

## RAILROAD LEASE AGREEMENT

THIS RAILROAD LEASE AGREEMENT ("Lease") is entered into on March 6<sup>th</sup> 2017, ~~2016~~ ("Effective Date"), by and between RUTHERFORD RAILROAD DEVELOPMENT CORPORATION, a North Carolina not for profit corporation ("Lessor"), and Town of Ruth, 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 the Town of Ruth and 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.

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**

**TOWN OF RUTH**

By: \_\_\_\_\_ (SEAL)  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: Don Baynard (SEAL)  
Print Name: Don Baynard  
Title: Mayor

