

## LEASE AGREEMENT

LANDLORD(S):

RECREATIONAL FACILITIES AND INFRASTRUCTURE  
DEVELOPMENT AUTHORITY OF TAZEWELL COUNTY ("RDA")  
108 East Main Street  
Tazewell, VA 24651

TENANT(S):

TRAILHEAD LODGING, LLC  
2869 Riner Road  
Christiansburg, VA 24073

TAX MAP NO(S): 005 A 0026F, and a portion of 005 A 0026H

CONSIDERATION: N/A

*This conveyance is exempt from recordation taxes pursuant to  
Section 58.1-811 of the Code of Virginia of 1950, as amended.*

**THIS LEASE AGREEMENT** (herein after sometimes referred to as "the Lease" or "this Lease") made this 30<sup>th</sup> day of July, 2015, by and between the **RECREATIONAL FACILITIES AND INFRASTRUCTURE DEVELOPMENT AUTHORITY OF TAZEWELL COUNTY, VIRGINIA, d/b/a THE TAZEWELL COUNTY RECREATIONAL DEVELOPMENT AUTHORITY** (hereinafter "Landlord" or "RDA"), a political subdivision of the Commonwealth of Virginia created pursuant to Section 15.2-5600 *et seq.*, of the Code of Virginia, as amended, whose address is 108 East Main Street, Tazewell, Virginia 24651 and **TRAILHEAD LODGING, LLC**, a Virginia Limited Liability Company, whose address is 2869 Riner Road, Christiansburg, Virginia 24073 (hereinafter "Tenant").

## RECITALS

I. Landlord is the sole owner of the Premises below described and desires to lease the Premises to Tenant so that Tenant may construct and rent small cabins on the

Premises for the public's recreational purposes.

2. Tenant desires to lease the Premises from Landlord for construction and operation of rental cabins which will be made available to the public by Tenant.

3. The parties desire to enter this Lease agreement defining their rights, duties, and liabilities relating to the Premises.

In consideration of the mutual covenants contained herein, the parties agree as follows:

### **I. PREMISES**

Landlord hereby leases and demises to Tenant approximately 16.30+/- acres in Tazewell County, Virginia at the Pocahontas ATV Trailhead near Boissevain, being all of parcel number 005 A 0026F and a portion of parcel number 005 A 0026H, both previously conveyed to the RDA from Boissevain Coal Miners Memorial Museum, Inc. by deed dated October 27, 2004 and recorded in the Tazewell County Circuit Court Clerk's Office in Deed Book 926, page 299, as shown on the attached plat titled Exhibit A (hereinafter referred to as "the Premises"). Landlord reserves from the Premises hereby demised that certain area shown on Exhibit A as "Right of Way". Landlord agrees that said "Right of Way" shall only be used for Landlord, its officers, agents, and employees, for the Southwest Regional Recreational Authority (SRRA), its officers, agents, and employees, and for persons drawn from the general public who may possess a permit to ride on SRRA's Pocahontas ATV trail, to access the Pocahontas ATV trail system and exit therefrom. Landlord, however, grants Tenant the nonexclusive right for Tenant and Tenant's employees, agents, and invitees to ingress, egress, and regress to and from the demised Premises over the remainder of Landlord's property. The Premises shall also include the right for Tenant's guests and invitees to

use the public restrooms located on the remainder of Landlord's property. Landlord shall maintain and operate said facilities during any term of the Lease.

Should Landlord later decide to lease the remainder of parcel number 005 A 0026H, Landlord shall notify Tenant of any procurement of proposals for Lease of said property to be advertised by Landlord in accordance with the Virginia Public Procurement Act.

## **II. PURPOSE**

Tenant shall use the Premises exclusively as a site for rental cabins offered to the public for short term rental. Tenant shall comply with all governmental regulations affecting the operation of such cabins. The cabins shall be of a like quality and constructed in a manner as described in Tenant's proposal to the RDA attached hereto as Exhibit B. Tenant's operation of such cabins by making them available to the public for rent is a part of the consideration to Landlord for this Lease agreement. Should Tenant or Tenant's agents or assigns fail to make the cabins available for rent to the public for a continuous twelve month period, Landlord shall have the right to terminate this Lease. Tenant shall not in any way discriminate against any person desiring to rent any cabin based on the persons race, sex, religion, or national origin. (The construction and operation of the rental cabins as described in Exhibit B may hereinafter be referred to as "the Project." The cabins so constructed may be referred to as "the cabins.")

## **III. TERM OF LEASE**

The first term of the Lease shall be for ten years and six months, commencing July 1, 2015 and terminating June 30, 2025. Tenant shall have the option to renew the Lease for a second term of ten years, which would commence July 1, 2025 and terminate June 30, 2035. Tenant shall have the option to renew the lease for a third

term of ten years, which would commence July 1, 2035 and terminate June 30, 2045. Tenant must notify Landlord of Tenant's intent to renew this lease for any additional term in writing at least thirty (30) days prior to the expiration of the then current term.

#### **IV. RENT**

During the first term of the Lease Tenant shall pay Landlord rent in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00) in ten equal, annual payments of FIVE THOUSAND DOLLARS (\$5,000.00) each due in advance on June 30th each year of the Lease. However, the first annual payment shall not be due until January 1, 2016. The second annual payment shall be due on June 30th, 2016. Thereafter, each annual payment is due in advance on June 30th each year of the Lease term.

Should Tenant not renew the Lease for a second term as above provided, Tenant shall pay Landlord \$12,500.00 at the conclusion of the first term of the Lease, as compensation to Landlord for the water and sewer improvements made by Landlord in reliance on Tenant's commitment herein to continue the project for twenty years.

During the second term of the Lease Tenant shall pay Landlord rent in the amount of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00) in ten equal, annual payments of SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$7,500.00) due June 30th each year.

During the third term of the Lease Tenant shall pay Landlord rent in the amount of TWENTY THOUSAND DOLLARS (\$20,000.00) for the first year of the third term. Thereafter, for the remainder of the third term of the Lease, the rent for each year shall increase by three percent 3% from the previous year: such that the second year's rent shall be \$20,600.00, the third year's rent \$21,218.00, the fourth year's rent \$21,854.54, etc. Rent payment shall be due in advance on June 30th each year.

## **V. IMPROVEMENTS**

The Cabins and related facilities as described in the attached Exhibit B shall not be deemed fixtures to the Premises. The Cabins shall remain Tenant's personal property. Any underground water distribution lines, sewer collection lines, or electrical lines and conduit installed by Tenant, as well as any extensions therefrom for individual cabins shall be deemed fixtures to the property and become Landlord's property upon expiration or termination of the Lease.

Landlord shall, at Landlord's expense, extend water and sewer lines to the Premises at the points shown on Exhibit A, in reliance on Tenant's construction and operation of the project as described in Exhibit B.

Landlord agrees to pay any tap fees charged by the Tazewell County Public Service Authority ("PSA") for connecting Tenant's systems to the PSA's at a single location for sewer and water as shown on Exhibit A.

## **VI. UTILITIES**

Tenant shall contract for all utility services required on the premises in the name of Tenant and shall be liable to pay for all utility services as they become due, including, but not limited to, gas, electricity, telephone and internet services, water and sewer services, garbage and rubbish services, and cable television services. Landlord shall arrange and grant all necessary and reasonable easements to utility service suppliers to facilitate installation, maintenance, and repairing of utility service required by Tenant.

## **VII. WATER AND SEWER FACILITIES**

Landlord agrees that adequate water and sewer services will be available for the Tenant at the locations indicated on the attached Exhibit A. For purposes of this

agreement "adequate" water and sewer services shall mean a water capacity of 10,000 gallons per day at a pressure not less than as required by the Virginia Department of Health and Waterworks Regulations, 12 VAC 5-590, VA Code § 32.1-167 - § 32.1-176, and a sewerage capacity of 10,000 gallons per day. Tenant will be responsible for the extension of water distribution lines and sewer collection lines within the Premises.

During any term of the Lease, Tenant will be responsible for all maintenance and repair of any improvements made by Tenant.

#### **VII. TAXES**

Landlord shall be responsible for all real property taxes and assessments levied on the Premises. Tenant shall pay all personal property taxes and assessments levied against the cabins and all business taxes and license fees related to the cabin rentals and other services provided by Tenant.

#### **VIII. ASSIGNMENT AND SUBLEASE**

Tenant may assign this Lease or sublet the Premises to another party upon written notice to Landlord.

#### **IX. ALTERATIONS AND MODIFICATIONS**

Tenant shall be permitted to grade, clear and otherwise modify the Premises in order to construct the cabins. Tenant shall comply with all Erosion and Sediment Control Laws, Storm Water Control Laws, Building Codes, and any other laws and regulations pertaining to the construction and is responsible for obtaining all necessary permits at Tenant's expense. Landlord shall not unreasonably refuse to participate in any permitting process which requires authorization from the land owner.

## **X. INSURANCE**

Tenant shall maintain premises liability and commercial general liability insurances naming the RDA, the County of Tazewell, and SRRA as additional insureds at all times during any term of the Lease. Upon request Tenant shall furnish to Landlord proof of such insurance. During the first term of the Lease such insurance shall be no less than One Million Dollars (\$1,000,000.00) per occurrence; Two Million Dollars (\$2,000,000.00) during the second term of the lease; and Three Million Dollars (\$3,000,000.00) during the third term of the Lease.

## **XI. BANKRUPTCY**

In the event Tenant files for voluntary bankruptcy, is placed in receivership, or has involuntary bankruptcy proceedings instituted against it by creditors Landlord shall have the option to terminate the Lease by giving thirty (30) days' notice to Tenant.

## **XII. EXAMINATION OF PREMISES**

Tenant has examined the Premises prior to execution of this Lease and hereby acknowledges that the Premises are in satisfactory condition at the time Tenant enters into possession of the Premises. Landlord has made no representation to Tenant relating to the condition of the Premises except as provided in the Lease.

## **XIII. DEFAULT AND FORFEITURE**

Should Tenant not complete construction of the cabins, as described on Exhibit B, on or before December 31, 2016, the Lease shall be terminated, any improvements made by Tenant shall become the property of Landlord, and all rent due for the first term shall then be due and payable to Landlord.

Landlord may, on default with respect to any of the provisions of the Lease by Tenant, provide Tenant with written notice of any breach of the Lease terms or

conditions and Tenant shall then have thirty (30) to either correct the condition, or commence corrective action if the condition cannot be corrected in thirty (30). If the condition cannot be corrected in thirty (30), Tenant shall have a reasonable time to complete the correction, provided corrective efforts are commenced promptly. Landlord may elect to enforce the terms and conditions of the Lease by any other method available under the provisions of the Lease or by law.

#### **XIV. DEFAULT OR BREACH**

A. Each of the following events shall constitute a default or breach of this Lease by Tenant:

(1) If Tenant, or any successor or assignee of Tenant while in possession, shall file a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or shall voluntarily take advantage of any such act by answer or otherwise, or shall make an assignment for the benefit of creditors.

(2) If involuntary proceedings under any bankruptcy law or insolvency act shall be instituted against Tenant, or if a receiver or trustee shall be appointed of all or substantially all of the property of Tenant, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within 60 days after the institution or appointment.

(3) If Tenant shall fail to pay Landlord any rent or additional rent when the rent shall become due and shall not make the payment within thirty (30) after notice thereof by Landlord to Tenant.

(4) If Tenant shall fail to perform or comply with any of the conditions of the Lease and if the nonperformance shall continue for a period of thirty (30) after notice thereof by Landlord to Tenant or, if the performance cannot be reasonably had within



the thirty (30) period, Tenant shall not in good faith have commenced performance within the thirty (30) day period and shall not diligently proceed to completion of performance.

(5) If Tenant shall vacate or abandon the Premises.

(6) If Tenant shall cease to operate rental cabins on the Premises for a period in excess of twelve consecutive months.

(7) If Tenant fails to commence construction of the Project within 180 days of commencement of the first term of the Lease.

B. Landlord's failure to meet any obligation undertaken by Landlord pursuant to this Lease Agreement which is not remedied within thirty (30) days of Tenant providing Landlord written notice shall be deemed a breach of this Agreement.

Additionally, if the Pocahontas ATV Trail System is closed for a period of more than three months continuously Tenant shall have the right to an abeyance of rent for the year in which such closure occurred and the right, at Tenant's election, to terminate the Lease.

Tenant acknowledges the Pocahontas ATV Trail is operated by the Southwest Virginia Regional Recreational Authority ("SRRA") and the times of operation, the terms of operation, and the condition of the ATV Trail are beyond Landlord's control.

Under no circumstances shall Landlord be liable to Tenant for any lost revenues, loss of profits or other consequential damages if the Pocahontas ATV Trail is limited, re-routed, or closed for any period of time for any reason.

## **XV. EFFECT OF DEFAULT**

In the event of any default hereunder the rights of Landlord shall be as follows:

(1) Landlord shall have the right to cancel and terminate the Lease, as well as all of the right, title, and interest of Tenant hereunder, by giving to Tenant not less than thirty (30) days' notice of the cancellation and termination. On expiration of the time fixed in the notice, the Lease and the right, title, and interest of Tenant hereunder, shall terminate in the same manner and with the same force and effect, except as to Tenant's liability, as if the date fixed in the notice of cancellation and termination were the end of the term herein originally determined.

(2) Landlord may elect, but shall not be obligated, to make any payment required of Tenant herein or comply with any agreement, term, or condition required hereby to be performed by Tenant, and Landlord shall have the right to enter the Premises for the purpose of correcting or remedying any such default and to remain until the default has been corrected or remedied, but any expenditure for the correction by Landlord shall not be deemed to waive or release the default of Tenant or the right of Landlord to take any action as may be otherwise permissible hereunder in the case of any default.

(3) After re-entry, Landlord may relet the Premises or any part thereof for any term without terminating the Lease, at the rent and on the terms as Landlord may choose. Landlord may make alterations and repairs to the Premises.

## **XVII. REMEDIES OF LANDLORD**

Any and all remedies provided to Landlord for the enforcement of the provisions of this Lease are cumulative and not exclusive, and Landlord shall be entitled to pursue

either the rights enumerated in this Lease or remedies authorized by law, or both. Tenant shall be liable for any costs or expenses incurred by Landlord in enforcing any terms of this Lease, or in pursuing any legal action for the enforcement of Landlord's rights.

#### **XVIII. PARTNERSHIP NOT CREATED**

This agreement in no way is intended to create a partnership or joint venture between the parties.

#### **XIX. MODIFICATION**

This Lease Agreement represents the entire understanding between the parties and may not be modified unless such modification is reduced to writing and duly executed by the parties.

#### **XX. GOVERNING LAW**

The terms of this Lease Agreement and any dispute arising from this Lease Agreement shall be governed by the Law of the Commonwealth of Virginia.

#### **XXI. INDEMNIFICATION**

Tenant agrees to hold Landlord harmless and indemnify Landlord with respect to any claim or action by third parties arising from ***Tenant's negligence under this*** Lease, Tenant's ***negligent*** construction of the cabins, Tenants ***negligent*** operation of the cabins, or the project as herein described. Such indemnity shall include any judgment awarded against Landlord ***arising from Tenant's negligence under this Lease***, any court costs, and any legal fees incurred by Landlord in defense of such claims

#### **XXII. ACCESS ROAD**

Landlord agrees to maintain the public access road through the remainder of

Landlord's property, being the Miner's Park, in generally the same condition as at the commencement of this Lease, being adequate drainage ditching and a stone/gravel base.

Landlord shall endeavor to pave said road with asphalt as funds become available for such purpose. However, Landlord's obligation to pave said road is subject to appropriations made at the discretion of the Tazewell County Board of Supervisors.

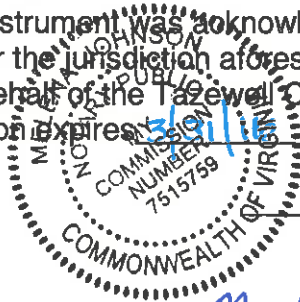
In Witness whereof, the parties have executed this Lease Agreement in Tazewell County, Virginia on the 30<sup>th</sup> day of July, 2015.

Landlord: Tazewell County  
Recreational Development Authority

By: Charlotte Whitted  
Charlotte Whitted, Chairperson

Commonwealth of Virginia,  
County of Tazewell, to-wit:

The foregoing instrument was acknowledged before me, Melena Johnson, a Notary Public in and for the jurisdiction aforesaid this 30<sup>th</sup> day of July, 2015, by Charlotte Whitted on behalf of the Tazewell County Recreational Development Authority. My commission expires 3/31/18. Notary Number: 7515759.



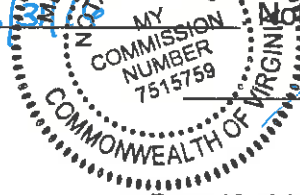
Melena Johnson  
Notary Public

Tenant: Matthew Kesler

By: Matthew Kesler  
Title: member

Commonwealth of Virginia,  
County of Tazewell, to-wit:

The foregoing instrument was acknowledged before me, Melena Johnson, a Notary Public in and for the jurisdiction aforesaid this 30<sup>th</sup> day of July, 2015, by Matthew Kesler on behalf of Seaside Lodge, LLC. My commission expires 3/31/18. Notary Number: 7515759.



Melena Johnson  
Notary Public

Boisevain Trailhead Lease Map (Exhibit A)

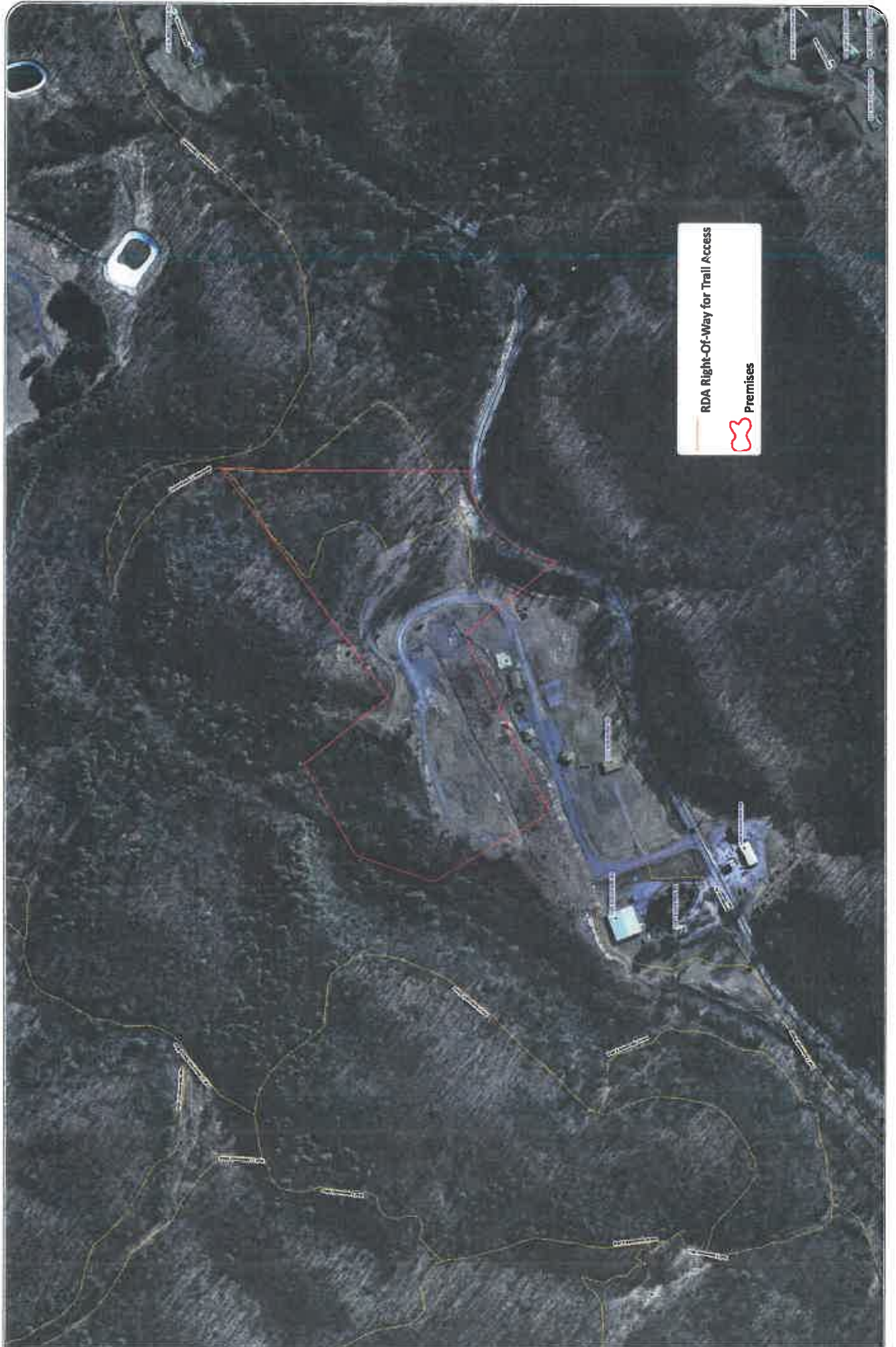




Exhibit A-2



**Exhibit A-3**  
**Showing Terminus of RDA Water and Sewer lines constructed by RDA pursuant to**  
**Article VII of the Lease Agreement**

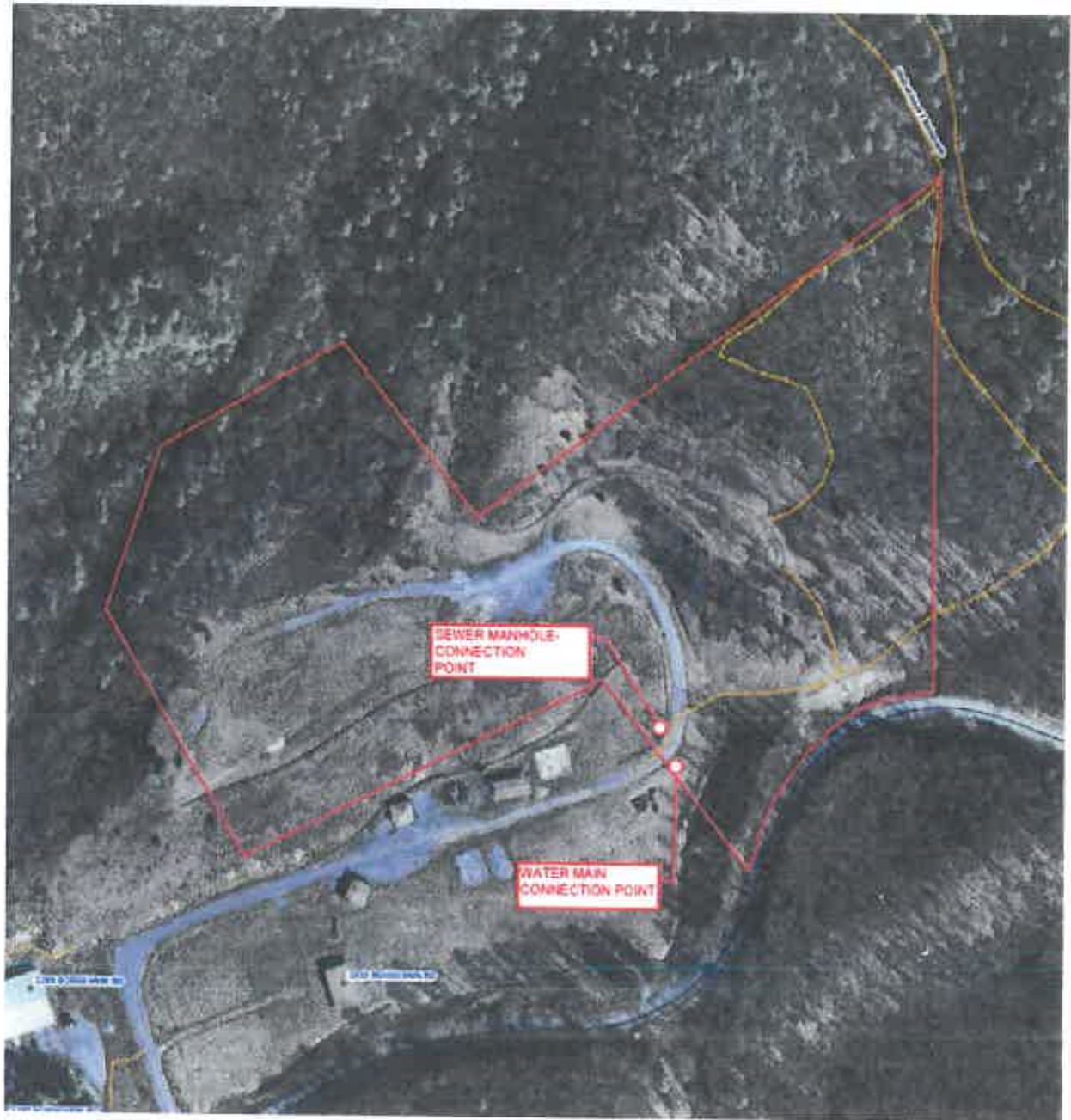
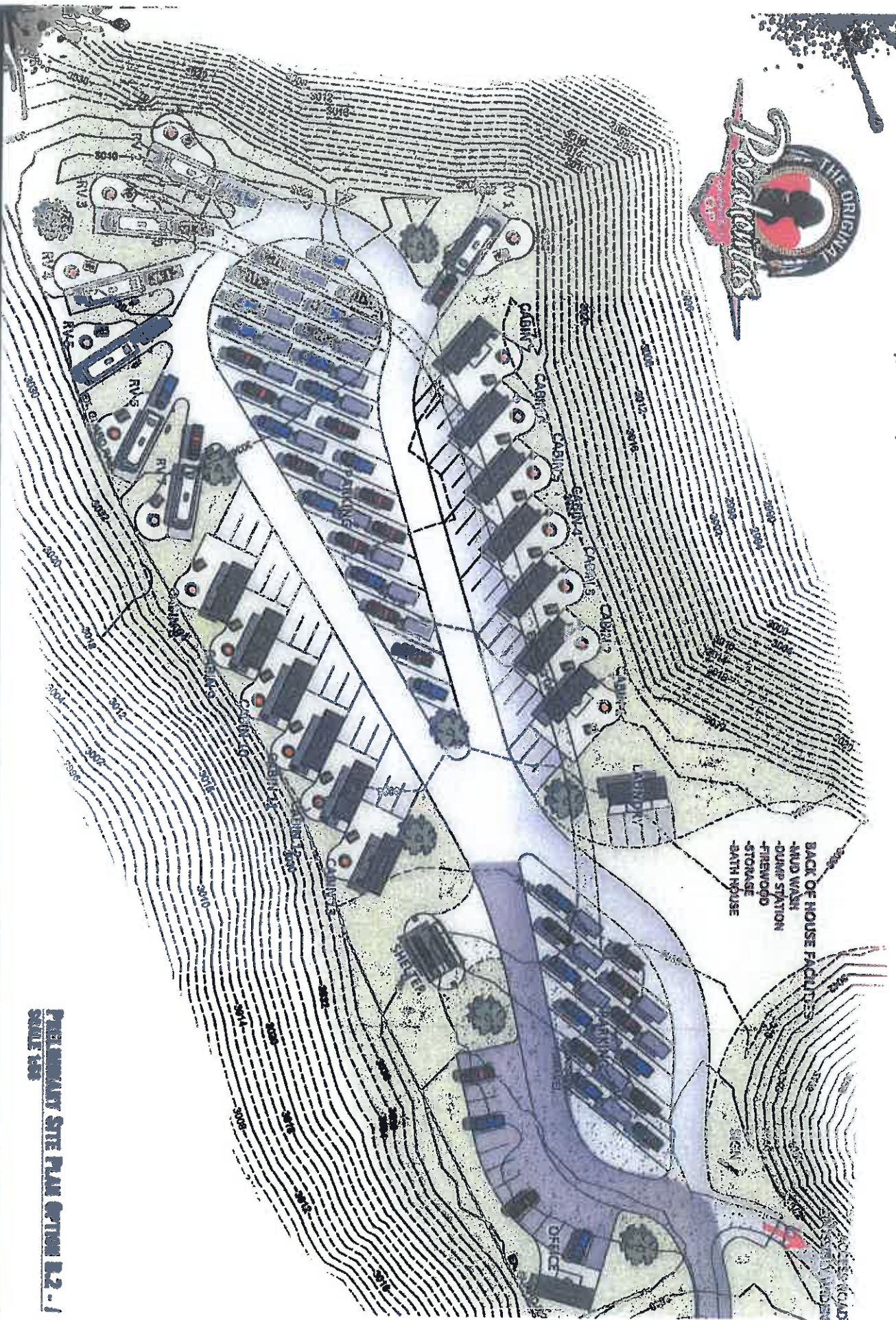




Exhibit B-1







Attachment 3 – Ashland Park Models



Exhibit B-3



Ashland Park Model

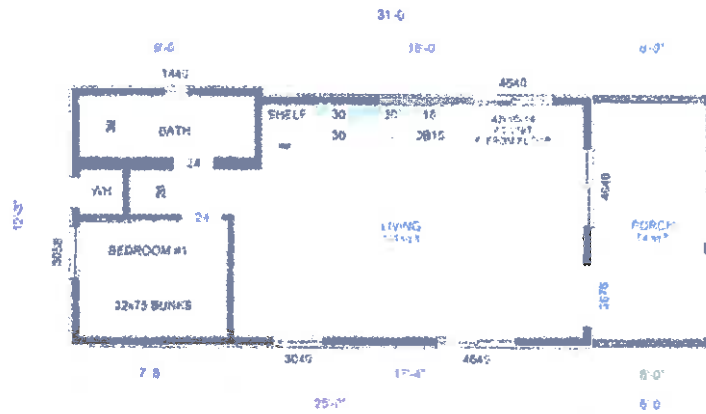


Exhibit B-4



# New Park Model

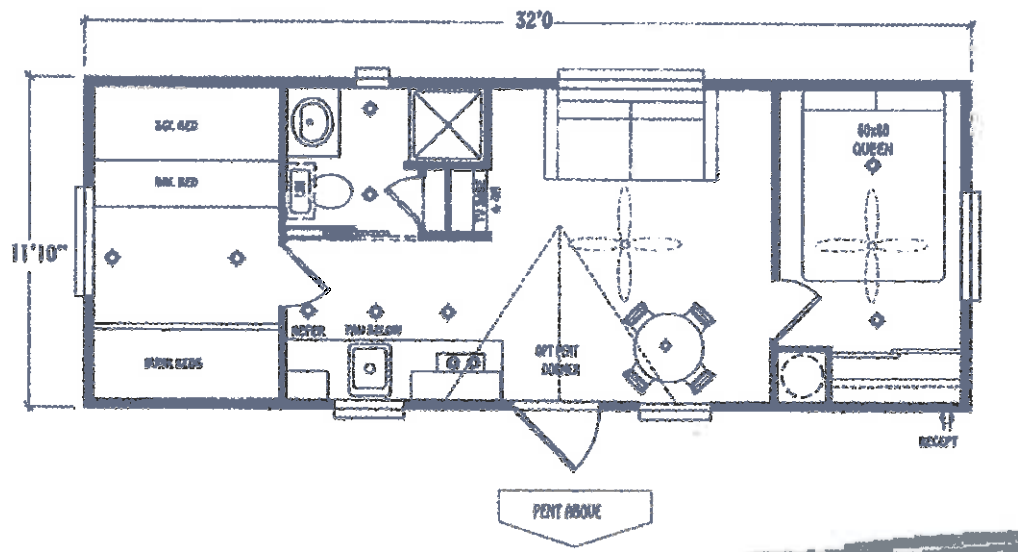


Exhibit B-5

## LESSOR'S WAIVER

WHEREAS, THE FIRST BANK AND TRUST COMPANY, Lender, has made a loan to TRAILHEAD LODGING, LLC, a Virginia Limited Liability Company, whose address is 2869 Riner Road, Christiansburg, Virginia 24073, Borrower, which loan is secured among other things by a security interest in park model cabins, vehicles, appliances, furniture, fixtures, machinery, and equipment owned and hereafter acquired;

WHEREAS, Borrower is leasing from RECREATIONAL FACILITIES AND INFRASTRUCTURE DEVELOPMENT AUTHORITY OF TAZEVELL COUNTY, VIRGINIA, d/b/a THE TAZEVELL COUNTY RECREATIONAL DEVELOPMENT AUTHORITY, Lessor, a political subdivision of the Commonwealth of Virginia created pursuant to Section 15.2-5600 et seq., of the Code of Virginia, as amended, whose address is 108 East Main Street, Tazewell, Virginia 24651, in which to conduct and operate the business known as Trailhead Lodging, LLC and,

WHEREAS, Lender desires that its security interest be hereby recognized and acknowledged by Lessor;

NOW, THEREFORE, Lessor hereby agrees:

1. To endeavor to give to Lender ninety (90) days written notice to THE FIRST BANK AND TRUST COMPANY at 150 Peppers Ferry Rd., NE, P.O. Box 767 Christiansburg, VA 24068, prior to eviction of Borrower or his assigns for any default in the payment of rent under the lease.
2. The Lender shall have the right to remove it's collateral from the leased premises for purposes of sale provided that such removal is accomplished during normal business hours and in a reasonable manner, or in the alternative, upon agreement, to conduct said sale during normal business hours and in a reasonable manner upon the premises upon payment of a reasonable storage charge for such period of time as Lender needs to advertise and conduct a sale. Lender hereby agrees to repair any damage to the leased premises caused by its activities in removing Borrower's property or conduct of sale thereof.
3. The Lender shall have the right to pay defaulted rent, maintain the lease in "good standing", and continue operations, but shall be under no obligation to do so.
4. The Lender shall have the opportunity, with the consent of Lessor, to find and install a substitute tenant satisfactory to Lessor, if it would be beneficial to both Lender and Lessor to do so.

LESSOR:

*RDA Chairperson*  
CHARLOTTE G. WHITTED

BY:

Charlotte G. Whitted