

## **LAND USAGE LEASE AGREEMENT**

This Lease Agreement made and entered into in duplicate at Canton, Ohio this \_\_\_\_\_ day of June, 2022, by and between the **WHITACRE GREER COMPANY** (formerly known as the **WHITACRE-GREER FIREPROOFING CO.**), an Ohio Corporation, of 1400 South Mahoning Avenue, Alliance, Ohio 44601, hereinafter called the “Lessor”, and the **STARK COUNTY PARK DISTRICT**, an Ohio Political Subdivision, of 5300 Tyner Street NW, Canton, Ohio 44718, hereinafter called the “Lessee”,

WHEREAS, Lessor is the owner of Carroll County Permeant Parcel Nos. 31-00175, 31-00602, 31-00603, 31-00604, 31-01430 and part of Carroll County Permeant Parcel No. 31-00597 situated in Rose Township, Carroll County, Ohio, totaling approximately 515 acres of land; and

WHEREAS, Lessee desires to lease said parcels of Lessor’s real property situated in Rose Township, Carroll County, Ohio, for the purpose of developing and maintaining a series of equestrian trails for public use; and

WHEREAS, Lessor is willing to lease said land to Lessee for the provision of public equestrian trails, provided Lessor retains certain rights as to the use and development of said real property.

WITNESSTH:

### **SECTION I. DESCRIPTION OF PREMISES**

Lessor leases to Lessee, and Lessee hires from Lessor, as herein provided, a number of separate parcels of real property situated in Rose Township, Carroll County, Ohio, being Carroll County Permeant Parcel Nos. 31-00175, 31-00602, 31-00603, 31-

00604, 31-01430 and part of Carroll County Permeant Parcel No. 31-00597 totaling approximately 515 acres and more particularly described on “Exhibit A” attached hereto and by reference incorporated herein, excluding the railroad right of way formerly known as the Penn Central Railroad which is addressed in a separate lease.

## **SECTION II. TERM**

The term of this Lease is one (1) year commencing on June 1, 2022.

## **SECTION III. RENT**

The total rent of this Lease is the sum of One Thousand Dollars (\$1,000.00). Lessee shall pay to Lessor such amount, payable at 1400 South Mahoning Avenue, Alliance, Ohio 44601, beginning on June 1, 2022.

## **SECTION IV. USE OF PREMISES**

The premises are leased for the purpose of maintaining and developing trails for public use. Lessor shall permit public access to the premises in accordance with the “Annual Plan” as hereinafter provided (Section VII) in this Lease Agreement.

Lessor, nevertheless, reserves the right, from time to time, to restrict access to certain portions of the real property by the general public for the purpose of conducting fox hunts and for any other purpose that Lessor determines to be appropriate. Such fox hunts shall be conducted in accordance with an annual schedule established by the mutual agreement of the parties to this Lease Agreement. Lessee shall be provided written notice fourteen (14) days in advance of any closing or restriction of the premises by Lessor beyond that set forth in the Annual Plan.

Notwithstanding other provisions set forth in this Trail Usage Lease Agreement, Lessor reserves the right for the exploration and production of gas and oil.

The Lessor agrees to keep Lessee apprised of the location of any proposed wells, pipelines, and access roads in order to minimize conflicts with park improvements and users and to cooperate with Lessee, whenever possible, in the planned oil and gas exploration and production.

Further, Lessor reserves the right to develop and use any portion of the premises not mutually agreed to be developed for trails and related recreational activities as the Lessor determines to be appropriate.

Lessee shall comply with the statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasional or affecting the use thereof by Lessee.

#### **SECTION V. TRAIL MAINTENANCE AND DEVELOPMENT**

Lessee shall provide staff and volunteers to assist in the maintenance of existing trails and the development of new trails on the premises. Lessor will support the Lessee in the solicitation of such volunteers.

Lessor and Lessee shall cooperate in the investigation of future recreation opportunities including but not limited to: (1) family bike trails, (2) mountain bike trails, (3) walking trails, (4) equestrian trails, (5) snow mobile trails, and (6) ATV trails.

#### **SECTION VI. SIGNAGE PROGRAM**

Lessee shall develop and maintain a comprehensive signage program to inform visitors of the areas which are open for public use and providing confidence markers along the trail to direct the public trail riders. Lessee shall secure Lessor's written permission as to the design and location of any signage prior to the purchase and/or construction and the installation of such signage.

## **SECTION VII. ANNUAL PLAN**

In conformity with the terms and conditions of this Lease Agreement, Lessor and Lessee shall cooperate in the development of an annual operating plan (hereinafter referred to as the "Annual Plan") specifying priorities for the maintenance of existing trails, development of new trails, developing parking for visitors, removal of debris and litter, installation and placement of signage, development of facilities/structures, development of a land management plan, development of a security plan, and the development of programs. Said security plan shall include the utilization of Park Rangers, park volunteers, and local law enforcement personnel. The Annual Plan shall be adopted within sixty (60) days of the execution of this Lease Agreement.

## **SECTION VIII. INSTALLATION OF GATES**

Lessee shall have the right to install gates in order to maintain control of access to, and within, the premises (including parking lots), provided that the Lessor is supplied with keys and/or combinations to any locks used to secure the premises. This clause is not intended to imply that the property will be fenced, only that security will be maintained as is mutually agreed upon under the Annual Plan.

## **SECTION IX. PROHIBITION AGAINST WASTE, NUISANCE, ETC.**

Lessee shall not commit, or allow to be committed, any waste of the premises, create or allow any nuisance to exist on the premises, or use or allow the premises to be use for an unlawful purpose.

## **SECTION X. ALTERATIONS, ADDITIONS OR IMPROVEMENTS**

Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions or improvements in, to or about the premises.

## **SECTION XI. DELIVERY, ACCEPTANCE AND SURRENDER OF PREMISES**

Lessee agrees to accept the premises on possession in its current condition and agrees to surrender the premises to Lessor at the end of the lease term in the same condition as when the Lessee took possession, allowing for reasonable use and wear, and damage by acts of God, including fire and storms.

## **SECTION XII. LESSOR'S RIGHT TO INSPECT, REPAIR AND MAINTAIN**

Lessor reserves the right to enter the premises at reasonable times to inspect same, to perform required maintenance and repair, or to make additions or alterations to any part of the premises, and Lessee agrees to permit Lessor to do so.

## **SECTION XIII. LIABILITY INSURANCE OF LESSEE**

Lessee shall procure and maintain in force during the term of this lease, at its expense, comprehensive general liability insurance in companies and through brokers approved by Lessor, adequate to protect against liability for damage claims arising out of accidents occurring in and around the leased premises from any cause relating to the maintenance, construction, programs or use of the leased premises by the Lessee or the use of the leased premises by any member of the general public, in a minimum amount of Five Hundred Thousand Dollars (\$500,000.00) for each person injured, One Million Dollars (\$1,000,000.00) for any one accident, and One Hundred Thousand Dollars (\$100,000.00) for property damage. Lessor shall be named as an additional insured in such policy or policies. The policies shall be delivered to Lessor for safe keeping.

Lessee agrees to obtain a written obligation from the insurers to notify Lessor in writing at least thirty (30) days prior to cancellation or refusal to renew any such policies. Lessee agrees that, if such insurance policies are not kept in force during the entire term of this lease, Lessor may procure the necessary insurance, pay the premium therefore, and that such premium shall be repaid to Lessor within thirty (30) days.

**SECTION XIV. NONLIABILITY OF LESSOR FOR DAMAGES; INDEMNITY**

Lessor shall not be liable for liability or damage claims for injury to persons or property from any cause relating to the maintenance, construction, programs, occupancy or use of the leased premises by Lessee or the occupancy or use of the leased premises by the general public. Lessee shall defend and indemnify Lessor from and against all liability, loss, claims, expenses and causes of action resulting from any injuries to persons or damage to property occurring on or around the leased premises in any manner arising out of or in connection with the use or occupancy of the leased premises by Lessee or by any member of the general public. Lessee waives any claims against Lessor for damages relating to its occupancy or use of/on the premises from any cause whatsoever.

**SECTION XV. LIABILITY INSURANCE OF LESSOR**

Prior to permitting any equestrian trail group or fox and hounds hunting club to use the premises, Lessor shall obtain from such group or club satisfactory evidence that such group or club has in effect comprehensive general liability insurance covering the premises with policy limits in the amount made available by the Masters of Fox Hounds Association, and in which Lessor and Lessee are each named as additional insureds.

Lessor shall procure and maintain in force during the term of this lease, at its expense, comprehensive liability insurance in companies and through brokers approved by Lessee, adequate to protect against liability for damage claims arising out of accidents occurring in and around the leased premises from any cause relating to the occupancy of the leased premises by the Lessor or any person or persons specifically invited or permitted to go on the leased premises by Lessor, in a minimum amount of Five Hundred Thousand Dollars (\$500,000.00) for each person injured, One Million Dollars (\$1,000,000.00) for any one accident, and One Hundred Thousand Dollars (\$100,000.00) for property damage. Lessee shall be named as an additional insured in such policy or policies. The policies shall be delivered to Lessee for safe keeping. Lessor agrees to obtain a written obligation from the insurers to notify Lessee in writing at least thirty (30) days prior to cancellation or refusal to renew any such policies. Lessor agrees that, if such insurance policies are not kept in force during the entire term of this lease, Lessee may procure the necessary insurance, pay the premium therefore, and that such premium shall be repaid to Lessee within thirty (30) days.

**SECTION XVI. NONLIABILITY OF LESSEE FOR DAMAGES; INDEMNITY**

Lessee shall not be liable for liability or damage claims for injury to persons or property from any cause relating to the maintenance, construction, programs, occupancy or use of/on the leased premises by Lessor or the occupancy or use of the leased premises by any person or persons specifically invited or permitted to go on the leased premises by Lessor. Lessor shall indemnify Lessee from and against all liability, loss, claims, expenses and causes of action resulting from any injuries to persons or damage to property occurring on or around the leased premises in any manner arising out

of or in connection with the use or occupancy of the leased premises by Lessor or by any person or persons specifically invited or permitted by Lessor to go on the leased premises. Lessor waives any claims against Lessee for damages relating to its occupancy or use of the premises from any cause whatsoever.

#### **SECTION XVII. ASSIGNMENT OR SUBLEASE**

Lessee agrees not to assign or sublease the premises leased, any part of the premises, or any right or privilege connected therewith, or to allow any other person to occupy the premises or any part of the premises, without first obtaining Lessor's written consent. Lessee's unauthorized assignment, sublease, or license to occupy shall be void, and shall terminate the lease at Lessor's option. Lessee's interest in this lease is not assignable by operation of law, nor is any assignment of its interest therein, without Lessor's written consent.

#### **SECTION XVIII. NOTICES**

Notices given pursuant to the provisions of this Lease, or necessary to carry out its provisions, shall be in writing, and delivered personally to the person to whom notice is to be given, or mailed postage prepaid, addressed to such person. Lessor's address for this purpose shall be P.O. Box 2960, Alliance, Ohio 44601, or such other address as it may designate in writing to Lessee. Notices to Lessee may be addressed to Lessee at 5300 Tyner Street NW, Canton, Ohio 44718.

#### **SECTION XIX. LESSOR'S REMEDIES ON DEFAULT**

In the event default of Lessee in the payment of rent, any additional rent, or the performance of any of the covenants or conditions hereof, Lessor may give Lessee notice of such default. If Lessee shall fail to cure any such default within ten (10) days,



after the receipt of such notice (or if such default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within ten (10) days and thereafter to diligently cure such default), then Lessor may terminate this Lease on not less than ten (10) days notice to Lessee. On the date specified in such notice the term of this Lease shall terminate, and Lessee shall the quit and surrender to Lessor. In the event this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects.

#### **SECTION XX. EFFECT OF LESSOR'S WAIVER OF COVENANTS**

Lessor's waiver of breach of one covenant or condition of this lease is not a waiver of breach of others, or of subsequent breach of the one waived. Lessor's acceptance of rent installments after breach is not a waiver of the breach, except of breach of the covenant to pay the rent installment or installments accepted.

#### **SECTION XXI. LIABILITY FOR ATTORNEY'S FEES**

In case suit shall be brought for a wrongful withholding of possession of the premises, for the recovery of any rent due under the provisions of this lease, or because of the breach of any other covenant herein contained, on the part of Lessee to be kept or performed, Lessee shall pay to Lessor a reasonable attorney's fee which shall be fixed by the court, and such attorney's fee shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment.

**SECTION XXII. BINDING EFFECT ON SUCCESSORS AND ASSIGNS**

This Lease Agreement and the covenants and conditions of this lease apply to and are binding on the successors of the parties to this lease and the assigns of the Lessor.

**SECTION XXIII. TIME OF THE ESSENCE**

Time is of the essence of this lease.

**SECTION XIV. AMENDMENT**

This Lease Agreement can only be amended by written agreement signed by the parties.

**SECTION XXV. OPTION TO RENEW**

Provided that Lessee is not in default in the performance of this Lease, Lessee shall have the option to renew the Lease for an additional unspecified term of years commencing on the date of expiration of the initial lease term upon such terms as are mutually agreed upon by the parties. Failure to execute an extension of this Lease will result in the automatic termination of said Lease without prejudice to either party.

**SECTION XXVI. ENTIRE AGREEMENT**

This lease constitutes the entire agreement between Lessor and Lessee relating to the subject of this lease. This Lease supersedes any and all previous negotiations and communications, oral and written, between the Lessor and Lessee with respect to the subject matter of this lease, except those specified in this lease.

IN WITNESS WHEREOF, the parties have hereunto set their hands at  
Canton, Ohio, on the day and year first above mentioned.

Signed in the presence of:

WHITACRE GREER COMPANY,  
An Ohio Corporation – Lessor

\_\_\_\_\_  
By: \_\_\_\_\_  
Janet Whitacre-Kaboth, CEO

\_\_\_\_\_  
By: \_\_\_\_\_  
John B. Whitacre III, Secretary

STARK COUNTY PARK DISTRICT,  
an Ohio political subdivision - Lessee

\_\_\_\_\_  
By: \_\_\_\_\_  
Daniel J. Moeglin, Executive Director

STATE OF OHIO :  
:SS:  
COUNTY OF STARK :

BE IT REMEMBERED, that on this \_\_\_\_\_ day of June, 2022, before me a Notary Public in and for said County, personally came the above-named WHITACRE GREER COMPANY (formerly known as the WHITACRE-GREER FIREPROOFING CO.), an Ohio Corporation, by Janet Whitacre-Kaboth, its President, and John B. Whitacre III, its Secretary, who acknowledged that they did sign the foregoing instrument and the same is the free act and deed of the said WHITACRE GREER COMPANY, and of them personally.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, Ohio on this day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

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

STATE OF OHIO :  
:SS:  
COUNTY OF STARK :

BE IT REMEMBERED, that on this \_\_\_\_\_ day of June, 2022, before me a Notary Public in and for said County, personally came the above-named STARK COUNTY PARK DISTRICT, an Ohio political subdivision, by Daniel J. Moeglin, its Executive Director, who acknowledged that he did sign the foregoing instrument and the same is the free act and deed of the said STARK COUNTY PARK DISTRICT, and of him personally.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Canton, Ohio on this day and year aforesaid.

\_\_\_\_\_  
NOTARY PUBLIC

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

This instrument prepared by:  
STARK COUNTY PARK DISTRICT

Approved at to legal form and sufficiency:

\_\_\_\_\_  
WILLIAM F. MORRIS  
Counsel for the Stark County Park District

# EXHIBIT A

Being Carroll County Auditor's Permanent Parcel Nos. 31-0000175, 31-0000597 (North of Bachelor Road NW), 31-0000602, 31-0000603, 31-0000604 and 31-0001430.

