

## DEED OF CONSERVATION EASEMENT

Any time the Property is transferred by Grantor to any third party, Grantor shall pay a transfer fee of 0.5% to Grantee and notify Grantee pursuant to the requirements of Section 11.

THIS DEED OF CONSERVATION EASEMENT ("**Deed**") is granted on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ ("**Grantor**"), whose address is \_\_\_\_\_, to **EAGLE VALLEY LAND TRUST**, a Colorado non-profit corporation ("**Grantee**"), whose address is PO Box 3016, Edwards, Colorado 81632. (Grantor and Grantee are collectively referred to herein as the "**Parties**".)

### RECITALS:

A. **Description of Property.** Grantor is the sole owner in fee simple of approximately \_\_\_\_ acres of real property located in \_\_\_\_\_ County, Colorado, more particularly described in **Exhibit A** and depicted in **Exhibit B**, both attached hereto and made a part hereof (the "**Property**").

B. **Qualified Organization.** Grantee is a "qualified organization," as defined in I.R.C. §170(h) and a charitable organization as required under C.R.S. § 38-30.5-104(2). Grantee is certified by the State of Colorado's Division of Real Estate to hold conservation easements for which a state tax credit is claimed. Grantee is also accredited by the Land Trust Accreditation Commission, a national accreditation program sponsored by the Land Trust Alliance. Grantee's primary purpose is to preserve and protect the natural, scenic, agricultural, historical, and open space resources 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.

C. **Conservation Purposes.** According to I.R.C. § 170(h)(4)(A) and Treas. Regs. § 1.170A-14(d), the conservation purposes of a qualified conservation contribution must include one or more of the following: (1) to preserve land for outdoor recreation by or education of the general public; (2) to protect relatively natural habitat of fish, wildlife or plants; (3) to preserve open space; and (4) to preserve historically important land or structures.

The conservation purposes of the conservation easement conveyed by this Deed are set forth below in this Recital C and collectively referred to hereafter in this Deed as the "**Conservation Values**."

### [TO BE COMPLETED UPON RECEIPT OF THE BASELINE REPORT]

1. **Relatively Natural Habitat** [Treas. Reg. § 1.170A-14(d)(3)]. The Property contains [wetlands, riparian areas, shortgrass prairie, etc.] that provide food,

shelter, breeding ground, and migration corridors for several wildlife species, including **[list names of species, including any endangered, threatened species or state species of concern]**. The Property contributes to the ecological viability of the **[local, state or national park, nature preserve, wildlife refuge, wilderness area, or other similar conservation area]**. **[Add additional language as needed]**.

2. **Open Space** [Treas. Reg. § 1.170A-14(d)(4)]. The Property qualifies as open space because it is being preserved **[for the scenic enjoyment of the general public and/or pursuant to a clearly delineated federal, state or local governmental conservation policy]** and will yield a significant public benefit.

a. 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 visible to the general public from **[list roads, rivers, trails, etc.]**, which are open to and actively utilized by residents of \_\_\_\_\_ County and the State of Colorado.

b. Agriculture. The Property is currently used for agricultural purposes including **[irrigated or dryland crop production, cattle grazing, etc.]**. This use is compatible with other land use in the vicinity, as adjacent properties are also used for agricultural production.

c. Clearly Delineated Government Conservation Policy. Protection of the Property furthers the specific objectives of those clearly delineated government conservation policies set forth in Recitals D and E below.

d. Significant public benefit. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values. **[Add additional public benefit, such as proximity to conserved lands, national parks, forests or BLM land, if applicable.]**

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

These Conservation Values are of great importance to Grantor, Grantee, the residents of \_\_\_\_\_ County, and the State of Colorado.

D. **State Policy Concerning Conservation Easements**. C.R.S. § 33-1-101, provides in relevant part that "it is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors." C.R.S. § 35-3.5-101 states 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.R.S. § 38-30.5-102 provides for the creation of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest or other use or condition consistent with the protection of open land, environmental quality or life sustaining ecological diversity . . ."

E. **Other Supporting Government Policy.** The \_\_\_\_\_ County Master Plan has the following goals and policies that support the protection of the Property.

**[ADD IN POLICIES FROM APPLICABLE MASTER PLAN/COMPREHENSIVE PLAN OR OTHER SUPPORTING LOCAL GOVERNMENT RESOLUTIONS OR ORDINANCES.]**

F. **Baseline Documentation Report.** Pursuant to Treas. Reg. § 1.170A-14(g)(5) and in order to document the condition of the Property as of the Effective Date, a report has been prepared by \_\_\_\_\_ and dated \_\_\_\_\_ (the “**Baseline Report**”). The Baseline Report contains a natural resources inventory and also documents the Conservation Values and the characteristics, current use, and status of improvements on and development of the Property. The Baseline Report is acknowledged by Grantor and Grantee as an accurate representation of the Property at the time of the transfer. The Baseline Report has been provided to both parties and will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Easement. However, the Baseline Report is not intended to preclude the use of other evidence to establish the condition of the Property as of the Effective Date.

G. **Charitable Donation.** Grantor intends to create a conservation easement pursuant to I.R.C. § 170(h), Treas. Reg. § 1.170A-14, and C.R.S. § 38-30.5-101, and hereby makes a charitable gift of the property interest conveyed by this Deed to Grantee. **[NEED TO REVISE FOR BARGAIN SALE OR NON-CHARITABLE TRANSACTIONS.]**

NOW, THEREFORE, in consideration of the recitals set forth above, incorporated herein by this reference, and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Colorado, Grantor voluntarily grants and conveys to Grantee and Grantee voluntarily accepts, a perpetual conservation easement in gross (“**Easement**”), an immediately vested interest in real property defined by C.R.S. §§ 38-30.5-101, *et seq.*, and of the nature and character described in this Deed, for the purpose of preserving and protecting the Conservation Values in perpetuity.

1. **Purpose.** The purpose of this Easement is to ensure that Grantor preserve and protect in perpetuity the Conservation Values as they exist upon the Effective Date (defined below) and as they may evolve in the future, in accordance with I.R.C. § 170(h), Treas. Reg. § 1.170A-14, and C.R.S. § 38-30.5-101, *et seq.* (“**Purpose**”). To effectuate the Purpose of this Easement, the Parties agree: (i) to permit those uses of the Property that are expressly permitted by this Easement, subject to any limitations or restrictions stated herein, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to prevent any use of the Property that is expressly prohibited by this Easement or will materially adversely

affect the Conservation Values. Nothing in this Easement is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation Values.

2. ***Rights of Grantee.*** To accomplish the Purpose of this Easement, this Deed conveys the following rights to Grantee:

- A. To preserve and protect the Conservation Values in perpetuity;
- B. To enter upon the Property at reasonable times to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that, prior to such entry, Grantee shall first provide reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;
- C. To prevent any activity on or use of the Property that is inconsistent with the Purpose or the express terms of this Easement and, except as limited by **Section 8**, Grantee may require the restoration of such areas or features of the Property that are damaged by an inconsistent activity or use;
- D. To enforce the terms and provisions of this Easement; and
- E. 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 approval which may be withheld in its discretion; and
- F. All Development Rights as defined in **Section 25** (Development Rights), except as specifically reserved by Grantor herein.

Nothing in this Section shall preclude the right of Grantee to enforce the preservation and protection of the Conservation Values or any other provisions of this Easement.

3. ***Rights Retained by Grantor.*** Subject to the terms and provisions of this Easement, Grantor reserves to Grantor, and to Grantor's personal representatives, heirs, successors and assigns, all rights accruing from Grantor's ownership of the Property, including: (i) the right to engage in or permit or invite others to engage in all uses of the Property that are expressly permitted by this Easement, subject to any limitations or restrictions stated herein, and those uses of the Property that do not materially adversely affect the Conservation Values; and (ii) to retain the economic viability of the Property and to retain income derived from the Property from all sources. Grantor may not, however, exercise these retained rights in a manner that is expressly prohibited by this Easement or that materially adversely affects the Conservation Values.

4. ***Property Improvements.*** Improvements existing as of the Effective Date are permitted, and Grantor may maintain, repair, replace and reasonably enlarge (subject to square footage limitations set forth below) such improvements in their current locations without

Grantee's approval. Grantor reserves the right to construct or place only the new improvements listed below, and Grantor shall provide prior notice of such construction to Grantee in accordance with **Section 17** (Grantor's Notice) to allow Grantee to evaluate the consistency of the proposed improvement with the terms and conditions of this **Section 4**. Once constructed, Grantor may maintain, repair, replace and reasonably enlarge such new improvements in their initially-constructed locations without Grantee's approval. "**Residential Improvements**" shall mean those covered improvements containing habitable space intended for full or part-time human habitation, including but not limited to, homes, cabins, guest houses, mobile homes, yurts, tepees, and any space attached to any such improvement such as a garage or covered porch. "**Non-Residential Improvements**" shall mean all other covered or uncovered agricultural and non-residential improvements that are not intended for human habitation, including but not limited to, barns, hay storage areas, machine shops, sheds, free-standing garages, well houses, outhouses, gazebos, picnic areas, sport courts, pools, outdoor kitchens, parking areas, and indoor and outdoor riding arenas. "**Minor Non-Residential Improvements**" shall mean minor agricultural or non-residential improvements including, but not limited to, fences, corrals, hayracks, cisterns, stock tanks, stock ponds, troughs, fenced hay stacks, livestock feeding stations, hunting blinds, wildlife viewing platforms, sprinklers, water lines, water wells, ditches, information kiosks, trail markers and trash receptacles.

A. **Building Envelope.** Grantor has designated a building envelope consisting of \_\_\_\_\_ (\_\_\_\_\_) acres in size in the general location depicted on **Exhibit B** (the "**Building Envelope**"). Grantor may construct, place, replace or enlarge New Residential Improvements and New Non-Residential Improvements within the Building Envelope subject to the following limitations:

- i. **[State maximum number of improvements.]**
- ii. **[State maximum square footage for each improvement and cumulative for all improvements.]**
- iii. **[State maximum height.]**
- iv. **[Other building restrictions.]**
- v. The construction of New Residential Improvements and New Non-Residential Improvements within the Building Envelope shall not cause adverse environmental impacts to the Conservation Values on portions of the Property located outside the Building Envelope.

B. **Outside of the Building Envelope.** Grantor may construct or place Minor Non-Residential Improvements in the portion of the Property outside the Building Envelope subject to the following limitations:

- i. **[State type of improvements permitted.]**
- ii. **[State maximum number of improvements.]**
- iii. **[State maximum square footage for each improvement and cumulative for all improvements.]**
- iv. **[State maximum height.]**
- v. **[Other building restrictions.]**

vi. Any other improvements outside the Building Envelope(s) are prohibited unless otherwise permitted by this Easement.

C. ***Other Improvements.***

i. ***Roads and Trails.*** For purposes of this Section, “**Roads**” shall mean any permanent road that is graded, improved or maintained, including any seasonal unimproved roads and two-track roads. “**Trails**” shall mean any unimproved or improved path, or paved or unpaved trail constructed or established by human use, but shall not include trails established by wildlife or livestock. Grantor may only construct Roads or Trails in the manner permitted below and only after providing notice to Grantor in accordance with **Section 17** (Grantor’s Notice).

a. ***Within the Building Envelope.*** Grantor may construct new Roads and parking areas (which Roads and parking areas may be paved) within the Building Envelope to access improvements expressly permitted within the Building Envelope by **Section 4**. Grantor shall not construct or establish any Road wider than necessary to provide access or to meet local codes for width of access to improvements permitted by this Easement.

b. ***Outside the Building Envelope.*** Grantor shall not construct or establish Roads outside the Building Envelope except for those existing Roads or new Roads depicted on **Exhibit B** or such other Roads that Grantee determines are consistent with the Purpose pursuant to **Sections 17** (Grantor’s Notice) and **18** (Grantee’s Approval). Grantor shall not construct or establish any Road wider than necessary to provide access or to meet local codes for width of access to improvements permitted by this Easement. Grantor shall not pave or otherwise surface any Road with impervious surfaces unless Grantee determines that said surfacing is consistent with the Purpose, pursuant to **Sections 17** (Grantor’s Notice) and **18** (Grantee’s Approval).

c. ***Trails.*** Grantor shall not construct or establish any new Trail on the Property except for the new Trail to be constructed in the location depicted on **Exhibit B**, or unless Grantee determines a new Trail is consistent with the Purpose, pursuant to **Sections 17** (Grantor’s Notice) and **18** (Grantee’s Approval).

ii. ***Fences.*** Grantor may maintain, repair and replace existing fences and construct new fences anywhere on the Property, provided that the location and design of fences located outside the Building Envelope shall facilitate the movements of wildlife across the Property and are otherwise consistent with the Purpose.

iii. **Utility Improvements.** Existing energy generation or transmission infrastructure and other existing utility improvements, if any, including but not limited to: (i) natural gas distribution pipelines, electric power poles, transformers, and lines; (ii) telephone and communications towers, poles, and lines; (iii) septic systems; (iv) domestic water storage and delivery systems; and (v) renewable energy generation systems including, but not limited to, wind, solar, geothermal, or hydroelectric (“**Utility Improvements**”), may be repaired or replaced with an improvement of similar size and type at their current locations on the Property without further permission from Grantee. New Utility Improvements may be enlarged or constructed on the Property, subject to the restrictions below and provided that they are consistent with the Purpose.

a. **Within the Building Envelope.** Grantor may enlarge or construct Utility Improvements within the Building Envelope without further permission of Grantee, provided that no Utility Improvements exceed thirty-five (35) feet in height.

b. **Outside of the Building Envelope.** Grantor shall not enlarge or construct any Utility Improvements outside of the Building Envelope without Grantee’s approval pursuant to **Sections 17** (Grantor’s Notice) and **18** (Grantee’s Approval); provided, however, that Grantor reserves the right to construct Utility Improvements outside the Building Envelope solely to provide utility services to the improvements permitted by this Easement, provided that no Utility Improvements exceed thirty-five feet in height.

c. **Additional Requirements.** Prior to the enlargement or construction of any Utility Improvements on the Property, Grantor shall provide notice of such enlargement or construction to Grantee. Following the repair, replacement, enlargement or construction of any Utility Improvements, Grantor shall promptly restore any disturbed area to a condition consistent with the Purpose. Any easement, right of way or other interest granted to a third party or otherwise reserved, to be used for Utility Improvements is subject to **Section 6K** (Easements, Rights of Way or Other Interests).

d. **Renewable Energy Generation Systems.** In addition to the foregoing, limited renewable energy generation systems are permitted for use on the Property primarily for the purpose of allowing Grantor to offset its energy consumption. Any limited renewable energy generated on the Property in accordance with this paragraph that incidentally is in excess of Grantor's consumption may be sold, conveyed, or credited to a provider of retail electric service to the extent permitted by Colorado law.

iv. **Signs.** Grantor may place and maintain signs on the Property provided that no individual sign exceeds twelve (12) square feet. Grantor may place larger signs on the Property if Grantee determines that said signs are consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

5. **Resource Management.** To accomplish the preservation and protection of the Conservation Values in perpetuity, Grantor shall operate, manage and maintain the Property in a manner that promotes the continued viability of the natural resources on the Property while maintaining any permissible productive uses of the Property, subject to the provisions of **Section 6**. Specifically, Grantor shall conduct the uses listed below in a manner consistent with the Purpose. Notwithstanding the foregoing, Grantor and Grantee recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of Grantor may result in an evolution of agricultural, silvicultural, and other uses of the Property, and such uses are permitted provided they are consistent with the Purpose.

A. **Agriculture.** [Describe current agricultural uses and declare that they are consistent with the Purpose.] 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, avoiding unsustainable livestock grazing practices, and minimizing loss of vegetative cover. If agricultural acts or uses are no longer practiced on the Property, either Party may request that the Parties develop a mutually acceptable plan to ensure appropriate land cover that is consistent with the Purpose. The expense of developing and implementing said plan shall be borne by Grantor.

B. **Timber.** Grantor may cut trees to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, and for fire mitigation purposes including limited and localized tree and vegetation thinning and the creation of defensible space for permitted improvements. Grantor may also cut dead trees for domestic uses on the Property such as firewood and construction of permitted buildings and fences. Any large scale fire mitigation activities, or commercial timber harvesting activities shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a professional forester at Grantor's expense, which plan shall be reviewed by Grantee, and shall not be effective unless and until approved by Grantee pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

C. **Relatively Natural Habitat.** Grantor may conduct any activities to create, maintain, restore, or enhance wildlife habitat and native biological communities on the Property, provided that such activities do not temporarily or permanently have a material adverse effect on the Conservation Values. If such activities could in any manner temporarily or permanently have a material adverse effect on the Conservation Values,



Grantor must first notify Grantee and obtain Grantee's consent pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

D. **Minerals and Other Deposits.** As of the Effective Date, Grantor does not own all of the coal, oil, gas, hydrocarbons, and other minerals (the "**Minerals**") located on, under, or in the Property or otherwise associated with the Property. For this reason, a minerals assessment report has been completed by \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_\_\_, in compliance with I.R.C. § 170(h)(5)(B)(ii) and Treas. Reg. § 1.170A-14(g)(4). The report concludes that, as of the Effective Date, the probability of extraction or removal of minerals from the Property by any surface mining method is so remote as to be negligible. **[OR if Grantor owns all minerals: As of the Effective Date, Grantor owns all of the coal, oil, gas, hydrocarbons, and other minerals (the "Minerals") located on, under, or in the Property or otherwise associated with the Property.]** This Easement expressly prohibits the mining or extraction of Minerals using any surface mining method. Grantor may permit subsurface access to Minerals from locations off the Property, provided that Grantor shall not permit such subsurface access to disturb the subjacent and lateral support of the Property. Notwithstanding the foregoing, Grantor and Grantee may permit mineral extraction utilizing methods other than a surface mining, if the method of extraction has a limited, localized impact on the Property that is not irretrievably destructive of the Conservation Values; provided, however, that Grantor and Grantee agree that the following provisions shall apply to any such proposed mineral extraction by Grantor or any third party, as applicable:

i. **Soil, Sand, Gravel and Rock.** Grantor may extract soil, sand, gravel or rock without further permission from Grantee so long as such extraction: (i) is solely for use on the Property for non-commercial purposes; (ii) is in conjunction with activities permitted herein, such as graveling roads and creating stock ponds; (iii) is accomplished in a manner that is consistent with the Purpose; (iv) does not involve disturbing by such extraction more than one half-acre (0.5 acres) of the Property at one time, and uses methods of mining that may have a limited and localized impact on the Property but are not irretrievably destructive of the Conservation Values; and (v) is reclaimed within a reasonable time by refilling or some other reasonable reclamation method for all areas disturbed. This provision shall be interpreted in a manner consistent with I.R.C. § 170(h), as amended, and the Treasury Regulations adopted pursuant thereto.

ii. **Oil and Gas.** Grantor, or a third party permitted by Grantor, may explore for and extract oil and gas owned in full or in part by Grantor, provided Grantor ensures that such activities are conducted in a manner that does not constitute surface mining and complies with the following conditions:

a. The exploration for or extraction of oil, gas and other hydrocarbons is conducted in accordance with a plan (the "**Oil and Gas Plan**"), prepared at Grantor's expense and approved in advance by Grantee. The Oil and Gas Plan shall describe: (a) the specific activities proposed; (b) the specific

land area to be used for well pad(s), parking, staging, drilling, and any other activities necessary for the extraction of oil and gas, and the extent of the disturbance of such land area before and after reclamation; (c) the location of facilities, equipment, roadways, pipelines and any other infrastructure to be located on the Property; (c) the method of transport of oil or gas produced from the Property; (d) the method of disposal of produced water, mining byproducts and hazardous chemicals produced by or used in the exploration and development of the oil or gas; (e) the proposed operation restrictions to minimize impacts on the Conservation Values, including noise and dust mitigation and any timing restrictions necessary to minimize impacts to wildlife; (f) the reclamation measures necessary to minimize disturbance to and reclaim the surface of the Property, including restoring soils to the original contours and replanting and re-establishing native vegetation using specific seed mixes and processes to ensure successful re-vegetation of the Property, including and in addition to those measures required by law; and (g) remedies for damages to the Conservation Values.

b. No tank batteries, refineries, secondary production facilities, compressors, gas processing plants, or other similar facilities may be located on the Property.

c. Areas of surface disturbance shall be mitigated promptly in accordance with the Oil and Gas Plan.

d. Travel for the purpose of oil or gas development shall be restricted to existing roads or to new roads approved in advance in writing by Grantee as part of the Oil and Gas Plan.

e. Well facilities and pipelines shall either be placed underground, or screened or concealed from view by the use of existing topography, existing native vegetation, newly planted but native vegetation, and/or use of natural tone coloring. Pipelines shall be located along or under existing roadways to the maximum extent possible.

f. Drilling equipment may be located above-ground without concealment or screening, provided that such equipment shall be promptly removed after drilling is completed.

g. Any soil or water contamination due to the exploration for or extraction of oil or gas must be promptly restored and remediated at the expense of Grantor.

h. Any produced water, mining byproducts or hazardous chemicals produced by or used in the exploration and development of the oil or gas shall not be stored or disposed of on the Property.

i. Flaring to enhance oil production is prohibited; flaring for emergencies or operational necessity is permitted.

j. Grantor shall not allow use of the Water Rights for any oil and gas activities.

k. Grantee shall be released, indemnified and held harmless from any liabilities, damages, or expenses resulting from any claims, demands, costs or judgments arising out of the exercise of any rights by Grantor, any lessees or other third parties relating to the exploration for or extraction of oil, gas or hydrocarbons.

iii. ***Third-Party Mineral Extraction.*** If a third party owns all, or controls some, of the Minerals, and proposes to extract Minerals from the Property, Grantor shall immediately notify Grantee in writing of any proposal or contact from a third party to explore for or develop the Minerals on the Property. Grantor shall not enter into any lease, surface use agreement, no-surface occupancy agreement, or any other instrument related to Minerals associated with the Property (each, a “**Mineral Document**”), with a third party subsequent to the Effective Date without providing a copy of the same to Grantee prior to its execution by Grantor for Grantee’s review and approval. Any Mineral Document shall require that Grantor provide notice to Grantee whenever notice is given to Grantor, require the consent of Grantee for any activity not specifically authorized by the instrument, and give Grantee the right, but not the obligation, to object, appeal and intervene in any action in which Grantor has such rights. Any Mineral Document must either (i) prohibit any access to the surface of the Property or (ii), must (a) limit the area(s) of disturbance to a specified area(s); (b) include provisions that ensure that the proposed activities have a limited, localized impact on the Property that is not irretrievably destructive of the Conservation Values; and (c) contain a full description of the activities proposed, a description of the extent of disturbance, the location of facilities, equipment, roadways, pipelines and any other infrastructure, the proposed operation restrictions to minimize impacts on the Conservation Values, reclamation measures including and in addition to those required by law, and remedies for damages to the Conservation Values. Any Mineral Document that only permits subsurface access to Minerals but prohibits any access to the surface of the Property shall also prohibit any disturbance to the subjacent and lateral support of the Property.

iv. ***Geothermal Resources.*** Within the Building Envelopes, the development and use of geothermal resources is permitted without Grantee’s approval, provided that it is consistent with the Purpose. Outside the Building

Envelopes, the development and use of geothermal resources is prohibited without Grantee approval pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

E. **Recreation.** Grantor may undertake low-impact recreational uses such as wildlife watching, hiking, cross-country skiing, snowmobiling, hunting and fishing, provided they are consistent with the Purpose. Trails are permitted only in accordance with **Section 5.C.i.c.** These uses are specifically excluded from the Restricted Practices in **Section 6D.**

F. **Water Rights.** The Parties agree that it is appropriate to encumber certain water rights beneficially used on the Property with this Easement pursuant to C.R.S. § 38-30.5-102, including all of Grantor's right, title, and interest in and to the water and water rights described in **Exhibit D** attached hereto and made a part hereof, together with all associated canals, ditches, laterals, headgates, springs, wells, ponds, reservoirs, water shares and stock certificates, water allotments, contracts, units, permits, easements and rights of way, and irrigation equipment affixed to the land (collectively, the "**Water Rights**").

i. **Permitted Water Uses.** The Parties agree that the Water Rights will be used according to their decreed terms. The Parties further agree that the Water Rights are hereby dedicated and restricted exclusively for conservation purposes, including, but not limited to, the Conservation Values of the Property, agricultural, wildlife habitat, horticultural, wetlands, recreational, forest, or other uses consistent with the protection and restoration of open land, environmental quality, or life-sustaining ecological diversity (the "**Permitted Water Uses**"). The Permitted Water Uses specifically include:

a. **Historical Use.** The Parties agree that Grantor shall have the paramount right to use and enjoy the Water Rights on the Property consistent with recent historical practices, including continued irrigation or other historical use of the Water Rights;

b. **Instream Flow Use.** The Parties agree that Grantor may enter into temporary legally enforceable water leases, contracts, emergency water loans, or similar agreements for conservation purposes, not to exceed three (3) consecutive years or five (5) out of every ten (10) years, to increase instream flows and/or water levels in streams, rivers, lakes, and reservoirs to preserve or improve the natural environment of such water body(s), provided that: (1) Grantee has given its prior written consent to such arrangements; (2) that such use, in the opinion of Grantee, would not jeopardize the long-term Conservation Values of the Property; (3) that such arrangements do not permanently separate the Water Rights from the Property; and (4) that such arrangements comply with current law; and

c. **Restoration/Enhancement Use.** Grantor may propose projects on the Property, including the riverbed of the Property, that prevent the degradation of, restore, and/or enhance and improve the quality of the watershed, wildlife habitat, and ecological health of the Property. These may include a change of Water Rights pursuant to C.R.S. § 37-92-302 or any successor statute (a “**Change**”) or water infrastructure construction. Such Change or construction shall be undertaken only after creation of a site specific plan for restoration/enhancement, which has been submitted to and approved by Grantee pursuant to **Sections 17** (Grantor’s Notice) and **18** (Grantee’s Approval).

Grantor shall have the paramount right to use and enjoy the Water Rights on the Property consistent with recent historical practices pursuant to **Section 5.F.i.a**, to use the Water Rights to benefit instream flows pursuant to **Section 5.F.i.b**, and to use the Water Rights for restoration or enhancement according to the terms and conditions of an approved restoration or enhancement plan pursuant to **Section 5.F.i.c**. In the event that Grantor can no longer use the Water Rights in accordance with recent historical practices, the Water Rights shall be used for other Permitted Water Uses. Grantor shall have the right to install, construct, maintain, repair, and if destroyed, reconstruct any facilities related to the Water Rights (such as gages, ditches, wells, reservoirs, recharge ponds, etc.), unless the Conservation Values of the Property would be unreasonably damaged thereby, as determined by Grantee in its reasonable discretion.

ii. **Restrictions on Water Rights.** Except as permitted by **Section 5.F.i**, the Parties agree that Grantor may not: (i) Change the Water Rights to or use the Water Rights for municipal, industrial, commercial, or any other new uses; (ii) Change the Water Rights for use other than on the Property; (iii) sell or lease the Water Rights, or encumber them separately from the Property or otherwise legally separate them from the Property; or (iv) have the points of diversion, or the type or the place of use within or without the Property changed, except after Grantor’s receipt of a written determination by Grantee that such changes are consistent with the Permitted Uses or will not materially impair the Conservation Values of the Property. Grantor shall not, without the prior written approval from Grantee, which approval shall not be unreasonably withheld, construct, or permit others to construct, any new diversion, storage, or other water structures upon the Property; develop any conditional water rights for use on the Property; or otherwise undertake any new development of water resources for use on the Property.

iii. **Change of Conditions.** Grantor expressly waives any claim to use, Change or transfer all or any part of the Water Rights other than as provided in this Easement, regardless of any future change in circumstances, change in values, or other reasons, based on any theory of reasonable accommodation or other

theory that would release any or all of the Water Rights from the provisions of this Easement without Grantee's express written consent, which can be granted, withheld, or conditioned by each in its sole discretion.

iv. ***Protection of Water Rights.*** In order to preserve and protect the Conservation Values of the Property, Grantor shall not abandon or allow the abandonment of any of the Water Rights, by action or inaction. Grantor shall annually report to Grantee the nature and extent of use of the Water Rights during the prior year, which report need not be in writing, but shall include copies of any reports submitted to the State or Division Engineer or Water Commissioner by Grantor. Grantor shall provide Grantee a copy of any written notice received by Grantor from any state water official concerning the use, or possible abandonment, of the Water Rights.

If the Water Rights appear on the decennial abandonment list as provided by C.R.S. § 37-92-401 or any successor statute or Grantee determines that the Water Rights are otherwise subject to a threat of abandonment, Grantee shall give Grantor written notice of such threat of abandonment and shall meet with Grantor to discuss the matter. If, and only if, Grantor fails to cure the threat of abandonment within 90 days of receiving such notice from Grantee, Grantee shall, in addition to any other remedies available to Grantee under this Easement or law, have the right to (1) enter the Property and undertake any and all actions reasonably necessary to continue the historical use of the Water Rights, if desired by Grantee; and (2) seek removal of the Water Rights from the decennial abandonment list. If the Water Rights remain subject to abandonment, Grantee may, after consultation with Grantor, seek to Change the Water Rights to another Permitted Water Use. Grantor agrees to cooperate in any manner necessary to accomplish such changes, and authorizes and appoints Grantee as its agent and attorney-in-fact to file for and obtain any administrative or judicial approvals required to effectuate such changes.

v. ***Recording Encumbrance on Stock Certificates.*** If the Water Rights include any shares in ditch or reservoir companies, Grantor shall promptly submit the related stock certificate(s) to the appropriate ditch or reservoir company for inclusion of the following notation thereon: "These shares are subject to the terms and restrictions set forth in the Deed of Conservation Easement from \_\_\_\_\_ to \_\_\_\_\_ recorded in the Real Property Records of \_\_\_\_\_ County, Colorado on \_\_\_\_\_, 20\_\_ at Reception No. \_\_\_\_\_." A copy of the reissued stock certificate(s) shall be promptly provided by Grantor to Grantee.

6. ***Restricted Practices.***

A. ***Subdivision.*** Grantor and Grantee agree that the division, subdivision or de facto subdivision of the Property, whether by legal or physical process, into two or

more parcels of land or partial or separate interests (including, but not limited to, condominium interests or the partition of undivided interests) is prohibited. At all times Grantor shall own and convey the Property as a single parcel which shall be subject to the terms and conditions of this Easement, regardless of whether the Property now consists of separate parcels, was acquired as separate parcels, or is treated as separate parcels for property tax or other purposes. Grantor may own the single parcel by joint tenancy or tenancy in common, consistent with **Section 28** (Joint and Several Liability) and **29** (Ownership by Single Entity Consisting of Multiple Parties); provided, however, that Grantor shall not undertake any legal proceeding to partition, subdivide or divide in any manner such undivided interests in the single parcel.

B. **Surface Disturbance.** Any alteration of the surface of the land, including without limitation, the movement, excavation, extraction or removal of soil, sand, gravel, rock, peat or sod, is prohibited, unless such alteration is associated with permitted acts on and uses of the Property and is consistent with the Purpose.

C. **Existing Water Features.** The maintenance and repair of existing non-domestic water improvements such as ponds, reservoirs, stock tanks, center pivot sprinklers, irrigation ditches, pipes, headgates, flumes, pumps, or wells is permitted. The construction of new water improvements or enlargement of existing water improvements, excluding ponds and reservoirs, is permitted provided that such activity is consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval). The enlargement of existing ponds or reservoirs, or the construction of new ponds or reservoirs, is permitted provided that Grantee determines that said activities are consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval). Any portion of the Property that is disturbed by the maintenance, repair, construction or enlargement of water improvements shall be restored to a condition that is consistent with the Purpose promptly after said activity is completed.

D. **Commercial or Industrial Activity.** Grantor shall not conduct industrial uses on the Property. Grantor shall not conduct commercial uses of the Property that are not consistent with the Purpose.

E. **Feed Lot.** Grantor shall not establish or maintain a feed lot. For purposes of this Easement, "feed lot" means a permanently constructed confined area or facility which is used and maintained continuously and exclusively for purposes of warm-up or fattening large numbers of livestock for market. Nothing in this Section shall prevent Grantor from seasonally confining livestock into an area, corral or other facility for warm-up or feeding, or from leasing pasture for the grazing of livestock owned by others.

F. **Public Access.** Nothing contained herein shall be construed as affording the public access to any portion of the Property, although Grantor may permit public access to the Property on such terms and conditions as it deems appropriate, provided that such access is consistent with the Purpose.

G. **Trash.** Grantor may not dump or accumulate any kind of trash, sludge, or refuse on the Property, except for farm-related trash and refuse produced on the Property that is disposed of in a manner that is consistent with the Purpose. Grantor may store or accumulate agricultural products and by-products on the Property in accordance with all applicable government laws and regulations and is consistent with the Purpose.

H. **Hazardous Materials.** Grantor may use agri-chemicals on the Property in accordance with all applicable federal, state or local laws. For purposes of this Easement, "Hazardous Materials" shall mean any "hazardous substance" as defined in §9601(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), "pollutant or contaminant" as defined in § 9601(33) of CERCLA, or any hazardous waste as defined in C.R.S. §25-15-101(6). 40 C.F.R. § 302.4 provides a non-exhaustive list of over 600 substances that qualify as hazardous substances under CERCLA. The use, treatment, storage, disposal, or release of Hazardous Materials shall only be permitted in accordance with applicable, federal, state and local law and regulations. Without limiting the foregoing, nothing in this Easement shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of 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.

I. **Weed Control.** The Parties recognize the potential negative impact of noxious weeds and invasive plant species on the Conservation Values. Grantor shall manage noxious weeds and invasive plant species in a manner consistent with the Purpose. Grantee has no responsibility for the management of noxious weeds and invasive plant species.

J. **Motorized Vehicle Operation.** The operation of motorized vehicles for purposes associated with permitted acts on and uses of the Property is permitted provided that such operation is consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval). Notwithstanding the foregoing, Grantor and Grantee agree that the operation of motorized vehicles for use by the general public is expressly prohibited.

K. **Easements, Rights of Way or Other Interests.** The conveyance or modification of an easement, right of way, Mineral Document or other similar interest is prohibited unless Grantee determines that the proposed conveyance or modification is consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

L. **Other Restricted Uses.** Grantor shall not construct or establish golf courses, sod farms, helicopter pads, and airstrips.



7. **Limited Impact Activities.** Subject to **Section 17** (Grantor's Notice) and **Section 18** (Grantee's Approval), Grantee may also, in its sole discretion, permit Grantor to engage in activities that may have limited impacts on the Conservation Values, provided that such activities: (1) do not violate or are not in conflict with the Purpose; AND (2) either enhance or do not significantly impair any Conservation Value protected by this Easement. Any approval granted pursuant to this paragraph shall be: (1) revocable at Grantee's discretion; (2) limited in duration; and (3) specific to the individuals or entities who have requested to engage in such activity. Notwithstanding the foregoing, Grantee will not agree to any activity that could result in the termination of this Easement under state or federal law.

8. **Responsibilities of Grantor and Grantee Not Affected.** Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligations of Grantor as owner of the Property. Additionally, unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Grantor shall continue to be solely responsible and Grantee shall have no obligation for the upkeep and maintenance of the Property and Grantor understands that nothing in this Easement relieves Grantor of any obligation or restriction on the use of the Property imposed by law. Among other things, this shall apply to:

A. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same. If for any reason Grantor fails to pay any taxes, assessments or similar requisite charges, Grantee may pay such taxes, assessments or similar requisite charges, and may bring an action against Grantor to recover all such taxes, assessments and similar charges plus interest thereon at the rate charged delinquent property taxes by the county assessor's office in which the Property is located.

B. **Liability.** Grantor shall indemnify, defend, and hold Grantee and its members, officers, directors, employees, agents, and contractors (collectively, the "**Indemnified Parties**") harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, unless due solely to the act or omission of the Indemnified Parties; (ii) the obligations under this Deed; (iii) the presence or release of hazardous materials on, under, or about the Property under **Section 6H**; (iv) the existence of any underground storage tanks on the Property; or (v) 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 state hazardous waste statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property. Grantee shall indemnify, defend and hold Grantor and its assigns, successors and heirs harmless from and against any and all loss, cost or expense, including reasonable attorney's fees, arising from or in any way related to injury to or

death of any person occurring on or about or related to the Property arising out of the Indemnified Parties' actions on the Property.

9. **Enforcement.** If Grantee finds what it believes is a violation of the terms of this Easement, Grantee shall immediately notify Grantor in writing of the nature of the alleged violation (“**Notice of Violation**”). Upon receipt of the Notice of Violation, Grantor shall immediately discontinue the activity or use that has caused the alleged violation and shall either: (a) restore the Property to its condition prior to the violation in accordance with a written restoration plan (“**Restoration Plan**”); or (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted. The Restoration Plan shall be submitted to Grantee within twenty (20) days after Grantor’s receipt of the Notice of Violation, or within a longer time period if so specified by Grantee in the Notice of Violation. The Restoration Plan shall be approved or disapproved by Grantee in writing within thirty (30) days after its submittal. If Grantee fails to respond in writing within thirty (30) days after Grantor’s submittal to Grantee of a Restoration Plan, the Restoration Plan shall be deemed approved. Grantor shall begin restoring the Property in accordance with the Restoration Plan within ten (10) days after it is approved or deemed approved by Grantee and diligently pursue such cure to completion in compliance with the terms of the approved Restoration Plan. If the condition described in clause (b) above occurs, both parties agree to meet within thirty (30) days to resolve this difference. If the parties are unable to resolve the dispute at the meeting, Grantee may, at its discretion, take appropriate legal action. If after receipt of the Notice of Violation, Grantor continues the activity or use that caused the alleged violation or if a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may get an injunction to stop it, temporarily or permanently prior to the parties meeting and prior to completion of the Restoration Plan. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation, and may order Grantor to pay any restoration costs necessitated by Grantor’s violation of the terms of this Easement.

Grantor shall pay any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit, and attorneys' fees and any costs of restoration necessitated by Grantor's violation of the terms of this Easement. If the deciding body determines that Grantee has acted in bad faith in seeking to enforce this Easement, each Party shall be responsible for their own costs. The parties will share equally in the mediation fees. Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and the failure of Grantee to discover a violation or to take action shall not waive any of Grantee’s rights, claims or interests in pursuing any such action at a later date.

10. **Transfer of Easement.** Grantee shall have the right to transfer this Easement to any public agency or private non-profit organization that, at the time of transfer, is a "qualified organization" under I.R.C. § 170(h) and authorized to hold conservation easements under C.R.S. §§38-30.5-101, et seq. and C.R.S. §12-61-720, and only if the agency or the organization expressly agrees to abide by the terms of this Easement and to assume the responsibility imposed

on Grantee by this Easement. Grantee shall notify Grantor in advance of any proposed transfers. If Grantee ever ceases to exist or no longer qualifies under federal or state law, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes and that agrees to abide by the terms of this Easement and to assume the responsibility imposed on Grantee by this Easement.

11. **Transfer of Property.** Any time the Property or a portion thereof is transferred by Grantor to any third party, Grantor shall pay a transfer fee of 0.5% of the current fair market value of the Property to Grantee to be used for purposes consistent with Grantee's mission. 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 shall notify Grantee in writing within (5) business days after closing using the form in **Exhibit D** attached hereto and made a part hereof, and shall attach to the form a copy of the new ownership deed. Grantee reserves the right to record a notice of transfer fee in the official real property records of \_\_\_\_\_ County, Colorado. This provision is intended to run with the land for perpetuity, and to touch and concern the Property burdened by this easement by providing Grantee a contribution toward its stewardship, enforcement and defense of this Easement. If a fee is attributable to a transfer of property classified as "residential real property," as defined in C.R.S. § 38-35-127(2)(e), then the Grantee covenants and agrees that the fee shall be used for the purposes specified in C.R.S. § 38-35-127(2)(b)(V) in a manner consistent with the Grantee's mission.

12. **Condemnation.** Grantor shall notify Grantee immediately of any communication or notice received concerning any proposed taking or condemnation affecting the Property, and Grantee shall have the right to participate in any proceedings as a real property interest holder. Grantee may pursue any remedies in law or in equity, including opposition to the condemnation of the Property. If the Property or any part thereof or interest therein is sold or conveyed to a condemning authority under threat of condemnation or taken through condemnation or other involuntary conversion, Grantee shall be entitled to compensation determined as provided in **Section 14**.

13. **Termination or Extinguishment of Easement.** Except as provided in **Section 12** (Condemnation), this Easement or any part hereof may only be terminated or extinguished by judicial proceedings in a court of competent jurisdiction. The only ground upon which this Easement can be terminated or extinguished is the total loss of all Conservation Values. If termination or extinguishment occurs, Grantee shall be entitled to compensation determined as provided in **Section 14**.

14. **Compensation upon Condemnation, Termination, or Extinguishment.**

A. The Parties acknowledge that an appraisal of the Property has been completed that indicates that the fair market value of the Easement is \_\_\_\_\_ percent (\_\_\_%) of the full fair market value of the Property unrestricted by this Easement ("**Proportionate Value Percentage**"), which percentage shall remain constant and shall be applied pursuant to Treas. Reg. § 1.170A-14(g)(6)(ii).

B. If the Property is condemned, in whole or in part, as discussed in **Section 12**, or if this Easement is terminated or extinguished pursuant to **Section 13** (Termination or Extinguishment of Easement), Grantee shall be entitled to a share of the proceeds of such action at least equal to the Proportionate Value Percentage of the full fair market value of the Property unrestricted by this Easement pursuant to Treas. Reg. § 1.170A-14(g)(6)(ii), excluding the value of any improvements. Grantor shall not voluntarily accept proceeds equal to less than full fair market value of the affected Property unrestricted by this Easement without the approval of Grantee.

C. Grantee's use of its share of such proceeds shall comply with Treas. Reg. § 1.170A-14(g)(6).

D. Grantee's remedies described in this Section shall be cumulative and shall be in addition to any and all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. § 38-30.5-108.

15. ***Perpetual Duration.*** This Easement shall be a servitude running with the land in perpetuity. The provisions of this Easement that apply to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear; provided, however, that each party's rights and obligations under this Easement shall terminate (as to such party, but not as to such party's successor, who shall be bound as provided herein) upon a transfer of the party's entire interest in this Easement or the Property, except that liability of such transferring party for act or omissions occurring prior to such transfer shall survive the transfer.

16. ***Change of Circumstance.***

A. ***Economic Value.*** The fact that any use of the Property that is prohibited by this Easement, or any other use as determined by Grantee to be inconsistent with the Purpose of this Easement, may become economically more valuable than permitted uses has been considered by Grantor in granting this Easement. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of this Easement pursuant to **Section 13**. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to **Section 13**.

B. ***Agricultural Value.*** In the event Grantee believes that agriculture is no longer a Conservation Value, Grantee may request that Grantor and Grantee develop an acceptable plan to ensure appropriate land cover consistent with Purpose. The expense of developing and implementing said plan shall be paid for by Grantor.

17. **Grantor's Notice.** Where Grantor's notice is required in this Deed, Grantor shall notify Grantee in writing not less than sixty (60) calendar days prior to the date Grantor intends to undertake the activity in question. The written notice shall describe the proposed activity in sufficient detail (i.e. location, size, scope, design, nature) to allow Grantee to evaluate the consistency of the proposed activity with the pertinent terms of this Easement.

18. **Grantee's Approval.** Where Grantee's approval is required in this Deed, Grantee shall grant or withhold its approval in writing within thirty (30) calendar days of receipt of Grantor's written notice thereof. Grantee's decision may be withheld if Grantee is unable to immediately evaluate the proposed action. Grantor shall not engage in the proposed act or use until Grantor receives Grantee's approval in writing. As part of its determination, Grantee shall consider the proposed manner in which the proposed activity will be conducted, whether it complies with the terms of this Easement, and the likely impact on the Conservation Values. Grantee's approval may be withheld only if Grantee reasonably determines that there is any risk that the activity as proposed is not consistent with the Purpose. Grantor shall pay any and all costs associated with the evaluation of the proposed use or activity, including, but not limited to, staff time, legal fees, and resource specialist fees.

19. **Notices.** Any notice that either party is required to give to the other in writing shall be transmitted via fax, U.S. mail, overnight delivery service or served personally to the following addresses which addresses may change from time to time by a party giving written notice in the manner set forth above:

Grantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
e-mail: \_\_\_\_\_

Grantee: Eagle Valley Land Trust  
PO Box 3016  
Edwards, CO 81632  
Phone: 970-748-7654  
e-mail: exec@evlt.org

20. **Liens on the Property.**

A. **Current Liens.** [Insert if applicable: There are currently \_\_\_\_\_ deed(s) of trust encumbering the Property, which deed(s) of trust shall be subordinated to this Deed by the recordation of separate instruments immediately after the recordation of this Deed.

B. **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. Any mortgage or lien arising from such a borrowing is subordinate to this Deed.

21. **No Merger, Abandonment, Release, or Adverse Possession.** Should Grantee in the future own all or a portion of the fee interest in the Property, Grantee as successor in title to Grantor, shall observe and be bound by the obligations of Grantor and the restrictions imposed on the Property by this Easement. In addition, this Easement shall not merge with the fee title without the prior written approval of Grantor. The Easement shall not be extinguished, in whole or in part, through the legal doctrine of merger in view of the public interest in its enforcement. This Easement cannot be abandoned, released, or affected by adverse possession.

22. ***Grantor's Representations and Warranties.***

A. Except as provided in **Section 20**, Grantor warrants that Grantor: (i) has good and sufficient title to the Property, free from all liens and encumbrances securing monetary obligations except ad valorem property taxes for the current year; (ii) has the right to grant access to the Property to Grantee for the purposes described in this Easement and has in fact granted said access to Grantee; and (iii) hereby promises to defend title to the Property against all claims that may be made against it by any person claiming by, through, or under Grantor.

B. Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

i. No hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, deposited, or transported, in, on, or across the Property, and that there are no underground storage tanks located on the Property;

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

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

iv. 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 use.

23. ***Acceptance.*** Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed for which no goods or services were exchanged or provided.

24. **General Provisions:**

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

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

C. **Waiver of Defenses.** Grantor hereby waives any defense of laches, estoppel or prescription and acknowledges and agrees that the one-year statute of limitation provided under C.R.S. § 38-41-119 does not apply to this Easement, and Grantor waives any rights of Grantor pursuant to such statute.

D. **Controlling Law and Liberal Construction.** The provisions of this Easement are subject to the laws of the United States and the State of Colorado as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder. The provisions of this Easement are to be liberally construed in favor of the Purpose, and any ambiguities or questions regarding the validity of specific provisions shall be interpreted in favor of maintaining the Purpose. Any decisions resolving such ambiguities or questions shall be documented in writing.

E. **Counterparts.** The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it; all counterparts, when taken together, shall constitute this instrument.

F. **Amendment.** If circumstances arise under which an amendment to or modification of this Deed would be appropriate, Grantor and Grantee are free to jointly amend this Deed; provided that no amendment shall be allowed that will confer a private benefit to Grantor or any other individual greater than the benefit to the general public (see Treas. Reg. § 1.170A-14(h)(3)(i)) or result in private inurement for a Board member, staff or contract employee of Grantee (see Treas. Reg. § 1.501(c)(3)-1(c)(2)), or affect the qualifications of this Easement under any applicable laws. Any amendment shall be consistent with Grantee's policies, must not be inconsistent with the preservation and protection of the Conservation Values, and shall not affect the perpetual duration of the Easement. Grantee shall have the right to charge a fee to Grantor for costs, including staff and consultant time and attorney's fees, associated with any amendment. Any amendment must be in writing, signed by both parties, and recorded in the official records of \_\_\_\_\_ County, Colorado.

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

25. **Development Rights.** For purposes of this Easement, “Development Rights” are defined as all present or future rights to (i) construct, place, replace, enlarge, maintain or repair any improvements on the Property; or (ii) receive credit for density for development on or off the Property. By this Deed, Grantor conveys to Grantee all Development Rights associated with the Property except those Development Rights specifically reserved by Grantor, which include the right to make New Residential Improvements, New Non-Residential Improvements and Minor Non-Residential Improvements pursuant to **Section 4**. Therefore, Grantor does not have the right to use or transfer any Development Rights conveyed to Grantee by this Deed.

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

27. **No Third Party Enforcement.** This Deed is entered into by and between Grantor and Grantee and does not create rights or responsibilities for the enforcement of the terms of this Deed in any third parties except as expressly reserved herein.

28. **Joint and Several Liability.** If Grantor at any time owns the Property in joint tenancy or tenancy in common, Grantor shall be jointly and severally liable for all obligations set forth in this Easement.

29. **Ownership by Single Entity Consisting of Multiple Parties.** If Grantor at any time is an entity which consists of shareholders, partners or members, such Grantor entity is required to include in its operating agreement, bylaws or other documents setting forth the rights and responsibilities of the entity, the right to assess or to otherwise collect payment from such shareholders, partners or members for any monetary or other obligations set forth in this Easement. Grantor shall provide a copy of such documentation at any time upon Grantee’s request.

30. **Environmental Attributes.** Grantor hereby reserves all Environmental Attributes associated with the Property. “Environmental Attributes” shall mean any and all tax or other credits, benefits, renewable energy certificates, emissions reductions, offsets, and allowances (including but not limited to water, riparian, greenhouse gas, beneficial use, and renewable energy), generated from or attributable to the conservation, preservation and management of the Property in accordance with this Easement. Nothing in this **Section 30** shall modify the restrictions imposed by this Easement or otherwise impair the preservation and protection of the Conservation Values.

31. **Tax Benefits.** Grantor acknowledges that Grantor is responsible for obtaining legal and accounting counsel to advise Grantor regarding the applicability of federal or state tax



benefits that might arise from the donation of the Easement. Grantee makes no representation or warranty that Grantor will receive tax benefits for the donation of the Easement.

32. ***Authority to Execute.*** Each party represents to the other that such party has full power and authority to execute and deliver this Deed, and perform its obligations under this Easement, that the individual executing this Deed on behalf of said party is fully empowered and authorized to do so, and that this Deed constitutes a valid and legally binding obligation of said party enforceable against said party in accordance with its terms.

33. ***Effective Date.*** The “**Effective Date**” of this Deed shall be the date of its recording in the \_\_\_\_\_ County Clerk and Recorder’s Office.

**TO HAVE AND TO HOLD, this Deed of Conservation Easement unto Grantee, its successors and assigns, forever.**



**GRANTEE:**

**EAGLE VALLEY LAND TRUST,**  
a Colorado nonprofit corporation

By: \_\_\_\_\_  
Jim Daus, Executive Director

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF EAGLE            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Jim Daus as Executive Director of Eagle Valley Land Trust, a Colorado non-profit corporation.

Witness my hand and official seal.

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

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

**EXHIBIT A**

Legal Description of the Property

**EXHIBIT B**

Building Envelope/Map of Property

**EXHIBIT C**  
**Water Rights**

Dedicated Water Rights

Excluded Water Rights (if applicable)

**EXHIBIT D**

Sample Notice of Transfer of Property

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

Pursuant to Section 11 of the Deed of Conservation Easement recorded \_\_\_(date)\_\_\_ under reception number \_\_\_\_, 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]. Also pursuant to Section 10 of the aforementioned Deed of Conservation Easement, a copy of the new ownership deed is attached.

**GRANTOR:**

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

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

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

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

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

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