

Prepared by:

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Tax Map No.: 73A(1)15-19

Exempt from recordation taxes and fees pursuant to Sections 58.1-811(C)(4), 17.1-279(E), and 17.1-266 of the Code of Virginia, 1950, as amended.

GROUND LEASE

THIS GROUND LEASE is made this __ day of _____, 20__, by and between BOTETOURT COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia (“Lessor”), and [name of entity], a [state] [type of entity] (“Lessee”).

RECITALS

WHEREAS, the Lessor is the owner of that certain real property known as Botetourt County Tax Map Nos. 73A(1)15-19, also known as the Courthouse Property, which includes the Old Jail Building, and is further described on the plat attached hereto as **Exhibit A**;

WHEREAS, Lessee proposes to lease a portion of the Courthouse Property from the Lessor, on which the Old Jail is located, to restore and redevelop the Old Jail;

WHEREAS, in furtherance thereof, the Parties desire to enter this lease.

WITNESSETH

NOW THEREFORE, in consideration of the premises hereof, which are expressly incorporated herein, the mutual covenants and promises made below, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Premises.

Lessor hereby grants and demises to Lessee, and Lessee hereby leases and rents from Lessor, the Property, together with all buildings, improvements, fixtures, and rights appurtenant thereto, upon and subject to the terms, conditions, covenants and provisions hereof; any building restrictions, regulations and zoning ordinances of Botetourt County and the Town of Fincastle; any easements; and any other matters of title which a search of the public records would disclose and any state of facts that an accurate survey would show.

2. Term.

The term of this lease shall be for a period of 40 years, beginning on the *[fill in closing date]*, and ending at noon on *[fill in 40 years date]*, without notice from either party to the other.

3. Rent.

The rent shall be \$1 annually, to be paid by Lessee to Lessor not later than December 31 of each year without notice or demand.

4. Rent to be Net to Lessor.

It is the intention of the parties that the rent payable hereunder shall be net to Lessor, and that all costs, expenses and obligations of every kind and nature whatsoever directly relating to the Leased premises, including, but not limited to, utilities, taxes, insurance and maintenance shall be the responsibility of Lessee.

5. Use of Leased Premises.

A. Use of the Leased premises shall generally proceed along a three-step process:

Phase 1: Due diligence and project planning. The objective of this phase is identification of all work involved and steps necessary for restoration of the jail,

formulation of a project budget, and submitting tax credit applications. Specific tasks include:

- Review of mechanical systems and electrical service;
- Evaluation of need for hazardous materials remediation (e.g., asbestos, lead paint);
- Identification of specific restoration tasks and categorization by trade or discipline;
- Estimation of costs for required work;
- Development of project budget;
- Application for Historic Tax Credits.

Phase 2: Restore and refurbish first floor. The objective of this phase is completion of rehabilitation of the first floor of the building and start-up of gift shop operations. Because the first floor was recently used for offices and storage, the work to be completed before occupancy is well-defined, involves minimal expenditure, and may be performed concurrently with phase 1. Specific tasks in this phase include:

- Remove drop ceiling and restore original;
- Restore wood floors;
- Restore/repoint first floor brickwork;
- Open and replace bricked-up window;
- Seal stairway floor-door between first and second floors;
- Reopen doorway between front two rooms;
- Paint;
- Landscape grounds.

Phase 3: Restore second and third floors and cupola. The objective of this phase is restoration of the jailer's quarters, the prisoners' cell areas, the cupola (fourth story), followed by start-up of museum operations. This phase would begin when phases 1 and 2 are complete and funding sources are defined and authorized. Specific tasks in this phase will be identified in phase 1 through due diligence efforts. In general terms, tasks will include:

- Implementation of remediation plan (as applicable);
 - Construct and install window and door casings;
 - Locate and install bath fixtures (visual—water service might or might not be restored);
 - Restore Jailer's Quarters and Prisoner Cell Areas (floors 2 and 3)
 - Restore cell-locking mechanisms to operation state;
 - Refurbish floors and stairways;
 - Restore railings and window bars;
 - Repair walls and ceilings using plaster and/or sheetrock;
 - Restore cupola;
 - Paint.
- B. Prior to undertaking any physical change in the Old Jail, other than normal repairs and like-for-like replacements, the Lessee must obtain approval from both the Lessor and the Town of Fincastle (the "Town"), even if such changes do not otherwise require permitting.
- C. Prior to establishing the gift shop business, the Lessee shall confer with the Lessor and the Town regarding the business plan to ensure that it will be consistent with the location next to the County Courthouse. If the character of the gift shop substantially changes, the Lessor or the Town may require changes to the business plan.
- D. The Lessee is responsible for coordinating quarterly meetings with representatives of the Lessor and the Town to discuss progress on the scope of work set out in this section.
- E. The Lessee shall establish detailed benchmarks and submit them to the Lessor and the Town within 45 days of entry of this lease.

6. Improvements, Repairs, Additions & Replacements.

A. Lessee shall, at all times during the term of this lease, and at its own cost and expense, keep and maintain in repair and good condition (ordinary wear and tear excepted), all buildings and improvements at any time erected on the Leased Premises, and shall use all reasonable precaution to prevent waste, damage, or injury.

B. Lessee may, at its own cost and expense, at any time make such alterations, changes, replacements, improvements, and additions in and to the Leased Premises and the buildings and improvements originally constructed thereon, including the modification or

renovation of any such building(s) and improvement(s) and/or structure(s), in accordance with the Approved Uses.

C. On the last day, or sooner termination of the term of this lease, Lessee shall quit and surrender the Leased Premises, and the buildings and permanent improvements then thereon, to Lessor. Lessee, on or before such date, may remove all its personal property, movable trade fixtures and equipment. All property not so removed shall be deemed abandoned and shall become the property of Lessor. On the last day, or sooner termination, possession to all buildings and permanent improvements on the Leased Premises shall revert to Lessor.

7. Requirements of Public Authority.

During the term of this lease, Lessee shall, at its own cost and expense, promptly observe and comply with all present and future laws, ordinances, requirements, orders, directives, rules and regulations of federal, state, county and city governments and of any, and all other governmental authorities affecting the Leased Premises or any part thereof, whether the same are in force at the commencement of the term of this lease or whether the same are in the future passed, enacted or directed, and Lessee shall pay all costs, expenses, liabilities, losses, damages, fines, penalties, claims and demands, including reasonable counsel fees, that may in any manner arise out of or be imposed because of the failure of Lessee to comply with the covenants of this section.

- **Covenant Against Liens.**

If, because of any act or omission of Lessee, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Lessor or any portion of the Leased Premises, Lessee shall, at its own cost and expense, cause the same to be discharged of record or bonded within thirty (30) days after written notice from Lessor to Lessee of the filing thereof; and Lessee shall indemnify and save harmless Lessor against and from all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom. Additionally, no person shall be entitled to any lien directly or indirectly derived through or under Lessee, or through or under any act or omission of Lessee, superior in rank or dignity to the fee interest of Lessor upon the Leased Premises or upon any insurance policies, except as otherwise specifically provided for in this lease and nothing in this lease other than that specifically provided for herein shall be construed in any way so as to contradict this provision.

8. Right of Entry.

Lessor, or Lessor's agents and designees, shall have the right, but not the obligation, to enter upon the Leased Premises, or any part thereof, at all reasonable times to inspect and examine the same. Lessor may exhibit the Lease Premises or any part thereof to prospective purchasers and prospective tenants, but in the case of prospective tenants only during the last twelve (12) months of the term of this lease.

9. Indemnity.

A. By Lessor. The Lessor hereby covenants and agrees to indemnify, hold harmless, save and defend the Lessee and its officers, directors, shareholders, employees, agents, representatives, affiliates and their respective successors and assigns from and against any claim, cause of action, loss, damage, liability, cost, or expense, including, without limitation, reasonable attorney's fees and expenses, made against or incurred by the Lessee as a result of (i) any violation by the Lessor, or any of its employees or agents, of any law, rule, regulation or ordinance now existing or hereinafter enacted, promulgated or modified with respect to the uses contemplated by this Lease, or (ii) any breach, default, violation, misrepresentation or breach of warranty by the Lessor in or under this Ground Lease or any other agreement or instrument executed by the Lessor in connection with this Ground Lease or the transactions contemplated within.

B. By Lessee. Lessee covenants and agrees to indemnify and save harmless Lessor and the Leased Premises from and against any and all claims and demands of every kind, character and description whatsoever, including all costs of defense, arising out of or resulting from the construction, use, occupation, management, operation, possession or control of the Leased Premises or any part thereof, by Lessee, its agents, servants or employees, whether such act, undertaking or obligation arises out of tort or contract; provided, however, that Lessee shall not indemnify and hold Lessor harmless for Lessor's own negligence or willful misconduct or the negligence or willful misconduct of Lessor's employees, agents or servants.

10. Insurance.

A. Lessee shall provide at its expense, and keep in force during the term of this lease, comprehensive general liability insurance with a good and solvent insurance company licensed to do business in the Commonwealth of Virginia, selected by Lessee, in a single limit of at least One Million Five Hundred Thousand Dollars (\$1,500,000.00) for bodily injury, personal injury and death and Three Hundred Thousand Dollars (\$300,000.00) with respect to damages to property. Such policy or policies shall include Lessor and, if required, any mortgagee authorized under this lease, as an additional insured.

B. At all times during the term of this lease, Lessee shall, at its own expense, keep all improvements located on the Leased Premises insured against loss or damage by fire, with customary extended coverage, with a good and solvent insurance company licensed to do business in the Commonwealth of Virginia, in an amount not less than the full insurable replacement value of all such improvements with no deduction for obsolescence. The insurance policy shall name Lessor and Lessee and, if, required, any mortgagee authorized under this lease, as an additional insured.

C. Lessee shall, during the term of this lease, pay all premiums for insurance coverage required by this section.

11. Destruction & Damage.

The parties hereto agree that damage to or destruction in whole or in part of any building or improvements on the Leased Premises by fire or any other casualty shall not work as termination of this lease, or authorize Lessee to quit or surrender the possession of the Leased Premises or any part thereof, and shall not release Lessee in any way from its liability

to pay Lessor the rent herein provided for or from any of the agreements, covenants or conditions of this lease. Lessee covenants and agrees to repair any such damage or reconstruct the buildings or improvements destroyed as promptly as is practicable, and that all funds received from any insurance policy under section 11 will be spent on reconstruction. In furtherance of this, Lessor agrees to endorse any checks made to the order of Lessor or to the joint order of Lessor and Lessee in connection with such insurance proceeds and to deliver any such checks to Lessee. The value and usefulness of the buildings or improvements repaired or reconstructed shall be equal to the value and usefulness of those buildings and improvements damaged or destroyed on the date immediately prior to such damage or destruction.

12. Condemnation.

A. If the whole of the Leased Premises, or any material part thereof, or all means of access to the Lease Premises, shall be condemned, or sold under threat of condemnation, this lease shall terminate and the Lessee shall have no claim against the Lessor, or to any portion of the award in condemnation for the value of the unexpired term of this lease. This paragraph shall not limit the Lessee's right to compensation from the condemning authority for the value of any property taken other than Lessee's leasehold interest.

B. In the event of a temporary taking or a taking of de minimis portions of the property for right-of-way expansion, utility relocations, and the like occurs, this lease shall not terminate.

13. Subordination.

The Lessee understands that the Premises are part of a larger parcel that has been pledged, through a lease-leaseback transaction, of record in the Office of the Clerk for the Circuit Court of Botetourt County, Virginia, as Instrument Nos. 220001240 and 220001241, as security for the Economic Development Authority of Botetourt County, Virginia's \$30,790,000 Public Facility Lease Revenue Bonds, Series 2022 (the "Bonds"), the proceeds of which are being used to improve the real estate surrounding the Leased Premises, and is expressly made subordinate and subject to the provisions thereof.

14. Assignment & Sublease.

Lessee may not assign or sublet this lease without the written consent of the Lessor.

15. Default.

A. In the event of default: (i) in the payment of any installment of rent as hereinabove provided; (ii) or in the event of breach of any other covenants or agreements herein contained on the part of Lessee; Lessor, after first giving written notice to Lessee of the alleged default or breach (specifying the default or breach and demanding that it be remedied), and, after the failure of Lessee to remedy the specified default or breach within ten (10) days after receipt of said notice in the case of non-payment of rent or within thirty (30) days or any longer period reasonably necessary to remedy any other specified default or breach after receipt of said notice, shall have the right to reenter the Leased Premises and require Lessee to surrender and vacate possession of the Leased Premises, to restrain for rent, and to re-rent the Leased Premises, without notice to Lessee, for the account of Lessee for the unexpired portion of the term of this lease, or Lessor may,

at Lessor's option, immediately terminate this lease. In the event that Lessor shall terminate this lease, recover possession of, or re-rent the Leased Premises, or take any other action under the foregoing provisions, such action on the part of Lessor shall not deprive Lessor of any other action or remedy provided by law against Lessee for possession, for rent or for damages.

B. In any suit brought by the Lessor to enforce any provision of this lease, the Lessor shall have the right to recover all costs incurred in connection with such suit, including reasonable attorney's fees.

C. Upon the filing of the Lessee of any voluntary petition in bankruptcy or for reorganization, arrangement, or other adjustment of creditors' rights, or for appointment of a receiver or trustee of the Lessee's property on the grounds of insolvency or bankruptcy, or the making of a general assignment for the benefit of creditors, or the filing by the Lessee of any petition or answer under any bankruptcy or insolvency statute, state or federal, except to seek dismissal thereof which is diligently pursued by the Lessee, the Lessor may immediately terminate this Lease and enter the Leased Premises.

16. Waiver.

Failure of Lessor or Lessee to complain of any act or omission on the part of the other party no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of their rights hereunder. No waiver by Lessor or Lessee at any time, express or implied, of any breach of any provision of this lease shall be deemed a waiver of a breach of any other provision of this lease or consent to any subsequent breach of the same or any other provision. No acceptance by Lessor of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account.

17. Services by Lessor.

Except as set forth in Section 5, Lessor shall not be required to furnish any service or facility to the Leased Premises or the building and improvements now existing or hereafter erected thereon, including but not limited to heat, water, light and power, and shall not be liable to Lessee or otherwise for any failure of water supply or electric current, or of any service by any utility, or any property damage caused by or resulting from steam, gas, electricity, water or rain which may flow or leak from any part of the Leased Premises or the building and improvements now existing or hereafter erected thereon, or from any pipes, appliances or plumbing works of the same, or from the street or sub-surface, or from any other place, nor from interference with land or easements, however caused, except if due to the negligence or affirmative acts of Lessor. Lessor shall not be required to make any repairs or alterations in or to the Leased Premises or the buildings and improvements now existing or hereafter erected thereon.

18. Notices.

Every notice, approval, consent or other communication authorized or required by this lease shall not be effective unless same shall be in writing and sent postage prepaid by United States registered or certified mail, return receipt requested, directed to:

Lessor at:

Attn: County Administrator
Botetourt County, Virginia
57 South Center Drive
Daleville, Virginia 24083
(540) 928-2000
glarrowe@botetourtva.gov

With a copy to:

Attn: County Attorney
Botetourt County, Virginia
Guynn, Waddell, Carroll & Lockaby, P.C.
415 South College Avenue
Salem, Virginia 24153
(540) 387-2320
mlockaby@botetourtva.gov

Lessee at: [address]

or such other address as either party may designate by notice, given from time to time in accordance with this section. All such notices shall be deemed to be given upon deposit in the United States mail as hereinabove provided. The rent payable by Lessee hereunder shall be paid to Lessor at the same place where a notice to Lessor is herein required to be directed.

19. Quiet Enjoyment & Covenant of Title.

Lessor covenants that it has full right and power to execute this Lease and to grant the estate demised herein, subject to the encumbrance of the Bonds, and that Lessee, upon payment of the rents herein reserved, and performing the terms, conditions, and covenants herein contained, shall peacefully and quietly have, hold, and enjoy the Premises during the full term of this Lease, and any extension hereof, from all persons claiming through Lessor.

20. Governing Law.

This lease shall be governed, interpreted, construed and regulated by the laws of the Commonwealth of Virginia. Pursuant to the provisions of Va. Code § 55.1-1400, the provisions of Chapter 14 of Title 55.1 of the Code of Virginia shall NOT govern this lease. Any action or suit relating to this Lease shall be brought in the Circuit Court or the General District Court for Botetourt County, Virginia, and in no other.

21. Partial Invalidity.

If any term, covenant, condition or provision of this lease shall be invalid or unenforceable, the remainder of this lease shall not be affected, and each term, covenant, condition and provision of this lease shall be valid and be enforceable to the fullest extent permitted by law.

22. Interpretation.

Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The terms "Lessor" and "Lessee" wherever used herein shall mean only the owner at the time of Lessor's or Lessee's interest herein, and upon any sale or assignment of the interest of either Lessor or Lessee herein, their respective successors in interest and/or assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Lessor or Lessee, as the case may be.

The Parties are each sophisticated, knowledge persons about the subject matter of this Lease who negotiated this Lease and had opportunity to consult with counsel. Accordingly, it shall be construed as jointly drafted and construed against neither party as the drafter.

23. Entire Agreement.

No oral statement or prior written matter shall have any force or effect. All parties agree that they are not relying on any representations or agreements other than those contained in this lease. This agreement shall not be modified or cancelled except by a writing signed by all parties.

24. Binding Effect.

Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Lessor and Lessee and their respective heirs, successors, administrators and assigns.

[SIGNATURES ON FOLLOWING PAGES]

LESSOR:

BOTETOURT COUNTY, VIRGINIA:

Gary Larrowe, County Administrator

COUNTY OF BOTETOURT,

COMMONWEALTH OF VIRGINIA, to wit:

The foregoing instrument was acknowledged before me this _____, 2023, by Gary Larrowe, County Administrator, on behalf of Botetourt County, Virginia.

My commission expires: _____

Notary registration number: _____

Notary Public

[SIGNATURES CONTINUE ON NEXT PAGE]

LESSEE:

[name of lessee]:

[person], [title]

CITY/COUNTY OF _____,

COMMONWEALTH OF VIRGINIA, to wit:

The foregoing instrument was acknowledged before me this _____, 2023, by
_____ on behalf of _____.

My commission expires: _____

Notary registration number: _____

Notary Public

[SIGNATURES CONTINUE ON NEXT PAGE]

SEEN AND ACKNOWLEDGED:
TOWN OF FINCASTLE, VIRGINIA:

[person], [title]

COUNTY OF BOTETOURT,
COMMONWEALTH OF VIRGINIA, to wit:

The foregoing instrument was acknowledged before me this _____, 2023, by _____ on behalf of the Town of Fincastle, Virginia.

My commission expires: _____

Notary registration number: _____

Notary Public