

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") made as of August]_____, 2013 by and between **STERLING RAIL, INC.** a Texas Corporation (the "Purchaser"), located at 2905 RR 620 North, Austin, TX 78734 and **FEATHER RIVER RAIL SOCIETY** a California Company (the "Seller"), located at P. O. Box 608, Portola, California 96122

WITNESSETH:

WHEREAS, Seller is the owner of the **VIA Cafe-Lounge Car** listed in Schedule A (the "Unit(s)").

WHEREAS, Purchaser has waived inspection of the Unit(s) and is hereby purchasing Unit(s) "AS IS/WHERE IS";

AND WHEREAS, subject to the agreements hereinafter set forth, Seller desires to convey to Purchaser all of its right, title and interest in and to the Unit(s) and Purchaser desires to acquire all of Seller's right, title and interest in and to the Unit(s).

NOW, THEREFORE, in consideration of the premises and the mutual terms and conditions hereinafter set forth, Purchaser and Seller hereby agree as follows:

Section 1. Matters Related to Sale.

- (a) **Delivery.** Immediately upon Seller's receipt of Purchaser's payment as outlined in Section 3 below and Purchaser's receipt of Bill of Sale as outlined in section 5(a) 5(c), Seller will make the Unit(s) available to Purchaser at Portola, California (the "Delivery Location") and ownership, risk of loss and damage to the Unit(s) will pass to Purchaser.
- (b) **Costs Relating to Shipping Subsequent to Closing.** The Unit(s) are sold "As-Is/Where Is" and any and all costs related to shipping of the Unit(s) from the Delivery Location to Purchaser's final designated destination plus any necessary repairs, inspections, certifications and insurance to transport the Unit(s) shall be at the sole cost and expense of Purchaser.
- (c) **Liens of Record.** The Unit(s) are owned by Seller free and clear of any liens or encumbrances against the Unit(s) and upon Closing shall remain free and clear of all liens of record (other than liens of record arising by or through Purchaser).

- (d) **Re-Tagging and Re-Stenciling the Unit(s).** Purchaser shall register the Unit(s) with Umler, obtain new AEI tags, plus re-tag and re-stencil the Unit(s) at Purchaser's sole expense prior to the shipping of the Unit(s).
- (e) **Storage.** Seller will provide (1) year of storage for the car from the execution of this Purchase and Sale Agreement at no cost to Purchaser.

Section 2. Sale of Unit(s). Seller shall sell and assign, and Purchaser shall purchase and accept Seller's right, title and interest in and to the Unit(s) upon Seller's receipt of Purchaser's payment as outlined in Paragraphs 3 and 5b below.

Section 3. Consideration. As consideration for the Unit(s) purchased, Purchaser shall pay to Seller the sum of USD \$40,000 (the "Purchase Price"). The Purchase Price for the Unit(s) is payable by wire transfer in immediately available funds as follows within one business day of the execution of this Agreement to the following:

Bank Name:

Account Name:

ABA Number:

For further credit to:

Final Account Number:

Section 4. Taxes. Purchaser shall be responsible for payment of any recording costs or transfer, sales, use, stamp, value added, withholding or other similar taxes (excluding taxes on the net income of Seller) imposed upon the sale and delivery of the Unit(s). Upon request, Purchaser will provide Seller with proof of payment of the above referenced costs and taxes.

Section 5. Closing.

- (a) **Closing.** The consummation of the transactions contemplated by this Agreement (the "Closing") shall be deemed to have occurred when Seller has received the Purchase Price in full in accordance with the above wire instructions and Purchaser has received a signed bill of Sale in the format provided in Exhibit A (the "Bill of Sale") from Seller.
- (b) **Seller's Consideration.** Seller shall receive the consideration as provided in Section 3.
- (c) **Bill of Sale.** Upon Seller's receipt of Purchaser's payment as outlined in Section 3 above, Seller shall immediately furnish Purchaser a signed Bill of Sale in the format provided in Exhibit A of this Agreement for the Unit(s).

Section 6. Warranties. THE UNIT(S) SHALL BE SOLD TO PURCHASER BY SELLER ON AN “AS-IS, WHERE-IS BASIS, WITH ALL FAULTS,” AND FREE OF ANY LIENS OR ENCUMBRANCES TO THEIR SALE WHEN TITLE PASSES TO PURCHASER, WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO DESIGN, QUALITY, VALUE, FUNCTIONALITY OR THE CONDITION OF THE UNIT(S), INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR ANY WARRANTY WITH RESPECT TO PATENT INFRINGEMENT AND PURCHASER SHALL HAVE NO RECOURSE AGAINST SELLER FOR THE UNIT(S). PURCHASER ACKNOWLEDGES THAT SELLER SHALL NOT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS INCURRED BY PURCHASER IN CONNECTION WITH OR RELATING TO THE PURCHASE OR THE USE OF THE UNIT(S).

Section 7. Additional Instruments. At the time of Closing or at such other later date as either party shall reasonably request, each party to this Agreement agrees to execute and deliver such instruments and take such actions as shall be reasonably required in order to carry out the transactions contemplated by this Agreement.

Section 8. Purchaser’s and Seller’s Representations and Warranties. Purchaser represents and warrants to Seller, and Seller represents to Purchaser, on the date hereof, the following:

- (a) **Organization; Good Standing; Authority.** Purchaser is a Texas Corporation duly organized, validly existing and in good standing under the laws of Texas and has the power and authority to carry on its business as it is now being conducted and to own the property and assets it now owns. Seller has similar authority and is a California Company in good standing.

Seller and Purchaser have the power and authority to enter into, perform their obligations under, and to consummate the transactions and other acts contemplated by this Agreement. The execution, delivery and performance of this Agreement by the parties, the payment of the Purchase Price by Purchaser as well as all other transactions contemplated by this Agreement have been duly and validly authorized and approved by all requisite action, including all required approvals of Purchaser’s and Seller’s directors and members. This Agreement constitutes the valid and binding obligation of parties, enforceable against either in accordance with its terms, except to the extent that enforceability may be limited by bankruptcy, insolvency and other laws affecting creditors’ rights generally. Neither the execution nor the delivery of this Agreement, nor the consummation of the transactions contemplated by this Agreement, nor the compliance with or fulfillment of the terms or the provisions of this Agreement will (i) violate or conflict with the provisions of the parties’ articles of continuance or bylaws; (ii) violate, conflict with, or constitute a breach of or default under the provisions of any indenture, agreement, judgment, decree, order, governmental permit or license, or other instrument to which either party is a

party or by which the parties are bound (which violation, conflict, breach or default would have a material adverse effect of the either party or its ability to perform its obligations hereunder); or (iii) require any affirmative approval, consent, authorization or other order, or action of any court, governmental authority or regulatory body or of any creditor of either party, except as specifically contemplated by this Agreement or for such approvals as shall have been obtained prior to the execution of this Agreement.

(b) **Brokerage Fees.** No person or entity acting on Purchaser’s or Seller’s behalf has any claim for a brokerage commission, finder’s fee or other like payment from Seller or Purchaser in connection with this Agreement or the transactions contemplated by this Agreement.

Section 9. Expenses. Purchaser and Seller shall each pay the respective fees, costs and expenses of their legal counsel, advisors and agents in connection with this Agreement and the transactions contemplated hereunder.

Section 10. General Indemnifications: Limitation on Liability.

(a) **Purchaser’s Obligations.** Purchaser will indemnify Seller, and each of Seller’s members, managers, employees and directors, and hold the same harmless from any liability, loss, claim, cause of action, proceeding, cost or expense, including attorney’s fees and expenses (collectively “Losses”), relating to any period commencing on or after the Closing accruing or arising, directly or indirectly, through or against Purchaser relating to the Unit(s) or this Agreement, whether known or unknown, contingent or otherwise.

(b) **Seller’s Obligations.** Seller will indemnify Purchaser, and each of Purchaser’s members, managers, employees, directors, and hold the same harmless from any liability, loss, claim, cause of action, proceeding, cost or expense, including attorney’s fees and expenses (collectively “Losses”), relating to any period prior to the Closing accruing or arising, directly or indirectly, through or against Seller relating to the Unit(s) or this Agreement, whether known or unknown, contingent or otherwise.

(c) **Limits on Liability.** IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER.

(d) **Survival.** The benefits of this Section shall survive the consummation of the transactions contemplated by this Agreement, including without limitation, the sale and delivery of the Unit(s).

Section 11. Confidentiality. Each party acknowledges that while performing its obligations under this Agreement it may have access to the other party’s Confidential Information. The receiving party may use the Confidential Information only to perform its obligations under this

Purchaser’s Initials/Date _____ / _____
Seller’s Initials/Date _____ / _____

Agreement. The receiving party must use the same care to protect the disclosing party's Confidential Information as it uses to protect its own Confidential Information, but in no event will the receiving party fail to use reasonable care to avoid unauthorized use, including disclosure, loss, or alteration of the disclosing party's Confidential Information. "Confidential Information" means (a) this Agreement and the discussions, negotiations and proposals related to this Agreement and (b) any information exchanged in connection with or contemplation of this Agreement concerning the other party's business, including without limitation tangible, intangible, visual, electronic, written, or oral information, whether received directly or indirectly from the other party. Confidential Information does not include information that is: (i) rightfully known to the receiving party before negotiations leading up to this Agreement; (ii) independently developed by the receiving party without relying on the disclosing party's Confidential Information; (iii) part of the public domain or is lawfully obtained by the receiving party from a third party not under an obligation of confidentiality; or (iv) free of confidentiality restrictions by written agreement of the disclosing party.

Section 12. Miscellaneous Provisions.

- (a) **Notices.** All notices, requests, demands or communications to any party shall be in writing and delivered personally or by certified mail, return receipt requested, postage prepaid or by facsimile transmission, answerback received or by electronic transmission, as follows:

To Purchaser: **STERLING RAIL, INC.**
2905 RR 620 North
Austin, TX 78734
Attn: Robert W. Mertz
Fax: 512-263-9799
Email: rwmertz@sterlingrail.com

To Seller: **FEATHER RIVER RAIL SOCIETY**
P. O. Box 608
Portola, CA 96122
Attn: Steve Habeck
Fax: 530-832-1854
Email: chooch@gotsky.com

Any notice sent shall be deemed to be given when delivered personally to the party to whom it is addressed, or if mailed in accordance with the terms of this paragraph, three (3) days following deposit in the U.S. Mail.

- (b) **Entire Agreement.** This Agreement and its schedules and exhibits comprises the complete understanding of the parties and there are no understandings, either written or oral, except as specifically set forth in this Agreement. No changes may be made in this Agreement unless specifically reduced to writing and accepted by

both parties. All prior negotiations and understandings of the parties are deemed merged into this Agreement.

- (c) **Amendment and Waiver.** This Agreement may be amended, or any portion of this Agreement may be waived, provided that such amendment or waiver shall be in writing, executed by the parties to which any particular provision specifically relates and all such amendments and waivers made shall be binding upon the parties. No course of dealing between or among any persons having any interest in this Agreement shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any person under or by reason of this Agreement.
- (d) **Inurement of Benefit to Assigns.** Purchaser shall be entitled to assign all or any portion of this Agreement, or the rights or obligations hereunder, without the prior written consent of Seller. All of the terms and provisions of this Agreement shall be binding upon, apply and inure to the benefit of the Purchaser, its respective successors and permitted assigns.
- (e) **Severability.** Each of the terms and provisions of this Agreement, except for the payment of the Purchase Price to Seller, is and is deemed to be severable, in whole or in part, and, if any term or provision or their application in any circumstance should be invalid, illegal or unenforceable, the remaining terms and provisions or their application, to circumstances other than those as to which it is held invalid, illegal or unenforceable, shall not be affected and shall remain in full force and effect.
- (f) **Exhibits and Schedules.** All exhibits and schedules attached to this Agreement are incorporated and made a part of this Agreement by reference.
- (g) **Paragraph Headings.** All paragraph and subparagraph headings are for convenience only and do not in any way limit or construe the contents of the paragraphs.
- (h) **Rights and Remedies.** All rights and remedies granted any of the parties under this Agreement shall be cumulative.
- (i) **Survival of Representations and Warranties.** All representations, warranties and indemnifications shall survive the closing of the transactions contemplated by this Agreement.
- (j) **Governing Law.** The law of the State of Texas shall govern all questions concerning the construction, validity and interpretation of this Agreement and the performance of the obligations imposed by this Agreement. Each party hereto hereby irrevocably consents and agrees that any legal action, suit or proceeding arising out of or in any way in connection with this Agreement may be instituted or brought solely in the courts of Travis County in the State of Texas.

- (k) **Construction.** As used herein, any reference to the masculine, feminine or neuter gender shall include all genders, the plural shall include the singular, and the singular shall include the plural. This Agreement and all instruments executed to consummate the transactions contemplated shall be deemed to have been mutually negotiated, prepared and drafted, and in the event of its interpretation no consideration shall be given to the issue of which party prepared, drafted or requested any term, condition or agreement.
- (l) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and electronically scanned PDF signatures shall be treated the same as original signatures for this Agreement.
- (m) **Waiver of Jury Trial.** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY.
- (n) **Force Majeure.** In no event shall the Seller be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Seller shall use reasonable efforts which are consistent with accepted practices to resume performance as soon as practicable under the circumstances.

WHEREOF, Seller and Purchaser have executed this Agreement by their duly authorized officers as of the day and year first written above.

For Purchaser **STERLING RAIL, INC.** by:

 Robert W. Mertz
 President

 Date

For Seller **FEATHER RIVER RAIL SOCIETY** by:

 Authorized Signature
 Printed Name / Title: _____

 Date

SCHEDULE A

VIA Cafe-Lounge Car

Exhibit A - Form of Bill of Sale

Pursuant to this **BILL OF SALE**, that for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **FEATHER RIVER RAIL SOCIETY** (the "Seller") does hereby sell, transfer and assign to **STERLING RAIL, INC.** (the "Purchaser"), "AS-IS" "WHERE-IS" and "WITH ALL FAULTS", all of Seller's rights, title and interest in and to the **VIA Cafe-Lounge Car** (the Unit(s) as listed in Schedule A of the Purchase and Sale Agreement by and between Purchaser and Seller dated August _____, 2013.

TO HAVE AND TO HOLD the Unit(s) unto the Purchaser, its successors and assigns, for its and their own use and behalf forever.

Seller represents and warrants to Purchaser and its successors and assigns that Seller has transferred all its right title and interest to the Unit(s) and that the Unit(s) are free and clear of all liens, charges, security interests and encumbrances other than such claims, liens, charges, security interests and encumbrances arising by through or under the Purchaser.

THE UNIT(S) ARE BEING SOLD AS IS WHERE IS AND SELLER DISCLAIMS ANY OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER WITH RESPECT TO THE UNIT(S), INCLUDING WITHOUT LIMITATION, THE CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OPERATION OR MERCHANTABILITY THEREOF, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT OR TRADEMARK INFRINGEMENT OR THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, OR COMPLIANCE OF ANY OF THE UNIT(S) WITH ANY APPLICABLE LAW.

IN WITNESS WHEREOF, the Seller, pursuant to due authority, has caused this instrument to be duly executed in its name by its officers, thereunto duly authorized, as of the _____ day of August, 2013.

For Seller **FEATHER RIVER RAIL SOCIETY** by:

Authorized Signature Date
Printed Name / Title: _____

(8723 KL)

Page 9 of 9
Purchaser's Initials/Date _____ / _____
Seller's Initials/Date _____ / _____