

Any time the Property itself or any interest in it is transferred by Landowners to any third party, Landowners shall pay a transfer fee of 0.25 percent of sales price and be used by Land Trust for purposes consistent with its mission, pursuant to the terms and provisions of Paragraph 21 of this Easement.

NASH RANCH DEED OF CONSERVATION EASEMENT

NOTICE: The Agricultural Conservation Easement Program, 16 U.S.C Section 3865 et seq., facilitated and provided funding for the purchase of an Agricultural Land Easement ("ALE") on real property described in Exhibit A, hereafter referred to as the "Property", for the purpose of protecting grazing uses and related conservation values by restoring and conserving the Property.

Wayne A. Nash and Sharon M. Nash (Landowners), the Rio Grande Headwaters Land Trust (Land Trust), and the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC) (individually referred to as a "Party" and jointly referred to as the "Parties") acknowledge that the ALE is acquired by the Land Trust to protect grazing uses and related conservation values by restoring and conserving the Property.

NOTICE: This Conservation Easement has also been acquired in part with a grant ("Grant") from the Colorado Water Conservation Board ("CWCBC").

THIS DEED OF CONSERVATION EASEMENT ("Easement" or "Deed") is made this 26th day of June 2019, by and between WAYNE A. NASH and SHARON M. NASH having their address at 8934 W. County Road 7 North, Del Norte, CO 81132 ("Landowners" "Landowner" or "Grantors"), in favor of the RIO GRANDE HEADWATERS LAND TRUST, a Colorado nonprofit corporation, with a principal place of business at 840 Grande Avenue, Del Norte, Colorado 81132 ("Land Trust" or "Grantee") and with a right of enforcement to the United States of America (the United States), acting by and through the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) on behalf of the Commodity Credit Corporation (CCC). Landowners and Land Trust are referred to herein individually as a "Party" and collectively as "Parties". The following exhibits are attached and incorporated:

Exhibit A	Legal Description of the Property
Exhibit B	Maps of Property
Exhibit C	Survey
Exhibit D	Water Rights
Exhibit E	Acknowledgement of Baseline
Exhibit F	Exceptions to Title

RECITALS:

A. Landowners are the sole owner in fee simple of certain real property legally described in **Exhibit A** attached hereto (the "Property") which consists of approximately one hundred and eighty-five (185) acres of land, together with water rights as described in **Exhibit D** beneficially used on such land ("Water Rights") located in Rio Grande County, Colorado. The Property contains one (1) Rio Grande County Assessor's parcel of land (Schedule No. 1528100112).

B. The Property possesses relatively natural habitat, agricultural productivity, scenic, open space (collectively, "Conservation Values") that are important to the Landowners, the people of Rio Grande County and the people of the State of Colorado.

In accordance with 26 U.S.C.A. § 170(h)(4)(A)(iii), and the Treasury Regulations adopted pursuant thereto, the Easement on the Property will preserve the Property's open space characteristics for the scenic enjoyment of the general public and pursuant to the governmental conservation policies outlined below, yield a significant public benefit. The property is highly visible from Rio Grande County Road 7 North (also known as Colorado State Highway 374, and from nearby Bureau of Land Management and Colorado State Land Board lands. Protection of the Property contributes to the conservation of the intact ranching and natural landscapes that currently characterize this area. Additionally, the Property contains productive agricultural lands with surface water rights, supporting irrigated meadows and livestock grazing.

In accordance with 26 U.S.C.A. § 170(h)(4)(A)(ii), and the Treasury Regulations adopted pursuant thereto, the Easement on the Property will preserve the Property's relatively natural habitat of fish, wildlife, or plants, or similar ecosystem, and yield a significant public benefit pursuant to the governmental conservation policies outlined below. Approximately point nine (.9) miles of the north channel of the Rio Grande river run through the ranch. Protection of this section of the river would add to other protected reaches of the river in Rio Grande County, as well as other protected sections of the river in adjacent counties upstream and downstream of the Nash Ranch. The Property provides important diverse wildlife habitat for a number of wildlife species. The special habitat components found on the ranch include the river riparian corridor, wetlands, marshes, open meadow, and mature cottonwood woodlands. Wildlife species supported by these habitats include several species of high conservation concern including the Southwestern Willow Flycatcher, the Northern leopard frog, the Northern harrier, Osprey and White-faced ibis. The Property also supports a wide variety of other species such as big game, small and medium-sized mammals, waterfowl, raptors, passerine birds, fish, reptiles and amphibians.

The conservation purpose of this Easement is recognized by, and the grant of this Easement will serve, at least and without limitation, the following clearly delineated governmental conservation policies:

- The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C.A. §§ 4201- 4209 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.” 7
U.S.C.A. § 4201(b) (2011).

- C.R.S. §§ 38-30.5-101 to 38-30.5-111, providing for the establishment 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.” C.R.S. § 38-30.5-102 (2010).
- The Colorado Wildlife and Parks and Outdoor Recreation Statutes, C.R.S. §§ 33-1-101 to 33-1-121, which provide 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. § 33-1-101(1) (2010).
- The Colorado Wildlife and Parks and Outdoor Recreation Statutes, C.R.S. §§ 33-2-101 to 33-2-106, which provide that “it is the policy of this state to manage all nongame wildlife, recognizing the private property rights of individual property owners, for human enjoyment and welfare, for scientific purposes, and to ensure their perpetuation as members of ecosystems; that species or subspecies of wildlife indigenous to this state which may be found to be endangered or threatened within the state should be accorded protection in order to maintain and enhance their numbers to the extent possible; that this state should assist in the protection of species or subspecies of wildlife which are deemed to be endangered or threatened elsewhere...” C.R.S. § 33-2-102 (2010).
- The Colorado Wildlife and Parks and Outdoor Recreation Statutes, C.R.S. §§ 33-10-101 to 33-10-114, which provide that “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. § 33-10-101(2) (2010).
- The Colorado Department of Agriculture Statutes, C.R.S. § 35-3-102, which provides in part that “the soil resources and fertility of the land of this state, and the economic use thereof, the prosperity of the farming population of this state, and the waters of the rivers of this state, and the prevention of floods are matters affected with a public interest.” C.R.S. § 35-3-102(1)(a) (2010).
- The Colorado Department of Agriculture Statutes, C.R.S. § 35-3-102, which provides in part that “the welfare of this state has been impaired and is in danger of being further impaired by destruction of its soil fertility, by uneconomic use and waste of its land, by exploitation and wasteful and unscientific use of its soil resources, by floods and impairment of its rivers as a result of soil erosion and by the decrease in the purchasing power of the net income per person on farms in the state as compared with the net income per person in the state not on farms.” C.R.S. § 35-3-102(1)(b) (2010).

- The Rio Grande County “Right to Farm and Ranch Policy 98-18” which states that “The Board of County Commissioners of Rio Grande County, Colorado recognizes the need to protect the viability and to emphasize the importance of farming, ranching and other agricultural activities in Rio Grande County” and the “the Board shall attempt and aspire to Conserve, enhance and encourage farming, ranching and associated agricultural activities and operations within Rio Grande County.”
- The Rio Grande County Joint Master Plan, adopted in 2016 includes the following:

Section 3: Accomplishments. 3.3: Collaboration of Governmental, Non-Profit and Private Organizations: “In an effort to conserve natural resources and preserve the cultural heritage of Rio Grande County for future generations, the County partners with many private, non-profit and other governmental agencies. One such organization is the Rio Grande Headwaters [Land] Trust. This organization, through conservation easements with private land owners, preserves the natural beauty and wildlife habitat of the area and promotes a sustainable agricultural way of life. The Headwaters goals are to protect and support working ranches and farms, water resources, wildlife habitat, scenic landscapes, and to inspire a culture of conservation in the San Luis Valley.”

Section 6: Land Use, Zoning and Natural Hazards:

Objective: Protect public health and safety in environmentally constrained and sensitive areas such as flood plains, wildfire areas and steep terrain. Action 7. Discourage new developments within the 100-year floodplain so as to minimize the risks of potential flood hazards.

Objective: Protect significant natural areas, wetlands, wildlife habitat and cultural resources. Actions: 1. Work with the Rio Grande Headwaters [Land] Trust, land owners and others to establish conservation easements using the Colorado Conservation Tax Exchange Program.

Objective: Protect agricultural and other economically productive natural resources in the County. Action 2. Acknowledge the work of the Rio Grande Headwaters [Land] Trust, land owners and others to establish conservation easements using the Colorado Conservation Tax Exchange Program.

- Rio Grande County Land Use Code, Article IV “To provide for higher quality in site and land planning, to conserve open space and to provide more efficient and attractive open space”; and Article IX “permitted land uses within the [Rural District and Agricultural District] are to encourage the preservation and protection of irrigated croplands, rangelands, watershed and wildlife habitats in the County; the maintenance of agricultural production; and preservation of associated life styles.”

C. Landowners are donating a portion of its Property interest to Land Trust for the exclusive purpose of assuring that, under Land Trust's perpetual stewardship, the Conservation Values of the Property will be conserved and maintained forever. Landowners intend that the Conservation Values be preserved and protected, and that any uses be prohibited that would materially diminish

or impair the Conservation Values or that otherwise would be inconsistent with the Purpose of this Easement, as defined in Paragraph 1.

The covenants, terms, conditions, and restrictions of this Easement shall be servitudes running with the land in perpetuity. Every provision of this Easement that applies to Landowners or Land Trust shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear; provided, however, that either Party's rights and obligations under this Easement shall terminate (as to such Party, but not as to such Party's successor, who shall be bound as provided herein) upon a transfer of such Party's entire interest in this Easement or the Property, except that liability of such transferring Party for acts or omissions occurring prior to such transfer shall survive the transfer.

The Parties acknowledge and agree that uses expressly permitted by this Easement and the current land use patterns, including, without limitation, those relating to operation of an agricultural operation, such as producing hay and grazing livestock, and to low-impact recreation uses such as fishing or hunting, do not materially diminish or impair the Conservation Values and are consistent with the Purpose of the Easement.

D. Landowners further intend, as owners of the Property, to convey to Land Trust the affirmative right to enforce the terms of this Easement in order to conserve and protect the Conservation Values of the Property in perpetuity in accordance with the Purpose of this Easement, as defined in Paragraph 1. Land Trust accepts the responsibility of enforcing the terms of this Easement.

E. The Effective Date of this Easement shall be the date and year of recording of this Easement.

F. Land Trust is a publicly-supported, tax-exempt organization described in Section 501(c)(3) and 170(h) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto, whose primary purpose is "Conserving our land, water and way of life in Colorado's Rio Grande Basin, the San Luis Valley".

G. Land Trust is also a charitable organization as required under Colorado Revised Statutes (C.R.S.) §§ 38-30.5-101 *et seq.*, which provides for conservation easements to maintain land and water in a natural, scenic or open condition, for wildlife habitat, or for agricultural and other uses or conditions consistent with the protection of open land in Colorado.

H. Land Trust is certified by the State of Colorado's Division of Conservation and is accredited by the Land Trust Alliance Accreditation Commission.

I. The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and by adopting and administering competitive grant applications and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state's wildlife, park, river, trail and open space heritage, to

protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.

J. Land Trust agrees by accepting this Easement to preserve and protect in perpetuity the Conservation Values for the benefit of this and future generations.

K. The Baseline conditions of the Property are set forth in the Baseline Report referenced in Paragraph 2, below, a copy of which is maintained in the files of the Land Trust.

NOW, THEREFORE, for the reasons given, and in consideration of the foregoing and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of the State of Colorado, and in particular C.R.S. §§ 38-30.5-101 *et seq.*, Landowners hereby voluntarily grant and convey to Land Trust, and Land Trust hereby voluntarily accepts, a perpetual conservation easement in gross, over the Property and Water Rights of the nature and character and to the extent hereinafter set forth. Landowners will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Landowners authorize Land Trust to enforce these covenants in the manner described below.

1. Purpose

The purpose of this Easement is to **protect grazing uses and related conservation values by restoring and conserving the Property** and to ensure that the Conservation Values are preserved and protected in perpetuity ("Purpose"). This Purpose is in accordance with §170(h) of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto. To effectuate the Purpose of this Easement, Landowners and Land Trust intend to permit only uses of the Property that do not materially diminish or impair the Conservation Values and to prevent any use of the Property that will materially diminish or impair the Conservation Values. Notwithstanding the foregoing, nothing in this Easement is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation Values. Additionally, the Parties acknowledge that the Permitted Water Uses and the Water Rights provide a substantial benefit to the Property's Conservation Values.

2. Baseline Documentation Report

The Parties acknowledge that a written report has been prepared, reviewed, and approved by the Parties that documents the Property's condition as of the conveyance date of this Easement (the "Baseline Report"). A copy of the Baseline Report shall be kept on file with both Parties and by this reference is incorporated into this Easement. The Parties acknowledge that the Baseline Report is intended to establish the condition of the Property as of the conveyance date of this Easement in accordance with Treasury Regulations, 26 C.F.R. § 1.170a-14(g)(5)(i) and both Parties have acknowledged the same in a signed statement, a copy of which is attached hereto as **Exhibit E**. The Baseline Report may be used by the Parties to establish that a change in the use or character of the Property has occurred; however, the

Parties further agree that its existence shall in no way limit the Parties' ability to use other pertinent information in resolving any controversy that may arise with respect to the condition of the Property as of the conveyance date of this Easement.

3. Land Trust's Affirmative Rights and Responsibilities

To accomplish the terms of this Easement, in addition to the rights described in C. R. S. §§ 38-30.5-101, *et seq.*, as the same may be amended from time to time, the following rights are hereby conveyed to Land Trust:

- (a) To preserve and protect the Conservation Values of the Property;
 - (b) To enter upon the Property pursuant to Paragraphs 7 and 8 at reasonable times to monitor Landowner's compliance with and, if necessary, to enforce the terms of this Easement; provided, that such right of entry shall not unreasonably interfere with Landowners' use and quiet enjoyment of the Property;
 - (c) To enjoin or prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use; and,
 - (d) To require Landowners to consult with Land Trust regarding the exercise of certain reserved rights that may impact or disturb the Conservation Values, and to have the right to review and approve or deny any such activity prior to it being undertaken.
- Nothing in this Easement is intended to require Land Trust to approve any action or agreement that is inconsistent with the terms of this Easement.

4. Rights and Responsibilities Reserved by Landowners

Notwithstanding any provisions of this Easement to the contrary, Landowners and Landowners' personal representatives, heirs, successors and assigns reserve all rights accruing from Landowners' ownership of the Property, including the right to sell, lease, license and devise the property, as well as any other rights consistent with the Conservation Values of the Property and not prohibited or limited by this Easement. Additionally, Landowners reserve the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited or restricted by this Easement and that do not materially diminish or impair the Conservation Values.

5. Uses and Restrictions on Uses

The following uses and practices are not an exhaustive recital of current or potential uses and practices on the Property. Some of these uses and practices are identified as being subject to specified conditions or to the requirement of prior approval by the Land Trust. The procedures for such prior approval are provided in Paragraph 6. Except as prohibited or otherwise limited by this Paragraph 5, Landowners reserve the right to use and enjoy the Property in any manner which is

consistent with the terms of this Easement. Any activities on or use of the Property that is inconsistent with the Purpose of this Easement is prohibited.

a. Development Rights

To fulfill the Purpose of this Easement, Landowners hereby convey to Land Trust all development rights deriving from, based upon, or attributable to the Property in any way ("Land Trust's Development Rights"), except those expressly reserved by Landowners herein, and the Parties agree that Land Trust's Development Rights shall be held by Land Trust in perpetuity in order to fulfill the Purpose of this Easement and to ensure that such rights are forever released, terminated, and extinguished as to Landowners, and may not be used on or transferred off of the Property to any other property or used for the purpose of calculating permissible lot yield of the Property or any other property.

b. Buildings and Other Structures

There are no buildings or structures on the Property as of the Effective Date.

The construction of any new structures is prohibited except as expressly permitted in this Paragraph 5b. Before undertaking any construction of new structures Landowners shall obtain prior written approval from Land Trust in accordance with Paragraph 6.

(1) All Structures and Improvements

Once built, structures and improvements may be maintained, repaired, and demolished. Structures and improvements may be replaced with Land Trust's prior written approval in accordance with Paragraph 6. However, structures and improvements may not be converted to other uses that are inconsistent with the Purpose of the Easement.

The location and design of any new structures shall not detract from the Conversation Values and the substantially unbuilt character of the Property when viewed from public vantage points. In no event shall any building height exceed thirty (30) feet above finished grade.

(2) Residential Structures and Improvements

Under no circumstances shall any residential structures or improvements be built on the Property, including structures that might be used for short term or long term rentals or seasonal housing.

(3) Agricultural Structures and Improvements

Agricultural structures and improvements, and utilities to serve approved structures, including on-farm energy structures allowed under Paragraph 5n(4) that neither individually nor collectively have an adverse impact on the grassland, grazing uses and related Conservation Values of the Property, may be built on the Property with Land Trust's prior written approval in accordance with Paragraph 6, provided that the agricultural structures or utilities are consistent

with the Agricultural Land Easement Plan described herein. No such structures, improvements or utilities shall be constructed in the wetlands or riparian areas, identified on **Exhibit B** attached hereto, the preservation of which is central to the Purpose of this Easement.

(4) Recreational Improvements

Under no circumstances shall any new recreational improvement be built on the Property, including but not limited to, off-road vehicle courses, athletic fields, golf courses or ranges, race tracks, airstrips, helicopter pads, or commercial shooting range.

(5) Commercial Structures and Improvements

Under no circumstances shall any new commercial structures or improvements be built on the Property.

(6) Fences

Fences may be maintained and replaced and new fences installed only in accordance with the Agricultural Land Easement Plan and consistent with grassland species management requirements identified in the Agricultural Land Easement Plan.

c. Paving and Road and Trail Construction; Impervious Surface Limitations

No portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious paving material without the advance prior written approval of Land Trust in accordance with Paragraph 6. Land Trust shall grant such approval only if Land Trust determines that the proposed paving or covering of the soil, or the location of any such road or trail, will not materially diminish or impair the Conservation Values, is within the impervious surface limits and is necessary to carry out the agricultural operations or other allowed uses on the Property.

Maintenance of existing roads, as documented in the Baseline Documentation Report are allowed. However, existing roads may not be widened or improved unless widening and improving is within impervious surface limits and is necessary to carry out the agricultural operations or other allowed uses on the Property and with advance written approval of the Land Trust in accordance with Paragraph 6. Maintenance of existing roads shall be limited to normal practices for unpaved roads, including, without limitation, grading; placing porous road surface gravel; the removal of vegetation; necessary pruning or removal of hazardous trees and plants; application of permeable materials necessary to correct erosion; placement of culverts, water control structures, and bridges; and maintenance of roadside ditches.

Impervious surfaces will not exceed 2% (3.7 acres), of the Property, excluding NRCS-approved conservation practices. Impervious surfaces are defined as material that does not allow water to percolate into the soil on the Property; including, but not limited to, residential buildings, agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. Impervious surface limitations include any surface disturbance or

impervious surfaces associated with oil and gas exploration and extraction. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights conveyed to Land Trust by this Agricultural Land Easement.

d. Agriculture and Ranching

(1) Agricultural Purposes

Landowners retain the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law and as is customary for the area in which the Property is located. For purposes of this Easement, agriculture is defined as the production of food, fiber, and forage. Agricultural uses include the breeding, raising, boarding, pasturing, and grazing of livestock; breeding and raising bees, fish, poultry, and other fowl; planting, raising, harvesting, and producing agricultural, horticultural, and forestry crops; and the primary processing, storage, and sale, including direct retail sale to the public, of crops and products, except as prohibited in Paragraph 5i, regarding commercial feed lots and other intensive growth livestock farms. Notwithstanding the foregoing, the provisions of this Easement limit the types of agricultural operations that can occur on the Protected Property to those that restore or conserve grassland, and protect grazing uses, and related conservation values.

Except for grazing uses and grassland restoration and conservation, the cultivation or production of crops, nonperennial forages for human or domestic animal consumption, crop seed production, or planting of orchards, vineyards, berries, tree farms, or other perennial nongrassland agricultural product is prohibited.

The Landowners and Land Trust recognize that changes in economic conditions, agricultural technologies, best management practices and landowner preferences may result in an evolution of agricultural activities on the Property. Such evolution shall be permitted so long as it is consistent with the Purpose and terms of this Easement.

The production, processing, and marketing of agricultural crops and livestock is allowed provided it is conducted in a manner consistent with the terms of the Agricultural Land Easement Plan described herein.

Landowners are allowed to graze, hay, harvest for hay and non-crop seed production, mow, construct fire breaks, conduct fire pre-suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, consistent with the provisions and conservation purposes of this Easement. The term "common grazing practices" means those practices customary to the region where the Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Property. Landowners must not hay, mow, or harvest for seed during certain nesting seasons for birds whose populations are in significant decline as identified by the Land Trust or NRCS. Determinations of nesting seasons for birds whose populations are in significant decline will be made in writing to the Landowners or set forth within the Agricultural Land Easement Plan for the Property.

No uses will be allowed that violate federal laws, including Federal drug laws or that decrease the Easement's protection for the grazing uses and related conservation values or adversely impact the restoration or conservation of the grassland, and related conservation values the Property.

(2) Conservation Programs

The Landowners reserve the right to participate in conservation directed agricultural contracts, programs, or leases offered by any private entity or governmental entity, such as the United States Department of Agriculture, the United States Department of Interior, and the State of Colorado, unless such contracts, programs, or leases involve activities that are otherwise prohibited by the terms of this Easement.

(3) Agrichemicals

The Landowners reserve the right to use agrichemicals, in accordance with label instructions, including, but not limited to, fertilizers, biocides, herbicides, and rodenticides, except that the use of agrichemicals shall not result in the significant impairment of any natural ecosystem or process on the Property.

e. Agricultural Land Easement Plan

As required by 16 U.S.C. Section 3865a, agricultural production and related uses of the Property are subject to an Agricultural Land Easement Plan that promotes the long-term viability of the land to meet the Agricultural Land Easement purposes. The Agricultural Land Easement Plan and any revisions thereto must be approved by the Landowners, the Land Trust, and NRCS. Landowners agree the use of the Property will be subject to the Agricultural Land Easement Plan on the Property

The Agricultural Land Easement Plan is incorporated by reference and must not include any provisions inconsistent with the conservation purposes of this Agricultural Land Easement. The Landowners and Land Trust agree to update the Agricultural Land Easement Plan in the event the agricultural uses or ownership of the Property change. A copy of the current Agricultural Land Easement Plan is kept on file with the Land Trust.

The Land Trust must take all reasonable steps to secure compliance with the Agricultural Land Easement Plan. In the event of substantial or ongoing noncompliance with the Agricultural Land Easement Plan or the requirement to update the Agricultural Land Easement Plan, NRCS may notify the Land Trust. NRCS will give the Landowners and Land Trust a reasonable amount of time, not to exceed 180 days, to take corrective action. If Land Trust fails to enforce the terms of the Agricultural Land Easement, including, but not limited to compliance with the Agricultural Land Easement Plan, the United States may exercise its right of enforcement.

f. Vegetation and/or Forest Management

Subject to other provisions of this Easement, Landowners may selectively cut, burn, mow, and clear vegetation in existing fields to the extent customary to perform routine upkeep and maintenance, to maintain the character and nature of the habitat, preserve winter range for deer, elk, and other wildlife, and for fire mitigation, road maintenance, weed control, insect control and to prevent personal injury and property damage.

Conversion of grasslands, meadows, riparian areas or wetlands to cultivated annual crops is prohibited.

Trees may be cut to control insects and disease, to control invasive non-native species, for fire mitigation, to promote forest health, to prevent personal injury and property damage, to prevent encroachment into pastureland, and for firewood and other permitted uses, including construction of permitted buildings and fences on the Property without a forest management plan, so long as any tree cutting does not substantially diminish or impair the Conservation Values of the Property.

Forest management and timber harvesting is allowed, provided it is carried out, to the extent practicable, in accordance with current, generally accepted best management practices for the sites, soils, and terrain of the Property. In addition, if the Property contains contiguous forest that exceeds the greater of 40 acres or 20 percent of the Easement area then forest management and timber harvesting must be performed in accordance with a written forest management plan. The forest management plan must be prepared by a professional resource manager, in consultation with the Land Trust. A forest management plan will not be required for the following allowed noncommercial activities: cutting of trees for the construction of allowed roads, utilities, buildings, and structures on the Property, cutting of trees for trail clearing, cutting of trees for domestic use as firewood or for other domestic uses by Landowners, removal of trees posing an imminent hazard to the health or safety of persons or livestock, or removal of invasive species.

g. Recreational Uses

Landowners reserves the right to engage in low impact recreational activities, such as horseback riding, hiking, cross-country skiing, or other similar recreational uses. Fishing and hunting are also permitted, so long as they are undertaken in compliance with applicable state and federal laws and regulations and pursued in a manner that does not materially diminish or impair the Conservation Values.

h. Industrial Uses

Industrial uses are strictly prohibited and shall not be allowed on the Property.

i. Commercial Uses

Limited commercial uses are allowed, as long as they are conducted in a manner that is consistent with § 170(h) of the United States Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted pursuant thereto, are customary rural enterprises, consistent with the Purpose of the Easement, and do not materially diminish or impair the

Conservation Values. Without limiting other potential commercial uses that meet the foregoing criteria, the following uses are allowed:

- (a) Agricultural production and related uses conducted as described in the Agricultural Land Easement Plan;
- (b) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures provided that Land Trust gives prior written approval for it in accordance with Paragraph 6;
- (c) Farm machinery repair;
- (d) Veterinary Services;
- (e) Commercial hunting and fishing to the extent they do not harm the agricultural use or grazing and grassland use, future viability, and related conservation values of the Property; and,
- (f) Temporary or seasonal outdoor activities or events that do not harm the agricultural use or grazing and grassland use, future viability, and related Conservation Values of the Property.

The foregoing descriptions of allowed commercial uses notwithstanding, commercial feed lots are inconsistent with the terms of this Easement and are prohibited. For purposes of this Easement, "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 commercial business of the reception and feeding of livestock for finishing the livestock.

j. Subdivision

The legal description of the Property is set forth at **Exhibit A**. Separate conveyance of a portion of the Property or division or subdivision of the Property is prohibited. The Parties agree that the division, subdivision or de facto subdivision of the Property, whether by legal or physical process, into more parcels of land or partial or separate interests (including, but not limited to, condominium interests or the partition of undivided interests) is prohibited. Even if the Property consists of more than one parcel for real estate tax or any other purpose or if it was acquired previously as separate parcels, it will be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement will apply to the Property as a whole. Ownership of the single parcel by joint tenancy or tenancy in common is permitted; provided, however, that Landowners, and Landowners' successors in interest, shall not undertake any legal proceeding to partition in kind, subdivide or divide in any manner the Property.

k. Oil, Gas, Mineral Extraction and Other Extraction

As of the Effective Date, Landowners own all of the coal, oil, gas, hydrocarbons, sand, soil, gravel, rock and other minerals of any kind or description (the "Minerals") located on, under, or in the Property or otherwise associated with the Property. Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other Mineral substance owned by Landowners as of the date of this Agricultural Land Easement or later acquired by Landowners, using any surface mining, subsurface mining, or dredging method, from Property is prohibited. However, Landowners and Land Trust agree that the following provisions shall apply to any proposed mineral extraction by Landowners or any third party, as applicable:

(1) Soil, Sand, Gravel and Rock

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

(2) Oil and Gas

Oil and gas exploration and extraction on the Property is allowed in accordance with this Sub-Paragraph (2), with prior written approval by the Land Trust in accordance with Paragraph 6 and Chief of NRCS. Land Trust and Landowners must demonstrate that such exploration and extraction of oil and gas is:

- (i) Not accomplished by any surface mining method;
- (ii) Accomplished by a method of extraction, production, and transport that has no more than a limited and localized impact that does not harm the agricultural use or Conservation Values of the Property;
- (iii) Within the impervious surface limits of the Agricultural Land Easement. Impervious surfaces, as defined in Paragraph 5c will include any surface disturbance or impervious surfaces associated with oil and gas exploration and extraction associated with uses permitted by this Paragraph; and,
- (iv) Subject to the Oil and Gas Plan described below that includes provisions for oil and gas exploration and extraction.

Any mineral leases or other conveyances of minerals entered into or renewed after the date of this Agricultural Land Easement Deed are subordinate to the terms of this Deed and will incorporate by reference this Deed.

(3) Oil and Gas Plan

Landowners, or a third party permitted by Landowners, may explore for and extract oil and gas owned in full or in part by Landowners, provided Landowners ensures that such activities are conducted in compliance with the requirements set forth in Sub-Paragraph (2) above, 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 Landowners' expense and approval in advance by Land Trust in accordance with Paragraph 6 and the NRCS. The Oil and Gas Plan shall describe: (a) the specific activities proposed; (b) the specific land area to be used for well pads, 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; (d) the method of transport of oil or gas produced from the Property; (e) the method of disposal of water, mining byproducts and hazardous chemicals produced by or used in the exploration and development of the oil or gas; (f) 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; (g) is within the impervious surface limits; (h) 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 (i) 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) 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.

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

(f) Any soil or water contamination due to the exploration for or extraction of oil or gas must be promptly remediated at the expense of Landowners.

(g) Any 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.

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

(i) Landowners shall not allow use of the Water Rights for any oil and gas activities.

(j) Land Trust 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 Landowners, any lessees or other third parties relating to the exploration for or extraction of oil, gas or hydrocarbons.

(4) Third-Party Mineral Extraction

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and their interests have not been subordinated to this Easement, the Landowners must require, to the greatest extent possible, that any oil, natural gas, and mineral exploration and extraction conducted by such third party is conducted in accordance with Sub-Paragraph 5(k)(2) above. In addition, if a third party owns all, or controls some, of the Minerals, and proposes to extract Minerals from the Property, Landowners shall immediately notify Land Trust in writing of any proposal from a third party to explore for or develop the Minerals on the Property. Landowners 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 Mineral Document to Land Trust prior to its execution by Landowners for Land Trust's review and advance written approval in accordance with Paragraph 6. Any Mineral Document shall require that Landowners provide notice to Land Trust whenever notice is given to Landowners, require the approval of Land Trust for any activity not specifically authorized by the instrument, and give Land Trust the right, but not the obligation, to object, appeal and intervene in any action in which Landowners 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 and shall not allow any use that would materially adversely affect the Conservation Values.

This Paragraph 5k shall be interpreted in a manner consistent with I.R.C. § 170(h) and the Treasury Regulations adopted pursuant thereto.

l. Motorized Vehicles

Motorized vehicles may be used only in conjunction with activities permitted by this Easement, including agriculture, recreation, hunting, and fishing, and in a manner that does not materially diminish or impair the Conservation Values. Off road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited. Nothing in this Paragraph is intended to prohibit the use of motorized vehicles for any agricultural, recreational, hunting, or fishing use or other use that is permitted under this Easement.

m. Signs or Billboards

No commercial signs, billboards, or advertisements shall be displayed or placed on the Property, except for appropriate and customary "for sale" or "for lease" signs alerting the public to the availability of the Property for purchase or lease, signs related to commercial activities occurring on the Property that are permitted under Paragraph 5i, and signs informing the public of the status of ownership.

n. Utilities, Storage and Septic Systems

(1) Wells

Landowners may construct and maintain new wells on the Property, as permitted by law, for uses consistent with the Conservation Values and terms of this Easement.

(2) Utility Improvements

Utility improvements include but are not limited to: natural gas distribution pipelines; electric power poles, transformers and lines; telephone and communications towers, poles and line; septic systems; domestic water storage and delivery systems; and renewable energy generation systems for Landowner's use on the Property including but not limited to wind, solar, geothermal or hydroelectric ("Utility Improvements").

Existing Utility Improvements may be maintained, repaired, removed and replaced in the same location and with a similar structure. No existing or new Utility Improvement shall exceed thirty (30) feet in height.

New utilities to serve approved buildings or structures, including on-farm energy structures and agricultural structures that neither individually nor collectively have an adverse impact on the agricultural use and future viability and related conservation values of the Property, may be built with prior written approval of Land Trust in accordance with Paragraph 6, provided that the utilities or agricultural structures are consistent with the Agricultural Land Easement Plan (see Paragraph 5e). When appropriate, Landowners may grant easements under the Property for such purposes provided that any such easement incorporates the restoration requirement of the preceding sentence.

(3) Commercial Energy Generation Facilities

The construction of commercial wind, solar, hydroelectric and other energy generation facilities is prohibited.

(4) On-Farm Energy Production

Renewable energy production is allowed for the purpose of generating energy for the agricultural needs of the Property. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the Conservation Values of the Property and consistent with the purposes of this Easement.

If any excess energy is produced by the energy generation facilities allowed herein, Landowners may with prior written approval of Land Trust in accordance with Paragraph 6, sell back that excess energy to a power company.

(5) Granting of Easements for Utilities and Roads

The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the grassland, grazing uses, and related conservation values of the Property as determined by Land Trust in consultation with the Chief of NRCS.

o. Lights

All outdoor lights installed after the date of this Easement shall be hooded, such that the lighting is fully shielded so that all light rays emitted are projected below, and not above, the horizontal plane of the fixture.

p. Trash

The dumping or accumulation of any kind of trash or refuse on the Property is prohibited, except that limited dumping or accumulation of ranch or farm-related trash and refuse produced on the Property is permitted, provided that such dumping does not materially diminish or impair the Conservation Values, does not occur in a riparian or wetland area, is temporary in nature, and is confined within a total area less than one-quarter acre in size at any given time. This Paragraph shall not be interpreted to prevent the storage of agricultural products and by-products on the

Property in accordance with all applicable government laws and regulations. No radioactive or hazardous waste shall be placed, stored, dumped, or buried on the Property.

q. Water Rights

(1) Water Rights Included

The Parties agree that it is appropriate to include certain water rights beneficially used on the Property in the Easement pursuant to C.R.S. §38-30.5-102. The "Water Rights" consist of all of Landowners' right, title, and interests in and to the water and water rights described in **Exhibit D**, together with all associated canals, ditches, laterals, headgates, springs and spring rights, reservoir and storage rights groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Property (collectively, the "Water Rights").

The Parties intend and desire that the obligations and restrictions set forth in this Paragraph be enforceable pursuant to C.R.S. §§38-30.5-101 through 38-30.5-111, inclusive, in as much as the same relate hereto. In the alternative, the Parties intend and desire that the obligations set forth in this Paragraph be enforceable as a restrictive covenant or equitable servitude.

(2) Permitted Water Uses

The Parties agree that the Water Rights are hereby dedicated and restricted exclusively for uses consistent with the terms of this Easement (the "Permitted Water Uses"). The Permitted Water Uses are continued irrigation or other historical use of the Water Rights, and Landowners shall have the paramount right to use and enjoyment of the Water Rights on the Property consistent with recent historical practices and the adjudicated use of the water. The Parties acknowledge that the Permitted Water Uses and the Water Rights provide a substantial benefit to the Property's Conservation Values, by, among other things, providing return flow to riparian and wetland areas on the Property.

Landowners may not have the points of diversion, or the place of use changed, except with the advance written approval of Land Trust in accordance with Paragraph 6 that such changes are not inconsistent with the Permitted Water Uses and will not impair the Conservation Values of the Property. Landowners shall not construct or permit others to construct, any new diversion, storage, or other water structures on the Property, and shall not otherwise undertake any new development of water resources for use on the Property without the prior written approval of Land Trust, which approval shall not be unreasonably withheld.

Landowners shall have the right, without Land Trust's prior written approval, to maintain, repair, and if necessary, reconstruct or replace any existing structures or equipment associated with the Water Rights (such as ditches, wells, irrigation equipment, reservoirs, sloughs and impoundments), so long as any activity does not materially impair or interfere with the Conservation Values.

(3) Restrictions on Water Rights

Landowners shall retain and reserve the Water Rights and shall not transfer, sell or otherwise separate the Water Rights from the Property. Except as set forth in Paragraph 26 herein, Landowners may only encumber, lease, or change the historic use of the Water Rights with the advance written approval of Land Trust in accordance with Paragraph 6 and provided that such encumbrance or lease does not separate the Water Rights from the Property.

Notwithstanding the provisions herein, and only with the advance written approval of Land Trust in accordance with Paragraph 6, Landowners may lease the Property's surface (ditch) Water Rights to public corporations, persons, mutual ditch companies, water users' associations, and other private or public corporations for irrigation, or in-stream flows off the Property, provided any such lease shall comply with current law, does not permanently separate the Water Rights from the Property, applies to not more than three years in ten and never in two consecutive years, and such lease shall authorize use of the Water Rights off the Property only in years where there is excess water not necessary to preserve the Conservation Values. Landowners shall not construct, or permit others to construct, any new water-diversion or storage facilities upon the Property for the purpose of using the water off the Property.

Landowners shall not act to materially alter, impair, materially modify, or adversely affect any existing ponds, wetlands, stream channels, or other water features currently located on the Property without the advance written approval of Land Trust in accordance with Paragraph 6. If an emergency exists, Landowners may commence work provided that Landowners give Land Trust notice within ten (10) working days of the emergency and describes the alteration or modification performed on the water feature to address the emergency. Any alterations or modifications to existing ponds, wetlands, streams, channels or other water features shall be conducted in compliance with all applicable statutes and regulations.

If, for events beyond the reasonable control of Landowners, water is not received by the Property, Landowners shall not be required to replace water not received or maintain existing conditions of water features. If such event is temporary in nature, Landowners shall not act to prevent the prior-existing condition of affected water features from being restored once such temporary event has ended.

Landowners shall not permit or conduct activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or subsurface waters.

The Parties intend and desire that the obligations and restrictions set forth in this Paragraph be enforceable pursuant to C.R.S. §§ 38-30.5-101 to 38-30.5-111. Alternatively, the Parties intend and desire that the obligations and restrictions set forth in this Paragraph be enforceable as a restrictive covenant, or that such obligations and restrictions be enforceable as an equitable servitude.

(4) Protection of Water Rights

Landowners shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights. In the event that Landowners fail, after written notice from Land Trust, to defend or protect the Water Rights or any portion thereof against injury or risk of abandonment, the Land Trust may, but shall not be required to, assert such defenses, seek to change such Water Rights, or take any other reasonable actions at Land Trust's sole cost and expense to avoid the loss or diminution of the Water Rights, or to maintain the historic use of the Water Rights.

If in the future any Water Rights associated with the Property are included within a mutual ditch company, or any other entity that issues shares of stock representing the Water Rights, Landowners shall include the following notation on the stock certificates and issue a copy to Land Trust:

"These shares are subject to the terms and restrictions set forth in the Conservation Easement Deed from [Name of the current Landowner] to Rio Grande Headwaters Land Trust recorded at [Reception No.], in the office of Rio Grande County Clerk and Recorder on [DATE].

Additionally, if in the future any Water Rights associated with the Property are included within a mutual ditch company, or any other entity that issues shares of stock representing the Water Rights Landowners shall promptly comply with all by-laws and requirements and pay, when due, all assessments, charges and fees of any kind for continued ownership, delivery and use of the Water Rights and the certificates of stock for such Water Rights. If Landowners fail to comply with any such by-laws or requirements or to pay assessments when due, Land Trust may comply with any such by-laws, complete such requirements and pay any such assessments on behalf of the Landowners, and thereafter to collect any such amount, together with interest, reasonable attorney fees, staff time, and court costs from the Landowners.

Nothing in this Paragraph shall be deemed to require Landowners to undertake steps to ensure flow from any ditch or any decreed or permitted wells on the Property in the event such flow is interrupted as a result of seasonal fluctuations in water flows, drought conditions, a naturally occurring decline in the water table, a naturally occurring lack of artesian pressure and/or curtailments from the Colorado Division of Water Resources.

(5) Change of Conditions

Landowners expressly waive any claim to use, change or transfer all or any part of the Water Rights other than as provided in this Easement, regardless of any future change in circumstances, change in values, or other reasons, based on any theory of reasonable accommodation or other theory that would release any or all of the Water Rights from the provisions of this Easement.

r. Surface Alteration

Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface or materially alter the topography, surface or subsurface water systems, or wetlands of the Property is prohibited, except as follows:

- (i) Dam construction in accordance with an Agricultural Land Easement Plan to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation.
- (ii) Erosion and sediment control pursuant to a plan approved by the Land Trust.
- (iii) Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by the Land Trust as being consistent with the conservation purpose of this Easement.
- (iv) Grazing uses or grassland restoration and related conservation activities conducted in accordance with the Agricultural Land Easement Plan.

6. Land Trust Approval

The purpose of requiring Land Trust approval is to ensure that the activities in question are designed and carried out in a manner consistent with the terms of this Easement. Whenever approval is required, Landowners shall make a request in writing not less than 45 days prior (with the exception noted in Paragraph 5q for emergencies) to the date Landowners intend to undertake the activity in question. After making the written request, Landowners shall not undertake the requested activity until receiving Land Trust's approval in writing.

The written request shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Land Trust to make an informed judgment as to its consistency with the terms of this Easement. Landowners shall provide such additional information as Land Trust may reasonably request.

Land Trust shall approve or deny the written request within 30 days of receipt of Landowners' written request. Land Trust's approval may be withheld only upon Land Trust's sole determination that the activity as proposed would materially diminish or impair the Conservation Values or would be inconsistent with the Purpose of this Easement. Land Trust shall specify its basis for approval or denial in writing.

Land Trust's written approval is required prior to Landowners initiating the following actions:

- (a) Construction of new structures (Paragraph 5b);
- (b) Replacement of structures (Paragraph 5b(1));
- (c) Construction of agricultural structures and improvements (Paragraph 5b(3));

- (d) Paving or otherwise covering any portion of the Property with concrete, asphalt, or any other impervious paving material (Paragraph 5c);
- (e) Widening or improving existing roads (Paragraph 5c);
- (f) The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures (Paragraphs 5i and 5n(4));
- (g) Oil and gas exploration and extraction (Paragraph 5k);
- (h) The creation of an Oil and Gas Plan (Paragraph 5k(3)(a));
- (i) Any proposal from a third party to explore for or develop the Minerals on the Property or entering into a Mineral Document with a third party (Paragraph 5k(4));
- (j) Construction of Utility Improvements (Paragraph 5n(2));
- (k) Changing points of diversion or the place of use of Water Rights (Paragraph 5q(2));
- (l) Encumbering, leasing, or changing the historic use of the Water Rights (Paragraph 5q(3));
- (m) Materially altering, impairing, modifying, or adversely affecting any existing ponds, wetlands, stream channels, or other water features (Paragraph 5q(3));
- (n) Extinguishing or terminating the interests and rights under this Easement (Paragraph 17); and,
- (o) Any other activity or use set forth in this Easement that requires Land Trust's advance written approval.

7. Monitoring of Property

With reasonable advanced notice to Landowners, Land Trust may enter the Property for the purpose of inspecting for violations. However, in the case of an emergency, Land Trust has the right to enter the Property to inspect without advance notice. In the event Land Trust gains knowledge of a non-emergency violation, Land Trust may enter the property three (3) calendar days after written notice is mailed or delivered to Landowners. Land Trust shall use reasonable efforts to provide Landowners with advance or contemporaneous notice of its intent to enter the Property. In the event Land Trust enters the Property without advance notice, Land Trust shall hold Landowners harmless from all accidents, injuries, or other damages. Landowners or their representative may accompany Land Trust on any inspections of the Property; however, Landowners' unavailability to accompany the Land Trust shall not limit the Land Trust in its inspections, monitoring visits or in the performance of its duties as related to this Easement.

The Land Trust will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Landowners and the Land Trust are in compliance with the Easement and Agricultural Land Easement Plan. If the annual monitoring report is insufficient or is not provided annually, or if the United States has evidence of an unaddressed violation, as determined by the Secretary, the United States may exercise its right of inspection. For purposes of inspection and enforcement of the Easement, the Agricultural Land Easement Plan, and the United States Cooperative Agreement with the Land Trust, the United States will have reasonable access to the Property with advance notice to the Land Trust and the Landowners or Landowner's representative.

In the event of an emergency, the United States may enter the Property to prevent, terminate, or mitigate a potential or unaddressed violation of these restrictions and will give notice to the Landowners and the Land Trust at the earliest practicable time.

8. Enforcement

Land Trust shall have the right to prevent, correct, or require correction of violations of the terms of this Easement. If Land Trust finds what it believes is a violation of this Easement, or Land Trust has a reasonable and good faith basis for believing that a violation may occur, Land Trust shall timely notify Landowners in writing of the nature of the alleged violation ("Notice of Violation"). Upon receipt of the Notice of Violation, Landowners shall immediately discontinue the activity or use that has caused the alleged violation and shall either:

- (a) restore the Property to its condition prior to the violation; or
- (b) provide Land Trust with a written plan of correction including a timetable for completion of the correction of the violation; or
- (c) provide a written explanation to Land Trust of the reason why the alleged violation should be permitted, in which event both Parties agree to meet as soon as possible to resolve their differences.

If a resolution cannot be achieved, both Parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute pursuant to Paragraph 10. Landowners shall discontinue any activity that could increase or expand the alleged violation during the mediation process. Should mediation fail to resolve the dispute within ninety (90) days of Land Trust's Notice of Violation to Landowners of the alleged violation, or by such other date as the Parties may mutually agree, Land Trust may, at its discretion, take appropriate legal action.

When, in Land Trust's opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values, Land Trust may, at its discretion, take appropriate legal action without pursuing mediation. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Land Trust may seek an injunction to stop such violation, temporarily or permanently. A court may also issue an order requiring Landowners to restore the Property to its condition prior to the violation.

Land Trust's remedies described in this Paragraph 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.

Pursuant to 16 U.S.C. Section 3865 et seq., the United States is granted the right of enforcement that it may exercise only if the terms of the Easement are not enforced by the Land Trust. The Secretary of the United States Department of Agriculture (the Secretary) or his or her assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the Land Trust, or its successors or assigns, fails to enforce any of the terms of this Easement, as determined in the sole discretion of the Secretary.

In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement or remedial action related to the enforcement of this Easement from the Landowners, including, but not limited to, attorney's fees and expenses related to Landowners' violations. In the event the United States exercises this right of enforcement, it is entitled to recover any and all administrative and legal costs associated with any enforcement of this Easement from the Land Trust, including, but not limited to, attorney's fees and expenses related to the Land Trust's violations or failure to enforce the easement against the Landowners up to the amount of the United States contribution to the purchase of the Agricultural Land Easement.

Landowners shall pay any costs incurred by Land Trust in enforcing the terms of this Easement against Landowners, including without limitation costs and expenses of suit, attorney fees and any costs of restoration necessitated by Landowners' violation of the terms of this Easement. If the deciding body determines that Landowners has prevailed in any such legal action, then each Party shall pay its own costs and attorney fees. However, if the deciding body determines that Land Trust's legal action was frivolous or groundless, Land Trust shall pay Landowners' costs and attorney fees in defending the legal action.

9. Reasonable Delays of Enforcement Not a Bar

If the Land Trust does not exercise, or delays the exercise of, its rights under this Easement in the event of a violation of any term, such inaction or delay shall not be deemed or construed to be a waiver by Land Trust of such term or of any subsequent violation of the same or any other term of this Easement or of any of Land Trust's rights under this Easement. Landowners waive any defense of laches, estoppel, or prescription, including the one-year statute of limitations for commencing an action to enforce the terms of a building restriction or to compel the removal of any building or improvement because of the violation of the same under C.R.S. §§ 38-41-119, *et seq.*

10. Mediation

If a dispute arises between the Parties concerning the consistency of any proposed use or activity with the purpose of this Easement, either Party may refer the dispute to mediation by request made in writing upon the other. Within fifteen (15) working days of the receipt of such

request, the Parties shall select a single, trained, and impartial mediator with experience in conservation easements and other land preservation tools. Mediation shall then proceed in accordance with the following guidelines:

a. Purpose

The purpose of the mediation is to: (i) promote discussion between the Parties; (ii) assist the Parties to develop and exchange pertinent information concerning the issue(s) in dispute; and (iii) assist the Parties to develop proposals which will enable them to arrive at a mutually acceptable resolution. The mediation shall not result in any express or *de facto* modification or amendment of the terms, conditions, or restrictions of this Easement.

b. Participation

The Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. The Parties or representatives of the Parties with settlement authority (other than their attorneys) will attend mediation sessions as required by the mediator.

c. Confidentiality

All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Parties or their respective counsel. The mediator shall not be subject to subpoena by any Party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceedings or construed as an admission of a Party in accordance with Colorado Rules of Evidence, Rule 408.

d. Time Period

Neither Party shall be obligated to continue the mediation process beyond a period of one hundred eighty (180) days from the date of receipt of the initial request.

The costs of the mediator shall be borne equally by Landowners and Land Trust; the Parties shall bear their own expenses and attorney's fees.

11. Acts Beyond Landowners' Control

Nothing contained in this Easement shall be construed to entitle Land Trust to bring any action against Landowners for any injury, violations to or change in the Property resulting from any Acts of God and causes beyond Landowners' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Landowners under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

Notwithstanding the foregoing, Landowners shall take reasonable efforts to prevent third parties from performing, and shall not knowingly allow third parties to perform, any act on or affecting the Property that materially diminishes or impairs the Conservation Values or is inconsistent with the Purpose of this Easement.

12. Access

No right of access by the general public to any portion of the Property is conveyed by this Easement.

13. Costs and Liabilities

Landowners retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including weed control and eradication. Landowners shall maintain adequate comprehensive general liability insurance coverage, against claims for injury, death or property damage. Land Trust shall be named as an additional insured party on all such insurance policies, and Landowners shall provide evidence of such insurance to Land Trust promptly upon request. Landowners shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Landowners.

14. Taxes

Landowners shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property or Water Rights by competent authority (collectively "Taxes"), including any taxes imposed upon, or incurred as a result of this Easement, and shall furnish Land Trust with satisfactory evidence of payment upon request. If Land Trust ever pays any Taxes or assessments on its interest in the Property, Landowners will reimburse Land Trust for the same.

15. Hold Harmless; General Disclaimer and General Warranty

Landowners shall hold harmless, indemnify, and defend Land Trust and the members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "**Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation attorney's fees reasonably incurred, arising from or connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, except to the extent caused by the negligence of any of the Indemnified Parties; (2) the obligations costs and expenses associated with enforcement of this Easement as specified in Paragraph 8; and (3) the presence or release of hazardous or toxic substances on, about, under or from the Property. For the purposes of this Paragraph, hazardous or toxic substances shall mean any substance that is regulated under any federal, state or local law or regulation.

Without limiting the foregoing, nothing in this Easement shall be construed as giving rise to any right or ability of Land Trust, nor shall Land Trust 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.

The United States, its employees, agents, and assigns disclaim and will not be held responsible for Landowners' or Land Trust's negligent acts or omissions or breach of any representation, warranty, covenant, or agreements contained in this Easement, or violations of any Federal, State, or local laws, including all Environmental Laws including, without limitation, those that give rise to liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions, costs of actions, or sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which the United States may be subject or incur relating to the Property.

Landowners must indemnify and hold harmless the United States, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which United States may be subject or incur relating to the Property, which may arise from, but are not limited to, Landowner's negligent acts, omissions, or breach of any representation, warranty, covenant, agreements contained in this Agricultural Land Easement Deed or violations of any Federal, State, or local laws, including all Environmental Laws.

16. Real Property Interest

This Easement constitutes a real property interest immediately vested in the Land Trust. With respect to a proposed extinguishment, termination, or condemnation action, the Parties stipulate that the fair market value of the Easement is equal to fifty-six (56%) percent, hereinafter the "Proportionate Share," of the fair market value of the land unencumbered by this ALE. The Proportionate Share will remain constant over time. The values at the time of this Easement shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this Grant, pursuant to Section 170(h) of the Code and the Treasury Regulations adopted pursuant thereto, whether or not Landowners claims any deduction for federal income tax purposes.

17. Termination, Eminent Domain, and Condemnation

If this Easement is taken, in whole or in part, by the exercise of the power of eminent domain, or if circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction.

Further, the interests and rights under this Agricultural Land Easement may only be extinguished or terminated with advance written approval of the Land Trust in accordance with Paragraph 6 and the United States. Due to the Federal interest in this Easement, the United States must review and approve any proposed extinguishment, termination, or condemnation action that may affect its Federal interest in the Property.

Each Party shall promptly notify the other Party in writing when it first learns of such circumstances. The Land Trust shall be entitled to full compensation for its interest in any portion of this Easement that is terminated as a result of condemnation or other proceedings. Land Trust shall use its proceeds in a manner consistent with the conservation Purpose of this Easement.

If this Easement is extinguished, terminated, or condemned, in whole or in part, then the Landowners must reimburse the Land Trust, the CWCB and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this Easement. The fair market value will be determined at the time all or a part of this Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Land Trust and the United States.

The allocation of the Proportionate Share between the Land Trust, the United States and CWCB will be as follows: (a) to the Land Trust or its designee, forty-two point eight (42.08%) percent of the Proportionate Share; (b) to the United States thirty-eight point sixty-one (38.61%) percent of the Proportionate Share; and (c) to the CWCB nineteen point thirty-one (19.31%) percent of the Proportionate Share.

Until such time as the Land Trust, the United States and the CWCB receive the Proportionate Share from the Landowners or the landowner's successor or assign, the Land Trust, the United States and the CWCB each have a lien against the Property for the amount of the Proportionate Share due each of them. If proceeds from termination, extinguishment, or condemnation are paid directly to the Land Trust, the Land Trust must reimburse the United States for the amount of the Proportionate Share due to the United States.

18. Amendment of Easement

The Parties acknowledge that biological, geological, climate and other changes will occur on the Property, and over time those changes may warrant amendments to this Easement to address such changes, while preserving one or more of the Conservation Values in the context of such changes. If the circumstances arise under which an amendment to or modification of this Easement or any of its exhibits would be appropriate, this Easement may be amended only, if, in the sole and exclusive judgement of the Land Trust and United States, by and through the Chief of the NRCS so long as the amendment:

(a) is consistent with the Conservation Values and Purpose of this Easement and complies with all applicable laws and regulations;

(b) does not affect the perpetual duration of the restrictions contained in this Easement;

(c) does not materially diminish or impair the qualifications of this Easement under any applicable laws or as a charitable gift or the status of any applicable laws, including Section 170(h) of the Code or the laws of Colorado;

(d) complies with all applicable laws and regulations;

(e) does not affect, sever from the Property or in any way diminish any of the water rights covered by this Easement; and,

(f) complies with Land Trust's policies for amendments, as such procedures, standards and policies may be amended from time to time.

The Land Trust must provide timely written notice to the Chief of NRCS of any proposed amendments. Prior to the signing and recordation of the amended Easement, such amendments must be mutually agreed upon by the Landowners, Land Trust, and the United States, by and through the Chief of NRCS. Any purported amendment that is recorded without the prior approval of the United States is null and void.

Any amendment must be in writing, signed by both Parties, and recorded in the records of the Clerk and Recorder of Rio Grande County. In order to preserve the Easement's priority, the Land Trust may require that the Landowners obtain subordinations of any then existing liens, mortgages, easements, or other encumbrances.

Nothing in this Paragraph shall be construed as requiring Land Trust to agree to any particular proposed amendment.

If the amendment is at the request of the Landowners for any reason, the Landowners shall pay all costs associated with the amendment, including closing costs, costs of consultants, including but not limited to appraisers, surveyors, and biologists; and shall pay all of Land Trust's administrative, implementation, and legal costs; but Landowners shall not pay an amount less than one thousand five-hundred dollars (\$1,500.00) adjusted for inflation at 3% annually based on the Effective Date.

If the amendment is at the request of Land Trust, Land Trust shall bear the closing and recording costs as well as its own costs. The Landowners shall bear the costs of any outside consultants or advisors whose counsel Landowners seek.

19. Easement Correction

The Parties shall cooperate to correct mutually acknowledged errors in this Easement (and exhibits), including typographical, spelling, or clerical errors. The Parties shall make such

corrections by written agreement. Any corrections shall be recorded in the records of the Rio Grande County's Clerk and Recorders.

20. Transfer of Easement

This Easement is transferable. With sixty (60) days advance written notice to Landowners, Land Trust shall have the right to transfer this Easement to any public agency or private nonprofit organization that, at the time of transfer:

- (a) is a "qualified organization" under § 170(h) of the Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder;
- (b) is authorized to acquire and hold conservation easements under C.R.S. §§ 38-30.5-101 to 38-30.5-111 (or any successor provision then applicable);
- (c) expressly agrees, in writing, to assume the responsibility imposed on Land Trust by this Easement; and,
- (d) is approved in writing as a transferee by the CWCB and the United States each in their sole and absolute discretion. Land Trust shall provide the CWCB and the United States with a written request to assign the Easement at least forty-five (45) days prior to the date proposed for the assignment transaction. The CWCB or the United States may disapprove of the transfer for any reason, including but not limited to, the Land Trust's desire to sell its interest in the Property.

If Land Trust desires to transfer this Easement to a qualified organization having similar purposes as Land Trust, but CWCB or the United States refuses to approve the transfer, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed on Land Trust by this Easement, provided that the CWCB and the United States shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court's decision on the matter.

Upon compliance with the applicable portions of this Paragraph 20, the Parties shall record an instrument completing the assignment in the records of Rio Grande County. Assignment of the Easement shall not be construed as affecting the Easement's perpetual duration and shall not affect the Easement's priority against any intervening liens, mortgages, easements, or other encumbrances.

21. Transfer of Property

Landowners shall expressly reference the terms and conditions of this Easement in any contract for sale, deed or other legal instrument by which it divests itself or attempts to divest itself of any interest in all or a portion of the Property. Landowners further agree to give written notice to Land Trust of the transfer of any interest at least thirty (30) days prior to the date of such transfer.

Any time the Property itself or any interest in it is transferred by Landowners to any third party, Landowners shall pay a transfer fee ("Transfer Fee") of 0.25 percent of sales price to be used by Land Trust for purposes consistent with its mission. The Transfer Fee shall not be due upon transfer of any interest in the Property by Landowners to: 1) a trust for the exclusive benefit of Landowners; 2) a family partnership, family limited partnership, limited liability company or entity, where the majority of interest is held by Landowners; 3) a lender through the form of a grant of a mortgage, deed of trust or similar security interest; 4) upon Landowners' death, if the transfer is to a family member through a probate, trust, or other estate distribution (i.e., the transfer fee shall apply if sold to a third party as part of settling Landowners' estate); and 5) an immediate family member.

The failure of Landowners to perform any act required by this Paragraph shall not impair the validity of this Easement or limit its enforceability in any way. Failure to provide notice pursuant to this Paragraph or in the recorded document shall not invalidate any transfer of the Property.

22. Perpetual Duration

The covenants, terms, conditions, and restrictions of this Easement shall be servitudes running with the land in perpetuity. Every provision of this Easement that applies to Landowners or Land Trust shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear; provided, however, that either party's rights and obligations under this Easement shall terminate (as to such party, but not as to such party's successor, who shall be bound as provided herein) upon a transfer of such party's entire interest in this Easement or the Property, except that liability of such transferring party for acts or omissions occurring prior to such transfer shall survive the transfer.

23. Remediation

If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Landowners agree to take all steps necessary to assure its containment and remediation, including any cleanup that may be required.

24. Notices

Any notice, demand, request, consent, approval or communication that either Party or other addresses as the Parties may designate written notice is required to give the other in writing shall be either served personally or sent by first class mail, addressed as follows:

To Landowners:
Wayne and Sharon Nash

8934 W. County Road 7 North,
Del Norte, CO 81132

To Land Trust:
Rio Grande Headwaters Land Trust
P.O. Box 444
Del Norte, CO 81132

To the CWCB
Attn: To Craig Godbout
1313 Sherman, #718
Denver, CO 80203

To the United States:
State Conservationist
USDA Natural Resources Conservation Service
Denver Federal Center
Building 56, Room 2604
P.O. Box 25426
Denver, CO 80225

25. Landowners' Title Warranty

Landowners own the fee simple interest in the Property, including the Water Rights.

Landowners warrants to Land Trust that Landowners have good and sufficient title to the Property and has the right, power and lawful authority to grant to Land Trust the rights conveyed in this Easement, including access to the Property for the purposes described in this Easement, and that the Property is free and clear from any and all adverse claims, liens, and encumbrances (except those noted in **Exhibit F** "Exceptions to Title"). Landowners and their successors in interest will warranty and forever defend this Easement against all and every person or persons lawfully claiming the whole or any part of the Easement against all claims from persons claiming by, through and under Landowners.

Landowners further represent and warrants to Land Trust that, after reasonable investigation and to the best of its knowledge:

(a) Landowners and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

(b) 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, regulations, or requirement applicable to the Property or its use;

(c) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(d) Other than the exceptions noted in **Exhibit F**, there are no other persons who may claim an interest in the Property that Landowners are aware of to the best of Landowners' knowledge.

26. Subsequent Liens on the Property

No provisions of this Easement shall be construed as impairing the ability of Landowners to use this Property as collateral for subsequent borrowing, provided that any deed of trust, mortgage or lien arising from such a borrowing shall be subordinate to this Easement.

27. Environmental Warranty

Landowners warrant that they are in compliance with, and will remain in compliance with, all applicable Environmental Laws and that there are no notices by any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Property. Landowners further warrant that it has no actual knowledge of a release or threatened release of Hazardous Materials, as such substances and wastes are defined by applicable Federal and State law.

Furthermore, Landowners warrant the information disclosed to Land Trust and United States regarding any past violations or noncompliance with Environmental Laws and associated remedial actions, or any past releases of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Landowners hereby promise to hold harmless and indemnify the Land Trust and the United States against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Landowners or any other prior owner of the Property. Landowners' indemnification obligation shall not be affected by any authorizations provided by the Land Trust or the United States to the Landowners with respect to the Property or any restoration activities carried out by the Land Trust at the Property; provided, however, that the Land Trust shall be responsible for any Hazardous Materials contributed after this date to the Property by the Land Trust.

"Environmental Law" or "Environmental Laws" means any and all Federal, State, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies, or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Without limiting the foregoing, nothing in this Easement shall be construed as giving rise to any right or ability of the Land Trust, nor shall the Land Trust, 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.

28. Environmental Attributes

Unless otherwise provided in this Easement, Landowners reserve all Environmental Attributes associated with the Property. "Environmental Attributes" shall mean any and all tax or other credits, benefits, renewable energy certificates, emissions reductions, offsets, and allowances (including but not limited to water, riparian, greenhouse gas, beneficial use, and renewable energy), generated from or attributable to the conservation, preservation and management of the Property in accordance with this Easement. Nothing in this Paragraph 28 shall modify the restrictions imposed by this Easement or otherwise be inconsistent with the Purpose.

29. Recording

Land Trust shall record this instrument in a timely fashion in the Rio Grande Clerk and Recorder's Office and may re-record it at any time as may be required to preserve its rights in this Easement.

30. Tax Benefits

Landowners acknowledge that Landowners are responsible for obtaining legal and accounting counsel to advise Landowners regarding the applicability of federal or state tax benefits that might arise from the bargain sale (sale at less than fair market value) or donation of the Easement. Land Trust makes no representation or warranty that Landowners will receive tax benefits for the bargain sale or donation of the Easement.

31. General Provisions

a. *Controlling Law*

The interpretation and performance of this Easement shall be governed by the laws of the United States and the State of Colorado.

b. *Liberal Construction*

Any general rule of construction to the contrary notwithstanding this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of C.R.S. §§ 38-30.5-10, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. *Severability*

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, it shall be deemed severed from this Easement, and the balance of this Easement shall otherwise remain in full force and effect.

d. *Entire Agreement*

This instrument sets forth the entire agreement of the Parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

e. *Joint Obligation*

The obligations imposed upon by the Landowners and Land Trust of this Easement shall be joint and several in the event that more than one entity or individual holds either interest at any given time.

f. *Non-Merger*

No merger shall be deemed to have occurred hereunder or under any documents executed in the future affecting this Easement, unless the Parties expressly state that they intend a merger of estates or interests to occur. The Parties further intend that no merger of interests occurs if Land Trust acquires fee title to the Property.

g. *Termination of Rights and Obligations*

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

h. 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.

i. No Third Party Beneficiaries

This Easement is entered into by and between Landowners and Land Trust, and is solely for the benefit of Landowners, Land Trust the CWCB and the United States and their respective successors and assigns for the purposes set forth herein and does not create rights or responsibilities in any third parties beyond Landowners, Land Trust, the CWCB and the United States.

j. Change of Conditions

A change in the potential economic value of any use that is prohibited by or inconsistent with this Easement, 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 Easement in whole or in part.

k. Authority to Execute

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

l. Violation of Criminal Laws

Violation of Federal, State, or local criminal law is prohibited. No activities shall be permitted on the Property in violation of current Federal, State or local criminal laws.

32. Acceptance

Acknowledgement of Donation (I.R.C. § 170(f)(8)). As attested by Rio Grande Headwaters Land Trust and the signature of its representative affixed hereto, Land Trust hereby accepts the rights and responsibilities conveyed by this Easement. The Land Trust acknowledges receipt and acceptance of this Deed of Conservation Easement encumbering the Property for which no goods or services were provided except the consideration paid for this Easement.

TO HAVE AND TO HOLD this Deed of Conservation Easement unto Land Trust, and to the United States for the rights and assurances set forth in the Easement, and to their respective successors and assigns, forever.

IN WITNESS WHEREOF, Landowner and Land Trust, intending to be legally bound hereby, have hereunto set their hands on the day and year first written above.

LANDOWNERS:

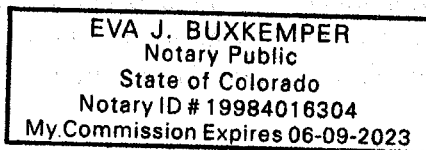
By: Wayne A Nash
WAYNE A. NASH

By: Sharon M Nash
SHARON M. NASH

STATE OF COLORADO)
) ss.
COUNTY OF RIO GRANDE)

The foregoing instrument was acknowledged before me this 26TH day of June, 2019, by Wayne A. Nash and Sharon M. Nash, as owners.

Witness my hand and official seal.



Eva J Buxkemper
Notary Public
My Commission Expires: 6/9/2023

Exhibit A
Legal Description of Property

The NE $\frac{1}{4}$ of the SE $\frac{1}{4}$, the E $\frac{1}{2}$ of the NE $\frac{1}{4}$, and the W $\frac{1}{2}$ of the NE $\frac{1}{4}$, all in Section 28, Township 40 North, Range 6 East, N.M.P.M., County of Rio Grande, State of Colorado.

EXCLUDING those two parcels heretofore conveyed to the Department of Highways, State of Colorado as shown in Deed recorded September 26, 1956 at Reception No. 186173.

EXCEPTING FROM THIS CONSERVATION EASEMENT a tract of land located in the NE $\frac{1}{4}$ of Section 28, Township 40 North, Range 6 East, New Mexico Principal Meridian, County of Rio Grande, State of Colorado, being more particularly described by metes and bounds as follows:

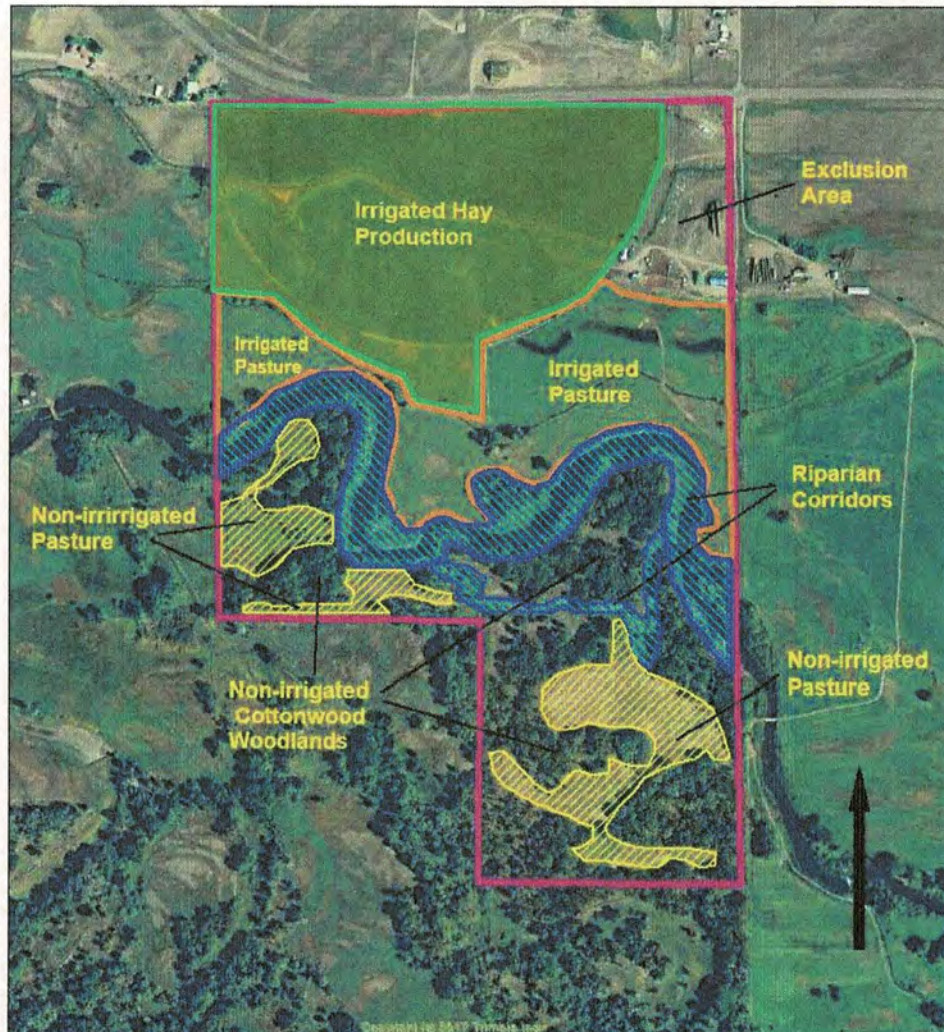
Beginning at the intersection of the east line of said Northeast Quarter of said Section 28 and the southerly right of way of County Road 7 North, also being the northeast corner of the herein described tract, from which the Northeast Corner of said Section 28 bears N 00°29'12" W a distance of 41.80 feet; thence S 00°29'12" E along said east line a distance of 993.61 feet to the southeast corner of the herein described tract; thence N 80°30'10" W a distance of 686.06 feet to the southwest corner of the herein described tract; thence N 33°48'54" E a distance of 90.90 feet; thence N 16°28'13" E a distance of 93.98 feet; thence N 36°24'39" E a distance of 36.84 feet; thence N 62°20'02" E a distance of 15.83 feet; thence N 81°16'29" E a distance of 53.53 feet; thence S 76°14'50" E a distance of 49.52 feet; thence N 29°19'36" E a distance of 98.39 feet; thence N 21°39'42" E a distance of 362.59 feet to the southeast corner of the Viera Wireless Del Norte Cell Tower Easement, as described at Reception No. 406559 in the office of the Rio Grande County Clerk and Recorder; thence N 00°29'12" W along the west line of said easement a distance of 255.25 feet to a point on said southerly right of way and the northwest corner of the herein described tract, thence N 88°55'08" E along said right of way a distance of 73.74 feet; thence following the arc of a curve to the right (Curve Data: Radius=11420.00, Central Angle= 01°00'21", Chord Bearing N 89°26'10" E, Chord Distance= 200.50') along said right of way a distance of 200.50 feet to the Point of Beginning.

**Exhibit B
Maps of Property
(Page 1 of 3)**



**Exhibit B
Maps of Property
(Page 2 of 3)**

**EXHIBIT 1
AGRICULTURAL PRODUCTION AREAS**



**Exhibit B
Maps of Property
(Page 3 of 3)**

**EXHIBIT 4
NWI-IDENTIFIED WETLANDS & OTHER WATER-RELATED FEATURES**

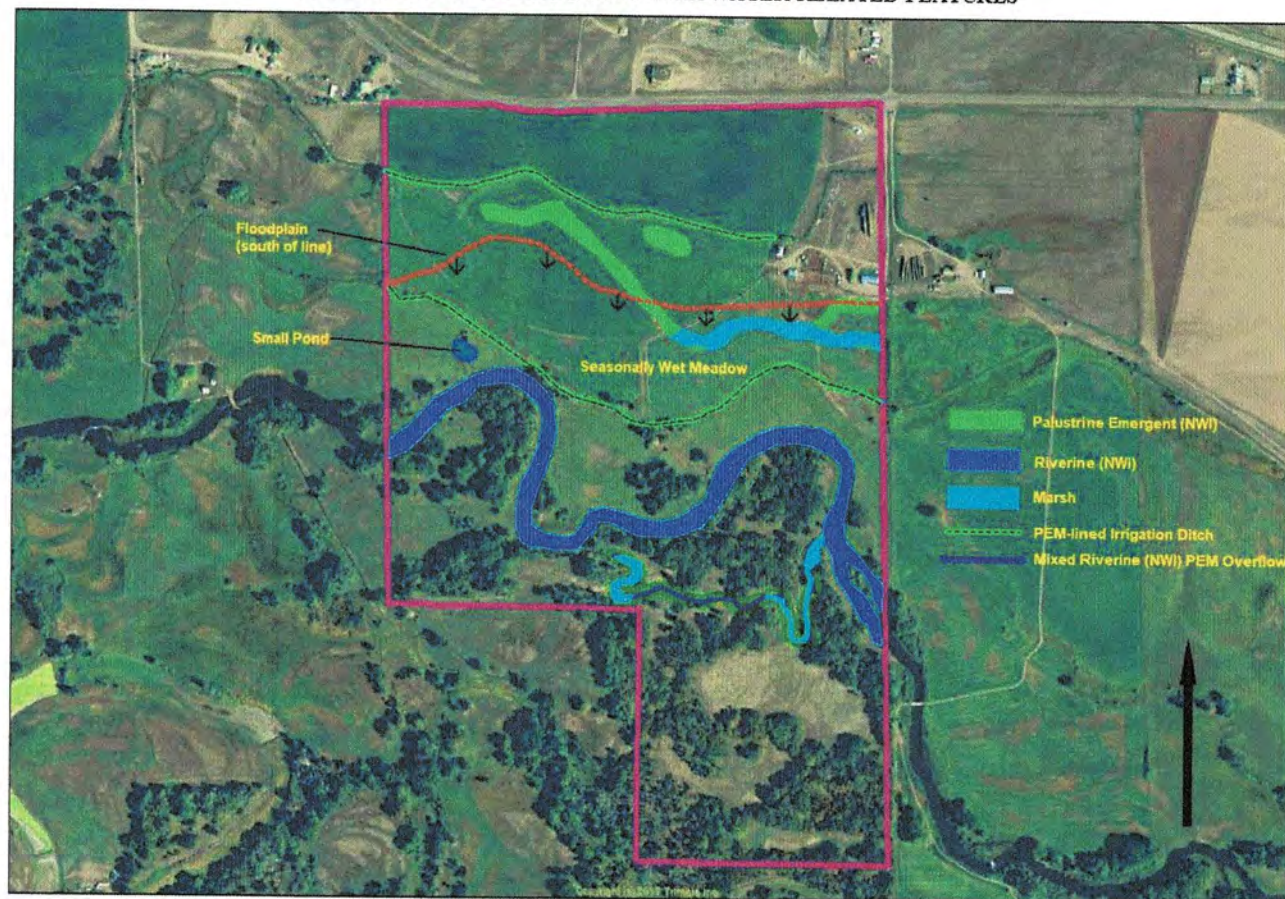


Exhibit D
Water Rights

1.04 cfs of the Rio Grande #2 Ditch, adjudicated on May 1, 1896, appropriation date March 1, 1881, Priority #200

Exhibit E Acknowledgement of Baseline

Owner Acknowledgment of Condition

We, Sharon M. and Wayne A. Nash, hereby accept this Conservation Easement Present Conditions Report for the Nash Ranch Conservation Easement, prepared by Rhea Environmental Consulting, and dated October, 2018, as an accurate representation of the biological and physical conditions of the Nash Ranch, as of the date of the conveyance of the conservation easement.

Sharon M. Nash
Sharon M. Nash

3-25-19
Date

Wayne A. Nash
Wayne A. Nash

3-25-19
Date

This report is accepted by the Rio Grande Headwaters Land Trust.

Nancy Butler
Nancy Butler
Executive Director

3-25-19
Date

This report, to the best of my knowledge, is an accurate representation of the condition of the Nash Ranch as of October, 2018.

Barry Rhea
Barry Rhea
Rhea Environmental Consulting

10-15-18
Date

Exhibit F
Exceptions to Title
(Page 1 of 1)

- 1) Patent BLM Serial Nr. COCOAA 032665, the right of a proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises.
- 2) Thirty foot right of way as shown in Quitclaim Deed recorded December 18, 1920 at **Reception No. 60095.**
- 3) Agreement between Eugene Martin and Omer Underwood, recorded May 25, 1926 at **Reception No. 80168.**
- 4) Right of Way Deed between Eugene Martin and San Luis Valley Rural Electric Cooperative, Inc., recorded August 17, 1939 at **Reception No. 124679.**
- 5) Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local customs, laws and decisions of courts, and also subject to the right of a proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted as provided bylaw as contained in Patent recorded on June 15, 1881 at **Reception No. 4798.**
- 6) Right of Way Deed between T.W. Carr and San Luis Valley Rural Electric Cooperative, Inc., recorded August 17, 1939 at **Reception No. 124678.**
- 7) Right of way for and rights of others to W. County Road 7 North.
- 8) Any right, title or interest of the general public, the state of Colorado and/or the United States in and to the bed and banks of the North Channel of the Rio Grande River.
- 9) Terms, conditions and obligations as set forth in the Boundary Agreement recorded February 12, 2019 at **Reception No. 435053.**
- 10) Terms, conditions and obligations as set forth in the Boundary Agreement recorded February 12, 2019 at **Reception No. 435054.**
- 11) Right/Nash Conservation Easement Plat filed August 29, 2018 in **Drawer A, Map 1139.**