

After recording, please return to:  
Eagle Valley Land Trust  
Attn: Jim Daus  
P.O. Box 3016  
Edwards, CO 81632

## 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 are 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. 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.

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.]**

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. § 33-10-101 provides "It is the policy of the state of Colorado that 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 of this state." 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. § 35-3-102(b) provides that, "the soil resources and fertility of the land, and the ... prosperity of the farming population ... and the waters of the rivers ... are matters affected with a public interest", and the "welfare of this state has been impaired ... by destruction of its soil fertility, by uneconomic use and waste of its land, by exploitation and wasteful ... use of its soil resources"]** 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 . . ." The Colorado Department of Transportation statutes (C.R.S. § 43-1-401, et seq.) provide that the "preservation and enhancement of the natural and scenic beauty of this state" are of substantial state interest.

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 the Easement and the Purpose. 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 the 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, the Parties agree: (i) to permit those uses of the Property that are expressly permitted by the Easement, subject to any limitations or restrictions stated herein; and (ii) to prevent any use of the Property that is expressly prohibited by the Easement. No use shall be made of the Property and no activity thereon shall be permitted which is or is likely to become inconsistent with the Purpose. Grantor and Grantee acknowledge that, in view of the perpetual nature of the Easement, they are unable to foresee all potential future land uses, future technologies and future evolution of the land and other natural resources, and other future occurrences affecting the Purpose or the Property. Grantee, in its sole discretion, shall have the right to determine whether proposed uses or proposed improvements not contemplated by or addressed in the Easement are consistent with the Purpose. Nothing in the 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, 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 the 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 the 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 a prohibited or inconsistent activity or use;
- D. To enforce the terms and provisions of the Easement; and
- E. To place signs on the Property that identify the land as being protected by the 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 the Easement.

3. **Rights Retained by Grantor.** Subject to the terms and provisions of the 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 the Easement, subject to any limitations or restrictions stated herein, and those uses of the Property that are consistent with the Purpose; 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 the Easement.

4. **Property Improvements.** Improvements existing as of the Effective Date are permitted, and Grantor may maintain, repair, replace and reasonably enlarge (subject to the size 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, and replace such new improvements in their initially-constructed locations without Grantee's approval, subject to the size limitations below. "**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. The square footage of any Residential Improvement shall be limited as set forth in Section 4.A below. "**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, sport courts, pools, and indoor and outdoor riding arenas. "**Minor Non-Residential Improvements**" shall mean minor agricultural or non-residential improvements including, but not limited to, small parking areas, fences, picnic areas, small outdoor kitchens, corrals, outdoor riding arenas, hayracks, cisterns, stock tanks, stock ponds, troughs, fenced haystacks, livestock feeding stations, hunting blinds, wildlife viewing platforms, sprinklers, water lines, water wells, ditches, information kiosks, trail markers and trash receptacles. The collective square footage of the Non-Residential Improvements shall not exceed \_\_\_\_\_ square feet.

A. **Improvements within Building Envelope.** Grantor has designated a building envelope(s) consisting of \_\_\_\_\_ (\_\_\_\_) acres in size in the general location depicted on **Exhibit B** (the "**Building Envelope(s)**"). Grantor reserves the right

to construct, maintain, repair and replace any Minor Non-Residential Improvements within the Building Envelope(s). In addition, Grantor reserves the right to construct, maintain, repair and replace the following new Residential Improvements and other new Non-Residential Improvements within the Building Envelope(s): **[include description of improvements with maximum square footage, maximum height and other building restrictions for each improvement]**

B. ***Improvements Outside of Building Envelope.*** Grantor may construct, maintain, repair and replace Non-Residential Improvements and Minor Non-Residential Improvements on portions of the Property outside the Building Envelope(s) only if such improvements are consistent with the Purpose and pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval), and the size limitations for Non-Residential Improvements set forth hereinabove. **[Grantee acknowledges and agrees that Grantor may allow construction of additional non-residential improvements as may be required under existing leases.]**

Any other improvements outside the Building Envelope(s) are prohibited unless otherwise permitted by the 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. Grantor shall use reasonable efforts to not bring any imported gravel onto the Property. "**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 maintain, repair and replace existing Roads and Trails on the Property as depicted on **Exhibit B**. Grantor may only construct Roads or Trails in the manner permitted below.

a. ***Within the Building Envelope.*** Grantor may construct, maintain and utilize new and existing 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 this **Section 4**; provided that 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 the Easement.

b. ***Outside the Building Envelope.*** Grantor shall not maintain, construct or establish new 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); provided that 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 the Easement. Grantor shall not pave or otherwise surface any Road with impervious surfaces outside the Building Envelopes 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 may construct and maintain new Trails on the Property if (I) located in the approximate locations depicted on **Exhibit B**, or (II) Grantee determines a new Trail is consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval); provided such Trails shall be used for non-motorized uses only.

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, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

iii. **Utility Improvements.** Energy generation or transmission infrastructure and other utility improvements on the Property, including but not limited to: (i) natural gas distribution pipelines, (ii) electric power poles, transformers, and lines; (iii) telephone and communications towers, poles, and lines; (iv) septic systems; (v) domestic water storage and delivery systems; and (vi) renewable energy generation systems including, but not limited to, wind, solar, geothermal, or hydroelectric ("**Utility Improvements**") existing on the Property 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 constructed and existing Utility Improvements may be enlarged on the Property, subject to the restrictions below and provided that they are consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

a. **Within the Building Envelope.** Grantor may construct new Utility Improvements and enlarge existing 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 construct new Utility Improvements or enlarge existing 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 new Utility Improvements outside the Building Envelope solely to provide

utility services to the improvements permitted by the Easement, and not to exceed thirty-five feet in height.

c. ***Additional Requirements.*** Prior to the enlargement or construction of any permitted 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, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval). 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 6.H** (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.*** Grantor recognizes the importance of good resource management and stewardship to preserve and protect the Conservation Values. 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, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval). In the event Grantee believes any resource management practices are not consistent with the preservation and protection of the Conservation Values, Grantor and Grantee shall, at Grantor's expense, consult with a mutually agreed upon resource management professional. In the event the parties are unable to agree upon a resource management professional, either party may apply to a court having jurisdiction for the appointment of such resource management professional. This professional will provide written recommendations for said resource management practices consistent with the preservation and protection of the Conservation Values, which recommendations shall be followed by both parties.

A. **Agriculture.** [Describe current agricultural uses and declare that they are consistent with the Purpose] All agricultural uses (including the storage of agricultural equipment and supplies) 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, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval). The expense of developing and implementing said plan shall be borne by Grantor. Grantor may store or accumulate agricultural products and by-products on the Property in accordance with all applicable government laws and regulations and consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

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 improvements 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. **Wildfire.** In the event of a wildfire, any and all methods of extinguishing the fire are permissible, subject to **Section 5.D** below.

D. **Force Majeure.** Grantor shall not be obligated to send any prior notice to Grantee, and Grantee shall not be entitled to bring any action against Grantor, with respect to any prudent, good faith activity undertaken by Grantor to prevent, abate, or mitigate injury to the Property immediately before, during, or immediately following fire, flood, storm, earth movement, acts of war, and similar causes beyond the control of Grantor. Grantor will promptly inform Grantee of injury to the Property caused by such events or actions.

E. **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, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

Grantee has no responsibility for the management of noxious weeds and invasive plant species.

F. ***Relatively Natural Habitat.*** Grantor may conduct any activities to create, maintain, restore, or enhance wildlife habitat and native biological communities on the Property provided such activity is consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

G. ***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, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval); (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 that is 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 Mineral Document, 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.

H. **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, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval). Grantor further reserves the right to conduct commercial recreational activities that are consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval) [**but not more than *de minimis* commercial recreational activity on the Property pursuant to IRC §2031(c)**]. Such commercial recreational activities may include hunting in compliance with Colorado Parks and Wildlife rules and regulations. Trails are permitted only in accordance with **Section 4.C.i.c.** These uses are specifically excluded from the Restricted Practices in **Section 6.C.**

I. **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, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

J. **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 promptly after said activity is completed to a condition that is consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

K. **Water Rights.** [If no adjudicated water rights:

- i. **Use of Water Rights.** Grantor retains and reserves the right to use all water and water rights currently used on the Property, if any, including without limitation springs, seeps, ponds, and easements and rights of way associated therewith, and including any water rights acquired after the date hereof (the "Water Rights"), in connection with uses permitted hereunder, and shall not voluntarily terminate transfer, lease, sell, abandon, or otherwise separate the

**Water Rights from title to the Property itself; provided that Grantor may request to transfer, lease, sell, or otherwise separate from the Property such portion of the Water Rights which Grantor believes are no longer necessary to maintain the Conservation Values provided that Grantee determines that said activities are consistent with the Purpose, pursuant to Sections 17 (Grantor's Notice) and 18 (Grantee's Approval).**

- ii. ***Recording Encumbrance on Stock Certificates.* If the Water Rights include any shares in ditch or reservoir companies, Grantor shall have submitted the related stock certificate(s) to Grantee or 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 Eagle Valley Land Trust recorded in the Real Property Records of Eagle County, Colorado recorded on [insert date of recording and reception number]. A copy of the reissued stock certificate(s) shall be promptly provided by Grantor to Grantee.]**

This Easement encumbers certain water rights beneficially used on the Property 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 C** 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, 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).

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.), provided such facilities are consistent with the Purpose, pursuant to **Sections 17** (Grantor’s Notice) and **18** (Grantee’s Approval).

ii. ***Restrictions on Water Rights.*** Except as permitted by **Section 5.K.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 the Purpose, pursuant to **Sections 17** (Grantor’s Notice) and **18** (Grantee’s Approval). Grantor shall not 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 not consistent with the Purpose, pursuant to **Sections 17** (Grantor’s Notice) and **18** (Grantee’s Approval).

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 the 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 the 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 the 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.

6. ***Restricted Practices.*** The following uses and practices on the Property shall be prohibited, except as specifically provided in Paragraph 5:

A. ***Land and Ownership Division.*** Grantor shall not grant, sell, exchange, devise, gift, transfer or otherwise convey the Property except in unified title as one (1) parcel only. The following are expressly prohibited: the legal or "de facto" division or subdivision of the Property, which shall include, but shall not be limited to, any subdivision, platting, testamentary division or other process by which the Property is divided in ownership or in which legal or equitable title to different portions of the Property are held by different owners. Grantor may not directly divide any of the

Property through the allocation of property rights among partners, shareholders or members of any legal entity, creation of a horizontal property regime, interval or time-share ownership, partitioning among tenants-in-common, judicial partition or by any other means.

B. ***Surface Disturbance.*** Grantor shall not alter the surface of the land, including without limitation, the movement, excavation, extraction or removal of soil, sand, gravel, rock, peat or sod, or any natural watercourse, riparian area, or wetland, is prohibited, unless such alteration is associated with permitted acts on and uses of the Property and is consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval). Grantor shall obtain Grantee's written approval pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval) before any such activities, improvements or enhancements are commenced to ensure that their location and nature are consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

C. ***Commercial or Industrial Activity.*** Grantor shall not conduct industrial uses on the Property. Grantor shall not conduct commercial uses of the Property that are inconsistent with I.R.C. §170(h) or the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

D. ***Feed Lot.*** Grantor shall not establish or maintain a feed lot. For purposes of the 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.

E. ***Trash.*** Grantor may not dump or accumulate any kind of trash, sludge, or refuse on the Property, except for agricultural-related trash and refuse produced on the Property that is disposed of in a manner that is consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval).

F. ***Hazardous Materials.*** Grantor may use agri-chemicals on the Property in accordance with all applicable federal, state or local laws. For purposes of the 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 the 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 CERCLA.

G. ***Motorized Vehicle Operation.*** Grantor, and any other entity or person Grantor authorizes, may use motorized vehicles, including without limitation all-terrain vehicles and agricultural and construction vehicles (i) on any Roads or Trails, and (ii) on any portion of the Property that is not a Road or Trail, provided that such vehicles shall be used only for construction, replacement or maintenance of the improvements permitted by the Easement or for property management purposes including, but not limited to, agricultural purposes, maintenance of the Roads or Trails, weed control, and habitat restoration. Any portion of the Property disturbed due to the use of motor vehicles shall be restored to a condition as close to its original condition as reasonably practicable.

H. ***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).

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

7. ***Limited Impact Activities.*** 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 are consistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval). 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 the Easement under state or federal law.

8. ***Responsibilities of Grantor and Grantee Not Affected.*** Other than as specified herein, the 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 the 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. 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. **No Liability.** Grantee shall not be liable for, and 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, injury, cost, or expense, including reasonable attorneys' fees, occurring on or arising from the Property unless due solely to the gross negligence or intentional acts of any Indemnified Parties. 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' negligent or deliberate actions on the Property determined to be the sole cause of injury or damage.

9. **Enforcement.**

A. **General Provisions.** Grantee shall have the right to prevent or correct, or require correction, of violations of the terms of this Deed. If Grantee finds what it believes is a violation of the terms of the 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. 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, either temporarily or permanently. Within thirty (30) days after Grantor's receipt of the Notice of Violation, Grantor shall either: (a) provide to Grantee a written plan for restoration and remediation of the Property and, once approved by Grantee, restore and remediate the Property in accordance with such approved 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 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 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 sole discretion, take appropriate legal action. Notwithstanding the foregoing, if Grantee determines in its sole discretion that immediate entry is required to prevent, terminate, or mitigate a violation of the terms of this Deed, Grantee shall use good faith efforts to notify Grantor prior to entry but reserves the right to enter the Property without

advance notice. If such entry occurs, Grantee shall notify Grantor within a reasonable time thereafter.

B. **Cost and Fee Recovery.** All costs, fees and expenses incurred by Grantee in administration of this Conservation Easement, including without limitation, all costs and fees of investigation, negotiation, mediation, settlement or suit, reasonable attorney's fees, experts and consultant fees, staff time, costs and fees for restoration, remediation, or other damage correction necessitated by Grantor's violation of the terms of the Easement, shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in full in a judicial enforcement action, each party shall bear its own costs.

C. **Grantee's Discretion.** Grantee's remedies described in this **Section 9** 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 as described in C.R.S. § 38-30.5-108. Enforcement of the terms of the Easement shall be at the sole 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 the 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. §12-61-1104, and only if the agency or the organization expressly agrees to abide by the terms of the Easement and to assume the responsibility imposed on Grantee by the 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 the Easement to another qualified organization having similar purposes and that agrees to abide by the terms of the Easement and to assume the responsibility imposed on Grantee by the Easement.

11. **Transfer of Property.** Grantor agrees to incorporate the terms of the 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; provided, however, that the failure of Grantor to perform any act required in this **Section 11** shall not impair the validity of this Deed or limit its enforceability in any way. 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 ("**Transfer Fee**") to Grantee to be used for purposes consistent with Grantee's mission. Notwithstanding the foregoing, Grantor shall not be obligated to pay the Transfer Fee for any transfer of the Property to a trust or foundation or other estate planning vehicle in which the beneficiaries thereof are related to the principals of Grantor, but Grantor shall pay to Grantee an administrative fee equal to five hours of staff time billed at Grantee's then-applicable reasonable hourly rate (currently \$100/hour) at the time of such transfer. Grantor shall notify Grantee in writing within (5) business days after transfer of the Property or interest therein, using the form in **Exhibit D** attached hereto and made a part hereof,

and shall attach to the form a copy of the recorded 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 the 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), the 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 the 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 the 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 the 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 the Easement pursuant to Treas. Reg. § 1.170A-14(g)(6)(ii). Grantor shall not voluntarily accept proceeds equal to less than full fair market value of the affected Property unrestricted by the 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 the 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 the 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 the 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.*** The fact that any use of the Property that is prohibited by the Easement, or any other use as determined by Grantee to be inconsistent with the Purpose, pursuant to **Sections 17** (Grantor's Notice) and **18** (Grantee's Approval), may become economically more valuable than permitted uses has been considered by Grantor in granting the Easement. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of the 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 the Easement or be considered grounds for its termination or extinguishment pursuant to **Section 13**.

17. ***Grantor's Notice.*** Where notice to Grantee 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 the 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 and has paid Grantee's costs as described in this paragraph. As part of its review and determination, Grantee shall consider the proposed manner in which the proposed activity will be conducted, whether it complies with the terms of the Easement, and the likely impact on the Conservation Values. Grantee's approval may be withheld if Grantee determines, in its sole discretion, that there is any risk that the activity as proposed is inconsistent with the Purpose. If Grantee does not approve Grantor's request, Grantee shall provide Grantor with a written explanation of such denial. Grantor shall pay any and all costs associated with the review and evaluation of the proposed use or activity, including, but not limited to, staff time, supplies, 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 by (i) hand delivery, (ii) U.S. mail, (iii) overnight delivery service that provides proof of delivery, or (iv) email, provided that evidence of receipt by the intended recipient is available, or (v) any other delivery service mutually agreed to by the Parties in writing 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.*** [There are currently no deeds of trust encumbering the Property.] 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 the 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 the Easement. In addition, the 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 existing recorded easements and leases, and 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 the 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 obligations created by this Deed **[for which no goods or services were exchanged or provided]**.

24. ***General Provisions:***

A. ***Severability.*** If any provision of the Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of the 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 the Easement, and Grantor waives any rights of Grantor pursuant to such statute.

D. **Controlling Law and Interpretation.** The provisions of the 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. Any general rule of construction to the contrary notwithstanding, the Easement shall be broadly construed in favor of the Easement to effectuate the Purpose to preserve and protect the Conservation Values as they exist in the Effective Date and as they may evolve in the future. Nothing permitted by the Easement or approved by Grantee in accordance with the Easement constitutes approval by any government or regulatory agency for construction, development or land use; nor does any permit or approval granted by a government or regulatory agency override the terms of the Easement. Grantor retains responsibility for obtaining and complying with all necessary permits and applicable laws before engaging in uses or activities permitted under the Easement.

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.** This Easement may be amended only with the written consent of Grantor and Grantee. Any amendment shall not affect the perpetual duration of the Easement. Any Amendment must, in Grantee's sole discretion, be consistent with the Purpose, and comply with § 170(h) of the IRC and any regulations promulgated thereunder, and with Grantee's procedures and standards for amendment in effect at the time of any proposed amendments. Nothing in this Section shall be construed as requiring Grantee to agree to any proposed amendment. 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 the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms of the Easement, all of which are merged herein.

25. **Development Rights.** For purposes of the 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 the 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.

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 the 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 the 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 the Easement. Nothing in this **Section 30** shall modify the restrictions imposed by the 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 the 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.**



**IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.**

**GRANTOR:**

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

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

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

Witness my hand and official seal.

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

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



**EXHIBIT A**

Legal Description of the Property

**EXHIBIT B**

Building Envelope(s)/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 11 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