

RAILROAD LEASE AGREEMENT

THIS RAILROAD LEASE AGREEMENT ("Lease") is entered into on _____, 2017 ("Effective Date"), by and between **RUTHERFORD RAILROAD DEVELOPMENT CORPORATION**, a North Carolina not for profit corporation ("Lessor"), and **RUTHERFORD COUNTY**, a North Carolina municipal corporation ("Lessee"). Each of Lessor and Lessee may be referred to in this Lease as a "Party" and collectively as the "Parties."

WHEREAS, Lessor and Southeast Shorelines, Inc., a North Carolina corporation, d/b/a Thermal Belt Railway ("TBRY"), were parties to a Lease and Operating Agreement dated February 26, 1990 ("Lease and Operating Agreement"), which granted TBRY certain rights and obligations to operate a certain railroad corridor in Rutherford County, commonly referred to as the Gilkey Line and the Bostic Spur (collectively, the "Corridors"); and

WHEREAS TBRY, by that certain Agreement for Partial Lease Termination and Release dated April 8, 2015, terminated its lease with Lessor and released all of its rights and interests thereunder as to the portions of the Corridors designated as Segments 1 and 3 in **Exhibit A** attached hereto, and a small portion of Segment 2, (collectively the "Premises") and the rail use of the Premises has now been discontinued by TBRY and they have been abandoned by Lessor subject to an interim trail use/rail banking condition, all pursuant to certain decisions and notices of the Surface Transportation Board establishing and/or allowing an interim trail use condition in lieu of an outright abandonment of the Premises; and

WHEREAS, Lessor and Lessee now desire to enter into this Lease to enable Lessor to preserve the Premises for future railroad use, to encourage economic development in Rutherford County, and to "railbank" the Premises under 16 U.S.C. § 1247 for the benefit of the residents of Rutherford County; and

NOW THEREFORE, in consideration of the agreements and covenants contained in this Lease and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

1. LEASED PREMISES.

Subject to and upon the terms, provisions and conditions set forth in this Lease, Lessor leases to Lessee, and Lessee leases from Lessor, the portion of the Premises located within the Lessee's corporate limits (the "Leased Premises"). By way of further description, and for the purposes of this Lease Agreement, the Leased Premises consists of the rail-bed/trail linear footage listed on **Exhibit B** as being within Lessee's corporate limits, together with any portion of the corridor described on **Exhibit A** that is associated with such linear footage and also within Lessee's corporate limits (ie. the full width of the corridor within which such rail-bed/trail linear footage is located). The parties acknowledge and agree that this description of the Leased Premises may be altered or further refined by subsequent survey, and that they will be bound by the findings of any such subsequent survey with regard to the definition of the Leased Premises for all purposes hereunder.

2. USE AND MAINTENANCE.

Lessee shall be solely responsible, at its sole expense, for the management, maintenance and operation of the Leased Premises and shall only use the Leased Premises for public purposes, as Lessee shall deem necessary or desirable in its sole discretion, including bicycle/walking paths, beautification, and purposes incidental thereto, in accordance with the Decision.

3. TERM.

The term of this Lease shall commence on the Effective Date and, unless earlier terminated as provided in this Lease, shall expire on the date that is ninety-nine (99) years after the Effective Date, with successive automatic renewal periods of fifty (50) years each ("Lease Term"), unless otherwise terminated pursuant to the terms of this Lease.

4. RENT.

Lessee shall pay to Lessor an annual payment during the Lease Term to reimburse Lessor for a portion of its costs to maintain its nonprofit status and corporate viability ("Administrative Cost Payment"). To determine the amount of the Administrative Cost Payment, each year Lessor shall calculate the administrative costs associated with the Corridors ("Administrative Costs") and divide the Administrative Costs on a per mile basis. The Administrative Cost Payment shall be the prorated portion of the Administrative Costs based on the mileage of the Leased Premises. Lessor may include the following costs in calculating the Administrative Costs: professional fees, including legal and accounting costs, filing and/or reporting fees, and any other cost or fee that Lessor is required to pay by law or by directive of any governmental or regulatory agency or entity to maintain its status and/or its authority to own and preserve the railway corridor. Notwithstanding anything herein to the contrary, such Administrative Cost Payment shall not exceed One Thousand Dollars (\$1,000.00) per year. However, if during the initial or extended term of this Lease, Lessor is unable to meet its Administrative Costs with the Administrative Cost Payment, combined with payments received from any other source, the parties agree to negotiate in good faith to make reasonable adjustments to the amount of Lessee's maximum annual contribution. On or before February 1, 2017, and every year thereafter, Lessor will provide Lessee with an invoice and itemized accounting of the Administrative Cost Payment ("Invoice"), and Lessee shall pay the Administrative Cost Payment within thirty (30) days after receipt of the Invoice.

5. UTILITIES.

A. Lessee shall arrange and pay for all utilities and services supplied to the Leased Premises or to Lessee.

B. All utilities and services shall be separately metered and maintained in Lessee's name. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by the Parties.

6. IMPROVEMENTS.

A. Except as set forth in Paragraph 7 below, Lessee shall have the right, at Lessee's sole expense, to demolish and remove (collectively, the "Removal Work") any and all existing improvements currently located on the Leased Premises (collectively, the "Existing Improvements"), or to retain and utilize any such Existing Improvements as Lessee shall deem desirable, in its sole discretion, without compensation or reimbursement to Lessor. Lessor hereby consents to the Removal Work and waives and releases any interest of Lessor in or to the Existing Improvements. All Removal Work shall be performed in a good and workmanlike, lien-free manner in accordance with applicable laws.

B. At any time during the Lease Term, Lessee shall have the right to develop and construct on the Leased Premises, at Lessee's sole expense, any improvements as Lessee shall deem necessary or desirable, in Lessee's sole discretion (collectively, the "Lessee Improvements"). All Lessee Improvements shall be constructed in a good and workmanlike lien-free manner in accordance with applicable laws. Lessee shall have the right to alter, replace, rebuild, improve or otherwise modify (collectively, "Alterations") any Lessee Improvements throughout the Lease Term, which Alterations shall be performed at Lessee's sole expense and in accordance with all applicable laws. Lessor shall

reasonably cooperate with Lessee in obtaining such licenses, permits and applications as may be required from time to time in connection with any Lessee Improvements or Alterations, or as may otherwise be required or necessary for Lessee.

C. All Lessee Improvements constructed on the Leased Premises and any Alterations shall at all times remain the sole and exclusive property of Lessee and shall in no event be deemed attached to or fixtures of the real property constituting the Leased Premises. Lessee shall have the right to remove such facilities and equipment at the expiration or early termination of the Lease Term for any reason.

7. RAIL REMOVAL AND SALVAGE VALUE RIGHTS.

Lessee expressly acknowledges and agrees that, for a period of ten (10) years from March 24, 2016, the Town of Forest City ("Forest City") shall have exclusive rights to the salvage value of any rails removed from the Premises, including the Leased Premises, and Forest City shall have the right to one hundred percent (100%) of the salvage value of the removed rails. For such ten (10) year period, Forest City shall have a continuing lien against the rails. Such lien is for and in consideration of Forest City's payment to TBRY for the release of its rights in the Corridors, thereby enabling Lessee to lease the Leased Premises from Lessor.

8. TERMINATION.

A. Lessee may terminate this Lease at any time, in its sole discretion, with no less than three (3) months prior notice to Lessor. From and after Lessor's receipt of written notice of such termination, Lessee shall have one hundred eighty (180) days to remove any Lessee Improvements from the Leased Premises and restore the surface of the Leased Premises to its original condition, reasonable wear and tear excepted. If Lessee fails to remove Lessee Improvements from the Leased Premises within the time-frame provided, the Lessee Improvements shall be deemed abandoned, and Lessor may retain or remove the Lessee Improvements located on the Leased Premises.

B. If (i) after the first thirty (30) years of the Lease Term, a new industry that requires railroad service publicly announces its decision to locate along the Premises, or (ii) if railroad service is reintroduced to the Premises for any reason, then in either case the Parties agree to amend or terminate this Lease to accommodate the reintroduction of rail services on the Premises; provided, the Parties shall use reasonable efforts to provide for the continued accommodation of the recreational use of the Leased Premises alongside any new railroad tracks installed on the Leased Premises through amending this Lease is lieu of termination. If recreational use can no longer be accommodated, this Lease shall be terminated and Lessee shall have one hundred eighty (180) days after the date of termination to remove or relocate any Lessee Improvements from the Leased Premises. If Lessee fails to remove Lessee Improvements from the Leased Premises within the time frame provided, the Lessee Improvements shall be deemed abandoned and Lessor may retain or remove the Lessee Improvements located on the Leased Premises.

9. TITLE.

Lessee accepts the Leased Premises in an "AS IS" condition without warranties or covenants; provided, Lessee shall not be liable for any liens, liabilities, obligations or other matters arising out of TBRY's occupancy of the Leased Premises prior to the Effective Date of this Lease.

10. FINANCIAL RESPONSIBILITY.

During the Lease Term, Lessee assumes full responsibility for: (i) managing and operating the Leased Premises, (ii) any legal liability arising out of the transfer or use of the Leased Premises (unless Lessee is immune from liability, in which case Lessee agrees to indemnify Lessor against any potential liability), and (iii) the payment of any and all taxes that may be levied or assessed against the Leased

Premises. Lessor shall notify Lessee within ten (10) days of Lessor's receipt of any tax bill relating to the Leased Premises, and Lessor shall forward the tax bill to Lessee within such ten (10) day period. Lessee reserves the right to challenge any tax assessment on the Leased Premises and Lessor agrees to cooperate with Lessee in connection with any such challenge.

11. MANAGEMENT OF THE PREMISES.

Lessee shall be exclusively responsible for the management of the Leased Premises. Lessee shall have the right to grant short and long-term subleases and sublicenses for any use of the Leased Premises not inconsistent with the Lessee's intended use of the Leased Premises, so long as such subleases and sublicenses are terminable at will, are not recorded in the public records and expressly provide that they constitute a sublease or sublicense under this Lease subordinate to Lessor's fee simple interest in the Leased Premises. Lessee shall not have the right to encumber Lessor's fee simple interest in the Leased Premises without Lessor's prior written consent and joinder on any applicable instrument. All agreements for the use of the use of the Leased Premises by parties other than Lessee shall be in writing. Lessee shall have the right to charge fair market rent and reasonable fees for any third party use or occupancy of the Leased Premises. Lessee shall have the right, but not the obligation, to commence any action or take any reasonable steps to protect the integrity and title of the Leased Premises and to preserve Lessor's and Lessee's interest in the Leased Premises.

12. INSURANCE.

Lessee, at its sole expense, shall maintain insurance as may be required by any federal, state, or local statute or ordinance of any governmental body having jurisdiction in connection with the operation of Lessee's use of the Leased Premises.

13. CONDEMNATION.

If Lessor receives notice of a proposed condemnation on all or any part of the Leased Premises, Lessor shall notify Lessee of the proposed condemnation within ten (10) days after receiving said notice. If, due to condemnation, the Leased Premises can no longer be used by Lessee for its intended purpose (as determined by Lessee in its sole discretion), Lessee shall have the right to terminate this Lease upon providing notice to Lessor. Lessee shall have the right to contest the proposed condemnation and pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee.

14. INSPECTION.

During the Lease Term, Lessee and its representatives, agents, contractors and subcontractors shall have the right to perform any and all inspections, studies or tests relating to the Leased Premises that Lessee deems desirable or necessary in Lessee's sole discretion, including soils tests, borings or any other invasive studies; provided, that all such inspections, studies or tests shall be conducted in accordance with reasonable standards and procedures.

15. REMEDIES.

Notwithstanding any provision to the contrary contained in this Lease, in the event of a Party's breach under this Lease, the breaching Party shall have sixty (60) days following receipt of notice from the non-breaching Party to cure the breach. If such breach cannot reasonably be cured within the sixty (60) day period and the breaching Party commences the cure within the sixty (60) day period and thereafter continuously and diligently pursues the cure to completion, the breaching Party shall have such reasonable additional extended periods as may be required beyond the sixty (60) day cure period to complete the cure. If the breaching Party fails to cure the breach within the applicable cure period, the

non-breaching Party may exercise any legal or equitable rights or remedies available, including such additional rights that may be set forth in this Lease. The exercise of any remedies shall not preclude the simultaneous or later exercise of the same or any other remedies.

16. BINDING AGREEMENT.

This Lease shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns. Lessee shall have the right to grant its employees, contractors, licensees and invitees the right to enter and use the Leased Premises.

17. NOTICES.

To be effective, any notice or other communication required, permitted, or contemplated by this Lease must be in writing and must be sent by facsimile, email, certified mail (return-receipt requested), overnight delivery service (with proof of delivery), or commercial courier (with proof of delivery) to the following addresses. Any notice given by facsimile or email shall also be delivered by certified mail, overnight delivery service, or commercial courier within two (2) days after the original transmission. Either Party may change its address(es) by giving five (5) days prior notice to the other Party of such change. Notice shall be deemed delivered or received upon the earliest to occur of: (a) receipt of the transmission if sent by facsimile or email; (b) three (3) days after the postmark if sent by certified mail; (c) the next day that is not a Saturday, Sunday, or legal holiday if sent by overnight delivery service, or (d) upon receipt if delivered by commercial courier.

If to Lessor:

Rutherford Railroad Development Corporation
Attn: David Lloyd
230 Spindale Street, Suite A
Spindale, NC 28160

If to Lessee:

Rutherford County
Attn: County Manager
289 N. Main Street
Rutherfordton, NC 28139

18. MEMORANDUM OF LEASE.

Lessor and Lessee shall, concurrently with the execution of this Lease, execute a Memorandum of Lease, and Lessee shall cause the Memorandum of Lease to be recorded in the Rutherford County Registry.

19. COOPERATION.

Lessor shall reasonably cooperate with Lessee in obtaining such licenses, permits and applications as may be required from time to time in connection with the construction or redevelopment of any Lessee Improvement or Alteration, or as may otherwise be deemed required or necessary, in Lessee's sole discretion, for Lessee's use of the Leased Premises.

20. ENTIRE AGREEMENT.

This Lease represents the entire agreement between the Parties and supersedes all other oral or written agreements between the Parties pertaining to this transaction. The paragraph headings in this Lease are inserted for convenience of reference only and in no way describe, interpret, define or limit the scope or content of this Lease or any of its provisions. This Lease may be amended only by a written instrument signed by Lessor and Lessee. Notwithstanding anything to the contrary in this Lease, this Lease is, and shall remain subject to, the Decision.

21. NO WAIVER.

Neither the failure of either Party to exercise any power given such Party under this Lease nor to insist on strict compliance with its obligations under this Lease, nor any custom or practice of the Parties at variance with the terms of this Lease, shall constitute a waiver of either Party's right to demand exact compliance with the terms of this Lease.

22. APPLICABLE LAW.

This Lease shall be construed and interpreted in accordance with the laws of North Carolina, excepting only its conflict of laws principles.

23. COUNTERPARTS.

This Lease may be signed in two or more counterparts, each of which shall be deemed as an original.

IN WITNESS WHEREOF, the Parties have caused this Lease to be executed under seal as of the day and year first written above.

**RUTHERFORD RAILROAD
DEVELOPMENT CORPORATION**

By: _____ (SEAL)

Print Name: _____

Title: _____

RUTHERFORD COUNTY, a municipal corporation

BY: _____

Bryan A. King, Chairman
Board of County Commissioners

ATTEST:

Hazel S. Haynes, Clerk
Board of County Commissioners

This instrument has been preaudited in the manner required
by the Local Government Budget and Fiscal Control Act.

Paula Roach
County Finance Officer

EXHIBIT A

Segment #1 (Alexander Mills to Spindale)

BEING a railroad corridor 100 feet wide, more or less, owned by the Rutherford Railroad Development Corporation (RRDC) in Rutherford County, North Carolina, between Alexander Mills and Spindale, North Carolina, being more particularly described as follows:

BEGINNING at the centerline of a 100 foot wide railroad corridor adjoining the northerly line of that parcel of land conveyed to the Town of Alexander Mills by Norfolk Southern Railway Company in a deed recorded in Deed Book 718, Page 332, Rutherford County Registry, and beginning at Railroad Milepost 175.50 and Railway Centerline Station 9283+95.5; thence running with the centerline of the railroad corridor in a northerly and northwesterly direction for a distance of 25,970.10 feet, more or less, to a point at Railroad Milepost 180.47 and Railway Centerline Station 9543+65.6, more or less, said point being the POINT OF TERMINATION of the railroad corridor herein described, containing 59.619 acres, more or less. For informational purposes, the afore-described railroad corridor is also the railroad corridor subject to a joint notice of exemption by the RRDC and discontinuance of service by the Thermal Belt Railway (TBRY) pursuant to STB Docket No. AB-568 (Sub-No. 2X) and STB Docket No. AB-567 (Sub No. 2X).

Segment #2 (Bostic Spur)

BEING a railroad corridor 200 feet in width, more or less, owned by the RRDC in Forest City, Rutherford County, North Carolina, being more particularly described as follows:

BEGINNING at a new iron pin (NIP) located at Railroad Centerline Station 5318+80.6, said NIP having NC Grid NAD'83(2011) coordinates of N: 591,531.297' E: 1,141,451.051' and being located S 81°15'38" E 172.58' from NC Grid monument "RU-27" having NC Grid NAD'83(2011) coordinates of N: 591,557.514' E: 1,141,280.505', said NIP also being located N 09°10'35" E 100.00' from a NIP located near the northern edge of pavement of U.S. Hwy #74 Business, thence running with the centerline of the railroad corridor in a westerly direction a distance of 2,441.4 feet, more or less, to a point at Railroad Milepost SF-407.40 and Railway Valuation Station 5343+22, said point being the POINT OF TERMINATION of the railroad corridor herein described at its connection with the railroad corridor described above as Railroad Corridor #1 (Alexander Mills to Spindale), containing 11.21 acres, more or less.

Segment #3 (Spindale to Gilkey)

BEING a railroad corridor 100 feet in width, more or less, owned by the RRDC in Forest City, Rutherford County, North Carolina, being more particularly described as follows:

BEGINNING at the centerline of a 100 foot wide railroad corridor adjoining the northerly line of the Railroad Corridor # 1, and beginning at Railroad Milepost 180.47 and Railway Centerline Station 9543+65.6; thence running with the centerline of the railroad corridor in a northerly and northwesterly direction for a distance of 41,553.60 feet, more or less, to a point at Railroad Milepost 188.34 and Railway Centerline Station 9975+10, more or less, near Gilkey in Rutherford County, North Carolina, said point being the POINT OF TERMINATION of the railroad corridor herein described, containing 95.39 acres, more or less. For informational purposes, the afore-described railroad corridor is also the railroad corridor subject to a joint notice of exemption by the RRDC and discontinuance of service by the Thermal Belt Railway (TBRY) pursuant to STB Docket No. AB-568 (Sub-No. 1X) and STB Docket No. AB-567 (Sub No. 1X).

EXHIBIT B

TO BE INCLUDED PRIOR TO EXECUTION