

February 5, 2020

Alexander Funk
Colorado Water Conservation Board
1313 Sherman Street #718
Denver, CO 80203

Re: CTGG1-2019-2940
Riverview Farms
Final Report

Dear Alex -

Please accept this letter as the final report related to the conservation easement portion of the South Platte River ATM & Conservation Easement-Riverview Farms project (CTGG1-2019-2940).

Colorado Open Lands (COL) and Western Water Partnerships successfully completed the bargain sale purchase of a conservation easement with a landowner in Weld County to permanently conserve a fully irrigated farm while incorporating flexible deed language to permit future water leasing to municipal or industrial users. The Riverview Farms conservation easement was recorded in the Land Records in March of 2019 (copy of deed enclosed), protecting 389 acres of prime soil from non-agricultural development. The farm is irrigated via two center pivots with approximately 505 acre-feet of water from the Sublette Augmentation Plan.

The recordation of this easement was significant, as it represents the first time the Natural Resource Conservation Service (NRCS) has funded a conservation easement through the federal Agricultural Land Easement program, that included flexible water sharing language, opening the door to permit future ATM development in the South Platte River basin. During certain periods (generally during dry years), the landowner will have the option to share water with a municipal or industrial user. However, the conservation easement prohibits the permanent separation of the associated water rights from the farm, thereby giving the municipal or industrial user a secure source of future ATM water without the threat of a competing interest buying and drying the farm.

Thanks to the grant from CWCB, COL was able to leverage funding from U.S. Fish and Wildlife Service, NRCS and the Walton Family Foundation to complete the conservation easement. COL is now actively working to secure an ATM between the landowner and a municipal or industrial user, hopefully contributing toward the Colorado Water Plan's goals for water-sharing agreements in the form of ATM's.

Thank you and CWCB again for the interest in this project. To the extent that you require additional information, please let us know.

Sincerely,



Carmen Farmer
Conservation Project Manager

Enclosure

DEED OF CONSERVATION EASEMENT

RIVERVIEW FARMS



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Pursuant to the requirements of Section 15 (Transfer of Property) of this Deed, any time the Property or a permitted portion thereof is transferred by Grantor to any third party, Grantor shall pay a fee of ¼ of 1% of the sale price to Grantee and notify Grantee.

NOTICE: THIS PROPERTY INTEREST HAS BEEN ACQUIRED IN PART WITH FUNDS FROM THE COMMODITY CREDIT CORPORATION UNDER THE AGRICULTURAL CONSERVATION EASEMENT PROGRAM (“**ACEP**”) **16 U.S.C SECTION 3865 ET SEQ. AND 7 CFR PART 1468**, WHICH IS ADMINISTERED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE - NATURAL RESOURCES CONSERVATION SERVICE (“**NRCS**” or “**UNITED STATES**”) FOR THE PURPOSE OF PROTECTING THE AGRICULTURAL USE AND FUTURE VIABILITY, AND RELATED CONSERVATION VALUES, BY LIMITING NONAGRICULTURAL USES OF THE PROPERTY, AND USING FUNDS THROUGH THE NORTH AMERICAN WETLANDS CONSERVATION ACT (“**NAWCA**”) PURSUANT TO U.S. FISH AND WILDLIFE SERVICE (“**USFWS**”) ASSISTANCE AWARD #F16AP00998 (“**GRANT**”) TO DUCKS UNLIMITED, INC, A COPY OF WHICH IS KEPT AT THE OFFICES OF USFWS DIVISION OF BIRD HABITAT CONSERVATION, 1849 C ST., NW, WASHINGTON, D.C. 20240, AND AT THE OFFICES OF WETLANDS AMERICA TRUST, ONE WATERFOWL WAY, MEMPHIS, TN 38120. THIS DEED CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY THAT ARE INTENDED TO PROTECT THE CONSERVATION VALUES IDENTIFIED IN RECITAL C, AND INCLUDES A RIGHT OF ENFORCEMENT TO THE UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE UNITED STATES DEPARTMENT OF AGRICULTURE (“**USDA**”) NATURAL RESOURCES CONSERVATION SERVICE (“**NRCS**”) ON BEHALF OF THE COMMODITY CREDIT CORPORATION (“**CCC**”).

THIS DEED OF CONSERVATION EASEMENT (“**Deed**”) is granted on this 20th day of March, 2019, by **RIVERVIEW FARMS, LLC**, a Colorado limited liability company (“**Grantor**”), whose address is 21020 County Road 6.5, Weldona, CO 80653, to **COLORADO OPEN LANDS**, a Colorado non-profit corporation (“**Grantee**”), whose address is 1546 Cole Boulevard, Suite 200, Lakewood, Colorado 80401 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**”). Grantor and Grantee may hereinafter be referred to individually as a “**Party**” or collectively as the “**Parties**”.

The following exhibits are attached hereto and are incorporated by reference:

Exhibit A: Legal Description of the Property

Exhibit B: Map of the Property
Exhibit C: Description of Water Rights
Exhibit D: Sample Notice of Transfer of Property

RECITALS:

- A. **Description of Property.** Grantor is the owner of the fee simple interest in the subject property legally described in Exhibit A and depicted in Exhibit B, consisting of approximately 389 acres of land (the “**Land**”), together with the water rights and well structures described in Exhibit C (the “**Water Rights**”), which water rights and structures have historically been used for agricultural purposes on the Property as described herein, any mineral rights on or underlying the Land owned by Grantor, together with appurtenances, located in Weld County, State of Colorado (together, “**the Property**”). 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, including the Water Rights, as applicable.
- B. **Qualified Organization.** Grantee is a "qualified organization," as defined in §170(h)(3) of the Internal Revenue Code (“I.R.C.”) and Treasury Regulation §1.170A-14(c) and is a charitable organization as required under §38-30.5-104 (2) of the Colorado Revised Statutes (“C.R.S.”).
- C. **Agricultural Conservation Easement Program.** This Easement is acquired with funds provided, in part, under the Agricultural Conservation Easement Program (“**ACEP**”) 16 U.S.C. Section 3865 et seq. and 7 CFR Part 1468 for the purpose of protecting the agricultural use and future viability, and related conservation values, by limiting nonagricultural uses of the Property.
- D. **Conservation Purposes.** Pursuant to I.R.C. §170(h)(4)(A) and Treasury Regulation §1.170A-14(d), the conservation purposes of a qualified conservation contribution must include one or more of the following: (1) to preserve land for outdoor recreation by or education of the general public; (2) to protect relatively natural habitat of fish, wildlife or plants; (3) to preserve open space; and (4) to preserve historically important land or structures.

The conservation purposes of this Easement (“**Conservation Purposes**”) are as follows:

- D1. **Relatively Natural Habitat** [§1.170A-14(d)(3)]. The Property contains prime upland habitat that provides food, shelter, breeding ground, and migration corridors for several wildlife species, including Canada geese, mule and whitetail deer, ducks, pheasants, turkey and pronghorn.
- D2. **Open Space** [§1.170A-14(d)(4)]. The Property qualifies as Open Space because it is being preserved for the scenic enjoyment of the general public and/or

pursuant to a clearly delineated federal, state or local governmental conservation policy, and its protection will yield a significant public benefit.

- D3. *Agriculture.*** The Property features locally important agricultural lands, with over 65% of the Property containing soils classified as having Statewide Significance. The Property is currently used for agricultural purposes including irrigated crop production and grazing of livestock. This use is compatible with other land use in the vicinity, as adjacent properties are also used for agricultural activities. The provisions of this Deed ensure that the Property will be available for agricultural production in accordance with I.R.C. §170(b)(E)(iv)(II).
- D4. *Significant public benefit.*** There is a foreseeable trend of water conversion from agricultural use to municipal and industrial development in the vicinity of the Property in the near future.

The Conservation Purposes set forth in this Recital D shall hereafter be referred to as the "**Conservation Values.**" These Conservation Values are of great importance to the Parties, the residents of Weld County, and the State of Colorado.

E. *State Policy Concerning Conservation Easements.*

C.R.S. §33-1-101 provides in relevant part that "it is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors."

C.R.S. §35-3.5-101 states in part that "it is the declared policy of the state of Colorado to conserve, protect.... agricultural land for the production of food and other agricultural products."

C.R.S. §38-30.5-102 provides for the creation of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest or other use or condition consistent with the protection of open land..."

F. *Other Supporting Government Policy.*

NAWCA. The purposes of the North American Wetlands Conservation Act ("NAWCA") are: "to encourage partnership among public agencies and other interests (1) to protect, enhance, restore, and manage, an appropriate distribution and diversity of wetland ecosystems and other habitats for migratory birds and other fish and wildlife in North America; (2) to maintain current or improved distributions of migratory bird populations; and (3) to sustain an abundance of waterfowl and other migratory birds consistent with the goals of the North American Waterfowl Management Plan and the international obligations contained in the migratory bird treaties and conventions and other agreements with Canada, Mexico, and other countries." This Easement is being partially purchased with NAWCA funding in part to further the Act's government policy of protecting

diverse ecosystems and migratory bird populations. Grantee submitted a grant application, that in competition with other applications across the region, NAWCA found to warrant award of a Grant to conserve the wetlands and open space values of the Property.

The State of Colorado has “set an objective that agricultural economic productivity will keep pace with growing state, national, and global needs, even if some acres go out of production. To achieve this objective, the State will work closely with the agricultural community, in the same collaborative manner that has produced agricultural transfer pilot projects, to share at least 50,000 acre-feet of agricultural water using voluntary alternative transfer methods by 2030. Colorado’s 2015 Water Plan describes market-competitive options to typical “buy-and-dry” transactions. Such alternative transfer methods can keep agriculturally dependent communities whole and continue agricultural production in most years, and if such arrangements can be made more permanent in nature, they will provide certainty to both municipal water providers and agricultural producers. Options include lease-fallowing agreements, deficit irrigation, water banking, interruptible supply agreements, rotational fallowing, water conservation programs, and water cooperatives” and buy-and-supply, which may also include conservation easements.

The State has affirmed “its commitment to develop and implement programs to advance various agricultural transfer methods as alternatives to permanent agricultural dry up. . .” HB 13-1248, at § 1.

The State has funded the Colorado Water Conservation Board’s alternative transfer methods program to develop alternatives to agricultural buy-and-dry since 2007 (SB 07-122; HB 14-1333).

In Weld County’s 2016 Comprehensive Plan, Guiding Principle B reads: Respect for Our Agricultural Tradition. The County has an agricultural tradition, as reflected by its ranking as one (1) of the most economically productive agricultural producing counties in the nation. Land use changes are occurring, and agriculturally zoned land is being changed to residential, commercial and industrial development. As these new land uses evolve, it is important that the established agricultural businesses and associated infrastructures are allowed to continue to operate without adding excessive constraints. Individuals who move into these areas must realize that they will experience conditions and services unlike an urban setting and must be willing to accept this lifestyle. The Weld County Right to Farm Statement can be found as part of the Agriculture goals and policies and, as a part of this Plan, supports the importance of agriculture in the County.

Furthermore, the County’s first goal statement in the Comprehensive Plan reads: “A.Goal 1. Respect and encourage the continuation of agricultural land uses and agricultural operations for purposes which enhance the economic health and sustainability of agriculture.

A.Policy 1.1. Establish and maintain an agricultural land use designation to promote the County's agricultural industry and sustain viable agricultural opportunities for the future.

A.Policy 1.2. Support the development of creative policies for landowners to voluntarily conserve agricultural land.

a. Recommended Strategy A.1.2.a. Examine opportunities to provide preservation techniques and incentives for voluntary conservation.”

Additionally, the government of the United States provides support for agriculture conservation through the Agricultural Conservation Easement Program, Title XII, Subtitle B, Part 1468 of the Agricultural Act of 2014, Public Law 113-79, 16 U.S.C. 3865, and 3865b under which the Secretary of Agriculture, acting through the Natural Resources Conservation Service, on behalf of the Commodity Credit Corporation, facilitates and provides funding for the purchase of conservation easements for the purpose of protecting agricultural uses and related conservation values of eligible land by limiting nonagricultural uses of the land.

- G. *Documentation of Present Conditions.*** Pursuant to Treasury Regulation §1.170A-14(g)(5) and in order to document the condition of the Property as of the date of this Deed, a report has been prepared by Blue Mountain Environmental Consulting, LLC and dated July, 2018 (“**Present Conditions Report**”). Baseline conditions of the Property are set forth in the Present Conditions Report, a copy of which is maintained in the files of Grantee. The Present Conditions Report documents the Conservation Values and the characteristics, current use, and status of improvements on and development of the Property. The Present Conditions Report has been provided to the Parties and is acknowledged by the Parties as an accurate representation of the Property at the time of the conveyance. The Present Conditions Report will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, the Present Conditions Report is not intended to preclude the use of other evidence to establish the condition of the Property as of the date of this Deed.
- H. *Conservation Easement.*** This Deed creates a perpetual conservation easement in gross, as defined by C.R.S. §38-30.5-102 and §38-30.5-103 and of the nature and character described in this Deed (“**Easement**”).
- I. *Charitable Donation.*** Grantor intends to sell a portion of the property interest conveyed by this Deed to Grantee, and to donate to Grantee the remaining property interest conveyed by this Deed, so that it may qualify as a tax deductible gift pursuant to I.R.C. §170(h), Treasury Regulation §1.170A-14, and C.R.S. §38-30.5-101 *et seq.*

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties mutually agree as follows:

1. ***Acknowledgement of Purpose and Intent.*** As a guide to the interpretation of this Deed and administration of this Easement, the Parties, for themselves, and for their successors and assigns, expressly declare their agreement and dedication to the following purpose and intent:
 - 1.1. ***Purpose.*** The purpose of this Easement is to preserve and protect the Conservation Values in perpetuity in accordance with I.R.C. §170(h), Treasury Regulation §1.170A-14, and C.R.S. §38-30.5-101 *et seq.* (“**Purpose**”).
 - 1.2. ***Intent.*** The intent of the Parties is to permit acts on and uses of the Property that are consistent with the Purpose and to restrict or prohibit acts on and uses of the Property that are not consistent with the Purpose (“**Intent**”). In this Deed, “**consistent with the Purpose**” shall mean acts on and uses of the Property that have a positive impact, neutral impact, or no impact on the Conservation Values as determined by Grantee in its sole discretion.
2. ***Conveyance of Easement.*** Grantor hereby voluntarily grants and conveys this Easement to Grantee, and Grantee hereby voluntarily accepts, without reservation, this immediately vested and perpetual real property interest, along with the rights and obligations created by this Deed. The terms and conditions of this Easement run with the land and are binding upon Grantor and Grantee and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them must comply with all terms and conditions of this Easement.
3. ***Rights Conveyed to Grantee.*** To accomplish the Purpose, the following rights are hereby conveyed to Grantee, its employees and its representatives, and NRCS under Section 3.3:
 - 3.1. To preserve and protect the Conservation Values;
 - 3.2. To prevent acts on or uses of the Property that are not consistent with the Purpose and, except as limited by Section 10 (Responsibilities of the Parties Not Affected) of this Deed, Grantee may require the restoration of such areas or features of the Property that are damaged by an inconsistent act or use;
 - 3.3. To enter upon the Property in order to monitor Grantor’s compliance with the terms of this Deed pursuant to Section 11 (Monitoring) of this Deed, and to enforce the terms of this Deed pursuant to Section 12 (Enforcement) of this Deed. NRCS is conveyed the right to enter upon the Property to exercise the Rights of the United States under Section 12.4 (United States of America Rights of Enforcement) of this Deed;
 - 3.4. To have all Development Rights as defined in Section 16 (Development Rights) of this Deed, except as specifically reserved by Grantor herein;
 - 3.5. To have all other rights conveyed by this Deed.

4. ***Rights Retained by Grantor.*** Grantor retains the right to perform any act on or use of the Property that is not prohibited or restricted by this Deed, provided that such acts or uses are consistent with the Purpose. Specifically, but not by way of limitation, Grantor retains the right to practice agriculture and use the Water Rights in accordance with Colorado Law, subject to the terms of this Deed.
5. ***Preserving Agricultural Uses.*** The provisions of this Deed and associated exhibits will not be interpreted to restrict the types of agricultural operations that can function on the Property, so long as the agricultural operations are consistent with the long-term viability of the Property, ALE Plan (defined in Section 8.1.1, below), and the Easement Purposes. Allowed uses of the Property include the specific uses allowed in Section 8 (Resource Management) and Section 9 (Restricted Acts and Uses).
6. ***Limitations on Nonagricultural Uses.*** Any activities inconsistent with the Purpose of this Easement are prohibited. No uses will be allowed that violate Federal laws, including Federal drug laws or that decrease the Easement's protection for the agricultural use and future viability, and related Conservation Values of the Property.
7. ***Property Improvements.*** No construction is permitted on the Property except as expressly permitted in this Deed. Impervious surfaces will not exceed two percent (2%) 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, nonresidential buildings and agricultural buildings with or without flooring, paved areas, and any other surfaces that are covered by asphalt, concrete, or roofs. This limitation does not include public roads or other roads owned and controlled by parties with rights superior to those rights granted to Grantee by this Deed.

Utilities to serve approved buildings or structures, including on-farm energy structures allowed under Section 7.2.4.5, and agricultural improvements that neither individually nor collectively have an adverse impact on the agricultural use and future agricultural viability and the related Conservation Values of the Property may be built outside of the Building Envelope with prior written approval of Grantee provided that the utilities or agricultural improvements are consistent with the Agricultural Land Easement Plan described in Section 8.1.1 and subject to the terms in Section 7.1 and Section 7.2.4.

- 7.1. ***Residential and Non-residential Structures and Agricultural Improvements.*** The construction, placement, replacement, enlargement, maintenance and repair of residential structures is prohibited. The construction, placement, replacement, enlargement, maintenance and repair of non-residential structures and improvements is permitted pursuant to the limitations set forth herein. For purposes of this Deed, "**Residential Improvements**" are defined as covered structures containing habitable space, including homes, cabins, guest houses, including any space attached to a home, cabin or guest house such as a garage, and any other structures intended for full or part-time human habitation. For purposes of this Deed, "**Nonresidential Improvements**" are defined as covered structures not intended for human habitation

and include, but are not limited to, barns, pole barns, sheds, arenas, and free-standing garages. For purposes of this Deed, “**Agricultural Improvements**” are defined as Nonresidential Improvements that are used specifically for agricultural purposes.

7.1.1. ***Building Envelope.*** There shall be one (1) building envelope permitted on the Property (referred to herein as “**Agricultural Building Envelope**”). All new Agricultural Improvements (with the exception of Agricultural Improvements permitted by Section 7.1.2 below) must be located within the Agricultural Building Envelope, containing approximately four (4) acres and depicted in Exhibit B, which is appended to and made a part of this Deed.

7.1.1.1. ***Agricultural Building Envelope.*** On the date of this Deed, the following improvements are located within the Agricultural Building Envelope: Concrete Pad consisting of 400 square feet of Footprint and grain bin consisting of 200 square feet of Footprint.

7.1.1.2. ***Agricultural Building Limitations.*** Grantor may construct, place, replace, or enlarge Agricultural Improvements within the Agricultural Building Envelope subject to the following limitations:

- 7.1.1.2.1. The maximum number of Agricultural Improvements (including attached appurtenances) shall not exceed two (2).
- 7.1.1.2.2. The maximum Footprint, as defined below, for each Agricultural Improvement shall not exceed 6,000 square feet.
- 7.1.1.2.3. The maximum Height, as defined below, for each Agricultural Improvement shall not exceed twenty (20) feet.
- 7.1.1.2.4. The total cumulative Footprint for all Agricultural Improvements shall not exceed 12,000 square feet.
- 7.1.1.2.5. Improvements in excess of the foregoing require Grantee approval pursuant to Section 23 (Grantee’s Approval) of this Deed.
- 7.1.1.2.6. Unenclosed improvements having no Footprint, such as corrals or hunting blinds, are permitted if consistent with the Purpose and Intent.

7.1.2. ***Outside of the Agricultural Building Envelope.*** Agricultural Improvements and utilities to serve approved buildings or structures, including on-farm energy structures

allowed under Section 7.2.4.5 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 outside of the Agricultural Building Envelope with prior written approval of Grantee provided that the Agricultural Improvements or utilities are consistent with the ALE Plan (defined in Section 8.1.1) and subject to the following specific terms. On the date of this Deed, no Agricultural Improvements are located outside of the Agricultural Building Envelope.

7.1.2.1. **Construction Limitations.** Grantor may construct, place, replace or enlarge Agricultural Improvements outside of the Agricultural Building Envelope subject to the following:

- 7.1.2.1.1. The maximum number of Agricultural Improvements shall not exceed two (2).
- 7.1.2.1.2. The maximum Footprint for each Agricultural Improvement shall not exceed three hundred (300) square feet.
- 7.1.2.1.3. The maximum Height for each Agricultural Improvement shall not exceed sixteen (16) feet.
- 7.1.2.1.4. The total cumulative Footprint for all Agricultural Improvements shall not exceed six hundred (600) square feet.
- 7.1.2.1.5. Improvements in excess of the foregoing require Grantee approval pursuant to Section 23 (Grantee's Approval) of this Deed.
- 7.1.2.1.6. Unenclosed improvements having no Footprint, such as corrals or hunting blinds, are permitted if consistent with the Purpose and Intent.

7.1.3. **Notice.** Prior to the placement, construction, replacement or enlargement of any Agricultural Improvement as permitted by Section 7.1.1 and 7.1.2, Grantor shall notify Grantee in writing not less than sixty (60) calendar days prior to the date Grantor intends to undertake the activity in question. The written notice shall describe the proposed improvement in sufficient detail (i.e. location, size, scope, design, nature) to allow Grantee to evaluate the consistency of the proposed improvement with this Section 7.

7.1.4. **Repair and Maintenance.** Grantor may repair and maintain permitted improvements without further consent of Grantee.

7.1.5. **Definition of Footprint.** For purposes of this Deed, Footprint is defined as the total ground area occupied by all Agricultural Improvements, calculated on the basis of the exterior dimensions (whether at or above ground level) including carports or breezeways, but does not include eaves, uncovered decks or patios ("**Footprint**").

7.1.6. **Measurement of Height.** For purposes of this Deed, Height is defined as the vertical distance from the low point of the grade at the structure perimeter to the high point of the structure ("**Height**"). For the purposes of this Deed, "Grade at the structure perimeter" means either the natural grade or the finished grade, whichever is lower in elevation.

7.2. **Other Improvements.**

7.2.1. **Roads.** Maintenance of existing Improved and Unimproved Roads documented on Exhibit B is allowed; however, existing Improved and Unimproved Roads may not be widened or improved unless widening and improving is within impervious surface limits, approved in advance by Grantee, and necessary to carry out the agricultural operations or other allowed uses on the Property.

For purposes of this Deed, Improved Roads shall be defined as any road, driveway or parking area that is graded, drained, or has a surface other than the natural earthen material ("**Improved Roads**") and Unimproved Roads shall be defined as any track greater than three (3) feet wide where the natural earthen material is the driving surface ("**Unimproved Roads**").

Construction, maintenance, paving (e.g. concrete, asphalt, or other impermeable material) or other surfacing of all Improved and Unimproved Roads is permitted within the Agricultural Building Envelope. Any paving of Improved and Unimproved Roads must be within impervious surface limits.

Notwithstanding the foregoing, Grantor is permitted to use motorized vehicles on and about the Property in a manner consistent with the Purpose and Intent, to support the Property's permitted agricultural uses, the Property's management, and for cases of emergency, such as fire or other natural disaster. Off road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited.

Any other granting or modification of easements for roads is prohibited when the road will adversely impact the protection of the Conservation Values of the Property as determined by Grantee in consultation with the Chief of NRCS.

- 7.2.2. **Fences.** Fences may be maintained and replaced and new fences installed if they are necessary for agricultural operations and other permitted uses on the Property or to mark boundaries of the Property.
- 7.2.3. **Signs.** Existing signs may be maintained, repaired and replaced (with signs similar in character and size) in their current location. New signs may be placed and maintained on the Property provided that the number and size of the new signs are consistent with the Purpose. No commercial signs, billboards, awnings, or advertisements shall be displayed or placed on the Property, except for appropriate and customary ranch or pasture identification signs, “for sale” or “for lease” signs alerting the public to the availability of the Property for purchase or lease, signs advertising a permitted use of the Property, “no trespassing” signs, signs regarding the private leasing of the Property for hunting, fishing or other low impact recreational uses, and signs informing the public of the status of ownership. All new signage shall be consistent with the Purpose.
- 7.2.4. **Utility Improvements.** Existing energy generation or transmission infrastructure and other utility improvements, including but not limited to: (i) electric power poles, transformers, and lines; (ii) telephone and communications towers, poles, and lines; (iii) septic systems; (iv) domestic water storage and delivery systems; and (v) renewable energy generation systems including, but not limited to, wind, solar, geothermal, or hydroelectric (“**Utility Improvements**”), may be repaired or replaced with an improvement of similar size and type at their current locations on the Property without further permission from Grantee. Utility Improvements and easements for Utility Improvements may be enlarged or constructed on the Property, subject to the restrictions below and provided that they are consistent with the Purpose. Utility Improvements shall be located underground to the extent practicable.
- 7.2.4.1. **Within the Agricultural Building Envelope.** Grantor may enlarge or construct Utility Improvements within the Agricultural Building Envelope without further permission of Grantee, provided that no Utility Improvements exceed thirty-five (35) feet in Height.
- 7.2.4.2. **Outside of the Agricultural Building Envelope.** Grantor shall not enlarge or construct Utility Improvements without permission of Grantee. Prior to the enlargement or construction of Utility Improvements, Grantor shall provide notice so that Grantee can evaluate whether the proposal is consistent with the Purpose, pursuant to Section 23 (Grantee’s Approval) of this Deed. Any permitted Utility Improvement shall be no more than 35 feet in Height.

7.2.4.3. ***Granting of Easements for Utilities.*** Any other granting of new or modification of pre-existing easements for utilities is prohibited when the grant or modification will adversely impact the agricultural use and future agricultural viability and related Conservation Values of the Property as determined by Grantee in consultation with the Chief of NRCS.

7.2.4.4. ***Additional Requirements.*** Following the repair, replacement, enlargement or construction of any Utility Improvements, Grantor shall promptly restore any disturbed area to a condition consistent with the Purpose. Any easement, right of way or other interest granted to a third party or otherwise reserved, to be used for Utility Improvements is subject to Section 9.9 (Easements, Rights of Way or Other Interests) of this Deed.

7.2.4.5. ***Renewable Energy Generation Systems.*** 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 in accordance with any local zoning ordinance and applicable state and federal law. Renewable energy sources must be built and maintained within impervious surface limits, with minimal impact on the Conservation Values of the Property, consistent with the purposes of this Easement and in accordance with Section 7.2.4.2 and 7.2.4.3 of this Deed. Excess power generated in the operation of renewable energy structures and associated equipment of other energy structures that Grantee approves in writing as being consistent with the Purpose may be sold, conveyed, or credited to a provider of retail electric service to the extent permitted by Colorado law.

7.2.5. ***Water Improvements.*** The maintenance and repair of existing non-domestic water improvements such as ponds, reservoirs, stock tanks, sprinklers, irrigation ditches, pipes, headgates, flumes, pumps, or wells is permitted. The construction of new water improvements or enlargement of existing water improvements, excluding ponds and reservoirs, is permitted provided that such activity is consistent with the Purpose and in accordance with applicable NRCS Conservation Practices. The enlargement of existing ponds or reservoirs, or the construction of new ponds or reservoirs, is permitted provided that Grantee determines that said activities are consistent with the Purpose, pursuant to Section 23 (Grantee's Approval) of this Deed. Any portion of the Property that is disturbed by the maintenance, repair, construction or enlargement of water improvements shall be restored to a condition that is consistent with the Purpose promptly after said activity is completed.

7.2.6. **Miscellaneous Improvements.** Golf courses, sod farms, helicopter pads, and airstrips are prohibited. Towers are prohibited unless Grantee determines that the proposed tower supports agricultural use, is consistent with the Purpose and approves it pursuant to Section 23 (Grantee's Approval) of this Deed or as otherwise expressly permitted by this Deed. Any permitted tower shall be no more than 35 feet in Height.

8. **Resource Management.** Grantor recognizes the importance of good resource management and stewardship to preserve and protect the Conservation Values. To this end, the following uses of the Property shall be conducted in a manner consistent with the Agricultural Land Easement Plan (defined below). The Agricultural Land Easement Plan shall be completed by the date of this Deed and shall be updated at least every five (5) years.

If Grantee believes any resource management practice(s) are not consistent with the Purpose, Grantee, in addition to all of its rights under this Deed, may request that the Parties consult with a mutually acceptable resource management professional. This professional will provide written recommendations for said resource management practice(s). The cost of this consultation shall be borne by Grantor. These recommendations shall be subject to review and approval by NRCS. If the Parties fail to update the Agricultural Land Easement Plan, the most recent version shall remain in full force and effect.

8.1. **Agriculture.** All agricultural uses shall be conducted using stewardship and management methods that preserve the natural resources upon which agriculture is based. Long term stewardship and management goals include preserving soil productivity, maintaining natural stream channels, preventing soil erosion, minimizing invasive species, avoiding unsustainable livestock grazing practices, and minimizing loss of vegetative cover. 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 in Section 8.1.1 below.

8.1.1. **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 (the "**ALE Plan**"), as approved by NRCS, that promotes the long-term viability of the land to meet the ALE purposes. The ALE Plan and any revisions thereto must also be approved by Grantor, Grantee, and NRCS. Grantor agrees the use of the Property will be subject to the ALE Plan on the Protected Property.

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

Grantee must take all reasonable steps to secure compliance with the ALE

Plan. In the event of substantial or ongoing noncompliance with the ALE Plan or the requirement to update the ALE Plan, NRCS may notify Grantee. NRCS will give Grantee and Grantor a reasonable amount of time, not to exceed 180 days, to take corrective action. If Grantee fails to enforce the terms of the Easement, including, but not limited to compliance with the ALE Plan, the United States may exercise its right of enforcement.

If agricultural acts or uses are no longer practiced on the Property, either Party may request that the Parties develop and adjust the ALE Plan to ensure appropriate land cover on the Property that is consistent with the Purpose. The expense of developing and implementing the ALE Plan to address these issues shall be borne by Grantor.

- 8.2. ***Forest Management and Timber Harvest.*** 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 40 contiguous acres or more of forest or 20 percent or more of the Property is forestland, 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 Grantee.

A forest management plan will not be required for the following allowed noncommercial activities: (i) cutting of trees for the construction of allowed roads, utilities, buildings and structures on the Property, (ii) cutting of trees for trail clearing, (iii) cutting of trees for domestic use as firewood or for other domestic uses by Grantor, (iv) removal of trees posing an imminent hazard to the health or safety of persons or livestock, or (v) removal of invasive species.

- 8.3. ***Relatively Natural Habitat.*** Habitat management activities that have the potential to negatively impact the Conservation Values such as chaining juniper or sagebrush, constructing or altering ponds, wetlands, or stream channels, and conducting controlled burns may be permitted provided that Grantee determines that said management activities are consistent with the Purpose, pursuant to Section 23 (Grantee's Approval) of this Deed.

- 8.4. ***Oil, Gas, or Mineral Exploration and Extraction.*** Mining or extraction of soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance ("**Minerals**") owned by Grantor as of the date of this Deed or later acquired by Grantor, using any surface mining, subsurface mining, or dredging method, from the Property is prohibited.

- 8.4.1. ***Ownership of Minerals.*** As of the date of this Deed, Grantor does not own all of the mineral rights located on, under, or in the Property or otherwise associated with the Property. For this reason, a minerals assessment report has been completed by Terracon Consultants, Inc., dated August 10, 2018, in compliance with I.R.C. §170(h)(5)(B)(ii) and Treasury Regulation §1.170A-

14(g)(4). The report concludes that, as of the date of this Deed, the probability of extraction or removal of minerals from the Property by any surface mining method is so remote as to be negligible. Grantor shall not transfer or otherwise separate any mineral rights from the Property. The third-party rights to minerals have not been subordinated to the Easement. As such, the Grantor 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 this Paragraph (F).

8.4.2. ***Mineral Development.*** Oil and gas exploration and extraction on the Property is permitted in accordance with this Section 8.4, if approved by Grantee, pursuant to Section 23 (Grantee's Approval), and Chief of NRCS. Grantor must demonstrate that such exploration and extraction of oil and gas is:

8.4.2.1. Not accomplished by any surface mining method;

8.4.2.2. 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 of the Conservation Values of the Property;

8.4.2.3. Within the impervious surface limits of this Easement; and

8.4.2.4. Subject to a Mineral Document, as defined below, that includes provisions for oil and gas exploration and extraction.

8.4.3. ***Notice Related to Minerals.*** Grantor agrees that by granting this Easement to Grantee, it has given Grantee an interest in the Property, and by so doing, given Grantee the same legal rights as Grantor to influence and control impacts to the surface of the Property from exploration or development of Minerals. This interest does not include any right for Grantee to receive any income, royalties or lease payments from exploration or development of Minerals. Grantee's interest requires that if Grantor is contacted verbally or in writing regarding the Minerals, Grantor shall provide written notice, copy, or description to Grantee of said contact within ten (10) days.

8.4.3.1. For purposes of this Deed, the term "Mineral Document" shall mean any lease, pooling agreement, unitization agreement, surface use agreement, no-surface occupancy agreement, or any other instrument related to Minerals. Any Mineral Document must 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 is not consistent with the Purpose.

- 8.4.3.2. Grantor shall not enter into any Mineral Document without Grantee and NRCS approval pursuant to Section 23 (Grantee's Approval) to ensure that said document is consistent with the Purpose and this Section, and Grantee shall have the right but not the obligation to be a party to any such agreement, if Grantee chooses, in its sole discretion. Grantee shall have the right to charge a fee to Grantor for time and costs associated with review of any Mineral Document.

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

Impervious surfaces as defined in Section 7 of this Deed will exclude any surface disturbance or impervious surfaces associated with oil and gas exploration and extraction associated with the uses permitted by this Section 8.4.

If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Deed is executed, and its interest has not been subordinated to this Easement, Grantor and Grantee 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 this Section 8.4.

- 8.5. ***Geothermal Resources.*** Within the Agricultural Building Envelope, the development and use of geothermal resources is permitted without Grantee's approval, provided that it is consistent with the Purpose. Outside of the Agricultural Building Envelope, the development and use of geothermal resources is prohibited without Grantee approval pursuant to Section 23 (Grantee's Approval).
- 8.6. ***Recreation.*** Low-impact recreational uses such as wildlife watching, hiking, cross-country skiing, horseback riding, hunting and fishing are permitted, provided they are consistent with the Purpose.
- 8.7. ***Weeds.*** The Parties recognize the potential negative impact of noxious weeds and invasive plant species on the Conservation Values. Grantor shall manage noxious weeds and invasive plant species in a manner consistent with the Purpose. Grantee has no responsibility for the management of noxious weeds and invasive plant species.
- 8.8. ***Water Rights.*** C.R.S. § 38-30.5-102 authorizes the inclusion of "water rights beneficially used upon the land...owned by the grantor" in a conservation easement.

The Water Rights are tied to and encumbered by the Easement, and shall be subject to the following terms and conditions.

- 8.8.1. ***Water Rights Ownership.*** Grantor shall retain sole ownership of the Water Rights, and shall use the Water Rights as authorized by this Deed.
- 8.8.2. ***Permitted Use of Water Rights.*** The Parties agree that, subject to the terms of this Deed, the Water Rights are hereby dedicated to and restricted primarily for continued agricultural use and future viability and related Conservation Values of the Property, and that Grantor shall continue to maintain their historic beneficial use. Grantor shall also have the right to supplement the Water Rights with additional water sources to be used on the Property to the extent permitted by Law. Notwithstanding the foregoing, Grantor may use the Water Rights for purposes off the Property per historic use as described in Case No. 2004CW81 and Grantor also reserves the right to enter into any leases or agreements for use of the Water Rights off the Property as described in Sections 8.8.2.2 through 8.8.2.4, subject to the restrictions in Section 8.8.3, below.
- 8.8.2.1. ***Water Agreements.*** For purposes of this Deed, the term “Water Agreement” shall mean any interruptible water supply agreement, a water conservation program, or any other lease or use agreement related to the Water Rights, such as an interruptible supply contract, water lease, fallowing program, forbearance agreement, emergency water loan, or other similar agreement to allow the temporary agricultural, environmental (including, without limitation, in-stream flow, wetland, piscatorial, and similar uses beneficial to preservation of wildlife, wildlife habitat and bio-diversity), municipal, commercial, or industrial use of the Water Rights off the Property.
- 8.8.2.1.1. Grantor shall not enter into any Water Agreement without Grantee approval to ensure that said document is consistent with the Purpose and this Section 8.8.2.2. Grantee shall have the right to charge a fee to Grantor for time and costs associated with review of any proposed Water Agreement.
- 8.8.2.1.2. Any Water Agreement must: (i) define the term of the agreement, (ii) include provisions that ensure the proposed activities are consistent with the Purpose, including preservation of soil health and agricultural viability, and (iii) not permanently separate the Water Rights from the Property. In the case that the term of the Water Agreement is less than 10 years in duration, water may not be removed from the Property pursuant to the Water Agreement more than three years in that ten-year term, and not for more than two consecutive years. In the case that Grantor wishes to enter into a Water Agreement for a term longer than 10 years,

water may not be removed from the Property pursuant to the Water Agreement more than three years in any ten-year term, and not for more than two consecutive years in any ten-year period, unless otherwise agreed by the Parties in consultation with a mutually acceptable resource management professional to develop a Farm/Ranch Water Operations Plan. Such plan will assess the impact to the Conservation Values of application of less than all Water Rights on the Property in some years and make recommendations as to the timing and amount of water that should be applied to the Property in order to manage erosion and prevent damage to the soil. The cost of a Farm/Ranch Water Operations Plan shall be borne by Grantor.

- 8.8.3. ***Restrictions on Water Rights.*** Grantor shall not permanently transfer, encumber, sell, or otherwise permanently separate the Water Rights from the Property. Grantor shall not abandon or allow abandonment of the Water Rights by action or inaction. Grantor shall not change the historic beneficial use of the Water Rights unless Grantee determines that said change is consistent with the Purpose, pursuant to Section 23 (Grantee's Approval) of this Deed. To the extent Grantor has control of the action, no change of the point of diversion of the Water Rights shall be submitted for judicial approval unless Grantee determines that the proposed change of point of diversion is consistent with the Purpose, pursuant to Section 23 (Grantee's Approval) of this Deed. Except to the extent permitted under Section 8.8.2, Grantor shall not develop any conditional water rights for use on the Property or otherwise undertake any new development of water resources for use on the Property, unless Grantee determines that said action is consistent with the Purpose, pursuant to Section 23 (Grantee's Approval) of this Deed.
- 8.8.4. ***Protection of Water Rights.*** Grantor shall cooperate with Grantee to help assure the continued historical beneficial use of the Water Rights in order to preserve and protect the Conservation Values. Grantee may request that Grantor report to Grantee annually regarding the nature and extent of Grantor's use of the Water Rights during the prior year, which report need not be in writing. Grantor shall provide Grantee with copies of any reports or correspondence submitted to the State or Division Engineer or Water Commissioner. Grantor shall also provide Grantee with a copy of any written notice or pleadings received by Grantor from any State water official or any other person concerning the possible abandonment of the Water Rights within 30 days receipt thereof.
- 8.8.5. ***Abandonment of Water Rights.*** If the Water Rights appear on the decennial abandonment list, or if Grantee determines that the Water Rights are subject to a threat of abandonment, Grantee shall give Grantor written notice of such threat. Grantor shall also be considered notified if Grantor receives notice from any state water official or any other person concerning the possible

abandonment of the Water Rights. Upon notification, the Parties shall work in good faith to develop and implement a mutually acceptable strategy to cure the threat of abandonment. Grantor shall have 90-days from notification to demonstrate action to rebut the presumption of abandonment of the Water Rights. If the Parties cannot reach a mutual agreement, or Grantor has failed to take action to cure the threat of abandonment of the Water Rights within 90 days of notification, Grantee shall, in addition to any other remedies available to Grantee under this Deed or by law, have the right to (i) enter upon the Property and undertake any and all actions reasonably necessary to continue the historical use of the Water Rights; (ii) seek removal of the Water Rights from the abandonment list; (iii) defend the Water Rights against any other claim of abandonment; (iv) seek to change the Water Rights to another use on the Property that is consistent with the Purpose or to an instream flow right, as described in Section 8.8.6; and (v) require Grantor to convey all or part of the Water Rights to Grantee for continued use on the Property. Grantor agrees to cooperate in any manner necessary to accomplish Grantee's election, and at Grantee's request, agrees to authorize and appoint Grantee as its agent and attorney-in-fact to file for and obtain any administrative or judicial approvals required to effectuate Grantee's election.

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

9. ***Restricted Acts and Uses.***

- 9.1. ***Subdivision.*** Separate conveyance of a portion of the Property or division or subdivision of the Property is prohibited. The Parties further agree that the division, partition in kind, subdivision or de facto subdivision of the Property, whether by legal or physical process, into two or more parcels of land or partial or separate interests (including, but not limited to, condominium interests or the partition of undivided interests) is prohibited. At all times the Property shall be owned and conveyed as a single parcel which shall be subject to the provisions of this Deed. Ownership of the single parcel by joint tenancy or tenancy in common is permitted, consistent with Sections 31 (Joint and Several Liability) and 32 (Ownership by Single Entity Consisting of Multiple Parties); provided, however, that Grantor shall not undertake any legal proceeding to partition in kind, subdivide or divide in any manner such undivided interests in the single parcel.

- 9.2. ***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, below. Such extraction shall have no more than limited, localized impact on the Property. Once extraction is complete, Grantor shall promptly restore any disturbed area to a condition consistent with the Purpose and Intent. This Section shall be interpreted in a manner that is consistent with I.R.C. § 170(h) and the Treasury Regulations adopted pursuant thereto.
- 9.2.1. Dam construction in accordance with an ALE Plan to create ponds for agricultural use, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement or creation.
- 9.2.2. Erosion and sediment control pursuant to a plan approved by Grantee.
- 9.2.3. Soil disturbance activities as required in the construction of approved buildings, structures, roads, and utilities provided that the required alteration has been approved in writing by Grantee as being consistent with the conservation purpose of this Easement.
- 9.2.4. Agricultural activities and related conservation activities conducted in accordance with the ALE Plan.
- 9.3. ***Industrial or Commercial Activity.*** Industrial or commercial uses of the Property are prohibited except for the following:
- 9.3.1. Agricultural production and related uses conducted as described in the ALE Plan required by Section 8.1.1.
- 9.3.2. 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 Protected Property herein protected.
- 9.3.3. Commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm or forest products, farm machinery repair, and small-scale farm wineries.
- 9.3.4. Small-scale commercial enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts and crafts.
- 9.4. ***Feedlot.*** The establishment or maintenance of a feedlot is prohibited. For purposes of this Deed, “feedlot” is defined as a permanently constructed confined area or facility which is used and maintained continuously and exclusively for purposes of finishing or fattening large numbers of livestock for market. Nothing in this Section shall prevent Grantor from seasonally confining livestock into an area, corral or other

facility for warm-up or feeding or calving, or from leasing pasture for the grazing of livestock owned by others.

- 9.5. **Public Access.** Nothing contained in this Deed shall be construed as affording the public access to any portion of the Property, although Grantor may permit public access to the Property on such terms and conditions as Grantor deems appropriate, provided that such access is consistent with the Purpose.
- 9.6. **Trash.** The dumping or accumulation of any kind of trash, sludge, or refuse on the Property is prohibited, except for farm-related trash and refuse produced on the Property, provided that such dumping or accumulation is consistent with the Purpose. The storage or accumulation of agricultural products and by-products on the Property is permitted provided that such activity is conducted in accordance with all applicable government laws and regulations and is consistent with the Purpose.
- 9.7. **Hazardous Materials.** The use and storage of Hazardous Materials (defined below in Section 10.2.1.3) shall only be permitted in accordance with applicable Environmental Laws (defined below in Section 10.2.1.2). The use of any other materials is permitted in accordance with all applicable Environmental Law. Otherwise, the treatment, permanent storage, disposal or release of Hazardous Materials on, from or under the Property is prohibited.
- 9.8. **Motorized Vehicle Operation.** Use of motorized vehicles on the Property is prohibited except for certain limited purposes as set forth: Motorized vehicles may only be used in carrying out the activities permitted herein in a manner that is consistent with the Purpose. Off-road vehicle courses for snowmobiles, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited. Nothing in this Section is intended to prohibit the use of motorized vehicles for agricultural, resource management, law enforcement, public safety, or other uses permitted under this Easement.
- 9.9. **Easements, Rights of Way or Other Interests.** The conveyance or modification of an easement, right of way or other similar interest arising after conveyance of this Easement is prohibited unless Grantee determines that the proposed conveyance or modification is consistent with the Purpose and Intent pursuant to Section 23 (Grantee's Approval) of this Deed.
10. **Responsibilities of the Parties Not Affected.** Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligations of Grantor as owner of the Property. The terms of this Deed shall not be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, Grantor shall make its best efforts to prevent third parties, including trespassers, from performing, and shall not

knowingly allow third parties to perform, any act on or use of the Property that is inconsistent with the Purpose. Grantor shall continue to be solely responsible for, and Grantee shall have no obligation for, the upkeep and maintenance of the Property, and Grantor understands that nothing in this Deed relieves Grantor of any obligation or restriction on the use of the Property imposed by law. Among other things, this shall apply to:

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

10.2. **Liability.**

10.2.1. **Grantor's Environmental Liability and Indemnification.**

10.2.1.1. **Environmental Warranty.** Grantor warrants that it is in compliance with, and will remain in compliance with, all applicable Environmental Laws (defined below). Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with, or any liability under, any Environmental Law relating to the operations or conditions of the Property. Grantor further warrants 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, Grantor warrants the information disclosed to Grantee and United States regarding any past violations or non-compliance with Environmental Laws and associated remedial actions, or any past released of Hazardous Materials and any associated remedial actions is complete and accurate.

Moreover, Grantor hereby promises to hold harmless, defend and indemnify Grantee and the United States and the members, directors, officers, employees, agents, and contractors and the heirs, representatives, successors, and assigns of each of them ("**Indemnified Parties**") against all liabilities, costs, losses, expenses, causes of action, judgments, 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

Grantor or any other prior owner of the Property. Grantor's indemnification obligation will not be affected by any authorizations provided by Grantee or the United States to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee will be responsible for any Hazardous Materials contributed after the date of this Deed to the Property by Grantee.

10.2.1.2. **"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.

10.2.1.3. **"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 that may pose a present or potential hazard to human health or the environment.

10.2.1.4. Notwithstanding anything in this Deed to the contrary, this Deed shall not impose any liability on Grantee or the United States for Hazardous Materials, nor does it make Grantee or the United States an owner of the Property, nor does it permit or require Grantee or the United States to control any use of the Property that may result in the treatment, storage, disposal or release of Hazardous Materials within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or any similar federal or state laws or regulations.

10.2.2. **General Disclaimer and Grantor Warranty.** The United States, its employees, agents, and assigns disclaim and will not be held responsible for Grantee's or Grantor's negligent acts or omissions or Grantee's or Grantor's breach of any representation, warranty, covenant, or agreements contained in this Deed, 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.

Grantor must indemnify, defend and hold harmless the Indemnified Parties for any and all liabilities, penalties, costs, causes of action, judgments, 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 Grantee and the United States may be subject or incur relating to the Property, which may arise from, but are not limited to, Grantor's negligent acts, omissions or breach of any representation, warranty, covenant, agreements contained in this Deed, or violations of any federal, state, or local laws, including all Environmental Laws.

10.2.3. **Grantee's Liability.** Grantee shall indemnify, defend and hold Grantor and its assigns, successors and heirs harmless from and against any and all loss, cost or expense, including reasonable attorney's fees, arising from or in any way related to injury to or death of any person occurring on or about or related to the Property arising out of the Indemnified Parties' actions on the Property.

11. **Monitoring.** In order to monitor Grantor's compliance with the terms of this Deed, Grantee shall have the right to enter upon the Property upon reasonable prior notice to Grantor. Said notice need not be in writing. Grantee may engage such experts or consultants that Grantee deems necessary to assist in monitoring, including conducting aerial flyovers of the Property. Such entry shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

12. **Enforcement.**

12.1. **General Provisions.** Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed. If Grantee determines that immediate entry is required to inspect for, prevent, terminate, or mitigate a violation of the terms of this Deed, Grantee may enter the Property without advance notice. If such entry occurs, Grantee shall notify Grantor within a reasonable time thereafter. If Grantee determines that an unresolved violation has occurred, Grantee shall notify Grantor, the United States, and any other lien holder who requests such notice in writing, of the nature of the alleged violation in writing. Upon receipt of said notice, Grantor shall immediately cease the alleged violation and either (i) if necessary, promptly provide a written plan for restoration and remediation of the Property and, once approved by Grantee, restore or remediate the Property in accordance with the plan; or (ii) provide written documentation demonstrating that the activity is permitted and is not a violation. Grantee's acceptance of Grantor's actions under (i)

or (ii) above shall be in Grantee's sole discretion, and shall be confirmed by Grantee in writing. If Grantor is unable or unwilling to immediately cease the alleged violation, and comply with (i) or (ii) above, the Parties agree to resolve the dispute through mediation or judicial process. At any point in time, Grantee may take appropriate legal action, including seeking an injunction, to stop the alleged violation.

- 12.2. ***Costs of Enforcement.*** Any costs incurred by Grantee in enforcing the terms of this Deed against Grantor, including, without limitation, costs and expenses of suit, attorneys' fees and any costs of restoration necessitated by Grantor's violation of the terms of this Deed, shall be borne by Grantor. If the deciding body determines that Grantee has acted in bad faith in seeking to enforce the terms of this Deed, Grantee will reimburse Grantor for reasonable costs of defense. If the Parties agree to mediation, the Parties will equally share the cost of the mediator's fees. The United States shall in no event be required to participate in mediation.
- 12.3. ***Grantee's Discretion.*** Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. §38-30.5-108. Enforcement of the terms of this Deed shall be at the discretion of Grantee, and the failure of Grantee to discover a violation or to take action shall not waive any of Grantee's rights, claims or interests in pursuing any such action at a later date.
- 12.4. ***United States Right of Enforcement.*** 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 holder of the Easement. 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 federal or state law if Grantee, 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 with any enforcement or remedial action related to the enforcement of this Easement from Grantor, including, but not limited to, attorney's fees and expenses related to Grantor's 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 Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the Easement against Grantor up to the amount of the United States' contribution to the purchase of this Easement.

Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that Grantee and Grantor are in compliance with this Easement and the ALE 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 this Easement, the ALE Plan, and the United States Cooperative Agreement with Grantee, the United States will have reasonable access to the Property with advance notice to Grantee and Grantor or Grantor'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 Grantee and Grantor or Grantor's representative at the earliest practicable time.

13. ***Amendment.*** This Easement may be amended only if, in the sole and exclusive judgment of Grantee, Grantor, and the United States, by and through the Chief of NRCS, such amendment is (a) consistent with the purposes of this Easement, (b) complies with all applicable laws and regulations, (c) does not affect the perpetual duration of the restrictions contained in this Easement, (d) does not affect the qualifications of this Easement under any applicable laws, (e) complies with Grantee's and the United States' procedures and standards for amendments (as such procedures and standards may be amended from time to time) and (f) receives the United States', by and through the Chief of the NRCS, prior written approval, each in its sole discretion. Grantee must provide timely written notice to the Chief of NRCS of any proposed amendment(s). Prior to the signing and recordation of the amended Easement, such amendment(s) must be mutually agreed upon by Grantee, Grantor, and the United States, by and through the Chief of NRCS.

No amendment shall be allowed that will confer a private benefit to Grantor or any other individual greater than the benefit to the general public [see Treasury Regulation §1.170A-14(h)(3)(i)] or result in private inurement for a board member, staff or contract employee of Grantee [see Treasury Regulation §1.501(c)(3)-1(c)(2)]. Any amendment must be in writing, signed by both parties, and recorded in the records of the Clerk and Recorder of Weld County.

In order to preserve the Easement's priority, Grantee may require that Grantor obtain subordinations of any liens, mortgages, easements, or other encumbrances arising after conveyance of this Easement but before the proposed amendment. The term "amendment" means any instrument that purports to alter in any way any provision of or exhibit to this Easement.

Nothing in this Section shall be construed as requiring Grantee or the United States to agree to any particular proposed amendment. Grantee shall have the right to charge a fee to Grantor for time and costs associated with any amendment. Any purported amendment that is recorded without the prior approval of the United States will be considered null and void.

14. ***Transfer of Easement.*** This Easement is transferable by Grantee, provided that (i) the transfer is restricted to an organization that, at the time of the transfer, is a qualified organization under I.R.C. § 170(h) and authorized to hold conservation easements under C.R.S. §38-30.5-101, et seq. and C.R.S. §12-61-724; (ii) the conservation purposes which the

contribution was originally intended to advance continue to be preserved and protected; (iii) the transferee agrees in writing to assume the responsibility imposed on Grantee by this Deed; and (iv) the transferee is approved in writing by the United States and the USFWS. Additionally, Grantee shall provide the United States and the USFWS with a written request to assign the Easement at least forty-five (45) days prior to the date of the assignment transaction. The receiving agency or organization must be approved in advance in writing as a transferee by the United States and the USFWS in its sole discretion. Grantee shall notify Grantor in advance of any proposed transfers. If Grantee ever ceases to exist, a court with jurisdiction is authorized to transfer this Easement pursuant to (i), (ii), (iii), and (iv) above.

Should Grantee be unable to assign the Easement according to this procedure, or the United States has refused to consent to the transfer, or Grantee ceases to exist, a court with competent jurisdiction shall assign the Easement to an organization meeting the criteria described in subsections (i)-(iv) herein of this paragraph, and shall provide Grantor and the United States notice of and an opportunity to participate in the court proceeding.

15. **Transfer of Property.** Any time the Property is transferred by Grantor to any third party, Grantor shall notify Grantee in writing within five (5) business days after closing using the form in Exhibit D, and shall include a copy of the new ownership deed. The document of conveyance shall expressly refer to this Deed. Grantor shall pay a fee of 1/4 of 1% of the purchase price to Grantee as holder of the real property interest represented by this Deed, excluding transfer to Grantor's direct descendants and family members, as defined by the Internal Revenue Code, and excluding transfers for the sole purpose of changing the type of legal entity by which title is held. Such fee shall be used for the purpose of the stewardship and defense of conservation easements held by Grantee or for other purposes consistent with Grantee's mission. This provision is intended to run with the land for perpetuity, and to touch and concern the Property burdened by this Easement by providing Grantee a contribution to enable its stewardship, enforcement and defense of this Easement. If a fee is attributable to a transfer of property classified as "residential real property," as defined in C.R.S. Section 38-35-127(2)(e), then Grantee covenants and agrees that the fee shall be used for the purposes specified in C.R.S. Section 38-35-127(2)(b)(V) in a manner consistent with Grantee's mission.
16. **Development Rights.** For purposes of this Deed, "**Development Rights**" are defined as all present or future rights to (i) construct, place, replace, enlarge, maintain or repair any improvements on the Property; or (ii) receive credit for density for development on or off the Property. By this Deed, Grantor conveys to Grantee all Development Rights associated with the Property except those Development Rights specifically reserved by Grantor, which include the right to make improvements to the Property pursuant to Section 7 of this Deed. Therefore, Grantor does not have the right to use or transfer any Development Rights held by Grantee.
17. **Condemnation.** Grantor shall notify Grantee immediately of any communication or notice received concerning any proposed taking or condemnation affecting the Property, and Grantee shall, in addition, notify the United States in writing of such circumstances. Grantee shall have the right to participate in any proceedings as a real property interest holder.

Grantee may pursue any remedies in law or in equity, including opposition to the condemnation of the Property. If the Property or any part thereof or interest therein is sold or conveyed to a condemning authority under threat of condemnation or taken through condemnation or other involuntary conversion, Grantee and the United States shall be entitled to compensation in accordance with applicable law, from any sale, exchange, condemnation, or other involuntary or voluntary conversion of all or any portion of the Property subsequent to such termination or extinguishment in accordance with Section 18 below. Due to the Federal interest in this Easement, the United States must review and approve any proposed condemnation action that may affect its Federal interest in the Property.

18. ***Termination or Extinguishment of Easement.*** Except as provided in Section 17 (Condemnation) of this Deed, this Easement or any part hereof may only be terminated or extinguished by judicial proceedings in a court of competent jurisdiction. The only ground upon which this Easement can be terminated or extinguished is the total loss of all Conservation Values. The interests and rights under this Easement may only be extinguished or terminated for actions other than condemnation or deeds in lieu of condemnation, by judicial proceedings, with written approval of Grantee and the United States. Due to the Federal interest in this Easement, the United States must review and approve any proposed extinguishment or termination action that may affect its Federal interest in the Property. If termination or extinguishment occurs, Grantee and the United States shall be entitled to compensation determined as provided in Section 19 (Compensation upon Condemnation, Termination, or Extinguishment) of this Deed.

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

- 19.1. With respect to a proposed extinguishment, termination, or condemnation action, the Parties stipulate that the fair market value of the Easement is Thirty-five percent (35.5%), hereinafter the “**Proportionate Share**,” of the fair market value of the land unencumbered by this Easement. The Proportionate Share will remain constant over time and shall be applied pursuant to Treasury Regulation §1.170A-14(g)(6)(ii).
- 19.2. If this Easement is extinguished, terminated, or condemned, in whole or in part, then Grantor must reimburse Grantee 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 Grantee and the United States.
- 19.3. The allocation of the Proportionate Share between Grantee and the United States will be as follows: (a) to Grantee or its designee, Fifty percent (50%) of the Proportionate Share; and (b) to the United States Fifty (50%) percent of the Proportionate Share. Until such time as Grantee and the United States receive the Proportionate Share from

Grantor or Grantor's successor or assign, Grantee and the United States 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 Grantee, Grantee must reimburse the United States for the amount of the Proportionate Share due to the United States.

20. ***No Merger, Abandonment, Release, or Adverse Possession.*** Should Grantee in the future own all or a portion of the fee interest in the Property, Grantee as successor in title to Grantor, shall observe and be bound by the obligations of Grantor and the restrictions imposed on the Property by this Deed. In addition, this Easement shall not merge with the fee title without the prior written approval of Grantor. The Easement shall not be extinguished, in whole or in part, through the legal doctrine of merger in view of the public interest in its enforcement. This Easement cannot be abandoned, released, or affected by adverse possession.
21. ***Perpetual Duration.*** This Easement shall be a servitude running with the land in perpetuity. The provisions of this Deed that apply to either Party shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Notwithstanding the foregoing, each Party's rights and obligations under the Easement created by this Deed shall terminate (as to such Party, but not as to such Party's successor, who shall be bound as provided herein) upon a transfer of the Party's entire interest in this Easement or the Property (provided that the United States has consented to a transfer of this Easement by Grantee), except that liability of such transferring Party for acts or omissions occurring prior to such transfer shall survive the transfer.
22. ***Change of Circumstance.*** Grantor has considered that restricted acts or uses may become more economically valuable than permitted acts or uses. It is the intent of the Parties that such circumstances shall not justify the termination or extinguishment of this Easement pursuant to Section 18 (Termination or Extinguishment of Easement) of this Deed. In addition, the inability to carry on any or all of the permitted acts and uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to Section 18 (Termination or Extinguishment of Easement) of this Deed.
23. ***Grantee's Approval.*** Where Grantee's approval is required by this Deed, Grantor shall provide written notice to Grantee not less than sixty (60) calendar days prior to the date Grantor intends to undertake the act or use, with sufficient detail (i.e. location, size, scope, design and nature) to allow Grantee to evaluate the consistency of the proposed act or use with the Purpose. Grantee shall approve or deny Grantor's written request, or notify Grantor of a delay in Grantee's decision, in writing within forty-five (45) calendar days of receipt of Grantor's written request. Grantee shall only approve acts or uses consistent with the Purpose. Grantor shall not engage in the proposed act or use until Grantor receives Grantee's approval in writing.
24. ***Written Notices.*** Any written notice that either Party is required to give to the other shall be delivered: (i) in person; (ii) via certified mail, with return receipt requested; (iii) via a

commercial delivery service that provides proof of delivery; or (iv) via any delivery method mutually agreed to by the Parties, to the following addresses and "Addressees", unless the Addressees have been notified by an Addressee of a change of address or ownership of such Addressee.

Grantor: Riverview Farms, LLC
Michael Groves
21020 County Road 6.5
Weldona, CO 80653

Grantee: Colorado Open Lands
1546 Cole Boulevard, #200
Lakewood, CO 80401
(303) 988-2373

USFWS: U.S. Fish and Wildlife Service
Division of Bird Habitat Conservation
1849 C St., NW
Washington, DC 20240

The United States: State Conservationist
USDA Natural Resources Conservation Service
Denver Federal Center
Building 56, Room 2604
P.O. Box 25426
Denver, Colorado 80225
Fax: (720) 544-2810

If an Addressee's address changes, such Addressee shall provide updated information to the other Addressees listed in this Section 24 in a timely manner. If a notice mailed to an Addressee at the last address on file is returned as undeliverable, the sender shall provide notice by regular mail to the intended recipient's last known address on file with the tax assessor's office of the county in which the Property lies, and the mailing of such notice shall be deemed compliant with this Section. Notice given to the designated representative of a trust or business entity shall be deemed notice to the trust or business entity, and notice given to the designated representative of a common or jointly held ownership shall be deemed notice to all owners.

25. Liens on the Property.

25.1. **Current Liens.** Grantor represents and warrants that (a) the Deed of Trust recorded April 3, 1998 under Reception No 2604233 in the records of the Clerk and Recorder of Weld County, Colorado, is subordinate to the rights of Grantee under this Deed as evidenced by that certain Subordination Agreement recorded immediately hereafter in the records of the Clerk and Recorder of Weld County, Colorado; (b) the Deed of Trust recorded May 11, 2011 under Reception No 3767926 in the records of

the Clerk and Recorder of Weld County, Colorado, is subordinate to the rights of Grantee under this Deed as evidenced by that certain Subordination Agreement recorded immediately hereafter in the records of the Clerk and Recorder of Weld County, Colorado; (c) the Deed of Trust recorded April 11, 2013 under Reception No 3923863 in the records of the Clerk and Recorder of Weld County, Colorado, is subordinate to the rights of Grantee under this Deed as evidenced by that certain Subordination Agreement recorded immediately hereafter in the records of the Clerk and Recorder of Weld County, Colorado; and (d) the Deed of Trust recorded March 28, 2018, under Reception No. 4386473 in the records of the Clerk and Recorder of Weld County, Colorado, is subordinate to the rights of Grantee under this Deed as evidenced by that certain Subordination Agreement recorded immediately hereafter in the records of the Clerk and Recorder of Weld County, Colorado.

- 25.2. ***Subsequent Liens.*** No provisions of this Deed should be construed as impairing the ability of Grantor to use the Property as collateral for subsequent borrowing. Any mortgage or lien arising from such a borrowing is and shall remain subordinate to this Easement or any amendments hereto.

26. *Grantor's Representations and Warranties.*

- 26.1. Grantor represents and warrants that Grantor: i) has good and sufficient title to the Property, free from all liens and encumbrances securing monetary obligations except ad valorem property taxes for the current year; ii) has the right to grant access to the Property to Grantee and the United States for the purposes described in this Deed and has in fact granted said access to Grantee and the United States; and iii) shall defend title to the Property against all claims that may be made against it by any person claiming by, through, or under Grantor.
- 26.2. Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge:
- 26.2.1. No Hazardous Materials exist or have been generated, treated, stored, used, disposed of, deposited, or transported, in, on, or across the Property; there has been no release or threatened release of any hazardous materials on, at, beneath, or from the Property; and there are no underground storage tanks located on the Property;
- 26.2.2. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
- 26.2.3. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and
- 26.2.4. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to

comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use.

27. **Acceptance.** Grantee hereby accepts without reservation the rights and obligations created by this Deed for which no goods or services were exchanged or provided.

28. **General Provisions:**

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

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

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

28.4. **Controlling Law.** The provisions of this Deed are subject to the laws of the United States and the State of Colorado as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder.

28.5. **Liberal Construction.** The provisions of this Deed are to be liberally construed in favor of the Purpose, and any ambiguities or questions regarding the validity of specific provisions shall be interpreted in favor of maintaining the Purpose. Any decisions resolving such ambiguities or questions shall be documented in writing.

28.6. **Counterparts.** The Parties may execute this Deed in two or more counterparts which shall, in the aggregate, be signed by all Parties. All counterparts, when taken together, shall constitute this Deed, and shall be deemed the original instrument as against any Party who has signed it.

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

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

29. **Recording.** The Parties shall record this Deed in a timely fashion in the official records of Weld County, Colorado, and Grantee may re-record it at any time as may be required to

preserve its rights in this Easement.

30. ***No Third Party Beneficiaries and Enforcement.*** This Easement is entered into by and between Grantor and Grantee, and is solely for the benefit of the public, Grantor, Grantee, and the United States, and their respective successors and assigns for the purposes set forth herein. This Easement creates express rights of enforcement in the United States as a third party beneficiary, but does not create enforcement rights or responsibilities in any other third parties, and as such, can only be enforced by Grantor, Grantee and the United States.
31. ***Joint and Several Liability.*** If Grantor at any time owns the Property in joint tenancy or tenancy in common, Grantor shall be jointly and severally liable for all obligations set forth in this Deed.
32. ***Ownership by Single Entity Consisting of Multiple Parties.*** If Grantor at any time is an entity which consists of shareholders, partners or members, such Grantor entity is required to include in its operating agreement, bylaws or other documents setting forth the rights and responsibilities of the entity, the right to assess such shareholders, partners or members for any monetary or other obligations set forth in this Deed. Grantor shall provide a copy of such documentation at any time upon Grantee's request.
33. ***Authority to Execute.*** Each Party represents to the other that such Party has full power and authority to execute and deliver this Deed, and perform its obligations under this Easement, that the individual executing this Deed on behalf of said Party is fully empowered and authorized to do so, and that this Deed constitutes a valid and legally binding obligation of said Party enforceable against said Party in accordance with its terms.

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

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

GRANTOR:

RIVERVIEW FARMS, LLC,
a Colorado limited liability company

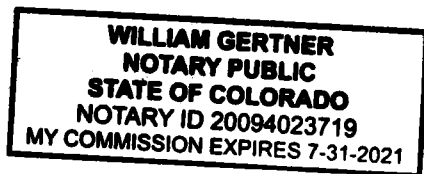
By: Mike Groves
Mike Groves, Manager

STATE OF COLORADO)
) ss.
COUNTY OF Maryland)

The foregoing instrument was acknowledged before me this 19th day of March, 2019, by Mike Groves, as Manager of Riverview Farms, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 7-31-2021
William Gertner
Notary Public



GRANTOR:

RIVERVIEW FARMS, LLC,
a Colorado limited liability company

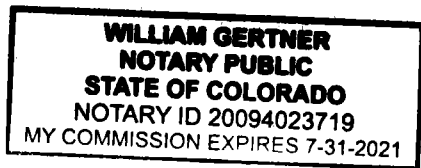
By: Pat Groves
Pat Groves, Manager

STATE OF COLORADO)
) ss.
COUNTY OF Montezuma)

The foregoing instrument was acknowledged before me this 19th day of March, 2019,
by Pat Groves, as Manager of Riverview Farms, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: 7-31-2021



[Signature]
Notary Public

GRANTEE:

COLORADO OPEN LANDS,
a Colorado non-profit corporation

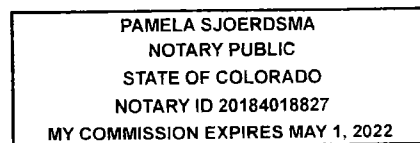
By *Anthony P. Caligiuri*
Anthony P. Caligiuri, President

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 18th day of March, 2019, by
Anthony P. Caligiuri as President of Colorado Open Lands, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires: May 1, 2022



Pamela Sjoerdsma
Notary Public

EXHIBIT A
Legal Description of the Property
(3 Pages)

PARCEL 1:

A PARCEL OF LAND IN SECTION 13, TOWNSHIP 4 NORTH, RANGE 61 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS COMMENCING AT THE N 1/4 CORNER OF SAID SECTION 13 (AND CONSIDERING THE NORTH LINE OF THE NW 1/4 AS BEARING S 87° 14' 00" W WITH ALL OTHER BEING RELATIVE THERETO);

THENCE S 87° 41' 00" W ALONG SAID NORTHLINE 2596.82 FEET TO THE NW CORNER OF SAID SECTION 13;

THENCE S 00° 26' 32" E, ALONG THE WEST LINE OF SAID NW 1/4 2631.25 FEET TO THE W 1/4 CORNER OF SAID SECTION 13;

THENCE S 00° 12' 08" E ALONG THE WEST LINE OF THE SW 1/4 OF SAID SECTION 13, A DISTANCE OF 486.69 FEET, MORE OR LESS, TO A POINT ON THE NORTH BANK OF THE JACKSON LAKE INTAKE;

THENCE ALONG SAID NORTH BANK N 69° 14' 22" E, 1393.25 FEET, MORE OR LESS, TO THE SE CORNER OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 13;

THENCE ALONG SAID NORTH BANK N 59° 12' 29" E, 1507.30 FEET, MORE OR LESS, TO A POINT ON THE EAST LINE OF SAID NW 1/4;

THENCE N 00° 43' 47" W, ALONG SAID EAST LINE, 1957.52 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THOSE PORTIONS THEREOF CONVEYED BY WILLIAM E DAY TO THE SOUTH PLATTE LAND, RESERVOIR AND IRRIGATION COMPANY IN QUIT CLAIM DEED RECORDED AUGUST 9, 1902 IN BOOK 163 AT PAGE 224.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF LYING SOUTH OF THE RIGHT OF WAY OF THE INLET DITCH TO THE JACKSON LAKE RESERVOIR AS THE RIGHT OF WAY IS DESCRIBED IN QUIT CLAIM DEED FROM WILLIAM E DAY TO THE SOUTH PLATTE LAND, RESERVOIR AND IRRIGATION COMPANY RECORDED AUGUST 9, 1902 IN BOOK 163 AT PAGE 224.

ALSO

ALL THAT PART OF SECTION 14, TOWNSHIP 4 NORTH, RANGE 61 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE N 1/4 CORNER OF SAID SECTION 14 AND (CONSIDERING THE NORTH LINE OF THE NE 1/4 AS BEARING N 88° 58' 49" W, WITH ALL OTHER BEARINGS BEING RELATIVE THERETO);

THENCE ALONG THE FOLLOWING DISTANCES AND BEARINGS; S 35° 50' 00" W, 617.4 FEET;

THENCE S 29° 27' 37" W, 582.25 FEET;

THENCE S 11° 9' 03" W, 532.77 FEET;

THENCE S 05° 39' 27" E, 556.98 FEET;

THENCE S 22° 25' 54" E, 496.58 FEET;

THENCE S 39° 35' 37" E, 1161.79 FEET TO A POINT ON THE NORTH BANK OF THE JACKSON LAKE INTAKE;

THENCE ALONG SAID NORTH BANK THE FOLLOWING DISTANCES AND BEARINGS; N 77° 49' 48" E, 775.0 FEET;

THENCE N 86° 14' 26" E, 1683.0 FEET, MORE OR LESS, TO A POINT ON THE EAST LINE OF THE SE 1/4 OF SAID SECTION 14;

THENCE N 00° 12' 08" W ALONG SAID EAST LINE 486.7 FEET, MORE OR LESS, TO THE E 1/4 CORNER OF SAID SECTION 14;

THENCE N 00° 26' 32" W ALONG THE EAST LINE OF THE NE 1/4 OF SAID SECTION 14, A DISTANCE OF 2631.25 FEET TO THE NE CORNER OF SAID SECTION 14;

THENCE N 88° 58' 49" W ALONG THE NORTH LINE OF SAID NE 1/4 A DISTANCE OF 2649.19 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THOSE PORTIONS THEREOF CONVEYED BY WILLIAM E. DAY TO THE SOUTH PLATTE LAND, RESERVOIR AND IRRIGATION COMPANY IN QUIT CLAIM DEED RECORDED AUGUST 9, 1902 IN BOOK 163 AT PAGE 224.

ALSO EXCEPTING THEREFROM ANY PORTION THEREOF LYING SOUTH OF THE RIGHT OF WAY OF THE INLET DITCH TO THE JACKSON LAKE RESERVOIR AS THE RIGHT OF WAY IS DESCRIBED IN QUIT CLAIM DEED FROM WILLIAM E. DAY TO THE

SOUTH PLATTE LAND, RESERVOIR AND IRRIGATION COMPANY RECORDED
AUGUST 9, 1902 IN BOOK 163 AT PAGE 224.

PARCEL 2: (EASEMENT)

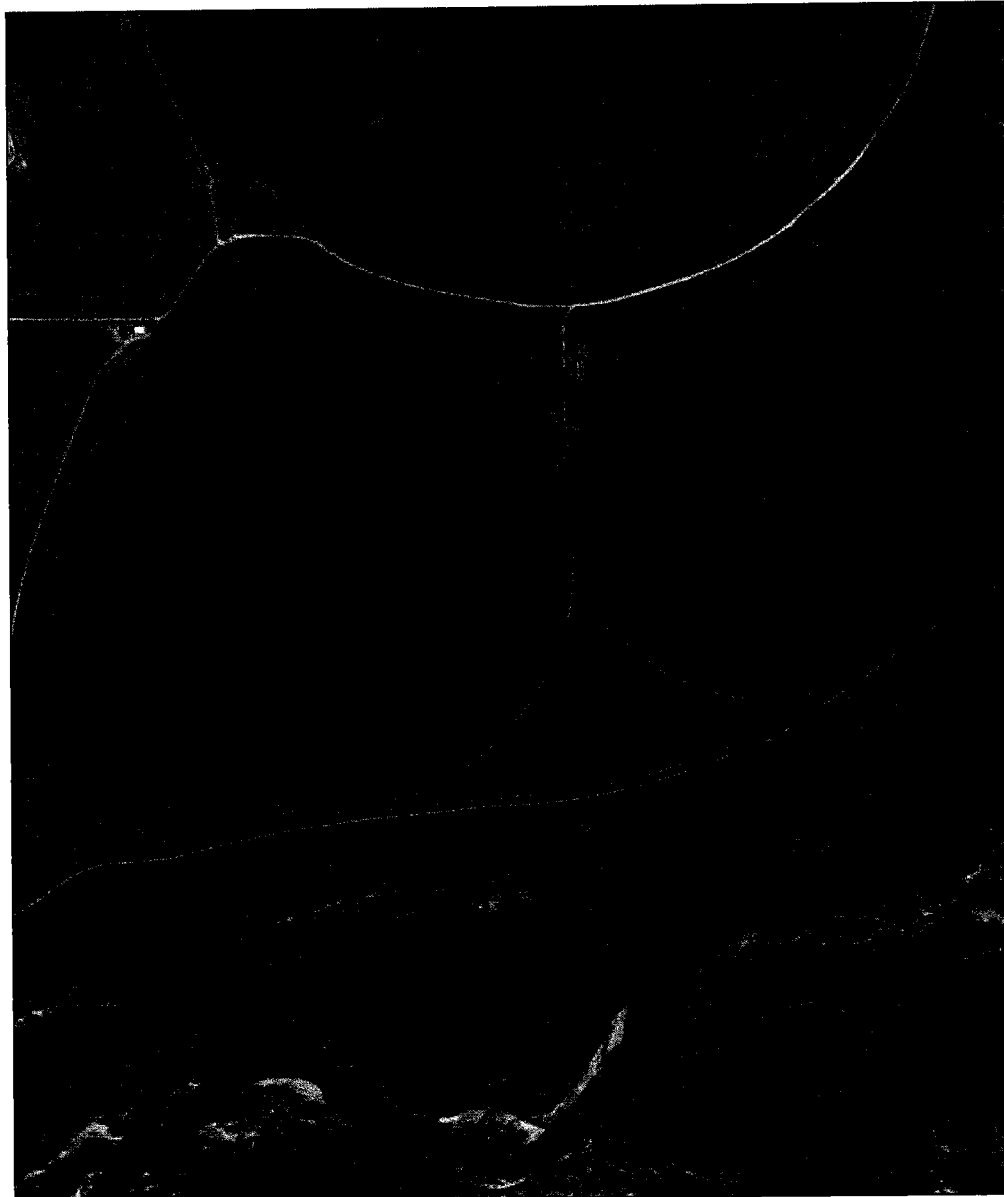
EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE NORTH 30 FEET OF
THE NW 1/4 OF SECTION 12, AND THE NORTH 30 FEET OF THE NE 1/4 OF SECTION 11
AND THE EAST 30 FEET OF THE W 1/2 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE
61 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO

PARCEL 3: (EASEMENT)

EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE NORTH 30 FEET OF
THE NE 1/4 OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 61 WEST OF THE 6TH P.M.,
COUNTY OF WELD, STATE OF COLORADO

EXHIBIT B

Map of the Property



Riverview Farms - Aerial Imagery Map
WELD COUNTY

Scale 1:10,000
Date 1/17/2017

0 0.05 0.1 0.2 Miles
|-----|-----|-----|

Legend



-  4-acre Building Envelope
-  Boundary

EXHIBIT C**Water Rights**

1. An undivided individual interest in the water rights and augmentation plan described in the decree of the Water Court for Water Division No. 1 entered in Case No. 89CW27 on April 30, 1996, which interest shall consist of 39.6% of the first 1,275 acre feet of recharge credits available under said augmentation plan, up to but not to exceed 505 acre feet in any year, with all its appurtenances; and together with an interest in the following "Agreements" concerning the operation, maintenance, and use of water rights and augmentation plan: 1) "Agreement" dated March 4, 1994 which is unrecorded, between Sublette Land and Cattle Company and Walter Thomas Jones and John Edward Jones; 2) "Memorandum of Agreement" dated April 10, 1995 and recorded in the records of Morgan County, Colorado on April 17, 1995 in Book 880 at page 22; 3) "Agreement" dated July 5, 1994 and recorded in the records of Weld County, Colorado on July 14, 1994 in Book 1450, F2047.
2. All water rights and all wells and equipment used for the irrigation of said land including, but not limited to, Well No. 1, Permit No. 9393F, Priority Date August 4, 1965, adjudicated December 31, 1972, in Case No. W-2929 A-34 in the State of Colorado, at a pumping rate not to exceed 977 GPM to irrigate a maximum of 160 acres; also Well No. 2, Permit No. 9393F, Priority Date May 31, 1975, adjudicated December 31, 1972, in Case No. 89CW027 in the State of Colorado; and also adjudicated in Case No. 97CW169 in the State of Colorado, at a pumping rate not to exceed 1,184 GPM to irrigate a maximum of 180 acres.

EXHIBIT D**Sample Notice of Transfer of Property**

To: Colorado Open Lands ("Grantee")
 From: **[Insert name of fee owner]** ("Grantor")

Pursuant to Section 15 (Transfer of Property) of the Deed of Conservation Easement recorded **[date]** under reception number _____, Grantee is hereby notified by Grantor of the transfer of the fee simple interest in the subject Property legally described in **Exhibit A** attached hereto effective **[insert date of closing]** to **[insert name of new Grantor]**, who can be reached at **[insert name, legal address, phone and fax number]**. Also pursuant to Section 15 (Transfer of Property) of the aforementioned Deed of Conservation Easement, a copy of the new ownership deed is attached.

GRANTOR:

By: _____
 Title: _____

STATE OF COLORADO)
) ss.
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 201__, by _____ as _____ of _____.

Witness my hand and official seal.

My commission expires: _____

 Notary Public

Date: _____

Expires _____