

## TRAIL EASEMENT

THIS TRAIL EASEMENT ("Easement") is made this \_\_\_ day of \_\_\_\_\_, 2023, by and between the BOARD OF EDUCATION OF THE DOUGLAS COUNTY SCHOOL DISTRICT RE-1, a political subdivision of the State of Colorado (hereinafter "Grantor"), whose address is 620 Wilcox Street, Castle Rock, Colorado 80104, and the HIGHLANDS RANCH METROPOLITAN DISTRICT, a political subdivision of the State of Colorado (hereinafter "Grantee"), whose address is 62 Plaza Drive, Highlands Ranch, Colorado, 80129. Grantor and Grantee are referred to collectively herein as the "Parties" and singularly as a "Party."

### WITNESSETH:

WHEREAS, Grantor is the owner of real property commonly known as Mountain Vista High School and located at 10585 Mountain Vista Ridge, Highlands Ranch, Colorado 80126 ("Grantor Property"); and

WHEREAS, Grantee desires an easement on, over, and across a portion of the Grantor Property in the area depicted on Exhibit A, attached hereto and incorporated herein (the "Easement Area") to construct, install, remove, replace, add to, maintain, and repair a multiple-use, public recreation trail (collectively, the "Improvements"); and

WHEREAS, Grantor is willing to grant to Grantee a perpetual and nonexclusive easement for such purposes on, over, and across the Easement Area subject to the terms and conditions of this Easement.

NOW THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration paid by Grantee to Grantor, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are incorporated herein by reference.
2. Grant of Perpetual and Non-Exclusive Easement. Grantor hereby grants and conveys to Grantee and its agents, employees, and contractors a non-transferable, perpetual, and non-exclusive easement in gross on, over, and across the Easement Area to construct, install, remove, replace, add to, maintain, and repair the Improvements, together with the right of ingress to and egress from the Easement Area by means of existing roads located on or adjacent to the Grantor Property.
3. Legal Description of Easement Area. Grantor is initially providing Grantee rights in and to the Easement Area as generally depicted on Exhibit A because a surveyed legal description of the Easement Area is not yet available and there is a need to acquire and construct the Improvements. Grantor and Grantee, through their designated representatives, shall, within sixty (60) days after substantial completion of the Improvements, mutually agree upon the location of the Easement Area based upon a surveyed legal description which shall be provided by Grantee at its sole cost and expense, and shall substitute Exhibit A with such surveyed legal description of the location. Upon the final determination of the location of the Easement Area, the revised Exhibit A shall be recorded with this Agreement and thereafter be subject to this Agreement; provided, however, if the surveyed legal description is not agreed upon within six (6) months of the date of this Agreement, this Agreement shall terminate and be of no further force and effect. In such event, the Grantee, at its sole cost and expense,

shall remove the Improvements and shall restore the surface of the Easement Area, and any areas disturbed by Grantee, as nearly as reasonably possible to their original grade and condition.

4. Use by Grantor. Grantor retains the right to use the surface of the Easement Area for any purpose which does not unreasonably interfere with the Grantee's use of the Easement Area.

5. Maintenance. Grantee, at Grantee expense, shall construct, install, remove, replace, add to, maintain, repair, and operate the Improvements in a good and workmanlike manner.

6. No Additional Uses. Use of the Easement Area by Grantee, its employees, authorized agents and contractors shall be for the sole and exclusive purposes contained herein, and this Easement shall not be construed as a dedication of the Easement Area or a grant of uses beyond those contemplated herein.

7. Notice. Grantee shall notify Grantor a minimum of twenty-four (24) hours prior to entering the Easement Area to commence construction of the Improvements or to perform any construction, installation, removal, replacement, addition, maintenance, repair, or operation activities, except in the event of an emergency, in which case notice shall be provided as soon as practicable.

8. Repair and Restoration. Upon the completion of any work authorized by this Easement, Grantee, at Grantee expense, shall restore the surface of the Easement Area, and any areas disturbed by Grantee, as nearly as reasonably possible to their original grade and condition. Grantee, at Grantee expense, shall revegetate any disturbed native vegetation within and adjacent to the Easement Area with the seed mixture currently approved by the Douglas County Department of Public Works Engineering.

9. Removal of Equipment. Upon completion of any work authorized by this Easement, Grantee shall promptly remove all materials, debris and equipment used to perform the work from the Easement Area, including construction equipment and materials staged and/or stored within the Easement Area, if any.

10. Fencing. If any permanent fencing located within and/or adjacent to the Easement Area is impacted by Grantee's activities, Grantee shall reset or replace the disturbed permanent fencing with like kind materials along the boundary of the Easement Area, or at a location to be mutually determined between the Parties. Grantor shall be prohibited from placing or constructing any fencing or structures within the Easement Area, unless specific written permission is obtained from Grantee.

11. Release. Grantee, for itself and those claiming through Grantee, hereby releases Grantor and its directors, employees, agents, mortgagees, licensees, contractors, guests, and invitees from any and all liability, loss, claims, demands, damages, penalties, fines, interest, costs, and expenses for damage that may arise from operations on, or use of, the Easement Area by Grantee or its employees, agents, contractors, or invitees.

12. Insurance. Grantee will secure and maintain commercial general liability insurance sufficient to cover any liability for the actions of the Grantee, its agents, employees, contractors, and invitees in the Easement Area, in an amount determined in the reasonable discretion of Grantee and, upon request of Grantor, Grantee shall provide Grantor with evidence of such insurance.

13. Environmental. Grantee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Easement Area by Grantee, its agents, employees or contractors, except those customarily used with regard to the equipment required to perform the maintenance and repair of the Improvements. Without limiting the foregoing, if the presence of any Hazardous Material on the Easement Area caused or permitted by Grantee results in any contamination of the Easement Area, Grantee shall promptly take all actions, at no expense to Grantor, as are necessary to return the Easement Area to the condition existing prior to the introduction of any such Hazardous Material to the Easement Area, provided that Grantor's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse effect on the Easement Area. As used in this Easement, the term "Hazardous Material" means any hazardous or toxic substance, material or waste that is or becomes regulated by any local governmental authority, the State of Colorado or the United States.

14. Mechanic's and Materialmen's Liens. Grantee covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed against the Easement Area or on Grantor's property with respect to work or services claimed to have been performed for, or materials claimed to have been furnished to, Grantee or its agents, employees, or contractors pursuant to this Easement.

15. Compliance with Laws. Grantee shall cause all activities and work on the Easement Area to be performed in compliance with all applicable laws, rules, regulations, orders and other governmental requirements.

16. Warranties and Disclaimers. Grantor makes no warranties or representations with respect to the Easement Area, including, without limitation, the condition and state of repair of the Easement Area, the suitability of the Easement Area for Grantee's intended use, or with respect to any rights which other parties may have, or claim to have, to enter upon the Easement Area by reason of access easements granted by Grantor or otherwise.

17. Appropriations. Any financial obligations of the Parties shall extend only to monies duly and lawfully appropriated and budgeted by each Party and encumbered for the purpose of this Easement.

18. No Waiver of Governmental Immunity. The Parties, and their respective directors, agents, and employees, are relying on, and do not waive or intend to waive by any provision of this Easement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., as amended.

19. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.

20. Recording. Upon full execution hereof, Grantee shall record this Easement in the real property records of Douglas County, Colorado.

21. No Third-Party Beneficiaries. Nothing in this Easement shall be construed to give any rights or benefits to anyone other than the Parties.

22. Severability. In the event any of the provisions of this Easement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining provisions

shall not be affected. Should either Party fail to enforce a specific term of this Easement, it shall not be a waiver of a subsequent right of enforcement, nor shall it be deemed a modification or alteration of the terms and conditions contained herein.

23. Entire Agreement. This Easement sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement, all of which are merged herein.

24. Amendment. Any amendment shall be in writing and signed by both Parties.

25. Venue. Venue for any action hereunder shall be in the District Court of the County of Douglas, State of Colorado.

26. Counterparts. This Easement may be executed in two (2) or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the Parties have executed this Easement on the date set forth above.

**GRANTOR:**

DOUGLAS COUNTY SCHOOL DISTRICT RE-1

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
 Secretary

STATE OF COLORADO )  
 ) ss.  
 COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_\_\_  
 by \_\_\_\_\_ as \_\_\_\_\_ of the Douglas County School District RE-1 and  
 \_\_\_\_\_ as the Board Secretary.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

**GRANTEE:**

HIGHLANDS RANCH METROPOLITAN DISTRICT

By \_\_\_\_\_

Attest:

\_\_\_\_\_

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_, as \_\_\_\_\_ of the Highlands Ranch Metropolitan District.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

Site Plan

4868-6986-6837, v. 2