



DONATION AGREEMENT

Western Pacific PFE Reefer Car 55069

This Donation Agreement, hereinafter referred to as “Agreement” is between the Feather River Rail Society, a California, non profit, 501(c)(3) public benefit corporation, with mailing address of: P.O. Box 608, Portola, CA 96122, hereinafter referred to as the “**Society**” and the Defonte Family, with mailing address of: 213 Topeka Ave San Jose, CA, 95126, hereinafter referred to as “**Donors**”.

Recitals

WHEREAS, Donors own one (1) Ice Refrigerator Car, identified as Western Pacific Pacific Fruit Express 55069, hereinafter referred to as “Reefer Car” which Donors is desirosto transfer to Society’s ownership and

WHEREAS, Society desires to attain ownership of said Reefer Car.

NOW THEREFORE, in consideration of the terms and conditions set forth in this Agreement, Society and Donors hereby agree and contract with one another as follows:

1. **Ownership Transfer of Reefer Car:** Donors hereby bargain and agree to donate to Society the Reefer Car. Society hereby bargains and agrees to accept from Donors the Reefer Car as herein described, all on the terms and conditions herein set forth.

2. **Identity of Reefer Car:**

a. The Reefer Car which Donors donate to Society is described as follows:

<u>Quantity</u>	One (1)
<u>Manufacturer</u>	American Car and Foundry
<u>Current Road Number</u>	Western Pacific 55069
<u>Type</u>	Wood body Ice Refrigerator Car
<u>Built Date</u>	1924
<u>Original Owner</u>	Western Pacific Railroad

3. **Closing Date:** All right, title and interest to the Reefer Car shall transfer to Society and Society agrees to take all rights, title and interest and full responsibility for care of the Reefer Car from Donors upon the full execution of this Agreement (“Closing Date”).

4. **Transfer Location:** The Reefer Car is donated, and Society accepts it, on an as is, where is basis, at the Donors property in San Jose, CA. Donors agree to provide all parts currently attached to the Reefer Car. Society acknowledges it has examined the Reefer Car and attached parts and expressly represents that it is satisfied with the condition of the Reefer Car.
5. **Acknowledgement:** The Society does agree to acknowledge this donation and all assistance toward the donation by the Donors. Notice shall be placed in the Society newsletter and all historic signage placed with the Reefer Car will note and commemorate Donors. Information entries on Society website and rosters shall also commemorate Donors.
6. **Taxes:** Society agrees to accept responsibility for dealing with all taxing authorities and for payment of any and all taxes (sales, use, etc.), in connection with the donation, transfer and ownership of the Reefer Car arising after the Closing Date. Donors represent that the Reefer Car is free of all liens or claims for sales or use taxes arising from before the Closing Date.
7. **Indemnification:**
 - a. Society hereby assumes liability for and agrees to defend, indemnify, protect and hold Donors and their agents and affiliates harmless from and against all liabilities (including without limitation any obligation based on strict liability and tort), claims, suits, judgments, damages, losses, fines, penalties, costs and expenses including attorneys' fees and costs arising out of or in any manner connected with the transfer of ownership, ownership, use, operation or disposition of the Reefer Car on and after the Closing Date.
 - b. Donors hereby assume liability for and agree to defend, indemnify, protect and hold Society and its officers, directors, employees, agents and affiliates harmless from and against any and all liabilities (including without limitation and obligation based in strict liability and tort), claims, suits, judgments, damages, losses, fines, penalties, costs and expenses, including reasonable attorneys' fees and costs arising out of or in any manner connected with (i) the transfer of ownership, ownership, use or operation of the Reefer Car prior to the Closing Date and prior to interchange, or (ii) any breach of warranties in this Agreement.
8. **No Broker or Agent:** Society and Donors both represent that it has not dealt with any broker, agent or other representative in connection with this transaction.
9. **Clean and Clear Title:** Donors warrant that title to the Reefer Car is being transferred to Society free of all liens and encumbrances and certifies that no prior obligations under previous contracts shall be transferred or imposed

inadvertently or otherwise by this Agreement. Donors further warrants that he has the full right, power and authority to transfer the Reefer Car to the Society.

- 10. **Attorney Fees:** The parties agree that in event of any action taken (whether by way of suit or otherwise) to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney’s fees.
- 11. **Governing Law and Venue:** This Agreement shall be governed by the laws of the State of California and any action to enforce or interpret this Agreement shall be commenced and maintained, in the Superior Court in and for the County of Plumas, State of California, if in state court, or in the United States District Court for the Eastern District of California, if in federal court.
- 12. **Binding on Heirs and Assigns:** This Agreement and each of its provisions shall be binding upon the heirs, executors, administrators, successors, and assigns of each of the parties hereto.
- 13. **Sole and Only Agreement:** This Agreement constitutes the sole and only agreement between the parties respecting the Reefer Car and correctly sets forth the rights, duties and obligations of each to the other with respect to the Reefer Car as of the date of full execution endorsement of this Agreement. Any amendment hereto must be in writing and executed by both parties..

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly empowered and authorized representatives as of the date last t endorsed below.

Feather River Rail Society

SIGNATURE
Steve Habeck, President

Date: _____ 2018

Dafonte Family Representative

SIGNATURE

Date: _____ 2018