

Transaction Coversheet

Transaction Number: 19-006

Effective Date: December ____, 2022

Closing Dates: See Section 8

Board Order Number: 2022-043

Contacts:

Transferee:

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With a copy to:

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Board:

Matt LaFontaine
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State Board of Land Commissioners
1127 Sherman Street, Suite 300
Denver, CO 80203

With a copy to:

Ed Hamrick
Assistant Attorney General
Natural Resources & Environment Section
Colorado Department of Law
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, Colorado 80203

AGREEMENT TO NON-SIMULTANEOUS EXCHANGES OF REAL PROPERTY

This Agreement to Non-simultaneous Exchanges of Real Property ("**Agreement**") is entered into pursuant to Article IX, Section 9 (7) of the Colorado Constitution and Title 36 of the Colorado Revised Statutes on the ___ day of December, 2022, ("**Effective Date**") between the STATE OF COLORADO, acting by and through the STATE BOARD OF LAND COMMISSIONERS, or its representatives or agents ("**Board**"), whose address is 1127 Sherman Street, Suite 300, Denver, CO 80203-2206, and the County of Boulder, a body corporate and politic ("**Transferee**"), whose address is P.O. Box 471, Boulder, CO 80306 (each a "**Party**" and collectively the "**Parties**").

RECITALS

A. Transferee desires to own, and has offered to obtain by exchange, land currently owned by the State of Colorado, located in Boulder County, Colorado, legally described on **Exhibit A** (the "**HVR Exchange Parcel**" and the "**Bald Mountain Exchange Parcel**", collectively the "**State Property**") and containing an aggregate 716.61 +/- acres, more or less;

B. Pursuant to Board Order Nos. 2022-043, dated June 16, 2022, and 2022-063, dated November 9, 2022, the Board has determined that it is in the best interest of the trusts it administers to exchange the State Property for certain other real property to be identified by the Board at a later date, pursuant to Article IX, Sections 9 and 10 of the Colorado Constitution and Title 36 of the Colorado Revised Statutes; and

C. The Parties are conducting these transactions under Sections 36-1-124.3 and 36-1-124.5 of the Colorado Revised Statutes;

NOW THEREFORE, in consideration of the foregoing and the various terms, covenants, and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals above and agree as follows:

ARTICLE 1: AGREEMENT TO EXCHANGE

§ 1.1 The Exchanges. Subject to the terms and conditions set forth in this Agreement, the Board agrees to convey and deliver all of the Board's right, title, and interest in the State Property, including any and all water rights and surface and subsurface water, except those rights and interests expressly reserved or excepted herein, to Transferee by Patent, and Transferee agrees to accept and take all of the Board's right, title, and interest herein conveyed by Patent and to deposit funds with the State Treasurer for the future acquisition of other property by the Board, pursuant to Article IX, Section 9 (7) of the Colorado Constitution, and pursuant to C.R.S. § 36-1-124.5 (the "**Exchanges**"). The exchange of the HVR Exchange Parcel is referred to herein as the "**HVR Exchange**" and the exchange of the Bald Mountain Exchange Parcel is referred to herein as the "**Bald Mountain Exchange**".

§ 1.2 Existing Encumbrances. The Patents will be subject to any and all covenants, restrictions, easements, and/or rights-of-way, including without limitation those shown on **Exhibit B**.

§ 1.3 Reservations to Board. The Patents will reserve the following rights and interests in the State Property to the Board:

§ 1.3.1 Mineral Resources. Title and all rights to any and all surface and sub-surface pore space, minerals, ores, and metals, of any kind and character, and all coal, asphaltum, oil, gas, or other like substances, and all geothermal resources in, on, or under the State Property (the “Mineral Estate” or “Minerals”) and rights of ingress and egress in, on, under, over, across and through the State Property for the purposes of exploration, production, mining, extraction, and removal of or access to such substances and resources, together with enough of the surface as may be necessary for the proper and convenient working of such substances and resources, to access the Mineral Estate reserved. For the avoidance of any doubt, the Mineral Estate hereby reserved to the State of Colorado expressly includes all industrial minerals and rock products, such as sand, gravel, clay, and crushed stone, located on or under the State Property.

§ 1.3.2 Archaeological Resources. All historical, prehistorical, and archaeological resources in, on, or under the State Property as provided in C.R.S. § 24-80-401 and any and all rights under C.R.S. §§ 24-80-401 through 411. Transferee understands and acknowledges the requirements of C.R.S. §§ 24-80-1301 through 1305.

§ 1.4 Notice of Non-Responsibility. The Patents will require Transferee, its heirs, successors, and assigns to provide actual and posted notice of non-liability pursuant to C.R.S. § 38-22-105 notifying all persons who might claim a mechanic’s lien relating to any work on, materials provided for, or improvements to the State Property initiated by or conducted for the benefit of Transferee, its heirs, successors, and/or assigns that the Board’s interests are not subject to such liens. To the extent permitted by law, Transferee, its heirs, successors and assigns shall indemnify, defend, and hold the Board harmless against any claims for mechanic’s liens relating to any work on, materials provided for or improvements to the State Property initiated by or conducted for the benefit of Transferee, its heirs, successors, and assigns. This obligation shall run with the land and survive the Closings.

§ 1.5 Non-Development Agreement. The Board will grant Transferee an agreement restricting the Board’s development of the Mineral Resources (“**Non-Development Agreement**”) in substantially the form attached as **Exhibit C**.

ARTICLE 2: EXCHANGE PAYMENTS

§2.1 For the purpose of constituting a basis on which these Exchanges may be made, the exchange payments for the HVR Exchange Parcel will be \$10,550,000.00 (the “**HVR Exchange Payment**”) and for the Bald Mountain Exchange Parcel will be \$2,800,000.00 (the “**Bald Mountain Exchange Payment**”) (collectively the “**Exchange Payments**”) subject to any credits and charges provided in this Agreement. In addition to the Exchange Payments, Transferee will be responsible for Transferee’s costs pursuant to Section 8.7. Transferee must wire the Exchange Payments directly to the Title Company (as that term is defined in Section 8.1) in the form of wire transfer(s) or other good funds acceptable to the Title Company at or before Closings. The Exchange Payments will be credited to a separate account in the Non-simultaneous State Trust Land Exchange Cash Fund pursuant to C.R.S. § 36-1-124.5(2).

ARTICLE 3: EARNEST MONEY AND LIQUIDATED DAMAGES

§ 3.1 Earnest Money. Transferee must tender the amount of \$10,000.00 in the form of wire transfer or other good funds to the Title Company within ten (10) business days after the Effective Date of this Agreement, as earnest money ("Earnest Money"). The Title Company will hold the Earnest Money in an interest-bearing account subject to the provisions of this Agreement. The Earnest Money will be applied to the Exchange Payment at the latest Closing or as the Parties may otherwise agree.

§ 3.2 Liquidated Damages. THE PARTIES HAVE AGREED THAT THE BOARD'S ACTUAL DAMAGES IN THE EVENT OF A FAILURE TO CONSUMMATE THESE EXCHANGES DUE TO TRANSFEREE'S DEFAULT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, THE AMOUNT OF THE EARNEST MONEY IS A REASONABLE ESTIMATE OF THE DAMAGES THAT THE BOARD WOULD INCUR IN SUCH EVENT. ACCORDINGLY, THE PARTIES AGREE THAT IF THE EXCHANGES ARE NOT CONSUMMATED DUE TO ANY DEFAULT BY TRANSFEREE HEREUNDER, THEN THE BOARD MAY TERMINATE THIS AGREEMENT AND RETAIN THE EARNEST MONEY AS LIQUIDATED DAMAGES. NOTHING IN THIS SECTION 3.2 SHALL LIMIT THE BOARD'S ABILITY TO RECOVER DAMAGES CAUSED BY TRANSFEREE'S DEFAULT THAT DOES NOT RESULT IN A FAILURE TO CONSUMMATE THIS AGREEMENT. EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE IN THIS SECTION 3.2 AND EACH PARTY HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION. THE PARTIES REPRESENT THAT THEY HAVE EITHER RETAINED LEGAL COUNSEL, OR HAVE DECLINED TO DO SO.

ARTICLE 4: ENCUMBRANCES AND/OR TRANSFERS

§ 4.1 Limitations on Transfers and Encumbrances. Between the Effective Date of this Agreement and the Closing Dates (as defined in Section 8.1) or termination of this Agreement, the Board must not otherwise sell, convey, option, lease, or grant any easement, right-of-way, or otherwise encumber the State Property.

§ 4.2 Existing Rights-of-Way. Any existing rights-of-way, whether or not of record, will be assigned to and assumed by the Transferee at Closing.

§ 4.3 Existing State Leases. Board surface leases are listed on Exhibit D. The surface leases will be either terminated at Closing or assigned to and assumed by the Transferee as shown on Exhibit D.

ARTICLE 5: DUE DILIGENCE, INSPECTION, AND CONDITION OF PROPERTY

§ 5.1 Nature of Transfer; Disclaimer of Representations and Warranties. To the maximum extent permitted by law, Transferee will take the State Property "AS IS", including any and all faults and preexisting conditions, and will bear all risk of loss or damage to the State Property occurring after the Effective Date of this Agreement. Transferee acknowledges and agrees that the Board has not made, does not make, and specifically negates and disclaims any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, verbal or written, past, present, or

future, of, as to, concerning, or with respect to the State Property including, but not limited to: (1) the value, nature, quality, or condition of the State Property, including, without limitation, the water, soil, and geology; (2) the income to be derived from the State Property; (3) the suitability of the State Property for any and all activities and uses which Transferee may conduct thereon; (4) the compliance of or by the State Property or its operation with any laws, rules, ordinances, or regulations of any applicable governmental authority or body; (5) the habitability, merchantability, marketability, profitability, or fitness for a particular purpose of the State Property; or (6) any other matter with respect to the State Property. The Board specifically disclaims any representations regarding compliance with any environmental protection, pollution, or land use laws, rules, regulations, orders, or requirements, including solid waste, or the disposal or existence, in or on the State Property, of any asbestos, any hazardous substance (as defined in 42 U.S.C. § 9601(14)), any hazardous waste (as defined in 42 U.S.C. § 6903(5)), or any petroleum (as defined in 42 U.S.C. § 6991(8)).

§ 5.2 Evidence of Title. If Transferee wants commitments for title insurance, the Transferee must, within fifteen (15) days after the Effective Date, cause the Title Company to issue commitments for title insurance, the cost of such commitments and associated fees to be paid by Transferee at Closing.

§ 5.3 Title Correction Period. Transferee will have 15 days after the receipt of a commitment for title insurance to provide the Board with written notice of any objections to form or content contained in the title commitment. The Board will have 15 days to respond in writing to Transferee's objection and to clarify the Board's position on clearing or curing each of the title objections raised by Transferee (the "Title Correction Period"). If the Board (1) does not respond within the Title Correction Period or (2) notifies Transferee of any objections it elects not to clear or otherwise correct, Transferee shall have an additional thirty (30) days to elect to either (1) waive the title objections not cleared or corrected by the Board, or (2) to terminate this Agreement (the "Waiver Period"), in which case the Earnest Money will be immediately refunded to Transferee. If Transferee fails to notify the Board of its intent to terminate the Agreement before the expiration of the Waiver Period, Transferee will be deemed to have waived any title objections not cleared or corrected by the Board during the Title Correction Period.

§ 5.4 Due Diligence Period. Subject to, and including, the conditions set forth elsewhere in this Agreement, Transferee will until December 30, 2022 ("Due Diligence Period") to complete its inspection of the State Property, which may include, but is not limited to surveys, environmental inspections, geotechnical borings, analysis and soils conditions, drainage studies, market studies, and any other studies and inspections deemed necessary by Transferee, during which time Transferee and its authorized agents and representatives will be entitled to enter upon the State Property at all reasonable times to inspect the State Property and conduct such tests or inspections as Transferee determines necessary or useful in its sole discretion; provided, however, that Transferee shall give at least twenty-four (24) hours' notice to the Board before Transferee, its authorized agents and representatives intend to enter upon the Property. If Transferee determines, in Transferee's reasonable judgment, that the State Property is not suitable for Transferee's intended use or is not in satisfactory condition, Transferee may terminate this Agreement prior to the expiration of the Due Diligence Period, and all Earnest Money will be refunded to Transferee once Transferee has repaired any damage to the State Property caused by Transferee or its

authorized agents and representatives during the inspection of the State Property and Transferee has delivered any reports that Transferee has conducted on the State Property to Board without representation or warranty of Transferee and only to the extent such reports are assignable. Transferee (at no cost to Transferee) shall work in good faith to request that any such reports be assignable.

§ 5.5 Opportunity to Inspect State Property. Transferee acknowledges and agrees that it has been given the opportunity to inspect the State Property and that Transferee is relying solely on Transferee's own investigation of the State Property and not on any information provided or to be provided by the Board other than as is stated in this Agreement.

§ 5.5.1 Information Provided by Board. The Board will provide copies of any existing and available engineering and survey work. Transferee further acknowledges and agrees that any information provided or to be provided by or on behalf of the Board with respect to the State Property was obtained from a variety of sources and that the Board has not made any independent investigation or verification of such information and makes no representations as to the accuracy or completeness of such information. The Board is not liable or bound in any manner by any verbal or written statements, representations, or information pertaining to the State Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant, or other person.

§ 5.5.2 Responsibility for Inspection. Transferee, except as otherwise expressly and clearly provided in this Agreement, is responsible for payment for all inspections, tests, surveys, engineering reports, and/or any other work performed at Transferee's request (collectively "Work") and must pay for any damage which occurs to the State Property as a result of such Work. Transferee must not permit claims or liens of any kind against the State Property for Work performed on the State Property at Transferee's request. To the extent permitted by law, Transferee agrees to indemnify, defend, reimburse, and hold the Board harmless for, from, and against any cost, loss, liability, injury, damage, judgments, fines, penalties, demand, action, claim, cause of action, or expense incurred by Board and caused by any such Work, claims, or lien. The provisions of this § 5.5.2 shall survive the termination of this Agreement.

§ 5.5.3 Release and Indemnification. Transferee and anyone claiming by, through or under Transferee hereby fully and irrevocably releases the Board, the Board's employees, representatives, and agents, from any and all claims that Transferee may now have or acquire in the future against the Board, the Board's employees, representatives, and agents for any cost, loss, liability, injury, damage, judgments, fines, penalties, demand, action, claim, cause of action, or expense arising from or related to Transferee's access or use of the State Property, and to any defects, errors, omissions, or other conditions, including environmental matters, affecting the State Property, or any portion thereof. To the extent permitted by law, Transferee agrees to indemnify, defend, reimburse, and hold the Board harmless for, from, and against any cost, loss, liability, injury, damage, judgments, fines, penalties, demand, action, claim, cause of action, or expense incurred by Board and caused by Transferee or its authorized agents and representatives arising from or related to Transferee's access or use of the State Property. The provisions of this § 5.5.3 shall survive the termination of this Agreement.

§ 5.6 Exchange Subject to Conditions. It is understood and agreed that the Exchange Payments reflect that all of the State Property is transferred by the Board and received by Transferee subject to the conditions set forth in this Article 5.

ARTICLE 6: INSURANCE AND INDEMNITY

§ 6.1 Insurance Requirements. To the extent Transferee's agents or contractors intend to enter the State Property for any purpose before the Closing Dates, Transferee's agents or contractors shall maintain an insurance policy that will provide protection for liability up to the limits under the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., with protection for public liability and property damage liability. All insurance policies shall name the Board as an additional insured and have a waiver of subrogation in favor of the Board.

§ 6.2 Indemnity. To the fullest extent permitted by law, Transferee agrees to indemnify, defend, reimburse, and hold the Board, its representatives, agents, employees, lessees, and contractors (collectively "Indemnitees"), harmless from, for, and against any and all cost, loss, liability, injury, damage, judgments, fines, penalties, demand, action, claim, cause of action, or expense (including, but not limited to, attorneys fees) (collectively, "Damages") directly or indirectly resulting from or arising out of Transferee's performance of this Agreement. Transferee's obligation under this Section 6.2 shall not apply to the extent it is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the Effective Date and shall not apply where such Damages are the result of the Indemnitee's sole gross negligence or willful misconduct. The provisions of this Section 6.2 shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., Article XI, Section 1 of the Colorado Constitution, or the Federal Tort Claims Act, 28 USC §2671 et seq., as applicable, as now or hereafter amended. The provisions of this § 6.2 are in addition to any other indemnification and shall survive the termination of this Agreement.

ARTICLE 7: SPECIAL DISTRICT DISCLOSURE

§7.1 SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. TRANSFEREE SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

ARTICLE 8: CLOSING

§ 8.1 Closings. The consummation of the Exchanges of the HVR Exchange Parcel and the Bald Mountain Exchange Parcel (each a "Closing" and together "Closings") will take place at a title company of the Board's choice ("Title Company") at a time and place mutually agreed upon by the Parties (the "Closing Dates") no later than December 31, 2022, unless an

extension is mutually agreed to by the Parties in writing. The Closings may occur on the same or different dates.

§ 8.1.1 Board Authority to Postpone Closing Dates. The Board may unilaterally postpone the Closing Dates as necessary to obtain fully executed Patents signed by the Governor as detailed by § 9.1.2, and attested by the Secretary of State.

§ 8.2 Timing of Exchange Payments. Transferee must pay the Exchange Payments on or before the Closing Dates for the respective exchanges.

§ 8.2.1 Credit to Exchange Payment. Should the Closing Dates differ, the latest Closing shall be subject to a prepayment credit of \$463,764.85 as provided under Recreation Lease #109498.

§ 8.3 Execution of Documents. All documents necessary for the consummation of these Exchanges must be executed and delivered on or before the Closing Dates.

§ 8.4 Delivery of Instruments.

§ 8.4.1 Delivery of Patents. Upon verification of receipt of the respective Exchange Payments by the Title Company, the Board must deliver, at its expense, Patents for the respective State Property in recordable form executed on behalf of the Board, conveying the State Property to Transferee.

§ 8.4.2 Non-Development Agreement. Upon verification of receipt of the consideration of \$368,000.00 for the Non-Development Agreement by the Title Company, the Board must deliver, at its expense, a Non-Development Agreement in substantially the form attached as Exhibit C for the State Property in recordable form executed on behalf of the Board. If the Closing Dates differ, the Non-Development Agreement shall be issued upon the latest Closing.

§ 8.5 Delivery of Possession. The Board must deliver possession of the respective State Property to Transferee on the respective Closing Dates.

§ 8.6 Assignment of Rights-of-Way. The Board will assign, sell, and transfer, without recourse or warranty, to Transferee all of the Board's right, title, and interest, if any, in and to the portions of any and all rights-of-way, whether or not of record.

§ 8.7 Closing Costs. The Board shall pay (i) the fees of any counsel representing it in connection with this transaction, (ii) half of any escrow and/or closing fees charged by Title Company, and (iii) half the costs of recordable documents necessary to close this Agreement. Transferee shall pay (i) the fees of any counsel representing Transferee in connection with this transaction, (ii) the premium for any owner's title policy, including any additional costs attributable to any extended coverage or endorsements, and the cost of the title search and exam for the State Property, (iii) half of any escrow fees charged by Title Company, (iv) all applicable transfer taxes, documentary stamp taxes and similar charges relating to the transfer of the State Property, (v) the premium for any lender's title policy, (vi) the cost of Transferee's inspections of the Property, (vii) the cost of any survey obtained by Transferee, (viii) half the costs of recordable documents necessary to close this Agreement.

§ 8.8 Delay in Closings. If, without amendment to this Agreement, either of the Closings are delayed for any reason beyond January 31, 2023, the Board will have the right to terminate this Agreement (in which event the Earnest Money will be returned to Transferee). In no event will Transferee be able to claim offset or credit or recover for improvements made to the State Property. Transferee will have no other remedy at law or in equity and Transferee expressly waives the remedy of damages.

ARTICLE 9: CONDITIONS TO CLOSING

§ 9.1 Conditions to Closing. In addition to any conditions outlined elsewhere in this Agreement, the obligation of the Board or Transferee to consummate the Exchanges contemplated by this Agreement is subject to the satisfaction, at or before Closings of the following conditions:

§ 9.1.1 Satisfaction of Conditions. The Board and Transferee must have performed, satisfied, and complied with all the covenants, agreements, and conditions required by this Agreement to be performed or complied with by the Board and Transferee on or before the Closing Dates.

§ 9.1.2 Signature of Patents. The Board will present the Patents to the Governor for signature, and the Parties will utilize their best effort to obtain the Governor's signature; provided, however, that nothing herein will limit the Governor's discretion, if any, to sign the Patents. Transferee agrees to accept the Governor's signature on the Patents by autopen. If the Governor refuses to sign the Patents and the Board advises Transferee of such fact, the Earnest Money, if previously paid, will be returned to Transferee, and this Agreement will terminate without any costs or recourse against the Board.

§ 9.1.3 Termination of Recreation Lease #109498. As appropriate, the Parties will terminate or amend Recreation Lease # 109498 upon the Closings.

§ 9.1.4 Boulder County Approval. These Exchanges have been approved by the Boulder Board of County Commissioners at its November 15, 2022 public board meeting.

§ 9.2 Waiver of Conditions. The Board or Transferee may waive any or all of the conditions in this Article 9 in writing, in whole or in part, without prior notice; provided, however, that no waiver of any such condition will constitute a waiver of either Party's other rights or remedies if the non-waiving Party is in default of any of the covenants under this Agreement.

ARTICLE 10: DEFAULT

§ 10.1 Transferee's Default. Transferee's failure to perform any obligation required by this Agreement, including without limitation Transferee's failure to make the Exchange Payments contemplated by this Agreement, will be deemed a default. Upon the occurrence of a default, and except as provided in Section 10.3, the Board must give Transferee ten (10) days' written notice of the default, and Transferee must be allowed ten (10) days from Transferee's receipt of such notice, consistent with Section 11.8, to cure the default. If Transferee fails to cure the default within the cure period, but the default does not result in the failure to consummate the Exchanges, the Board may elect to obtain specific performance of Transferee's obligations under this Agreement or to recover its actual damages (including without limitation interest on any amounts due together with any attorneys' fees and costs

incurred by the Board in enforcing this Agreement). If Transferee fails to cure the default and the Exchanges are not consummated due to Transferee's default, terminate this Agreement and either (1) retain the Earnest Money as liquidated damages or (2) pursue its actual damages and apply the Earnest Money toward satisfaction of any award of actual damages as provided in Section 3.2 (Liquidated Damages). In no event will Transferee be able to claim offset or credit or recover for improvements made to the State Property in the event that Transferee is in default hereunder and Closings do not occur.

§ 10.2 The Board's Default. Except as provided in Section 9.1.2 (Signature of Patents), the failure of the Board, without the right to do so and in default of its obligations under this Agreement, to convey the Patents contemplated by this Agreement will be deemed a default. Upon the occurrence of a default, the Transferee must give the Board ten (10) days' written notice of the default, and the Board must be allowed ten (10) days from the Board's receipt of such notice, consistent with Section 11.8, to cure the default. If the Board fails to cure the default within the cure period, Transferee may elect to treat this Agreement as being in full force and effect and the Transferee shall have the right to obtain specific performance of obligations under this Agreement, or Transferee may elect to terminate this Agreement and any Earnest Money paid shall be returned to Transferee. In no event will Transferee be able to claim offset or credit, or recover for improvements made to the State Property. Transferee will have no remedy at law or in equity for such failure other than the remedy specified in this Section 10.2 and in Section 8.8 (Delay in Closings) and Transferee expressly waives the remedy of damages.

§ 10.3 Notice That Time is of the Essence. Time is of the essence. Failure of Transferee to timely make any payment required under this Agreement, may, at the option of the Board, be deemed an immediate default. The Board may, but is not required to, allow Transferee to cure such non-payment within ten (10) business days of Transferee's receipt of written notice, consistent with Section 11.8 (Notices), from the Board of such default.

ARTICLE 11: MISCELLANEOUS

§ 11.1 Parties in Interest. All of the terms and provisions of this Agreement will be binding upon, inure to the benefit of, and be enforceable by the heirs, successors, and permitted assigns of the respective Parties. Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies under or by reason of this Agreement, nor is anything herein intended to create any third-party beneficiary status in any other party, except as herein clearly and expressly stated.

§ 11.2 Entire Agreement. This Agreement represents the entire agreement between the Board and Transferee relating to the Exchanges of State Property contemplated hereby and supersedes any and all prior agreements, understandings, representations, and statements between the Parties hereto, whether oral or written, and whether by a Party hereto or such Party's legal counsel. The Board and Transferee are entering into this Agreement based solely on the representations and warranties in this Agreement and not based on any other promises, representations, and/or warranties. No modification, waiver, amendment, discharge, or change of this Agreement will be valid unless the same is in an appropriate written instrument duly executed by the Parties. All Exhibits attached hereto shall be incorporated by reference as if set forth herein in full.

§ 11.3 No Assumption of Liabilities. Transferee has not assumed and does not agree to assume any of the Board's liabilities or obligations, except as specifically provided in this Agreement.

§ 11.4 Capacity. Transferee has the capacity and authority to enter into this Agreement and to consummate the Exchanges described herein without the joinder or consent of any other party.

§ 11.5 Statutory References. Any reference to any statutes or laws or regulations thereunder will include any and all amendments, modifications, or replacements of the specific sections and provisions concerned.

§ 11.6 Time. In the event the last day permitted for the performance of any act required or permitted under this Agreement falls on a holiday or other non-business day, the time for such performance will be extended to the next succeeding business day. Time periods under this Agreement will exclude the first day and include the last day of such time period. All periods of time specified in this Agreement shall be counted in calendar days unless otherwise expressly stated. As used in this Paragraph, the terms "holiday" or "non-business day" shall mean those dates upon which nationally chartered banks of the United States of America operating in the State of Colorado are not open for business or those dates that are designated as a state holiday under the laws of the State of Colorado.

§ 11.7 Headings. The headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of the text of this Agreement.

§ 11.8 Notice. All notices required or permitted hereunder must be in writing and must be served on the Parties at the following address:

Any Notice to the Transferee must be addressed:

The Director
Boulder County Parks & Open Space
5201 St. Vrain Road
Longmont, CO 80503

with copies to:
Boulder County Attorney's Office
P.O. Box 471
Boulder, CO 80306

Any Notice to the Board must be addressed:

Matt Lafontaine
Acquisition and Disposition Manager
State Board of Land Commissioners
1127 Sherman Street, Suite 300
Denver, CO 80203

with a copy to:

Ed Hamrick
Assistant Attorney General
Natural Resources & Environment Section
Colorado Department of Law
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, Colorado 80203

Any such notices must be either (1) sent postage prepaid by certified U.S. mail, return receipt requested, in which case notice will be deemed received on the first day that delivery was attempted as shown on the return receipt; (2) sent overnight by a nationally recognized overnight courier, in which case it will be deemed received one business day after deposit with such courier; or (3) personally delivered, in which case notice will be deemed received on the same day such notice is so delivered. The above addresses may be changed by written notice to the other Party; provided however, that no notice of a change of address will be effective until actual receipt of such notice by the other Party. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice will not be deemed a failure to give notice.

§ 11.9 Recording. Neither this Agreement nor any memorandum thereof, may be recorded in whole or in part, and any recordation in violation of this Agreement shall be deemed to be a default under this Agreement by the recording party.

§ 11.10 Colorado Open Records Act ("CORA") Disclosure. To the extent not prohibited by federal law, this Agreement and the performance measures if any, are subject to public release through CORA, §§ 24-72-200.0, C.R.S., et seq.

§ 11.11 Governing Law and Venue. This Agreement will be construed and enforced in accordance with the laws of the State of Colorado. Venue for legal proceedings related to this Agreement will be in the appropriate court of the City and County of Denver. Transferee hereby waives personal service of any and all process upon it, consents to service of process by registered mail directed to it at the address stated above, and acknowledges that service so made will be deemed to be completed upon actual delivery thereof (whether accepted or refused).

§ 11.12 Assignment of Agreement. This Agreement may not be assigned, except upon the following conditions: (i) the assignee of Transferee must be an affiliate of Transferee or an entity controlling, controlled by, or under common control with Transferee or any of its principals; (ii) all of the Earnest Money must have been delivered in accordance herewith; (iii) the assignee of Transferee must assume all obligations of Transferee hereunder pursuant to an assignment and assumption agreement; and (iv) a copy of the fully executed written assignment and assumption agreement will be delivered to the Board at least five (5) business days prior to Closing.

§11.13 Survival of Agreement Provisions. To the extent that any provisions of this Agreement require performance to be completed after Closings, such provisions will survive the Closings and be binding upon the Parties and will not merge into the Patents to be delivered in accordance with this Agreement. All agreements and covenants by the Parties, which the Party to whom

performance is owed could reasonably expect to be intended to survive closing, will survive closing and not merge with the Patents.

§ 11.14 Commissions. The Board states that no agents, brokers, or commissions are involved in these Exchanges. Any commissions or fees for any agents, brokers, or otherwise incurred by Transferee related to these Exchanges will be the responsibility of Transferee and not the Board.

§ 11.15 Counterparts. This Agreement may be executed in any number of counterparts, which together shall constitute one agreement. Signatures required in this Agreement shall be original "wet" handwritten signatures or digital signatures in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules. If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules including Docusign, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

§ 11.16 Full and Accurate Disclosure. No representation or warranty by Transferee or the Board made in this Agreement, contains or will contain any untrue statement of material fact or omits to state a material fact necessary to make the statements contained herein not misleading.

§ 11.17 Severability. The provisions of this Agreement are severable and any provision that is declared invalid or becomes inoperable for any reason will not affect the validity of any other provision hereof, provided that the Parties hereto can continue to perform their obligations under this Agreement in accordance with its intent.

§ 11.18 Order of Precedence. In the event of any conflict or inconsistency between the terms of this Agreement or between this Agreement and the Exhibits, such conflicts or inconsistencies must be resolved by reference to the Agreement and Exhibits in the following order of priority:

1. The provisions of Article 12 (State of Colorado Special Provisions);
2. The provisions of Article 15 (Additional Conditions), if any;
3. The remaining provisions of the Agreement; and
4. The Exhibits.

ARTICLE 12: STATE OF COLORADO SPECIAL PROVISIONS

§ 12.1 Fund Availability CRS §24-30-202(5.5). Financial obligations of the Board and the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

§ 12.2 Governmental Immunity. Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, agencies, boards, commissions, committees,

bureaus, offices, employees and officials or the Transferee shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

§ 12.3 Non-Agency and Non-Employment. Neither Transferee nor any agent or employee of Transferee shall be deemed to be an agent or employee of the State. Transferee shall not have authorization, express or implied, to bind the State to any agreement, liability, or understanding, except as expressly set forth herein. Transferee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Transferee or any of its agents or employees. Transferee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Transferee shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

§ 12.4 Compliance with Law. Transferee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

§ 12.5 Choice of Law, Jurisdiction, and Venue. Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

§ 12.6 Prohibited Terms. Any term included in this Agreement that requires the Board or the State to indemnify or hold Transferee harmless; requires the Board or the State to agree to binding arbitration; limits Transferee's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of C.R.S. §24-106-109.

§ 12.7 Employee Financial Interest/Conflict of Interest. CRS §§24-18-201 and 24-50-507. The signatories aver that to their knowledge, no employee of the Board or the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Transferee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Transferee's services and Transferee shall not employ any person having such known interests.

§ 12.8 Public Contracts with Natural Persons. CRS §24-76.5-101, *et seq.* Transferee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Transferee (1) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (2) shall comply with the provisions of CRS §24-76.5-101 et seq., and (3) has

produced one form of identification required by CRS §24-76.5-103 prior to the Effective Date of this Agreement.

ARTICLE 13: 1031 EXCHANGE COOPERATION

[intentionally deleted].

ARTICLE 14: LEGAL COUNSEL

THIS AGREEMENT IS A LEGAL INSTRUMENT. LEGAL, TAX OR OTHER COUNSEL SHOULD BE CONSULTED BEFORE SIGNING. EACH PARTY HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS AGREEMENT. THE PARTIES REPRESENT THAT THEY HAVE EITHER RETAINED LEGAL COUNSEL, OR HAVE DECLINED TO DO SO.

ARTICLE 15: ADDITIONAL CONDITIONS

None.

(Signatures on following page)

IN WITNESS WHEREOF, the Parties executed this Agreement as of the date first written.

COUNTY OF BOULDER,
a body corporate and politic

By: _____
Marta Loachamin, Chair

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ____ day of December 2022, by
Marta Loachamin, Chair of the Board of County Commissioners of Boulder County, Colorado.

Witness my hand and official seal.

Notary Public
My commission expires: _____

STATE OF COLORADO
ACTING BY AND THROUGH THE
STATE BOARD OF LAND COMMISSIONERS

Signature: _____
By: Bill Ryan
Title: Director, Colorado State Board of Land Commissioners

State of Colorado
City & County of Denver

The foregoing instrument was acknowledged before me this ____ day of December 2022, by
Bill Ryan, as Director, Colorado State Board of Land Commissioners.

Witness my hand and official seal.

Notary Public
My commission expires: _____

EXHIBIT A

Legal Description of the State Property

HVR Exchange Parcel

All of Section 36, less and except the West 1/2 of the Northwest 1/4, Township 3 North, Range 71 West of the 6th P.M. County of Boulder, State of Colorado.

Bald Mountain Exchange Parcel

All of Section 16, Township 1 North, Range 71 West of the 6th P.M., County of Boulder, State of Colorado, less and except U.S. Mining Patents 45377, 45265, 36304, 167992; and excepting State Mining Patents No. 1, No. 2, and No. 3; and excepting State Land Board Patents 7759, 7875, 7201, 7658, 7907, 7705, and 8558.

EXHIBIT B

Covenants, Easements, Restrictions, Rights of Ways, Encumbrances Other Than Leases Listed in the Board's ATLAS Database

...

Real Estate Section Search

TOWNSHIP (COLUMN) RANGE (COLUMN)

SECTION (COLUMN) LEGAL DESCRIPTION

TOTAL: 5

Edit View	Lease Number	Lease Type	Lease Subtype	Lessee(s)	Lease Status	Start Date	End Date
	109498	Recreation		COUNTY OF BOULDER	Active	1/1/2022	12/31/2023
	109498	Recreation		COUNTY OF BOULDER	Active	1/1/2022	12/31/2023
	109498	Recreation		COUNTY OF BOULDER	Active	1/1/2022	12/31/2023
	109498	Recreation		COUNTY OF BOULDER	Active	1/1/2022	12/31/2023
	111021	Other	Timber Management	COLORADO STATE FOREST SERVICE	Active	7/1/2017	7/1/2037

...

Real Estate Section Search

TOWNSHIP (COLUMN) RANGE (COLUMN)

SECTION (COLUMN) LEGAL DESCRIPTION

TOTAL: 13

Edit View	Lease Number	Lease Type	Lease Subtype	Lessee(s)	Lease Status	Start Date	End Date
	102969	Right of Way	Communications	MTN STATES TEL & TEL CO/DENVER	Active	10/16/1929	
	103911	Right of Way	Transportation	CITY OF BOULDER	Active	7/8/1966	
	103990	Right of Way	Transportation	COUNTY OF BOULDER	Active	7/8/1966	
	104206	Right of Way	Power	PUBLIC SERVICE CO COLO	Active	1/9/1970	
	104656	Right of Way	Transportation	BOULDER COUNTY BD OF COUNTY COMMISSIONERS	Active	2/24/1981	
	104757	Right of Way	Power	PUBLIC SERVICE CO COLO	Active	5/25/1984	
	104869	Right of Way	Communications	RICHARD SMITH	Active	5/4/1988	
	105210	Right of Way	Transportation	BOULDER BOARD OF COUNTY COMMISSIONERS	Active	11/17/1999	
	109498	Recreation		COUNTY OF BOULDER	Active	1/1/2022	12/31/2023
	109498	Recreation		COUNTY OF BOULDER	Active	1/1/2022	12/31/2023
	109498	Recreation		COUNTY OF BOULDER	Active	1/1/2022	12/31/2023
	109498	Recreation		COUNTY OF BOULDER	Active	1/1/2022	12/31/2023
	109498	Recreation		COUNTY OF BOULDER	Active	1/1/2022	12/31/2023

EXHIBIT C
FORM OF NON-DEVELOPMENT AGREEMENT



STATE OF COLORADO
STATE BOARD OF LAND COMMISSIONERS

NON-DEVELOPMENT AGREEMENT
Agreement No. LT-115095

THIS AGREEMENT (the “Agreement”), dated this _____ day of December, 2022 (the “Effective Date”), made and entered into by and between the STATE OF COLORADO, acting by and through the STATE BOARD OF LAND COMMISSIONERS (the “Board”), located at 1127 Sherman Street, Denver, CO 80203 and the County of Boulder, a body corporate and politic, (“Surface Owner”), whose address is whose address is P.O. Box 471, Boulder, CO 80306.

WHEREAS, Surface Owner owns all right, title and interest to the surface estate more particularly described in **Exhibit A** attached hereto and made apart hereof, which surface estate shall not include the pore space (the “Property”), and the Board owns title and all rights to any and all surface and sub-surface pore space, minerals, ores, and metals, of any kind and character, and all coal, asphaltum, oil, gas, or other like substances, and all geothermal resources in, on, or under the State Property (the “**Mineral Estate**” or “**Minerals**”) and rights of ingress and egress in, on, under, over, across and through the Property for the purposes of exploration, production, mining, extraction, and removal of or access to such substances and resources, together with enough of the surface as may be necessary for the proper and convenient working of such substances and resources, to access the Mineral Estate. For the avoidance of any doubt, the Mineral Estate expressly includes all industrial minerals and rock products, such as sand, gravel, clay, and crushed stone, located on or under the Property.;

WHEREAS, Surface Owner previously leased the Property and has acquired the Property from the Board to maintain and provide open space; and

WHEREAS, Surface Owner desires to enter into an agreement with the Board to restrict the development of the Minerals Estate;

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **TERM** - The term of the Agreement shall be ninety-nine (99) years until December_____, 2121 (the “Term”).
2. **CONSIDERATION** - Surface Owner shall pay to the Board, or cause to be paid on their behalf, \$368,000.00 (the “Consideration”) for the Term payable on the Effective Date.
3. **NO DEVELOPMENT** - The Board shall not, during the Term, exercise its rights to the mineral estate underlying the Property, which include, for the avoidance of doubt, the right to drill, excavate, dredge, mine, extract, explore for or otherwise develop, or cause such development, and/or lease for such development any Minerals or the Mineral Estate.
4. **TRANSFER AND ASSIGNMENT** - The Board and Surface Owner agree and acknowledge that this Agreement, including any provision herein, shall not create any (i) covenant, (ii) right or obligation which shall run with the land, or (ii) any type of perpetual right or obligation. Surface Owner may not transfer or assign this Agreement to subsequent owners of the surface.
5. **NO SURFACE OWNER RIGHT TO DEVELOP MINERALS** - This Agreement does not grant the Surface Owner any right, title, or interest to the Mineral Estate, nor does it provide any right or authority to explore for, prospect, develop, extract or use any Minerals, including but not limited to any sand, gravel, rock,

or fill material, or pore space. Surface Owner's claim to or exercise of any right relating to the Mineral Estate, or other mineral estate owned by the Board, will be grounds for the immediate termination of this Agreement by the Board, at the Board's sole and absolute discretion.

6. SURRENDER AND TERMINATION - Surface Owner may at any time surrender and cancel this Agreement for all or any portion of the Property, provided that this surrender clause shall become inoperative immediately and concurrently with the institution of any suit in any court of law by Surface Owner, the Board, or any assignee of the Board to enforce this Agreement or any of its terms, express or implied. If this Agreement is cancelled, surrendered, or terminated for any reason, the Consideration shall be forfeited and the Board shall not make any refunds to Surface Owner, and Surface Owner expressly waives any right it may have to repayment of the Consideration.
7. PROTECTION FROM OFFSET DRAINAGE - In case of offset drainage the Surface Owner will be offered an oil and gas lease and will be required to develop any and all oil or gas underlying this surface or, in lieu of drilling, pay a royalty based on technical information and set by the Board.
8. UNIT AGREEMENTS - The Board shall not consent to the unitization or pooling of the Minerals or Mineral Estate with other lands. If all or any portion of the Minerals or Mineral Estate are unitized or pooled pursuant to law or regulation without the consent of the Board ("Forced Pooling"), the Board shall not be in violation of this Agreement and the Board shall receive any payments or compensation attributable or related to the unitized or pooled Minerals or Mineral Estate. The Board shall have no obligation to object to any Forced Pooling.
9. COMPLIANCE WITH LAW - Nothing in this Agreement shall be construed as a waiver by the Board of any right or remedy given to it by law for the administration of Board owned Minerals or other property rights.
10. NONCOMPLIANCE - Any failure to comply with any of the conditions set out in this Agreement, may, at the discretion of the Board, result in cumulative remedies which include penalties, immediate termination of this Agreement, or an action for damages.
11. CONDEMNATION - If the Mineral Estate shall be taken in any condemnation proceeding, this Agreement shall automatically terminate as of the date of taking. If only a portion of the Mineral Estate is taken by condemnation, only that portion of the Agreement relating to the portion of the Mineral Estate taken shall terminate. Any award for condemnation of the Mineral Estate shall be paid to, and wholly retained by, the Board.
12. ENTIRE AGREEMENT - This Agreement and all documents incorporated herein by reference represent the entire Agreement between the parties. Prior or contemporaneous additions, deletions, or other changes to this Agreement will not have any force or effect whatsoever, unless written in this Agreement. No oral agreement shall be held to vary the provisions hereof. This Agreement shall not be amended or ratified except by written document executed by the parties hereto.
13. GOVERNING LAW, JURISDICTION, AND VENUE - This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The exclusive jurisdiction for all suits, actions, or proceedings related to this Agreement will be in the State of Colorado and the exclusive venue will be in the City and County of Denver.
14. NO JOINT VENTURE - The Board is not and will not be construed to be a partner, joint venturer or associate of Surface Owner in the conduct of the business of Surface Owner. The Board shall not be liable for any debts incurred by Surface Owner in the conduct of Surface Owner's business.

15. NO THIRD PARTY BENEFICIARY - Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.
16. CONSTRUCTION AGAINST THE DRAFTER - In the event of an ambiguity in this Agreement 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.
17. GOVERNMENTAL IMMUNITY - Liability for claims or injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, commissions, committees, bureaus, offices, officials, and employees, and the Surface Owner are controlled and limited by the provisions of the Governmental Immunity Act, C.R.S. § 24-10-101 et seq., the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the risk management statutes, C.R.S. § 24-30-1501 et seq., as amended. No term or condition of this Agreement will be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.
18. COLORADO OPEN RECORDS ACT (“CORA”) DISCLOSURE - To the extent not prohibited by federal law, this Agreement and the performance measures if any, are subject to release through CORA, C.R.S. § 24-72-200.0 et seq.
19. COUNTERPARTS - This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one agreement.
20. SIGNATURES - Signatures required in this Agreement shall be either original “wet” handwritten signatures or digital signatures in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules. If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules including DocuSign, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.
21. AUTHORITY - If Surface Owner is an entity other than an individual, each individual executing this Agreement on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said entity and that this Agreement is binding upon said entity in accordance with its terms. Each person or entity signing the Agreement on behalf of the Board has the full and unrestricted authority to execute and deliver this Agreement and to grant rights granted herein.
22. NO WAIVER - The failure of either party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements contained within this Agreement shall not be construed to constitute a waiver, relinquishment, or release of such obligations, covenants, or agreements.

[signature page follows]

IN WITNESS WHEREOF, the Board and the Surface Owner, by their signatures below, agree to the terms of this Agreement, effective as of the Effective Date:

SURFACE OWNER

COUNTY OF BOULDER,
a body corporate and politic

By: _____
Marta Loachamin, Chair

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ____ day of December 2022, by Marta Loachamin, Chair of the Board of County Commissioners of Boulder County, Colorado.

Witness my hand and official seal.

Notary Public
My commission expires: _____

STATE OF COLORADO BY THE
STATE BOARD OF LAND COMMISSIONERS

By: _____

Date: _____

EXHIBIT A

Agreement No. LT-115095

The Property

All of Section 36, less and except the West 1/2 of the Northwest 1/4, Township 3 North, Range 71 West of the 6th P.M. County of Boulder, State of Colorado,

AND

All of Section 16, Township 1 North, Range 71 West of the 6th P.M., County of Boulder, State of Colorado, less and except U.S. Mining Patents 45377, 45265, 36304, 167992; and excepting State Mining Patents No. 1, No. 2, and No. 3; and excepting State Land Board Patents 7759, 7875, 7201, 7658, 7907, 7705, and 8558.

Altogether containing 716.61 acres, more or less.

EXHIBIT D
State Surface Leases

State Lease No.	Type of Lease	Lessee	Terminate or Assign?
109498	REC	Boulder County	Terminate/Amend
111021	OT - Timber Management	Colorado State Forest Service	Terminate as to State Property



STATE OF COLORADO
STATE BOARD OF LAND COMMISSIONERS

NON-DEVELOPMENT AGREEMENT
Agreement No. LT-115095

THIS AGREEMENT (the “Agreement”), dated this _____ day of December, 2022 (the “Effective Date”), made and entered into by and between the STATE OF COLORADO, acting by and through the STATE BOARD OF LAND COMMISSIONERS (the “Board”), located at 1127 Sherman Street, Denver, CO 80203 and the County of Boulder, a body corporate and politic, (“Surface Owner”), whose address is whose address is P.O. Box 471, Boulder, CO 80306.

WHEREAS, Surface Owner owns all right, title and interest to the surface estate more particularly described in **Exhibit A** attached hereto and made apart hereof, which surface estate shall not include the pore space (the “Property”), and the Board owns title and all rights to any and all surface and sub-surface pore space, minerals, ores, and metals, of any kind and character, and all coal, asphaltum, oil, gas, or other like substances, and all geothermal resources in, on, or under the State Property (the “**Mineral Estate**” or “**Minerals**”) and rights of ingress and egress in, on, under, over, across and through the Property for the purposes of exploration, production, mining, extraction, and removal of or access to such substances and resources, together with enough of the surface as may be necessary for the proper and convenient working of such substances and resources, to access the Mineral Estate. For the avoidance of any doubt, the Mineral Estate expressly includes all industrial minerals and rock products, such as sand, gravel, clay, and crushed stone, located on or under the Property.;

WHEREAS, Surface Owner previously leased the Property and has acquired the Property from the Board to maintain and provide open space; and

WHEREAS, Surface Owner desires to enter into an agreement with the Board to restrict the development of the Minerals Estate;

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **TERM** - The term of the Agreement shall be ninety-nine (99) years until December_____, 2121 (the “Term”).
2. **CONSIDERATION** - Surface Owner shall pay to the Board, or cause to be paid on their behalf, \$368,000.00 (the “Consideration”) for the Term payable on the Effective Date.
3. **NO DEVELOPMENT** - The Board shall not, during the Term, exercise its rights to the mineral estate underlying the Property, which include, for the avoidance of doubt, the right to drill, excavate, dredge, mine, extract, explore for or otherwise develop, or cause such development, and/or lease for such development any Minerals or the Mineral Estate.
4. **TRANSFER AND ASSIGNMENT** - The Board and Surface Owner agree and acknowledge that this Agreement, including any provision herein, shall not create any (i) covenant, (ii) right or obligation which shall run with the land, or (ii) any type of perpetual right or obligation. Surface Owner may not transfer or assign this Agreement to subsequent owners of the surface.
5. **NO SURFACE OWNER RIGHT TO DEVELOP MINERALS** - This Agreement does not grant the Surface Owner any right, title, or interest to the Mineral Estate, nor does it provide any right or authority to explore for, prospect, develop, extract or use any Minerals, including but not limited to any sand, gravel, rock,

or fill material, or pore space. Surface Owner's claim to or exercise of any right relating to the Mineral Estate, or other mineral estate owned by the Board, will be grounds for the immediate termination of this Agreement by the Board, at the Board's sole and absolute discretion.

6. SURRENDER AND TERMINATION - Surface Owner may at any time surrender and cancel this Agreement for all or any portion of the Property, provided that this surrender clause shall become inoperative immediately and concurrently with the institution of any suit in any court of law by Surface Owner, the Board, or any assignee of the Board to enforce this Agreement or any of its terms, express or implied. If this Agreement is cancelled, surrendered, or terminated for any reason, the Consideration shall be forfeited and the Board shall not make any refunds to Surface Owner, and Surface Owner expressly waives any right it may have to repayment of the Consideration.
7. PROTECTION FROM OFFSET DRAINAGE - In case of offset drainage the Surface Owner will be offered an oil and gas lease and will be required to develop any and all oil or gas underlying this surface or, in lieu of drilling, pay a royalty based on technical information and set by the Board.
8. UNIT AGREEMENTS - The Board shall not consent to the unitization or pooling of the Minerals or Mineral Estate with other lands. If all or any portion of the Minerals or Mineral Estate are unitized or pooled pursuant to law or regulation without the consent of the Board ("Forced Pooling"), the Board shall not be in violation of this Agreement and the Board shall receive any payments or compensation attributable or related to the unitized or pooled Minerals or Mineral Estate. The Board shall have no obligation to object to any Forced Pooling.
9. COMPLIANCE WITH LAW - Nothing in this Agreement shall be construed as a waiver by the Board of any right or remedy given to it by law for the administration of Board owned Minerals or other property rights.
10. NONCOMPLIANCE - Any failure to comply with any of the conditions set out in this Agreement, may, at the discretion of the Board, result in cumulative remedies which include penalties, immediate termination of this Agreement, or an action for damages.
11. CONDEMNATION - If the Mineral Estate shall be taken in any condemnation proceeding, this Agreement shall automatically terminate as of the date of taking. If only a portion of the Mineral Estate is taken by condemnation, only that portion of the Agreement relating to the portion of the Mineral Estate taken shall terminate. Any award for condemnation of the Mineral Estate shall be paid to, and wholly retained by, the Board.
12. ENTIRE AGREEMENT - This Agreement and all documents incorporated herein by reference represent the entire Agreement between the parties. Prior or contemporaneous additions, deletions, or other changes to this Agreement will not have any force or effect whatsoever, unless written in this Agreement. No oral agreement shall be held to vary the provisions hereof. This Agreement shall not be amended or ratified except by written document executed by the parties hereto.
13. GOVERNING LAW, JURISDICTION, AND VENUE - This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The exclusive jurisdiction for all suits, actions, or proceedings related to this Agreement will be in the State of Colorado and the exclusive venue will be in the City and County of Denver.
14. NO JOINT VENTURE - The Board is not and will not be construed to be a partner, joint venturer or associate of Surface Owner in the conduct of the business of Surface Owner. The Board shall not be liable for any debts incurred by Surface Owner in the conduct of Surface Owner's business.

15. NO THIRD PARTY BENEFICIARY - Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.
16. CONSTRUCTION AGAINST THE DRAFTER - In the event of an ambiguity in this Agreement 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.
17. GOVERNMENTAL IMMUNITY - Liability for claims or injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, commissions, committees, bureaus, offices, officials, and employees, and the Surface Owner are controlled and limited by the provisions of the Governmental Immunity Act, C.R.S. § 24-10-101 et seq., the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the risk management statutes, C.R.S. § 24-30-1501 et seq., as amended. No term or condition of this Agreement will be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.
18. COLORADO OPEN RECORDS ACT (“CORA”) DISCLOSURE - To the extent not prohibited by federal law, this Agreement and the performance measures if any, are subject to release through CORA, C.R.S. § 24-72-200.0 et seq.
19. COUNTERPARTS - This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which taken together shall constitute one agreement.
20. SIGNATURES - Signatures required in this Agreement shall be either original “wet” handwritten signatures or digital signatures in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules. If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules including DocuSign, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.
21. AUTHORITY - If Surface Owner is an entity other than an individual, each individual executing this Agreement on behalf of said entity represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said entity and that this Agreement is binding upon said entity in accordance with its terms. Each person or entity signing the Agreement on behalf of the Board has the full and unrestricted authority to execute and deliver this Agreement and to grant rights granted herein.
22. NO WAIVER - The failure of either party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements contained within this Agreement shall not be construed to constitute a waiver, relinquishment, or release of such obligations, covenants, or agreements.

[signature page follows]

IN WITNESS WHEREOF, the Board and the Surface Owner, by their signatures below, agree to the terms of this Agreement, effective as of the Effective Date:

SURFACE OWNER

COUNTY OF BOULDER,
a body corporate and politic

By: _____
Marta Loachamin, Chair

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ____ day of December 2022, by Marta Loachamin, Chair of the Board of County Commissioners of Boulder County, Colorado.

Witness my hand and official seal.

Notary Public
My commission expires: _____

STATE OF COLORADO BY THE
STATE BOARD OF LAND COMMISSIONERS

By: _____

Date: _____

EXHIBIT A

Agreement No. LT-115095

The Property

All of Section 36, less and except the West 1/2 of the Northwest 1/4, Township 3 North, Range 71 West of the 6th P.M., County of Boulder, State of Colorado,

AND

All of Section 16, Township 1 North, Range 71 West of the 6th P.M., County of Boulder, State of Colorado, less and except U.S. Mining Patents 45377, 45265, 36304, 167992; and excepting State Mining Patents No. 1, No. 2, and No. 3; and excepting State Land Board Patents 7759, 7875, 7201, 7658, 7907, 7705, and 8558.

Altogether containing 716.61 acres, more or less.



Board of County Commissioners

December 6, 2022

Fidelity National Title Company
655 South Sunset Street, Suite A
Longmont, CO 80501

Attention: Rebecca Ringman

Re: Commitments for Title Insurance No. F18796 and F18802; HVR and Bald Mountain
– State Land Board Parcels

Dear Ms. Ringman:

The County of Boulder is the purchaser of the following described real property located in the State of Colorado, County of Boulder:

SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.

In order to remove pre-printed exception No. 4 of Schedule B on the owner's policies to be issued to the County of Boulder on the above-described property, the County of Boulder certifies that no improvements have been made on the property by the County and there are no existing or outstanding bills or obligations to any contractors, sub-contractors or suppliers for materials supplied or labor performed, commenced or contracted for, including but not limited to excavation, demolition, engineering or architectural fees.

COUNTY OF BOULDER,
a body corporate and politic

By: _____
Marta Loachamin, Chair
Board of County Commissioners

Matt Jones County Commissioner **Claire Levy** County Commissioner **Marta Loachamin** County Commissioner

Boulder County Courthouse • 1325 Pearl Street • Boulder, Colorado 80302 • Tel: 303-441-3500 • Fax: 303-441-4525
Mailing Address: P.O. Box 471 • Boulder, CO 80306 • www.BoulderCounty.org • commissioners@bouldercounty.org

EXHIBIT A

Legal Description

Heil Valley Ranch Parcel:

All of Section 36, less and except the West 1/2 of the Northwest 1/4, Township 3 North, Range 71 West of the 6th P.M., County of Boulder, State of Colorado.

Bald Mountain Parcel:

All of Section 16, Township 1 North, Range 71 West of the 6th P.M., County of Boulder, State of Colorado,
less and except U.S. Mining Patents 45377, 45265, 36304, 167992; and excepting State Mining Patents No. 1, No. 2, and No. 3; and excepting State Land Board Patents 7759, 7875, 7201, 7658, 7907, 7705, and 8558.