

THIS LEASE HAS IMPORTANT LEGAL CONSEQUENCES. THE PARTIES SHOULD CONSULT LEGAL COUNSEL BEFORE SIGNING.

LEASE

This Lease (the "**Lease**") is made and entered into this ____ day of _____, 2013, by and between Durango School District 9R ("Landlord") and the City of Durango, Colorado, a Municipal Home-Rule Corporation ("Tenant")

In consideration of the payment of the Rent (as defined below); all costs, charges, and expenses which Tenant assumes, agrees, or is obligated to pay to Landlord, and the performance of the promises by Tenant set forth below, Landlord hereby leases to Tenant, and Tenant hereby accepts the Property (as defined below), subject to the terms, provisions and conditions set forth in the Lease.

1. **Property:** Landlord is the owner of certain real estate in the City of Durango, La Plata County, Colorado, commonly known as Buckley Park, located north of 12th Street, east of Main Avenue adjacent to the School District 9R Administration Building, which Property is legally described on Exhibit A hereto attached, the contents of which are incorporated by reference herein (the "Property"). The Property is currently unimproved, other than park improvements consisting of trees, vegetation and irrigation systems. Landlord agrees that this Lease covers the entire Property, as described on **Exhibit A**. The Landlord's Board of Education has made a finding that the Property is not currently needed for Landlord's purposes and is available for rental pursuant to CRS 22-32-110(1)(f).

2. **Term:** Landlord Leases the Property to Tenant from twelve o'clock noon on the ____ day of _____, 2013, until 11:59 p.m. on the ____ day of _____, 2023 (the "**Primary Lease Term**"). In addition to the Primary Lease Term, Landlord grants to Tenant two successive options of ten (10) years each, to extend the term of the lease at the expiration of the Primary Lease Term and subsequently at the expiration of the first option period if the option to renew is validly exercised. Such options shall be conditional upon Tenant not being in default at the time the option is exercised by Tenant, and the Landlord determining that the Property is still not needed for Landlord's purposes. The option periods herein described shall automatically take effect, unless Tenant notifies Landlord in writing that Tenant does not desire to renew the Lease for the additional option term, or unless Landlord notifies Tenant in writing that Landlord needs the Property for Landlord's purposes. Any such written notification by either party shall be provided to the other party at least six (6) months prior to the expiration of the Primary Lease Term, and again at least six (6) months prior to the expiration of the first option term. Such notice shall be provided to each party at that party's address hereinafter set forth. Subject to Tenant's performance of all obligations under this Lease, including, without limitation, the payment of rent, Tenant shall enjoy quiet and peaceful possession of the Property.

3. **Rent:** Rental for the Primary Lease Term shall be the sum of \$1,000, payable in full at the time of execution of this Lease. Unless otherwise provided in the Lease, all payments due under the Lease shall be mailed, or delivered to Landlord at 201 East 12th Street, Durango, Colorado 81301. Notwithstanding the payment of rent as herein described, Landlord shall retain the ability to use the property for School District 9-R functions and activities pursuant to a schedule of use mutually acceptable to the parties.

Rent payable during the first and second option periods shall be the sum of \$1,000 for each ten year option term, with such rent to be payable within 60 days after Tenant exercises the option to renew pursuant to the procedures set forth in Paragraph 2 above.

4. **Security Deposit:** No security deposit shall be required from Tenant.

5. **Use:** The Property shall be used by Tenant for public purposes, including, but not limited to public functions, gatherings, events and activities. Tenant shall not grant exclusive use of the Property to any

third-party for a period in excess of 72 hours, without prior written consent from Landlord, which consent shall not be unreasonably delayed, conditioned or denied.

6. **Utilities:** During the Primary Lease Term and any option or renewal period, Tenant shall be responsible for payment of all utility charges pertaining to the Property, inclusive of water charges for irrigation.

7. **Maintenance, Trash Removal, Snow Removal:** During the Primary Lease Term and any option or renewal period, Tenant shall, at Tenant's sole expense, be responsible for maintenance of the Property, which shall include irrigation, fertilization, weed removal, tree maintenance, mowing and trimming. The grass areas on the Property shall be maintained, mowed, weeded and irrigated in the same manner that the Tenant maintains other park properties within the City. Trees on the Property shall be maintained consistent with the practices Tenant utilizes for trees located within other park properties in the City.

During the Primary Lease Term and any option or renewal period, Tenant shall be responsible for removal of snow and ice from sidewalks adjacent to and abutting the Property, or driveways and parking areas serving the Property, if any. Tenant shall also assume and be responsible for trash removal from the Property, including specifically, the removal of all trash and debris following any event for which the Property is utilized.

8. **Taxes:** Tenant shall be solely responsible for any applicable taxes or assessments levied against the Property during the Primary Lease Term or any renewal or option term. Tenant's obligations hereunder shall specifically exclude any state, federal or local income or sales taxes owed by Tenant or Landlord.

9. **Insurance:** During the Primary Lease Term and any option or renewal period, Tenant shall provide comprehensive liability coverage through the Colorado Intergovernmental Risk Sharing Agency (CIRSA) comparable to the coverage obtained and maintained by Tenant with respect to other City parks and recreational facilities. Tenant shall, prior to the execution of this Lease, provide Landlord with a Certificate of Coverage evidencing such insurance coverage, which Certificate shall name Landlord as an additional insured, as its interests may appear. The Certificate of Coverage shall include provisions which prohibit the cancellation or material modification of coverage without written notice to Landlord at least 30 days in advance of any such cancellation or modification.

10. **Condition of the Property and Representations:** Tenant is familiar with the physical condition of the Property. Except as may otherwise be provided in this Lease, Landlord makes no representations or warranties as to the physical condition of the Property, or the suitability of the Property for Tenant's intended use. The Property is rented to Tenant "as is," in its current condition, and all warranties are hereby expressly disclaimed. Landlord further makes no representations, or warranties as to whether Tenant's intended use will necessitate changes, or alterations to the Property in order to comport with local, state, or federal laws and regulations. Such laws and regulations include, but are not limited to: health code regulations, access regulations (including, but not limited to, the Americans with Disabilities Act), and zoning regulations. Tenant understands and agrees that in the event actions, alterations, or improvements are required in order to bring the Property into compliance with any local, state, or federal laws and regulations because of Tenant's intended use, Tenant shall be solely responsible for any and all associated costs and expenses related thereto. Subject to the protections and monetary limits on liability afforded by the Colorado Governmental Immunity Act, as now existing or hereafter amended, Tenant further indemnifies and agrees to hold Landlord harmless from any and all claims and liabilities that may arise by virtue of Tenant's use of the Property in violation of any local, state or federal laws or regulations.

Landlord acknowledges that the 'mud bench' located at the western side of the Property adjacent to Main Avenue may be removed by Tenant without violating any term or condition of this Agreement.

11. **Use of Property:** Tenant, in consideration of the leasing of the Property agrees as follows:

a. **Use of Property:** To use and occupy the Property solely as and for the use specified in

Paragraph 5 of the Lease. Landlord's consent to the aforementioned use is not an assurance, or warranty that the Property' attributes are sufficient for Tenant's use. Tenant represents and warrants that it has conducted sufficient due diligence to assure itself that the Property is suitable for its use, and that such use is permitted by applicable law.

b. **Signage:** Tenant shall be permitted to maintain and replace signs on the Property, provided all signage is in compliance with applicable ordinances and regulations including, but not limited to, sign and design ordinances.

c. **Legal Compliance / Use of Alcohol:** Tenant and its licensees and invitees shall comply with and abide by all federal, state, county, and municipal laws and ordinances in connection with the occupancy and use of the Property. Tenant and its licensees and invitees shall not use the Property in any way that may result in an increase of the rate or cost to the Landlord to insure the Property. No hazardous or dangerous activities are permitted upon the Property.

Landlord acknowledges that functions sponsored or allowed by Tenant on the Property may involve the consumption of alcoholic beverages. Notwithstanding the policy of the Landlord to prohibit the use or consumption of alcohol on property owned by the Landlord, and to the extent otherwise provided by law, Landlord acknowledges that alcohol may be consumed on the Property during the term of the Lease and that such use or consumption does not violate the terms of the Lease. Tenant and its licensees and invitees may not possess, or consume alcoholic beverages on the Property unless they are of legal age. Tenant hereby covenants and agrees to use its reasonable efforts to prevent and preclude its employees, guests, invitees, etc. from illegal conduct involving the use of alcohol on the Property.

d. **Additional Prohibitions:** Neither Tenant nor its volunteers, employees, guests, or invitees shall act in any manner that would interfere with, or be a nuisance to, other invitees of the Property, or adjacent property owners, or that would interfere with those other parties' quiet enjoyment of their respective properties. Said prohibition includes, but is not limited to, loud noises, loud music, noxious or unpleasant odors, and disruptive behavior or actions. Notwithstanding the foregoing, Landlord acknowledges and understands that Tenant may, from time to time, sponsor or allow live entertainment on the Property in conjunction with City events. Tenant shall not permit any portion of the Property to be used in a manner that may endanger the property of Landlord, or any person living near the Property. Tenant shall keep all portions of the Property in a clean, safe, and sanitary condition.

e. **Pets and Animals:** Pets or animals shall be permitted upon the Property in accordance with applicable ordinances of the City of Durango.

f. **Storage/Trash:** Tenant shall store all personal property entirely within the Property. Tenant shall store all trash and refuse in adequate containers within the Property, which Tenant shall maintain in a neat and clean condition so as not to create any health or fire hazard.

g. **Hazardous Material Prohibited:** Tenant shall not cause or permit any hazardous material to be brought upon, kept or used on, or about the Property by Tenant, its agents, employees, contractors, or invitees. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of hazardous material on the Property caused, or permitted by Tenant results in contamination of the Property, then Tenant shall, subject to the protections and monetary limits on liability afforded by the Colorado Governmental Immunity Act, as now existing or hereafter amended, indemnify, defend, and hold Landlord harmless from any and all resulting claims, judgments, damages, penalties, fines, costs, liabilities, or losses.

h. **Tobacco:** The parties agree that during the Primary Lease Term and any option or renewal period, the Property shall not be considered "school property" for purposes of Sections 22-32-109(1)(bb), and 25-14-103.5, C.R.S., prohibiting possession or use of tobacco products on school property. Tobacco use and

possession shall be permitted upon the Property in accordance with applicable ordinances of the City of Durango.

i. **Existing Use Agreements.** The Landlord has entered into use agreements that affect the property with the parties listed on Exhibit B, attached hereto and incorporated herein, and this Lease is subject to such existing agreements. Upon request Landlord will provide documentation in its possession of any such existing agreements. Tenant shall be entitled to collect any rentals due under such existing agreements during the Primary Lease Term and any option or renewal terms.

j. **Quiet Enjoyment;**

(i) Landlord agrees that upon Tenant paying the Rent and performing Tenant's obligations under the Lease, Tenant shall peacefully and quietly have, hold, and enjoy the Property throughout the Term or until the Lease is terminated pursuant to its terms. Landlord shall not be responsible for the acts or omissions of any third party that may interfere with Tenant's use and enjoyment of the Property.

(ii) Notwithstanding the foregoing, Landlord shall be entitled, at any time, to enter upon the Property for the purpose of surveying, permitting, soil testing, and other similar activities in connection with defining and designing Landlord's future intentions for the use of the Property, if any, that may occur during the term of this Lease. Landlord will endeavor to conduct such activities with minimal disruption to the Tenant's use of the property and the use of the Property by the employees, licensees and invitees of the Tenant. Landlord shall indemnify and hold Tenant harmless from and against any damage that may be incurred by Tenant as a result of the activities of Landlord, its employees, agents and independent contractors under this subparagraph.

12. **Subletting or Assignment:** Except for the 72-hour use authorized in paragraph 5 above, Tenant shall not sublet the Property or any part thereof, nor assign this Lease or any interest therein, without the prior written consent of Landlord, which consent may be withheld by Landlord at its sole discretion.

13. **Surrender of Property:** Tenant will return the Property to Landlord at the expiration of the Lease in as good order and repair as the Property enjoyed at the commencement of this Lease.

14. **No Waiver:** No assent, express or implied, to any Default of any one or more of the agreements herein shall be deemed to be a waiver of any succeeding or other Default.

15. **Tenant's Duty to Repair:** Tenant shall, at Tenant's sole cost and expense, maintain the Property consistent with the obligations set forth in Paragraph 7 of this Lease. This obligation shall include specifically the obligation to preserve and maintain any improvements to the Property, including, but not limited to picnic benches, picnic tables, and other similar amenities that may be placed on the Property by Tenant for public usage. Tenant repairs shall include all replacements, renewals, alterations or betterments ("Tenant Repairs").

16. **Tenant Improvements:** Tenant shall not build or construct any improvements, including but not necessarily limited to any building or other structure, fence, earthen berm, light pole, concrete pad, tennis court, other court for a sport or game, or concrete walkway upon the Property without the Landlord's prior written approval, which approval shall not be unreasonably delayed, conditioned or denied. Tenant shall be solely responsible for any and all approved improvements or alterations to the Property ("**Tenant Work**").

17. **Tenant Work and Repairs / Compliance with Codes / Mechanics Liens:** Tenant shall procure all necessary permits and approvals, including without limitation the Landlord's approval, before undertaking any Tenant Work or Tenant Repairs. Tenant shall perform all Tenant Work or Tenant Repairs in a good and workmanlike manner. Tenant shall utilize materials of good quality. Tenant shall comply with all laws, ordinances, and regulations, including, but not limited to, building, health, fire, and safety codes. Subject to the protections and monetary limits on liability afforded by the Colorado Governmental Immunity Act, as now existing or hereafter amended, tenant hereby agrees to hold Landlord and Landlord's agents harmless and indemnified from all injury, loss, claims, or damage to any person or property (including the cost for defending against the foregoing) occasioned by, or growing out of Tenant Work or Tenant Repairs. Tenant shall promptly

pay when due the entire cost of any Tenant Work or Tenant Repairs on the Property undertaken by Tenant, so that the Property shall at all times be free of liens for labor and materials. Subject to the protections and monetary limits on liability afforded by the Colorado Governmental Immunity Act, as now existing or hereafter amended, tenant hereby agrees to indemnify, defend, and hold Landlord harmless of and from all liability, loss, damages, costs, or expenses, including reasonable attorneys' fees, incurred in connection with any claims of any nature whatsoever for work performed for, or materials, or supplies furnished to Tenant, including lien claims of laborers, materialmen, or others. Should any such liens be filed or recorded against the Property or the Improvements with respect to work done for, or materials supplied to, or on behalf of Tenant, or should any action affecting the title thereto be commenced, Tenant shall cause such liens to be released of record within five (5) days after notice thereof. If Tenant desires to contest any such claim of lien, Tenant shall nonetheless cause such lien to be released of record by the posting of adequate security with a court of competent jurisdiction as may be provided by Colorado's mechanic's lien statutes. If Tenant shall be in default in paying any charge for which such mechanic's lien or suit to foreclose such lien has been recorded or filed and shall not have caused the lien to be released as aforesaid, Landlord may (but without being required to do so) pay such lien or claim and any associated costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due from Tenant to Landlord as Additional Rent.

DEFAULT, NOTICE AND REMEDIES

18. **Default:** If Tenant is in arrears in the payment of any installment of Rent, or any portion thereof, or is in violation of any other covenants or agreements set forth in the Lease (a "**Default** ") and the Default remains uncorrected for a period of 30 days after Landlord has given written notice thereof pursuant to applicable law, then Landlord may, at Landlord's option, undertake any of the following remedies without limitation:

(a) declare the Term of the Lease ended;

(b) terminate Tenant's right to possession of the Property and reenter and repossess the Property pursuant to applicable provisions of the Colorado Forcible Entry and Unlawful Detainer statute;

(c) recover all present and future damages, costs and other relief to which Landlord is entitled;

(d) pursue Landlord's lien remedies;

(e) pursue breach of contract remedies; or

(f) pursue any and all available remedies in law or equity.

In the event possession is terminated by reason of a Default prior to expiration of the Lease Term, Tenant shall remain responsible for Rent, subject to Landlord's duty to mitigate damages.

19. **Abandonment:** In the event of an abandonment of the Property, Landlord may, without being obligated to do so and without terminating this Lease, retake possession of the Property and exercise any of the following remedies:

(a) Tenant shall be liable for all damages or losses sustained by Landlord, including without limitation, the balance of the Rent, if any, court costs and reasonable attorney's fees.

(b) Tenant's personal property and the personal property of any guest, invitee, licensee, or occupant may be removed from the Property and left on the street or alley, or, at Landlord's option, it may be removed and stored, or disposed of at Landlord's sole discretion. Landlord shall not be deemed a bailee of the property removed and Landlord shall not be held liable for the property. Subject to the protections and monetary limits on liability afforded by the Colorado Governmental Immunity Act, as now existing or hereafter amended, Tenant shall indemnify Landlord for any expense in defending against any claim by Tenant or third party and for any legal expense, cost, fine, or judgment awarded to a third-party as a result of Landlord's action pursuant to this subsection.

(c) Landlord may enter the Property, clean and make necessary repairs, and charge Tenant for the costs so incurred; provided that the cleaning and repairs are obligations of the Tenant.

(d) Tenant shall peacefully surrender and deliver up possession of the Property.

20. **Negligent Damages:** Tenant shall be responsible for and reimburse Landlord for any and all damages to the Property or persons and property therein caused by the grossly negligent, reckless or intentional

acts of itself, its employees, agents, invitees, licensees, or contractors.

21. **Waiver of Liability:** Landlord and Landlord's agents and employees shall not be liable for, and Tenant waives all claims related to, damage to property sustained by Tenant, employees, agents or contractors, or any other person claiming through Tenant, resulting from any accident in or upon the Property or the Property of which they shall be a part, including, but not limited to, claims for damage resulting from any equipment or appurtenances becoming out of repair.

22. **Third Party Liability:** Landlord shall not be liable to Tenant for any damage by or from any act or negligence of any co-tenant or other occupant of the Property, or by any owner or occupant of adjoining or contiguous property. Landlord shall not be liable for any injury or damage to persons or property resulting in whole or in part from the criminal activities of others.

23. **Landlord Insurance:** Insurance shall be procured by Landlord in accordance with its sole discretion. All awards and payments thereunder shall be the property of the Landlord, and Tenant shall have no interest in the same. Notwithstanding the foregoing, Landlord agrees to obtain liability insurance required to be carried to protect Landlord's interests and adequate hazard insurance for the Property.

OTHER PROVISIONS

24. **Condemnation of Property:** Landlord's and Tenant's duties and responsibilities are as follows when destruction or condemnation of the Property occurs:

a. **Condemnation:** If the whole or part of the Property are taken by any authority for any public or quasi-public use, or purpose, then Subparagraph (b) of this Paragraph shall apply. All damages and compensation awarded for any taking shall be the sole property of Landlord.

b. **Termination of Term:** Tenant agrees that where the Property has been taken due to condemnation as described in Subparagraph (a) of this Paragraph, the Term of the Lease shall cease and terminate upon the date that possession of the Property is taken by the authority. Rent shall be prorated and payable up to the time of the cessation of the Term. Tenant shall not hold Landlord liable for any damages as a result of any of the events described in this subparagraph.

25. **Holdover:** Tenant shall vacate the Property and remove all of Tenant's personal property from the Property prior to 11:59 p.m. on the date the Term expires. Landlord may immediately commence eviction proceedings at its sole discretion. If, after the expiration of the Lease, Tenant shall remain in possession of the Property and continue to pay Rent without a written agreement as to such possession, then such tenancy shall be regarded as a month-to-month tenancy, at a monthly rental, payable in advance, equivalent to the prorated value of the last month's Rent paid under the Lease, and subject to all the terms and conditions of the Lease.

26. **Notices:** All notices required or allowed to be sent under the lease shall be in writing and either:
(a) delivered as provided by applicable law, including *inter alia*, §13-40-101, C.R.S., *et seq.* (Colorado Forcible Entry and Unlawful Detainer statute);
(b) personally delivered with proper proof of service; or
(c) sent via U.S. first class mail, postage prepaid.

All notices required or allowed to be sent to Landlord shall be sent or delivered to the address where rent is to be paid. All notices required or allowed to be sent to Tenant shall be sent to the following address:

City Manager
City of Durango
949 East 2nd Avenue
Durango, Colorado 81301

Notwithstanding the foregoing, all notices involving or concerning §13-40-101, C.R.S., shall be delivered as provided by statute.

27. **Attorneys Fees;** In the event Tenant or Landlord fails to perform any of its respective obligations under the Lease, or in the event a dispute arises concerning the meaning or interpretation of any provision of the Lease, the defaulting party, or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees.

28. **Governing Law:** This Lease shall be governed and construed in accordance with the laws of the State of Colorado. Venue shall be proper in La Plata County, where the Property is located.

29. **Amendments and Termination:** Unless otherwise provided in the Lease, the Lease may only be amended, modified or terminated by a written instrument executed by Landlord and Tenant.

30. **Captions:** The paragraph titles or captions in the Lease are for convenience only and shall not be deemed to be part of the Lease.

31. **Pronouns; Joint and Several Use of Certain Terms;** Whenever the terms referred to in the Lease are singular, the same shall be deemed to include the plural, as the context indicates, and vice versa. All references to "Landlord" shall mean Landlord or its authorized agents, contractors or employees, as may be required by the specific context. All references to "Tenant" shall mean each and every person comprising Tenant, or an individual person, or combination of persons, comprising Tenant as may be required by the specific context.

32. **Waivers:** No right under the Lease may be waived except by written instrument executed by the party who is waiving such right. No waiver of any breach of any provision contained in the Lease shall be deemed a waiver of any preceding or succeeding breach of that provision, or of any other provision contained in the Lease. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts.

33. **Heirs, Assigns, Successors:** The Lease is binding and inures to the benefit of the assigns, and successors in interest to the parties, subject to the restrictions on assignment in Paragraph 12.

34. **Time of the Essence:** Time is of the essence of the Lease, and each and all of its provisions.

35. **Corporate Authorization:** The Tenant is a corporation, each individual executing the Lease on behalf of the corporation represents and warrants that he or she is duly authorized to execute and deliver the Lease on behalf of said corporation in accordance with a duly adopted resolution or motion of the governing body of the corporation and that the Lease is binding upon the corporation in accordance with its terms.

36. **Severability:** If any term, covenant, condition or provision of the Lease, or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable, the remainder of the Lease, or the application of such term, or provision to persons, or circumstances other than those to which it is held invalid, or unenforceable, shall not be affected thereby, and each provision of the Lease shall be valid and shall be enforced to the fullest extent permitted by law.

37. **Other Applicable Laws:** Federal, state, county or municipal laws and ordinances may affect the Property, the Lease, and the Landlord / Tenant relationship that are not specifically addressed in the Lease. Landlord and Tenant should consult legal counsel prior to execution of the Lease to ascertain such information.

38. **Additional Provisions:** In the event there are any additional agreements between the parties or provisions with respect to the Property, an Addendum may be attached to the Lease, which shall be incorporated by this reference as a part of the Lease.

IN WITNESS WHEREOF, the parties have executed this Lease the day and year first above written.

LANDLORD:

TENANT:

DURANGO SCHOOL DISTRICT 9R

CITY OF DURANGO, COLORADO

Title

Title

Date: _____

Date: _____

THE PARTIES SHOULD INITIAL EACH PAGE OF THE LEASE. EACH PARTY SHOULD RECEIVE A SIGNED COPY OF THE LEASE