



**STATE OF COLORADO**  
**STATE BOARD OF LAND COMMISSIONERS**  
**Recreational Lease No. 114378**

**1. PARTIES**

**THIS RECREATIONAL LEASE** is entered into at Denver, Colorado, by and between the State of Colorado, acting through its State Board of Land Commissioners ("Board"), whose address is 1127 Sherman Street, Suite 300, Denver, CO 80203, and **El Paso County, by and through the Board of El Paso County Commissioners on behalf of El Paso County Parks Department** ("Lessee," whether one or more) as a **Public Entity**, whose address is **2002 Creek Crossing, Colorado Springs, CO 80906**. The Board and Lessee ("Parties") agree to the following terms and conditions:

**2. EFFECTIVE DATE**

The "Effective Date" of this Lease is **12/9/2022**.

**3. CONSIDERATION**

The Parties acknowledge that the mutual promises and covenants contained in this Lease and other good and valuable consideration are sufficient and adequate to support this Lease.

**4. LEASE DEFINITION**

"Lease" means this Lease, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of the Lease, amendments, riders, and any future modifying agreements, exhibits, attachments or references incorporated in this Lease pursuant to Colorado State Law, Fiscal Rules, State Controller Policies, and Board policies, directives and schedules.

**5. DESCRIPTION OF THE PROPERTY**

The Board leases to the Lessee and Lessee leases from the Board, exclusively for recreational purposes, the state trust lands, in the County(s) of **El Paso Colorado**, as described in Exhibit A (the "Property").

**6. TERM**

The initial term of this Lease is for a term of **10 years** beginning **12/09/2022**, until **12/08/2032** subject to the covenants and agreements, unless terminated sooner as provided for in this Lease.

**7. USE OF THE PROPERTY**

- a) The Lessee may access, occupy, and use the Property only for the following recreational purpose(s):
1. Non-motorized public use trail within a 30 foot corridor.
  2. Public parking area.
  3. Passive public recreation (e.g. hiking, non-commercial photography, bird/wildlife watching, etc) and limited active public recreation (i.e. horseback riding and biking).
  4. Motorized access by the Lessee for administrative and maintenance purposes.
  5. County operated slash-mulch collection site.
- b) Except as allowed in paragraph above (§7.a.), the Lessee must abide by the following use restrictions on the Property:
1. Motorized vehicle use is restricted to publicly maintained roads and trails. No new roads or trails may be created without prior written consent by the Board.
  2. Use of buildings, corrals or other capital structures, or of safety zones surrounding such structures, is prohibited.
  3. Littering is prohibited. Lessee must provide adequate trash services for public users.

4. Camping and fires are prohibited. Overnight use, including RV parking and camping, is prohibited.
5. All pets must be leashed, except when being used as aids in hunting, and must be under control at all times.
6. Use is limited to daylight hours, defined as one-half hour before sunrise and one-half hour after sunset.
7. Commercial filming and photography are prohibited.
  - a. Commercial filming and photography mean the film, electronic, magnetic, digital, or other recording of a still or moving image by a person, business, or other entity for a market audience with the intent of selling or generating income. Examples include, but are not limited to, feature film, videography, television broadcast, or documentary, or other similar projects. Commercial filming and photography activity may include the advertisement of a project or service, or the use of actors, models, sets, props or additional equipment.
  - b. Models includes but is not limited to wedding and family photography taken by a professional filmmaker, videographer, or photographer.
    - i. Additional equipment includes but is not limited to reflectors, bounce cards, sound booms, or similar equipment.
    - ii. Filming or photography for personal use or to promote Lessee's specific operations authorized under this lease are allowed as long as filming or photography are not sold or do not independently general income.
- c) This Lease is subject to any and all presently-existing leases, easements, rights-of-ways, and other interests whether or not visible on the ground.
- d) Any use of the Property for activities not specifically allowed in §7.a., or authorized through a separate agreement with the Board, is prohibited.
- e) Unless specifically allowed in §7.a., or authorized through a separate agreement with the Board, this Property cannot be included or enrolled in any local, state, or federal program. Unauthorized enrollment may result in cancellation of this lease.

#### **8. RENT**

The annual rental amount for the first year of this lease is **Twenty One Thousand Eight Hundred Twenty Five Dollars (\$21,825)**. For subsequent years, rent shall be the sum of the previous year's rent plus a 2.5 percent escalator, as described in **Exhibit B - Rent Schedule**.

#### **9. PAYMENTS TO THE BOARD**

Lessee must pay to the Board the rental due each and every year, in advance on or before the lease anniversary date, as well as any accrued penalty and interest during the term of this Lease at the office of the State Board of Land Commissioners, Denver, Colorado.

#### **10. ADJUSTMENTS TO USE AND RENT**

The use of Property (§7) and/or rental amount (§8), are subject to periodic review and change(s) at the sole discretion of the Board. If at any time during the term of the Lease the Board adjusts these terms and the Lessee does not accept the adjusted terms, the Lessee may cancel this Lease by providing the Board with written notice within thirty (30) days after the date of the notice of adjustment. If cancellation notice is not received by the Board within 30 days, the Board and Lessee agree that all adjusted terms are accepted.

#### **11. GOVERNMENTAL IMMUNITY**

Liability for claims or injuries to persons or property arising from the negligence of the State of Colorado and/or Lessee, their respective departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act, C.R.S. § 24-10-101 et seq., and the risk management statutes, C.R.S. § 24-30-1501 et seq., as amended. No term or condition of this Lease

will be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Governmental Immunity Act as applicable now or hereafter amended.

12. **INDEMNIFICATION**

Lessee assumes all liability arising from the use, occupation or control of the Property by Lessee under this Lease. This assumption includes, but is not limited to, liability for all personal injuries (including death) and environmental and property damage and destruction. To the extent permitted by law, Lessee agrees to defend, indemnify and hold harmless the Board from and against any and all liabilities, losses, damages, liens, expenses, claims, demands, debts, obligations, fines, penalties, suits or actions, judgments, and costs of any kind whatsoever arising from the use, occupation or control of the Property, caused by any act, omission or neglect of Lessee, or Lessee's employees, agents, guests, invitees, contractors or assigns. Lessee further agrees to indemnify the Board for any costs, including costs of suit and fees for consultants, experts, and attorneys, incurred by the Board in terminating or canceling, enforcing obligations or defending itself against any matter arising under this Lease caused or permitted by lessee or Lessee's employees, agents, guests, invitees, contractors or assigns. This provision shall survive termination, cancellation or relinquishment of this Lease and any cause of action by the Board to enforce it shall not be deemed to accrue until the Board's actual discovery of said liability, claim, loss, damage, or exposure. This indemnity is in addition to any other indemnity provided for in this Lease. Lessee will not be responsible for any liability caused by persons granted other uses of the Property by the Board.

13. **INSURANCE**

Not applicable. Lessee is a public entity.

14. **ASSESSMENTS, TAXES AND UTILITIES**

Lessee must pay, when due, all assessments, taxes, fees, water and utility charges, if any, levied or accruing against the Property, improvements, appurtenances, uses or activities of Lessee, including those that could otherwise result in a lien being placed against the Property.

15. **PENALTY AND INTEREST**

Both a penalty and interest will be imposed for, but not limited to, late payments, improper or partial payments, and violation of any covenant of this Lease. Penalty and interest and fee schedules, as adopted by the Board, are effective immediately after approval. A current Penalty and Interest schedule is available on-line at <http://www.trustlands.state.co.us> and through any office of the State Board of Land Commissioners.

16. **IMPROVEMENTS OR ALTERATIONS**

- a) Lessee must not place any improvement on the Property and must not substantially alter the Property in any way, without prior written authorization by the Board. Written authorization can be sought by submitting to the Board an Improvement Application on a form provided by the Board. Improvements placed upon the Property by the Lessee with the Board's prior written authorization are referred to in this Lease as "authorized improvements." Any improvements or alterations that have not received prior written authorization are referred to in this Lease as "unauthorized improvements."
- b) Upon the termination of this Lease, and provided Lessee is not then in breach of or in default under this Lease, Lessee must present all authorized improvements to the Board for first offer to purchase. Should the Board decline to purchase the improvement(s), the Lessee may either:
  1. remove the improvement(s) without damage to the Property; or
  2. sell the improvement(s) to a subsequent lessee pursuant to §36-1-119 C.R.S.
- c) In the event that the new owner or new Lessee and the former Lessee do not agree upon the value of the authorized improvements, the Board will establish the value of the authorized improvements.
- d) Lessee will not be entitled to compensation for, or to sell or remove, any authorized improvements when the Lease is terminated by the Board for violation by the Lessee of the Lease until Lessee has satisfied all outstanding obligations relating to the Lease.
- e) All authorized improvements not removed or sold within sixty (60) days after termination of this Lease will be deemed abandoned and may, at the Board's option, be removed by the Board at the Lessee's

expense, retained by the Board for use by subsequent lessees, or sold by the Board with all proceeds going to the Board.

- f) All unauthorized improvements will, at the Board's option:
  - 1. become the property of the Board without cost to the Board or compensation to the Lessee; or
  - 2. be removed by the Lessee at Lessee's expense without damage to the Property; or
  - 3. be removed by the Board at Lessee's expense.
- g) Lessee must not suffer or permit to be enforced against the Property, or any part of the Property, or any improvements on the Property, any mechanics', materialmen's, contractors', or subcontractors' liens arising from, or any claim of damage growing out of the work of any construction, repair, restoration, replacement or improvement, or any other claim or demand howsoever the same may arise. Lessee must pay or cause to be paid all of said liens, claims or demands before any action is brought to enforce such liens, claims or demands against the Property or improvements. Lessee must provide actual and posted notice of nonliability pursuant to §38-22-105 C.R.S. notifying all persons who might claim any liens or encumbrances upon the Property relating to any work, labor, services or materials provided for or improvements to the Property initiated by or conducted for the benefit of Lessee that the Board's interests are not subject to such liens or encumbrances. To the extent permitted by law, Lessee will indemnify, defend and hold the Board harmless against any claims for any liens or encumbrances upon the Property relating to any work, labor, services or materials provided for or improvements to the Property initiated by or conducted for the benefit of Lessee.
- h) Lessee agrees to maintain with the Board a current and complete list of all authorized improvements on the Property on a form provided by the Board.
- i) Lessee must keep and maintain the Property and all Lessee- and/or Board-owned improvements, whether new or pre-existing, in good order, repair and safe condition, ordinary wear and tear excepted.

#### 17. COMPLIANCE WITH THE LAWS

- a) With respect to the Property, Lessee must comply with all applicable federal, state and local laws, ordinances, and regulations, including but not limited to criminal, land use, fencing, noxious weed, environmental, wetlands, hazardous waste, and health and safety laws, ordinances and regulations.
- b) In addition to the foregoing, and not in limitation thereof, Lessee must not cause or knowingly permit any Hazardous Material to be brought upon, kept or used in or about the Property by Lessee or Lessee's agents, employees, contractors or invitees, without the prior written consent of the Board. If the Lessee violates these obligations, or if the presence of Hazardous Material on the Property caused or knowingly permitted by the Lessee results in contamination of the Property, or if contamination of the Property by Hazardous Material otherwise occurs for which the Lessee is legally liable, then, To the extent permitted by law, the Lessee will indemnify, defend and hold the Board harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of the Property, damages for the loss or restriction on use of the Property, damages arising from any adverse impact on future leasing of the Property, and sums paid in settlement of claims, attorney fees, consultant fees and expert fees) which arise during or after the lease term as a result of such contamination. This indemnification of the Board by the Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or ground water on or under the Property. Without limiting the foregoing, if the presence of any Hazardous Material on the Property caused or knowingly permitted by the Lessee results in any contamination of the Property, the Lessee must promptly take all actions at Lessee's sole expense as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Material to the Property, provided that Lessee obtains the Board's prior approval of such actions. Lessee will not be liable under this section for the actions or omissions of those persons over whom Lessee has no control.
- c) As used in this Lease, the term "Hazardous Material" means any hazardous or toxic substance, material or waste, which is or becomes regulated by any local governmental authority, the State of Colorado or the United States Government. The term "Hazardous Material" includes, without limitation, any material

or substance that is (i) defined or designated as a "hazardous substance," "hazardous waste" or a "regulated substance" under appropriate state or federal law; (ii) petroleum; or (iii) asbestos.

#### **18. PROTECTION, STEWARDSHIP AND COOPERATION**

- a) Lessee must not permit, commit, or allow, and must protect the Property against, any loss, damage, any dangerous condition, injury, or waste, except as caused by persons granted other uses of the Property by the Board. Lessee may use the Property only for the purposes granted and in accordance with good resource conservation practices.
- b) Lessee must not store or allow to be stored on the Property, any products, materials, or equipment that is not related to and necessary for the day-to-day management of the recreational activities allowed by this lease.
- c) Lessee must not cut, remove, or use, or allow to be cut, removed or used, any live timber or trees, or remove, use or allow to be removed or used any minerals, ores, metals, coal, asphaltum, oil, gas, sand, gravel, clay, quarry products, peat, geothermal resources or other naturally occurring resources unless approved in advance in writing by the Board or except as caused by persons granted other uses of the Property by the Board.
- d) Lessee must cooperate with and in no way impede or obstruct the other uses permitted by the Board pursuant to the paragraph entitled "Reservations to the Board."
- e) Lessee must provide the Board with copies of any and all reports prepared on behalf of, or obtained by, the Lessee regarding the past use, present use, and/or condition of the Property and any improvements.
- f) Lessee must immediately notify the Board of any damage or destruction of the Property.
- g) Lessee must not make false statements to the Board regarding the Property or Lessee's use of the Property.
- h) The failure of the Lessee to comply with any of the requirements and obligations of this section will be grounds for immediate cancellation of this Lease at the election of the Board, and will subject the Lessee to sanctions, penalties and fees in accordance with applicable policies, directives and schedules, as adopted by the Board from time to time, and incorporated in this Lease by reference.

#### **19. LAND BOARD POLICIES, DIRECTIVES AND SCHEDULES**

This Lease incorporates and Lessee must comply with all applicable policies, directives and schedules, as adopted by the Board. Such policies, directives and schedules are available on-line at <http://www.trustlands.state.co.us> and through any office of the State Board of Land Commissioners. Lessee is responsible to stay fully informed of all applicable policies, directives and schedules. Lack of actual notice or knowledge of applicable policies, directives and schedules will not provide a defense for any failure to comply. Lessee acknowledges that the Board meets publicly on a monthly basis and at such public meetings may amend or change existing policies, directives and schedules and/or adopt new policies, directives and schedules. Any amendments or changes to existing policies, directives and schedules and any adopted new policies, directives and schedules, will be effective after adoption by the Board and are incorporated into this Lease by reference.

#### **20. NUISANCE**

Lessee must not use, or permit any use of, the Property in a manner that causes a nuisance or that is, using a reasonable person standard, offensive or annoying to other lessees or permitted users on the Property, persons occupying the Property, or person occupying adjacent property.

#### **21. RESERVATIONS TO THE BOARD**

The Board hereby reserves:

- a) Access

1. The right to access to the Property at all reasonable times by the Board, its employees, agents, lessees, licensees, permittees, guests, invitees, contractors or assigns. Lessee hereby grants to the Board, its employees, agents, or contractors a non-revocable license for access on, over, across or through Lessee's other lands during the term of this Lease for access to the Property.



2. The right to access, inspect, and monitor the Property at all reasonable times by the Board, utilizing all reasonable means and methods, including but not limited to gate counters, game cameras and Unmanned Aerial Systems (UAS). The use of UAS will be in accordance with applicable Federal Aviation Administration (FAA) rules and regulations. Lessee will cooperate and not interfere with all reasonable means and methods of access, inspection, and monitoring including taking actions necessary to comply with FAA rules and regulations.

b) Additional Uses

1. Commercial, Industrial, Residential

The right to lease all or any portion of the Property to other persons for the purpose of land development.

2. Minerals

The right to lease all or any portion of the Property to other persons for the purposes of exploring, producing, mining, extracting, removing all minerals or minerals resources as defined in §§36-1-100.3 and 125 C.R.S and geothermal resources described in §36-1-147 C.R.S.

3. Agriculture

The right to lease all or any portion the Property to other persons for the purpose of livestock grazing, crop production, or any other agricultural use. Such lease will convey exclusive use for such purpose.

4. Renewable Energy Resources

The right to lease all or any portion of the Property to other persons for the purposes of developing renewable energy resources as described in §36-1-147.5 C.R.S.

5. Timber

The right to lease all or any portion of the Property to other persons for the purposes of timber management, harvest or sale.

6. Rights-of-Ways

The right to grant any right-of-way or easement on, under, over, across or through all or any portion of the Property. If and when such right-of-way or easement is granted, the Lessee will be compensated by the grantee for any damages to Lessee's personal property, crops, fixtures and authorized improvements, but not for loss of use of the land or the Property.

7. Filming and Photography

The right to lease all or any portion of the Property to other persons for filming and photography.

8. Other

The right to put the Property to any other additional uses at any time and for any purpose, and all rights, privileges and uses of every kind or nature not specifically granted to Lessee by this Lease.

Together with reasonable and adequate rights of access and surface rights necessary for the convenient exercise of the above reserved rights.

c) Time of Use

The right to designate or control the time of use of the Property, in order to protect Property its productivity or to accommodate other approved uses of the Property.

d) Cancellation

The right to cancel this Lease as to all or any part or portion of the Property, upon three hundred and sixty-five (365) days prior written notice to the Lessee. Lessee is responsible for all rent payments until surrender date (including outstanding rent, penalty and interest assessments, damages, etc.). If the lease cancellation date falls after any anniversary date, Lessee is responsible for pro-rated rent. The amount due will be calculated from the lease anniversary date to the date Lessee surrenders possession, plus interest and penalty if applicable.

e) Disposition

The right to sell, exchange, or otherwise dispose of all or any portion of the Property during the term of this Lease.

f) Reversion

The right to reversion of all interests in the Property upon termination of this lease.

g) Water Rights

Title to all water rights associated or appurtenant to the Property. In addition:

1. No water, ditch, reservoir, well, spring, seepage or other right, permit, or use of any kind, ("water right") may be initiated, established, appropriated or adjudicated (for use on or off the Property) by the Lessee for which the point of diversion, withdrawal, use or storage is on the Property, without the prior written approval of the Board. All applications and documents pertaining to any such water right must be made in the name of the Board, and the Board reserves the right to make or convert any related applications or documents in or to its own name. Any such water right, approved or unapproved is the sole and absolute property of the Board without cost to the Board.
2. Improvements made or constructed by the Lessee in connection with such water right, apart from any such water right, are subject to the preceding section entitled "Improvements or Alterations." The water right itself, however, will belong to the Board without cost.
3. Lessee must request and receive prior written approval by the Board for any proposal by the Lessee to apply and/or use on the Property an existing water right which is not diverted, withdrawn or stored on the Property, and which is not the property of the Board. Such approval must be in accordance with applicable policies, directives and schedules, as adopted by the Board from time to time, and incorporated in this Lease by reference. Once an application of such water right is approved the Board has the option to:
  - i. require that the water right, or any portion thereof, be sold to the Board or its subsequent lessee at its fair market value; or
  - ii. permit the water right to be removed from the Property, but only under a reclamation/restoration plan approved by the Board and completed by the Lessee. If the reclamation/restoration is not completed by the Lessee within the time set forth in the approved plan, the water right will remain attached to and available for use on the Property until the reclamation/restoration is completed without cost to the Board.
4. If any water right (and/or related improvements) owned by the Board is leased to the Lessee by this Lease, it will be described in the paragraph entitled "Description of the Property" and in that event will be considered part of the Property. The Lessee must put all leased water to maximum beneficial use, keep records of all such use, and submit an annual report that documents such use to the Board and Division of Water Resources.

h) Historical, Prehistorical, and Archeological Resources

Title to all historical, prehistorical, and archaeological resources in all lands, rivers, lakes, reservoirs, and other areas owned by the state. Historical, prehistorical, and archaeological resources include all deposits, structures, or objects which provide information pertaining to the historical or prehistorical culture of people within the boundaries of the state of Colorado, as well as fossils and other remains of animals, plants, insects, and other objects of natural history within such boundaries, and in addition to the specific site or deposit, rights-of-way access on state-owned land from a maintained public road for the exploration, protection, preservation, interpretation, and enhancement of the site or deposit proper.

**22. BOARD'S DISCRETION**

Whenever the Board's approval, consent or authorization is sought by the Lessee under this Lease, the Board may withhold such approval, consent or authorization in its sole and absolute discretion.

**23. BOARD'S AUTHORITY**

This Lease is entered into pursuant to the authority granted to the Board by Colorado law.

## **24. CONDITION OF PROPERTY**

Lessee represents that Lessee has had an opportunity to inspect the Property prior to entering into this Lease, and Lessee accepts the Property in its present condition and acknowledges that the Property is in all respects suitable for the leased purposes. The Board disclaims any and all obligation and Lessee waives any claim that the Board has any obligation to provide access to the Property, to fence, make any repairs to or construct any improvements upon the Property. The Board does not make any warranties or covenants, express or implied, of habitability, quiet enjoyment or that the Property are suitable for the leased purposes.

## **25. EMINENT DOMAIN**

If the Property is taken by the valid exercise of the right of eminent domain, in whole or in part, either the Board or Lessee may terminate this Lease effective the date the Property transfers by eminent domain by providing written notice to the other party at least thirty (30) days before the date the Property transfers. Any and all damages that are awarded for such taking of the Property will be the exclusive property of the Board. Lessee hereby disclaims any interest therein and assigns to the Board any and all claims to such award. The Board will not claim any interest in authorized improvements of the Lessee and the Lessee will only be entitled to compensation for authorized improvements as negotiated between the Lessee and the condemning public authority or as determined by the court.

## **26. NO LEASEHOLD INTEREST**

Upon sale, condemnation, exchange or other disposition of the Property, or any part thereof, and upon any other cancellation or termination of this Lease, either at or prior to the end of the lease term, Lessee will have no claim or right to any leasehold interest or any right to compensation for any leasehold interest based upon any unexpired term or expectation of extension or renewal of this Lease except as provided by applicable statute. This section does not change Lessee's rights in the authorized improvements set forth in the section entitled "Improvements."

## **27. NO SALE, ASSIGNMENT, OR SUBLEASING OF LEASE OR PROPERTY**

- a) Lessee is prohibited from the sale, assignment, partial assignment, collateralization, encumbrance, sublease, pasturage or any other use agreement of the Property, (collectively called a "Transfer") to any person or entity unless approved in advance in writing by the Board. Approval of a Transfer will not release Lessee from Lessee's liabilities or obligations under this Lease. Upon approval of a Transfer, the Board may change or impose new rental amounts, terms, conditions and payments.
- b) Any transfer or change in the control or ownership of the Lease necessitated by bankruptcy, death, divorce, merger, sale of private property or otherwise will be a Transfer requiring Board notification and approval.
- c) Any attempted Transfer by Lessee without prior written Board approval is invalid, will be grounds for immediate cancellation of this Lease at the Board's option and will subject the Lessee to sanctions, penalties and fees in accordance with applicable policies, directives and schedules, as adopted by the Board from time to time, and incorporated in this Lease by reference.

## **28. DEFAULT**

### **a) Defined**

In addition to any defaults specified in other sections of this Lease, the failure of either Party to comply with or to perform any of its obligations under this Lease in whole or in part or in a timely or satisfactory manner, or Lessee actions that diminishes the value of the Property in any way, constitute a default. If Lessee or any party that is member of Lessee holds any other leases with the Board, any default of any other lease constitutes a default of this Lease as well. Lessee is not responsible for the actions of the Board's other lessees of the Property or parties that Board has granted access to the Property outside of this Lease.

### **b) Notice and Cure period**

#### **1. Non-Monetary Default:**

- i. In the event of a non-monetary default, notice of the default will be given in writing by the aggrieved Party to the other Party in the manner provided in § 28. If the defaulting Party has



not cured the default within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, if the defaulting Party has not begun the cure within 30 days and pursued the cure with diligence, the other Party may exercise any of the remedies set forth in § 27(c) or otherwise available at law. But, the Board may intervene immediately, without notice or cure period, if reasonably necessary to preserve public safety or to prevent immediate public crisis, or prevent significant irreparable harm to the Property. Alternatively, the Board may require the Lessee to act immediately to remedy any default, which the Board deems a threat to safety, life, or property.

2. Monetary Default:

- i. If Lessee fails to make any payment to the Board, the Board will send Lessee an invoice that will include applicable penalties and interest (“Delinquent Invoice”). If the Board does not receive full payment of the Delinquent Invoice within fifteen (15) days of the Delinquent Invoice, the Board will send a letter (“Demand for Payment”) via certified mail to the Lessee. Other named lease participants and any named collateral interest holder will be copied on the Demand for Payment. If the Board does not receive full payment within thirty (30) days of the date of the Demand for Payment, or if the certified receipt is returned to the Board without a signature, the Board may exercise any of the remedies set forth in § 27(c), or otherwise available at law.
- ii. The Board will accept partial payments. Any acceptance of a partial payment will not waive any rights or claims of the Board or any obligations of Lessee to make full payment. The Board will send Lessee a Delinquent Invoice with the outstanding balance due including applicable penalties and interest and follow the notice and cure process provided in § 27(b)(ii)(1).
- iii. If payment cannot be processed due to Non-Sufficient Funds (“NSF”) Lessee will be notified via certified letter of the non-sufficiency and will have three (3) days after receipt of certified letter to cure the NSF. In the event a certified receipt is returned to the Board without a signature, the Board will follow the cure process provided in § 27(b)(ii)(1). After notice of NSF, Lessee must make payment by bank check (Cashier’s Check), money order, Automated Clearing House (ACH), or credit card. No personal checks will be accepted. Interest and penalty will be applied.

c) Remedies

If Lessee defaults and fails to cure after notice of the default, the Board will have the following remedies:

1. The Board may terminate the Lease. Upon termination for default, the Board may retain all rental monies previously paid. The Board may also hold, appropriate, sell or otherwise dispose of any fences, improvements, and machinery of Lessee upon the Property to recover the payment of any delinquent rental amounts or any other claims of the Board against Lessee on account of damages, expenses, injury or otherwise.
2. Lessee forfeits all improvements on the Property to the Board and the Board may retain all rental monies previously paid.
3. The Board may enforce the terms of this Lease through specific performance.
4. The Board may seek damages for the failure to comply with the terms of this Lease.
5. The Board may cure the default. If the Board cures the default, Lessee agrees to repay the Board for all costs for curing the default including without limitation costs of suit and fees for consultants, experts, and attorneys.
6. The Board may forward any outstanding debt to the State of Colorado Central Collections for further action.
7. The Board may terminate any other lease that Lessee or any party that is member of Lessee holds with the Board.

8. These remedies are cumulative. The Board may exercise any of these remedies individually or in any combination. The Board may exercise these remedies concurrently or consecutively.

If the Board defaults and fails to cure after notice of the default, Lessee may seek specific performance. Lessee waives all other remedies including damages and must not deduct or set off any rent or other payments due.

## **29. NOTICES**

Any notice, request or demand required or permitted to be delivered under this Lease must be in writing and will be deemed to be given and delivered when deposited with the United States Postal Service, postage prepaid addressed to the party intended at the address stated in this Lease, or to such other address as may hereafter be furnished in writing. In addition, Lessee must provide written notification to the Board of any change of address in a timely manner. Failure to do so may result in penalties and interest in accordance with §13 of this Lease.

## **30. SURRENDER BY LESSEE**

Lessee may surrender and relinquish this Lease by providing three hundred and sixty-five (365) days written notice to the Board. If Lessee relinquishes the Lease after any anniversary date, Lessee is responsible for pro-rated rent. The amount due will be calculated from the lease anniversary date to the date Lessee surrenders possession or Lessee's request to relinquish whichever is later, plus interest and penalty if applicable.

## **31. HOLDING OVER**

Lessee agrees to surrender possession and occupancy of the Property peaceably at the termination of the Lease (by expiration or otherwise). If Lessee remains in possession or makes use of the Property in any way after the termination of this Lease, Lessee will be liable for damages in a minimum amount based on a pro-rated amount of the last year's rental during such holdover possession. The amount of damages will not be less than the rate agreed upon in this Lease, and the Board may set damages that Lessee must pay during continued occupancy. At the Board's option, the Lessee will be deemed to be in possession of the Property and to be occupying the same so long as Lessee uses the Property, or so long as any of Lessee's authorized or unauthorized improvements or personal effects remain on the Property. Continued occupancy will be a tenancy at sufferance, and will not establish a new or extended lease term or other right, no matter how long maintained and regardless of the Board's knowledge thereof.

## **32. TERMINATION**

Upon termination, surrender or cancellation of this Lease, Lessee must pay all rental amounts accrued as well as any accrued penalty and interest, must immediately vacate the Property, must remove all improvements and restore the Property as directed by Board and required under this Lease.

## **33. CONDITION ON TERMINATION**

At the termination of this Lease at the end of the Lease term or for any other reason, Lessee must surrender and deliver the Property in as substantially good order and condition as it existed at the beginning of this Lease, except loss by fire, inevitable accident, act of God, damage or neglect not attributable to the Lessee, and ordinary wear and tear.

## **34. GENERAL PROVISIONS**

### **a) Historical, Prehistorical, and Archaeological Resources**

Under no circumstances may any person destroy, disturb, mar, collect, remove or alter any historical, prehistorical, or archaeological resources of any kind on state lands as provided by law. In the event of discovery of anything of any historical, prehistorical, or archaeological nature, the Lessee must notify the Board immediately.

### **b) Binding Effect**

All provisions of this Lease, including the benefits and burdens, extend to and bind the Parties' respective heirs, legal representatives, successors, and assigns.

### **c) Captions and Headings**

The captions and headings in this Lease are for convenience of reference only, and must not be used to interpret, define, or limit its provisions.

d) Representation

This Lease is a legal document with binding obligations. Lessee has had the opportunity to engage legal counsel to review this Lease.

e) Construction Against the Drafter

In the event of an ambiguity in this Lease the rule of construction that ambiguities will be construed against the drafter does not apply and the Parties hereto will be treated as equals and no Party will be treated with favor or disfavor.

f) Colorado Open Records Act (“CORA”) Disclosure

To the extent not prohibited by federal law, this Lease and the performance measures if any, are subject to public release through the CORA, §24-72-200.1, C.R.S., et seq.

g) Counterparts

This Lease may be executed in any number of counterparts, which together shall constitute one agreement. Signatures required in this Lease shall be original “wet” handwritten signatures. Executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server or other similar electronic means. Any such transmittal shall constitute delivery of the executed agreement, with signatures binding on the parties as if they were originals.

h) Entire Understanding

This Lease represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged into this Lease. Prior or contemporaneous additions, deletions, or other changes to the Lease will not have any force or effect whatsoever, unless written in this Lease.

i) Extinguishment and Replacement

This Lease extinguishes and replaces any prior leases between the Parties related to the Property upon the Effective Date of this Lease.

j) Insolvency of Lessee

If the Lessee becomes insolvent, bankrupt, or has a receiver appointed, the Board may terminate this Lease. Insolvency as used in this Lease will mean the inability of the Lessee to meet obligations as they come due.

k) Jurisdiction and Venue

The exclusive jurisdiction for all suits, actions, or proceedings related to this Lease will be in the State of Colorado and the exclusive venue will be in the City and County of Denver.

l) Modification

1. By the Parties

Modifications of this Lease are not effective unless agreed to in writing and signed by both Parties in an amendment to this Lease that is properly executed and approved in accordance with applicable Colorado State law. No waiver, modification, amendment, discharge or change of this Lease will be valid unless the same is in writing and signed by the Board. The staff of the Board does not have authority, actual or apparent, to waive, modify, amend, discharge or change any provision of this Lease, except in writing and explicitly authorized by statute, board order or board policy.

2. By Operation of Law

This Lease is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification will be incorporated into and be part of this Lease automatically on the effective date of such change.

m) Notification of Board Meetings

The Board meets monthly with meeting agendas posted on the State Board of Land Commissioners' website (<http://www.trustlands.state.co.us>). Meetings are open to the public. All parties are granted an opportunity to speak during the open comment period of each meeting.

n) Severability

If any term or provision of this Lease proves to be invalid, unenforceable, void, or illegal, the remainder of this Lease will not be affected thereby, and will be valid and be enforced as written.

o) Survival of Certain Lease Terms

Notwithstanding anything in this Lease to the contrary, provisions of this Lease requiring continued performance, compliance, or effect after termination of this Lease, will survive such termination and will be enforceable by the Board if Lessee fails to perform or comply as required. However, upon expiration or earlier termination of this Lease, the rights of the Lessee and of all persons, firms, corporations, and entities, claiming under Lessee in and to the Property and all improvements hereon, will cease.

p) Third Party Beneficiaries

Enforcement of this Lease and all rights and obligations under this Lease are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Lease are incidental to the Lease, and do not create any rights for such third parties.

q) Waiver

Waiver of any breach of a term, provision, or requirement of this Lease or any right or remedy under this Lease, whether explicitly or by lack of enforcement, will not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement. The acceptance of performance, rent, or any other sum owing by the Board following a breach by the Lessee of any provision of this Lease, will not constitute a waiver of any right of the Board with respect to such breach. The Board will be deemed to have waived any right only if the Board expressly does so in writing.

r) Validity and Enforceability

This Lease will not be valid or enforceable until it is both approved by the Board in accord with the Board's policies and signed by the Board.

### 35. ADDITIONAL CONDITIONS

- a) The Property or a portion of the Property included in this Lease was designated into the Stewardship Trust in 1998 and is known as **Black Forest**. This designation requires the protection and enhancement of natural values for which this Property was designated or have been subsequently identified, collectively referred to as "natural values". Appropriate and sound land management is critical to the long-term protection and stewardship of these natural values. Any use of the Property which degrades the natural values may subject the Lessee to sanctions, penalties and fees, and may serve as grounds for Lease cancellation, in accordance with applicable policies, directives and schedules, as adopted by the Board from time to time, and incorporated herein by reference. A Stewardship Trust Management Plan that describes these natural values and best management practices for their long-term sound stewardship has been developed by the State Land Board and is available for review upon request. A summary describing the lands subject to this provision, the natural values, and the required best management practices for the management of the property is attached as **Exhibit C** to this Lease.
- b) Lessee shall submit all management plans for the Property to the Board for review and approval before implementation.

- c) Lessee shall not block or impede the Board's access to internal portions of the Property. The Lessee shall provide the Board with keys or combination codes to any gate locks.
- d) Lessee shall maintain fencing on interior side of the trail corridor, and provide signs at adequate intervals along these fences, to discourage public trespass or use of interior portions of the state trust land.
- e) The Board will not consider or approve any improvements that create any encumbrance on the property beyond the term of this Lease.
- f) Lessee shall provide concepts, sketches and architectural drawings of any proposed interpretive panels, trail signs or park entry monuments to the Board for review and approval before implementation.
- g) Lessee shall not place or allow new memorial benches and/or plaques on the Property, and shall remove existing ones prior to expiration of this Lease.

Additional conditions, if any other than listed above, are set forth on an attached rider(s), and made a part hereof.

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(Seal)

IN WITNESS WHEREOF, the Board and the Lessee, by their signatures below, agree to the terms of this Lease:

**BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO**

By: \_\_\_\_\_  
Stan VanderWerf, Chair

\_\_\_\_\_ Date

**ATTEST:**

\_\_\_\_\_  
Chuck Broerman  
County Clerk and Recorder

STATE OF COLORADO BY THE  
STATE BOARD OF LAND COMMISSIONERS

By: \_\_\_\_\_  
Abraham Medina, Recreation Program Manager

Date: \_\_\_\_\_



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## EXHIBIT A

### Recreational Lease No. 114378

#### PROPERTY DESCRIPTION

A parcel of land situated in Section 16, Township 12 South, Range 65 West of the Sixth Principal Meridian, El Paso County, Colorado, more fully described as follows:

Commencing at the Northwest corner of the Northwest quarter of said Section 16;

Thence North  $89^{\circ}45'01''$  East along the North line of said Section 16, a distance of 30.00 feet;

Thence South  $00^{\circ}19'17''$  West parallel to and 30.00 feet East of the West line of the Northwest quarter of said Section 16, a distance of 30.00 feet to a point parallel to and 30.00 feet South of the North line of said Section 16, said point being the point of beginning;

Thence North  $89^{\circ}45'01''$  East parallel to and 30.00 feet South of the North line of said Section 16, a distance of 5,174.82 feet;

Thence South  $00^{\circ}08'56''$  West parallel to and 30.00 feet West of the East line of the Northeast quarter of said Section 16, a distance of 1,737.84 feet to a point on the North property line of The Outdoor Science Center Subdivision;

Thence North  $89^{\circ}51'04''$  West along said North property line, a distance of 200.00 feet;

Thence North  $00^{\circ}08'56''$  East parallel to and 230.00 feet West of the East line of the Northeast quarter of said Section 16, a distance of 1,536.43 feet;

Thence South  $89^{\circ}45'01''$  West parallel to and 230.00 feet South of the North line of said Section 16, a distance of 4,675.41 feet to a point 330.00 feet East of the West line of the Northwest quarter of said Section 16;

Thence South  $00^{\circ}19'17''$  West parallel to and 330.00 feet East of the West line of the Northwest quarter of said Section 16, a distance of 651.84 feet;

Thence North  $89^{\circ}40'43''$  West a distance of 100.00 feet to a point parallel to and 230.00 feet East of the West line of the Northwest quarter of said Section 16;

Thence South  $00^{\circ}19'17''$  West parallel to and 230.00 feet East of the West line of the Northwest quarter of said Section 16, a distance of 1,766.65 feet;

Thence South  $00^{\circ}17'44''$  West parallel to and 230.00 feet East of the West line of the Southwest quarter of said Section 16, a distance 2,412.16 feet;

Thence North  $89^{\circ} 47' 18''$  East parallel to and 230.00 feet North of the South line of the Southwest quarter of said Section 16, a distance of 2,396.48 feet;

Thence North  $89^{\circ} 47' 25''$  East parallel to and 230.00 feet North of the South line of the Southeast quarter of said Section 16, a distance of 2,399.32 feet;

Thence North  $00^{\circ} 00' 58''$  West parallel to and 230.00 feet West of the East line of the Southeast quarter of said Section 16, a distance 2,416.94 feet;

Thence North  $00^{\circ} 08' 56''$  East parallel to and 230.00 feet West of the East line of the Northeast quarter of said Section 16, a distance of 219.30 feet to a point of the South property line of the Outdoor Science Center Subdivision;

Thence South  $89^{\circ} 51' 04''$  East along said South property line a distance of 200.00 feet to a point 30.00 feet West of the East line of the Northeast quarter of said Section 16;

Thence South  $00^{\circ} 08' 56''$  West parallel to and 30.00 West of the East line of the Northeast quarter of said Section 16, a distance of 218.95 feet;

Thence *South*  $00^{\circ} 00' 58''$  East parallel to and 30.00 West of the East line of the Southeast quarter of said Section 16, a distance of 2,615.94 feet;

Thence  $89^{\circ} 47' 25''$  West parallel to and 30.00 North of the South line of the Southeast quarter of said Section 16, a distance of 2,598.64 feet;

Thence South  $89^{\circ} 47' 18''$  West parallel to and 30.00 North of the South line of the Southwest quarter of said Section 16, a distance of 2,598.26 feet;

Thence North  $00^{\circ} 17' 44''$  East parallel to and 30.00 feet East of the West line of the Southwest quarter of said Section 16, a distance of 2,613.94 feet;

Thence North  $00^{\circ} 19' 17''$  East parallel to and 30.00 feet East of the West line of the Northwest quarter of said Section 16, a distance of 2,615.51 feet to the paint of beginning.

The preceding parcel of land contains 3,939,876.64 square feet or **90.45 acres**, more or less.

Bearings are based on the North line of Section 16, Township 12 South, Range 65 West of the Sixth Principal Meridian which was assumed to bear North  $89^{\circ} 45' 01''$  East.

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## Recreational Lease No. 114378

### RENT SCHEDULE

Year No.	Payment Due	Rental Amount with 2.5% Annual Escalator
1	12/9/2022	\$21,825
2	12/9/2023	\$22,371
3	12/9/2024	\$22,930
4	12/9/2025	\$23,503
5	12/9/2026	\$24,091
6	12/9/2027	\$24,693
7	12/9/2028	\$25,310
8	12/9/2029	\$25,943
9	12/9/2030	\$26,592
10	12/9/2031	\$27,256

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## EXHIBIT C

### Recreational Lease No. 114378

Black Forest Stewardship Trust Property, El Paso County  
Designated Natural Values & Best Management Practices

#### 1. Lessee and Lease Information

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Lease Type: REC Lease Number: 114378 Lessees: El Paso County

#### 2. Legal Description

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Legal description of the state trust lands subject to this lease addendum. Also see attached map.

Meridian	Twp	Range	Section	Acres	Legal Description
6	12S	65W	16	90.45	FP (Metes & Bounds Covering the Perimeter of Section)

#### 3. Stewardship Trust Property Information

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Stewardship Trust Property Name: Black Forest

Designation Date: Dec. 1998

Nominator(s): Partnership for Black Forest Section 16, Academy School District 20, Colorado State Forest Service, and El Paso County

#### 4. Identified Natural Values

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Natural values identified at time of designation (Dec. 1998)

1. State Rare Plants (*Heuchera richardsonii* (G5/S1), *Krigia biflora* (G5/S1), *Potentilla ambigens* (G3/S1S2))
2. Vegetation Community (Black Forest ecosystem)

Natural values subsequently identified

1. Wildlife/ Wildlife Habitat (Lewis' Woodpecker, northern leopard frog, large mammals)

#### 5. Best Management Practices

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Best management practices listed below shall be implemented by the lessee for the protection and enhancement of the natural values listed above.

1. Develop and implement weed management plan for the open space trail area, making sure to inspect trails for new weed establishment and promptly treat new infestations.
2. Follow Colorado Parks & Wildlife guidelines to ensure new or repaired fence is wildlife friendly.
3. Obtain Stewardship Trust Manager and District Manager approval for any seed mixes to be used on disturbed or unvegetated areas to ensure that it contains only native grass and forb species appropriate to the property's ecological site description or sterile annual species used to temporarily stabilize soil.
4. Remove all trash and other waste material left on the property.

# Map of property subject to Exhibit C\*

(Your actual lease acres may be less than that is shown below.)

