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**EXPLORE PARK LEASE AGREEMENT**

This Explore Park Lease Agreement, made this \_\_\_\_\_ day of September, 2013 (the "Lease Agreement"), is by and between the Virginia Recreation Facilities Authority (the "Authority" and "Landlord") and the Roanoke County, Virginia, (the "County" and "Tenant").

**RECITALS**

- R1. The County is a county of the Commonwealth of Virginia.
- R2. The Authority is a political subdivision of the Commonwealth established by the General Assembly of Virginia which operates pursuant to Chapter 16 of Title 10.1 of the Code of Virginia.
- R3. Virginia Code Ann. § 10.1-1601 states the public purposes of the Authority to provide a high quality recreational attraction in the western part of the Commonwealth; expand the historical knowledge of adults and children; promote tourism and economic development in the Commonwealth; set aside and conserve scenic and natural areas along the Roanoke River and preserve open-space land; and enhance and expand research and educational programs.
- R4. Virginia Code Ann. § 10.1-1603(1) authorizes the Authority to lease as lessor, any property, real or personal.
- R5. Virginia Code Ann. § 15.2-1800(A) authorizes the County to acquire property by lease as lessee.
- R6. The County and the Authority wish to promote and accomplish the public purposes stated in Virginia Code Ann. § 10.1-1601 through the leasing all of the Authority's real and personal property to the County pursuant to the terms of this Lease Agreement.
- R7. The Roanoke County Comprehensive Plan, specifically the 2008 Amendment entitled the "Mount Pleasant Community Plan," encourages and supports the public purpose and goals shared by the County and the Authority."
- R8. The development and operation of Explore Park has been a priority for the County for many years. The County believes this Lease Agreement will allow the County and the Authority to protect and further the County's investments in Explore Park.

R9. The Board of Directors of the Authority approved this Lease Agreement by Resolution dated September 24, 2013.

R10. The Board of Supervisors of the County approved this Lease Agreement by Ordinance dated September 24, 2013.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Authority and the County agree as follows:

1. Definitions. The terms below shall have the following meanings as used in this Lease Agreement.

- a. Effective Date. The Effective Date of this Lease Agreement shall be October 1, 2013.
- b. Execution Date. The Execution Date of this Lease Agreement shall be September \_\_, 2013.
- c. Leased Personal Property. The term Leased Personal Property shall mean the items of personal property owned by the Authority and leased to the County pursuant to this Agreement.
- d. Leased Premises. The term Leased Premises shall mean those parcels of land comprising 1,051.68 acres, plus or minus, together with any and all improvements located thereon, and located in Roanoke County and Bedford County, as described in the Legal Description attached as **Exhibit 1** to this Lease Agreement. Of the total of approximately 1,051.68 acres, 663.657 acres are located in Roanoke County and 388.02 acres are located in Bedford County. Portions of the Leased Premises are known as Explore Park. The Leased Premises shall include any and all improvements, fixtures, personal property, equipment and land associated with the water and wastewater systems serving and located on the Leased Premises.
- e. Termination Date. The Termination Date of this Lease Agreement shall be December 31, 2112 or such other effective date of termination as provided for in this Lease Agreement.

2. Leased Premises. The Authority hereby leases the Leased Premises, as defined in Section 1(d) above, together with any and all improvements thereon, to the County effective upon the Effective Date and continuing through the Termination Date. The Authority intends to lease all of its real property to the County pursuant to this Lease Agreement.

3. Term. The Term of this Lease Agreement shall commence on the Effective Date and end on the Termination Date, unless otherwise terminated as provided in this Lease Agreement.

4. Rent. The County agrees to pay one dollar (\$1.00) per year as rent for the Leased Premises. The County shall prepay all of the rent, totalling \$99.00, on or before the Effective Date.

5. Use of the Leased Premises. The Leased Premises shall be used for the public purposes stated in Virginia Code Ann. § 10.1-1601 which shall include, but not be limited to, the development of a high quality recreational attraction, expanding the historical knowledge of adults and children, promoting tourism and economic development in the Commonwealth, setting aside and conserving scenic and natural areas along the Roanoke River and preserving open-space lands, and similar recreation, conservation, educational, and passive uses. The County may construct additional improvements on the Leased Premises in its sole and absolute discretion.

a. Quiet Enjoyment. The Authority covenants that the County shall peaceably possess and enjoy the Leased Premises, for the term granted, without any interruption or disturbance, subject only to the public purpose requirements of Virginia Code Ann. § 10.1-1601.

b. Public Access. The County shall continue to make significant portions of the Leased Premises reasonably available to the public for recreational and conservation uses similar to the access provided to the public as of the Effective Date.

6. Easements and Access; Leases. Tenant hereby acknowledges that at the Effective Date the Premises are subject to certain leases, easements for ingress and egress, utilities, drainage and other purposes including, without limitation, those set forth in **Exhibit 2**. **Exhibit 2** is based upon Landlord's existing title policies and deeds, which have been provided to Tenant. The information is accurate to the knowledge, information and belief of the Landlord.

7. Maintenance. Tenant shall, at its own expense, maintain the Leased Premises and all facilities and improvements constructed thereon. The Tenant shall be responsible for all expenses and costs related to the Leased Premises. Tenant covenants to maintain and operate the Leased Premises in the manner and at the level of care and maintenance no less than that of other County parks and facilities of a similar nature.

8. Transfer of Remaining Cash Amount.

a. The Authority agrees to appropriate and pay \$100,000 to the County on the Effective Date. (October 1, 2013). The Authority shall appropriate and transfer all of its balance of remaining funds to the County on January 1, 2014. During the period between the Effective Date and January 1, 2014, the Authority shall use its funds for appropriate transitional and winding up purposes.

- b. The County shall use the cash amounts transferred by the Authority for the maintenance, repair and improvement to structures on the Premises, as directed by the Landlord. Without limiting Landlord's right to enforce the provisions of Sections 7 and 9 hereof, Landlord acknowledges that its specific direction of the Tenant's maintenance of the Premises is limited to the expenditure of this cash amount only. The County shall acknowledge the contributions of the Authority with respect to any improvements constructed using the funds transferred by the Authority to the County pursuant to this Agreement.

9. Maintenance and Use of Historic Structures.

- a. Definitions. The terms below shall have the following meanings as used in this Lease Agreement:
  - i. Class 1 Historic Structures. The term "Class 1 Historic Structures" shall mean the following structures located at Explore Park: the Brugh Tavern, the Mount Union Church, and Slone's Grist Mill.
  - ii. Class 2 Historic Structures. The term "Class 2 Historic Structures" shall mean the following structures located at Explore Park: the Hofauger House (with the Cobbler Shop and dependencies), the Intervale Barn (also known as the Houtz Barn), Kemp's Ford School House, and the Wray Barn.
  - iii. Class 3 Historic Structures. The term "Class 3 Historic Structures" shall mean the following structures located at Explore Park: the Blacksmith Shop, the Alone Yet Not Alone Cabin, and the Frontier Fort.
  - iv. Historic Structures: The term "Historic Structures" shall mean, collectively, the Class 1 Historic Structures, the Class 2 Historic Structures, and the Class 3 Historic Structures.
- b. Use of Historic Structures. The County may use the Historic Structures in any reasonable way and may make any improvements to the Historic Structures that it deems appropriate to allow the use of the structures with due consideration of the historic character of the Historic Structures. It is the Authority's and the County's intent to allow the County to make use of the

Historic Structures in support of the public purposes stated in Virginia Code Ann. § 10.1-1601 in any way the County deems appropriate.

- c. Maintenance of Class 1 Historic Structures. The County shall, for the first fifteen (15) years of the Term, reasonably maintain the Class 1 Historic Structures. This maintenance obligation shall be satisfied by (a) ensuring that their roofs are sound, (b) that they are otherwise weather-proof, animal and insect proof, and (c) mowing and trimming grass and vegetation surrounding the structures. The Class 1 Historic Structures shall not be altered or materially modified without the prior written consent of the Authority. This restriction shall not apply to the non-historic portions of the Brugh Tavern or the Mount Union Church. This condition shall also not apply to repairs that are deemed, in the County's sole discretion, to be made on an emergency basis.
- d. Maintenance of Class 2 Historic Structures. The County shall, for the first ten (10) years of the Term, reasonably maintain the Class 2 Historical Structures. This maintenance obligation shall be satisfied by (a) ensuring that their roofs are sound, (b) that they are otherwise weather-proof, animal and insect proof, and (c) mowing and trimming grass and vegetation surrounding the structures. The Class 2 Historic Structures shall not be altered or materially modified without the prior written consent of the Authority. This condition shall also not apply to repairs that are deemed, in the County's sole discretion, to be made on an emergency basis.
- e. Maintenance of Class 3 Historic Structures. The County shall, for a period of five (5) years, reasonably maintain the Class 3 Historic Structures. This maintenance obligation shall be satisfied by (a) ensuring that their roofs are sound, (b) that they are otherwise weather-proof, animal and insect proof, and (c) mowing and trimming grass and vegetation surrounding the structures.
- f. Relocating the Historic Structures. The County shall have the authority to relocate any Historic Structure to any location on the Leased Premises at any time at its own expense after giving thirty (30) days written notice to the Authority of the County's intent to relocate any designated Historic Structure. The process of the relocation and the new site selected for the Historic Structure shall be done in an appropriate and professional way that

will best preserve the Historic Structure and continue to have it available for public use and education as it was in its original location.

- g. Removal of Historic Structures. The County shall have the authority to cease maintaining and/or remove any Historic Structure after the expiration of the applicable maintenance period (15 years for Class 1 Historic Structures; 10 years for Class 2 Historic Structures; and 5 years for Class 3 Historic Structures).

i. Class 2 Historic Structures. In the event the County determines that it wishes to remove any Class 2 or Class 3 Historic Structure, it shall give written notice to the Authority of its desire to remove a designated Historic Structure. The Authority shall have six (6) months from the date of the notice to arrange for the removal or relocation of the designated structure. The County shall cooperate with all efforts to relocate, disassemble and/or store the structure. The Authority will be responsible for all costs associated with the removal and storage, unless the County specifically agrees to cost sharing as designated by separate agreement.

ii. Class 1 Historic Structures. In the event the County determines that it wishes to remove any Class 1 Historic Structure , it shall give written notice to the Authority of its desire to remove a designated Class 1 Historic Structure. The Authority shall have one year from the date of the notice to arrange for the removal or relocation of the designated structure. The County shall cooperate with all efforts to relocate, disassemble and/or store the structure. The Authority shall be responsible for all costs associated with the removal and storage, unless the County specifically agrees to cost sharing as designated by separate agreement.

iii. Discontinuance of Future Maintenance. In the event the County decides not to continue to maintain all or some of the Historic Structures after the applicable maintenance period, the County shall give the Authority written notice of its decision. The Authority and the County shall make reasonable efforts to give the donor(s), or their successors, if such donor(s) can be reasonably identified, notice that the County will not continue to maintain the designated Historic

Structure(s). The Authority and/or such donor(s) shall have the right at any time after such notice to arrange for the maintenance, removal or relocation of the designated structure. The County shall cooperate with all efforts to maintain, relocate, disassemble and/or store the structure. The Authority and/or such donor(s) shall be responsible for all costs associated with the removal and storage, unless the County specifically agrees to cost sharing as designated by separate agreement.

- h. Adverse Conditions. The County shall have the authority to reasonably address adverse conditions affecting any Historic Structure, including adverse conditions resulting from deterioration over time, with due consideration of the historic nature of the Historic Structures and the general intent to continue the availability of the Historic Structures for use during the applicable maintenance period.
- i. Hofauger House. The Authority and the County recognize the current deteriorated condition of the Hofauger House including, without limitation, the presence of mold in the basement and other areas within the structure. The County shall have the authority to address this adverse condition in any reasonable manner, including the removal of any mold ridden materials, spraying of a mold retardant, and/or sealing off or filling in the basement or relocating the structure on the Leased Premises. The County shall have no obligation to place dehumidifiers, vapor seal the basement, or take any other extraordinary measures to eradicate the existing mold, prevent mold from developing in the future, or to otherwise maintain the Hofauger House structure.
- j. Dickerson Cabin. The Authority and the County recognize that the Dickerson Cabin at Rutrough Point has deteriorated. The County agrees it shall not demolish or remove the Dickerson Cabin until after December 31, 2014. During the period prior to December 31, 2014, the Authority and the County shall consider what steps may be available to stabilize and/or use the Dickerson Cabin. The County shall have the authority to demolish and remove the Dickerson Cabin after December 31, 2014 in its discretion.
- k. Names. Tenant shall not change the names of the Historic Structures without the written permission of the Landlord. It will be Landlord's responsibility

to obtain any permission of the original donors, or their successors, if required. In the event Landlord is unable to obtain permission from the original donors, the Landlord may give such permission as may be appropriate.

- l. Signage. Tenant shall make reasonable efforts to install and maintain signage reasonably near the Historic Structures denoting historical information about the Historic Structures.
- m. Storage for Historic Inventory Items. For a period ending December 31, 2018, the County shall continue to provide reasonable storage facilities for the Authority's historical inventory items consistent with the storage of such items in recent years. The storage facilities for the Authority's historical inventory items shall be reasonably secure with access restricted to the Authority and County management representatives. The County shall not be obligated to provide storage facilities for the Authorities historical inventory items after December 31, 2018.
- n. Disassembled Historic Structures. The Authority owns a number of disassembled historic structures that are stored in the South Operations Center facility located on the Leased Premises. The County shall continue to store the disassembled structures at the South Operations Center or elsewhere until December 31, 2018. A list of the disassembled structures is included in **Exhibit 3**. During the period until December 31, 2018, the Authority shall arrange for the disposition of the disassembled structures. The County shall not be obligated to store the disassembled structures after December 31, 2018.

10. Maintenance and Use of Visitor's Center. Tenant shall operate and maintain the Visitor's Center consistent with its agreement with the National Park Service. This obligation shall not extend to any obligations outside that which is prescribed by the agreement between the County and the National Park Service.

11. Future Revenues. The County shall use each year an amount at least equal to the annual revenues generated by or in connection with the Leased Premises for the maintenance, repair or improvement of roads, infrastructure, or other improvements on the Leased Premises, the maintenance or conservation of the Historic Structures, or for recreation or conservation programs



conducted on the Leased Premises, or for capital costs or debt service for improvements located on the Leased Premises.

12. Water and Wastewater Systems. The Leased Premises shall include all real property, and all personal property, fixtures, equipment and similar items, related to the operation of water and wastewater systems serving the Leased Premises.

- a. Maintenance. The Tenant, or its assignees, shall maintain and operate the water and waste-water systems serving the Leased Premises, or any successor systems, so as to maintain at least the same level of service and capacities as that of the existing system's design capabilities on the Effective Date.
- b. Conveyance of Utility Lots. At any time upon the written request of the County, the Authority shall convey to the County, or to the Western Virginia Water Authority (or its successor), those portions of the Leased Premises reasonably necessary for the operation, expansion, or improvement of the water and wastewater treatment facilities located on and serving the Leased Premises including, without limitation, the granting by the Authority of any reasonably necessary access easements. The County shall be responsible for all costs related to these conveyances, including, without limitation, any costs associated with the subdivision of utility lots.

13. Lease of Personal Property. The Authority hereby leases its personal property to the County during the Term. The Authority intends to lease all of its personal property to the County pursuant to this Lease Agreement other than its historical items inventory as listed in **Exhibit 4**.

14. Taxes. The Tenant shall pay and discharge all existing and future taxes, assessments, duties, impositions, burdens assessed, charged or imposed upon the premises and for any improvements thereon.

15. Encumbrances. The Tenant shall not consent to or permit the Property or any part thereof or any improvements thereon, to become subject to any lien, charge or encumbrance whatsoever, and shall indemnify the Landlord against all such liens, charges, and encumbrances; it being expressly agreed that the Tenant shall have no authority, express or implied, to create or allow any lien, charge or encumbrance upon the Property or the improvements thereon of any type whatsoever.

16. Indemnification. To the extent permitted by law, including but not limited to Virginia Code Ann. § 29.1-509, Tenant shall reimburse the Landlord for, and shall indemnify and hold the Landlord, its employees and agents harmless from and against all costs, damages, claims, liabilities, expenses (including attorney fees), losses, and court costs suffered by or claimed against the Landlord, directly or indirectly, based on or arising out of, in whole or in part, or from the use or occupancy of the Premises or the activities conducted thereon by the Tenant or any third party, any act or omission of the Tenant or any invitee, any breach of the Tenant's obligation under this Lease Agreement, including the failure to surrender the Premises upon expiration or early termination of the lease term, and any dispute between the Landlord and Tenant related to the Premises.

17. Insurance.

- a. Liability Insurance. Tenant covenants and agrees that it will name Landlord as an additional insured on all liability insurance policies relating to the Leased Premises. The County shall maintain for its own and the Authority's protection, and at its own expense, a comprehensive public general liability and property insurance policy to the extent of at least \$2,000,000 coverage for bodily injury and \$500,000 coverage for property damage, including evidence of the payment and annual premiums therefor, upon the request of the Landlord. The insurance coverage amounts shall be increased or decreased based upon any increase or decrease after the Effective Date in the Consumer Price Index for All Urban Consumers, U.S. City Average for All Items, seasonally adjusted (Series ID: CUU R0000SAC), as determined by the United States Department of Labor, Bureau of Labor Statistics using 1982-84=100 as the standard reference base or, if there is no such Consumer Price Index, then by the successor or the most nearly comparable successor index thereto (appropriately adjusted to the 1982-84=100 standard reference base). Tenant shall provide Landlord with a certificate of insurance naming Landlord as an additional insured. The County shall appropriate funds to the Authority as reasonably necessary for the Authority to maintain public official liability coverage.
- b. Casualty Insurance. Tenant agrees that the structures located on the Premises shall be insured under a policy of casualty insurance, if insurance is available at a commercially reasonable cost. Tenant may give Landlord thirty (30) days prior written notice that Tenant will not purchase the

casualty insurance described in this Section 9. In such event, Landlord may purchase such insurance directly.

18. **Representations and Warranties.**

- a. **Landlord.** To induce Tenant to execute, deliver and perform this Lease and without regard to any independent investigations made by Tenant, Landlord represents and warrants to Tenant that on and as of the Execution Date and the Effective Date as follows:
  - i. **Title.** Except with respect to one or more parcels held in joint ownership or tenancy with others, Landlord owns the indefeasible, fee simple title to the Premises. Landlord's preparation of Exhibit 1 is based on Landlord's title policies and deeds, which have been provided to Tenant. The information is accurate to the knowledge, information and belief of the Landlord. Certain acreage discrepancies may exist between the deeds and the applicable county's tax maps.
  - ii. **No Litigation.** There are no claims, causes of action or other litigation or proceedings pending or, to the best of the Landlord's knowledge, threatened in respect to the ownership, operation or environmental condition of the Leased Premises or any part thereof.
  - iii. **Consents.** There are no third party consents or approvals required to effectuate this Lease Agreement. Landlord has full capacity, right, power and authority to execute, deliver and perform this Lease Agreement and all documents to be executed by Landlord pursuant hereto, and all required action and approvals thereof have been duly taken and obtained. The individuals signing this Lease Agreement and all other documents executed or to be executed on behalf of Landlord are and shall be duly authorized to sign the same on Landlord's behalf and to bind Landlord thereto.
  - iv. **Cooperation.** Landlord expressly acknowledges Tenant's intention to use the Premises within the bounds of the Use provisions of this Lease Agreement and represents that it will co-operate in any reasonable accommodation, including amendment to this Lease

Agreement, which may be required in order to effectuate Tenant's purpose.

- b. Tenant. Tenant represents and warrants to Landlord as follows:
  - i. Tenant has full capacity, right, power and authority to execute, deliver and perform this Lease Agreement and all documents to be executed by Tenant pursuant hereto, and all required action and approvals therefor have been duly taken and obtained. The individuals signing this Lease Agreement and all other documents executed or to be executed pursuant hereto on behalf of Tenant are and shall be duly authorized to sign the same on Tenant's behalf and to bind Tenant thereto. This Lease Agreement and all documents to be executed pursuant hereto by Tenant are and shall be binding upon and enforceable against Tenant in accordance with their respective terms.

19. Delivery of Due Diligence Materials by Landlord. Landlord shall deliver to Tenant, within sixty (60) days following the Execution Date, any of the following items to the extent such items are in its possession or to the extent such items exist and are easily obtainable, unless otherwise noted and specifically excepted by the parties ("Landlord's Due Diligence Items"):

- a. Environmental Reports
- b. Soil reports
- c. All surveys, plats and plans associated with the property.
- d. Existing Title Policies with documents creating exceptions to title.
- e. Current site plan depicting the actual location and orientation of building and other structures sited on the Premises and any site plans depicting proposed location and orientation of buildings to be sited on the Premises.
- f. Copies of recorded final plat and final "as built" plans for water quality and storm water retention facilities.
- g. Written identifiable commitments made by the Landlord, including but not limited to the River Foundation, Blue Ridge Parkway, National Park Service,

and any other local, regional or state organizations with an interest herein, regarding the land or existing structures owned by the Landlord.

- h. Copies of all options and assignments, including but not limited to cell tower leases.
- i. All VLH reports, studies, surveys, plats, due diligence reports and any other miscellaneous items in Landlord's possession.

20. Lawful Use. Tenant shall not make or suffer any use or occupancy of the Leased Premises contrary to any law, governmental regulation or ordinance now or hereafter enforced. Tenant shall not permit any hazardous waste, including but not limited to petroleum products, to be stored, used, or placed in or on the Premises.

21. Breach or Default. Landlord may terminate this Lease if there is a material noncompliance by the Tenant with any provision of this Lease, and should the Tenant fail to cure such noncompliance within one (1) year after receipt of written notice from the Landlord (i) specifying the act(s) and/or omissions that constitute the breach, and (ii) stating that the Lease shall terminate on a date not less than one (1) year after the Tenant's receipt of such notice if the breach is not cured within such one (1) year period. If the breach may be cured and the Tenant affects such cure prior to the date specified in such notice, this Lease shall not terminate. If the Tenant fails to cure the breach prior to the date specified in such notice, the Landlord shall be entitled to immediate possession.

- a. Lease Termination Fee. Upon the termination of the Lease upon breach by the Tenant, the Tenant shall, as a lease termination fee and liquidated damages (but not as a penalty) pay the Landlord a lease termination fee of \$150,000. This lease termination fee reflects the initial cash amount transferred by the Authority to the County pursuant to this Lease Agreement and a reasonable estimate of the expected cost to the Authority of re-establishing its operations over a period of time after resuming control over and operation of the Leased Premises. The base amount of the lease termination fee shall be \$150,000. This base amount shall be increased or decreased based upon any increase or decrease between the Effective Date and the termination date in the Consumer Price Index for All Urban Consumers, U.S. City Average for All Items, seasonally adjusted (Series ID: CUUR0000SA0), as determined by the United States Department of Labor, Bureau of Labor Statistics using 1982-84=100 as the standard

reference base or if there is no such Consumer Price Index then by the successor or the most nearly comparable successor index thereto (appropriately adjusted to the 1982-84=100 standard reference base).

22. **Miscellaneous.**

- a. **County Support.** The Authority will have on-going administrative obligations and expenses that will exceed the rental income provided by this Lease. The County shall provide the Authority with such meeting space, records storage, and administrative and clerical support as are reasonably necessary for the residual operations of the Authority. The County shall pay any necessary fees and expenses of the Authority not able to be provided in-kind by the County. In no event shall the County be obligated to pay salaries or compensation for any employees, contractors or agents of the Authority.
- b. **Advisory Committee.** The Authority shall have two standing seats on Roanoke County's Parks and Recreation Advisory Committee (the "Advisory Committee"). The Board of Supervisors shall appoint two members of the Advisory Committee based on the nomination of the Authority. In the event Authority fails to nominate an appointee to the Advisory Commission for any reason, the Board of Supervisors may appoint a person as a member of the Advisory Committee with due consideration of the Authority's interests.
- c. The County shall make reasonable efforts to work with Roanoke College in the development and implementation of recreational and educational programs in the historical area of the Leased Premises.

23. **Master Plan.** The County shall develop and implement, with input from the Roanoke County Parks and Recreation Advisory Committee, the Roanoke County 48-Month Operational Plan (RC48MOP) for Explore Park as set out in the County's May 2013 Proposal and incorporated and made a part herein of this Lease as **Exhibit 5**. The County covenants to make reasonable efforts to develop and implement the Plan consistent with available resources and conditioned on annual appropriations.

24. **Entire Agreement.** It is understood and agreed that this instrument contains the entire agreement between the parties and no representations heretofore made are a part hereof unless indicated herein. Any modification of this Lease Agreement shall be in writing and signed by the parties hereto.

25. Waiver. No consent or waiver, express or implied, by the Landlord or the Tenant to or of any breach of any obligation to the other shall be construed as a consent to or a waiver of any other breach of the same or any other obligation.

26. Heirs, Successors and Assigns. It is understood and agreed that all of the covenants, agreements, terms, conditions and provisions of this lease or any renewal or extension thereof shall extend to and be binding upon the heirs, successors, executors, administrators, and assigns of the respective parties hereto.

- a. Failure By the Authority to Act. In the event the Authority fails to respond, grant, or deny any consents or approvals, or take any other action reasonably required under this Lease Agreement, after the County has made diligent effort to have the Authority act on such a request, the County may seek the consent or approval from the Virginia Secretary of Natural Resources or the successor office in lieu of any action by the Authority.
- b. Cessation of Existence. If the Virginia Recreational Facilities Authority ceases to exist during the term of this Lease, all rights to approval, control and residual authority vested in the Authority shall be transferred to the Commonwealth of Virginia by operation of law or otherwise.

27. Assignment and Subletting.

- a. Any assignments, subleases or options, including any cell tower options, entered into by the Landlord shall become the assignments, sublease or options of the Tenant, unless specifically excepted herein.
- b. Tenant has the sole and exclusive right to assign, sublease, and/or option all or any portion of its rights to the Leased Premises, without approval of the Landlord, as long as the assignment, sublease or option is consistent and in lawful conformance with the use provisions of this Lease.

28. Notices. All notices, demands, or other communications of any type, whether required by this Lease or in any way related to the transaction contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Lease. All notices shall be legible and in writing and shall be delivered personally to the addressee with a receipt requested therefor, sent by a recognized overnight courier service for next day delivery or sent by United States certified mail, return receipt requested, postage prepaid and addressed to the parties at their respective addresses set forth below. Either party may hereto change the address for notice and the

addressee to whom notices are sent by giving the other party ten (10) days advance written notice of such change of address or addressee.

Landlord: Virginia Recreational Facilities Authority  
P.O. Box 505  
Vinton, Virginia 24179  
Attn: Chairman

With a copy to: Gregory J. Haley

Gentry, Locke, Rakes & Moore  
P.O. Box 40013  
Roanoke, Virginia 24022-0013  
Phone: (540) 983-9368  
Fax: (540) 983-9468

Tenant: County of Roanoke  
Att: County Administrator  
P.O. Box 29800  
Roanoke, Virginia 24018-9800  
Phone: (540) 772-2001  
Fax: (540) 772-2193

With a copy to: Paul M. Mahoney, Att: County Attorney

County of Roanoke  
P.O. Box 29800  
Roanoke, VA 24018  
Phone: (540) 772-2007



29. Due Authority. The representatives of the County and the Authority who have executed this Lease Agreement have done so pursuant to authority specifically granted by their respective governing bodies.

30. Continuing Effect of State Statutes. The County and the Authority acknowledge the continuing effect of all enacting legislation with respect to the Authority and its binding effect upon the Property, including, without limitation, Chapter 16 of Title 10.1 of the Code of Virginia and the use provisions of Section 10.1-1618.

31. Binding Effect. It is agreed that all of the terms and conditions of this Lease Agreement are binding upon the parties hereto, their administrators, heirs, successors, and assigns, unless otherwise specified herein.

32. Severability. If any provision of this Lease Agreement or the application thereof to any person or circumstances shall to any extent be held void, unenforceable, or invalid, then the remainder of this Lease Agreement or the application of such provision to persons or circumstances other than to those as to which it is held void, unenforceable, or invalid, shall not be affected thereby, and each provision of this Lease Agreement shall be valid and enforced to the fullest extent permitted by law.

33. Governing Law and Forum Selection. This Lease shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Virginia. Any cause of action arising under or relating to this Lease shall be brought in the Circuit Court for the County of Roanoke or the County of Bedford, as applicable, or in the United States District Court for the Western District of Virginia.

34. Recordation of Lease. A Memorandum of Lease ("Memorandum of Lease"), suitable for recording in the Clerk's Office of the Circuit Court of Roanoke County or Bedford County, Virginia, as applicable, in the form attached as **Exhibit 6**, shall be executed by all parties simultaneous with the execution of this Lease, and Tenant may cause a copy of said Memorandum of Lease to be recorded, at Tenant's expense.

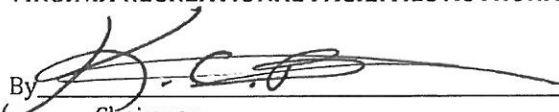
35. Subject to Future Appropriations. The obligations of the County under this Agreement shall be subject to and dependent upon appropriation being made from time to time by the Board of Supervisors of the County for such purpose. Any other provision to the contrary notwithstanding, this Agreement and the obligations herein shall not constitute a debt of the County within the meaning of any limitation on indebtedness of the County under any constitutional or statutory limitation and nothing in this Agreement shall constitute a pledge of the

full faith and credit of the County under any provision of its Charter, as applicable, or the Constitution of Virginia.

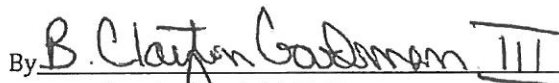
36. Scheduled Events. The Authority has agreed with third parties to make portions of the Leased Premises available for those events and activities listed on **Exhibit 7**. The County agrees that it will cooperate with and allow the scheduled events and activities to proceed. The Authority will be responsible for managing the scheduled events.

IN WITNESS WHEREOF, the parties have executed this lease this \_\_\_\_\_ day of September, 2013.

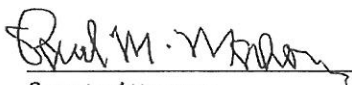
VIRGINIA RECREATIONAL FACILITIES AUTHORITY

By  \_\_\_\_\_  
Chairman

BOARD OF SUPERVISORS FOR ROANOKE COUNTY, VIRGINIA

By  \_\_\_\_\_  
County Administrator

Approved as to form:

 \_\_\_\_\_  
County Attorney

SIGNATURES AND NOTARIES