

LOCOMOTIVE LEASE AGREEMENT

THIS LEASE AGREEMENT No. _____ (“Agreement”) is dated this ____ day of _____, 2023, and is between Feather River Rail Society, a California Non-Profit Public Benefit Corporation (FRRS) and _____, a(n) _____ (LESSOR).

Lessor is the legal owner of a _____ Locomotive (builder’s number _____) (the “Locomotive”).

Equipment Details: _____

FRRS operates a public railroad museum and desires to lease said Locomotive from Lessor for operations to support the mission and goals of the railroad museum, and Lessor desires to lease said Locomotive to FRRS to support such mission and goals. Therefore, the parties agree as follows:

TERMS AND CONDITIONS OF LEASE:

1. Lease of the Locomotive:

a. Lessor hereby leases to FRRS, and FRRS hereby leases from the Lessor, the Locomotive on the terms and conditions set forth in this Agreement. FRRS shall store the Locomotive during the term of this Agreement on the grounds of its museum in Portola, California.

b. FRRS has received a “Mechanical Inspection Report” dated _____, outlining the results of an initial inspection of the Locomotive performed by _____, a copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference. Any additional repair items or other issues discovered during FRRS’ subsequent inspection (upon delivery of the Locomotive to FRRS) shall be identified in Exhibit “B” and incorporated herein by this reference. The parties agree that as FRRS performs additional maintenance and repairs during the Lease Term, more maintenance and repair items may be discovered. Upon such discovery, the parties may execute addendums to this Agreement to address such respective repairs; however, FRRS shall have no obligation to make such repairs without a mutually agreeable addendum hereto.

c. The Locomotive will be transported and delivered to FRRS/WPRM by _____ at their sole expense prior to the Lease Term Commencement Date specified in Section 4 below.

2. Lease Term:

The term of this Agreement shall commence on the date that it is fully executed by both parties (the “Term Commencement Date”) and shall terminate upon the ____ day of

_____, 20__ (the “Term”), subject to any right of a non-defaulting party to terminate this Agreement following any material breach of this Agreement by the other party, as further provided hereinbelow. Notwithstanding the termination of this Agreement, all obligations incurred hereunder prior to its termination shall be preserved until satisfied and shall survive termination of this Agreement. Neither Party shall be obligated nor required to renew the Agreement upon expiration or earlier termination of the Term.

3. Rent:

a. FRRS shall be required to pay monthly / annual rent for its use of the Locomotive at the rate of \$ _____ for each month / year of use (the “Rent”). Such rent shall be payable to Lessor [**INSERT MONTHLY OR ANNUAL PAYMENT TIMING, e.g., no later than the fifth day of each month or no later than the anniversary of the Term commencement date each year after such commencement date.**]

b. In addition to the Rent, FRRS shall be responsible for the costs of the following:

Effective upon the date the Locomotive is brought into service, as FRRS determines such date in its sole and absolute discretion (the “Service Commencement Date”), and throughout the Term hereof, FRRS shall be responsible for costs of routine maintenance and operation of the Locomotive, as further provided in Section 6 below.

4. Use:

Provided that FRRS is not in default of any provision of this Agreement, FRRS, except as set forth in this Agreement, shall have the exclusive right to use, operate, possess, and control the Locomotive during the Term of this Agreement.

5. Operation and Movement of the Locomotive:

a. FRRS anticipates keeping the Locomotive in Portola, California throughout the Term, and shall not move the Locomotive from the museum location without prior written notice to and approval from Lessor.

b. FRRS shall not modify the Locomotive in any manner that would change its historic appearance without the prior written consent of the Lessor. Lessor agrees and acknowledges that FRRS may make certain minor modifications to satisfy legal requirements, such as [**INSERT ANTICIPATED MODIFICATIONS THAT FRRS WANTS TO MAKE WITHOUT LESSOR APPROVAL**].

c. FRRS shall not, without Lessor’s prior written consent, permit the operation, use or possession of the Locomotive by any person, company, organization, or entity other than FRRS and its respective officers, agents, employees, volunteers and representatives.

6. Maintenance and Repair:

a. Effective on the Service Commencement Date and continuing through the Term hereof, FRRS shall be responsible, at its sole cost and expense, for routine and regular

maintenance on the Locomotive. The parties agree that routine and regular maintenance shall include: **[PRUDENT TO AGREE NOW ON SCOPE OF THIS TYPE OF MAINTENANCE]** (collectively, "Routine Maintenance").

b. If FRRS determines at any time during the Term that maintenance or repairs beyond the Routine Maintenance activities (individually or collectively, "Non-Routine Maintenance") are required, FRRS shall notify Lessor in writing of same, and FRRS' proposed costs for same, and Lessor agrees to, within fifteen (15) calendar days after the date of FRRS' written notice, to reasonably agree and provide written authorization for FRRS to make such repairs at Lessor's sole cost and expense. FRRS shall provide a written invoice to Lessor for such Non-Routine Maintenance costs and Lessor shall pay same to FRRS within fifteen (15) calendar days after receipt of such invoice. Prior to performance of any such Non-Routine Maintenance, Lessor shall have the right, upon prior notice to FRRS, to inspect the Locomotive in the presence of FRRS representatives.

c. At the expiration of the Term, FRRS shall provide to Lessor a written report by an FRRS-qualified maintenance and operations representative describing the current status of the Locomotive and the work performed by FRRS during the Term of this Agreement. Such report shall include copies of all applicable maintenance and repair records.

7. Insurance:

Effective upon the Service Commencement Date and continuing throughout the period during which FRRS is in possession of the Locomotive, FRRS shall maintain comprehensive general liability and property damage insurance in commercially reasonable amounts as FRRS shall determine from time to time.

8. Damage or Destruction of the Locomotive:

Effective on the Service Commencement Date, FRRS hereby assumes and shall bear any risk of loss and damage to the Locomotive arising out of the gross negligence or willful misconduct of FRRS, its members, officers, agents, representatives, or assigns. In the event of loss or material damage to the Locomotive arising out of any such gross negligence or willful misconduct, FRRS shall, in FRRS's sole and absolute discretion: 1) restore the Locomotive to good repair, condition and working order; 2) replace the same with like equipment that is reasonably acceptable to the Lessor and is in good repair, condition and working order; or 3) pay to the Lessor the replacement cost of the Locomotive, which replacement cost shall be determined at the time of any such damage or destruction pursuant to **[NEED PROCESS FOR DETERMINING REPLACEMENT COST – INDUSTRY-STANDARD BLUEBOOK-TYPE VALUATIONS OR OTHER SOURCE FOR REASONABLE APPRAISAL?]**. The parties agree to cooperate in submitting any such matter as an insurance claim under all applicable policies that FRRS maintains hereunder.

9. Governing Law/Disputes and Remedies

Each party must provide to the other party written notice of any alleged disputes, claims, and/or breach ("Dispute(s)") arising under this Agreement within fifteen (15) calendar days after the alleged event or action that results in any such Dispute(s). An executive officer and/or board

member or other representative with decision-making authority for each party shall then be required to meet and confer with the non-complaining party no later than ten (10) business days after receipt of the written notice of the alleged Dispute(s) and to work in good faith to resolve same.

10. Mediation:

a. If within twenty (20) calendar days after such meeting outlined in the immediately preceding section, the parties have not succeeded in resolving the dispute, they will, within an additional twenty (20) calendar days thereafter submit the dispute to a mutually acceptable third-party mediator who is acquainted with dispute resolution methods and who can perform the mediation in Portola, California (or another location to which the parties may agree in writing). In the event the parties are unable to appoint a mutually acceptable mediator, they shall jointly make application to a court with appropriate jurisdiction in the County of Plumas, California, requesting that the court appoint a mediator. The parties agree to participate in good faith in the mediation and in the mediation process. The mediation shall be non-binding.

b. The costs of mediation, including any mediator's fees, and costs for the use of the facilities during the meetings, shall be borne equally by Lessor and FRRS. Each party's costs and expenses will be borne by the party incurring them. If any party commences an arbitration or court action based on a Dispute(s) hereunder without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such arbitration or court action.

11. Arbitration:

a. If the parties are unable to resolve the dispute through such mediation efforts within a ninety (90)-calendar day period after commencement of such mediation, any such Dispute(s) shall then be settled by binding arbitration through "JAMS," and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction.

b. By signing this Agreement, the parties agree to have any Dispute(s) not resolved by the informal meet and confer and/or mediation provisions hereinabove be decided by neutral arbitration as provided by California law and the parties further agree that they are giving up any rights they might possess to have the dispute litigated in a court or jury trial. By signing this Agreement, the parties are giving up their judicial rights to appeal. If either party refuses to submit to arbitration after agreeing to this provision, it may be compelled to arbitrate under the authority of the California Code of Civil Procedure. Agreement to this arbitration provision is voluntary.

c. The arbitration shall be scheduled to take place in Portola, California (unless the parties agree otherwise in writing) and all of the fees and the costs of the arbitration shall be shared equally by the parties. The arbitration shall be conducted in accordance with either the JAMS Optional Expedited Arbitration Procedures or the JAMS Comprehensive Arbitration Rules based upon the mutual agreement of the parties. In the event that the parties cannot so agree, the arbitration shall be conducted in accordance with the JAMS Comprehensive Arbitration Rules. Attorney's fees shall be awarded to the prevailing party by the arbitrator in accordance with

California law. The arbitrator shall have no power to alter or amend this Agreement or to award any relief inconsistent with the provisions herein or unavailable in a court of law. The award of the arbitrator shall be final and binding.

12. Indemnification:

a. FRRS SHALL INDEMNIFY THE LESSOR AGAINST, AND HOLD THE LESSOR HARMLESS FROM ANY AND ALL CLAIMS, ACTIONS, SUITS, PROCEEDINGS, COSTS, EXPENSES, DAMAGES, LOSSES, AND LIABILITIES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEY’S FEES) (COLLECTIVELY, “LOSSES”), ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENCE OR WILLFUL MISCONDUCT OF THE FRRS IN CONNECTION WITH THE INSPECTION, MOVEMENT, TRANSPORTATION, REPAIR AND/OR OPERATION OF THE LOCOMOTIVE BY FRRS OR ANY OF ITS MEMBERS, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES OR ASSIGNS, WHETHER WITH OR WITHOUT THE LESSOR’S KNOWLEDGE OR CONSENT, AND ANY ACTIVITY ON THE FRRS TRACK INCLUDING LOADING OR UNLOADING PASSENGERS.

b. LESSOR SHALL INDEMNIFY FRRS AGAINST, AND HOLD FRRS HARMLESS FROM ANY AND ALL CLAIMS, ACTIONS, SUITS, PROCEEDINGS, COSTS, EXPENSES, DAMAGES, LOSSES, AND LIABILITIES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEY’S FEES) (COLLECTIVELY, “LOSSES”), ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY NEGLIGENCE OR WILLFUL MISCONDUCT OF THE LESSOR, INCLUDING THE ENTRY OF THE LESSOR, ANY OF HIS, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES, OR ASSIGNS UPON FRRS’ PROPERTY FOR ANY PURPOSES, THE INSPECTION, MOVEMENT, TRANSPORTATION, REPAIR AND/OR OPERATION OF THE LOCOMOTIVE BY THE FRRS OR ANY OF ITS MEMBERS, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES OR ASSIGNS, WHETHER WITH OR WITHOUT THE FRRS’ KNOWLEDGE OR CONSENT, AND ANY ACTIVITY ON THE FRRS TRACK INCLUDING LOADING OR UNLOADING PASSENGERS.

13. Return of the Locomotive:

Upon the expiration or earlier termination of the Term, Lessor shall be responsible, at its sole cost and expense, to remove the Locomotive from FRRS property and to transport and deliver the Locomotive to a location designated by Lessor.

14. Default:

If either party breaches this Agreement, the other party may terminate this Agreement upon sixty (60) calendar days’ written notice, unless the breach is cured within such sixty (60)-day period to the reasonable satisfaction of the non-breaching party, in which case the Agreement shall continue in full force and effect. A party’s waiver of any breach shall not constitute or be deemed a waiver of any other breach. If FRRS has acted in good faith to commence repair and maintenance work as required under Section 6 above, and such work is frustrated by factors beyond FRRS’ reasonable control, such failure to complete the work shall not constitute a breach of this Agreement.

15. Ownership:

The Locomotive is, and shall at all times be and remain, the sole and legally titled property of the Lessor, subject to FRRS' rights hereunder to possess, operate, and control same. The FRRS shall have no ownership right, title, or interest in or to the Locomotive except as expressly set forth in this Agreement.

16. Operation by Lessor:

a. During the Term, Lessor may request in writing that FRRS grant access to the Locomotive so Lessor may operate same on FRRS property. FRRS shall respond to Lessor's request within five (5) calendar days after receipt of such written request and, if FRRS so approves Lessor's request, FRRS shall provide notice to Lessor of all applicable rules, regulations, and certifications that FRRS shall require prior to such operation (including any requirements of applicable oversight agencies).

b. Lessor acknowledges that any approved operation by Lessor will require that a) Lessor provide proof of property damage and general liability insurance for the planned period of operation, which insurance requirements FRRS shall provide to Lessor in any notice of approval, and b) the presence of a certain number of FRRS-certified crew members, as determined by FRRS in its sole and absolute discretion.

17. Liens:

FRRS shall keep the Locomotive free from all liens arising out of any work performed, material furnished, or obligations incurred by FRRS. FRRS shall not, however, be required to pay or discharge any tax or assessment so long as it shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any reasonable manner that will not affect or endanger Lessor's title and interest to the Locomotive.

18. Bankruptcy and Liquidation:

Neither this Agreement nor any interest therein is assignable or transferable by operation of law. If any proceedings under the Bankruptcy Act, as amended, is commenced by or against FRRS, or if FRRS is adjudged insolvent, or if FRRS makes any assignment for the benefit of its creditors, or if a writ of attachment or execution is levied on the Locomotive, and is not released or satisfied within ten (10) days thereafter, or if a receiver is appointed in any proceeding or action to which FRRS is a party with authority to take possession FRRS's assets, the Lessor may immediately repossess the Locomotive and may, in addition, exercise any one or more of the remedies set forth in this Agreement. In such an event, this Agreement shall, at the option of the Lessor, without notice, immediately terminate and shall not be treated as an asset of FRRS after the exercise of said option.

19. Assignment:

The parties agree that this lease relationship is unique to the parties. Therefore, FRRS shall not assign this Agreement or any part or any interest in the use, operation, maintenance or possession in the Locomotive without the express prior written consent of the Lessor. The Lessor

shall have the right, subject to its obligations under this Agreement, to sell, assign, or otherwise dispose of the Lessor's interest in the Locomotive and in this Agreement at any time, subject to FRRS's prior written approval.

20. Complete Agreement; Amendments:

This instrument constitutes the entire agreement between the parties on the subject matter hereof and it shall not be amended, altered or changed except by further writing signed by the parties hereto. The invalidity or unenforceability of any provision of this Agreement shall not cause any other provision to be invalid or unenforceable.

21. Governing Law:

This Agreement shall be construed and enforced according to the laws of the State of California. Venue for any proceedings shall be in Plumas County California.

22. Attorney's Fees:

Except as provided in Section 10(b) above, in any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover its reasonable costs and attorney's fees.

23. Authority to Execute:

Each party acknowledges that the officer executing this Agreement has the authority to enter into this Agreement on behalf of the party and in so doing is authorized to bind the party on whose behalf he is signing to the terms and conditions of this Agreement.

24. Notices:

Any notice required to be provided by this Agreement to the parties shall be deemed given when mailed by U.S. Mail, certified mail return receipt requested, via email, or personally delivered.

Signatures on following page.

The parties hereto have executed this Agreement as of the day and year first above written:

Owner/Lessor

Date: _____

Name: _____

Title: _____

**Feather River Rail Society, a California
non-profit public benefit corporation**

Date: _____

Greg Elems, President