

**AMENDED AND RESTATED
DEED OF CONSERVATION EASEMENT**

WINDANCE 2012

Pursuant to the requirements of Section 13 (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.

THIS AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT ("Deed") is granted on this 31 day of July, 2012, by Shannon Burke and Rodney Marcy ("Grantor"), whose address is 347 Glencoe St., Denver, CO 80220, to COLORADO OPEN LANDS, a Colorado non-profit corporation ("Grantee"), whose address is 274 Union Boulevard, Suite 320, Lakewood, Colorado 80228 (individually a "Party" and collectively the "Parties").

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

Exhibit A: Legal Description
Exhibit B: Map
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 property legally described in Exhibit A and depicted in Exhibit B, consisting of approximately 113.5 acres of land, together with existing improvements (as further described in Section 4, Property Improvements, of this Deed) ("Original Conservation Area"), water rights (as further described in Exhibit C hereto) ("Original Water Rights") and mineral rights owned by Grantor associated with or appurtenant to the property located in Garfield County, State of Colorado, which are subject to that certain Deed of Conservation Easement recorded on September 16, 2011, at Reception No. 808183 of the records of the Garfield County Clerk and Recorder's Office ("Original Deed"). Grantor is also the owner of the fee simple interest in the property legally described in Exhibit A and depicted in Exhibit B, which consists of approximately 113.81 acres of land ("Additional Conservation Area") and additional water rights as further described in Exhibit C ("Additional Water Rights"). The Original Conservation Area and the Additional Conservation Area, together with existing improvements (as further described in Section 4, Property Improvements, of this Deed) and the Original Water Rights and the Additional Water Rights, and mineral rights owned by Grantor located in Jefferson County, State of Colorado shall collectively be known as the "Property".
- B. **Amendment and Restatement.** Upon execution and recordation of this Deed, the Original Deed is hereby amended and restated in its entirety by this Deed, and the Original Deed shall be superseded by this Deed and have no further force or effect;

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provided, however, that such amendment and restatement shall not interrupt the perpetual duration of the Original Deed or the property rights which vested in Grantee upon the recording of the Original Deed.

- C. **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.).
- 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:

1. **Relatively Natural Habitat** [§ 1.170A-14(d)(3)]. The Property contains a variety of habitats including Rocky Mountain aspen forest and woodland, inter-mountain basins montane sagebrush steppe, and Rocky Mountain subalpine-montane riparian shrubland. The riparian zones associated with Mason Creek and four acres of open water provide tremendous value to wildlife. Although livestock were present on the Property during the site visit, rangelands appeared to be in excellent condition. These range sites consisted of an extremely diverse native flora that is capable of sustaining healthy populations of wildlife and increasing biodiversity on the Property. Invasive species are minimal.

Elk (*Cervus elaphus*) habitat can be found throughout the Property. The Colorado Division of Wildlife has designated the Property as Winter Range with Winter Concentration Areas (WCA) occurring adjacent to the Property. The designation of WCA indicates the range of a species where densities are at least 200% greater than the surrounding winter range density during the same period and used to define winter range in the average five winters out of ten (CDOW). Windance Ranch also lies within the overall range for mule deer (*Odocoileus hemionus*). Winter concentration areas are located just east of the Property boundary, and a critical migration corridor exists across the southern parcel. The Property also falls within the overall range for bighorn sheep (*Ovis canadensis*).

Habitat connectivity within the region is excellent as most of the land surrounding the Property is either privately owned or managed by natural resource agencies such as the Bureau of Land Management (BLM) or United States Forest Service (USFS). The White River National Forest encompasses 2.3 million acres within Eagle, Pitkin, Garfield, Summit, Rio Blanco, Mesa, Gunnison, Routt, and Moffat counties and provides recreational opportunities and habitat for a diverse range of wildlife.

The Property is potentially habitat for the boreal toad, a State endangered species, which typically lives in damp conditions in the vicinity of marshes, wet meadows,

streams, beaver ponds, glacial kettle ponds, and lakes interspersed in subalpine forest.

2. ***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 will yield a significant public benefit. Land adjacent to the Property is privately owned or owned by the United States Forest Service. Other local landowners include the Bureau of Land Management. The 3,100-acre Hack Lake Special Recreation Area is located about one mile northwest of the Property and provides hunting, fishing and camping opportunities. The Deep Creek Trail is five miles south of the Property and provides hiking opportunities.
3. ***Scenic Enjoyment.*** The Property adds to the scenic character of the local rural landscape in which it lies, contains a harmonious variety of shapes and textures, and provides a degree of openness, contrast and variety to the overall landscape. Land use on this Property is compatible with surrounding public and private lands, which consist of residential, recreational, agricultural, and open-space areas in a rural setting; Preservation of this Property will maintain a high degree of contrast and variety because various shapes and textures are present. These features include aspen forests, montane-subalpine grasslands, subalpine-montane riparian shrublands, coniferous forests, montane sagebrush steppe, mesic meadows, montane lakes, and other community types, with an undeveloped foreground; Ecotones, consisting of forests, wetlands, and riparian habitats, throughout the Property will maintain a variety of shapes and textures; The property can be viewed by the general public from the west, where it borders USFS land for approximately 1/2 mile, and from the east and southeast where it is in close proximity to BLM land. These viewpoints allow the general public to enjoy characteristic landscapes, which are open to and actively utilized by residents of Garfield County and the State of Colorado. Preservation of the Property will continue to provide an opportunity for the general public to appreciate the unobstructed scenic views it provides of an open and undeveloped landscape. The terms of this Deed do not permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land.
4. ***Agriculture.*** The Property is currently used for agricultural purposes including cattle grazing. This use is compatible with other land use in the vicinity, as adjacent properties are also used for agricultural production. The Property does not contain soils that support 'prime farmland;' however, there are soil types available that do support rangeland production. There are soils on the Property that are capable of producing approximately 2,231 pounds per acre of air-dried forage. Forests in Colorado provide significant benefit to the natural environment and the economy. Protection of Colorado's forest has far reaching benefits, as Colorado is a headwaters state with many downstream users relying on healthy forests upstream to maintain clean water. Conservation of the Property protects a variety of forest types including 3.5 acres of coniferous pine forests and 128.8 acres of deciduous aspen forests and woodlands.
5. ***Significant Public Benefit.*** According to the Garfield County Comprehensive Plan 2030, "the vast majority of the county is either under federal jurisdiction or

extremely remote and virtually inaccessible due to terrain constraints. The remaining area, which is subject to the most development pressure, is also the most accessible and visible part of the county. If the level of projected growth materializes over the next 20 years, how it develops will have a dramatic impact on the quality of life of its residents, and the fiscal well-being of its government."

Conservation of this property is consistent with local, public conservation initiatives. The Garfield County Comprehensive Plan 2030 outlines the county's goals of promoting the continuation and expansion of agricultural uses, preserving a significant rural character in the county, and preserving and visual corridors in the county. The plan also emphasizes the county's goals of ensuring that natural, scenic, ecological, and critical wildlife habitat resources are protected and/or impacts mitigated.

Located within Game Management Unit 25 and Unit S59, the Property can provide habitat for many of Colorado's high-value species, including elk, mule deer, black bear (*Ursus americanus*), mountain lion (*Felis concolor*) and bighorn sheep. Due to the Property's close proximity to over 1 million acres of public land in the White River National Forest and Flattops Wilderness Area, populations of these game species will likely increase during hunting seasons as they are pressured off of public land and onto the safety of the Property. In 2010, 2,100 hunters spent 10,098 recreation days in the Game Management Unit 25 and harvested 424 elk. Sheep hunts are extremely limited in the region with only 2 hunting tags being issued. Last year one hunter spent eight days in the field and didn't harvest an animal.

Watershed conservation will ensure the health and protection of forests and wetlands providing valuable ecosystem services, including water purification, ground water and surface flow regulation, erosion control, and streambank stabilization. The importance of these services is improved water quality and quantity contributing to public and environmental health.

Development of the Property would degrade the scenic character of the landscape as it is situated near the top of a hill and is visible from many locations. Development would also fragment wildlife habitat and impair agricultural productivity.

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

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

- E. **Documentation of Present Conditions.** Pursuant to Treasury Regulation §1.170A-14(g)(5) and in order to document the condition of the Property as of the date of this Deed, a report has been prepared by Blue Mountain Environmental Consulting and dated August, 2011, and updated July 2012 ("Present Conditions Report"). 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.
- F. **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").
- G. **Charitable Donation.** Grantor intends to make a charitable gift of the Easement created by this Deed to Grantee pursuant to I.R.C. §170(h), Treasury Regulation §1.170A-14, and C.R.S. §38-30.5. No goods or services shall be provided by Grantee to Grantor in exchange for this contribution.

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:

- I. **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 ("Purpose").
- II. **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 do not have significant negative impact or permanent negative impact on the Conservation Values as determined by Grantee in 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.

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

1. **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.

2. **Rights Conveyed to Grantee.** To accomplish the Purpose, the following rights are hereby conveyed to Grantee, its employees and its representatives:

- 2.1. To preserve and protect the Conservation Values;
- 2.2. To prevent acts on or uses of the Property that are not consistent with the Purpose and, except as limited by Section 7 (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;
- 2.3. To enter upon the Property in order to monitor Grantor's compliance with the terms of this Deed pursuant to Section 8 (Monitoring) of this Deed, and to enforce the terms of this Deed pursuant to Section 9 (Enforcement) of this Deed.
- 2.4. To have all Development Rights as defined in Section 14 (Development Rights) of this Deed, except as specifically reserved by Grantor herein.
- 2.5. To have all other rights conveyed by this Deed.

3. **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.

4. **Property Improvements.** Improvements existing as of the date of this Deed are permitted. All other construction or placement of improvements is prohibited except as provided herein.

- 4.1. **Buildings.** The replacement, maintenance and repair of the cabins and outbuildings is permitted pursuant to the limitations set forth herein.
 - 4.1.1. **Building Envelopes.** There shall be two (2) building envelopes permitted on the Property (referred to herein as "Building Envelope 1" and "Building Envelope 2"). The construction of new buildings (with the exception of nonresidential improvements permitted by Section 4.1.6 below) shall be permitted only within the Building Envelopes.
 - 4.1.2. **Building Envelope 1.** Building Envelope 1 is located on the Original Conservation Area and consists of one-half acre more or less. The location of Building Envelope 1 is generally depicted on Exhibit B. No improvements presently exist within Building Envelope 1.
 - 4.1.3. **Building Envelope 1 Limitations.** Grantor may construct a residence within Building Envelope 1 subject to the following limitations.
 - 4.1.3.1. Only one residence with attached or detached garage may be built.

- 4.1.3.2. The maximum Footprint, as defined below, for the residence may not exceed 2,000 square feet.
- 4.1.3.3. The maximum Footprint, as defined below, for the garage may not exceed 700 square feet.
- 4.1.3.4. The maximum Height, as defined below, for improvements shall not exceed thirty feet.
- 4.1.3.5. Improvements in excess of the foregoing require Grantee approval pursuant to Section 21 (Grantee's Approval) of this Deed.
- 4.1.4. **Building Envelope 2.** Building Envelope 2 is to be located on the Additional Conservation Area and shall consist of one half acre, more or less. Building Envelope 2 is to be located entirely within the 5-acre "Building Zone" as generally depicted on Exhibit B. Prior to the commencement of construction of any structures within Building Envelope 2, Grantor shall cause the exact location of Building Envelope 2 to be surveyed, at no cost to Grantee, and Grantor shall provide a copy of said survey to Grantee for its approval pursuant to Section 20 (Grantee's Approval) of this Deed. Upon approval of the survey the Parties shall record a notice referring to this Easement describing and depicting the final location of Building Envelope 2 and extinguishing any right to locate Building Envelope 2 in a different location within the Building Zone. Grantee will provide a copy of such recorded notice to the Grantor. No improvements presently exist within the Building Zone.
- 4.1.5. **Building Envelope 2 Limitations.** Following Grantee's approval of the location of Building Envelope 2 and upon recordation of the required notice, Grantor may construct or otherwise locate a residence within Building Envelope 2 subject to the following limitations.
- 4.1.5.1. Only one residence with attached or detached garage may be built.
- 4.1.5.2. The maximum Footprint, as defined below, for the residence may not exceed 2,000 square feet.
- 4.1.5.3. The maximum Footprint, as defined below, for the garage may not exceed 700 square feet.
- 4.1.5.4. The maximum Height, as defined below, for improvements shall not exceed thirty feet.
- 4.1.5.5. Improvements in excess of the foregoing require Grantee approval pursuant to Section 21 (Grantee's Approval) of this Deed.
- 4.1.5.6.
- 4.1.6. **Cabins.** Four small buildings are located on the Property. These buildings are: an historical cabin consisting of 170 square feet of Footprint; an

historical cabin consisting of 350 square feet of Footprint; an historical outhouse consisting of 18 square feet of Footprint; and a recent outhouse consisting of 18 square feet of Footprint. These four buildings may be maintained and repaired, but may not be expanded or replaced.

- 4.1.7. **Unenclosed Improvements.** Unenclosed improvements having no Footprint, such as corrals or hunting blinds, are permitted if consistent with the Purpose and Intent.
- 4.1.8. **Notice.** Prior to the replacement or construction of any improvement as permitted by Section 4.1, 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 proposed replacement in sufficient detail to allow Grantee to evaluate the consistency of the proposed improvement with this Section.
- 4.1.9. **Outside of the Building Envelopes.** On the date of this Deed, the following improvements are located outside of the Building Envelopes: a partial perimeter fence, three headgates, irrigation ditches, culverts, and two access roads.
- 4.1.10. **Repair and Maintenance.** Grantor may repair and maintain permitted improvements without further consent of Grantee.
- 4.1.11. **Definition of Footprint.** For purposes of this Deed, Footprint is defined as the total ground area occupied by all improvements, calculated on the basis of the exterior dimensions (whether at or above ground level) including carports or breezeways, but does not include eaves, uncovered decks or patios ("Footprint").
- 4.1.12. **Measurement of Height.** For purposes of this Deed, Height is defined as the vertical distance from the high 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.

4.2. **Other Improvements.**

- 4.2.1. **Roads.** For purposes of this Deed, Roads shall be defined as any track greater than three (3) feet wide where the natural earthen material is the driving surface ("Roads"). Several unimproved Roads exist on the Property as shown on Exhibit B. No new Roads are permitted, except that Grantor reserves the right to construct a new Road in order access the Building Zone and the improvements permitted therein. Existing Roads may be maintained and improved, but may not be expanded or surfaced with an impermeable material unless Grantee determines that the proposed new Road or altering of the existing Road is consistent with the Purpose, determined pursuant to Section 21 (Grantee's Approval) of this Deed.

- 4.2.2. **Fences.** Existing fences may be maintained, repaired and replaced and new fences may be built anywhere on the Property, provided that the location and design of said fences are consistent with the Purpose.
- 4.2.3. **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.
- 4.2.4. **Utility Improvements.** No 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"), exist on the Property, although reserved third-party utility rights-of-way do exist. Utility Improvements may be constructed on the Property to provide utility service to improvements permitted within the Building Envelopes. All electric and telephone lines shall be installed underground. Other Utility Improvements may be constructed on the Property provided that they are consistent with Purpose and approved by Grantee, pursuant to Section 21 (Grantee's Approval), of this Deed.
- 4.2.4.1. **Additional Requirements.** Following the 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 6.9 (Easements, Rights of Way or Other Interests) of this Deed.
- 4.2.5. **Water Improvements.** The maintenance and repair of existing non-domestic water improvements such as ponds, reservoirs, stock tanks, center pivot sprinklers, irrigation ditches, pipes, headgates, flumes, pumps, or wells is permitted. The construction of new water improvements or enlargement of existing water improvements, excluding ponds and reservoirs, is permitted provided that such activity is consistent with the Purpose. 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 21 (Grantee's Approval) of this Deed. Any portion of the Property that is disturbed by the maintenance, repair, construction or enlargement of water improvements shall be restored to a condition that is consistent with the Purpose promptly after said activity is completed.
- 4.2.6. **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 21 (Grantee's Approval) of this Deed or as otherwise expressly permitted by this Deed.

5. **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. 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 agreed upon 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.

- 5.1. **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. If agricultural acts or uses are no longer practiced on the Property, either Party may request that the Parties develop a mutually acceptable plan to ensure appropriate land cover that is consistent with the Purpose. The expense of developing and implementing said plan shall be borne by Grantor.
- 5.2. **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 21 (Grantee's Approval) of this Deed.
- 5.3. **Relatively Natural Habitat.** Habitat management activities that have the potential to negatively impact the Conservation Values such as chaining juniper or sagebrush, constructing or altering ponds, wetlands, or stream channels, and conducting controlled burns may be permitted provided that Grantee determines that said management activities are consistent with the Purpose, pursuant to Section 21 (Grantee's Approval) of this Deed.
- 5.4. **Minerals and Other Deposits.** As of the date of this Deed, Grantor owns all of or a controlling interest in the mineral rights located on, under, or in the Property or otherwise associated with the Property.
- 5.5. **Mining.** The exploration, development, mining or other extraction or removal of minerals, including but not limited to coal, oil, gas or hydrocarbons ("Minerals") on, under, or in the Property or otherwise associated with the Property by any method is prohibited, except that extraction or removal of oil, gas or other hydrocarbons from under the Property without use of the surface of the Property is permitted, provided that the method of mining has limited, localized impact on the Property and is not irretrievably destructive of the conservation values [as described by 1.170A-

14(g)(6)]. In addition, Grantor shall not transfer, lease, or otherwise separate any mineral rights from the surface of the Property.

- 5.6. **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.
- 5.7. **Weeds.** The Parties recognize the potential negative impact of noxious weeds and invasive plant species on the Conservation Values. Grantor shall manage noxious weeds and invasive plant species in a manner consistent with the Purpose. Grantee has no responsibility for the management of noxious weeds and invasive plant species.
- 5.8. **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").

5.8.1 **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.

5.8.2 **Restrictions on Water Rights.** Grantor shall not transfer, encumber, sell, lease or otherwise separate the Water Rights from the Property. Grantor shall not abandon or allow abandonment of the Water Rights by action or inaction. Grantor shall not change the historic beneficial use of the Water Rights unless Grantee determines that said change is consistent with the Purpose, pursuant to Section 21 (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 21 (Grantee's Approval) of this Deed.

5.8.2.1 **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.

5.8.2.2 **Abandonment of Water Rights.** If Grantee determines that the Water Rights are subject to a threat of abandonment, Grantee shall give Grantor written notice of such threat of abandonment. If and only if Grantor fails to cure the threat of abandonment within one hundred eighty (180) days of receipt of said notice from Grantee, or such lesser time as necessary to comply with any relevant statutory or court imposed deadline, 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; 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.

6. *Restricted Acts and Uses.*

- 6.1. ***Subdivision.*** Grantor reserves the right to convey, sell, or transfer the Original Conservation Area and the Additional Conservation Area separately, with each area remaining subject to the provisions of this Deed. The Parties agree that the further division, partition, subdivision or de facto subdivision of the Property, whether by legal or physical process, into two or more parcels of land or partial or separate interests (including, but not limited to, condominium interests or the partition of undivided interests) is prohibited. Ownership of the Property by joint tenancy or tenancy in common is permitted, consistent with Sections 29 (Joint and Several Liability) and 30 (Ownership by Single Entity Consisting of Multiple Parties); provided, however, that Grantor shall not undertake any legal proceeding to partition, subdivide or divide in any manner such undivided interests in the Property.
- 6.2. ***Surface Disturbance.*** Any alteration of the surface of the land, including without limitation, the movement, excavation, extraction or removal of soil, sand, gravel, rock, peat or sod, is prohibited, unless such alteration is associated with permitted acts on and uses of the Property and is consistent with the Purpose.
- 6.3. ***Industrial or Commercial Activity.*** Industrial uses of the Property are prohibited. Commercial uses of the Property that are not consistent with the Purpose are prohibited.
- 6.4. ***Feedlot.*** The establishment or maintenance of a feedlot is prohibited. For purposes of this Deed, "feedlot" is defined as a permanently constructed confined area or facility which is used and maintained continuously and exclusively for purposes of finishing or fattening large numbers of livestock for market. Nothing in this Section shall prevent Grantor from seasonally confining livestock into an area, corral or other facility for feeding or calving, or from leasing pasture for the grazing of livestock owned by others.
- 6.5. ***Public Access.*** Nothing contained in this Deed shall be construed as affording the public access other than visual 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.

- 6.6. **Trash.** The dumping or accumulation of any kind of trash, sludge, or refuse on the Property is prohibited, except for farm-related trash and refuse produced on the Property, provided that such dumping or accumulation is consistent with the Purpose. The storage or accumulation of agricultural products and by-products on the Property is permitted provided that such activity is conducted in accordance with all applicable government laws and regulations and is consistent with the Purpose.
- 6.7. **Hazardous Materials.** For purposes of this Deed, "Hazardous Materials" shall mean any "hazardous substance" as defined in §9601(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), "pollutant or contaminant" as defined in § 9601(33) of CERCLA, or any hazardous waste as defined in C.R.S. §25-15-101(6). 40 C.F.R. § 302.4 provides a non-exhaustive list of over 600 substances that qualify as hazardous substances under CERCLA. The use, treatment, storage, disposal, or release of Hazardous Materials shall only be permitted in accordance with applicable, federal, state and local law and regulations.
- 6.8. **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 and Intent.
- 6.9. **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 and Intent pursuant to Section 21 (Grantee's Approval) of this Deed.
7. **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:
- 7.1. **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 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.
- 7.2. **Liability.**
- 7.2.1. **Environmental Liability.**

- 7.2.1.1. Grantor shall indemnify, defend, and hold Grantee and its members, officers, directors, employees, agents, and contractors (collectively, the "Indemnified Parties") harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) the existence, generation, treatment, storage, use, disposal, deposit or transportation of Hazardous Materials in, on or across the Property; (ii) the release or threatened release of Hazardous Materials on, at, beneath or from the Property; (iii) the existence of any underground storage tanks on the Property; or (iv) a violation or alleged violation of, or other failure to comply with, any federal, state, or local environmental law or regulation by Grantor or any other prior owner of the Property.
- 7.2.1.2. Notwithstanding anything in this Deed to the contrary, this Deed does not impose any liability on Grantee for Hazardous Materials, nor does it make Grantee an owner of the Property, nor does it permit or require Grantee to control any act on or use of the Property that may result in the treatment, storage, disposal or release of Hazardous Materials within the meaning of CERCLA or any similar federal, state or local law or regulation.
- 7.2.2. **Grantor's Liability.** Grantor shall indemnify, defend, and hold the Indemnified Parties harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, unless caused solely by the willful and wanton act or omission [as defined by C.R.S. §13-21-102(1)(b)] of the Indemnified Parties; (ii) the obligations under this Section; or (iii) the violation or alleged violation of, or other failure to comply with any state, federal, or local law, regulation, or requirement by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property.
- 7.2.3. **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.
8. **Monitoring.** In order to monitor Grantor's compliance with the terms of this Deed, Grantee shall have the right to enter upon the Property upon reasonable prior notice to Grantor. Said notice need not be in writing. Grantee may engage such experts or consultants that Grantee deems necessary to assist in monitoring, including conducting aerial flyovers of the Property. Such entry shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.
9. **Enforcement.**
- 9.1 **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 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 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.

9.2 ***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.

9.3 ***Grantee's Discretion.*** Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values as described in C.R.S. §38-30.5-108. Enforcement of the terms of this Deed shall be at the discretion of Grantee, and the failure of Grantee to discover a violation or to take action shall not waive any of Grantee's rights, claims or interests in pursuing any such action at a later date.

10. ***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.

11. ***Amendment.*** If circumstances arise under which an amendment to this Deed would be appropriate, the Parties are free to jointly amend this Deed by mutual written consent. However, no amendment shall be allowed that will (i) confer a private benefit to Grantor or any other individual that is greater than the benefit to the general public (see Treasury Regulation §1.170A-14(h)(3)(i)); (ii) result in private inurement for a board member, staff or contract employee of Grantee (see Treasury Regulation §1.501(c)(3)-1(c)(2)); (iii) affect the qualifications of this Easement under any applicable laws; or (iv) affect the perpetual duration of the Easement. Grantee shall have the right to charge a fee to Grantor for time and costs associated with any amendment. Any amendment must be in writing, signed by the Parties, and recorded in the official records of Garfield County, Colorado.

12. **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. §12-61-720; and (iii) the qualified organization agrees to assume the responsibility imposed on Grantee by this Deed. 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), and (iii) above.
13. **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 "residential real property," as defined in C.R.S. Section 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. Section 38-35-127(2)(b)(V) in a manner consistent with the Grantee's mission.
14. **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 4.1 (Residential and Nonresidential Structures) of this Deed. Therefore, Grantor does not have the right to use or transfer any Development Rights held by Grantee.
15. **Condemnation.** Grantor shall notify Grantee immediately of any communication or notice received concerning any proposed taking or condemnation affecting the Property, and Grantee shall have the right to participate in any proceedings as a real property interest holder. Grantee may pursue any remedies in law or in equity, including opposition to the condemnation of the Property. If the Property or any part thereof or interest therein is sold or conveyed to a condemning authority under threat of condemnation or taken through condemnation or other involuntary conversion, Grantee shall be entitled to compensation determined as provided in Section 17 (Compensation upon Condemnation, Termination, or Extinguishment) of this Deed.
16. **Termination or Extinguishment of Easement.** Except as provided in Section 15 (Condemnation) of this Deed, this Easement or any part hereof may only be terminated or extinguished by judicial proceedings in a court of competent jurisdiction. The only ground upon which this Easement can be terminated or extinguished is the total loss of all

Conservation Values. If termination or extinguishment occurs, Grantee shall be entitled to compensation determined as provided in Section 17 (Compensation upon Condemnation, Termination, or Extinguishment) of this Deed.

17. Compensation upon Condemnation, Termination, or Extinguishment.

17.1 The Parties acknowledge that an appraisal of the Property has been completed that indicates that the fair market value of the Original Conservation Area Easement is fifty-five percent (55%) of the full fair market value of the Property unrestricted by this Easement ("Proportionate Value Percentage"), and that the fair market value of the Additional Conservation Area Easement is fifty-five percent (55%) of the full fair market value of the Property unrestricted by this Easement ("Proportional Value Percentage"), which percentages shall remain constant and shall be applied according to the relevant Conservation Area pursuant to Treasury Regulation §1.170A-14(g)(6)(ii).

17.2 If the Property is condemned, in whole or in part, pursuant to Section 15 (Condemnation) or if this Easement is terminated or extinguished pursuant to Section 16 (Termination or Extinguishment of Easement), Grantee shall be entitled to a share of the proceeds of such action at least equal to the Proportionate Value Percentage of the full fair market value of the Property unrestricted by this Easement pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii). Grantor shall not voluntarily accept less than full fair market value of the affected Property unrestricted by this Easement without Grantee's approval.

17.3 Grantee's use of its share of such proceeds shall comply with Treasury Regulation § 1.170A-14(g)(6).

17.4 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.

18. 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.

19. 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, except that liability of such transferring party for act or omissions occurring prior to such transfer shall survive the transfer.

20. ***Change of Circumstance.*** Grantor has considered that restricted acts or uses may become more economically valuable than permitted acts or uses. It is the intent of the Parties that such circumstances shall not justify the termination or extinguishment of this Easement pursuant to Section 16 (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 16 (Termination or Extinguishment of Easement) of this Deed.
21. ***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. Grantor shall not engage in the proposed act or use until Grantor receives Grantee's approval in writing.
22. ***Written Notices.*** Any written notice that either Party is required to give to the other shall be delivered: (i) in person; (ii) via certified mail, with return receipt requested; (iii) via a commercial delivery service that provides proof of delivery; or (iv) via any delivery method mutually agreed to by the Parties, to the following addresses, unless one Party has been notified by the other Party of a change of address or ownership.

Grantor: Shannon Burke and Rodney Marcy
347 Glencoe Avenue
Denver, CO 80220
303-638-8705

Grantee: Colorado Open Lands
274 Union Blvd., Suite 320
Lakewood, CO 80228
(303) 988-2373

If addresses change, Grantor shall provide updated information to Grantee 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 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.

23. ***Liens on the Property.***

- 23.1 ***Current Liens.*** That certain Deed of Trust granted by Grantor to the Public Trustee of Garfield County for the benefit of Windance Ranch, LLC, dated January 30, 2012 to secure \$640,000 and recorded on February 6, 2012, at Reception No. 814206 in the Garfield County Clerk and Recorder's Office ("Deed of Trust") is subordinate to this Deed as evidenced by the Subordination Agreement dated July 31, 2012, between Grantor and the Public Trustee of Garfield County and recorded simultaneously herewith in the Garfield County Clerk and Recorder's Office. That certain Deed of Trust granted by Grantor to the Public Trustee of Garfield County for the benefit of Verus Bank of Commerce, dated April 16, 2012 to secure \$393,975 and recorded on April 30, 2012, at Reception No. 817985 in the Garfield County Clerk and Recorder's Office ("Deed of Trust") and assignee of that certain Assignment of Rents in connection with said Deed of Trust recorded April 30, 2012 at Reception No. 817986 is subordinate to this Deed as evidenced by the Subordination Agreement dated July 31, 2012, between Grantor and the Public Trustee of Garfield County and recorded simultaneously herewith in the Garfield County Clerk and Recorder's Office.
- 23.2 ***Subsequent Liens.*** No provisions of this Deed should be construed as impairing the ability of Grantor to use the Property as collateral for subsequent borrowing. Any mortgage or lien arising from such a borrowing is and shall remain subordinate to this Easement or any amendments hereto.

24. *Grantor's Representations and Warranties.*

- 24.1 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 for those certain Deeds of Trust referenced in Section 23.1, and 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.
- 24.2 Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge:
- 24.2.1 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;
- 24.2.2 Grantor and the Property are in compliance with all federal state, and local laws, regulations, and requirements applicable to the Property and its use;
- 24.2.3 There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and
- 24.2.4 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,

24.2.4 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.

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

26. **General Provisions:**

- 26.1 **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.
- 26.2 **Captions.** The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.
- 26.3 **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.
- 26.4 **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.
- 26.5 **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.
- 26.6 **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.
- 26.7 **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. Upon execution and recordation of this Deed, the Original Deed is hereby amended and restated in its entirety by this Deed, and the Original Deed shall be superseded by this Deed and have no further force or effect; provided, however, that such amendment and restatement shall not interrupt the perpetual duration of the Original Deed or the property rights which vested in Grantee upon the recording of the Original Deed.

27. **Recording.** Grantor shall record this Deed in a timely fashion in the official records of Garfield County, Colorado, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.
28. **No Third Party Enforcement.** This Deed is entered into by and between the Parties, and does not create rights or responsibilities for the enforcement of its terms in any third parties.
29. **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.
30. **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.
31. **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, its successors and assigns, forever.

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

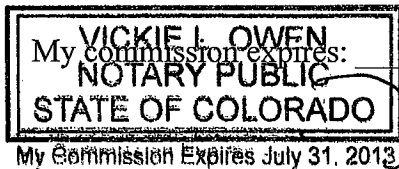
GRANTOR:

By: Shannon Burke
Shannon Burke

STATE OF COLORADO)
COUNTY OF Jefferson) ss.

The foregoing instrument was acknowledged before me this 31st day of July, 2012, by Shannon Burke in her individual capacity as owner of the Property.

Witness my hand and official seal.



[Signature]
Notary Public

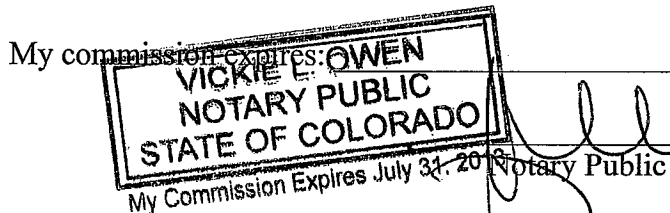
GRANTOR:

By: Rodney Marcy
Rodney Marcy

STATE OF COLORADO)
COUNTY OF Jefferson) ss.

The foregoing instrument was acknowledged before me this 31st day of July, 2012, by Rodney Marcy in his individual capacity as owner of the Property.

Witness my hand and official seal.



[Signature]
Notary Public

GRANTEE:

COLORADO OPEN LANDS,
a Colorado non-profit corporation

By *Charles Russell*
Charles A. Russell, Chairman

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 31st day of July, 2012, by Charles A. Russell as Chairman of Colorado Open Lands, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires: March 25, 2015

Amanda Kwiterna
Notary Public

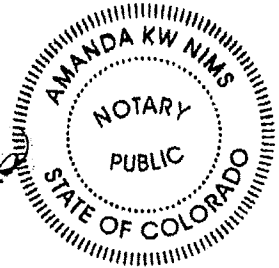


EXHIBIT A

Legal Description of the Original Conservation Area

Parcel 1, Windance Ranch, according to the plat recorded September 12, 2011 at Reception No. 807971, County of Garfield, State of Colorado, more particularly described as:

A parcel of land located in the southwest quarter of Section 27 and the southeast quarter of Section 28, Township 3 South, Range 87 West of the Sixth Principal Meridian, in the County of Garfield, State of Colorado, more particularly described as follows, with all bearings based on a bearing of S.89°34'42"E. Between the center one quarter corner of Section 28, a 3¼ inch aluminum cap on a ¾ inch aluminum pipe, and the one quarter corner common to Sections 27 and 28, a 2½ inch GLO Brass Cap on a one inch steel pipe.

Beginning at the center corner of Section 28; thence along the center line of Section 28 S.89°34'42"E. 2693.56 feet to the quarter corner common to Sections 27 and 28; thence S.0°30'47"W. 443.26'; thence S.88°33'47"E. 85.97 feet; thence S.11°49'53"E. 1307.94 to a point on the boundary of parcel 3 as recorded in book 764, page 591; thence along the boundary of said parcel 3 the following 15 courses and distances:

1. S.81°40'56"W. 21.52 feet
2. S.89°51'46"W. 86.47 feet
3. N.72°00'13"W. 178.20 feet
4. N.76°18'13"W. 65.83 feet
5. N.30°11'54"W. 59.21 feet
6. N.17°13'20"W. 14.95 feet
7. N.01°11'11"W. 35.13 feet
8. S.88°55'12"W. 12.64 feet
9. N.86°48'31"W. 503.09 feet
10. S.71°09'38"W. 364.03 feet
11. S.20°21'42"E. 102.09 feet
12. S.85°50'26"W. 781.09 feet
13. S.87°16'55"W. 101.45 feet
14. S.85°15'38"W. 630.93 feet
15. S.85°41'39"W. 321.18 feet

to a point on the westerly line of the southeast quarter of Section 28; thence along said westerly line of the southeast quarter of Section 28, N.00°25'33"W. 1900.75 feet to the point of beginning.

Said parcel contains 113.5 acres, more or less.

Together with those rights contained in Grant of Access Road Easement for the benefit of the property described above, recorded September 16, 2011 at Reception No. 808182 in the records of the Clerk and Recorder of Garfield County, Colorado.

(continued on next page)

EXHIBIT A (continued)

Legal Description of the Additional Conservation Area

Parcel 4, Windance Ranch, according to the plat recorded September 12, 2011 at Reception No. 807971 and rerecorded November 2, 2011 at Reception No. 810207, more particularly described as:

A parcel of land located in the West one half of Section 27, Township 3 South, Range 87 West of the Sixth Principal Meridian, in the County of Garfield, State of Colorado, more particularly described as follows, with all bearings based on a bearing of S.89°34'42"E. between the center one quarter corner of Section 28, a 3 ¼ inch aluminum cap on a ¾ inch aluminum pipe, and the one quarter corner common to Sections 27 and 28, a 2 ½ inch GLO Brass Cap on a one inch steel pipe.

Beginning at the Northwest corner of Section 27, a 2-3/4" GLO brass cap monument on a 2-1/2" steel pipe; thence S.89°44'12"E. 2788.44 feet to the North one quarter corner of Section 27, a 2-1/2" GLO brass cap monument on a 1" steel pipe in a mound of stone; thence S04°58'30"W. 1417.37 feet, thence S.46°47'47"W. 550.17 feet, thence S.83°11'33"W. 644.25 feet; thence S.48°38'28"W. 391.83 feet; thence S.03°50'48"E. 766.59 feet to a point on the centerline of ROAD A; thence along the centerline of ROAD A, 69.96 feet on a curve to the left with a radius of 190.59 feet, a tangent of 35.38 feet, a central angle of 21°01'57", and a chord that bears S.78°24'41"W. 69.57 feet, thence continuing along the centerline of ROAD A S.67°53'43"W. 110.36 feet to the centerline of ROAD B; thence departing the centerline of ROAD A and along the centerline of ROAD B the following nine courses and distances:

1. N.26°49'13"W. 95.48 feet
2. N.05°52'42"W. 57.13 feet
3. N.17°49'24"W. 42.36 feet
4. N.33°23'31"W. 105.20 feet
5. N.62°41'11"W. 51.85 feet
6. N.49°36'50"W. 31.53 feet
7. N.02°37'15"W. 58.61 feet
8. N.12°51'43"W. 69.29 feet
9. N.30°11'03"W. 23.45 feet

to the center of the cul-de-sac for ROAD B.

Thence departing the centerline of ROAD B and along the Easterly boundary of Parcel 3 N.07°31'37"W. 1025.21 feet to the Northeast corner of Parcel 3; thence along the Northerly boundary line of Parcel 3 S.89°10'31"W. 808.67 feet to the Westerly boundary line of the Northwest one quarter of Section 27; thence along the Westerly boundary line of the Northwest one quarter of Section 27 N.01°52'57"W. 1492.40 feet to the point of beginning, County of Garfield, State of Colorado

Together with hose easement rights as contained in the Grant of Access Road Easement recorded February 06, 2012 at Reception No. 814208 in the records of the Clerk and Recorder of Garfield County, Colorado.

EXHIBIT B

Map of the Property

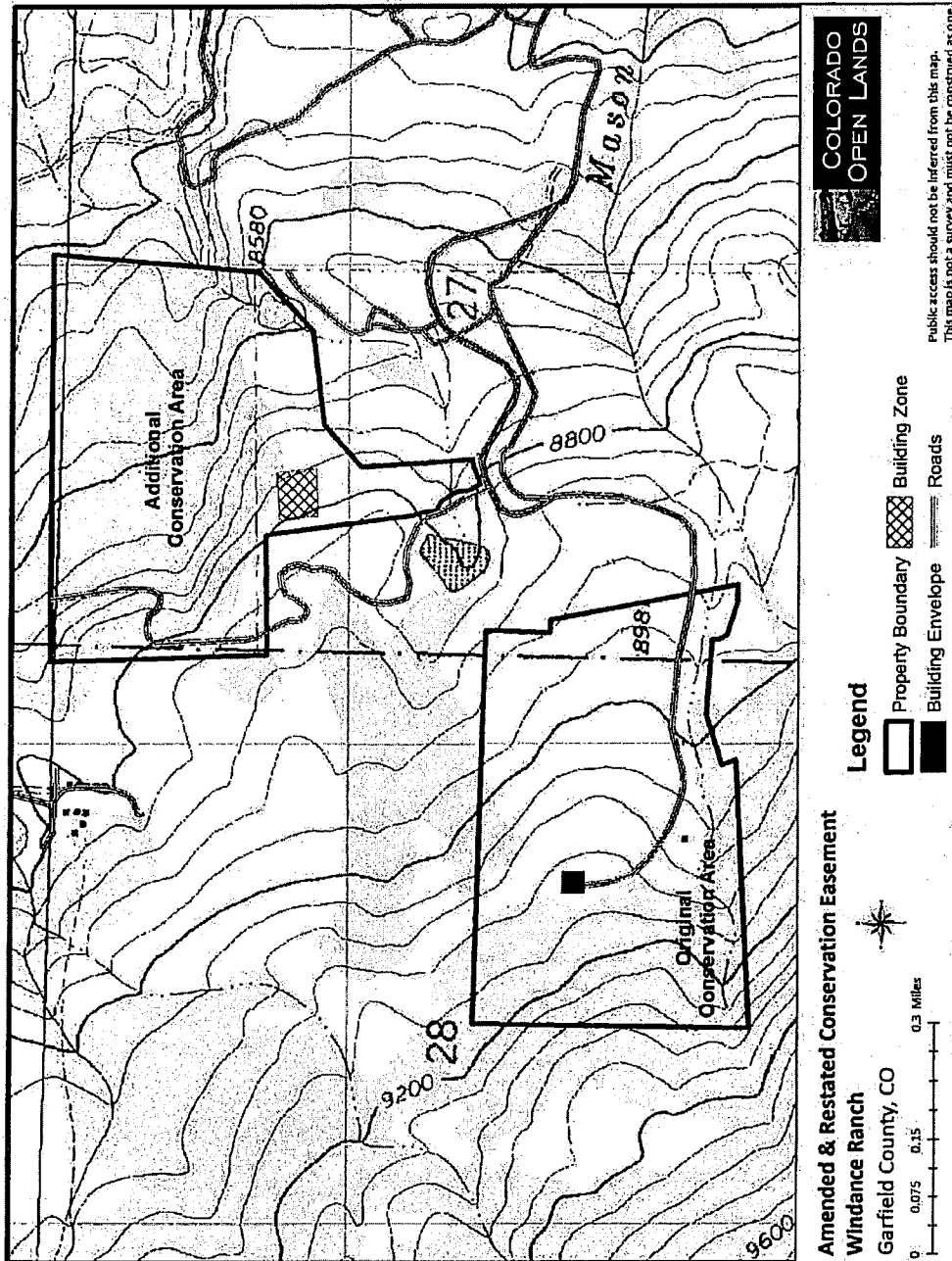


EXHIBIT C

Original Water Rights

All of Seller's interest in the Baer Ditch, Priority 332, decreed in Case No. CA1123; the Baer Ditch 1st Enlargement, decreed in Case No. 90CW329; Aspen Lake, decreed in Case No. 90CW328; and an undivided 1% of Seller's interest in the water rights managed by the Four Creek Ditch Company.

Additional Water Rights

All of Seller's interest in Lower McLean Reservoir, decreed in Case No. 90CW328, District Court in and for Water Division No. 5, State of Colorado; and an undivided four percent (4%) interest in the following water rights managed by the Four Creek Ditch Company, a Colorado corporation:

(1) Four Creek Ditch, priority no. 336, decreed in Civil Actions No. 1123 on February 7, 1956, with an appropriation date of May 15, 1934, for 2.5 cfs, and the Four Creek Ditch First Enlargement, priority no. 369, decreed in Civil Action No. 1123 on February 7, 1956, with an appropriation date of July 10, 1951, for 7.9 cfs, both for irrigation uses, the sources of which are Lake and Grunner Creeks, tributaries of Sweetwater Creek. The headgates of the Four Creek Ditch are as follows:

(a) Headgate No. 1, which is on the right bank of Lake Creek in Section 13, T. 3 S., R. 87 W. of the 6th P.M. at a point approximately 1500 feet W. of the East Section line and 1900 feet N. of the South Section line of said Section 13;

(b) Headgate No. 2, which is on Darnell Creek in Section 18, T. 3 S., R. 87 W. of the 6th P.M. at a point approximately 1150 feet E. of the West Section line and 725 feet N. of the South Section line of said Section 18;

(c) Headgate No. 3, which is on Grunner Creek in Section 20, T. 3 S., R. 87 W. of the 6th P.M. at a point approximately 1150 feet E. of the West Section line and 1400 feet S. of the North Section line of said Section 20;

(d) Headgate No. 4, which is on East Grunner Creek in Section 20, T. 3 S., R. 87 W. of the 6th P.M. at a point approximately 1200 feet W. of the East Section line and 2100 feet S. of the North Section line of said Section 20;

(e) Headgate No. 5, which is on Cease Creek in Section 20, T. 3 S., R. 87 W. of the 6th P.M. at a point approximately 50 feet W. of the East Section line and 1925 feet N. of the South Section line of said Section 21;

(f) Headgate No. 6, which is on Riland Creek in Section 28, T. 3 S., R. 87 W. of the 6th P.M. at a point approximately 2650 feet E. of the West Section line and 75 feet S. of the North Section line of said Section 28;

(continued on next page)

EXHIBIT C (continued)

(g) Headgate No. 7, which is on East Fork of Riland Creek in Section 28, T. 3 S., R. 87 W. of the 6th P.M. at a point approximately 2275 feet W. of the East Section line and 475 feet S. of the North Section line of said Section 28; and

(h) Headgate No. 8, which is on Newman Creek in Section 28, T. 3 S., R. 87 W. of the 6th P.M. at a point approximately 1390 feet W. of the East Section line and 2050 feet S. of the North Section line of said Section 28.

(2) Horse Meadows Ditch, priority no. 205, decreed in Civil Action No. 466 on December 9, 1907, with an appropriation date of July 26, 1906, for 7.5 cfs for irrigation uses, the sources of which are Lake Creek (aka Peel Creek), Middle Lake Creek, East Lake Creek, Grunner Creek, East Grunner Creek, Cease Creek, Riland Creek, and Newman Creek, all tributaries to Sweetwater Creek, as said water right was changed in Case Nos. 91CW257 and 95CW185.

(3) Four Creek Ditch, priority no. 406, decreed in Civil Action No. CA1123 on February 7, 1956, with an appropriation date of June 7, 1954, for 1.5 cfs conditional, 0.75 cfs conditional, and 0.75 cfs conditional to Four Creek Ditch Headgate Nos. 1, 2 and 3, respectively, for irrigation uses, the sources of which are Lake Creek and tributaries of Lake Creek, which are tributaries to Sweetwater Creek. By decree in Case No. 06CW70 dated January 7, 2008, 0.75 cfs of the conditional water right decreed to Four Creek Ditch Headgate No. 2 and 0.50 cfs of the conditional water right decreed to Four Creek Ditch No. 3 were made absolute for all decreed purposes.

(4) Horse Meadows Ditch Stream Priority 1, Appropriation No. 233, decreed in Civil Action No. CA560 on November 10, 1913, with an appropriation date of April 15, 1909, for 2.80 cfs conditional for irrigation uses, the source of which is the West Branch of Lake Creek, a tributary to Sweetwater Creek.

(5) Four Creek Ditch Third Enlargement, decreed in Case No. 09CW914 on October 30, 2011, with an appropriation date of June 1, 2006, for 3.0 cfs conditional, 1.0 cfs conditional, 1.5 cfs conditional, 1.0 cfs conditional, 1.0 cfs conditional, 1.0 cfs conditional, 1.0 cfs conditional and 1.0 cfs conditional, decreed to Four Creek Ditch Headgate Nos. 1-8, respectively, as said headgates are described in paragraph 1 above.

**SUBORDINATION TO DEED OF CONSERVATION EASEMENT
FOR THE WINDANCE RANCH**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned, WINDANCE RANCH, LLC, as beneficiary of that certain Deed of Trust recorded February 06, 2012, at Reception Number 814206 of the records of the Clerk and Recorder of Garfield County, Colorado (the "Deed of Trust"), and which Deed of Trust is subordinated to another lien at Reception Number 820398 of the records of the Clerk and Recorder of Garfield County, Colorado, hereby consents to the execution of that certain Deed of Conservation Easement (the "Deed of Conservation Easement") from Shannon Burke and Rodney Marcy, as "Grantor", to Colorado Open Lands, a Colorado nonprofit corporation, as "Grantee", to be recorded in the records in the Office of the Clerk and Recorder of Garfield County, Colorado. Furthermore, the undersigned, WINDANCE RANCH, LLC, as beneficiary of that certain Deed of Trust hereby subordinates the lien of the Deed of Trust to the Deed of Conservation Easement, and agrees that any foreclosure of the Deed of Trust shall not adversely affect the existence or continuing validity of the Deed of Conservation Easement, which Deed of Conservation Easement shall run with the land and remain in full force and effect as if such Deed of Conservation Easement were executed, delivered, and recorded prior to the execution, delivery, and recording of the Deed of Trust.

Notwithstanding anything to the contrary contained in the Deed of Trust, WINDANCE RANCH, LLC agrees that Grantee shall receive compensation in accordance with applicable law and as determined in accordance with Section 17 of the Deed of Conservation Easement resulting from any condemnation or other event terminating or extinguishing the Deed of Conservation Easement (a "taking") upon all or any part of the Property. WINDANCE RANCH, LLC agrees that the proceeds from any such taking (net of costs of collection) shall be divided as and when received so that Grantee receives its proportionate share of the proceeds as required under the Deed of Conservation Easement.

IN WITNESS WHEREOF, the undersigned have executed this Subordination
this 31 day of July, 2012.

WINDANCE RANCH, LLC

By: 

Title: Vice-President

STATE OF COLORADO)

) ss.

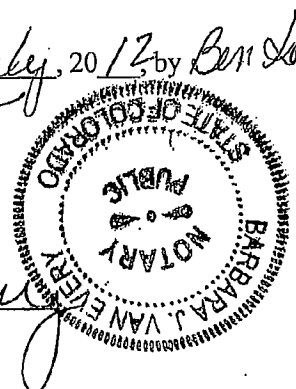
COUNTY OF Sumner)

The foregoing instrument was acknowledged before me this 31st day of July, 2012, by Ben St
as Vice President of Verus Bank of Commerce

Witness my hand and official seal.

My commission expires: 8/19/2012

Barbara Jean Evers
Notary Public



**SUBORDINATION TO DEED OF CONSERVATION EASEMENT
FOR THE WINDANCE RANCH**

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WINDANCE RANCH, LLC

By: _____

Title: Vice-President

STATE OF COLORADO)

COUNTY OF Sumner)

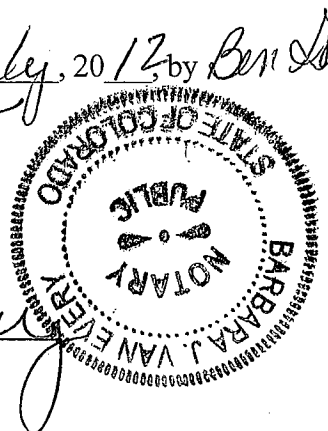
) ss.

The foregoing instrument was acknowledged before me this 31st day of July, 2012 by Ben Stiles
as Vice President of Verus Bank of Commerce

Witness my hand and official seal.

My commission expires: 8/19/2012

Barbara Jean Evers
Notary Public



**SUBORDINATION TO DEED OF CONSERVATION EASEMENT
FOR THE WINDANCE RANCH**

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WINDANCE RANCH, LLC

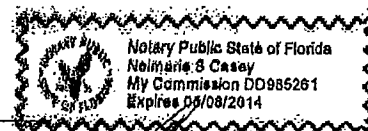
STATE OF FLORIDA)
~~COLORADO~~)
COUNTY OF Hillsborough) ss.

By: William M. Blandford
Title: V.P. WRB Enterprises,
Managing Member

The foregoing instrument was acknowledged before me this 31st day of July, 2012, by
as William M. Blandford

Witness my hand and official seal.

My commission expires: 5/8/14



Notarie S. Casey
Notary Public

**SUBORDINATION TO DEED OF CONSERVATION EASEMENT
FOR THE WINDANCE RANCH**

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WINDANCE RANCH, LLC

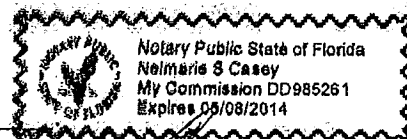
STATE OF FLORIDA)
~~COLORADO~~) ss.
COUNTY OF Hillsborough)

By: William M. Blanchard
Title: V.P. WRB Enterprises,
Managing Member

The foregoing instrument was acknowledged before me this 31st day of July, 2012, by
as William M. Blanchard

Witness my hand and official seal.

My commission expires: 5/8/14



Nelmarie S. Casey
Notary Public