

## **25 Tonner 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 (FRRS) and Armando Epifani, an individual

Armando Epifani is the owner of a General Electric-built 25ton locomotive (builder’s number \_\_\_\_\_) and hereafter referred to as the “25 Tonner.”

As the Feather River Rail Society operates a public railroad museum and desires to lease said 25 tonner from Armando Epifani for operations to support the mission and goals of the railroad museum, the parties agree as follows:

### **TERMS AND CONDITIONS OF LEASE:**

#### **1. Lease of the 25 Tonner:**

Armando Epifani hereby leases to the Feather River Rail Society, and Feather River Rail Society hereby leases from the Armando Epifani, the 25 tonner on the terms and conditions set forth in this Agreement. The Feather River Rail Society, shall store the 25 tonner locomotive during the term of this Agreement on the grounds of its museum in Portola California.

- 2.** The FRRS has received the “Locomotive 25 Tonner Mechanical Inspection Report” dated \_\_\_\_\_ wherein the results of an initial inspection of the 25 Tonner were provided to the FRRS, a copy of which is attached hereto as Exhibit “A” and incorporated herein by this reference. Additional repair items have been discovered and are identified in Exhibit “B” attached hereto and incorporated herein by this reference. The parties agree that as additional items of repair are undertaken in the future, more items of repair may be discovered. Upon such discovery of additional repair items, the parties may execute addendums to this Agreement to address such respective repairs, however FRRS shall have no obligation to make the same without a mutually agreeable addendum hereto.

The 25 tonner will be transported to the FRRS/WPRM by Armando Epifani at his expense prior to this lease agreement effective date.

#### **3. Use:**

Provided that FRRS is not in default of any provision of this Agreement, FRRS, except as set forth in this Agreement, will be entitled to the right to the use, operation, possession, and control of the 25 Tonner during the term of this Agreement. FRRS will also during such period employ, and have control, supervision, and responsibility over, any operations or uses of the 25 Tonner.

**4. Term of Agreement:**

The term of this Agreement shall commence on the date that it is fully executed by both parties and shall terminate upon the 31st day of December, 2033, subject to any right of a non-defaulting party to terminate this Agreement following any material breach of this Agreement by the other party. 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 obligated nor required to renew the Agreement upon termination of the leasehold.

**5. Rental Agreement:**

- a. FRRS shall be required to pay annual rent for its use of the 25 tonner at the rate of \$50 for each year of use.
- b. FRRS shall be responsible for the costs of the following:
  - Once the 25 tonner is returned to service as determined by the parties, then normal costs of maintenance of the 25 tonner, as defined in this Agreement, together with normal operating costs of the FRRS for use of the 25 tonner for the term of this Agreement shall be paid by the FRRS.

**6. Default:**

If either party breaches a material provision of this Agreement, the other party may terminate this Agreement upon 90 days' written notice unless the breach is cured within the notice period. A party's waiver of any breach shall not constitute or be deemed a waiver of any other breach. A good faith effort to repair or maintain the 25 tonner, as defined by Paragraph \_\_\_ of this Agreement, begun by FRRS within 10 days of any breakdown which is constrained by factors beyond FRRS's control, shall not in and of itself, constitute a breach of this Agreement.

**7. Operation and Storage of the 25 tonner:**

After this Agreement is effective, and the 25 tonner is placed into use by FRRS, FRRS agrees to operate, maintain, and protect the 25 tonner for the term of this Agreement. FRRS agrees to store the 25 tonner during the term of this Agreement.

**8. Disclaimer:**

Armando Epifani represents and warrants that he has the right to lease the 25 tonner, as provided in this Agreement.

**9. Liability Insurance:**

While in possession of the 25 tonner, FRRS shall maintain comprehensive general liability insurance.

#### **10. Property Insurance:**

While in possession of the 25 tonner, FRRS shall maintain comprehensive general property liability insurance.

#### **11. Damage or Destruction of the 25 tonner:**

After this Agreement is effective, and the 25 tonner is placed into use by FRRS, FRRS hereby assumes and shall bear the entire risk of loss and damage to the 25 tonner arising out of the negligence of FRRS, excepting any cause due to the negligence or willful misconduct of the FRRS or its members, officers, agents, representatives, or assigns. In the event of loss or material damage to the 25 tonner arising out of the negligence of FRRS, FRRS shall, at FRRS's sole option, and as reasonable: 1) place the same in good repair, condition and working order; 2) replace the same with like equipment which is reasonably acceptable to the Armando Epifani and is in good repair, condition and working order; or 3) pay to the Armando Epifani the replacement cost of the 25 tonner. The parties agree to cooperate in submitting any such matter as an insurance claim under all applicable policies described in paragraphs 9 and 10 above.

#### **12. Maintenance and Repair:**

The Armando Epifani and FRRS agree that for the purposes of this Agreement, maintenance shall be defined to include servicing of the engine, all necessary and appropriate inspections, winterizing of the locomotive, and maintenance activities that include cleaning, lubrication and adjustment of journals, axles, bearings, linkages, cylinders, pins and bushings, cleaning and servicing of brake valves, adjusting mechanisms, replacing brake shoes and brake hoses, servicing of injectors without replacing parts, and machinery, replacing glass, light bulbs, cotter pins and general fasteners, fixings sanders, hoses, minor gaskets and loose components such as water glasses and sweeping out of the tender for each season.

- a. Work which includes new piping, tubing, fitting replacement, bearings, bushings, castings, bolts, pins and forgings, air system rings, pistons, rods, valves, cylinders, replacement of wooden beams, decks, ladders, attachments, couplers, knuckles, draw bars, pockets, pins, buffers, springs, air pump and governor parts, air brake components, injector parts, check valves, mechanical lubricator parts, safety valves, bells, whistles, lamps, journal boxes, drive wheels, tires, axles, wedges, adjusting bolts, frame pieces, spring or components of springs, brake levers or arms, pistons, rings, cylinders, valves, linkages, rods, cross head components, is also intended as repair.
- b. FRRS, at its own cost and expense, shall maintain the 25 tonner during its use by FRRS. The FRRS and the Armando Epifani shall mutually agree on repairs that may need to be made from time to time, and further agree to FRRS's price to make the repairs, as FRRS may set from time to time, with the cost of repair being borne by the Armando Epifani save and except for those repairs which are made necessary and occasioned by the FRRS's negligence or misuse of 25 tonner.

- c. FRRS, at its own cost and expense, shall keep the 25 tonner in good repair, condition, and working order while being used by FRRS.
- d. The Armando Epifani shall have the right to inspect the 25 tonner, either by duly authorized members of the FRRS or by its authorized representatives, and shall have the right after such inspections to “meet and confer” with FRRS regarding the physical condition of the 25 tonner. In addition, at the end of the term of this Agreement, FRRS shall provide to the Armando Epifani with a written report by a qualified maintenance and operations representative describing the current status of the 25 tonner and the work performed by FRRS on it during the term of this Agreement, and shall provide to the Armando Epifani copies of all records required.

**13. Arbitration:**

Any dispute arising under this Agreement shall be settled by Arbitration in accordance with the Rules of Arbitration as in effect in the State of California from time to time.

The Armando Epifani and FRRS agree to mutually select a person to arbitrate, and agree that the parties will, pending receipt of an arbitration award, pay for such costs of arbitration equally. Each of the parties shall bear its own fees and costs of arbitration. Arbitration selected by the parties shall be binding. Judgment upon any arbitration award rendered in accordance herewith may be entered in any Court having jurisdiction thereof.

**14. Operation and Movement of the 25 tonner:**

- a. FRRS anticipates that the 25 tonner will be kept in Portola California during the term of the lease.
- b. FRRS shall store the 25 tonner in at least as secure and protected a location as FRRS’s other locomotives.
- c. FRRS shall not modify the 25 tonner in any manner, except for decoration and lettering, which would change its historic appearance, other than as required to meet any legal requirements, without the prior written consent of the Armando Epifani.
- d. FRRS shall not, without the Armando Epifani prior written consent, permit the operation, use or possession of the 25 tonner by any person, company, organization, or entity other than FRRS and its respective officers, agents, employees, volunteers and representatives.

**15. Indemnification:**

- a. FRRS SHALL INDEMNIFY THE ARMANDO EPIFANI AGAINST, AND HOLD THE ARMANDO EPIFANI 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, INCLUDING THE ENTRY OF THE FRRS, ITS MEMBERS, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES, OR ASSIGNS UPON ARMANDO EPIFANI PROPERTY FOR ANY PURPOSES, THE INSPECTION, MOVEMENT, TRANSPORTATION, REPAIR AND/OR OPERATION OF THE 25 TONNER BY FRRS'S OR ANY OF ITS MEMBERS, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES OR ASSIGNS, WHETHER WITH OR WITHOUT THE ARMANDO EPIFANI'S KNOWLEDGE OR CONSENT, AND ANY ACTIVITY ON THE FRRS TRACK INCLUDING LOADING OR UNLOADING PASSENGERS, EXCEPT TO THE EXTENT THAT SUCH RESULTS FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE FRRS OR ITS MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES, OR ASSIGNS.

- b. ARMANDO EPIFANI SHALL INDEMNIFY FRRS AGAINST, AND HOLD THE 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 ARMANDO EPIFANI, INCLUDING THE ENTRY OF THE ARMANDO EPIFANI, ANY OF HIS, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES, OR ASSIGNS UPON FRRS'S PROPERTY FOR ANY PURPOSES, THE INSPECTION, MOVEMENT, TRANSPORTATION, REPAIR AND/OR OPERATION OF THE 25 TONNER BY THE FRRS OR ANY OF ITS MEMBERS, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES OR ASSIGNS, WHETHER WITH OR WITHOUT THE FRRS'S KNOWLEDGE OR CONSENT, AND ANY ACTIVITY ON THE FRRS TRACK INCLUDING LOADING OR UNLOADING PASSENGERS, EXCEPT TO THE EXTENT THAT SUCH RESULTS FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE FRRS OR ITS MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES, OR ASSIGNS.

**16. Return of the 25 TONNER:**

Upon the expiration or termination of this Agreement, Armando Epifani will transport and deliver the 25 tonner to a location designated by him.

**17. Failure to Meet Obligations:**

Should either the Armando Epifani or FRRS fail to procure or maintain insurance as required under this Agreement or fail to pay rent, fees, assessments, charges and taxes as specified in this Agreement, the compliant Party shall have the right, but shall not be obligated, to effect such insurance, or pay said fees, assignments, charges and taxes, as the case may be. In that event, the cost thereof shall be repayable to the failing Party by the compliant Party within 30 days, and on such failure to pay, the compliant Party may, at its election, declare the failure to constitute a material breach in the terms of this Agreement

and cancel the Agreement and terminate the leasehold.

**18. Ownership:**

The 25 tonner is, and shall at all times be and remain, the sole and exclusive property of the Armando Epifani. The FRRS shall have no right, title or interest in or to the 25 tonner except as expressly set forth in this Agreement.

**19. Operation by Amrando Epifani:**

Armando Epifani shall have the right to operate the 25 tonner on FRRS property within the rules, regulations and certifications required by the FRRS and any relevant oversight agencies. This shall include Armando Epifani being certified for locomotive operation by the FRRS and operating with appropriate number of FRRS certified crew. Any operation will be first cleared with and approved by relevant FRRS operation managers, to include the General Superintendent, President, Vice-President and / or Yardmaster. Operation will be conducted according to current FRRS operating rules and special bulletins.

**20. Liens:**

FRRS shall keep the 25 tonner free from all liens arising out of any work performed, material furnished or obligation 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 which will not affect or endanger the Armando Epifani title and interest to the 25 tonner.

**21. 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 25 tonner, 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 Armando Epifani may immediately repossess the 25 tonner 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 Armando Epifani, without notice, immediately terminate and shall not be treated as an asset of FRRS after the exercise of said option.

**22. Assignment:**

The parties agree that the 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 25 tonner without the express prior written consent of the Armando Epifani. The Armando Epifani shall have the right, subject to its obligations under this Agreement, to sell, assign, or otherwise dispose of the Armando Epifani's interest in the 25 tonner and in this Agreement at any time.

**23. 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.

**24. Governing Law:**

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

**25. Attorney's Fees:**

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. Such shall include appeal.

**26. No Construction Against Drafter:**

Each party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of this Agreement.

**27. 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.

**28. 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, or personally delivered.

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

Owner Armando Epifani

Signed:

Date:

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Armando Epifani

Feather River Rail Society, A California Non-Profit Corporation

Signed:

Date:

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Greg Elems - President