeter of the Display area, the sufficiency of which Vendor and Railroad shall approve separately.

e. Railroad Agrees to allow Vendor to park one 24-foot truck on its property at a place it will designate during the term of this Agreement.

2. **Access to Premises.** Vendor and LFUCG shall provide all equipment and personnel necessary to carry out the set-up, firing and tearing down of the Display. Set-up and any other related use of Railroad Premises shall not commence until Vendor provides Railroad the following:

a. Certificate of insurance for Commercial General Liability as required and specified in Section 7 of this Agreement, such certificate to be provided to Railroad at least ten (10) days prior to the first date access to the Yard is required.

b. An original of this Agreement duly signed by authorized representatives of LFUCG and Vendor.

3. After Railroad receives the foregoing, LFUCG and Vendor may enter on the Railroad’s property as follows:

July 1, 2020	8am to 5pm – setup all equipment
July 2, 2020	8am to 5pm - Only in the event that setup is not possible on July 1 due to weather. Local authorities (fire and police) will be notified and security will be provided if July 3 rd is need.
July 4, 2020	8am to 11pm – load all fireworks and prepare for the display
July 5, 2020	8am to 12pm – finish all clean-up of site

The Display shall take place exclusively pursuant to the above schedule unless rescheduled pursuant to Paragraph 6, below.

4. **Conduct on Premises:** Vendor agrees not to make any changes to Railroad’s premises without Railroad’s permission and that following the Display, it will restore Railroad’s premises to the condition in which it was found. No representatives, employees or agents of Vendor may enter upon Railroad’s premises until they have received safety and other instructions from Railroad personnel. Railroad Agrees that a Railroad supervisor will be available during normal Yard operating hours.

5. **Safety:** The Display and Vendor’s use of Railroad’s premises shall at all times be subject to Railroad Safety standards, operating rules and regulations of which Vendor is timely advised, and in full compliance with all federal, state or local regulatory requirements relative thereto. No Display by Vendor pursuant to this Agreement shall be undertaken unless under Railroad’s supervision. Vendor personnel shall promptly obey and carry out any instructions issued by Railroad while on Railroad property.

6. **Postponement:** The Parties agree that in the event Vendor must postpone the scheduled Display on the date listed in paragraph 2, above, due to inclement weather, equipment failure, strikes, or any other event beyond the control of the parties, that the Vendor may reschedule the Display for July 5th with breakdown to take place on July 6th.

7. **Risk and Indemnity:** To the extent allowable under Kentucky law, LFUCG and Vendor shall and do hereby assume responsibility for and agree to RELEASE, INDEMNIFY AND HOLD HARMLESS the Railroad, its successors and assigns, from and against all loss, costs, and expenses, including attorneys’ fees, claims, suits, and judgments whatsoever arising out of or in connection with injury to or death of any person or persons whomsoever, including employees and agents of the parties hereto, or loss of or damages to any property whatsoever, including property of the parties, or loss of service or use of the Yard or loss of revenue or profit caused by or in any way connected with the Display and/or LFUCG or Vendor’s presence on or use of the Railroad’s premises or equipment. At its election, the Railroad may give notice to LFUCG and Vendor to defend the Railroad against any such claims or suits, and upon the giving of such notice, LFUCG and Vendor shall, at their expense, so defend the Railroad, with counsel reasonably satisfactory to the Railroad. LFUCG and Vendor understand and agree that their use of and presence on the Railroad’s property is at their own risk; that the Railroad makes no representation or warranty as to the safety, condition or suitability of its property for any purpose whatsoever; that they accept the usage of the property “AS IS” and that they, to the exclusion of the Railroad, assume all risks and hazards arising in any manner from their presence on or use of the Railroad’s property, or the presence on or use of said property by any and all of their officers, agents, employees, contractors, invitees and any other person who either the LFUCG or the Vendor knew, or in the exercise of ordinary care should have known, might be present on the Railroad’s property by reason of this Agreement. In no event shall Vendor’s indemnification act as a waiver of any defense, immunity or damage limitations Vendor may otherwise have available as to third parties.

8. **Insurance:** Vendor, at its sole cost and expense, shall procure and shall maintain during the continuance of this Agreement, a Commercial General Liability Policy naming the Railroad as an additional named insured with a limit of not less than \$10,000,000.00 per occurrence. Vendor shall furnish a Certificate of Insurance evidencing the above coverage and the form of the policy to the Railroad as set forth in Section 2 herein. The carrier and the amount of the coverage shall be subject to the prior approval of the Railroad. Such insurance shall contain a contractual liability endorsement which will cover the obligations assumed under this Agreement and such other endorsement or endorsements as, in the opinion of counsel for the Railroad may be necessary or advisable to fully protect and indemnify the Railroad. In addition, such insurance shall contain a notification provision whereby the insurance company shall give thirty (30) days' written notice to the Railroad of any change or cancellation of the policy. All of these endorsements and notice provisions shall be stated on the Certificate of Insurance. It is agreed that the liability assumed by the Vendor in this Agreement shall not be limited to the insurance coverage stipulated herein.

9. The term Railroad as used in this Agreement shall include any other company or companies whose property is leased, licensed or operated by Railroad. Said term shall also include any parent company or companies, subsidiary or subsidiaries, affiliated companies of R. J. Corman Railroad Company/Central Kentucky Lines, LLC and their servants, agents or employees.

10. This Agreement is not intended to constitute, create, give effect to or otherwise recognize a joint venture, partnership, or other form of business entity of any kind, and the rights and obligations of the parties hereto shall be limited to those expressly set forth herein and no party shall hold itself out, directly or by implication, as the agent of the other for any matter whatsoever.

11. This Agreement shall be effective as of the date first above written and shall continue in force and effect thereafter until terminated by any of the parties hereto upon five (5) days' written notice to the other or thirty (30) days following the conclusion of the scheduled Display and cleanup.

12. Railroad may terminate this Agreement at any time upon written notice to Vendor and/or LFUCG should either of them fail to comply with any of the terms and conditions of this Agreement, provided, however, that Vendor and/or LFUCG shall have twenty-four (24) hours within which to cure any breach of its obligations hereunder.

13. Any termination of this Agreement shall not in any manner affect any rights, claims, or liabilities which may have accrued hereunder to any party and which, at the time of termination, have not been settled.

14. This Agreement may not be assigned by Vendor or LFUCG without the Railroad's written consent.

15. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

R. J. CORMAN RAILROAD COMPANY/CENTRAL
KENTUCKY LINES, LLC

By: _____

Print: _____

Title: _____

LEXINGTON FAYETTE URBAN COUNTY
GOVERNMENT

By: _____

Print: _____

Title: _____

ZAMBELLI FIREWORKS INTERNATIONALE

By: _____

Print: _____

Title: _____