

After Recording Return to:  
Eagle Valley Land Trust  
P.O. Box 3308  
Eagle, CO, 81631

Any time the Property is transferred by Grantor to any third party, Grantor shall pay a transfer fee 1% of the fair market value of the Property to Grantee and notify Grantee pursuant to the requirements of Section 14 of this Easement.

## SAMPLE DEED OF CONSERVATION EASEMENT

*This Sample Deed of Conservation Easement may contain elements not applicable to a particular property or to a particular landowner's conservation objectives because Conservation Easements are drafted to address the specific Conservation Values of the Property and the specific objectives of the Grantor (the landowner) and the Grantee (Eagle Valley Land Trust).*

[Name of Easement]

This Deed of Conservation Easement (the "Easement") made as of this \_\_\_\_ day of \_\_\_\_, 200\_\_, by \_\_\_\_\_ an \_\_\_\_\_, having an address at \_\_\_\_\_ ("Grantor"), in favor of the EAGLE VALLEY LAND TRUST, a nonprofit Colorado corporation, having an address of P.O. Box 3308, Eagle, CO, 81631 ("Grantee").

The following Exhibits are attached hereto and made a part of this Easement:

- Exhibit A - Legal Description of Property
- Exhibit B - Map of Property
- Exhibit C - Baseline Documentation Report Acknowledgement
- Exhibit D - Water Rights
- Exhibit E - Notice of Transfer of Property
- Exhibit F - Subordination Agreement

### RECITALS:

A. [Description of Property] Whereas, Grantor is the sole owner in fee simple of approximately \_\_\_\_ acres of real property in \_\_\_\_\_ County, Colorado, more particularly described in **Exhibit A** and generally depicted on **Exhibit B**, both attached hereto and incorporated herein by this reference (the "**Property**") together with [insert as appropriate existing improvements (as further described in Section \_\_) water rights, mineral rights, and permits appurtenant to and associated with the Property] certain Water Rights, described in **Exhibit D**. The term "Property" shall hereinafter be defined as the land and water rights combined, and the term "Water Rights" shall refer to the water rights alone.

B. [State Policies Regarding Conservation Easements] Whereas, the State of Colorado has recognized the importance of private efforts to conserve land in a natural, scenic, historic, agricultural, or open condition, and for wildlife habitat and other uses consistent with the protection of open land having undisturbed or restored environmental quality, by the enactment of Colorado Revised Statutes (C.R.S.) Sections 38-30.5-101 *et seq.* The conservation purposes of this Easement are recognized by the Colorado Wildlife and Parks and Outdoor Recreation statutes, C.R.S. Sections 33-1-101, *et seq.*, which provide that “it is the policy of the State of Colorado that the wildlife and their environment and the natural, scenic, scientific, and outdoor recreation areas, of this State are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this State and visitors to this State” [insert if agricultural purpose/use] and the Colorado Department of Agricultural Statutes, C.R.S. Sections 35-1-101, *et seq.*, which provide in part that “it is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products”;

C. [Conservation Values] Whereas, the Property possesses significant ecological, wildlife habitat, scenic, aesthetic, and open space values . . . is a valuable element of the natural habitat of [major location] and its ecological, scenic, and aesthetic values, including flora, fauna, and soils, the maintenance of which habitat helps support wildlife and plant populations and communities including [\_\_\_\_\_], and is plainly visible to the public from [\_\_\_\_\_] Road(s).

[Insert description/identification of Conservation Values to be protected per IRS regulation 1.170A-14(d)]

[EXAMPLE: The Conservation Values of the Property include Relatively Natural Habitat and Open Space as further described below:

Relatively Natural Habitat [§ 1.170A-14(d)(3)]. The Property contains wetlands, riparian areas, and shortgrass prairie that provide food, shelter, breeding ground, and migration corridors for several wildlife species. \_\_\_\_\_ Creek and \_\_\_\_\_ Lake serve as natural habitat for several bird species, including the white-crowned sparrow, Wilson’s warbler, great blue heron, and belted kingfisher. The habitat on the Property is also “significant” as required by the Treasury Regulations, as it represents habitat for rare, endangered or threatened species such as bald eagles, piping plovers, burrowing owls, sandhill cranes, and ferruginous hawks.

Open Space [§ 1.170A-14(d)(4)]. The Property qualifies as open space because it will be preserved for the scenic enjoyment of the general public and will yield a significant public benefit.

Scenic enjoyment. The Property adds to the scenic character of the local rural landscape in which it lies, contains a harmonious variety of shapes and textures, and provides a degree of openness, contrast and variety to the overall landscape. A large portion of the Property is visually accessible to the general public from both \_\_\_\_\_ highway, and the \_\_\_\_\_ River, which are open to and actively utilized by residents of \_\_\_\_\_ County and the State of Colorado.

Agriculture. The Property is currently used for agricultural purposes including irrigated crop production and cattle grazing. This use is compatible with other land use in the vicinity, as adjacent properties are also used for agricultural production.

Significant public benefit. There is a foreseeable trend of intense development in the vicinity of the Property in the near future. The City/Town of \_\_\_\_\_ lies just 20 miles west of the Property, and the City/Town of \_\_\_\_\_ lies just 5 miles west. There is a strong likelihood that development of the Property would lead to or contribute to degradation of the scenic and natural character of the area. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values.

It should also be noted that the terms of the Easement do not permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land.

The conservation values set forth in this paragraph may herein be collectively referred to as the “**Conservation Values**”. These Conservation Values are of great importance to Grantor, Grantee, the people of Eagle County and the State of Colorado and are worthy of preservation; [if applicable-- The Conservation Values include the priority of ranching and farming activities on all or part of the Property, but such use shall not be required if the same becomes uneconomically feasible or beneficial ]

D. [Local Policies Regarding Conservation]Whereas, the following local policies and resolutions support the conservation of the Property: The Property and its use are consistent with Eagle County’s Master Plan, and its Guiding Policies, as set forth in Resolution 96-01, which reiterates the 1981 Master Plan – “the environmental quality of Eagle County shall be protected” and includes policies to protect wildlife areas; maintain and enhance water quality and quantity; protect unique land forms; monitor and control air quality; and require development to be compatible with natural constraints of the land. Further, Resolution 2003-097 establishes that it is the policy of Eagle County to be dedicated to “preserving wildlife habitat, protecting working farms and ranches, conserving scenic landscapes and vistas, and protecting wetlands and floodplains” within and throughout Eagle County;

E. [Documentation of Present Condition] Whereas, the specific Conservation Values, characteristics, current uses, status of improvements, and present condition of the Property are documented in a inventory of the Property, dated \_\_\_\_\_, entitled \_\_\_\_\_, which inventory is on file with Grantor and at the office of Grantee and incorporated by this reference. The inventory consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the condition of the Property at the time of this grant (“**Baseline Documentation Report**”), and which inventory is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant and is not intended to preclude the use of other evidence to establish the condition of the Property if there is a controversy over its use;

F. [Qualified Organization] Whereas, Grantee is a qualified private organization under the terms of C.R.S. Sections 38-30.5-101, *et seq.*, a “qualified organization” within the meaning of Section 170(h)(3) of the Internal Revenue Code of

1986 as amended (the “Code”), a “charitable organization” as described in Section 501(c)(3) of the Code, and a “publicly supported organization” as described in Section 170(b)(1)(A) of the Code, whose primary purpose is to preserve and protect the natural, scenic, agricultural, historical, and open space resources of Eagle County, including the area in which the Property is located, by assisting landowners who wish to protect their land in perpetuity to preserve and conserve natural areas, environmentally significant land, and working landscapes for ecological, scenic, aesthetic, scientific, charitable and educational purposes; and

G. [Charitable Donation] Whereas, Grantor intends to donate this Deed of Conservation Easement pursuant to C.R.S. Sections 38-30.5-101 *et seq.*, as a charitable gift to Grantee of the property interest conveyed by the Easement in order to ensure the Property's preservation in perpetuity. **OR** [Quid Pro Quo] Whereas, Grantor acknowledges that this Easement is intended to satisfy [in part] the requirement of the Eagle County Land Use Code for the creation by Grantor of a conservation easement for the [Project] pursuant to the [“\_\_\_\_\_ Determination No./Resolution No. \_\_\_\_\_ for the Property (the “Approval”)] between Grantor and Eagle County, State of Colorado, a governmental entity acting by and through its Board of County Commissioners (“BOCC”) recorded on \_\_\_\_\_ in the records of the Eagle County Clerk and Recorder. **OR** [Quid Pro Quo] Whereas, this Easement is intended to satisfy the requirement to grant a conservation easement pursuant to the Agreement for Purchase and Sale of the Property between Grantor and the County of Eagle, State of Colorado, a governmental entity acting by and through its Board of County Commissioners (“BOCC”) recorded on \_\_\_\_\_ in the records of the \_\_\_\_\_ County Clerk and Recorder.

### **AGREEMENT:**

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Colorado and in particular C.R.S. Sections 38-30.5-101, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a perpetual conservation easement in gross (“**Easement**”) for the purpose of protecting and preserving the Conservation Values of the Property in perpetuity. **OR** [Quid Pro Quo: NOW, THEREFORE, in consideration of the matters above, the mutual covenants, terms, conditions and restrictions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:]

#### **1. Purpose**

It is the purpose of this Easement to protect and preserve the Conservation Values of the Property, to assure that the Property will be retained forever predominantly in its [natural, scenic, historical, agricultural, forest, and open space] condition, and to prevent any use of the Property that is inconsistent with the preservation and protection of the Conservation Values of the Property. It is Grantor’s intent to convey this Easement to Grantee to ensure that the Conservation Values of the Property be preserved and protected forever in accordance with Section 170(h) of the Code. It is the parties’ intent to permit uses of the Property that are not inconsistent with the preservation and

protection of the Conservation Values as determined by Grantee in its sole discretion and that are not expressly prohibited herein.

## **2. Baseline Documentation Report**

The parties acknowledge that the Baseline Documentation Report has been prepared, reviewed and approved by Grantee and Grantor. A copy of the Baseline Documentation Report is on file with both Grantor and Grantee and by this reference made a part hereof. The parties acknowledge that the Baseline Documentation Report is intended to establish the condition of the Property subject to the Easement as of the date written above (the “**Operative Date**”) and that both Grantor and Grantee have acknowledged in a signed statement, a copy of which is attached here as **Exhibit C**, that the Baseline Documentation Report accurately represents the condition of the Property on the Operative Date.

The parties agree that, in the event a controversy arises with respect to the condition of the Property as of the Operative Date, or compliance with or violation of any term or provision of this Easement, the parties shall not be precluded from utilizing all other relevant or material documents, surveys, reports, and other information to determine the condition of the Property as of the Operative Date.

## **3. Rights of Grantee**

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- 3.1.** To preserve and protect the Conservation Values of the Property;
- 3.2.** To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Section 7; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property;
- 3.3.** To prevent or enjoin any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Section 7; and
- 3.4.** To place signs on the Property that identify the land as being protected by this Easement, the size, number, and location of which signs are subject to Grantor’s reasonable approval.
- 3.5.** Nothing in this Section shall preclude the right of Grantee to enforce the preservation and protection of the Conservation Values of the Property or any other provisions of this Easement.

**3.6.** To be considered an owner of an interest in the Property, and therefore a co-applicant, whose signature must be obtained before Grantor may proceed with any application for zoning change, annexation to a municipality, variance to or exemption from the land use regulations of the controlling jurisdiction, right-of-way vacation, building permit, grading permit or other permit pertaining to a use of the Property which is regulated by a governmental authority and not otherwise provided for in this Easement.

**3.7.** The first right to purchase the Property [and mineral rights appurtenant to the Property]. In the event Grantor desires to sell the Property and receives a bona fide offer for such sale, the Property shall be offered to Grantee who shall have a first right to purchase such offered fee interest for the same terms and conditions as the bona fide offer or for an amount and terms equally acceptable to Grantor. Written notice of such bona fide offer shall be given to Grantee who shall have thirty (30) days from the date of receipt of the written notice to accept such offer, and if not accepted, the sale may be made to such third party purchaser. If Grantee elects to purchase the Property in response to a bona fide offer, Grantee shall first transfer this Easement to another qualified organization pursuant to the "Assignment" paragraph herein. This interest shall not terminate if Grantee has been offered the first right to purchase the Property and declines to exercise its right, whether once or numerous times, except that pursuant to C.R.S. § 15-11-1102 the right of first refusal shall terminate if it does not vest within (ninety) 90 years after the date of execution of this Easement by the parties.

#### **4. Permitted and Prohibited Uses of the Property**

The following uses and practices, though not an exhaustive recital, are consistent with the Easement as subject to specified qualifications, conditions, and requirements of and procedures for prior notice to or approval of Grantee. Procedures for prior approval and notice are listed below in Section 6 herein. Any activity on or use of the Property inconsistent with the preservation and protection of the Conservation Values of the Property is prohibited.

**4.1. Improvements.** Grantor may maintain, repair, enlarge and replace improvements in accordance with the standards set forth in these subsections. Grantor shall notify Grantee in writing of such construction and provide Grantee with documentation and plans necessary to ensure compliance with the standards set forth in these subsections. Grantee's written approval shall be given upon determination in its sole discretion that the proposed building complies with the standards set forth in this subsection 4.1. If Residential or Agricultural Improvements (defined hereafter) are replaced or enlarged in a manner not requiring Grantee's approval as specified in these subsections, Grantor shall notify Grantee of the replacement or enlargement so that its records may be updated. For purposes of these subsections, "floor area" is defined as gross horizontal areas of all floors of a covered space enclosed within two or more walls measured from the outside of all exterior walls, excluding residential covered or uncovered decks or patios, utility and mechanical areas, and non-habitable cellars, crawl spaces, or attics.

**A. Existing Improvements.** The parties agree that the current use of and improvements to the Property are not inconsistent with the preservation and protection of the Conservation Values and are permitted. The construction or reconstruction of any improvement, except those existing on the date of this Easement, is prohibited except as

described below. Any other improvements are prohibited unless Grantee determines in its sole discretion that the proposed construction is not inconsistent with the preservation and protection of the Conservation Values.

**1. Existing Residential Improvements:** [Insert as appropriate: Grantor may maintain, repair, replace, and enlarge (to a cumulative maximum of \_\_\_\_\_ square feet of enclosed floor area), the Residential Improvements at their current location without further permission of the Grantee.]

**2. Existing Agricultural Improvements.** [Insert as appropriate: Grantor may maintain, repair, replace, and enlarge (to a cumulative maximum of \_\_\_\_\_ square feet of enclosed floor area), the Agricultural Improvements at their current location without further permission of the Grantee.]

**B. Construction of New Improvements.** The construction of any building or other structure, except those existing on the date of this Easement or those approved by Grantee subsequent to the date hereof but prior to construction, is permitted only in “Building Areas” shown on **Exhibit B**, defined by and in accordance with this subsection. Grantor shall notify Grantee in writing of any proposed construction at least thirty (30) days in advance of any proposed construction and shall provide Grantee with documentation and plans necessary to ensure compliance with the standards set forth in this subsection 4.1. Grantee’s written approval shall be given in the sole discretion of Grantee, if the proposed construction complies with the standards set forth in this subsection 4.1.

**1. New Residential Improvements:** [Insert as appropriate--Grantor hereby reserves the right to construct or otherwise locate \_\_\_\_\_ additional single-family residence(s), which residence(s) shall comply with the following standards, (such as building height, materials, design, location and footprint, not to exceed \_\_\_\_\_ square feet of enclosed floor area, together with associated residential appurtenances such as garages and sheds, all of which will be located within the Building Area as depicted on **Exhibit B** attached hereto and made a part of this Easement. Grantor may maintain, repair, enlarge and replace improvements in accordance with the standards set forth in this subsection 4.1.]

**2. New Agricultural Improvements:** [Insert as appropriate--New, unenclosed agricultural improvements such as corrals, loafing sheds, hayracks, or stock tanks with a floor area of less than \_\_\_\_ square feet may be constructed anywhere on the Property without Grantee’s consent. New agricultural buildings with a floor area of greater than \_\_\_\_square feet shall be located within the Building Area as depicted on **Exhibit B**, without Grantee’s consent. Construction of new agricultural buildings with a floor area greater than \_\_\_\_\_ square feet of enclosed floor area anywhere on the Property is prohibited, unless Grantee in its sole discretion determines that the proposed construction is not inconsistent with the preservation and protection of the Conservation Values. Grantor may maintain, repair, enlarge and replace Agricultural Improvements in accordance with the standards set forth in this subsection 4.1.]

**4.2. [if appropriate] Agricultural Activities.** All agricultural uses shall be conducted using stewardship and management methods that preserve the natural resources upon which agriculture is based. Long term stewardship and management goals include

preserving soil productivity, maintaining natural stream channels, preventing soil erosion, minimizing invasive species, and avoiding unsustainable livestock grazing practices. Grantor may institute and carry on agricultural activities, including ranching, farming, and all other agricultural activities consistent with protection of the long-term ecological and economic viability of the Property. Grazing, feeding, breeding, raising, and managing livestock shall be accomplished in a manner that maintains or improves the condition of the Property, and is limited in intensity and frequency consistent with the preservation and protection of the Property's Conservation Values. Grantor may also cultivate, irrigate and harvest crops on that portion of the Property historically used for such purposes. The Property shall be managed to prevent overgrazing and erosion related to agricultural activities. High-intensity agricultural uses and grazing on dry pasture lands shall be conducted in a manner consistent with sound management practices as determined by the Natural Resource Conservation Service (NRCS) or its successor organization. If agricultural operations cease in the future, Grantor agrees to re-seed any heavily disturbed areas with appropriate native vegetation to prevent the spread of noxious weeds and to provide forage and habitat for wildlife. The parties agree that agricultural operations may resume any time thereafter and that the terms and conditions of this Easement are intended to ensure that the Property remain available for agricultural or livestock production, or both, in accordance with Section 170(b)(1)(E)(iv) of the Code.

**4.3. Retail, Commercial, or Industrial Activity.** No commercial, industrial or retail uses are permitted on the Property, [if appropriate] except primarily ranching and farming, and similar agricultural uses as provided herein, including the sale of hay, livestock or other products grown or produced on the Property, and controlled hunting and fishing in accordance with applicable laws, consistent with the preservation and protection of the Conservation Values of the Property. Examples of such prohibited uses are: golf courses, commercial feed lots, meat or poultry processing facilities, commercial nurseries, sawmills, or logging operations or facilities, agricultural products retail outlets, and other similar intensive agricultural uses, any restaurant, night club, campground, trailer park, motel, hotel, commercial swimming pool, gas station, retail outlet, or facility for the manufacture or distribution of any product not grown or produced on the Property in connection with [agricultural purpose expressly permitted herein]. Notwithstanding the foregoing, Grantor may use the Property for a home-occupation business (cottage industry), a country-inn, or bed-and-breakfast with prior written approval of Grantee, provided that such use is in accordance with applicable laws and that Grantee determines in its sole discretion that such use is not inconsistent with the preservation and protection of the Conservation Values. For the purposes of this Easement, a commercial "feed lot" shall be defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, for purposes of engaging in the business of the reception and feeding of livestock for hire. Nothing in this Section shall prevent Grantor from seasonally confining Grantor's livestock into an area for feeding and or leasing pasture for the grazing of livestock owned by others.

**4.4. Subdivision.** The division, subdivision or *de facto* division of the Property, physically, or by legal process, including partition, or by any other action (including entering into any lease or other agreement) is strictly prohibited. The Property shall be conveyed only in its entirety as a single parcel.

**4.5. Utilities.** Except pursuant to utility easements in existence prior to the grant of this Easement, or pursuant to utility easements created subsequent to the grant of this Easement pursuant to an exercise of eminent domain, no new utility transmission lines shall be constructed or permitted on the Property except as necessary to service structures permitted in the Building Area. All new utilities outside the Building Areas shall be placed underground, unless mutually agreed upon by Grantor and Grantee.

**4.5.5. Telecommunications Facilities.** [Telecom towers/infrastructure prohibited if scenic easement]: The erection, construction, installation, relocation or use of a communication facility, telecommunication facility, network element, telecommunication equipment, or any other equipment or material that may be used for telecommunications or to provide telecommunications services (except for customer premises equipment) as such terms are defined in The Federal Telecommunications Act of 1996, is prohibited.

**4.6. Aircraft Facilities.** Grantor shall not construct or erect any aircraft facilities or aircraft landing strips, pads, or facilities on the Property.

**4.7. Roads.** Grantor shall not construct any roads on the Property except in connection with permitted residential uses, forest management for wildlife habitat protection, and water development or enhancement for stock and wildlife. Any road constructed for one or more of such purposes shall be subject to the prior approval of Grantee. Any road constructed for a permitted temporary use shall be reclaimed and restored to its original condition within forty-five (45) days after its use is discontinued.

**4.8. Off-Road Vehicle Use and Impact.** Grantor shall not use vehicles off of existing roads and travelways in a manner that may result in erosion or compaction of the soils, detrimental impact on the natural appearance of the land, or interference with vegetation or natural habitats of those animal species occurring on the Property. Notwithstanding the foregoing, Grantor's use of off-road vehicles may be necessary in forest and range management for protection and enhancement of wildlife habitat, and such limited use by Grantor is therefore expressly permitted, provided that Grantor shall make its best efforts to avoid or minimize uses and impacts of uses that are inconsistent with the preservation and protection of the Conservation Values of the Property. Grantor's use of off-road vehicles, including but not limited to snowmobiles, all terrain vehicles, or other vehicles shall not disturb or result in the harassment of wildlife and public use of off-road vehicles such as snowmobiles or all-terrain vehicles is prohibited.

**4.9. Mineral Activities.** At the time of granting the Easement, Grantor owns all the minerals associated with the Property **OR** [only a portion of/or none of the mineral rights associated with the Property. For this reason, a mineral remoteness letter dated \_\_\_\_\_ has been completed by \_\_\_\_\_ in compliance with Section 170(h) of the Internal Revenue Code and related Treasury Regulations, a copy of which is on file with Grantee.]

Grantor's [**OR** if Grantor owns all minerals—The] exploration, development, mining, or extraction of oil, gas, and other minerals, rock, gravel, coal, peat, soil, or sand found in, on, or under the Property is prohibited. Grantor's [or if Grantor owns all minerals—The] exploration, development, mining or extraction of geothermal resources and hydrocarbons from the Property is prohibited. Grantor shall not transfer, lease or

otherwise separate soil, sand, gravel, rock, or any other mineral substance from the surface of the Property.

**4.10. Billboards.** Grantor shall not construct, maintain, or erect any commercial signs or billboards on the Property. Small signage not to exceed \_\_\_\_ square feet is permitted to display and state the name of the owner and Property, that the area is protected by this Easement, the prohibition of any unauthorized entry or use, or the advertisement for the sale of the Property.

**4.10. Fences.** Existing fences may be repaired, replaced, and improved on the Property and new fences may be constructed anywhere on the Property for the purpose of management [of livestock and] wildlife, provided that all fences are compliant with then-current Colorado Division of Wildlife standards for fencing to permit migration of wildlife across the Property in a wildlife migration area and are not inconsistent with the preservation and protection of the Conservation Values of the Property.

**4.11. Trash.** Grantor shall not permanently accumulate, dump, or otherwise dispose of trash, debris, ashes, sawdust, and other non-compostable refuse on the Property. Refuse generated by [if appropriate—normal ranching, range, and] forest management activities associated with protection and enhancement of wildlife habitat is permitted.

**4.12. Hazardous Materials.** The storage, dumping, or other disposal of toxic or hazardous materials or of non-compostable refuse on the Property is prohibited, except for the above-ground storage and use of fuels, fertilizers, treated lumber and legal chemicals as necessary for the agricultural operation. All materials shall be stored in accordance with all applicable laws and regulations, and in a manner that prevents spillage, leakage, and dumping, and which prevents soil, and surface water or groundwater contamination, and in a manner that is consistent with the preservation of the Conservation Values of the Property. Notwithstanding anything in this Easement to the contrary, this prohibition does not make Grantee an owner of the Property, nor does it permit Grantee to control any use of the Property by Grantor that may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, that Grantee may bring action to protect the Conservation Value of the Property, as described in this Easement. (This prohibition does not impose liability on Grantee, nor shall Grantee be construed as having liability as a “responsible party” under CERCLA or similar federal or state statutes.)

**4.13. Water Resources.** Grantor shall not manipulate, divert, dam, pollute, drain, dredge, or otherwise alter the naturally-occurring streams, wetlands, springs, lakes, ponds, or other surface or subsurface water features on the Property in a manner that degrades or destabilizes their natural banks or shorelines, or otherwise is inconsistent with the preservation and protection of the Conservation Values of the Property. Grantor may develop and maintain those water resources on the Property necessary or desirable for [if appropriate--grazing,] wildlife, fisheries, and recreational pursuits conducted thereon pursuant to the terms of this Easement, including, but not limited to stream bank stabilization and the right to locate, construct, install and maintain [headgates, ditches, wells, stock watering facilities and] ponds, and to improve the quality and quantity of water available for the purposes permitted herein. Grantor is required to notify Grantee of these activities as set forth in Section 6. The pollution of any surface or sub-surface

water on the Property is prohibited [if appropriate--, except for that pollution which may occur from the customary agricultural practices permitted hereunder].

**4.14. Water Rights.** There are no water rights included in, with, or encumbered by this Easement as necessary to support the Property's Conservation Values. **OR**

[Dedicated Water Rights may replace Water Rights if not all rights are attached, but the water to be encumbered should be described in Exhibit D]

**A. Water Rights Included.** The Property includes all of Grantor's rights, title and interest in the Water Rights described in **Exhibit D** attached hereto and incorporated herein by reference. Grantor shall have the right to continue [historic] use of the Water Rights on the Property [in order to protect and preserve the Conservation Values of the Property?] To this end, Grantor shall have the right to improve, maintain, repair, relocate and reconstruct facilities related to the Water Rights (such as ditches, wells and reservoirs);

**B. Restrictions on Water Rights.** The Water Rights shall not: (i) be changed to or used for municipal, industrial, or commercial uses, as defined by Colorado law; (ii) be changed for use off of the Property; (iii) be sold, leased, or encumbered separately from the Property or legally separated from the Property; or (iv) have their points of diversion, or their type or place of use within the Property changed, except pursuant to a legally-recognized interruptible supply contract, fallowing agreement, emergency water loan, or similar agreement to temporarily increase instream flows in the \_\_\_\_\_ River or Creek. Water Rights may be used for other activities on the Property that are not prohibited by the terms of this Easement, after a written determination by Grantee that such changes are consistent with the preservation and protection of the Conservation Values, and do not create an intent to abandon;

**C. Protection of Water Rights.** If Grantor fails to maintain the historic use of the Water Rights, or the Water Rights are otherwise subject to a threat of abandonment, Grantee shall have the right, **but not the obligation [only if dedicated Water Rights exceed those necessary to support CVs]**, to (i) enter upon the Property and undertake any and all actions reasonably necessary to continue the use of the historic Water Rights, or (ii) after ninety (90) days written notice to Grantor, seek to change the Water Rights to another beneficial use approved by Grantee and permitted pursuant to this Easement, or convey all or part of such rights to the Colorado Water Conservation Board or its successor organization for the specific purpose of increasing the flow in \_\_\_ River or Creek;

**D. Effect of Loss.** No loss of Water Rights through injury or abandonment, or conversion of the Water Rights as set forth above, shall be considered a severance of the title to the Water Rights from the Property for federal or state tax or other purposes, or as basis for extinguishment of this Easement.

**4.15. Surface Disturbance.** Grantor shall not change, disturb, alter, excavate, or impair any watercourse or wetland on the Property. Except as expressly permitted by this Easement, any alteration of the surface of the land, including without limitation, the movement, excavation or removal of soil, sand, gravel, rock, peat or sod [that is

inconsistent with the preservation and protection of the Conservation Values,] is prohibited.

**4.15. Timber Harvesting.** Grantor may cut or prune trees and brush on the portions of the Property [if appropriate--where agriculture is permitted in order to permit the agricultural use of those portions of the Property], cut posts and poles for use on the Property, collect dead, dying, and down trees for firewood for Grantor's personal use, and remove timber to abate disease, insect infestation, mitigate forest fires, and maintain a healthy forest ecosystem. Grantor may remove trees that constitute a hazard to persons, property, and existing roads. Grantor shall notify Grantee, as set forth in Section 6, of the above activities. Grantor is prohibited from commercially harvesting timber, or cutting trees for any commercial or business purpose on the Property. Further, Grantor shall not cut or disturb any trees or other vegetation within 300 feet of any active raptor nest during the nesting season, or remove any crown trees or overstory vegetation within three hundred (300) feet of any active raptor nest at any time. Notwithstanding the foregoing, diseased trees may be cut down and removed during the non-nesting season to abate insect infestations.

**4.16. Weeds and Non-native Species.** Grantor has the responsibility to control weeds in a manner consistent with state laws, subject to the following: (i) All control techniques shall be consistent with the labeled instructions of the application materials to constitute the minimum necessary to control or eradicate the weeds, and not be inconsistent with the preservation and protection of the Conservation Values of the Property; (ii) Aerial application of any weed control is prohibited without Grantee's prior written approval; and (iii) Biological (insect) control of weeds that is not inconsistent with the preservation and protection of the Conservation Values of the Property shall be permitted as consistent with the purposes of this Easement. Grantor shall not introduce to the Property any non-native plant or animal species. [If appropriate--Forage and fodder plants traditionally used in the \_\_\_\_\_ area, such as alfalfa and clover, may be used.]

**4.17. Hunting and Fishing.** Grantor and Grantor's family, employees and guests may hunt, trap and fish for animals, birds and fish in a manner consistent with state and federal laws and regulations, at levels of intensity which are not detrimental to the wildlife and fishery populations. Grantor shall not itself conduct commercial hunting, outfitting, or guiding on the Property, nor permit any commercial hunting, outfitting, or guide service to operate on the Property.

**4.18. Wildlife Disturbance or Harassment.** Harassment of wildlife by people on foot or in vehicles, or by domestic animals, is prohibited.

## **5. Reserved Rights**

Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the protection and preservation of the Conservation Values of the Property.

## 6. Notice and Approval

**6.1. Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities provided in Section 4 is to afford Grantee an adequate opportunity to review or monitor the proposed activity or use to ensure that it is designed and carried out in a manner that is not inconsistent with the preservation and protection of the Conservation Values of the Property. Whenever notice is required, Grantor shall notify Grantee in writing not less than thirty (30) business days prior to the date Grantor intends to undertake the activity or use in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity or use in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the preservation and protection of the Conservation Values of the Property.

**6.2. Grantee's Approval.** Where Grantee's approval is required, as set forth in Sections \_\_, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefor. Grantee's approval may be withheld upon a determination by Grantee, in its sole discretion, that the action or use as proposed would be inconsistent with the protection and preservation of the Conservation Values of the Property.

## 7. Grantee's Remedies

**7.1. Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give notice to Grantor of such violation and seek corrective action sufficient to cure the violation, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement pursuant to subsection 7.4 herein, and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the preservation and protection of the Conservation Values of the Property, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee. Should a land survey be necessary to determine the actuality, nature, or extent of a violation, Grantor shall pay for such survey.

**7.2. Injunctive Relief.** If Grantor fails to cure the violation within twenty (20) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a twenty (20) day period, fails to begin curing such violation within the twenty (20) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction, *ex parte* as necessary, to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

**7.3. Damages.** Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

**7.4. Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Section 7 without prior notice to Grantor or without waiting for the period provided for cure to expire.

**7.5. Scope of Relief.** Grantee's rights under this Section 7 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate, and that Grantee shall be entitled to the injunctive relief described in subsection 7.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of providing either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this Section 7 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

**7.6. Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including without limitation, costs and expenses of suit and reasonable attorneys' fees, costs of necessary supporting documentation, such as land surveys, and any cost of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

**7.7. Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of Grantor's breach of any term of this Easement shall not be deemed or construed to be waiver by Grantee of such term or of any subsequent breach of the same, or any other term of this Easement, or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy related to Grantor's breach shall impair such right or remedy, or be construed as a waiver.

**7.8. Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription, and any defense available pursuant to C.R.S. §38-41-119.

**7.9. Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring action against Grantor for any injury or damage to, or change in the Property resulting from natural causes, acts of God, or natural acts beyond Grantor's control, including without limitation, fire, flood, storm, and earthquakes, or from injury or damage to, or change in the Property resulting from, any prudent and reasonable action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury or damage to the Property resulting from such causes.

## **8. Access**

No right of access by the general public to any portion of the Property, other than visual, is conveyed by this Easement. Notwithstanding the foregoing, Grantor may permit access to the general public provided that it ensures that such access is consistent with Colorado's recreational use statute \_\_\_\_\_ and provides immunity to Grantor and Grantee for the public's access to and use of the Property.

## 9. Owner Responsibilities

**9.1. Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance, of the Property, including the maintenance of adequate liability insurance coverage and weed control and eradication and shall furnish Grantee with satisfactory evidence of insurance coverage upon request. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, material furnished to, or obligation incurred by Grantor.

**9.2. Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively “taxes”), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

**9.3. Representation and Warranties.** Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

**A.** No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the to environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property;

**B.** There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulation, and requirements;

**C.** Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

**D.** There is no pending or threatened litigation in any way affecting, involving, or relating to the Property;

**E.** No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its uses, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claim, demands, or orders; and

**F.** Grantor warrants that it has good and sufficient title to the Property, that it has good right, full power and lawful authority to grant and convey this Easement, that any mortgages or liens on the Property are and shall remain subordinate to the terms of this

Easement and that the Property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature whatsoever that are not subordinate to the terms of this Easement, and Grantor hereby promises to warrant and forever defend the title to the Easement in the quiet and peaceable possession of Grantee, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.

**9.4. Remediation.** If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the same was caused by Grantee, in which case Grantee shall be responsible therefor.

**9.5. Control.** Nothing in this Easement shall be construed as giving rise to, in the absence of a judicial decree, any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, And Liability Act of 1980, as amended ("CERCLA"), and any Colorado state law counterpart.

**9.6. Hold Harmless.** Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any Property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (b) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and any similar federal or state law, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (c) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; (d) all costs, liabilities and obligations of ownership of the Property, including payment of taxes imposed upon or incurred by the Property as a result of this Easement, such as property taxes, or income taxes from the sale of income tax credits; (e) tax benefits or consequences of any kind which result or do not result from entering into this Easement; and (f) the obligations, covenants, representations, and warranties of subsections 9.1 through 9.5, and.

## **10. Extinguishment and Condemnation**

**10.1. Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, after the court has explored all options for importing other purposes for the Easement pursuant to the *cy pres* doctrine. The amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be the stipulated fair market value of the Easement, or proportionate part thereof, as determined in accordance with subsection 10.2.

In granting this Easement, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Grantor and Grantee that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of Grantor, or its heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

**10.2. Valuation.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purpose of subsection 10.1, the parties stipulate to have a fair market value of \_\_\_ % of the full fair market of the Property, which percentage is determined by dividing the value of the Easement at the time of this grant by the fair market value of the Property unencumbered by the Easement at the time of this grant (excluding any increase in value after the date of this grant attributable to improvements made thereafter), and which percentage shall remain constant.

**10.3. Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interest in the Property subject to the taking or in-lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantee's share of the balance of the amount recovered shall be determined by multiplying that balance by the percentage set forth in subsection 10.2

**10.4 Application of Proceeds.** Grantee shall use any proceeds received under the circumstances described in this Section 10 in a manner consistent with its conservation purposes, which are exemplified by this grant.

## 11. Assignment

Grantee may assign its rights and obligations under this Easement to an organization that is: (a) a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and (b) authorized to acquire and hold conservation easements under Colorado law. As a

condition of such transfer, Grantee shall require the transferee to expressly agree, in writing, to carry out and uphold the conservation purposes of this Easement and otherwise assume all of the obligations and liabilities of Grantee set forth herein or created hereby. After such transfer, Grantee shall have no further obligation or liability under this Easement. If Grantee is unable to transfer the Easement to another organization because it is no longer incorporated or functioning in furtherance of its original mission, a court with jurisdiction shall transfer the Easement to another qualified organization having similar purposes, which organization agrees to assume the responsibilities of Grantee.

## **12. Amendment**

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement consistent with the Purpose of this Easement provided that any amendment have a neutral or beneficial effect on the Property's Conservation Values, as determined by Grantee in its sole discretion. No amendment shall be permitted that shall affect the Easement's perpetual duration, permit uses of the Property inconsistent with the Easement's Purpose or the protection and preservation of the Property's Conservation Values, permit, enable, or effect division or subdivision of the Property, permit the construction of buildings or structures on the Property, or affect the qualification of this Easement or the status of Grantee under any applicable laws, including C.R.S. Section 38-30.5-101, *et seq.*, or Section 170(h) of the Code or any regulations promulgated thereunder. No amendment shall be permitted that will confer a private benefit to Grantor or any other individual or entity greater than the benefit to the general public (see IRS Reg. 1.170A-14(h)(3)(i)) or result in private inurement to a Board member, staff or contract employee of Grantee (see IRS Reg. 1.501(c)(3)-1(c)(2)). Any amendment to this Easement shall be recorded in the official records of Eagle County, Colorado. Any and all costs, including staff time and attorney fees associated with any and all amendments to this Easement shall be borne by Grantor.

## **13. Liens on the Property**

**13.1. Subordination. [if appropriate]** At the time of conveyance of this Easement, the Property is subject to a mortgage, the holder of which has agreed by separate instrument, a copy of which is attached hereto as **Exhibit D** and incorporated by this reference, to subordinate its rights in the Property to the extent necessary to permit Grantee to enforce the purpose of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the mortgage holder.

**13.2 Subsequent Liens.** No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such borrowing shall be subordinated to this Easement and shall encumber the entire Property.

## **14. Subsequent Transfers**

Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer using the form in **Exhibit E** attached hereto. Any time the Property or a portion thereof is transferred by Grantor to any third party, Grantor shall pay a transfer fee of 1% of the fair market value of the Property to Grantee to be used for monitoring, stewardship, defense, and enforcement of this Easement or other conservation easements that Grantee holds, or for other purposes consistent with Grantee's own purpose. The failure of Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

## 15. Notices

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, return receipt requested, postage prepaid, addressed as follows:

EVLT: P.O. Box 3308, Eagle, CO, 81631

GRANTOR:

## 16. Recordation

Grantee shall record this instrument in timely fashion in the official records of \_\_\_\_\_ County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Easement.

## 17. General Provisions

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

**17.2 Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of the Easement to protect and preserve the Conservation Values of the Property in perpetuity, and the policy and purpose of C.R.S. Sections 38-30.5-101 *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid and ensure continuation of the purposes of the Easement and the preservation and protection of the Conservation Values of the Property shall be favored over any interpretation that would render it invalid. The common law rules of disfavoring restrictions on the use of real property and construing restrictions in favor of the free and unrestricted use of real

property shall not apply to interpretations of this Easement or to disputes between the Parties concerning the meaning of particular provisions of this Easement.

**17.3. Severability.** If any provision of this Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to person or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

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

**17.5. No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

**17.6. Joint Obligation.** If more than one owner owns the Property at any time, the obligations imposed by this Easement upon the owners shall be joint and several.

**17.7. Successors.** The covenants, terms, conditions, and restriction of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

**17.8. Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

**17.9. Captions.** The captions in this instrument have been inserted solely for convenience of reference, are not a part of this instrument, and shall have no effect upon construction or interpretation.

**17.10. Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

**17.11. No Merger.** Unless the parties expressly state that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Deed of Conservation Easement.

**17.12. Terms.** The terms "Grantor" and "Grantee", wherever used herein, or any pronoun used in place thereof, shall include, respectively, the above-named Grantor and its personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns. The term "Property," wherever used herein, shall refer to the land described in **Exhibit A** [and water rights combined]. The term "Water Rights," wherever used herein, shall refer to the water rights alone, as described in **Exhibit D**. The terms "Easement" and "Conservation Easement in gross" refer to the immediately





**Exhibit A**

**Legal Description of Property**

**Exhibit B**  
**Map of Property**

**Exhibit C**

**Baseline Document Report Acknowledgement**

Grantor and Grantee acknowledge that each has read the “\_\_\_\_\_ Conservation Easement Baseline Documentation Report,” dated \_\_\_\_\_, 20\_\_\_\_, and that the report accurately reflects the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

EAGLE VALLEY LAND TRUST,  
a Colorado non-profit corporation  
etc>

[<Grantor>, a \_\_\_\_\_  
<corporation/partnership,

By: \_\_\_\_\_  
\_\_\_\_\_

By:

Its \_\_\_\_\_  
\_\_\_\_\_

Its

Date: \_\_\_\_\_

Date: \_\_\_\_\_

OR FOR INDIVIDUAL:

\_\_\_\_\_

[INDIVIDUAL NAME]

Exhibit D

Water Rights

**[WHEN WATER RIGHTS ARE ENCUMBERED BY THE EASEMENT.]**

**[When the water rights to be included in the conservation easement can be described with specificity, include as much detail as possible, i.e., name of water right, source of water, amount, court and case number, date(s) of appropriation and date(s) of adjudication, or certificate number(s) for shares in ditch and reservoir companies.]**

**[When the water rights to be included in the conservation easement cannot be described with specificity, but the intent of the parties is to include all of the water rights.]** The “Water Rights” include, without limitation, all of the Grantor’s right, title and interests in any and all water and water rights beneficially used on the Property, and all canals, ditches, laterals, headgates, springs, ponds, reservoirs, water allotments, water shares and stock certificates, contracts, units, wells, easements and rights of way, and irrigation equipment associated therewith. The Water Rights include surface water rights and groundwater rights, whether tributary or nontributary, decreed or undecreed.

**Exhibit E**

**Notice of Transfer of Property**

To: Eagle Valley Land Trust (“Grantee”)  
From: **[Insert name of fee owner]** (“Grantor”)

Pursuant to Section 14 of the Deed of Conservation Easement, Grantee is hereby notified by Grantor of the transfer of the fee simple interest in the subject Property legally described in **Exhibit A** attached hereto effective \_\_\_\_\_ **[insert date of closing]** to \_\_\_\_\_ **[insert name of new Grantor]**, who can be reached at \_\_\_\_\_ **[insert name, legal address, phone and fax number]**.

**GRANTOR:**

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

STATE OF COLORADO )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

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

Date: \_\_\_\_\_

## Exhibit F

### Subordination Agreement

This Agreement is entered into by and among {LENDER}, a {state of incorporation} corporation with its principal office located at \_\_\_\_\_ (“Mortgagee”); [Land owners], whose mailing address is \_\_\_\_\_ (“Mortgagors”); and the Eagle Valley Land Trust, a Colorado non-profit corporation, with its principal office located at \_\_\_\_\_ and mailing address at P.O. Box 3308, Eagle, CO, 81631 Eagle, Colorado (“Land Trust”).

Whereas, Mortgagors are the owners of that certain real property in \_\_\_\_\_ County, Colorado (“Property”);

Whereas, Mortgagee is the holder of a promissory note made by Mortgagors, dated \_\_\_\_\_, in the original principal amount of \_\_\_\_\_ (the “Note”), which is secured by a mortgage encumbering the Property of even date therewith, recorded on [date], at Volume \_\_\_ of Mortgages, page \_\_\_, Records of \_\_\_\_\_ County, Colorado (the “Mortgage”);

Whereas, following the execution of this Agreement, Mortgagors are conveying a conservation easement over the Property to Land Trust (“Easement”);

Whereas, upon Mortgagors’ request, Mortgagee has consented to subordinate the Mortgage to the terms of the Easement, which Mortgagee has reviewed and approved; and

Whereas, the Easement, which could not otherwise be conveyed by Mortgagors nor accepted by Land Trust, is being conveyed and accepted in reliance on this Agreement.

NOW THEREFORE, in consideration of the above and the mutual covenants and promises contained herein, and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is represented and agreed as follows:

1. The Mortgage is subordinated and hereafter shall be junior to the Easement to the extent necessary to permit Land Trust to enforce the purpose of the Easement in perpetuity and to prevent any modification or extinguishment of the Easement by the exercise of any right of Mortgagee.

2. In the event of the foreclosure of the Mortgage, whether by judicial decree or pursuant to a power of sale, the Easement shall not be extinguished but shall survive and continue to encumber the Property.

3. This Agreement shall be binding upon and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns.

4. An endorsement has been placed upon the Note stating that it has, by this instrument, been subordinated to the Easement to the extent described herein.

This Agreement shall be recorded immediately after the Easement is recorded.

Entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_.

MORTGAGEE:

[type name]

by \_\_\_\_\_

its [official capacity]

MORTGAGORS:

\_\_\_\_\_  
\_\_\_\_\_

LAND TRUST:

EAGLE VALLEY LAND TRUST, a Colorado non-profit corporation

By: \_\_\_\_\_

its \_\_\_\_\_

[official capacity]