

**DEED OF CONSERVATION EASEMENT****JACKSON RANCH 2020**

Pursuant to the requirements of Section 17 (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  $\frac{1}{4}$  of 1% of the sale price to Grantee and notify Grantee.

NOTICE: THIS PROPERTY INTEREST HAS BEEN ACQUIRED IN PART WITH FUNDS PROVIDED IN PART BY GRANT # 20103 FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO TRUST FUND (the "**BOARD**"). THIS DEED OF CONSERVATION EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE AND OTHER CONSERVATION VALUES. THE BOARD HAS FOUND THAT THE ADOPTION OF THESE RESTRICTIONS IS IN THE PUBLIC INTEREST.

NOTICE: THIS PERPETUAL 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 THAT NEGATIVELY AFFECT THE AGRICULTURAL USES AND CONSERVATION VALUES OF THE PROPERTY (THE "**PURPOSE**"). THIS DEED OF CONSERVATION EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE, AGRICULTURAL, AND OTHER CONSERVATION VALUES, WHICH IS ADMINISTERED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE NATURAL RESOURCES CONSERVATION SERVICE ("**NRCS**" or "**UNITED STATES**"). BY VIRTUE OF ITS FUNDING OF THE ACQUISITION OF THIS CONSERVATION EASEMENT, THE UNITED STATES HAS ACQUIRED AN INTEREST IN THIS CONSERVATION EASEMENT, INCLUDING A RIGHT OF ENFORCEMENT AND CERTAIN OTHER RIGHTS AND ASSURANCES SPECIFICALLY SET FORTH HEREIN. A COPY OF THE COOPERATIVE AGREEMENT IS KEPT ON FILE AT THE OFFICE OF NRCS AS SET FORTH BELOW, AND AT THE OFFICES OF COLORADO OPEN LANDS SET FORTH BELOW.

THIS DEED OF CONSERVATION EASEMENT ("Deed") is granted on this 12<sup>th</sup> day of **March, 2021**, by **ALFRED VAUGHN JACKSON** and **SUE ANN JACKSON** (together the "**Grantor**"), whose address is PO Box 39, Manassa, CO 81142, 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**").

The designations "Grantor" and "Grantee" refer to Grantor and Grantee and their respective

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successors and assigns. Grantor and Grantee may hereinafter be referred to individually as a “Party” or collectively as the “Parties”. The terms “Easement,” “Deed,” “conservation easement,” “Deed of Conservation Easement,” and “Deed of Conservation Easement in gross” refer to the immediately vested interest in real property defined by Colorado Revised Statutes §§38-30.5-101 *et seq.*, and this legal document, consisting of the rights and restrictions enumerated herein, by which said Easement is granted.

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

- Exhibit A: Legal Description of the Property
- Exhibit A-1: Description of Building Envelopes
- Exhibit B: Map of the Property
- Exhibit C: 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 433 acres of land, together with existing improvements (as further described in Section 8, Property Improvements, of this Deed), water and mineral rights owned by Grantor associated with or appurtenant to the property, located in Conejos County, State of Colorado (“**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.
- 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.), is certified to hold conservation easements for which a state tax credit is claimed by the State of Colorado’s Division of Conservation as outlined in C.R.S. §12-15-104 and in Rule 2.1 of the Code of Colorado Regulations, Qualifications for Certification to Hold Conservation Easements (4 CCR 725-4, Rule 2.1), for the current year. Grantee is also accredited by the Land Trust Accreditation Commission, a national accreditation program sponsored by the Land Trust Alliance, at this time. Further, Grantee’s mission is to preserve the significant open lands and natural heritage of Colorado through private and public partnerships, innovative land conservation techniques and strategic leadership, and it possesses the resources and commitment to protect and defend the conservation purposes of this grant.
- 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 as defined below, by limiting nonagricultural uses that negatively affect the agricultural uses and

conservation values of the Property (the “Purpose”).

- 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 hosts a two-mile long section of the San Antonio River which creates a significant ribbon of riparian habitat. Subsurface water spreads across the San Antonio floodplain and feeds the wet meadow grasses and cottonwood galleries making this a vital migration corridor for a variety of species. The Property provides habitat for a variety waterfowl and wading birds who use the river to rest and feed as well as to nest in the dense grasses. Numerous songbirds nest in the willow habitats along the river, including the southwestern willow flycatcher. Deer and elk also use the ranch to winter over as they move down from the Sangre’s. Jackson Ranch flanks the newly named San Luis Valley Conservation Area, whose habitat plan is designed to protect wildlife and wetland habitat in southern Colorado and northern New Mexico. This project helps meet those objectives. It supports riparian forests and wetlands, irrigated hayfields, and sagebrush shrublands that provide habitat for elk, mule deer, black bear, wild turkey, and numerous small mammal and avian species. The Property provides winter range for elk, mule deer, and bald eagles.
- 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.

**Scenic Enjoyment.** 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. Conserving the Jackson Ranch property will help maintain the scenic character of the area. The entire Conejos River corridor is beautiful, but this area is one of the most spectacular because the vast majority of it remains as flood-irrigated ranchland. With its ranches, wetlands, rivers, foothills of the San Juan Mountains to the West, and the San Luis Hills and 14,000-foot peaks of the Sangre de Cristo Mountains to the east, the ranch has stunning views. The property lies just east of the small town of Manassa.

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The Los Caminos Antiguos Scenic and Historic Byway (highway 142) is named in recognition of the old pathways that wound through the southern half of the San Luis Valley. Los Caminos Antiguos is one of only 26 designated byways in Colorado and the Jackson Ranch is visible from this scenic and historic byway.

Visitors from around the world venture into the area to experience the culture and its many artisan works such as the Stations of the Cross and the historic San Acacio and Antonito Catholic Chapels, two of the oldest churches in Colorado. Antonito is also home to the Cumbres & Toltec Scenic Railroad, a traditional narrow-gauge railway. The town of Manassa is known for its Pioneer Days Festival, where folks from all over the nation travel to enjoy the historic agriculture, scenic beauty and visit the home of Jack Dempsey, better known as the Manassa Mauler. During this 4-day event the town sees its population of 990 residents, boom to 12,000.

In addition, the property provides unfettered views to the Bureau of Land Management's San Luis Hills Area of Critical Environmental Concern and San Luis Hills Wilderness Study Area.

***Agriculture.*** The Property has traditionally been used for agriculture and this use is continued through the production of hay from irrigated fields and cattle grazing. Originally homesteaded in 1888, the land has been worked by the Jackson family for 4 generations. The Property has important water rights in the Conejos River irrigation system. Significant historic agricultural lands are irrigated by a system of earthen surface ditches, which are gravity fed by mountain snow runoff from high in the San Juan Mountains. This Property and its associated water rights are important to its long-term productivity and regional irrigation. Agricultural use of the Property is compatible with other land use in the vicinity, as adjacent properties are also used for agricultural production. Current agricultural production on the Property consists of irrigated hay production and livestock grazing. This use is compatible with other land use in the area. 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).

***Clearly Delineated Government Conservation Policy.*** Protection of the Property furthers the specific objectives of a clearly delineated government conservation policy. The Conejos County Comprehensive Plan Environmental Resources section states that:

- ER-12 Conejos County shall endeavor to protect all identified wetland areas of the county, in recognition of their importance in maintaining water quality, wildlife habitat, flood protection, and other critical environmental functions. Protecting Jackson Ranch will ensure the long-term viability of the wetlands within its boundary.

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- ER-13 Conejos County shall endeavor to protect all areas identified as highest priority on the Significant Wildlife Habitat Overlay Map, which is adopted by reference as part of the Master Plan. Jackson Ranch sits within the Significant Wildlife Habitat area.
- ER-13-s4 Riparian vegetation shall be preserved whenever possible through the use of setbacks, clustering or other techniques, in order to preserve wildlife habitat.
- ER-19 Protect prime agricultural land from development. Jackson Ranch is part of the mosaic of prime agricultural lands in Conejos County.
- ER-19-s2 The practice of agricultural protection techniques such as purchase of development rights, voluntary donation of conservation easements, land trusts, and related mechanisms, which preserve the rural character and agricultural economy of Conejos County shall be encouraged.
- Conejos County Comprehensive Plan: Grown Management Section states that: Agriculture shall be recognized as an important economic, cultural, and environmental resource value-provider for the County (GM7). Conserving Jackson Ranch ensures that it remains a critical part of the Agricultural economy.
- Conejos County Comprehensive Plan: Grown Management Section states that: The protection of agricultural land and water in Conejos County shall be based on a combination of incentives, voluntary participation, and measures to strengthen the viability of agriculture (GM9). Jackson Ranch is a voluntary conservation easement.
- Conejos County Comprehensive Plan: Grown Management Section states that: To retain agriculture and the resulting open space, environmental quality, wildlife habitat, etc., afforded by it, it is necessary to adopt programs that will help agriculture be economically viable and reasonably competitive with other potential uses of agricultural land.

The Rio Grande Basin Implementation Plan is a key subcomponent of Colorado's Water Plan, developed by the Colorado Water Conservation Board in 2015. The Rio Grande Basin Implementation Plan outlines the steps the Rio Grande Basin will need to take to ensure long-term sustainability of all the basins natural resources. The conservation of Jackson Ranch is a voluntary, incentive-based conservation of private land. By working with willing landowners, conservation easements secure key lands from future development and tie water rights to the land preventing their sale. This is especially effective on sites where agriculture and important wildlife habitat converge. Protecting critical water sources on private land is a key objective in the Basin. Protection of these wetland habitat types can help ensure proper drying and flooding cycles, important to sustaining agriculture, wetlands and wildlife. Rio Grande Basin Roundtable 2015, at 5.2.4.4 – 103-105.

***Significant Public Benefit.*** There is a foreseeable trend of intense development and water exportation in the vicinity of the Property in the near future; the town of Manassa

has seen increased residential and recreational development at a rate that has more than tripled. As such, there is a strong likelihood that the Property would be developed if left unprotected, which would in turn lead to or contribute to the degradation of the scenic and natural character of the surrounding area. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values. The Property lies within the active floodplain of the Rio San Antonio and the Conejos Rivers. The Sego Springs State Wildlife Area lies to the northwest, the newly designated Brownie Hills State Wildlife area lies to the east and another conservation easement lies directly adjacent to the north boundary of the Property.

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 Conejos County, and the State of Colorado.

**E. State Policy Concerning Conservation Easements.** Funding for this project has been provided in part by the Great Outdoors Colorado Trust Fund program. The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and the Board of the Great Outdoors Colorado Trust fund, by adopting and administering competitive grants application and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state’s wildlife, park, river, trail and open space heritage, to protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.

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

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

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

**F. Other Policy Concerning Conservation Easements.** The Conejos County Development and Open Space Plan (2010 edition) maps the Property within an area having ‘High Conservation Value’. The Property is specifically described as a Priority Project for Private Conservation as part of lands that protect our historic agricultural identity, are priority conservation areas, as they are agricultural parcels that mimic natural systems, and support outstanding wildlife and ecological values.

The government of the United States provides support for agriculture conservation through the Agricultural Conservation Easement Program, Title II, Subtitle F, Section 2601-2605 of the Agricultural Improvement Act of 2018, Public Law 115-334, which authorizes the Agricultural Conservation Easement Program 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.

The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. §§ 4201, *et seq.*, the purpose of which is “to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland.”

- G. 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**”).
- H. Charitable Donation.** Grantor intends to sell a portion of the property interest conveyed by this Deed to the Grantee, which is defined as a sale to Grantee at a price less than the fair market value of the conservation easement interest. Grantor intends to donate to the Grantee the difference between the fair market value of the conservation easement interest and the consideration paid by Grantee, as a charitable donation of a qualified conservation contribution 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, net neutral impact, or no impact on the Conservation Values as determined by Grantee in

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its sole discretion. Nothing in this Deed is intended to compel a specific act on or use of the Property other than the preservation and protection of the Conservation Values.

2. ***Conveyance of Easement.*** Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, this Easement, an immediately vested interest in real property, in perpetuity. 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, any and all of whom 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, (and to NRCS under Section 3.3): and its employees and its representatives
  - 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 11 (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 12 (Monitoring) of this Deed, and to enforce the terms of this Deed pursuant to Section 13 (Enforcement) of this Deed. NRCS is conveyed the right to enter upon the Property to exercise the Rights of the United States under Section 13.4 (United States Right of Enforcement) of this Deed.
  - 3.4. To have all Development Rights as defined in Section 18 (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, Grantor retains the right to practice agriculture, subject to the terms of this Deed.
5. ***Documentation of Present Conditions.*** The baseline conditions of the Property are set forth in a Present Conditions Report, a copy of which is maintained in the files of the Grantee. The Present Conditions Report, dated July 20, 2020, was prepared by Wetland Dynamics 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. 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.

6. ***Preserving Agricultural Uses.*** No uses will be allowed that violate Federal laws, including Federal drug laws, or that decrease the Easement's protection for the Purpose. Allowed uses of the Property include the specific uses allowed in Section 9 (Resource Management) and Section 10 (Restricted Acts and Uses).
7. ***Limitations on Nonagricultural Uses.*** Any activities not consistent with the Purpose are prohibited. The provisions of this Easement limit the types of agricultural operations that can occur on the Property to those that promote the Purpose. Activities within Section 9 (Resource Management) and Section 10 (Restricted Acts and Uses) that are not consistent with the Purpose are specifically prohibited, subject to the qualifications stated in those sections.
8. ***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 conveyed to Grantee by this Easement. The percent of impervious surfaces on the Property as of the date of this Deed is documented in the Present Conditions Report.

Utility Improvements, as defined in Section 8.2.4, to serve approved buildings or structures, including on-farm energy structures allowed under Section 8.2.4.5, that neither individually nor collectively have an adverse impact on the Purpose may be located outside of the Building Envelopes with Grantee approval pursuant to Section 25 (Grantee's Approval) of this Deed provided that the Utility Improvements or Agricultural Improvements are subject to the terms in Section 8.1 and Section 8.2.4.

- 8.1. ***Residential, Nonresidential Improvements and Agricultural Improvements.*** The construction, placement, replacement, enlargement, maintenance and repair of residential and nonresidential structures, whether temporary or permanent, 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 houses, cabins, guest houses, mobile homes, tiny homes and any space attached to a house, 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 and not intended for human habitation and include, but are not limited to, barns, pole barns, sheds, arenas, greenhouses, season extenders/hoop houses, and free-standing garages. For

purposes of this Deed, “**Agricultural Improvements**” are defined as Nonresidential Improvements that are used specifically for agricultural purposes.

8.1.1. ***Building Envelopes.*** There shall be three (3) building envelopes permitted on the Property (individually referred to herein as “**Building Envelope 1**”, “**Building Envelope 2**” and “**Building Envelope 3**” and collectively referred to herein as the “**Building Envelopes**”). All Residential Improvements and Nonresidential Improvements (with the exception of Agricultural Improvements permitted by Section 8.1.2 below) must be located within the Building Envelopes, containing approximately 10 acres and described or shown in the sections below and in Exhibit B, which is appended to and made a part of this Easement. The Existing Structures, as defined below, are permitted in their current location and at their current size. The Grantor may repair and maintain the Existing Structures without further consent of Grantee.

8.1.1.1. ***Building Envelope 1.*** Building Envelope 1 consists of five (5) acres. The location of Building Envelope 1 is legally described on **Exhibit A-1** and generally depicted on **Exhibit B**. On the date of this Deed, the following improvements are located within Building Envelope 1: 1 single family residence, 2 agricultural buildings, 1 storage building and corrals with load out (the “**Existing Structures**”) consisting of 11,000 square feet of Footprint.

8.1.1.2. Grantor may construct, place, replace, or enlarge Residential or Nonresidential Improvements within Building Envelope 1 subject to the limitation on Impervious Surfaces and the following limitations.

8.1.1.2.1. The maximum number of Residential Improvements (including attached appurtenances) shall not exceed one (1).

8.1.1.2.2. The maximum Footprint, as defined below, for the Residential Improvement shall not exceed five thousand (5,000) square feet.

8.1.1.2.3. The maximum Height, as defined below, for each Residential Improvement shall not exceed thirty-five (35) feet.

8.1.1.2.4. The maximum Footprint for each Nonresidential Improvement shall not exceed ten thousand (10,000) square feet, and the total cumulative Footprint for all Nonresidential Improvements shall not exceed thirty thousand (30,000) square feet.

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- 8.1.1.2.5. The maximum Height for each Nonresidential Improvement shall not exceed thirty-five (35) feet.
- 8.1.1.2.6. The total cumulative Footprint for all Residential and Nonresidential Improvements shall not exceed fifty-five thousand (55,000) square feet.
- 8.1.1.2.7. Improvements in excess of the foregoing require Grantee approval pursuant to Section 25 (Grantee's Approval) of this Deed.
- 8.1.1.2.8. Unenclosed improvements having no Footprint, such as corrals or hunting blinds, are permitted if consistent with the Purpose.
- 8.1.1.3. **Building Envelope 2.** Building Envelope 2 consists of four and one-half acres (4.5) acres. The location of Building Envelope 2 is legally described on **Exhibit A-1** and generally depicted on **Exhibit B**. On the date of this Deed, one (1) improvement is located within Building Envelope 2: Agricultural building and farm equipment storage (the "**Existing Structures**") consisting of 5,000 square feet of Footprint.
- 8.1.1.4. Grantor may construct, place, replace, or enlarge Nonresidential Improvements within Building Envelope 2 subject to the limitation on Impervious Surfaces and the following limitations.
  - 8.1.1.4.1. Residential Improvements are prohibited within Building Envelope 2.
  - 8.1.1.4.2. The maximum Footprint for each Nonresidential Improvement shall not exceed ten thousand (10,000) square feet, and the total cumulative Footprint for all Nonresidential Improvements shall not exceed thirty thousand (30,000) square feet.
  - 8.1.1.4.3. The maximum Height for each Nonresidential Improvement shall not exceed thirty-five (35) feet.
  - 8.1.1.4.4. Improvements in excess of the foregoing require Grantee approval pursuant to Section 25 (Grantee's Approval) of this Deed.
  - 8.1.1.4.5. Unenclosed improvements having no Footprint, such as corrals or hunting blinds, are permitted if consistent with the Purpose.

8.1.1.5. **Building Envelope 3.** Building Envelope 3 consists of one-half (½) acre. The location of Building Envelope 3 is legally described on **Exhibit A** and generally depicted on **Exhibit B**. On the date of this deed there are no improvements within this building envelope. Building Envelope 3 will be the site of **a potential single-family residence and 1 Garage**.

8.1.1.6. Grantor may construct, place, replace, or enlarge Residential or Nonresidential Improvements within Building Envelope 3 subject to the limitation on Impervious Surfaces and the following limitations.

8.1.1.6.1. The maximum number of Residential Improvements (including attached appurtenances) shall not exceed one (1).

8.1.1.6.2. The maximum Footprint, as defined below, for the Residential Improvement shall not exceed five thousand (5,000) square feet.

8.1.1.6.3. The maximum Height, as defined below, for each Residential Improvement shall not exceed thirty-five (35) feet.

8.1.1.6.4. The maximum Footprint for each Nonresidential Improvement shall not exceed two thousand (2,000) square feet for the one permitted garage, and one thousand (1,000) square feet for the one permitted storage building, and the total cumulative Footprint for all Nonresidential Improvements shall not exceed three thousand (3,000) square feet.

8.1.1.6.5. The maximum Height for each Nonresidential Improvement shall not exceed thirty-five (35) feet.

8.1.1.6.6. The total cumulative Footprint for all Residential and Nonresidential Improvements shall not exceed eight thousand (8,000) square feet.

8.1.1.6.7. Improvements in excess of the foregoing require Grantee approval pursuant to Section 25 (Grantee's Approval) of this Deed.

8.1.1.6.8. Unenclosed improvements having no Footprint, such as corrals or hunting blinds, are permitted if consistent with the Purpose.

8.1.2. ***Outside of the Building Envelopes.*** Agricultural improvements that neither individually nor collectively have an adverse impact on the Purpose of the Easement, may be built outside of the Building Envelopes with prior written approval of the Grantee pursuant to Section 25 (Grantee's Approval), provided that the Agricultural Improvements are consistent with the ALE Plan (defined in Section 9.3) and subject to the following specific terms. On the date of this Deed, no Agricultural Improvements are located outside of the Building Envelopes.

8.1.2.1. ***Construction Limitations.*** Grantor may construct, place, replace or enlarge Agricultural Improvements outside the Building Envelopes subject to the following limitations on Impervious Surfaces and the following limitations

8.1.2.1.1. The maximum number of Agricultural Improvements shall not exceed one (1).

8.1.2.1.2. The maximum Footprint for the one permitted Agricultural Improvement shall not exceed three hundred (300) square feet.

8.1.2.1.3. The maximum Height for each Agricultural Improvement shall not exceed thirty-five (35) feet.

8.1.2.1.4. Agricultural Improvements in excess of the foregoing require Grantee approval pursuant to Section 25 (Grantee's Approval) of this Deed.

8.1.2.1.5. Unenclosed improvements having no Footprint, such as corrals or hunting blinds, are permitted if consistent with the Purpose.

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

8.1.4. ***Notice.*** Prior to the placement, construction, replacement or enlargement of any Residential Improvement, Nonresidential Improvement and/or Agricultural Improvement as permitted by Section 8.1.1, 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 location, Footprint and Height of the proposed improvement in sufficient detail to allow Grantee to evaluate the consistency of the proposed improvement with this Section.

8.1.5. **Definition of Footprint.** For purposes of this Deed, Footprint is defined as the total ground area occupied by a Residential Improvement or Nonresidential Improvement, 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”).

8.1.6. **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 that either the natural grade or the finished grade, whichever is lower in elevation.

8.2. **Other Improvements.**

8.2.1. **Roads.** For purposes of this Deed, Improved Roads shall be defined as any road, driveway or parking area that is graded, or has a surface other than the existing natural earthen material (“Improved Roads”) and Unimproved Roads shall be defined as any track greater than three (3) feet wide where the existing natural earthen material is the driving surface, and is not graded (“Unimproved Roads”).

8.2.1.1. **Within the Building Envelopes.** Construction, maintenance, paving (e.g. concrete, asphalt, or other impermeable material) or otherwise surfacing of all Improved and Unimproved Roads is permitted within the Building Envelopes.

8.2.1.2. **Outside of the Building Envelopes.** Maintenance of existing Improved and Unimproved Roads located outside of the Building Envelopes and 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, with Grantee approval pursuant to Section 25 (Grantee’s Approval), and necessary to carry out the agricultural operations or other allowed uses on the Property.

New Improved and Unimproved Roads may be constructed outside of the Building Envelopes if they are approved in advance by Grantee pursuant to Section 25 (Grantee’s Approval), within impervious surface limits, and are necessary to carry out the agricultural operations or other allowed uses on the Property. Any new Improved or Unimproved Roads must be constructed in a location and manner that is consistent with the Purpose.

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8.2.1.2.1. **Courses.** Off Road courses for snowmobiles, all-terrain vehicles, motorcycles, bicycles, or any motorized or nonmotorized vehicles are prohibited.

8.2.1.2.2. **Granting of Easements for Utilities and Roads.** The granting or modification of easements for utilities and roads is prohibited when the utility or road will adversely impact the Purpose of the Easement as determined by the Grantee in consultation with the Chief of NRCS

8.2.2. **Fences.** Fences may be maintained and replaced, and new fences installed if they are necessary for agricultural operations or other allowed uses on the Property or to mark boundaries of the Property. Maintenance, replacement, and installation of fences must be conducted in a manner consistent with the Purpose.

8.2.3. **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. Grantee shall erect one or more signs visible from the nearest public roadway, or from an alternative location approved by the Board, identifying the Board's Grant and investment in this Property to the public.

8.2.4. **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 may be enlarged or constructed on the Property, subject to the restrictions below and provided that they are consistent with the Purpose.

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

- 8.2.4.2. ***Outside of the Building Envelopes.*** Grantor shall not enlarge or construct Utility Improvements outside of the Building Envelopes 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 Purpose, pursuant to Section 25 (Grantee's Approval) of this Deed. Any permitted Utility Improvement shall be no more than thirty-five (35) feet in Height.
- 8.2.4.3. ***Granting of Easements for Utilities.*** The granting or modification of easements for utilities is prohibited when the utility will adversely impact the Purpose of the Easement as determined by the Grantee in consultation with the Chief of NRCS.
- 8.2.4.4. ***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 10.10 (Easements, Rights of Way or Other Interests) of this Deed.
- 8.2.4.5. ***Renewable Energy Generation System*** Renewable energy production is allowed for the purpose of generating energy for the agricultural and residential 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, consistent with the Purpose and in accordance with Section 8.2.4.2 and 8.2.4.3 of this Deed. Excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves pursuant to Section 25 (Grantee's Approval) may be sold, conveyed, or credited to a provider of retail electric service to the extent permitted by Colorado laws.
- 8.2.5. ***Water Improvements.*** The maintenance, replacement, and repair of existing non-domestic water improvements such as ponds, reservoirs, stock tanks, center pivot sprinklers, irrigation ditches, pipes, headgates, flumes, pumps, or wells is permitted. The construction of new water improvements or enlargement of existing water improvements, excluding ponds and reservoirs, is permitted provided that such activity is consistent with the Purpose 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 25 (Grantee's Approval) of this Deed. Any portion of the Property that is disturbed by the maintenance, replacement, 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.

- 8.2.6. **Miscellaneous Improvements.** Golf courses, sod farms, helicopter pads, and airstrips are prohibited. Towers are prohibited unless Grantee determines that the proposed tower is consistent with the Purpose, pursuant to Section 25 (Grantee's Approval) of this Deed or as otherwise expressly permitted by this Deed. Any permitted tower shall be no more than thirty-five (35) feet in Height.

9. **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 accordance with the provisions below and the Agricultural Land Easement Plan (defined below). The Agricultural Land Easement Plan shall be completed by the date of this Deed and shall be reviewed at least every five (5) years. If the Parties fail to update the Agricultural Land Easement Plan, the most recent Agricultural Land Easement Plan shall remain in full force and effect. Grantee shall provide the Agricultural Land Easement Plan to the Board.

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. Grantee shall determine whether said recommendations are consistent with the Purpose.

- 9.1. **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.

- 9.2. **Preserving Agricultural Uses.** The provisions of this Easement 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 and the Purpose of the Easement. No uses will be allowed that violate Federal laws, including Federal drug laws, or that decrease the Easement's protection for the Purpose of the Easement. Allowed uses of the Property include the specific uses allowed in this section 9, sections 8.4(i)-(iv) and the following activities, subject to the qualifications stated below:

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The production, processing, and marketing of agricultural crops and livestock are allowed provided these activities are conducted in a manner consistent with the terms of the Easement and the ALE Plan described in Section 9.3.

- 9.3. ***Agricultural Land Easement Plan.*** The Grantee shall prepare an Agricultural Land Easement Plan (the “ALE Plan”) in consultation with the Grantor and as needed NRCS. The Grantee agrees to update the ALE Plan, in consultation with the Grantor and as needed NRCS, in the event the agricultural uses or ownership of the Property change. The costs of updating the ALE Plan shall be borne by Grantor. A copy of the current ALE Plan is kept on file with the Grantee.

The ALE Plan shall describe the farm or ranch management system, describe the natural resource concerns, describe the conservation measures and practices a landowner may employ to address the identified concerns, and promote the long-term viability of the land to meet the Purpose of the Easement.

The ALE Plan shall include a conservation plan that complies with 7 CFR Part 12 pertaining to all highly erodible land on the Property. If the NRCS standards and specifications for highly erodible land are revised after the date of this Easement based on an Act of Congress, NRCS will work cooperatively with the Grantor and Grantee to develop and implement a revised conservation plan.

- 9.4. ***Timber.*** On a limited and localized basis, trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, and for domestic uses on the Property such as firewood and construction of permitted improvements. Tree thinning activities are permitted to maintain the character and nature of the wildlife habitat. Other timber harvesting activities shall be conducted in accordance with a forest management plan prepared by a professional forester at Grantor’s expense, provided that Grantee determines that said activities and management plan are consistent with the Purpose, pursuant to Section 25 (Grantee’s Approval) of this Deed. A copy of the forest management plan shall be provided to the Board prior to any timber harvesting activities on the Property.
- 9.5. ***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 25 (Grantee’s Approval) of this Deed.
- 9.6. ***Oil, Gas, or Mineral Exploration and Extraction.*** The mining or extraction, exploration, development, or removal from, on, under, in the Property or as associated with the Property using any surface mining, subsurface mining, or dredging method (“**Mineral Development**”) of soil, sand, gravel, rock, stone, decorative stone, gold and other rare earth elements, oil, natural gas, coalbed methane

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(including any and all substances produced in association therewith from coalbearing formations), hydrocarbon, fossil fuel, or any other mineral substance of any kind or description (collectively referred to as “**Minerals**”) owned by Grantor as of the date of this Deed or later acquired by Grantor (“**Grantor’s Minerals**”) is prohibited, except as stated below in Section 9.6.2 and Section 10.3.

9.6.1. **Ownership of Minerals.** As of the date of this Deed, Grantor owns all of the rights and interests in the Minerals and mineral rights located on, under, or in the Property or otherwise associated with the Property. Grantor shall not transfer or otherwise separate the rights or interests in and to any Minerals and mineral rights from the Property.

If a third party owns or leases the oil, natural gas, or any other mineral rights associated with the Property at the time this Deed is executed (“**Third Party Owner**”), and their 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 Owner is conducted in accordance with Section 9.6. Notwithstanding the foregoing, as of the date of this Deed, Grantor owns all of the rights and interests in the Minerals and mineral rights located on, under, or in the Property or otherwise associated with the Property.

9.6.2. **Mineral Development.** Subject to Grantee’s approval pursuant to Section 25 (Grantee’s Approval), Grantor’s Minerals may be removed from below the surface of the Property provided that Grantor shall not permit such subsurface access to disturb the subjacent and lateral support of the Property, and further provided that there is no surface occupancy on the Property, including but not limited to the location of all equipment, pumps, storage facilities, pipelines, roads, and any other infrastructure, or other activities necessary for extraction, storage, or transportation is located off the Property, extraction takes place off the Property, and that the method and means of extraction is consistent with the Purpose.

9.6.3. **Notice Related to Minerals.** Grantor agrees that by granting this Easement to Grantee, it has given Grantee a portion of its ownership 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 ownership interest does not include any right for Grantee to receive any income or royalties from exploration or development of Minerals. Grantee’s ownership interest requires that if Grantor is contacted verbally or in writing regarding the Minerals or creation of a Mineral Document (defined below), Grantor shall provide written notice, copy, or description to Grantee of said contact within ten (10) days.

9.6.3.1. **Definition of Mineral Document.** Grantor shall provide to Grantee notice and copy of any pooling agreement, unitization agreement,

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no-surface occupancy agreement, third party lease, or any instrument related to Minerals (“**Mineral Document**”) affecting the Property. Grantor and Grantee shall seek to enter into a no-surface occupancy agreement prior to Third Party Owner conducting mineral exploration or extraction.

9.6.3.2. **Approval of Mineral Document Required.** Grantor shall not enter into any Mineral Document, or amend or renew any existing Mineral Document, without Grantee approval pursuant to Section 25 (Grantee’s Approval) and NRCS 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 Document entered into or renewed after the date of this Deed is subordinate to the terms of this Deed and must incorporate by reference this Deed.

9.7. **Geothermal Resources.** Within the Building Envelopes, the development and use of geothermal resources is permitted without Grantee’s approval, provided that it is consistent with the Purpose. Outside the Building Envelopes, the development and use of geothermal resources is prohibited without Grantee approval pursuant to Section 25 (Grantee’s Approval).

9.8. **Recreation.** Low-impact recreational uses such as wildlife watching, hiking, cross-country skiing, hunting and fishing are permitted, provided they are consistent with the Purpose.

9.9. **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.

9.10. **Water Rights.** Pursuant to C.R.S. § 38-30.5-102, which authorizes the inclusion of “water rights beneficially used upon the land...owned by Grantor” in a conservation easement, the Property subject to this Easement includes any and all right, title and interest in and to the water rights described in **Exhibit C (“Water Rights”)**.

9.10.1. **Permitted Uses of Water Rights.** The Parties agree that the Water Rights are hereby dedicated and restricted exclusively to be used for the preservation and protection of the Conservation Values (“**Permitted Water Uses**”), and that Grantor shall continue to maintain their historic beneficial use. Notwithstanding the foregoing, Grantor reserves the right to enter into any

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leases or agreements for use of Water Rights off the Property, subject to the restrictions below.

9.10.1.1. 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 use of Water Rights off of the Property for the purposes of supporting the long-term local or regional irrigation by avoidance of buy and dry or avoidance of forced curtailment or other regulatory action, or to increase instream flows and/or water levels in streams, rivers, lakes reservoirs and aquifers to preserve or improve the natural environment of such water body(s). Such Water Agreement may allow the temporary use of Water Rights only within the upper Rio Grande basin for agricultural, environmental (including, without limitation, in-stream flow, wetland, piscatorial, and similar uses beneficial to preservation of wildlife, wildlife habitat and bio-diversity), use of the Water Rights off the Property.

9.10.1.2. Grantor shall not enter into any Water Agreement without Grantee approval pursuant to Section 25 (Grantee’s Approval) to ensure that said document is consistent with the Purpose and this Section and Grantor shall have the burden of demonstrating to Grantee that the proposed Water Agreement is consistent with the Purpose and that the Water Agreement is not in conflict with their water decree or ditch company bylaws. Grantee shall have the right to charge a fee to Grantor for time and costs associated with review of any proposed Water Agreement.

9.10.1.3. 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. Grantor may, in its sole discretion request that the Parties develop a Farm/Ranch Water Operations Plan. Such plan will assess the impact to the Conservation Values of application of less than full 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. The cost of a Farm/Ranch Water Operations Plan shall be borne by Grantor.

9.10.2. **Restrictions on Water Rights.** Grantor shall not sell or otherwise permanently separate the Water Rights from the Property. Grantor shall not encumber the Water Rights separately from the Property. Grantor shall not separately

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transfer the Water Rights from the Property, except on a temporary basis and as provided in Section 9.10.1. 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 25 (Grantee's Approval) of this Deed. 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 25 (Grantee's Approval) of this Deed.

9.10.3. ***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 also provide Grantee with copies of any reports or correspondence submitted to the State or Division Engineer or Water Commissioner. Grantor shall 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 of receipt thereof.

9.10.4. ***Abandonment of Water Rights.*** If the Water Rights appear on 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 Permitted Water Use, including a temporary use of the Water Rights off of the Property subject to the terms of Section 9.10.1; and (v) require Grantor to convey all or part of the Water Rights to Grantee for continued use on the Property or elsewhere in the same water district or elsewhere consistent with Grantee's mission. 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.

9.10.5. ***Ditch or Reservoir Company.*** C.R.S. §38-30.5-104(5) requires that, when a conservation easement encumbers a water right represented by shares in a mutual ditch or reservoir company, sixty (60) days notice must be given to said company before the conservation easement may be conveyed. This requirement has been fulfilled.

## **10. *Restricted Acts and Uses.***

10.1. Any activities inconsistent with the Purpose of the Easement are prohibited. The following activities are inconsistent with the Purpose of the Easement and are specifically prohibited, subject to the qualifications stated below.

10.2. ***Division of the Property.*** At the time of the conveyance of this Easement, the Property may consist of more than one (1) parcel for purposes of county tax assessment or may have been conveyed to Grantor by one (1) or more separate deeds. Notwithstanding the number of separate parcels describing or conveying the Property, the Property may be granted, sold, exchanged, devised, gifted, transferred, encumbered or otherwise conveyed in unified title as one (1) parcel only, subject to the provisions of this Deed. Separate conveyance of a portion of the Property or the division, subdivision, or de facto subdivision of the Property by legal or physical process (including, but not limited to, platting, testamentary division, or other process by which the Property is divided in ownership or in which legal or equitable title to different portions of the Property are held by different owners), into two or more parcels of land, or partial or separate interests (including, but not limited to, condominium interests, interval or time-share interests or the partition in-kind of undivided interests) is prohibited. Ownership of the single unit by joint tenancy or tenancy in common is permitted, consistent with Sections 34 (Joint and Several Liability) and 35 (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 unit.

10.3. ***Surface Alteration.*** Grading, blasting, filling, sod farming, earth removal, or any other activity that will disturb the soil surface of materially alter the topography, surface or subsurface water systems, or wetlands of the Property is prohibited, except for the following:

10.3.1. Dam construction is permitted pursuant to a plan approved by the Grantee pursuant to Section 25 (Grantee's Approval) to create ponds for agricultural uses, fire protection, or wildlife enhancement, including enhancement through wetland restoration, enhancement, or creation;

10.3.2. Erosion and sediment control is permitted pursuant to a plan approved by the Grantee pursuant to Section 25 (Grantee's Approval);

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10.3.3. Soil disturbance activities required in the construction of approved buildings, structures, roads, and utilities are permitted provided that the required alteration has been approved in writing by Grantee pursuant to Section 25 (Grantee's Approval) as being consistent with the Purpose of the Easement; and

10.3.4. Agricultural activities and related conservation activities conducted in accordance with the terms and conditions of this Easement and the ALE plan as described in Section 9.3 are permitted.

Such Surface Alteration must be (i) limited, localized and within a defined area on the Property; (ii) disturbing no more than one-half acre of the Property at one time; (iii) restored to a condition consistent with the Purpose once Surface Alteration is complete; and (iv) consistent with I.R.C. § 170(h) and the Treasury Regulations adopted pursuant thereto.

This entire Section 10.3 shall be interpreted in a manner that is consistent with I.R.C. § 170(h) and the Treasury Regulations adopted pursuant thereto.

10.4. ***Industrial or Commercial Activity.*** Industrial or commercial activities on the Property are prohibited except for the following:

10.4.1. Agricultural production and related uses in accordance with the terms and conditions of this Easement;

10.4.2. The sale of excess power generated in the operation of renewable energy structures and associated equipment or other energy structures that Grantee approves in writing as being consistent with the Purpose of the Easement and in accordance with the terms and conditions of this Easement;

10.4.3. Temporary or seasonal outdoor activities or events that do not harm the Purpose of the Easement; and

10.4.4. Commercial enterprises related to agriculture or forestry including but not limited to agritourism, processing, packaging, and marketing of farm products, farm machinery repair, farm wineries, and small-scale retail enterprises compatible with agriculture or forestry, including but not limited to cafés, shops, and studios for arts or crafts.

10.5. ***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 feeding or calving, or from leasing pasture for the grazing of livestock



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owned by others.

- 10.6. **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.
- 10.7. **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.
- 10.8. **Hazardous Materials.** The use and storage of Hazardous Materials (defined below) shall only be permitted in accordance with those laws. The use of any other materials is permitted in accordance with all applicable Environmental Law (defined below). Otherwise, the treatment, permanent storage, disposal or release of Hazardous Materials on, from or under the Property is prohibited.
- 10.9. **Motorized Vehicle Operation.** The operation of motorized vehicles for purposes associated with permitted acts on and uses of the Property is permitted provided that such operation is consistent with the Purpose.
- 10.10. **Easements, Rights of Way or Other Interests.** The conveyance or modification of an easement, right of way, Mineral Document or other similar interest is prohibited unless Grantee determines that the proposed conveyance or modification is consistent with the Purpose pursuant to Section 25 (Grantee's Approval) of this Deed. If such instruments involve roads or Utility Improvements, consultation with the Chief of NRCS is required, pursuant to Sections 8.2.1.2.2 and 8.2.4.3.
11. **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. Additionally, unless otherwise specified below, nothing in this Deed shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Grantor shall continue to be solely responsible 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:
- 11.1. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same. If for any reason Grantor fails to pay any taxes, assessments or similar requisite charges, Grantee may pay such taxes, assessments or similar requisite

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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.

### 11.2. *Liability.*

#### 11.2.1. *Grantor's Environmental Liability and Indemnification.*

11.2.1.1. ***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, the Board, 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, the Board 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 existence, generation, treatment, storage, use, disposal, deposit, transportation, release or threatened release of any Hazardous Materials on, at, across, beneath or from the Property, the existence of any underground storage tanks on 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, the Board or the United States to Grantor with respect to the Property or any restoration activities carried out by Grantee on the Property, nor will these activities by any means make Grantee, the Board, or the United States an owner or operator under CERCLA, defined in subsection 11.2.1.4 below; provided, however, that Grantee will be responsible

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for any Hazardous Materials contributed after this date to the Property by Grantee.

- 11.2.1.2. **“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.
- 11.2.1.3. **“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.
- 11.2.1.4. Notwithstanding anything in this Deed to the contrary, this Deed shall not impose any liability on Grantee, the Board or the United States for Hazardous Materials, nor does it make Grantee, the Board, or the United States an owner or operator of the Property, nor does it permit or require Grantee, the Board, 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, state or local law or regulation.
- 11.2.2. **General Disclaimer and Grantor Warranty.** The United States, the Board, and their respective 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

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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, staff time, expert fees, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) to which Grantee, the Board, 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.

11.2.3. **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.

12. **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 drone, aerial flyovers and satellite imagery of the Property. Such entry shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

### 13. **Enforcement.**

13.1. **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 a violation has occurred, Grantee shall notify Grantor, the Board and the United States of the nature of the alleged violation. Said notice need not be in writing. Upon receipt of said notice, Grantor shall immediately cease the alleged violation and either (i) if necessary, provide a written plan for restoration and remediation of the Property and, once approved, 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

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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. The Board and United States shall in no event be required to participate in mediation.

13.2. **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, the Parties shall each be responsible for their own costs. If the Parties agree to mediation, the Parties will equally share the cost of the mediator's fees. The Board and the United States shall in no event be required to participate in mediation.

13.3. **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 sole discretion of Grantee, and the failure of Grantee to discover a violation or to take action shall not waive any of Grantee's rights, claims or interests in pursuing any such action at a later date.

13.4. **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 Grantee. The Secretary of the United States Department of Agriculture (the Secretary) or the Secretary's assigns, on behalf of the United States, may exercise this right of enforcement under any authority available under State or Federal law if the 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 associated 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 the Grantee, including, but not limited to, attorney's fees and expenses related to Grantee's violations or failure to enforce the Easement against the Grantor, up to the amount of the United States' contribution to the purchase of the Easement.

The Grantee will annually monitor compliance and provide the United States with an annual monitoring report that documents that the Grantee and Grantor are in compliance with this Easement. If the annual monitoring report is insufficient or is not provided annually, or if the United States has a reasonable and articulable belief of an

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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, and the United States ALE Agreement with Grantee, the United States will have reasonable access to the Property. Prior to its inspection of the Property, the United States shall provide advance notice to Grantee and Grantor and provide Grantee and Grantor a reasonable opportunity to participate in the inspection.

In the event of an emergency, the United States may enter the Property to prevent, terminate, or mitigate a potential or unaddressed violation of the Easement and will give notice to Grantee and Grantor at the earliest practicable time.

14. **Deed Correction.** The Parties shall cooperate to correct mutually acknowledged errors in this Deed (and exhibits hereto), including typographical, spelling, or clerical errors. Such correction shall be by recorded written agreement signed by the Parties, with all associated costs being apportioned as the Parties may mutually agree. Notwithstanding the foregoing, prior to recording any correction to the Deed pursuant to this section, the Parties must provide notice to and receive the prior written approval of the Board and the United States, by and through the Chief of NRCS.
15. **Amendment.** If circumstances arise under which an amendment to or modification of this Deed or any of its exhibits would be appropriate, as determined by Grantee, the Board and the United States, by and through the Chief of NRCS, each in its sole discretion, the Parties may jointly amend the terms of the Deed so long as the amendment (a) shall have a positive, or at least a neutral, effect on or impact to the Conservation Values and is consistent with the Purpose, (b) does not affect the perpetual duration of the restrictions contained in this Easement, (c) complies with all federal, state, and local laws, including C.R.S. § 38-30.5-101, *et seq.*, or any regulations promulgated thereunder, (d) shall be consistent with Grantee's, the Board's and the United States' public mission, (e) shall not jeopardize Grantee's tax-exempt status or status as a charitable organization under federal or state law, (f) shall not result in private inurement or confer impermissible private benefit, and (g) complies with Grantee's, the Board's and the United States' procedures and standards for amendments (as such procedures and standards may be amended from time to time) (f) receives the written approval of the Board and (g) receives the United States', by and through the Chief of NRCS, prior written approval, each in its sole discretion. Grantee must provide timely written notice to the Board and 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, the Board and the United States, by and through the Chief of NRCS. Amendment of the Easement shall not affect the Easement's priority against any intervening liens, mortgages, easements, or other encumbrances. In order to preserve the Easement's priority, Grantee, the Board and/or the United States may require that any liens, mortgages, easements, or other encumbrances be subordinated to any proposed amendment. Nothing in this Section shall be construed as requiring Grantee, the Board 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 Board and/or the United States will be considered null and void. Any amendment must be in writing, signed by the Parties,

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and recorded in the official records of Conejos County, Colorado. A copy of the recorded Amendment shall be provided to the Board and the United States.

16. ***Transfer of Easement.*** This Easement is transferable by Grantee, provided that (i) the conservation purposes which the contribution was originally intended to advance continue to be carried out; (ii) 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; and (iii) the qualified organization agrees to assume the responsibility imposed on Grantee by this Deed; and (iv) the transferee is approved in writing by both the Board and the United States. Additionally, Grantee shall provide the Board and the United States 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 Board and the United States each 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.

The Board shall have the right to require Grantee to assign its rights and obligations under this Easement to a different organization if Grantee ceases to exist; is unwilling, unable, or unqualified to enforce the terms and provisions of this Easement; or is unwilling or unable to effectively monitor the Property for compliance with this Easement at least once every calendar year. Prior to any assignment under this Section 16, the Board shall consult with Grantee and provide Grantee an opportunity to address the Board's concerns. If the Board's concerns are not addressed to its satisfaction, the Board may require that Grantee assign this Easement to an organization designated by the Board that complies with Section 16 (i), (ii), and (iii) above.

If Grantee desires to transfer this Easement to a qualified organization having similar purposes as Grantee, but the Board has refused to approve the transfer, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibility imposed on Grantee by this Easement, provided that Grantor and the Board shall have adequate notice of and an opportunity to participate in the court proceeding leading to the court's decision on the matter.

17. ***Transfer of Property.*** Any time the Property or a permitted portion thereof 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, including the value of non-cash consideration, to Grantee as holder of the real property interest and right of possession 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. This provision is intended to run with the land for perpetuity, and to touch and concern the Property burdened by this easement by providing Grantee a contribution toward its stewardship, enforcement and defense of this Easement. If a fee is attributable to a transfer of property classified as

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“residential real property,” as defined in C.R.S. § 38-35-127(2)(e), then the Grantee covenants and agrees that the fee shall be used for the purposes specified in C.R.S. § 38-35-127(2)(b)(V) in a manner consistent with the Grantee's mission.

18. **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 Residential Improvements and Nonresidential Improvements pursuant to Section 8.1 (Residential, Nonresidential and Agricultural Improvements) of this Deed. Therefore, Grantor does not have the right to use or transfer any Development Rights held by Grantee.
19. **Condemnation.** Grantor shall notify Grantee immediately of any communication or notice received concerning any proposed taking or condemnation affecting the Property, and Grantee shall have the right to participate in any proceedings as a real property interest holder. In addition, Grantor shall notify the Board and the United States in writing of such circumstances. Condemnation shall proceed in accordance with C.R.S. § 38-30.5-107. 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, the Board and the United States shall be entitled to compensation determined as provided in Section 21 (Compensation upon Condemnation, Termination, or Extinguishment) of this Deed. Due to the Federal interest in this Easement, any condemnation action that may affect the United States’ interest in the Property must be reviewed and approved by the United States.
20. **Termination or Extinguishment of Easement.** Except as provided in Section 19 (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 in accordance with C.R.S. Section 38-30.5-107. 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 in accordance with C.R.S. Section 38-30.5-107, with written approval of Grantee, the Board and the United States. Due to the Federal interest in this Easement, any proposed extinguishment or termination action that may affect the United States’ interest in the Property must be reviewed and approved by the United States. If termination or extinguishment occurs, Grantee the Board and the United States shall be entitled to compensation determined as provided in Section 21 (Compensation upon Condemnation, Termination, or Extinguishment) of this Deed.
21. **Compensation upon Condemnation, Termination, or Extinguishment.**
  - 21.1. With respect to a proposed extinguishment, termination, or condemnation action, the Grantee, Board, and the United States acknowledge that an appraisal of the Property



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has been completed that indicates that the fair market value of the Easement is fifty-five and six-tenths percent (55.6%) of the full fair market value of the Property unrestricted by this Easement (“**Proportionate Value Percentage**”), which percentage shall remain constant and shall be applied pursuant to Treasury Regulation §1.170A-14(g)(6)(ii). The Proportionate Share will remain constant over time.

- 21.2. If this Easement is extinguished, terminated, or condemned, in whole or in part, then the Grantor must reimburse Grantee, the Board, and the United States an amount equal to the Proportionate Share of the fair market value of the land unencumbered by this Easement. The fair market value will be determined at the time all or a part of this Easement is terminated, extinguished, or condemned by an appraisal that meets the Uniform Standards of Professional Appraisal Practice (USPAP) or Uniform Acquisition Standards or Federal Land Acquisition (UASFLA). The appraisal must be completed by a certified general appraiser and be approved by the Grantee, the Board and the United States. Grantor shall not voluntarily accept less than full fair market value of the affected Property unrestricted by this Easement without Grantee’s approval.
  - 21.3. The allocation of the Proportionate Share between Grantee, the Board, and the United States will be as follows: (a) to Grantee or its designee, forty-four percent (44%) of the Proportionate Share, (b) to the Board, eighteen percent (18%) of the Proportionate Value Percentage, and (c) to the United States thirty-four percent (34%) of the Proportionate Share. Until such time as Grantee, the Board and the United States receive the Proportionate Share from Grantor or Grantor’s successor or assign, Grantee, the Board, 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 Board and the United States for the amount of the Proportionate Share due to the Board and the United States.
  - 21.4. Grantee’s use of its share of such proceeds shall comply with Treasury Regulation § 1.170A-14(g)(6).
  - 21.5. Grantee's remedies described in this Section shall be cumulative and shall be in addition to any and all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. §38-30.5-108.
22. **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. In addition, as provided in C.R.S. § 38-30.5-107, “a conservation

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easement in gross for which a Colorado state income tax credit has been allowed may not in whole or in part be released, terminated, extinguished, or abandoned by merger with the underlying fee interest in the servient land or water rights”.

Prior to acquiring all of a portion of the fee interest in the Property, the Grantee must first obtain the written approval of the Board and the United States. As a condition of such approval, the Board or the United States may require that the Grantee first transfer the Deed to another qualified organization consistent with Section 16, above. In the event the Grantee acquires fee title interest or any other interest in the Property without the Grantee’s prior knowledge (e.g. receiving real property by will), the Grantee must immediately provide notice of its acquisition to the Board and the United States, and the Board or the United States may require that the Grantee transfer this Deed to another qualified organization consistent with Section 16, above. This Easement cannot be abandoned, released, or affected by adverse possession

23. ***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 Board and the United States has consented to a transfer of this easement by Grantee), except that liability of such transferring party for act or omissions occurring prior to such transfer shall survive the transfer.
24. ***Change of Circumstance.*** Grantor, Grantee, the Board and the United States have 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 20 (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 20 (Termination or Extinguishment of Easement) of this Deed.
25. ***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.
26. ***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

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commercial delivery service that provides proof of delivery; or (iv) via any delivery method mutually agreed to by the Parties, to the following addresses, unless one Party has been notified by the other Party of a change of address or ownership.

Grantor: Alfred Vaughn and Sue Ann Jackson  
PO Box 39  
Manassa, CO 81142  
Phone: (719) 580-3209

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

The United States:

USDA Natural Resources Conservation Service  
Denver Federal Center  
Building 56, Room 2604  
P.O. Box 25426  
Denver, Colorado 80225

The Board:

Executive Director  
State Board of the Great Outdoors Colorado Trust Fund  
1900 Grant Street, Suite 725  
Denver, CO 80203

If above addresses change, the Parties shall provide updated information to one another in a timely manner. If a notice mailed to either Party at the last address on file is returned as undeliverable, the sending Party shall provide notice by regular mail to the other Party'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 in compliance 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.

### ***27. Liens on the Property.***

27.1. ***Current Liens.*** Grantor represents and warrants that there are no Deed of Trusts encumbering the Property as of the date and time of recording of this Deed.

27.2. ***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

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mortgage or lien arising from such a borrowing is and shall remain subordinate to this Deed or any amendments hereto.

### 28. *Grantor's Representations and Warranties.*

28.1. 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 for the purposes described in this Deed and has in fact granted said access to Grantee; 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.

28.2. Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge:

28.2.1. 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;

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

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

28.2.4. No civil or criminal proceedings or investigations have been threatened 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.

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

### 30. *General Provisions:*

30.1. *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.

30.2. *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

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interpretation.

- 30.3. ***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.
- 30.4. ***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.
- 30.5. ***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.
- 30.6. ***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.
- 30.7. ***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.
31. ***Recording.*** Grantee shall record this Deed in a timely fashion in the official records of Conejos County, Colorado, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.
32. ***No Third Party Enforcement.*** This Easement is entered into by and between Grantor and Grantee, and is solely for the benefit of the public, Grantor, Grantee, the Board 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 third parties, and as such, can only be enforced by Grantor, Grantee, and the United States.
33. ***Termination of Rights and Obligations.*** In the event that Article XXVII of the Colorado Constitution, which established the Board, is amended or repealed to terminate the Board or merge the Board into another entity, the rights and obligations of the Board hereunder shall be assigned to and assumed by such other entity as provided by law, but in the absence of such direction, by the Colorado Department of Natural Resources or its successor. Provided a transfer is permitted by this Deed, a Party's rights and obligations under the Deed terminate upon transfer of the Party's interest in the Deed or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer

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34. ***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.
35. ***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.
36. ***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, the Board, 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.**


[Signature pages follow]

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GRANTOR:

Alfred Vaughn Jackson and Sue Ann Jackson

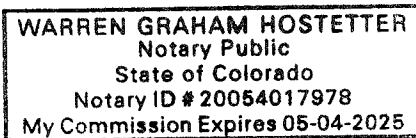
By:   
Alfred Vaughn Jackson

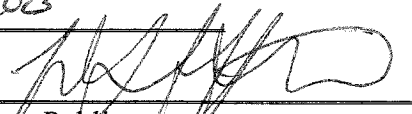
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Alamosa )

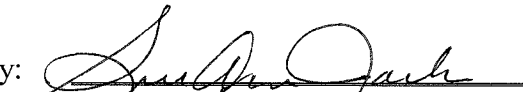
The foregoing instrument was acknowledged before me this 10 day of March, 2021, by Alfred Vaughn Jackson.

Witness my hand and official seal.

My commission expires: 05-04-2025



  
Notary Public

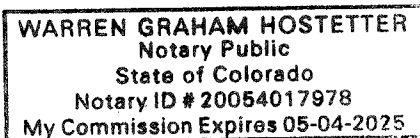
By:   
Sue Ann Jackson

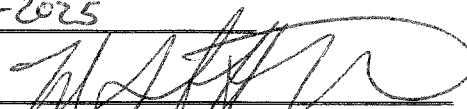
STATE OF COLORADO )  
 ) ss.  
COUNTY OF Alamosa )

The foregoing instrument was acknowledged before me this 10 day of March, 2021, by Sue Ann Jackson.

Witness my hand and official seal.

My commission expires: 05-04-2025



  
Notary Public

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GRANTEE:

COLORADO OPEN LANDS,  
a Colorado non-profit corporation

By Anthony P. Caligiuri  
Anthony P. Caligiuri, President

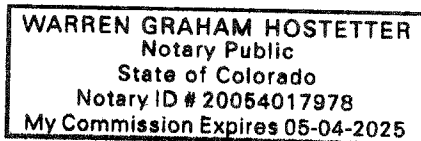
STATE OF COLORADO )  
COUNTY OF Alamosa ) ss.  
~~JEFFERSON~~ )

The foregoing instrument was acknowledged before me this 10 day of  
March, 2021, by Anthony P. Caligiuri as President of Colorado Open Lands, a  
Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires: 05-04-2025

[Signature]  
Notary Public





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## **EXHIBIT A**

### **Legal Description of the Property**

#### **Parcel 1:**

**The Southwest 1/4 of the Southwest 1/4 of Section 22, Township 34 North, Range 10 East of the N.M.P.M., County of Conejos, State of Colorado.**

#### **Parcel 2:**

**The Southeast 1/4 of the Southwest 1/4 of Section 21, Township 34 North, Range 10 East of the N.M.P.M., County of Conejos, State of Colorado.**

#### **Parcel 3:**

**The South 1/2 of the Southeast 1/4 of Section 21, Township 34 North, Range 10 East of the N.M.P.M. and the Northeast 1/4 of the Northwest 1/4 of Section 28, Township 34 North, Range 10 East of the N.M.P.M. and the North 1/2 of the Northeast 1/4 of Section 28, Township 34 North, Range 10 East of the N.M.P.M., County of Conejos, State of Colorado**

#### **Parcel 4:**

**The Northwest 1/4 of the Southeast 1/4 of Section 21, Township 34 North, Range 10 East of the N.M.P.M. and the Northeast 1/4 of the Southeast 1/4 of Section 21, Township 34 North, Range 10 East of the N.M.P.M. and that part of the Southeast 1/4 of the Northeast 1/4 which lies South of State Highway 142, Section 21, Township 34 North, Range 10 East of the N.M.P.M., County of Conejos, State of Colorado.**

#### **Parcel 5:**

**The Northwest 1/4 of the Southwest 1/4 of Section 22, Township 34 North, Range 10 East of the N.M.P.M. and that part of the South 1/2 of the Southwest 1/4 of the Northwest 1/4 Lying South of State Highway 142 of Section 22, Township 34 North, Range 10 East of the N.M.P.M., County of Conejos, State of Colorado**

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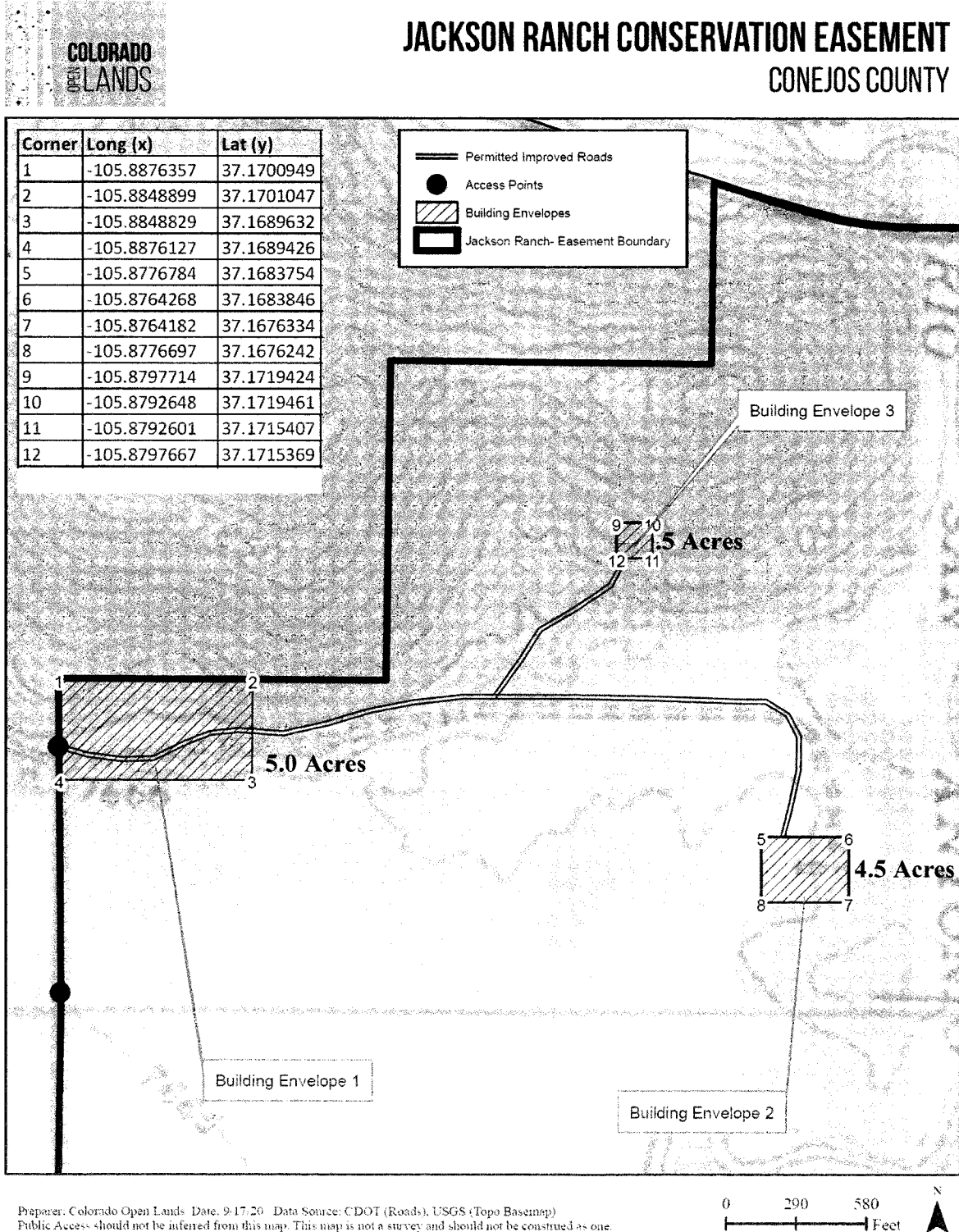
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## EXHIBIT A-1

### Description of Building Envelopes



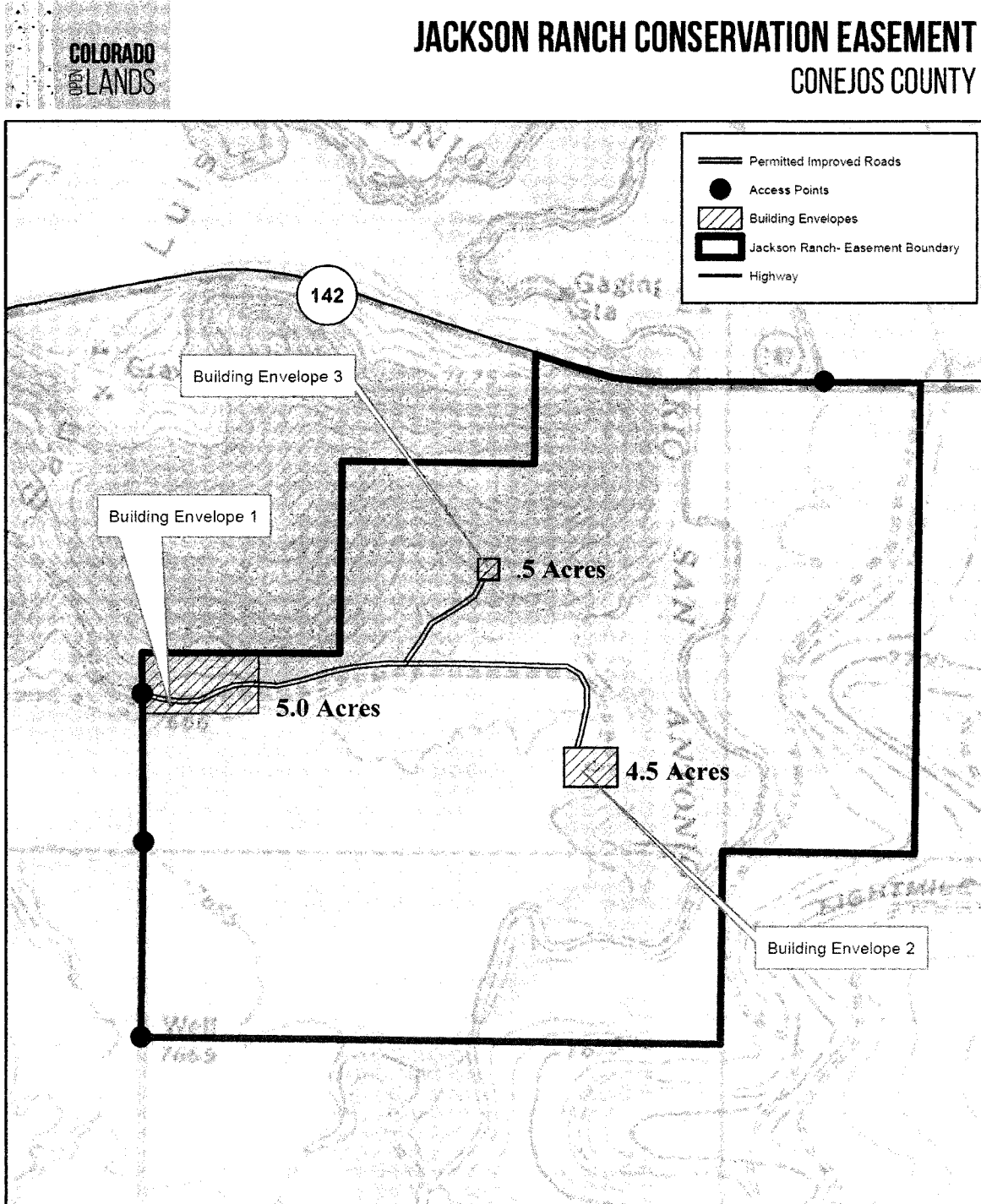
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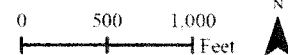
## EXHIBIT B

### Map of the Property

## JACKSON RANCH CONSERVATION EASEMENT CONEJOS COUNTY



Prepared: Colorado Open Lands Date: 9/17/20 Data Source: CDOT (Roads), USGS (Topo Basemap)  
Public Access should not be inferred from this map. This map is not a survey and should not be construed as one.



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

3/8 share of the Trujillo (Trogillio) Priority No. 21, adjudicated October 22, 1883, appropriated April 15, 1857, decreed 29.80 cfs for irrigation and domestic purposes.

3/8 share of the Trujillo (Trogillio) Priority No. 30, adjudicated October 22, 1883, appropriated April 1, 1863, decreed 23.68 cfs for irrigation and domestic purposes

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**EXHIBIT D**

**Sample Notice of Transfer of Property**

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

Pursuant to Section 17 (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 17 (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 \_\_\_\_\_,  
202\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_.

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

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

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