

AGRICULTURAL LAND LEASE

This lease is entered into this ____ day of _____, 201__ by and between the Board of County Commissioners of Pitkin County, Colorado, hereinafter "Landlord" or "County", and _____, hereinafter "Tenant".

Now therefore, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. Purpose and Intent. Landlord and Tenant intend that the property, all appurtenances, water rights, easements and improvements be used for active agricultural production. Agricultural production shall continue during the entire term of the lease without interruption, consistent with accepted agricultural practices and the agriculture production plan for the property proposed by Tenant and accepted by Landlord, in writing, and made part of this lease.

2. Leased Property. Landlord in consideration of the terms contained herein leases to the Tenant, pursuant to the attached Annual Operating Plan, the following described real property: _____, together with all appurtenant water rights, consisting of the following: _____, easements and improvements ("Property").

3. Lease Term. Unless earlier terminated by operation of this lease, the lease term shall be in effect as of the date the lease is entered above, to December 31, _____. This lease shall not be renewed or extended except through express written amendment to this lease. Tenant is expressly prohibited from holding over beyond the expiration of the lease term without express written permission of Landlord.

4. Rent. Tenant agrees to pay Landlord rent at the rate of \$_____ for each calendar year or any portion of a calendar year that this lease is in effect. This amount shall be the annual rent for the Property. The annual rent shall be due in full to the Landlord on April 1, _____ each year or portion of a year that the lease is in effect. Failure to pay rent by this date constitutes a breach of this lease.

AGRICULTURAL PROVISIONS

1. Soil Testing. Except as modified by the Annual Operating Plan, it shall be the responsibility of the Tenant to test the soil of the Property twice a year. Soil samples shall be gathered from a representative portion of the leased property. Soil samples will be gathered during the month of May and during the month of September. Soil samples will be tested through the Colorado State University extension office.

2. Weed Control. Tenant is responsible for the removal of all noxious weeds as defined in the Colorado Noxious Weed Act. Removal of noxious weeds shall be before individual plants go to seed. The use of any herbicide shall be particularly approved by the County as part of the Annual Operating Plan for the Property.

3. Pest Control. Tenant may engage in control, removal, or a ratification of any pests or predators only with the express approval of the County. Methods for pest control shall be contained in the Annual Operating Plan.

4. Fertilizers. The application of any and all fertilizer agents shall be based upon the results of the soil tests and with the recommendation of Colorado State University. The intent of the application of any fertilizer will be to restore or improve soil conditions. The type of fertilizer to be used as well as its application schedule and application method shall be contained within the Annual Operating Plan for the Property.

5. Livestock. Livestock may be maintained on the Property consistent with the Annual Operating Plan. Livestock shall be penned or pastured so as not to cause the destruction of pasture grasses, soil depressions or swales, or in any way that would negatively affect irrigation practices. Watering of livestock shall be conducted in approved areas consistent with the Annual Operating Plan.

6. Vehicle and Machinery Storage. The storage of vehicles or machinery not actively used as part of the agricultural operation is prohibited. The maintenance of vehicles and machinery used in agricultural operations may be conducted only in designated areas. Any spill or loss of any fluid associated with vehicles or agricultural machinery must be collected and disposed of off the Property consistent with applicable law.

7. Existing Vegetation. Existing hedgerows and brush areas shall not be disturbed except as specifically allowed in writing by the County or as incorporated into the Annual Operating Plan.

8. Emblements. Tenant shall be entitled to all emblements if the termination of the lease is not a result of Tenant's breach and shall retain harvest rights through the end of the growing season. If the lease is terminated or canceled as a result of Tenant's default and failure to cure in accordance with the terms of this lease, all agricultural products shall be harvested or otherwise gathered and sold, if possible and reasonably practical, with the proceeds of such sale going to Landlord to cover its costs and the remainder shared between Landlord and Tenant based on the percentage of the growing season each was in possession of the Property. The Landlord will not possess a security interest in the emblements.

9. Fences. Tenant shall be responsible for maintaining all fences and gates in working condition as necessary for the Tenant's proposed use, normal wear and tear excepted. Removal of fencing is permitted with Landlord's approval and must be reinstalled upon termination of this lease if Tenant does not obtain a concurrent lease on the Property.

10. Water Rights. Tenant shall utilize all water rights associated with the Property. Landlord may enter the property to maintain a record of diversion or delivery amounts and the areas of the Property watered. Tenant shall not make any improvements or changes in the irrigation infrastructure without written permission of the Landlord. All irrigation improvements become the property of the Landlord at the end of the lease. Tenant shall maintain all ditches, laterals, tail runs, pipes, splitter boxes, and all other infrastructure associated with the use of water on the Property. Maintenance shall include but not be limited to burning, cleaning and dredging ditch courses, clearing pipelines, keeping headgates and diversion structures in workable order.

11. Erosion. Tenant shall not engage in any activity which results in the loss of soil or changes the topography or grade of the Property. All soil disking and tilling must be approved in

the Annual Operating Plan. Irrigation activity must be temporarily halted if any ditch, lateral, pipeline or other irrigation infrastructure becomes damaged or inoperable.

12. Annual Operating Plan. An Annual Operating Plan shall be developed for the County by the Open Space and Trails Department, with the Tenant's input, within two months of the Tenant entering into this lease and will be reviewed and amended, if necessary, at least annually (the "Annual Operating Plan") and incorporated into this lease. Landlord may terminate this lease if Tenant fails to comply with any of the material provisions of the Annual Operating Plan. All Annual Operating Plans shall include the type of agricultural activity to be conducted on the Property and describe the areas of the Property that will be used for specific agricultural activities. The plan will propose the anticipated water use and whether any changes are needed to the existing irrigation infrastructure. The plan shall address any herbicide or pesticide applications to be used on the Property and whether or not there are pests or predators to be removed or eradicated from the Property. The plan shall include the anticipated season dates for the actual agricultural activity as well as the winter cover for the areas of the Property on which agricultural activities were conducted. The plan shall include the types, method of application and timing for the application of any fertilizer to be used. Amendments to the plan may be executed by the Open Space and Trails Department.

GENERAL PROVISIONS

1. Insurance. Tenant shall procure and maintain for the term of the lease, insurance against claims for injury to persons or damage to Property which may arise from or in connection with occupancy and use of the Property.

The insurance requirements herein are minimum requirements for this lease and in no way limit the indemnity covenants contained in this lease. Tenant's insurance shall be primary and non-contributory with any insurance or self-insurance purchased by the Landlord. The insurance companies issuing the policy or policies hereunder shall have no recourse against the County of Pitkin for payment of any premiums or for assessments under any form of policy. Any and all deductibles or self-insured retentions in the above-described insurance policies shall be assumed by and be for the amount of, and at the sole expense of the Tenant.

Tenant shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverages. Tenant is not relieved of any liability or other obligations assumed or pursuant to the lease by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

A. Coverage and Limits of Insurance: Tenant shall provide coverage with limits of liability not less than those stated below. An umbrella and/or excess liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

1. Statutory Workers' Compensation: Colorado statutory minimums
 - a. Policy shall contain a waiver of subrogation against the County.

b. This requirement shall not apply when Tenant, contractor or employee is exempt under Colorado Workers' Compensation Act., AND when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

Minimum Limits:

Coverage A (Workers' Compensation)	\$ Statutory
Coverage B (Employers Liability)	\$ 500,000

2. Commercial General Liability – ISO 1CG 0001 form or equivalent
(*With County named additional insured*)

Minimum Limits:

General Aggregate	\$ 500,000
Products/Completed Operations Aggregate	\$ 500,000
Each Occurrence Limit	\$ 500,000
Personal/Advertising Injury	\$ 500,000
Fire Damage (Any One Fire)	Replacement Value of any Structures
Medical Payments (Any One Person)	\$ 5,000

Coverage to include:

- Premises and Operations
- Personal / Advertising Injury
- Products / Completed Operations
- Liability assumed under an Insured Contract (including defense costs assumed under contract)
- Independent Contractors
- Additional Insured—Owners, Lessees or Contractors Endorsement, ISO Form 2010 (2004 Edition or equivalent)
- Additional Insured—Owners, Lessees or Contractors Endorsement, ISO CG 2037 (2004 Edition or equivalent)
- The policy shall be endorsed to include the following additional insured language on the Additional Insured Endorsements specified above: "County, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers named as an additional insured with respect to liability and defense of suits arising out of the activities performed by, or on behalf of the Contractor, including completed operations."

B. Proof of Insurance:

1. Each insurance policy required by the insurance provisions of this lease shall provide the required coverage and shall not be suspended, voided or

canceled except after thirty (30) days prior written notice has been given to the County, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to Pitkin County Open Space and Trails Department, 530 E. Main Street, 3rd Floor, Aspen, Colorado, 81611. If the insurance carrier will not provide the required notice, the Consultant/Contractor and or its insurance broker shall notify the County of any cancellation, or reduction in coverage or limits of any insurance within seven (7) days of receipt of insurers' notification to that effect.

2. Landlord reserves the right to request and receive a copy of any policy and any policy endorsement at any time during the term of this lease.

2. Indemnity.

A. Tenant agrees to indemnify, hold harmless and, not excluding the County's right to participate, defend the County, its subsidiary, parent, associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, volunteers, and any jurisdiction or agency issuing permits for any work included in the performance of this lease, hereinafter referred to as indemnitee, from all suits and claims, including attorney's fees and cost of litigation, actions, loss, damage, expense, cost or claims of any character or any nature arising out of the work done in fulfillment of the terms of this lease or on account of any act, claim or amount arising or recovered under workers' compensation law or arising out of the failure of Tenant to conform to any statutes, ordinances, regulation, law or court decree. It is agreed that Tenant will be responsible for primary loss investigation, defense and judgment costs where this contract of indemnity applies. Pitkin County and its elected Board shall be named as an additional insured with respect to any liability arising out of the activities performed by, or on behalf of the Tenants on the Leased Property.

B. Tenant further shall investigate, process, respond to, adjust, provide defense for and defend, pay or settle all claims, demands, or lawsuits related hereto at its sole expense and shall bear all other costs and expenses related thereto, even if the claim, demand or lawsuit is groundless, false or fraudulent.

3. Assignability. Tenant agrees not to assign or sublease any part of the Property without the written consent of the Landlord.

4. Binding Arbitration. Any disputes arising out of this lease shall be subject to binding arbitration. The parties agree that any disputes concerning the terms and conditions of this lease shall be submitted and finally settled by arbitration. Arbitration shall be conducted pursuant to the rules of the American Arbitration Association and shall be presided over by the Pitkin County Hearing Officer appointed to arbitrate Pitkin County contract disputes. Costs of the arbitration shall be awarded to the substantially prevailing party.

5. Severability. In the event that any provision of this lease shall be held to be invalid or unenforceable, the remaining provisions of this lease shall remain valid and binding upon the parties hereto.

6. Integration and Modification. This lease represents the entire and integrated lease between the County and Tenant and supersedes all prior negotiations, representations, or contract, either written or oral. This lease may be amended only by written contract signed by both the County and Tenant.

7. Records. Tenant shall maintain comprehensive, complete and accurate books, records, and documents concerning its performance relating to this lease for a period of three (3) years after final payment under the lease and the County shall have the right within the three (3) year period to inspect and audit these books, records and documents, upon demand, in a reasonable manner and at reasonable times, for the purpose of determining, by accepted accounting and auditing standards, compliance with all provisions of the lease and applicable law.

8. Lease Made in Colorado. The parties agree that this lease was made in accordance with the laws of the State of Colorado and shall be so construed. Venue is agreed to be exclusively in the courts of Pitkin County, Colorado.

9. Attorney's Fees. In the event that legal action is necessary to enforce any of the provisions of this lease beyond the arbitration described in Paragraph 4 above, the substantially prevailing party, whether by final judgment or out of court settlement, shall recover from the other party all costs and expenses of such action or suit including reasonable attorney's fees.

10. Waiver. Failure of the County to exercise any right or remedy granted under this lease shall not have the effect of waiving or limiting the exercise of the County, or of any other right or remedy or the indication of such right or remedy at any future time.

11. Governmental Immunity. Tenant agrees and understands that Pitkin County is relying on and does not waive, by any provision of this lease, the monetary limitations or terms or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to Pitkin County or any of its officers, agents or employees. Further, nothing in this lease shall be construed or interpreted to require or provide for indemnification of Tenant by the County for any injury to any person or any property damage whatsoever which is caused by the negligence or other misconduct of the County or its agent or employees.

12. Notice. Any written notice required by this lease shall be deemed delivered through any of the following: (1) hand delivery to the person at the address below; (2) electronic, internet or facsimile delivery with confirmation of receipt to the e-mail address or fax number below; or (3) within three (3) days of being sent certified first class mail, postage prepaid, return receipt requested addressed as follows below. Notice by facsimile, e-mail or internet delivery

shall be deemed given upon receipt of a confirmation by sender and notice by personal delivery shall be deemed given when received.

To: Pitkin County Open Space & Trails
Attn:
530 E. Main Street, 3rd Floor
Aspen, Colorado 81611
Fax: (970) 920-5198
E-Mail Address:

With Copies

To: Pitkin County Attorney's Office
530 E. Main Street, #302
Aspen, Colorado 81611
Fax: (970) 920-5198
E-Mail: John.Ely@pitkincounty.com

To: Tenant (Contact, Address, Fax, E-Mail)

13. Default/Violation of Lease Terms. Every clause herein contained is hereby made a condition of this lease. If Tenant fails to comply with any of the material provisions of this lease, or of any present rules and regulations or any that may be hereafter prescribed by Landlord, or materially fails to comply with any duties imposed on Tenant by statute within seven (7) days after delivery of written notice by Landlord specifying the non-compliance and indicating the intention of Landlord to terminate the lease by reason thereof, Landlord may terminate this lease. At the time of default or violation, Landlord may declare all unpaid rent for the remaining term of the lease to be immediately due and payable within thirty (30) days notice to Tenant. Tenant shall be responsible to Landlord for the cost of repairs, legal fees, advertising and any other costs incurred in preparing the Property for re-renting. Tenant agrees not to return to the premises after legal removal.

14. Section Headings. Paragraph or section headings within this lease are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit or aid in the construction of any terms or provisions contained herein.

MICELLANEOUS

1. Landlord reserves the right for itself, its agents, and employees to enter the Property at any reasonable time to inspect the Property and to work and make improvements as the Landlord

shall deem necessary. Except in exigent or emergency circumstances, Landlord shall give Tenant forty-eight (48) hours notice before entering Property.

2. Landlord makes no guarantee of the productivity of the Property and assumes no liability of any condition, visible or not, which may affect agricultural productivity of the Property. Tenant agrees to accept the Property in an as is condition.

3. Tenant shall perform all routine maintenance on the improvements on the Property. Tenant shall repair any damage to the improvements on the Property that are the result of acts of third parties.

4. Tenant shall not place store or use on the Property substances that are hazardous toxic dangerous or harmful or which are defined as hazardous substances by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 USC § 9601.

5. Tenant shall not pledge mortgage or cause any lien to be recorded against the Property during the term of this lease.

6. Tenant shall not construct any building or improvement on the Property without Landlord's written consent.

7. Tenant shall not dispose of trash garbage rubbish or refuse on the Property.

8. Tenant shall not permit any commercial activity on the Property apart from those activities described in the agricultural plan.

IN WITNESS WHEREOF, the Landlord and Tenant have duly executed this lease on the day and year first above written.

TENANT:

LANDLORD:

**Board of County Commissioners of Pitkin
County**

By: _____
Date

By: _____
Chair Date

APPROVED AS TO FORM:

**John M. Ely
Pitkin County Attorney**