

**LEASE AND OPERATING AGREEMENT  
(TOWN OF DOLORES – THE GALLOPING GOOSE HISTORICAL SOCIETY)**

WHEREAS, the Town of Dolores, Colorado is the owner of the Galloping Goose No. 5 (hereafter “the Goose”), located in Flanders Park at the replica Rio Grande Southern Railroad Depot, Dolores Colorado, and

WHEREAS, it was the intent of the original purchasers who donated the Goose to the Town of Dolores, placed the Goose in the Town's name, that the Goose remain in the Town of Dolores, Colorado to showcase an important part of the Town's history, and as a visible part of the Town's identity, and

WHEREAS, the Galloping Goose Historical Society (hereinafter referred to as Society) is a non profit organization formed for the purpose to preserve and promote the history of the Historical Rio Grande Southern Railroad, and the restoration, operation and maintenance of Galloping Goose No. 5, and

WHEREAS, the Society entered into an agreement with the Dolores Rotary Club to restore and operate Goose No. 5 (aka Motor No. 5) with Rotary to retain ownership of Goose No. 5 without the knowledge that the Town of Dolores was the legal owner of the Goose No. 5 and that the stated purpose of “the Society” is the restoration and operation of Goose No. 5, and

WHEREAS, the Society has over the years constructed a Replica Railroad Depot (hereafter referred to as Depot) and restored Goose No. 5 to a historically accurate operating condition as is feasible, and

THEREFORE the Town and the Society hereby enter into this agreement and agree as follows:

1. The Town hereby leases the Goose exclusively to the Society, at no cost, for display at the Depot located in Flanders Park Dolores, Colorado and for operating on narrow gauge railroads that fall under the regulations of the Federal Railroad Administration or the Colorado Department of Transportation.
2. The Society shall be solely responsible for entering into agreements with the owners and operators of any railway to operate the Goose on its tracks.
3. The Town Manager or the Town Board of Dolores' designee shall act for the Town in all matters concerning this agreement, unless otherwise stated. The President of the Society and a designee appointed by the Society's Board of Directors shall act for the Society in all matters concerning this agreement, unless otherwise stated.
4. In the first quarter of each calendar year, the Society shall provide the Town with its plan for expected operations of the Goose for that calendar year. The Town shall have the right to review the plan and discuss changes with Society within 30 days of the submittal by the Society. If the Town does not discuss changes with the Society within such 30 day period, the plan shall be deemed acceptable as submitted.

**5.** The plan for Goose operations may be modified throughout the year, the Society shall submit such modifications to the Town and the Town shall have the same right to review such modifications within 31 days of submittal and discuss changes as provided in Paragraph 4.

**6.** Special events may arise such that the Goose needs to be operated on too short a notice to fulfill the conditions in Paragraph 5. The Society shall inform the Town of such an event as soon as possible, and make the best effort to discuss the event with the Town as soon as possible.

The Town shall retain a right of written approval for expected operations (Paragraph 5), as well as modified operations (Paragraph 6) if the Town responds to the notices from the Society within the 30 days time period set forth in Paragraph 4. The Town shall also retain a right of written approval of special events submitted pursuant to this Paragraph 6. Any such rights of approval shall not be unreasonably withheld by the Town.

In the case of an event that does not allow 30 days for a response by the Town, the notice from the Society shall state the latest date that a response would be needed from the Town concerning the event. Should the Town not respond by the date specified, then the operation of the Goose in the designated event shall be deemed acceptable as submitted.

**7.** If necessary the Society shall coordinate the movement of the Goose in and out of Flanders Park with the Town Manager or Board designee; provided, however, it is understood and agreed that the responsibility for movement of the Goose shall rest solely with the Society.

**8.** The Society shall have the sole responsibility for the general maintenance of the Goose in its restored historical look and working configuration, using generally accepted historical preservation and restoration techniques.

**9.** The Society shall be responsible for acquiring and maintaining, as its sole cost and expense, adequate liability insurance coverage during the term of this Agreement, in such amounts as the Town may reasonably approve. The amount of insurance required during any given year shall be determined subsequent to review of the plan of expected operations as provided for in Paragraph 4, 5 and 6 above. The Society shall also maintain adequate liability insurance to satisfy the requirements of the owner of any particular railway on which the Goose will operate. The Society shall name the Town of Dolores as an additional insured on the all of the Society's policies concerning the Goose. The parties shall exchange copies of insurance coverage which each has on Goose No. 5 after the procedure set forth in Paragraph 4 above.

**10.** The Society shall be responsible for all costs of operating and maintaining the Goose.

**11.** The Society shall be responsible for raising the funds required to operate and maintain the Goose and for administering the acquisition and expenditure of such funds. The Society shall be responsible for administering the terms of grants or donations for such funds from public and private institutions and from individuals.

**12.** The Society may receive revenue as result of operating the Goose. All revenue received by the Society will remain with the Society for use in covering costs of operation and maintenance, for use in educational activities associated with the Goose, or for other restoration and preservation projects that fulfill the stated objectives of the Society.

**13.** The Town shall consider providing assistance and support that are within its means, such as providing work and storage space, utilities, and reasonable use of Town service subject to the approval of the Town Manager or Board's designee.

**14.** The Town agrees to continue its insurance coverage of the Goose (replacement cost).

**15.** Should any grant application or contract with the Society require a signature from the Town as owner of the Goose, the Town Manager or Board designee shall sign after authorization by Town Board for the Town. The signature of the Town Manager or Board designee only recognizes that the Town is owner of the Goose and shall not bind the Town to any of the terms of any agreement or contract entered into by the Society.

**16.** In the first quarter of each calendar year, the Society shall provide the Town with the Society's annual report on the operation and maintenance of the Goose including income and expenses of Society attributable to the Goose for past calendar year.

**17.** The Society acts through its Board of Directors. The members of the Board of Directors are not employees of or agents for the Town. The Society shall have no authority, express or implied, to bind the Town to any agreements or understandings.

**18.** For any agreement or contract into which it enters, the Society agrees to perform the scope of work in accordance to the terms and conditions set forth in such an agreement or contract and to be responsible for the work of its subcontractors.

**19.** The Society shall indemnify, save, and hold harmless the Town, its officers, employees and agents, against any and all claims, damages, liability and court awards, including attorney fees, costs and expenses incurred as a result of any act or omission by the Society or its volunteers and subcontractors in performance of their duties under agreements and contracts entered into by Society.

**20.** Subject to the protections, immunities, monetary and other limits of the Colorado Governmental Immunity Act, the Town shall indemnify, save, and hold harmless the Society, its directors, volunteers and agents, against any and all claims, damages, liability and court awards, including attorney fees, costs and expenses incurred as a result of any act or omission by the Town or its employees and agents in performance of their duties under agreements and contracts between the Town and the Society.

**21.** The members of the Society's Board of Directors are jointly and severally obligated to perform according to the terms of this agreement.

**22.** The term of this agreement shall be ten years. The agreement shall be automatically renewed for additional periods of five years each unless or until either party decides to terminate the agreement at the end of a current period of the agreement, by giving a minimum of nine months written notice of the intent of termination.

**23.** Should the Society cease to exist, this agreement shall be terminated. Should the Society be unable to perform maintenance duties for a period of twelve months or more, this agreement shall be terminated. The Society shall give notice to the Town if it decides to disband or can no longer actively maintain the Goose. Should the Town perceive that the Society no longer exists or no longer provides maintenance for a period of a year or more, the Town shall give notice to the Society that it intends to

terminate the agreement in ninety days. The Society shall have the right to provide reasonable grounds to continue the agreement. One of the possible reasonable grounds shall be that the Goose will not be in operation for a period of more than a year and requires no maintenance during that period, but that the Society does intend to continue with operations and maintenance as events warrant.

24. This Agreement may not be assigned by either party without the express written permission of the other party, which permission may be withheld at the discretion of the non-assigning party.

25. This Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado, and as so construed and interpreted, shall be binding upon the respective parties, their successors and permitted assigns.

IN WITNESS WHEREOF, this Agreement is entered into between the Town of Dolores and the Galloping Goose Historical Society this 22nd day of June, 2015.

GALLOPING GOOSE HISTORICAL SOCIETY  
OF DOLORES INC., A COLORADO  
NON-PROFIT ORGANIZATION

BY: Lew Matie  
President

ATTEST:

William A. White  
Vice President

THE TOWN OF DOLORES  
A STATUTORY TOWN

BY: Duvall Truelsen  
Duvall Truelsen, Mayor

Lana Hancock  
Lana Hancock, Town Clerk

Michael F. Green  
Michael F. Green, Town Attorney