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Otero County Clerk

**FORM FOR**  
**DEED OF CONSERVATION EASEMENT**  
**FOR THE**  
**Wesley and Brenda Herman FARM**

THIS DEED OF CONSERVATION EASEMENT ("Deed") is granted effective as of the day of 26<sup>th</sup>, December 2012 by Wesley Herman and Brenda Herman whose address is 19501 Co Rd 17.5, Rocky Ford, Co 81067 ("Grantor"), to the Lower Arkansas Valley Water Conservancy District ("District" or "Grantee"), for the purpose of forever conserving one or more of the following: the open space character, agricultural productivity, wildlife habitat, and/or scenic qualities of the subject property.

**WITNESS THAT**

Grantor is the sole owner in fee simple of the property ("Property") legally described in Exhibit A attached to and made a part of this Deed, which consists of approximately 320 acres of land, together with buildings and other improvements, located in Otero County, State of Colorado.

The Property is primarily irrigated cropland and native rangeland, and is an important part of the productive agricultural land still remaining in the Lower Arkansas Valley. The Property is supplied with irrigation water from the High Line Canal. The Property also includes relatively natural habitat with a variety of wildlife species, including deer, antelope, pheasant, quail, morning dove along with a large number of birds. For a more detailed list of wildlife present on this farm see the Present Condition Report.

The Property contains irrigated farmland which grows a wide variety of crops which historically have made the town of Rocky Ford famous, like watermelon and cantaloupe. The irrigation water is supplied by the Highline Canal which conveys surface water from the Arkansas River to the property. Other crops historically grown include corn, alfalfa, wheat, irrigated grass and onion. The native rangeland is used for livestock production.

The agricultural, ecological and other characteristics of the Property, its current use and state of improvement, are described in the Present Condition Report ("Report") prepared by Grantor with the cooperation of Grantee, which Report is subject to approval by both Grantor and Grantee. The Report 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 Deed. However, this Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

Grantor intends to convey an interest in the Property by this Deed to Grantee for the exclusive purpose of assuring that, under Grantee's perpetual stewardship, the agricultural productivity, open space character, wildlife habitat, and scenic qualities of the Property ("Conservation Values") will be conserved and maintained forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The parties agree, however, that the current agricultural use of, and improvements to, the Property are consistent with the conservation purposes of this Deed.

The conservation purposes of this Deed are recognized by, and the grant of this Deed will serve, at least and without limitation, the following clearly delineated governmental conservation policies:



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- The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. §§4201, *et seq.*, whose purpose is “to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland.”
- The Colorado Department of Agriculture statutes, Colorado Revised Statutes §§ 35-1-101, *et seq.*, which provide in part that “it is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products.”
- Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, providing for the establishment of conservation easements to maintain land “in a natural, scenic or open condition, or for wildlife habitat, or for agricultural . . . or other use or condition consistent with the protection of open land having wholesome environmental quality or life-sustaining ecological diversity.”
- The Colorado Wildlife and Parks and Outdoor Recreation statutes, Colorado Revised Statutes §§ 33-1-101, *et seq.*, which provide that “it is the policy of the State of Colorado that the wildlife and their environment and the natural, scenic, scientific, and outdoor recreation areas of this state are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and visitors to this state.”
- The Lower Arkansas Valley Water Conservancy District policy, which provides for the preservation of open space (including farm and ranch land) within the District boundaries and the conservation of native water of the Arkansas River and its tributaries for the scenic enjoyment of the general public, and to insure that the preservation of open space through regional conservation (including irrigation and water supply protection) will yield significant public benefits to the citizens of the District.

Grantee is a “qualified conservation organization,” as defined by the United States Internal Revenue Code, and accepts the responsibility of enforcing the terms of this Deed and upholding its conservation purposes forever.

Grantor owns the fee simple interest in the Property, *Grantor intends to subject the property to a Deed of Trust by Farm Credit of Southern Colorado which has agreed that its Deed will be recorded subsequent to and subject to this Deed.*

NOW, THEREFORE, for the reasons given, and in consideration of their mutual promises and covenants, Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property defined by Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, and of the nature and character described in this Deed, exclusively for the purpose of conserving and forever maintaining the agricultural productivity, open space character, wildlife habitat, and scenic qualities of the Property (the “Conservation Values”).



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- 1) ***Use of Property.*** It is the intention of Grantor to preserve the ability of the Property to be used for agricultural production, and to preserve any open space character, wildlife habitat, and scenic qualities of the Property. The Property may not be used for industrial activities, but may be used for other activities which are not prohibited by the terms of this Deed. As used herein, agricultural production shall mean the production, processing, storage or retail marketing of crops, livestock, and livestock products. For purposes hereof, crops, livestock and livestock products include, but are not limited to:
  - (a) crops commonly found in the community surrounding the Property;
  - (b) field crops, including corn, wheat, oats, rye, barley, hay, potatoes, herbs and dry beans;
  - (c) fruits, including apples, peaches, grapes, cherries, nuts and berries;
  - (d) vegetables, including lettuce, tomatoes, snap beans, cabbage, carrots, beets, onions, mushrooms, and soybeans;
  - (e) horticultural specialties, including sod, seeds, nursery stock, ornamental shrubs, ornamental trees, Christmas trees and flowers;
  - (f) livestock and livestock products, including dairy cattle, beef cattle, sheep, swine, goats, horses, poultry, fur bearing animals, bees, milk and other dairy products, eggs and furs; and
  - (g) timber, wood, and other wood products derived from trees.
- 2) ***Prohibited Acts.*** Grantor promises not to perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants herein. Grantor hereby authorizes Grantee to enforce these covenants in the manner described below. However, unless otherwise specified, nothing in this Deed shall require Grantor to take any action to restore the condition of any buildings or structures located on the Property after any fire, act of God, or other event over which Grantor has no control, provided, however, that Grantor shall make reasonable efforts to return all agricultural land to productivity on the property after any fire, act of God, or other event over which Grantor has no control. Grantor understands that nothing in this Deed relieves them of any obligation or restriction on the use of the Property imposed by law.
- 3) ***Construction of Buildings and Other Structures.*** The construction of any building or other structure, except those existing on the date of this Deed or those approved by Grantee subsequent to the date hereof, but prior to construction, is prohibited except in accordance with subparagraphs b) through e) below. Before undertaking any construction that requires advance permission, Grantor shall notify Grantee of such request.
  - a) **Fences.** Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock, without any further permission of Grantee. Grantor shall not be required to erect any new fences for any purpose, including, but not limited to, fencing out livestock from riparian areas or other designated habitats.
  - b) **Agricultural Structures and Improvements.** All existing agricultural buildings and agricultural structures may be repaired, reasonably enlarged and replaced at their current



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location without further permission of Grantee. New buildings and improvements to be used solely for agricultural purposes, including the processing or sale of farm or ranch products predominantly grown or raised on the Property, may be built within the building envelope described on Exhibit B attached to and made a part of this Deed (the "Building Envelope"). Loafing sheds, corrals and other minor agricultural buildings and improvements may be constructed anywhere on the Property. Grantor will notify Grantee prior to construction within the Building Envelope, so Grantee can update its records. No construction of any other new agricultural buildings or improvements other than those covered by the preceding three sentences shall be constructed.

- c) Single-Family Residential Dwellings. All existing single-family residential dwellings may be repaired, reasonably enlarged and replaced at their current location without further permission of Grantee. Not more than ONE new single-family residential dwellings, together with associated outbuildings such as barns, garages and sheds, may be built on the Property within the Building Envelope without further permission of Grantee. At the time that construction of such dwelling or dwellings is to commence, Grantee shall be notified so that its records can be updated.
- d) Repair and Replacement. All buildings which are permitted hereunder may be repaired, reasonably enlarged, and replaced at their permitted location without further permission from Grantee. At the time that construction is to commence, Grantee shall be notified so that its records may be updated.
- e) New Farm Support Housing. New dwellings or structures to be used primarily to house tenants or employees engaged in agricultural production on the Property ("Farm Support Housing") may be built on the Property, provided they are located within the area identified as "Farm Support Housing" on Exhibit B. Farm Support Housing shall not be subdivided from the Property under any circumstances.
- 4) Subdivision. The division or subdivision of the Property into two or more parcels, whether by physical or legal process, is prohibited.
- 5) Development Rights. To fulfill the purpose of this Deed, Grantor hereby conveys to Grantee all development rights deriving from, based upon or attributable to the Property in any way, including, without limitation, any development rights or potential based upon all or any portion of the Property (including without limitation, the land, the Water Rights, any mineral rights, the development rights, and all other property rights granted to the Grantee by this Deed) ("Grantee's Development Rights") except those expressly reserved by the Grantor herein, and the parties agree that the Grantee's Development Rights shall be held by the Grantee in perpetuity in order to fulfill the purpose of this Deed, and to ensure such rights are forever released, terminated and extinguished as to the Grantor, and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating the permissible yield of the Property or any other property.
- 6) Conservation Practices. Grantor recognizes the importance of good resource management and stewardship to present and future generations. To this end, all agricultural uses of the Property shall be conducted using standard stewardship and management practices, which shall include compliance with governmental noxious weed control regulations.
- 7) Timber Harvesting. Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the Property. Any commercial timber



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harvesting on the Property shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester.

8) *Mining, mineral extraction, and mineral rights.*

a) Commercial Mining, Mineral Extraction. The commercial mining or extraction of any minerals, including soil, peat, sand, gravel, rock, other common building and landscaping materials, oil, shale oil, natural gas, coal, coal bed methane, or other hydrocarbons, uranium, geothermal resources, and hard rock minerals or any other mineral substance ("Mineral Rights"), using any surface mining method is prohibited; provided that mineral extraction is permitted if such extraction is not accomplished by any surface mining method and the method of extraction has a limited, localized impact on the real property that does not disturb the subjacent or lateral support of the Property and is not irretrievably destructive of the Conservation Values of the Property, and provided further that the mining or extraction will not substantially diminish or impair the Conservation Values of the Property. No extraction permitted pursuant to this paragraph shall occur without prior written notice to Grantee, which notice shall include a description of the type of extraction, the areas within which such extraction shall occur, and the anticipated impact thereof on the Conservation Values.

i) Grantor Extractions. Notwithstanding anything in this Deed to the contrary, soil, sand, gravel, rock and other common building and landscaping materials may be extracted without further permission from Grantee so long as such extraction is solely for noncommercial use on the Property, is in conjunction with activities permitted herein, and is accomplished in a manner which is consistent with the Conservation Values expressed in this Deed. This provision shall be interpreted in a manner consistent with § 170(h) of the United States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto.

b) Surface Impacts. Grantor agrees that by granting this Deed to Grantee, Grantor has granted to Grantee an interest in Grantor's rights as owner of the Property on which exploration, development, mining, extraction or removal of any minerals may be conducted. The Grantee shall have the same legal rights as Grantor to influence and control impacts to the surface of the Property from mineral development by third parties who own some or all of the Mineral Rights located beneath the Property. Such rights shall include, but not be limited to, the right to take whatever legal action the Grantee deems necessary in order to respond to proposals to develop any Mineral Rights from on or beneath the Property, including bringing judicial or administrative actions. Grantor further grants Grantee the right, but not the obligation, to object, intervene, and/or appeal on Grantor's behalf to any regulatory or administrative application, lease, permit or other regulatory or administrative approval, action or decision by any federal, state or local entity or agency concerning mineral exploration and development on the Property.

c) Mineral Rights.

At the time of granting this Deed, Grantor owns less than 100 percent of the Mineral Rights associated with the Property. For this reason, a mineral assessment report dated November 19, 2012 has been completed by Headwaters Explorations in compliance with Section 170(h) of the Internal Revenue Code and Section 1.170A-14(g) of the Treasury Regulations, a copy of which is on file with the Grantee.

Grantor shall not lease, sever or separate Grantor's portion of the Mineral Rights from the Property, nor explore for, develop, mine, extract or otherwise remove any minerals from on or beneath the Property, except that Grantor may lease to a third party, or, upon



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notification to the Grantee, retain from the future sale of the Property or separately convey to a third party, the right to explore for and extract subsurface oil, gas, or other minerals only from the Property in a manner that is temporary and reclaimable and otherwise consistent with the meaning, provisions, and terms of Section 170(h) of the Code and Section 1.170A-14(g) of the Treasury Regulations and provided that any related surface use agreements or leases that may affect the surface of the Property entered into hereafter incorporate the Grantee to the degree possible and recognize, incorporate, and are subordinate to this Deed.

- d) Future Oil and Gas Agreements. Grantor shall incorporate this Deed by reference and summarize the Property's Conservation Values in any and all future oil and gas leases, surface use agreements, or no-surface occupancy agreements to which Grantor is party that affect the Property or address oil and gas rights separated hereafter], which contacts shall be subordinate to this Deed.

Grantor and the Grantee agree that they shall not unilaterally enter into oil and gas leases, surface use agreements, right-of-way agreements or no-surface occupancy agreements with a third party regarding any oil and gas exploration and development of the Property, but instead Grantor and the Grantee shall be required parties to any such contract. Grantor agrees that upon cessation of exploration or extraction activities, Grantor shall ensure that the impacted site is recontoured, revegetated, and restored in a manner consistent with the surface use or other pertinent agreement and this Deed, as approved by the Grantee.

- 9) *Paving and Road Construction.* No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other paving material, nor shall any road for access or other purposes be constructed, except for any unpaved road necessary to provide access to the buildings currently located on or permitted to hereafter be constructed on the Property. Any such road permitted by this Paragraph shall be constructed in a manner that does not substantially diminish or impair the Conservation Values of the Property.
- 10) *Trash.* The dumping or accumulation of any kind of trash or refuse on the Property, other than farm-related trash and refuse produced on the Property, is strictly prohibited. However, this shall not prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations.
- 11) *Recreational Uses.* Golf courses, airstrips, and helicopter pads are strictly prohibited on the Property. Other buildings and facilities for any other public or private recreational use may only be built on the Property in accordance with Paragraph 3, and then only in a manner that does not substantially diminish or impair the Conservation Values of the Property, except that use of the Property for more than "de minimus" commercial recreation activity is prohibited. The term "de minimus" shall have the meaning as set forth in § 2031(c)(8)(B) of the United States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto.
- 12) *Feed Lot and Industrial Agricultural Operations.* The establishment or maintenance of a commercial feedlot, and the use of the Property for concentrated agricultural operations such as hog-raising or industrial dairy operations, are prohibited. For purposes of this Deed, "commercial feed lot" is defined as a permanently-constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and feeding of livestock. Nothing in this section shall prevent Grantor from seasonally confining Grantor's livestock



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into an area for feeding, or from leasing pasture for the grazing of livestock, but not to exceed the carrying capacity of the Property for the existing conditions, consistent with practices recommended by the United States Department of Agriculture.

13) *Water Rights.*

- a) Water Rights Included. Pursuant to C.R.S. § 38-30.5-103(4), the parties have determined that certain water rights are necessary to conserve and maintain forever the Conservation Values of the Property to effectuate the intent of the parties. The parties accordingly agree that it is appropriate to include certain water rights beneficially used on the Property in this Deed (the "Water Rights"). The "Water Rights" include all of the Grantor's right, title and interests in and to the water and water rights described on Exhibit C, 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.
- b) Water Rights Appurtenant. All of the Water Rights are a perpetual appurtenance to the Property and to this Conservation Easement and shall at all times pass with and remain in the same ownership as the Property and shall at all times remain subject to the terms of this Conservation Easement. This Conservation Easement and its encumbrance of the Property and all of the Water Rights is the dominant estate; the Property and the Water Rights, subject to the terms of this Deed, constitute the servient estate.
- c) Permitted Water Uses. The parties 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 of open land, environmental quality or life-sustaining ecological diversity (the "Permitted Water Uses"). The preferred Permitted Water Uses are the continued irrigation or other historical use of the Water Rights by the Grantor, and the Grantor shall have the paramount right to use and enjoy the Water Rights on the Property consistent with recent historical practices. In the event that the Grantor can no longer use the Water Rights for their historical purposes, the Water Rights shall be used for other Permitted Water Uses. The Grantor shall have the right to maintain, repair, and if destroyed, reconstruct or replace any existing facilities, structures or equipment related to the Water Rights (such as ditches, wells, reservoirs and irrigation equipment), unless the Conservation Values of the Property would be irreversibly damaged thereby, as determined by the Grantee in its reasonable judgment.
- d) Restrictions on Water Rights. Except as provided in Subparagraph h of this Paragraph, the parties agree that the Grantor may not (i) permanently change the Water Rights to or use the Water Rights for municipal, industrial, commercial or any other new uses, (ii) permanently 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) change the points of diversion, or the type or the place of use within or without the Property, except after Grantor's receipt of a written determination by the Grantee that such changes are not inconsistent with the Permitted Water Uses and will not impair the Conservation Values of the Property. Grantor shall not construct, or permit others to construct, any new diversion, storage or other water structures upon the Property, shall not develop any conditional water rights for use on the Property, and shall not otherwise undertake any new development of water resources for





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use on the Property without the prior written approval of the Grantee, which approval shall not be unreasonably withheld.

- e) 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 Conservation 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 Conservation Easement without the Grantee's express written consent, which can be granted, withheld or conditioned in Grantee's sole discretion.

The Grantor expressly waives any claim to utilize or transfer all or any part of the Water Rights, other than as provided in this Deed, and expressly waives and disclaims any right to reasonable accommodation or other remedy at law or in equity that would change the terms of the Deed in any manner without the written approval of the Grantee, which approval the Grantee may withhold if it determines, in its sole discretion, that the proposed change would harm the Conservation Values of the Property.

- f) Protection of Water Rights. In order to preserve and protect the Conservation Values of the Property, the Grantor shall continue the recent historical use of the Water Rights on the Property consistent with the Conservation Values and shall not abandon or allow the abandonment of any of the Water Rights, by action or inaction. In the event such Water Rights are represented by water shares, stock certificates, water allotments, contracts, units, or interests in a joint ditch, ditch and/or reservoir company, water users association, or similar entity, the Grantor shall promptly pay all assessments and shall not allow the Water Rights or shares to be forfeited, sold or otherwise impaired as a result of nonpayment. The Grantor shall annually report to the 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 the Grantor. The Grantor shall provide the Grantee a copy of any written notice received by the Grantor from any state water official concerning the assessment, use, or possible abandonment, of the Water Rights.

If the Water Rights appear on the decennial abandonment list or the Grantee determines that the Water Rights are otherwise subject to a threat of abandonment, the Grantee shall give the Grantor written notice of such threat of abandonment and consult with the Grantor to discuss the matter. If, and only if, Grantor fails to cure the threat of abandonment within six months of receiving such notice from the Grantee, the Grantee shall, in addition to any other remedies available to the Grantee under this Deed or law, have the right to (i) enter upon the Property and undertake any and all actions reasonably necessary to continue the historical use of the Water Rights if desired by the Grantee; and (ii) seek removal of the Water Rights from the decennial abandonment list. If the Water Rights remain subject to abandonment, the Grantee may, after consultation with the Grantor, seek to change the Water Rights to another Permitted Water Use, including, but not limited to, use for instream flows and/or maintenance of water levels in reservoirs. The Grantor agrees to cooperate in any manner necessary to accomplish the Grantee's election, 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.

If the Grantor shall fail to pay any assessment of any joint ditch, ditch and/or reservoir company, water user association, or other similar entity and the Water Rights become subject to forfeiture, sale, or other impairment as a result of such delinquency, the Grantee shall, in addition to any other remedies available to the Grantee under this Deed





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or law, have the right to pay such assessment. In such event, the Grantor shall reimburse Grantee for all its expenses incurred in paying such assessment and preventing the forfeiture, sale or impairment of the Water Rights, including, but not limited to reasonable attorneys' fees. The Grantee shall thereafter have a lien upon the Water Rights that are the subject matter of this Deed for such expenses, and shall have the right to foreclose upon that lien if not reimbursed within six months.

- g) Temporary Instream Flow Use of Water Rights. The parties recognize that adverse environmental conditions, such as drought, occur from time-to-time, and that such conditions may pose a more significant threat to the natural environment and life-sustaining ecological diversity of streams, rivers, lakes and reservoirs than to the Conservation Values of the Property. Therefore, the parties agree that the Grantor may enter into legally-enforceable water leases, contracts, emergency water loans, or similar agreements for conservation purposes to temporarily increase instream flows and/or water levels in streams, rivers, lakes, and/or reservoirs to preserve the natural environment of such water body(s), provided that (i) the Grantee has given its prior written consent to such arrangements, and (ii) the Water Rights shall not be used for such uses more than three out of every 10 years without a written determination by the Grantee that such use would not jeopardize the long-term Conservation Values of the Property.
- h) Municipal Use of Water Rights. The parties recognize the substantial municipal demands for water rights in the Lower Arkansas Valley generally, and in the area of the Property and the Water Rights specifically. The parties also recognize that the long-term economic viability of any agricultural activity on the Property is necessary to accomplish the purposes of this Deed, and that enhancing such economic viability through limited municipal use of the Water Rights will foster the purposes of this Deed. Therefore, the parties specifically anticipate and intend that the Grantor (after 30 days notice to and the written approval of the Grantee) may enter into legally-enforceable interruptible supply contracts, water leases, fallowing programs, emergency water loans, or other similar agreements to allow the temporary municipal, commercial, or industrial use of the Water Rights. The parties also specifically anticipate and intend that the Grantor (after 30 days notice to and the written approval of the Grantee, which approval may not be unreasonably withheld) may grant one or more municipalities a perpetual interest in the Water Rights to lease such Water Rights in three years out of ten years on a rolling ten-year basis, and/or to lease up to thirty-five percent (35%) of such Water Rights annually. The parties agree that any such temporary or perpetual grant of an interest in the Water Rights to a municipality may be included in an amendment to this Deed and/or in a separate agreement and that such municipal interest shall be independently enforceable by such municipality as a conservation easement, an easement in gross, and/or an independent contract.
- i) Recording encumbrance on stock certificates. If the Water Rights include any shares in ditch or reservoir companies, the Grantor shall promptly submit the related stock certificate(s) to the appropriate ditch and reservoir company for inclusion of the following notation thereon: "These shares are subject to the terms and restrictions set forth in the Conservation Easement Deed from Wesley and Brenda Herman to The Lower Arkansas Valley Water Conservancy District recorded in the Real Property Records of Otero County Colorado on \_\_\_\_\_, 20\_\_ at Reception No. \_\_\_\_\_." A copy of the re-issued stock certificate(s) shall be promptly provided by Grantor to Grantee.

- 14) *Rights Retained by Grantor.* Subject to interpretation under Paragraph 22, as owner of the Property, Grantor retains the right to perform any act not specifically prohibited or



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limited by this Deed. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone they choose. Grantor retains the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products which are grown on the Property; farm machinery repair; sawmills; and firewood distribution; provided such uses are confined to locations within the Building Envelope described in Paragraph 3(B).

15) *Responsibilities of Grantor and Grantee Not Affected.* Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligation of Grantor as owner 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.
- b) Upkeep and Maintenance. Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.
- c) Liability and Indemnification. If Grantee is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Property, Grantor shall indemnify and reimburse Grantee for these payments, as well as for reasonable attorneys' fees and other expenses of defending itself, unless Grantee or any of its agents have committed a negligent or deliberate act that is determined by a court to be the sole cause of the injury or damage. In addition, Grantor warrants that Grantee is and will continue to be an additional insured on Grantor's liability insurance policy covering the Property. Grantor shall provide certificates of such insurance to Grantee on an annual basis.

16) *Enforcement.* Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed. With reasonable advance notice to Grantor, Grantee or Grantee's agents may enter the Property for the purpose of inspecting for violations. If Grantee finds what it believes is a violation, Grantee may, at its discretion, take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee shall give Grantor written notice of the violation and sixty (60) days to correct it, before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, Grantee may obtain an injunction to stop it, temporarily or permanently, in addition to such other relief as the court deems appropriate. A court may also issue an injunction requiring Grantor to restore the Property to its condition prior to the violation. In any case, where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time, and Grantor hereby waives any defense available to Grantor pursuant to C.R.S. § 38-41-119, or the defense of laches or estoppel.

17) *Transfer of Easement.* With the prior written consent of Grantor (which consent shall not be unreasonably withheld), Grantee shall have the right to transfer the easement created by this Deed to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under §170(h) of the United States Internal Revenue Code, and



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under Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, and only if the agency or organization expressly agrees to assume the responsibility imposed on Grantee by this Deed. If Grantee desires to transfer this easement to a qualified organization having similar purposes as Grantee, but Grantor unreasonably refuses to approve the transfer or, if Grantee ever ceases to exist or no longer qualifies under §170(h) or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility provided that Grantor receives notice of, and an opportunity to participate in, the court proceeding.

- 18) *Transfer of the Property.* Any time the Property itself, or any interest in it, is transferred by Grantor to any third party, Grantor shall notify Grantee, in writing at least twenty (20) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Deed.
- 19) *Amendment of Easement.* This easement may be amended only with the written consent of Grantee and Grantor by an instrument duly executed and recorded in the real property records of Otero County, Colorado. Any such amendment shall be consistent with the purposes of this Deed and may not affect its perpetual duration. Any such amendment shall comply with §170(h) of the United States Internal Revenue Code, and any regulations promulgated thereunder. Any such amendment shall also be consistent with Colorado Revised Statutes §§ 38-30.5-101, *et seq.*, and any regulations promulgated thereunder.
- 20) *Termination of Easement.*
- a) If it is determined that conditions on or surrounding the Property change so much that it becomes impossible or impracticable to fulfill its conservation purposes, a court with jurisdiction may, at the joint request of both Grantor and Grantee, terminate the easement created by this Deed. If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the easement may be terminated through condemnation proceedings. If the easement is terminated in whole or in part or all or part of the Property is sold or taken for public use, then Grantee shall be entitled to the percent of the gross sale proceeds or condemnation award that represents an amount equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Deed. Grantee shall use the proceeds consistent with the conservation purposes of this Deed.
  - b) A change in the potential economic value of any use that is prohibited by or inconsistent with this Deed, or a change in the potential economic value of all or any portion of the Property (including, without limitation, the land, the Water Rights, any mineral rights, the development rights, and all other property rights granted to the Grantee by this Deed), or a change in any current or future uses of neighboring properties, shall not constitute a change in conditions that makes it impossible for continued use of the Property for conservation purposes and shall not constitute grounds for terminating the Deed in whole or in part, or releasing any portion of the Property including, without limitation, the land, the Water Rights, any mineral rights, the development rights, and all other property rights granted to the Grantee by this Easement), from the terms of this Deed.
  - c) If this Deed is terminated in whole or in part, District shall execute an appropriate instrument and record it in the real property records of Otero County, Colorado.



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- 21) *Interpretation.* This Deed shall be interpreted under the laws of the State of Colorado, resolving any ambiguities and questions of the validity of specific provisions so as to preserve the Conservation Values and give maximum effect to its conservation purposes.
- 22) *Perpetual Duration.* The easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. A party's rights and obligations under this Deed terminate upon transfer of the party's interest in this Deed or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- 23) *Notices.* Any notices required by this Deed shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:
- To Grantor: Wesley and Brenda Herman  
19501 Co Rd 17.5  
Rocky Ford, Co 81067
- To Grantee: Lower Arkansas Valley Water Conservancy District  
801 Swink Avenue  
Rocky Ford, Colorado 81067
- 24) *Grantor's Title Warranty.* Grantor warrants that Grantor has good and sufficient title to the Property and hereby promises to defend the same against all claims from persons claiming by, through or under Grantor.
- 25) *Grantor's Environmental Warranty and Indemnity.* Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property and hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste or violation of federal, state, or local environmental laws. Without limiting the foregoing, nothing in this Deed 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.
- 26) *Subsequent Liens on the Property.* No provision of this Deed should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Deed.
- 27) *No Merger.* Unless the parties expressly state that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Deed.
- 28) *Acceptance.* As attested by its signature affixed hereto, Grantee hereby accepts, without reservation, the rights and responsibilities conveyed by this Deed.



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- 29) *Liberal Construction.* Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed in a manner that best effectuates and protects Conservation Values and the purposes of this Deed and the policies and purposes of C.R.S. §38 30.5 101 *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 30) *Interpretation.* This Deed shall be interpreted as any other real property deed according to the laws of the State of Colorado.
- 31) *Internal Revenue Code.* [delete this paragraph if not relevant] This Deed shall always be interpreted in a manner consistent with the Internal Revenue Code to insure that the Conservation Values as defined by the Internal Revenue Code are protected.
- 32) *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.
- 33) *Recording.* Grantor shall record this Deed in the real property records of \_\_\_\_\_ County, Colorado within 10 days from the date first written above.

TO HAVE AND TO HOLD, this Deed 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: \_\_\_\_\_

Wesley Herman

Brenda Herman

STATE OF COLORADO )

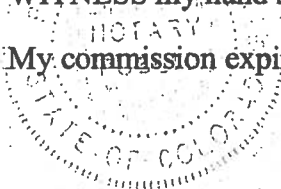
COUNTY OF OTERO )

ss.

The foregoing instrument was acknowledged before me this 26 day of December \_\_\_\_\_, 2012,  
by Wesley Herman and Brenda Herman.

WITNESS my hand and official seal.

My commission expires: 10/07/2014



Paula L. Sany



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Notary Public

**ACCEPTED:**

**Lower Arkansas Valley Water Conservancy District**

By: Bill Hancock

  
Its: Conservation Program Manager

STATE OF COLORADO )

COUNTY OF OTERO )

ss.

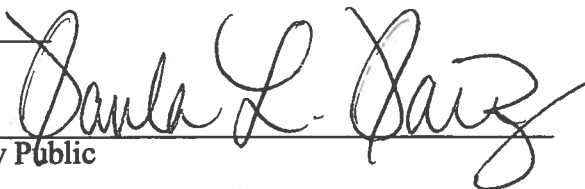
The foregoing instrument was acknowledged before me this 26 day of December, 2012,  
by Bill Hancock, as Conservation Program Manager of the Lower Arkansas Valley Water  
Conservancy District.

WITNESS my hand and official seal.

My commission expires:

10/07/2014

Notary Public



**Exhibit A**

Legal Description of Property

**Exhibit B**

Building Envelope

**Exhibit C**

Water Rights *[delete if not relevant]*



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STEWART TITLE  
GUARANTY COMPANY

Customer Reference Number (if any):

Exhibit A

In the County of OTERO, State of Colorado:

The S1/2 of Section 22, Township 24 South, Range 57 West of the 6th P.M., EXCEPT a tract of land lying in the SE1/4SE1/4 of Section 22, Township 24 South, Range 57 West of the 6th P.M., more particularly described as follows: Beginning at the SE corner of said Section 22 as monumented by a 1" iron pipe around a 5/8" rebar with 2" aluminum cap properly stamped PS, INC., PLS 12103 and considering the South line of adjacent Section 23, (as monumented by a 3/4" rebar and 3-1/4" aluminum cap at the S1/4 corner of said Sec. 23), bearing assumed N.90°00'00"W. with all other bearings contained herein being relative thereto; thence N.39°37'35"W., 899.34 feet to the TRUE POINT OF BEGINNING; thence N.65°27'31"W., 149.32 feet; thence N.73°59'57"W., 77.71 feet; thence N.34°52'18"W., 55.39 feet; thence N.8°54'02"W., 78.06 feet; thence S.87°38'54"E., 204.37 feet; thence S.2°47'26"W., 57.20 feet; thence S.89°45'29"E., 58.12 feet; thence S.2°08'49"W., 140.34 feet to the true point of beginning. TOGETHER WITH an easement 16.00 feet wide (8.00' each side of centerline) for access and utility purposes whose centerline begins at a point 8.69 feet West of the SE corner of said Section 22; thence N.23°00'15"W., 509.51 feet; thence N.36°52'02"W., 165.86 feet; thence N.60°29'24"W., 77.50 feet; thence N.77°12'45"W., 206.23 feet to a point South of the SE corner of the heretofore described tract; thence N.65°27'31"W., 149.55 feet; thence N.73°59'57"W., 79.96 feet; thence N.34°52'18"W., 60.08 feet; thence N.8°54'02"W., 81.50 feet to a protraction of the North line of said tract and terminus of said easement.

ABC

AND

A tract of land lying in the SE1/4SE1/4 of Section 22, Township 24 South, Range 57 West of the 6th P.M., more particularly described as follows: Beginning at the SE corner of said Section 22 as monumented by a 1" iron pipe around a 5/8" rebar with 2" aluminum cap properly stamped PS, INC., PLS 12103 and considering the South line of adjacent Section 23, (as monumented by a 3/4" rebar and 3-1/4" aluminum cap at the S1/4 corner of said Sec. 23), bearing assumed N.90°00'00"W. with all other bearings contained herein being relative thereto; thence N.39°37'35"W., 899.34 feet to the TRUE POINT OF BEGINNING; thence N.65°27'31"W., 149.32 feet; thence N.73°59'57"W., 77.71 feet; thence N.34°52'18"W., 55.39 feet; thence N.8°54'02"W., 78.06 feet; thence S.87°38'54"E., 204.37 feet; thence

Commitment No. 111812

ABC TITLE & CLOSING SERVICES, LLC, 300 MAIN ST., SUITE A, PO Box 92, Ordway, CO 81063

(719) 267-5538

FAX: (719) 267-5539

# 060093

Authorized Agent

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STEWART TITLE  
GUARANTY COMPANY

Customer Reference Number (if any:

S.2°47'26"W., 57.20 feet; thence S.89°45'29"E., 58.12 feet; thence S.2°08'49"W., 140.34 feet to the true point of beginning. TOGETHER WITH an easement 16.00 feet wide (8.00' each side of centerline) for access and utility purposes whose centerline begins at a point 8.69 feet West of the SE corner of said Section 22; thence N.23°00'15"W., 509.51 feet; thence N.36°52'02"W., 165.86 feet; thence N.60°29'24"W., 77.50 feet; thence N.77°12'45"W., 206.23 feet to a point South of the SE corner of the heretofore described tract; thence N.65°27'31"W., 149.55 feet; thence N.73°59'57"W., 79.96 feet; thence N.34°52'18"W., 60.08 feet; thence N.8°54'02"W., 81.50 feet to a protraction of the North line of said tract and terminus of said easement.

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**EXHIBIT B**  
**BUILDING ENVELOPE**

The building envelope shall include five (5) acres located around and including the present home and bordered on the south by County Road X and on the west by the High Line Canal.



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**EXHIBIT C**  
**WATER RIGHTS**

Water rights include Twelve (12) shares of the capital stock  
of the High Line Canal Company.