



## **LOCOMOTIVE #18 LEASE AGREEMENT No. FY22-L002**

**THIS LEASE AGREEMENT No. FY22-L002** (“Agreement”) is dated this 26th day of August, 2021, and is between VIRGINIA AND TRUCKEE RAILROAD, INC., a Nevada Corporation (“VTRR”) and the NEVADA COMMISSION FOR THE RECONSTRUCTION OF THE V&T RAILWAY OF CARSON CITY STOREY COUNTY, a political subdivision of the State of Nevada (“Commission”).

The Commission is the owner of a Baldwin-built 2-8-2 steam locomotive (builder’s number 41709, numbered MCR 18) and tender (hereinafter collectively referred to as the “18”). VTRR is the owner of a steam locomotive and tender commonly and hereafter referred to as the “29.”

VTRR operates a tourist railroad enterprise.

The parties agree as follows:

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

**1. Lease of the 18:** Commission hereby leases to VTRR, and VTRR hereby leases from the Commission, the 18 on the terms and conditions set forth in this Agreement. VTRR, at its expense, shall store the 18 during the term of this Agreement.

**2.** The Commission has received the “Locomotive #18 Mechanical Inspection Report” dated 1 December 2009 authored by Christopher DeWitt wherein the results of an initial inspection of the 18 were provided to the Commission, 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 VTRR shall have no obligation to make the same without a mutually agreeable addendum hereto.

**3. Use:** Provided that VTRR is not in default of any provision of this Agreement, VTRR, except as set forth in this Agreement, will be entitled to the right to the use, operation,

possession, and control of the 18 during the term of this Agreement. VTRR will also during such period employ, and have control, supervision, and responsibility over, any operations or uses of the 18.

**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, 2022, 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 be obligated nor required to renew the Agreement upon termination of the leasehold.

**5. a. Rental Agreement:** VTRR shall be required to pay annual rent for its use of the 18 at the rate of \$500 for each day of use up to a maximum of \$20,000 for each year of use.

**b.** VTRR shall be responsible for the costs of the following:

- Once the 18 is permitted to return to service as determined by regulatory authorities, then all costs of maintenance of the 18, as defined in this Agreement, together with all costs of VTRR for use of the 18 for the term of this Agreement shall be paid by VTRR; and
- VTRR shall be responsible for all costs of taking the 18 out of service at the end of its use and prior to storage, including all costs of winterizing the locomotive.

**c. Condition Precedent to Lease:** The Commission and VTRR agree that this Agreement is conditioned upon the existence of a valid Operation Agreement between them by which VTRR shall receive appropriate consideration for those excursion trains operated exclusively by VTRR for the Commission.

**d.** The Commission shall also, at its sole cost and expense, have the 18 inspected by the appropriate representative of the Federal Railroad Administration (“FRA”) and/or the Nevada Public Utilities Commission (“PUC”) and shall obtain all required FRA/PUC certifications that the locomotive may be operated and used for excursion trains offered by VTRR for the Commission. The Commission shall also, at its sole cost and expense, have the 18 inspected by such other federal or state regulatory agencies as may have jurisdiction over the 18 and excursion trains operated in the State of Nevada prior to this Agreement becoming effective.

**6. Default:** If either party breaches a material provision of this Agreement, the other party may terminate this Agreement upon 30 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 18, as defined by

Paragraph 13 of this Agreement, begun by VTRR within 10 days of any breakdown which is constrained by factors beyond VTRR's control, shall not in and of itself, constitute a breach of this Agreement.

**7. Operation and Storage of the 18:** After this Agreement is effective, and the 18 is placed into use by VTRR, VTRR agrees to operate, maintain, and protect the 18 for the term of this Agreement. VTRR agrees to store the 18 during the term of this Agreement.

**8. Compliance with Law:** After this Agreement is effective, and the 18 is placed into use by VTRR, VTRR shall, at VTRR's sole cost, comply with all applicable requirements, rules, laws, ordinances, and orders of all municipal, state, and federal governments and authorities now in force, or that may later be in force, pertaining to the possession and use of the 18. VTRR shall meet and pay timely when due all applicable permit, license and other fees required by local, state or federal authorities pertaining to the 18. VTRR shall prepare and file all required reports with any municipal, state and/or federal agency required by any regulatory agency which has jurisdiction over the 18.

**9. Disclaimer:** Commission represents and warrants that Commission has the right to lease the 18, as provided in this Agreement.

**10. Liability Insurance:** While in possession of the 18, VTRR shall maintain comprehensive general liability insurance as shall protect VTRR and Commission concerning VTRR's use of the 18. Such general liability insurance shall name the Commission as an additional insured and shall provide that the Commission receive at least thirty (30) days' written notice prior to cancellation or modification thereof. The insurance shall include coverage of not less than FIVE MILLION DOLLARS (\$5,000,000.00), per occurrence/FIVE MILLION DOLLARS (\$5,000,000.00) aggregate, including premises operations (including VTRR's operation of the 18), completed operations, contractual liability, independent contractor's liability, broad form property damage, and personal injury to be at least as broad as the unmodified ISO Form No. CG 00 01 (occurrence form). All policies of insurance required to be maintained herein shall provide that the Commission shall be given thirty (30) days' written notice of any intended cancellation thereof or reduction of coverage provided thereby. During the term of this Agreement, VTRR shall provide the Commission with an updated original, or copy, of the policy or certificate evidencing such insurance. The Commission shall likewise carry liability insurance related to those excursion trains operated exclusively by VTRR for the Commission, on the same terms set forth above for VTRR except that VTRR shall not be named as an additional insured on the Commission's insurance policy.

**11. Property Insurance:** The Commission shall maintain primary property insurance on the 18, and provide a certificate to VTRR evidencing such insurance which shall cover damage or destruction to the 18.

**12. Damage or Destruction of the 18:** After this Agreement is effective, and the 18 is placed into use by VTRR, VTRR hereby assumes and shall bear the entire risk of loss and damage to the 18 arising out of the negligence of VTRR, excepting any cause due to the negligence

or willful misconduct of the Commission or its members, officers, agents, representatives, or assigns. In the event of loss or material damage to the 18 arising out of the negligence of VTRR, VTRR shall, at VTRR'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 Commission and is in good repair, condition and working order; or 3) pay to the Commission the replacement cost of the 18. The parties agree to cooperate in submitting any such matter as an insurance claim under all applicable policies described in paragraphs 10 and 11 above.

**13. a. Maintenance and Repair:** The Commission and VTRR agree that for the purposes of this Agreement, maintenance shall be defined to include servicing of the engine, all necessary and appropriate inspections, submittal of end of year Form 5 to the FRA, 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, dead weight testing of gauges, UT dry pipes, adjusting mechanisms, replacing brake shoes and brake hoses, servicing of injectors without replacing parts, punching of fire tubes, cleaning out smoke box, sweeping of fire box, wiping jacketing, cab surfaces 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.

Repair items are to include Form 19 boiler repairs or alterations, the 1472-day service inspection, Form 4 inspections, manufacture or replacement of stay bolts, tubes, sheets, refractory or other boiler work, including caulking, forming, drilling, tapping, welding or riveting including tender tank components. and caulking of seams where necessary.

Work which includes new piping, tubing, jacketing, insulation, 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, tender wheels, bearings, frame, bolsters, boxes, pads, linkage, 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, burners, drifting valves, 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, valve motion, reverse mechanism, throttle shaft and linkage, throttle body, dry pipe, throttle pipe, saddle, smoke box, nozzles, injectors (except cleaning and servicing are maintenance items), and dynamo, is also intended as repair.

**b.** VTRR, at its own cost and expense, shall maintain the 18 during its use by VTRR. The VTRR and the Commission shall mutually agree on repairs that may need to be made from time to time, and further agree to VTRR's price to make the repairs, as VTRR may set from time to time, with the cost of repair being borne by the Commission save and except for those repairs which are made necessary and occasioned by the VTRR's negligence or misuse of 18.

**c.** VTRR, at its own cost and expense, shall keep the 18 in good repair,

condition, and working order while being used by VTRR.

**d.** The Commission shall have the right to inspect the 18, either by duly authorized members of the Commission or by its authorized representatives, and shall have the right after such inspections to “meet and confer” with VTRR regarding the physical condition of the 18. In addition, at the end of the term of this Agreement, VTRR shall provide to the Commission with a written report by a qualified maintenance and operations representative describing the current status of the 18 and the work performed by VTRR on it during the term of this Agreement, and shall provide to the Commission copies of all records required by regulatory agencies.

**14. 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 Nevada from time to time.

The Commission and VTRR 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.

**15. Operation and Movement of the 18:**

**a.** VTRR anticipates that the 18 will be kept in Virginia City during the term hereof.

**b.** VTRR shall store the 18 in at least as secure and protected a location as VTRR’s other locomotives.

**c.** VTRR shall not modify the 18 in any manner, except for decoration and lettering, that would change its historic appearance, other than as required to meet federal requirements, without the prior written consent of the Commission.

**d.** VTRR shall not, without the Commission’s prior written consent, permit the operation, use or possession of the 18 by any person, company, organization, or entity other than VTRR and its respective officers, agents, employees and representatives.

**16. Indemnification:**

**a.** VTRR SHALL INDEMNIFY THE COMMISSION AGAINST, AND HOLD THE COMMISSION 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 VTRR, INCLUDING

THE ENTRY OF THE VTRR, ITS MEMBERS, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES, OR ASSIGNS UPON THE COMMISSION'S PROPERTY FOR ANY PURPOSES, THE INSPECTION, MOVEMENT, TRANSPORTATION, REPAIR AND/OR OPERATION OF THE 18 BY VTRR'S OR ANY OF ITS MEMBERS, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES OR ASSIGNS, WHETHER WITH OR WITHOUT THE COMMISSION'S KNOWLEDGE OR CONSENT, AND ANY ACTIVITY ON THE COMMISSION'S TRACK INCLUDING LOADING OR UNLOADING PASSENGERS, EXCEPT TO THE EXTENT THAT SUCH RESULTS FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE COMMISSION OR ITS MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES, OR ASSIGNS.

**b.** THE COMMISSION SHALL INDEMNIFY VTRR AGAINST, AND HOLD THE VTRR 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 COMMISSION, INCLUDING THE ENTRY OF THE COMMISSION, ITS MEMBERS, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES, OR ASSIGNS UPON VTRR'S PROPERTY FOR ANY PURPOSES, THE INSPECTION, MOVEMENT, TRANSPORTATION, REPAIR AND/OR OPERATION OF THE 18 BY THE VTRR OR ANY OF ITS MEMBERS, EMPLOYEES, OFFICERS, AGENTS, REPRESENTATIVES OR ASSIGNS, WHETHER WITH OR WITHOUT THE VTRR'S KNOWLEDGE OR CONSENT, AND ANY ACTIVITY ON THE COMMISSION'S TRACK INCLUDING LOADING OR UNLOADING PASSENGERS, EXCEPT TO THE EXTENT THAT SUCH RESULTS FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE VTRR OR ITS MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES, OR ASSIGNS.

**17. Return of the 18:** Upon the expiration or termination of this Agreement, VTRR will transport and deliver the 18 to the Commission at a location within Carson City or Storey County designated by the Commission, in good repair, condition and working order.

**18. Failure to Meet Obligations:** Should either the Commission or VTRR 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.

**19. Ownership:** The 18 is, and shall at all times be and remain, the sole and exclusive property of the Commission. VTRR shall have no right, title or interest in or to the 18 except as expressly set forth in this Agreement.

**20. Liens:** VTRR shall keep the 18 free from all liens arising out of any work performed, material furnished or obligation incurred by VTRR. VTRR 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 Commission's title and interest to the 18; provided, VTRR shall reimburse the Commission for any damages or expenses which result from such failure to pay or discharge.

**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 VTRR, or if VTRR is adjudged insolvent, or if VTRR makes any assignment for the benefit of its creditors, or if a writ of attachment or execution is levied on the 18, and is not released or satisfied within ten (10) days thereafter, or if a receiver is appointed in any proceeding or action to which VTRR is a party with authority to take possession VTRR's assets, the Commission may immediately repossess the 18 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 Commission, without notice, immediately terminate and shall not be treated as an asset of VTRR after the exercise of said option.

**22. Assignment:** The parties agree that the lease relationship is unique to the parties. Therefore, VTRR shall not assign this Agreement or any part or any interest in the use, operation, maintenance or possession in the 18 without the express prior written consent of the Commission. The Commission shall have the right, subject to its obligations under this Agreement, to sell, assign, or otherwise dispose of the Commission's interest in the 18 and in this Agreement at any time.

**23. Intellectual Rights:** The Commission is the owner of all intellectual property of or pertaining to, or arising from the 18 including the image thereof, whether consisting of photographic, electronic, physical replication (regardless of scale, style, drawing or artistic rendition or any other visual, audio or other medium), drawing or artistic rendition, or any other visual, audio or other medium.

VTRR is the owner of all intellectual property of or pertaining to, or arising from, its logo, its locomotives (interior and exterior), its railroad equipment, its facilities and landmarks, including any images thereof, whether consisting of photographic, electronic, physical replication (regardless of scale, style, drawing or artistic rendition or any other visual, audio or other medium).

**24. 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.

**25. Governing Law:** This Agreement shall be construed and enforced according to the laws of the State of Nevada. Venue of any proceedings shall be in Carson City, Nevada.

**26. 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.

**27. 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.

**28. 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.

**29. 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.

THE NEVADA COMMISSION FOR THE RECONSTRUCTION OF THE V&T RAILWAY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David Peterson,  
Chairman of the Board

VIRGINIA & TRUCKEE RAILROAD COMPANY,  
A Nevada Corporation

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Thomas Gray,  
President