

This instrument prepared by:

Eric Ridenour

RIDENOUR & GOSS, PA

PO Box 965

Sylva, NC 28779

STATE OF NORTH CAROLINA

COUNTY OF JACKSON

LONG-TERM LEASE AGREEMENT

This Long-Term Lease Agreement entered into this the 1st day of September 2023, by and between the BLUE RIDGE SOUTHERN RAILROAD, LLC, a Delaware Limited Liability Company, with an address of 315 W. Third Street, Pittsburg, KS 66762, hereinafter “Lessor” and The TOWN OF SYLVA, a North Carolina Municipality, with an address of 83 Allen St., Sylva, NC 28779, hereinafter, “Lessee.”

WITNESSETH:

WHEREAS, the municipal limits of the Town of Sylva were originally created in 1889 by extending 8 equally spaced points a distance of 3,960 ft (3/4 of a mile) from the Southeast corner of the Sylva depot structure, so as to form an octagon; and

WHEREAS, the old Sylva depot location is historically recognized as the geographic center of the Town of Sylva; and

WHEREAS, the Sylva depot was razed in 1978, and it is the intent of the Lessee to construct a structure with the general appearance of a train depot station on the same site for the purpose of housing a public restroom.

NOW THEREFORE, for and in consideration of the mutual benefits and obligations set forth in this Lease, the Lessor and Lessee agree to be bound on as follows:

1. LEASED PREMISES. Lessor hereby leases to Lessee the property depicted on **Exhibit A**, located in the Town of Sylva, County of Jackson, and State of North Carolina (“Leased Premises”).

2. TERM/TERMINATION.
 - 2.1. The term of this Lease (“Term”) shall be for ninety-nine (99) years commencing on September 1, 2023 (“Commencement Date”) and unless sooner terminated as hereinafter provided shall expire on August 31, 2122 (the “Term”).

 - 2.2. **This lease will not become effective until Lessor has signed.** Lessor will provide Lessee with a fully executed Lease once Lessor receives payment as identified in Section 3 and a certificate of insurance meeting the requirements as identified in Section 11. **LESSEE MAY NOT ENTER THE LEASED PREMISES UNTIL THEY RECEIVE A FULLY EXECUTED LEASE FROM LESSOR.**

3. RENT. The rent for the entire term of this lease is the lump sum of ten thousand dollars (\$10,000). Simultaneous with the execution and delivery of this lease, the Lessee has tendered payment in full.

4. USE. Lessee shall use the Leased Premises solely for the purpose of the construction, maintenance and use of a public use restroom facility and for no other purpose (“Use”) without the prior written consent of Lessor. Lessee shall not allow the Leased Premises to be used by another person or firm without the prior written consent of Lessor. Lessee shall, at its sole cost and expense, promptly comply with all present and future laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any governmental authority or court of competent jurisdiction affecting the Use and condition of the Leased Premises and any equipment placed or used thereon and Lessee’s operations and activities on the Leased Premises.

5. LESSOR RESERVED RIGHTS.
 - 5.1. Lessor reserves the right to use, operate, maintain, repair, replace, or augment the Leased Premises provided that such action does not unreasonably interfere with Lessee's Use of the Leased Premises for the purposes set forth in this section. This Lease is subject and subordinate to any right which Lessor or any easement holder, lessee, or licensee of Lessor may have in the Leased Premises. Lessee shall not interfere with the maintenance or operation of the Reserved Facilities, or the rights of any easement holders, lessees, or licensees with respect thereto. "Reserved Rights" means existing tracks, pipes, conduits, thoroughfares, roads, tunnels, electric communication and signal transmission lines and poles for such lines, and any other facilities of similar nature on, above or below the ground, belonging to any party whomsoever.

- 5.2. Lessor shall have the right to enter the Leased Premises at reasonable hours day or night and inspect the Leased Premises, make such repairs, additions or alterations as it may deem necessary for the safety, preservation or restoration of the Leased Premises and the improvements, if any, located thereon (there being no obligation, however, on the part of Lessor to make any such inspections, repairs, additions or alterations), or to exhibit the Leased Premises to prospective purchasers.
6. TAXES AND ASSESSMENTS. Lessor shall pay and continue to pay during the term of this Lease, all real property taxes, before such become delinquent.
7. UTILITIES. Lessee, at its sole cost and expense (including fees for permits and similar documents), shall obtain all utility services required or desired by Lessee, including the installation of meters and submeters if none exist. Lessee shall be responsible for all charges for utilities consumed by, and supplied to, Lessee by the provider thereof.
8. CONDITION OF LEASED PREMISES AND MAINTENANCE.
 - 8.1. Lessee has fully inspected and accepts the Leased Premises "AS IS, WHERE IS, WITH ALL FAULTS." Lessor makes no representations as to the zoning, condition, utility, or fitness of the Leased Premises for any use.
 - 8.2. Lessee shall perform and bear the entire expense of all repairs, maintenance, alterations, or improvements to the Leased Premises (land and all improvements including building structures) including without limitation snow and ice removal; vegetation control; adjacent walkways; roads; parking areas; exterior walls; roof; heating; ventilating; air-conditioning; electrical; plumbing; utility supply lines; and other systems on the Leased Premises. Lessee shall keep the condition of the Leased Premises in good order and in safe condition. Lessor shall have no obligation whatsoever to maintain or repair the Leased Premises.
 - 8.3. Upon termination of the Lease, Lessor may require Lessee to remove all improvements placed upon the Leased Premises and restore the ground to a level and graded surface.
9. LIABILITY.
 - 9.1. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSEE SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS LESSOR AND LESSOR'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "LESSOR INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES,

PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION AND GOVERNMENTAL OVERSIGHT COSTS) ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "LIABILITIES") OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) THIS AGREEMENT, EXCEPT TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR.

- 9.2. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS LESSEE AND LESSEE'S AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS (COLLECTIVELY, "LESSEE INDEMNITEES") FOR, FROM AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR.

10. ENVIRONMENTAL COMPLIANCE.

- 10.1. Lessee in its use, occupancy and possession of the premises must comply with all applicable Federal, State and Local ordinances, rules, regulations, requirements and laws, including (by way of illustration only and not by way of limitation) any governmental authority or court controlling environmental standards and conditions on the premises, and must furnish satisfactory evidence of such compliance upon request by Lessor. If, as a result of Lessee's use, occupancy or possession of the premises, any such ordinance, rule, regulation, requirement, decree, consent decree, judgement, permit or law is violated, or if, as a result of Lessee's use, occupancy or possession of the premises, any pollutant, hazardous material, hazardous waste or toxic wastes, materials or substances should enter, be released from or otherwise affect any part of the premises (including surface, subsurface, airborne and/or ground contamination) then Lessee agrees to defend, indemnify, and hold harmless Lessor from and against any penalties, fines, costs (including, but not limited to response, remediation, removal and clean-up costs, legal fees, and court costs), corrective action, natural resource damage, and damages and expenses of any other nature whatsoever threatened against, imposed upon or incurred by Lessor. Lessee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on, under, or within the Minimal Clearances of the Leased Premises.

- 10.2. Lessee shall give Lessor immediate notice to Lessor's Emergency Dispatch at 866-386-9321 of any release of pollutants on or from the Leased Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Lessee's use of the Leased Premises. Lessee shall use the best efforts to promptly respond to any release on or from the Leased Premises. Lessee also shall give Lessor immediate notice of all measures undertaken on behalf of Lessor to investigate, remediate, respond to or otherwise cure such release or violation.
 - 10.3. In the event that Lessor has notice from Lessee or otherwise of a release or violation of federal, state, or local environmental health and safety regulations on the Leased Premises which occurred or may occur during the term of this Lease, Lessor may require Lessee, at Lessee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Leased Premises. Should the Lessee fail to take timely measures to investigate, remediate, respond to or otherwise cure such a release or violation, the Lessor reserves the right to complete said actions and invoice the Lessee for any and all expenses incurred by the Lessor.
 - 10.4. Lessee shall promptly report to Lessor in writing any conditions or activities upon the Leased Premises which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Lessee's reporting to Lessor shall not relieve Lessee of any obligation whatsoever imposed on it by this Lease. Lessee shall promptly respond to Lessor's request for information regarding said conditions or activities.
11. INSURANCE. Lessee shall, at its sole cost and expense, shall maintain during the life of this Lease full coverage insurance under the Town's general liability policy which shall fully insure the structure and premises, both for replacement value and premises liability.

12. DEFAULTS AND REMEDIES.

Should Lessee default in fulfilling any of the covenants or obligations of this Lease, Lessor shall serve Lessee with a 30 day right to cure letter specifying the nature of said default. Upon the expiration of said right to cure, if Lessee shall have failed to remedy such default, then Lessor may serve a notice of termination of this Lease upon Lessee and the Lease Term hereunder shall end and expire and Lessee shall then quit and surrender the Leased Premises to Lessor.

13. ASSIGNMENT; BINDING ON SUCCESSORS. Lessee may not assign this Lease, nor any of its individual rights or obligations under this Lease, without the prior consent of Lessor. This Lease will inure to the benefit of and be binding upon the successors and assigns of the Parties.
14. NOTICES. Any notice required or permitted to be given hereunder by one party to the other shall be in writing, and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Lessor

Company:	Blue Ridge Southern Railroad
Attention:	Contract Administration
Mailing Address:	315 W. Third Street
City, State, Zip:	Pittsburg, KS 66762

If to Lessee

Company:	Town of Sylva, NC
Attention:	Town Manager
Mailing Address:	83 Allen Street
City, State, Zip:	Sylva, NC, 28779-2629

15. SURVIVAL. Neither termination nor expiration will release either party from any liability or obligation assumed under this Lease, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or the date when the Leased Premises are restored to the condition as of the Effective Date.
16. RECORDATION; GOVERNING LAW. This Lease shall be filed in the Jackson County Register of Deeds and will be made of public record. The laws of the State of North Carolina shall govern all matters arising out of or relating to this Lease. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Lease shall bring the legal action or proceeding in the Superior Court of Jackson County, North Carolina.
17. SEVERABILITY. To the maximum extent allowed by law, if any provision of this Lease is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Lease are not affected or impaired in any way.

18. ENTIRE AGREEMENT. This Agreement (“Lease”), together with any exhibits or schedules, sets forth the entire agreement between the Parties, and replaces and supersedes any prior agreements, understandings, negotiations, or discussions between the Parties relative to the subject matter of this Lease. This Lease may only be modified by a written amendment signed by an authorized representative of both Parties and said written amendment must expressly refer to this Lease. Any attempt to modify the terms in such a manner shall be considered null and void.

19. NON-WAIVER. The failure of either party to insist upon or enforce, in any instance, strict performance by the other party of any of the requirements, covenants, conditions, or restrictions of this Lease or to exercise any rights herein conferred, may not be construed as a waiver or relinquishment of the party’s right to assert or rely upon such terms or rights on any future occasion, except to the extent the party specifically expresses, in writing, its intent to waive its rights.

20. BROKERAGE COMMISSIONS.

Any fees or commissions, with respect to the Leased Premises, due to a broker or finder are the sole responsibility of the Party that engaged those services.

21. COUNTERPARTS.

The parties may execute this Lease in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one Lease.

[Signature pages intentionally placed on separate pages]

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth on the first page.

LESSOR:
BLUE RIDGE SOUTHERN RAILROAD, L.L.C.

By: _____ (seal)
Justin K. Ogle, General Manager

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public, do hereby certify that Justin K. Ogle, General Manager of BLUE RIDGE SOUTHERN RAILROAD, LLC, a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official seal, this the ____ day of August 2023.

Signature of Notary Public

(OFFICIAL SEAL)

My Commission expires: _____

IN WITNESS WHEREOF, the Lessee Town of Sylva, has set its hand and seal, this the day and year first above written.

LESSEE:
TOWN OF SYLVA

By: _____ (seal)
David Nestler, Mayor

ATTEST:

Amanda Murajda, Town Clerk

STATE OF NORTH CAROLINA
COUNTY OF JACKSON

I, _____, a Notary Public for said County and State, do hereby certify that AMANDA MURAJDA, with whom I am personally acquainted, and who, being duly sworn by me, confirmed that she is the Town Clerk of the TOWN OF SYLVA, and that DAVID NESTLER, is the MAYOR OF THE TOWN OF SYLVA, the entity that executed the foregoing and annexed instrument; that she knows the common seal of the Town of Sylva, that the seal affixed to the name of the Town of Sylva was subscribed thereto by the Mayor of the Town of Sylva, and that said Town Clerk and Mayor subscribed their names thereto, and said common seal was affixed by order of the Town Board, and said instrument is the act and deed of the Town of Sylva.

Witness my hand and official seal, this the ____ day of August, 2023.

Notary Public:

My Commission Expires: _____

(official seal)

Exhibit A

The leased property consists of that 0.154 acre tract of real property located at the site of the old Sylva depot, in the center of the Town of Sylva, Jackson County, North Carolina more particularly depicted on that certain survey prepared by Alliance Land Surveying, P.C. for the Town of Sylva, and recorded in Plat Cabinet 26, Slide 195 of the Jackson County Register of Deeds. A copy of said survey is likewise attached hereto for reference.

Exhibit A

