DRAFT: 1/2/2020

PARKING LOT USE AGREEMENT

This Parking Lot Use Agreement is made this ___ day of _____, 2020, by and between the ROARING FORK TRANSPORTATION AUTHORITY, a regional transportation authority created pursuant to Colorado law, whose address is 2307 Wulfsohn Road, Glenwood Springs, Colorado ("RFTA") and PEGWOOD LLC, a Colorado Limited Liability Company; PEGLEN, LP, a Colorado Limited Partnership; and ROARING FORK MARKET PLACE, LLLP, a Colorado limited liability partnership, c/o Pegasus Development & Investment Company, 3989 East Arapahoe Road, Suite 300, Centennial, Colorado 80122 (PEGWOOD LLC, PEGLEN, LP, and ROARING FORK MARKET PLACE, LLLP are collectively sometimes referred to herein as "Pegasus Development").

RECITALS

A. PEGWOOD LLC, PEGLEN, LP and ROARING FORK MARKET PLACE, LLLP are the owners of the Parking Lot and roads, right-of-ways, driveways and parking areas located in the City of Glenwood Springs, Garfield County, Colorado as depicted in Exhibit "A" attached hereto and made a part hereof (the "Parking Lot"). PEGWOOD, LLC is the owner of Parcel No. 218522206011; PEGLEN, LP is the owner of Parcel No. 218522206012; and ROARING FORK MARKET PLACE, LLLP is the owner of Parcel No. 218522206013. All three portions of the parking lot are managed by Pegasus Development & Investment Company, a Colorado corporation, which is why all three entities and Pegasus Development & Investment Company are collectively referred to as Pegasus Development. As a condition of RFTA's performance hereunder, RFTA shall be provided an Ownership and Encumbrance Report from a title company in Garfield County verifying ownership of the parcels of the Parking Lot.

B. RFTA wishes to use the Parking Lot to park and stage transit buses in locations depicted in Exhibit "B" and Pegasus Development is willing to grant RFTA a non-exclusive license to allow such use on the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, RFTA and Pegasus Development agree as follows:

1. **Recitals.** The foregoing recitals are incorporated by reference herein as affirmative acknowledgments and representations of the parties.

2. **Agreement Term.** The initial term of this Agreement and the license granted hereby shall be for a five (month) period, effective as of December 1, 2019 through April 30, 2020. The agreement shall then automatically renew for consecutive sixty (60) day periods until such time as Pegasus Development provides no less than sixty (60) days' notice of termination, in which event RFTA's license granted

hereby shall terminate at the end of such sixty (60) day period; provided, however, that in no event shall any termination by Pegasus Development be effective earlier than April 30, 2020. RFTA's monthly payments under this Agreement shall be prorated to the date of termination. RFTA may terminate this Agreement at any time upon sixty (60) days' notice, in which event any monthly amounts paid by RFTA shall be prorated to the date of termination.

3. **Permitted Use**. RFTA may use the areas shown in Exhibit "B" for the parking and staging of not more than (4) transit vehicles at the same time and shall not impede the current tenants of the Roaring Fork Market Place's access to the trailer stored on the southern edge of the parking lot.

4. **Non-Disturbance.** RFTA drivers and buses will not interfere with any business or customers of tenants utilizing the Parking Lot. RFTA agrees to cooperate with Pegusus Development to minimize the interference of RFTA vehicles and drivers with the Owner's use of the Parking Lot

5. **Payment.** RFTA shall pay Pegasus Development the amount of Five Thousand ($5,000.00) Dollars per month during the period of RFTA's use. Pegasus Development shall generate an invoice for each payment effective as of the first day of each month and present it to RFTA. RFTA's payments shall be due and payable within fifteen (15) days of the date that the invoice is received by RFTA.

6. **Legal Fees.** RFTA shall pay Pegasus Development the sum of One Thousand ($1,000.00) Dollars for its legal fees associated with the review of this Agreement.

7. **Capital Contribution.** RFTA shall pay Pegasus Development a one-time capital contribution of One Hundred Thousand ($100,000.00) Dollars to be due as of April 30, 2020. Pegasus Development shall submit to RFTA an invoice for this amount on or after April 30, 2020 and RFTA shall make payment within fifteen (15) days of the date that the invoice is received by RFTA. This capital contribution is in recognition of RFTA's prior use of the Parking Lot and in full satisfaction by Pegasus Development of any wear and tear to the Parking Lot resulting from RFTA's prior use or any inconvenience caused thereby.

8. **Maintenance.** Pegasus Development shall be responsible for the performance of all maintenance and repair of the Parking Lot, including snow removal and all repairs and maintenance.

9. **Default.** Either party may terminate this Agreement in the event of default by the other party, provided that written notice of such default is provided to the defaulting party and the defaulting party fails to cure such default within thirty (30) days of notice thereof or commences with such thirty (30) day period a good faith effort to effectuate and proceed to completion any cure that may take longer than thirty (30) days.

10. **Insurance and Indemnification**. To the extent provided by law, and without in any way waving RFTA's governmental immunity, RFTA agrees to indemnify and hold Pegasus Development and Investment Company free and harmless from any and all demands, loss or liability resulting from injury or damage arising out of the use or the condition of the Parking Lot under this Agreement, excepting those claims and losses resulting from the actions of Pegasus Development, its agents, employees, licensees or invitees. RFTA shall maintain in full force and effect liability insurance naming Pegasus Development and Investment Company as an additional insured for such claims on RFTA's General Liability Insurance policy. RFTA shall deliver to Pegasus Development and Investment Company proof of such insurance.

11. **Entire Agreement.** This Agreement sets forth all the conditions and understandings between the Pegasus Development and RFTA concerning the Parking Lot and there are no covenants, processes, agreements, conditions or understandings, either oral or written, between them other than herein set forth.

12. **Authorization.** The persons executing this lease on behalf of RFTA hereby warrant that RFTA is a duly organized political subdivision of the State of Colorado qualified to do business in the State of Colorado and such persons are duly authorized by the RFTA Board of Directors to execute and deliver this Agreement on behalf of RFTA. Pegasus Development represents to RFTA that it has the full right, power, and authority to enter into this Agreement and that it will execute or procure any further necessary assurances of title that may be reasonably required by RFTA.

13. **Governing Law and Venue.** This agreement shall be construed and enforced in accordance with the laws of the State of Colorado. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Garfield County, Colorado.

14. **Assignment/Modification**. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party. No Assignment of this Agreement shall be effective without the prior written approval of the other party.

15. **Attorney's Fees.** In the event that any action is filed in relation to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and expenses.

16. **Notices.** Notices and other communication which may be given or are required to be given under this Agreement shall be in writing and shall be deemed given when delivered personally or when deposited in the U.S. mail with sufficient postage affixed, certified and return receipt requested, and addressed to such party and their

respective address shown below, or such other address, provided to the other party in accordance with the procedures of this section:

RFTA:	Roaring Fork Transportation Authority ATTN: RFTA CEO 2307 Wulfsohn Road Glenwood Springs, CO 81601 E-mail: dblankenship@rfta.com and mhermes@rfta.com
Pegasus Development:	3989 E. Arapahoe Road, Suite 300 Centennial, CO 80122 E-mail: sangermj@gmail.com

17. **Execution by Counterparts; Electronic Signatures**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The parties approve the use of electronic signatures for execution of this Agreement. Only the following two forms of electronic signatures shall be permitted to bind the parties to this Agreement: (i) Electronic or facsimile delivery of a fully executed copy of the signature page; (ii) the image of the signature of an authorized signer inserted onto PDF format documents. All documents must be properly notarized, if applicable. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. § 24-71.3-101 to 121.

18. **No Waiver of Governmental Immunity Act or other Protections for a Governmental Entity**. The parties hereto understand and agree that RFTA is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act et seq., C.R.S. § 24-10-101 et seq., as from time to time amended, or any other rights, protections, immunities, defenses or limitations on liability provided by law or any applicable provisions of the Colorado Constitution and other applicable laws or otherwise available to RFTA, its subsidiary, associated and/or affiliated entities, successors, or assigns; or its elected officials, employees, agents, and volunteers.

19. **No Joint Venture**. Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee or other relationship between the Parties other than independent Contracting parties. Except as permitted under the remedies provisions hereunder, neither Party shall have the express or implied right to act for, on behalf of, or in the name of the other Party.

20. **No Third-Party Beneficiary**. No third party may enforce or rely upon this Agreement.

21. **Nonappropriation of Funds**. RFTA's financial obligation under this Agreement shall be contingent upon the availability of appropriated funds from which payment for Agreement purposes can be made. No legal liability on the part of RFTA for any payment may arise until funds are made available for the Agreement by RFTA's Board of Directors.

22. **Extension or Modification.** This Agreement may not be amended or supplemented, nor may any obligations hereunder be waived, except by agreement signed by both parties.

23. **Nonwaiver.** No failure or waiver or successive failures or waivers on the part of either party, its successors or permitted assigns, in the enforcement of any condition, covenants, or article of this Agreement shall operate as a discharge of any such condition, covenant, or article nor render the same invalid, nor impair the right of either party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other party hereto, its successor.

ROARING FORK TRANSPORTATION AUTHORITY

By:_____
Dan Blankenship Date
Chief Executive Officer

Approved as to Form and Legality:

_____
Paul J. Taddune, RFTA General Counsel

PEGWOOD, LLC, a Colorado limited liability company

_____
By: Date

PEGLEN, LP, a Colorado limited partnership

_____

By: Date

ROARING FORK MARKET PLACE, LLLP, a Colorado limited liability limited partnership

_____

By: Date

PEGASUS DEVELOPMENT & INVESTMENT COMPANY

By:_____

President Date

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Exhibit A: Real Property Managed by Pegasus Development and Investment CO

PEGWOOD, L.L.C.
Parcel No. 218522206011

PEGLEN, L.P.
Parcel No. 218522206012

ROARING FORK MARKET PLACE, L.L.L.P.
Parcel No. 218522206013

Exhibit B: RFTA's Area of Permitted Use