

**THIRD AMENDMENT TO AMENDED AND RESTATED DEED OF
CONSERVATION EASEMENT
ROATCAP RANCH 2007**

THIS THIRD AMENDMENT TO AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT ("Third Amendment") is made this 8 day of January, 2016, by and between Nick Hughes, whose address is 708 1250 Road, Delta, Colorado 81416 ("Grantor"), and Colorado Open Lands, a Colorado non-profit corporation, whose address is 355 South Teller Street, #210, Lakewood, Colorado 80226, ("Grantee").

RECITALS:

- A. Grantor is the current owner of the water rights described in Exhibit A (the "Water Rights").
- B. Certain real property and Fifty-Four percent (54%) of the Water Rights were encumbered by a conservation easement for the benefit of Grantee pursuant to an Amended and Restated Deed of Conservation Easement dated December 21, 2007, (the "Easement"), which was recorded December 21, 2007 at Reception No. 621614 in the Books and Records of the Delta County Clerk and Recorder.
- C. Certain amendments and corrections to the Easement were accomplished including encumbrance of 100% of the Water Rights, by a First Amendment to Amended and Restated Deed of Conservation Easement dated February 10, 2009 (the "First Amendment"), which was recorded on February 13, 2009 at Reception No. 632113 in the Books and Records of the Delta County Clerk and Recorder.
- D. Further amendment of the Easement, for the purpose of addressing permitted improvements within certain building envelopes on real property subject to the Easement, was accomplished by a Second Amendment to Amended and Restated Deed of Conservation Easement dated July 9, 2010 (the "Second Amendment"), which was recorded July 20, 2010 at Reception No. 644192 in the Books and Records of the Delta County Clerk and Recorder.
- E. The Second Amendment purports to amend in its entirety the First Amendment, and declares that "the First Amendment is null and void and shall have no further force or effect," which created uncertainty regarding the percentage of Water Rights that were subject to and encumbered by the Easement.
- F. By this Third Amendment, the Grantor and Grantee desire to clearly define the Water rights that are subject to and encumbered by the Easement.

NOW, THEREFORE, the Grantor and Grantee agree as follows:

- Go/w -
- Not Transferring
- Go/w
- Go/w
1. One hundred percent (100%) of the water rights represented by 226 shares of capital stock in the West Reservoir and Ditch Company owned by Grantor (the "Encumbered WR&DC Shares") are subject to and encumbered by the Easement.
 2. The water rights represented by Grantor's remaining 474 shares in the West Reservoir and Ditch Company (the "Unencumbered WR&DC Shares") are not subject to or encumbered by the Easement.
 3. One hundred percent (100%) of the water rights represented by the 340 shares of capital stock in the Oak Mesa Ditch and Reservoir Company owned by Grantor are subject to and encumbered by the Easement.
 4. One hundred percent (100%) of Grantor's interest in and to one third (1/3) or 1.17 cfs of the 3.50 cfs decreed to the Goldenough Ditch, Priority No. 40, which is the subject of the Second Amended Findings and Ruling of the Referee and Decree entered on July 26, 1985 by the District Court, Water Division No. 4, Case No. 87CW248 transferring the same for diversion at the Oak Mesa Ditch is subject to and encumbered by the Easement.
 5. Grantor agrees that he will not, without prior written approval from Grantee, file an application with the water court requesting to change any of Grantor's Unencumbered WR&DC Shares, if such change may require the dry-up of irrigated acreage on the property encumbered by the conservation easement. Nothing in this Paragraph 5 is intended to limit, reduce or modify any of Grantor's, or his successors' and assigns', obligations with respect to the lands encumbered by the Easement, the Encumbered Water Rights under this Third Amendment, or that certain personal Water Rights Operating Agreement between Grantor and Grantee.
 6. This Third Amendment shall be recorded in the official records of Delta County, Colorado.

GRANTOR

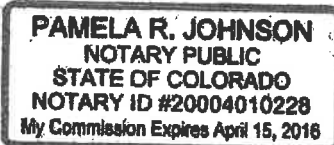
By: Nick Hughes
Nick Hughes

STATE OF Colorado)
COUNTY OF Mesa) ss.

The foregoing instrument was acknowledged before me this 8th day of January, 2016, by Nick Hughes.

Witness my hand and official seal.

My commission expires: 4/15/2016



Pamela R. Johnson
Notary Public

GRANTEE:

COLORADO OPEN LANDS,
A Colorado non-profit corporation

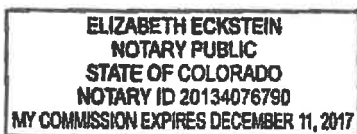
By: Anthony Caligini
President

STATE OF Colorado)
COUNTY OF Jefferson) ss.

The foregoing instrument was acknowledged before me this 7 day of January, 2016, by Anthony Caligini President of Colorado Open Lands, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires: December 11, 2017



Elizabeth Eckstein
Notary Public

EXHIBIT A -WATER RIGHTS

- Water rights represented by 700 shares of capital stock in the West Reservoir and Ditch Company.
- Water rights represented by 340 shares of capital stock in the Oak Mesa Ditch and Reservoir Company.
- Grantor's interest in and to 1/3, or 1.17 cfs, of the 3.50 cfs decreed to the Goodenough Ditch, Priority No. 40, which is the subject of the ~~Second~~ Amended Findings and Ruling of the Referee and Decree entered on July 26, 1988 by the District Court, Water Division No. 4, Case No. 87CW248 transferring the same for diversion at the Oak Mesa Ditch.

UNOFFICIAL COPY

**SECOND AMENDMENT TO AMENDED AND RESTATED
DEED OF CONSERVATION EASEMENT
ROATCAP RANCH 2007**

THIS SECOND AMENDMENT TO THE AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT ("Second Amendment") is made as of the 9th day of July, 2010, by and between JOY M. MCCLURE, as owner of Parcel 1 (defined below), whose address is 2785 SUMMIT HARBOR DRIVE, and MICHAEL MCCLURE, as owner of Parcel 2 (defined below), whose address is P.O. Box 1311 PAMPA, CO. (collectively, "Grantor"), and COLORADO OPEN LANDS, whose address is 274 Union Boulevard, Suite 320, Lakewood, CO 80228 ("Grantee").

RECITALS:

- A. Joy M. McClure is the owner of approximately 199.24 acres of real property located in Delta County, Colorado and more particularly described as "Parcel 1" on Exhibit A, and depicted on Exhibit B, both attached hereto and made a part hereof.
- B. Michael McClure is the owner of approximately 100.76 acres of real property located in Delta County, Colorado and more particularly described as "Parcel 2" on Exhibit A, and depicted on Exhibit B, both attached hereto and made a part hereof.
- C. Parcel 1 and Parcel 2 shall be collectively referred to herein as the "Property."
- D. On December 21, 2007, Grantor granted to Grantee that certain Amended and Restated Deed of Conservation Easement Roatcap Ranch 2007, recorded December 21, 2007 at Reception No. 621614 in the records of the Clerk and Recorder of Delta County, Colorado, which encumbered the Property (the "Easement").
- E. On February 3, 2009, Grantor subdivided the Property into Parcel 1 and Parcel 2 by executing that certain Quit Claim Deed recorded February 13, 2009 at Reception No. 632114 and that certain Quit Claim Deed recorded February 13, 2009 at Reception No. 632115.
- F. On February 13, 2009, Grantor and Grantee executed that certain First Amendment to the Amended and Restated Deed of Conservation Easement Roatcap Ranch 2007, recorded February 13, 2009 at Reception No. 632113 in the records of the Clerk and Recorder of Delta County, Colorado ("First Amendment").
- G. The First Amendment modified the size and locations of Building Envelope 1 and Building Envelope 2 to fit more logically into Parcel 1 and Parcel 2.
- H. Grantor and Grantee desire to modify the permitted improvements within Building Envelope 1 and Building Envelope 2.
- I. Section 22F of the Easement permits an amendment of the Easement that must be executed by both parties and recorded in the records of the Clerk and Recorder of Delta County, Colorado.

J. Grantee has determined that this Second Amendment meets the requirements of Treasury Regulation §1.170A-14(h)(3)(i) and does not confer a private benefit to Grantor or any other individual greater than the benefit to the general public.

K. Grantee has determined that this Second Amendment meets the requirements of Treasury Regulation §1.501(c)(3)-1(c)(2) and does not result in private inurement for any of Grantee's board members, staff, or contract employees.

L. Grantee has determined that this Second Amendment does not affect the qualifications of the Easement under any applicable laws, is not inconsistent with the preservation and protection of the Conservation Values, and does not affect the perpetual duration of the Easement.

NOW, THEREFORE, in accordance with the foregoing, the covenants and considerations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, the parties hereby amend the Easement and First Amendment as follows:

1. The First Amendment is hereby amended in its entirety by this Second Amendment, and the First Amendment is null and void and shall have no further force or effect.
2. Sections 4A through 4D of the Easement are hereby deleted in their entirety and replaced with the following:

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 otherwise provided herein.

A. **Residential and Non-residential Improvements.** The construction, placement, replacement, enlargement, maintenance and repair of residential and non-residential structures and improvements is permitted pursuant to the limitations set forth herein. For purposes of this Deed, "**Residential Improvements**" are defined as structures having Floor Area (as defined below) and containing habitable space, including homes, cabins, guest houses, and any space attached to a home, cabin or guest house such as a garage, and any other structures intended for full or part-time human habitation. For purposes of this Deed, "**Non-residential Improvements**" are defined as structures having Floor Area and not intended for human habitation and include, but are not limited to, barns, pole barns, sheds, loafing sheds, indoor arenas, silos, machine shops or free-standing garages.

(1) **Building Envelopes.** There shall be two (2) building envelopes permitted on the Property (individually referred to herein as "**Building Envelope 1**" and "**Building Envelope 2**" and collectively referred to herein as the "**Building Envelopes**"). All Residential Improvements and Non-residential Improvements (with the exception of Non-residential Improvements permitted by Section 4A(2) below) constructed after the date of this Deed shall be located within the Building Envelopes.

a. **Building Envelope 1.** Building Envelope 1 consists of approximately five (5) acres. The location of Building Envelope 1 is generally depicted on Exhibit B. On the date of this Deed, six (6) improvements are located within Building Envelope 1: two (2) Residential Improvements consisting of one (1) single-family residence (approximately 1,600 square feet of Floor Area) and one (1) cabin (approximately 720 square feet of Floor Area); and four (4) Non-residential Improvements consisting of two (2) sheds (collectively approximately 180 total square feet of Floor Area), one (1) loading shed (approximately 300 square feet of Floor Area), and one (1) chicken-coop (approximately 80 square feet of Floor Area).

b. **Building Envelope 1 Limitations.** Grantor may construct, place, replace, or enlarge Residential or Non-residential Improvements within Building Envelope 1 subject to the following limitations.

(i) The maximum number of Residential Improvements (including attached appurtenances) shall not exceed two (2) at any time.

(ii) The maximum Floor Area for the existing single family residence shall not exceed 2,000 square feet.

(iii) The maximum Floor Area, as defined below, for the existing cabin shall not exceed 1,000 square feet.

(iv) The maximum height for each Residential Improvement shall not exceed 35 feet.

(v) The maximum Floor Area for one (1) Non-residential Improvement shall not exceed 2,000 square feet.

(vi) The maximum Floor Area for any additional Non-residential Improvement shall not exceed 1,000 square feet.

(vii) The maximum height for each Non-residential Improvement shall not exceed 35 feet.

(viii) The total cumulative Floor Area for all Residential Improvements shall not exceed 3,000 square feet.

(ix) The total cumulative Floor Area for all Non-residential Improvements shall not exceed 3,000 square feet.

(x) The total cumulative Floor Area for all improvements shall not exceed 6,000 square feet.

(xi) Improvements in excess of the foregoing require Grantee approval pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

(xii) Unenclosed improvements having no Floor Area, such as corrals, hayracks, headgates, ditches, culverts, stock tanks or similar structures are permitted without further permission from Grantee.

c. **Building Envelope 2.** Building Envelope 2 consists of approximately six (6) acres. The location of Building Envelope 2 is generally depicted on Exhibit B. On the date of this Deed, there is one (1) Non-residential Improvement, a barn (approximately 750 total square feet of Floor Area), located within Building Envelope 2.

d. **Building Envelope 2 Limitations.** Grantor may construct, place, replace, or enlarge Residential or Non-residential Improvements within Building Envelope 2 subject to the following limitations.

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

(ii) The maximum Floor Area for the Residential Improvement shall not exceed 3,000 square feet.

(iii) The maximum height for each Residential Improvement shall not exceed 35 feet.

(iv) The maximum Floor Area for one (1) Non-residential Improvement shall not exceed 2,000 square feet.

(v) The maximum Floor Area for any additional Non-residential Improvement shall not exceed 1,000 square feet.

(vi) The maximum height for each Non-residential Improvement shall not exceed 35 feet.

(vii) The total cumulative Floor Area for all Residential Improvements shall not exceed 3,000 square feet.

(viii) The total cumulative Floor Area for all Non-residential Improvements shall not exceed 3,000 square feet.

(ix) The total cumulative Floor Area for all improvements shall not exceed 6,000 square feet.

(x) Improvements in excess of the foregoing require Grantee approval pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

(xi) Unenclosed improvements having no Floor Area, such as corrals, hayracks, headgates, ditches, culverts, stock tanks or similar structures are permitted without further permission from the Grantee.

B. General Construction Restrictions and Procedures.

(1) **Repair and Maintenance.** Grantor may repair and maintain existing and future permitted improvements at their current location without further consent of Grantee.

(2) **Notice.** Prior to the placement, construction, replacement or enlargement of any Residential Improvement or Non-residential Improvement as permitted by Section 4A, Grantor shall request and obtain Grantee's approval pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

C. Outside of the Building Envelopes. On the date of this Deed, there are no improvements located outside of Building Envelopes.

(1) **Construction Limitations.** The construction of Residential Improvements outside of the Building Envelopes is prohibited. ~~The~~ construction of any Non-residential Improvements such as barns, pole barns, sheds, loafing sheds, indoor arenas, silos, machine shops, free-standing garages or similar structures outside of the Building Envelopes is prohibited, unless Grantee in its sole discretion determines that the proposed construction is not inconsistent with the preservation and protection of the Conservation Values. Unenclosed improvements having no Floor Area, such as corrals, hayracks, headgates, ditches, culverts, stock tanks or similar structures are permitted without further permission from the Grantee.

D. Definition of Floor Area. For purposes of Section 4, Floor Area is defined as all Residential or Non-residential finished or unfinished space, covered and enclosed within two or more sides, including all levels of a multi-level improvement, but does not include covered or uncovered decks or patios.

3. Section 6A of the Easement is hereby deleted in its entirety and replaced with the following:
 - A. **Subdivision.** Grantor has divided the Property into Parcel 1 and Parcel 2. Grantor and Grantee agree that no further division, 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 permitted. Ownership by joint tenancy or tenancy in common is permitted; provided, however, that Grantor shall not undertake any legal proceeding to partition, subdivide or divide the Property or its ownership in any manner except as provided herein.
4. In the event of a conflict between the terms and provisions of this Second Amendment and the terms and provisions of the Easement, this Second Amendment shall govern and control.
5. This Second Amendment may be executed in counterparts, each of which shall be an original but all of which when taken together shall constitute one amendment.
6. All defined terms used herein shall have the same meaning as set forth in the Easement unless expressly provided to the contrary herein.
7. Grantor and Grantee hereby ratify and confirm this modification to the terms and provisions of the Easement. Except as amended by this Second Amendment, the terms and provisions of the Easement shall remain in full force and effect.

(SIGNATURE PAGES TO FOLLOW)

IN WITNESS WHEREOF, this Second Amendment to Amended and Restated Deed of
Conservation Easement Roatcap Ranch 2007 is executed as of the day and year first above
written.

GRANTOR:

As to Parcel 1

By Joy M. McClure
Joy M. McClure

As to Parcel 2

By Michael McClure
Michael McClure

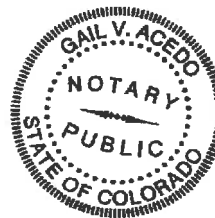
STATE OF COLORADO)
) ss.
COUNTY OF Delta)

The foregoing Second Amendment to the Amended and Restated Deed of Conservation
Easement Roatcap Ranch 2007 was acknowledged before me this 9th day of
July, 2010, by Michael McClure and Joy M. McClure.

Witness my hand and official seal.

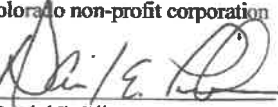
My commission expires: 11-9-2013

Gail V. Acedo
Notary Public



GRANTEE:

COLORADO OPEN LANDS,
a Colorado non-profit corporation

By 
Daniel E. Pike
Title: President

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing Second Amendment to the Amended and Restated Deed of Conservation
Easement Roatcap Ranch 2007 was acknowledged before me this 1 day of July,
2010, by Daniel E. Pike as President of Colorado Open Lands, a Colorado non-profit corporation.

WITNESS my hand and official seal.

My commission expires: 1-13-2013



My Commission Expires 01/13/2013


Notary Public

EXHIBIT A

Legal Description of the Property

Parcel 1

LEGAL DESCRIPTION

SE1/4SW1/4, SW1/4SE1/4 Section 22;
NE1/4NW1/4, NW1/4NE1/4, SW1/4NE1/4, NW1/4SE1/4, SW1/4NE1/4NE1/4,
NE1/4SE1/4NE1/4, W1/2SE1/4NE1/4, W1/2NE1/4SE1/4 Section 27;
all in Township 13 South, Range 92 West of the 6th Principal Meridian,
Delta County, Colorado.

EXCEPTING THEREFROM

A parcel of land located within the NE1/4 of Section 27, Township 13 South, Range 92 West of the 6th P.M., having a description based upon a bearing of S.88°46'54"E. from 1/4 Corner common to Sections 22 and 27 (monumented by a 2-1/2" USGLO brass cap) to the Section Corner common to Sections 22, 23, 26 and 27 (monumented by an 3-1/4" aluminum cap PLS14621), with all other bearings relative thereto and being more particularly described as follows:
Beginning at the 1/4 corner common to Sections 22 and 27 and running along the north line of said NE1/4 S.88°46'54"E. 1301.65 feet to the E1/16 corner common to Sections 22 and 27 (monumented by an 3-1/4" aluminum cap PLS25972); thence along the east line of the NW1/4 of the NE1/4 S.02°07'57"W. 646.22 feet (monumented by an 2" aluminum cap PLS25972); thence along the north line of the SW1/4 of the NE1/4 of the NE1/4 S.88°41'13"E. 647.95 feet (monumented by an 2" aluminum cap PLS25972); thence along the east line of the SW1/4 of the NE1/4 of the NE1/4 S.02°23'08"W. 647.34 feet to the south line of the NE1/4 of the NE1/4 (monumented by an 2" aluminum cap PLS25972); thence along said south line S.88°35'28"E. 645.08 feet to the N1/16 corner common to Sections 26 and 27 (monumented by an 3-1/4" aluminum cap PLS25972); thence along the east line of said NE1/4 S.02°38'15"W. 648.48 feet to the SE corner of the N1/2 of the SE1/4 of the NE1/4 (monumented by an 2" aluminum cap PLS25972); thence along the south line of said N1/2 of the SE1/4 of the NE1/4 N.88°29'40"W. 1284.41 feet (monumented by a witness corner bearing S.88°29'40"E. 563.29 feet from the true corner position and being a 2" aluminum cap PLS25972); thence along the west line of said N1/2 of the SE1/4 of the NE1/4 N.02°07'57"E. 646.22 feet to the NE1/16 corner of said Section 27 (monumented by an 3-1/4" aluminum cap PLS25972); thence along the west line of the NE1/4 of the NE1/4 N.02°07'57"E. 29.63 feet (monumented by an 2" aluminum cap PLS25972); thence N.83°14'19"W. 80.29 feet (monumented by an 2" aluminum washer on a gate post PLS25972); thence S.88°37'28"W. 392.22 feet (monumented by an 2" aluminum cap PLS25972); thence S.85°28'29"W. 174.69 feet to the SE of the S1/2 of the SW1/4 of the NW1/4 of the NE1/4 (monumented by an 2" aluminum cap PLS25972); thence along the east line of said S1/2 of the SW1/4 of the NW1/4 of the NE1/4 N.01°52'43"E. 322.55 feet to the NE corner of said S1/2 of the SW1/4 of the NW1/4 of the NE1/4 (monumented by an 2" aluminum cap PLS25972); thence along the north line of said S1/2 of the SW1/4 of the NW1/4 of the NE1/4 N.88°38'21"W. 646.51 feet to the NW corner of said S1/2 of the SW1/4 of the NW1/4 of the NE1/4 also being on the west line of said NE1/4 (monumented by an 2" aluminum cap PLS25972); thence along said west line N.01°37'26"E. 966.00 feet to the point of beginning, said parcel contains 61.98 acres, more or less.

ALSO EXCEPTING THEREFROM

The SW1/4 of the SE1/4 of Section 22, Township 13 South, Range 92 West of the 6th P.M.,

Together with a perpetual easement over and across the existing road that runs through the land as described in Warranty Deed recorded June 17, 2005 under Reception No. 592478 and shall constitute a covenant running with the land.

Grantor shall have the right to use existing road to access gate to the BLM.

Parcel 2

A parcel of land located within the NE1/4 of Section 27, Township 13 South, Range 92 West of the 6th P.M., having a description based upon a bearing of S.88°46'54"E. from 1/4 Corner common to Sections 22 and 27 (monumented by a 2-1/2" USGLO brass cap) to the Section Corner common to Sections 22, 23, 26 and 27 (monumented by an 3-1/4" aluminum cap PLS14621), with all other bearings relative thereto and being more particularly described as follows:
Beginning at the 1/4 corner common to Sections 22 and 27 and running along the north line of said NE1/4 S.88°46'54"E. 1301.65 feet to the E1/16 corner common to Sections 22 and 27 (monumented by an 3-1/4" aluminum cap PLS25972); thence along the east line of the NW1/4 of the NE1/4 S.02°07'57"W. 646.22 feet (monumented by an 2" aluminum cap PLS25972); thence along the north line of the SW1/4 of the NE1/4 of the NE1/4 S.88°41'13"E. 647.95 feet (monumented by an 2" aluminum cap PLS25972); thence along the east line of the SW1/4 of the NE1/4 of the NE1/4 S.02°23'08"W. 647.34 feet to the south line of the NE1/4 of the NE1/4 (monumented by an 2" aluminum cap PLS25972); thence along said south line S.88°35'28"E. 645.08 feet to the N1/16 corner common to Sections 26 and 27 (monumented by an 3-1/4" aluminum cap PLS25972); thence along the east line of said NE1/4 S.02°38'15"W. 648.48 feet to the SE corner of the N1/2 of the SE1/4 of the NE1/4 (monumented by an 2" aluminum cap PLS25972); thence along the south line of said N1/2 of the SE1/4 of the NE1/4 N.88°29'40"W. 1284.41 feet (monumented by a witness corner bearing S.88°29'40"E. 563.29 feet from the true corner position and being a 2" aluminum cap PLS25972); thence along the west line of said N1/2 of the SE1/4 of the NE1/4 N.02°07'57"E. 646.22 feet to the NE1/16 corner of said Section 27 (monumented by an 3-1/4" aluminum cap PLS25972); thence along the west line of the NE1/4 of the NE1/4 N.02°07'57"E. 29.63 feet (monumented by an 2" aluminum cap PLS25972); thence N.83°14'19"W. 80.29 feet (monumented by an 2" aluminum washer on a gate post PLS25972); thence S.88°37'28"W. 392.22 feet (monumented by an 2" aluminum cap PLS25972); thence S.85°28'29"W. 174.69 feet to the SE of the S1/2 of the SW1/4 of the NW1/4 of the NE1/4 (monumented by an 2" aluminum cap PLS25972); thence along the east line of said S1/2 of the SW1/4 of the NW1/4 of the NE1/4 N.01°52'43"E. 322.55 feet to the NE corner of said S1/2 of the SW1/4 of the NW1/4 of the NE1/4 (monumented by an 2" aluminum cap PLS25972); thence along the north line of said S1/2 of the SW1/4 of the NW1/4 of the NE1/4 N.88°38'21"W. 646.51 feet to the NW corner of said S1/2 of the SW1/4 of the NW1/4 of the NE1/4 also being on the west line of said NE1/4 (monumented by an 2" aluminum cap PLS25972); thence along said west line N.01°37'26"E. 966.00 feet to the point of beginning, said parcel contains 61.98 acres, more or less.

TOGETHER WITH

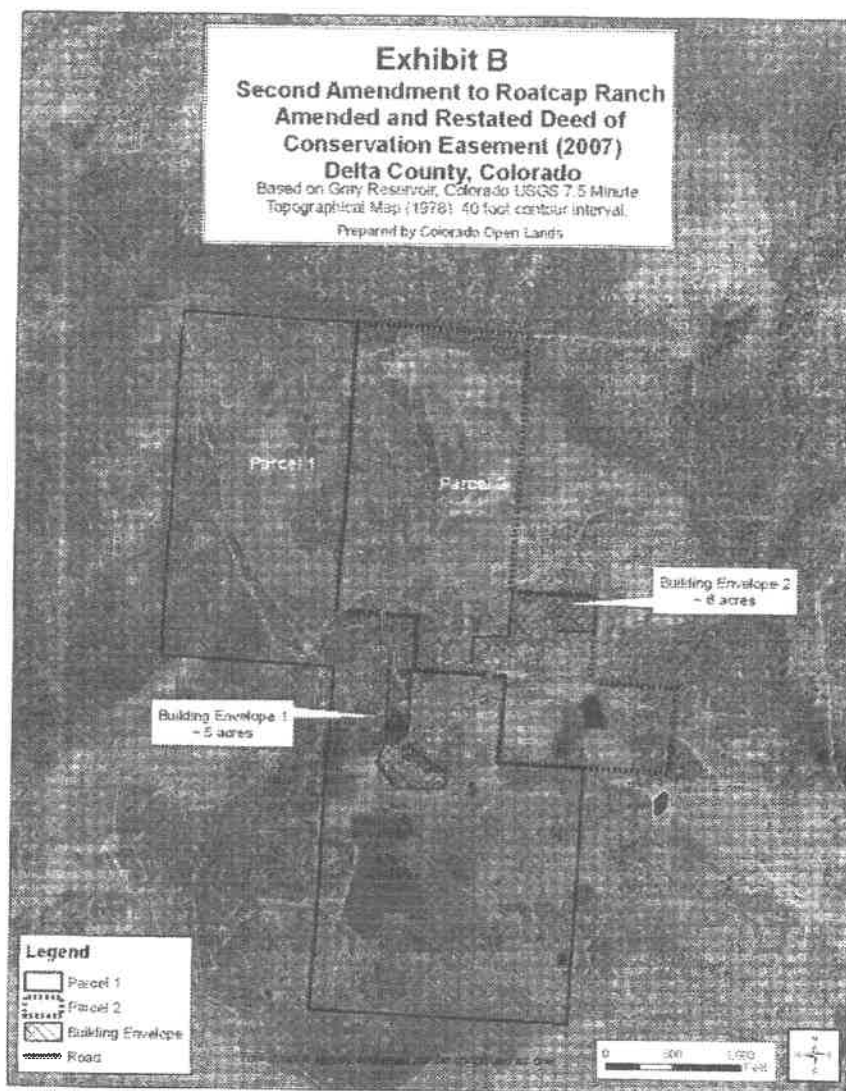
The SW1/4 of the SE1/4 of Section 22, Township 13 South, Range 92 West of the 6th P.M.,

TOTAL ACRES 100.76 ACRES MORE OR LESS.

County of Delta,
State of Colorado.

Together with a perpetual easement over and across the existing road that runs through the land as described in Warranty Deed recorded June 17, 2005 under Reception No. 592478 and shall constitute a covenant running with the land.

Grantor shall have the right to use existing road to access gate to the BLM.



**FIRST AMENDMENT
TO AMENDED AND RESTATED
DEED OF CONSERVATION EASEMENT
ROATCAP RANCH 2007**

THIS FIRST AMENDMENT TO THE AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT ("First Amendment") is made as of the 12 day of February, 2009, under the following recitals:

RECITALS:

- A. On or about December 21, 2007, MICHAEL MCCLURE AND JOY M. MCCLURE as "Grantor", executed that certain Amended and Restated Deed of Conservation Easement in favor of Colorado Open Lands, a Colorado nonprofit corporation, as "Grantee", which deed was recorded December 21, 2007 at Reception No. 621614 in the records of the Clerk and Recorder of Delta County, Colorado (the "Easement"). The legal description of the real property subject to the Easement and this First Amendment ("Property") is attached hereto as Exhibit A. All defined terms used herein shall have the same meaning as set forth in the Easement unless expressly provided to the contrary herein.
- B. Grantor and Grantee desire to amend the Easement referenced therein to modify the location of two building envelopes to fit more logically into two subdivided parcels. The location of the subdivided parcels and building envelopes are shown on Exhibit B of this First Amendment.
- C. Grantor and Grantee also desire to correct an error appearing in Exhibit C of the Easement regarding Water Rights included in the Easement.
- D. The Easement provides that it may be amended by an instrument signed by Grantor and Grantee and recorded in the real estate records of Delta County.
- E. Paonia State Bank hereby consents to this First Amendment and confirms the continuing subordination of the lien of its deed of trust against the Property to the Easement, as amended by this First Amendment.
- F. Grantee has determined that this First Amendment meets the requirements of Treasury Regulation §1.170A-14(h)(3)(i) and does not confer a private benefit to Grantor or any other individual greater than the benefit to the general public.
- G. Grantee has determined that this First Amendment meets the requirements of Treasury Regulation §1.501(c)(3)-1(c)(2) and does not result in private inurement for any of Grantee's board members, staff, or contract employees.

NOW, THEREFORE, in accordance with the foregoing, the covenants and considerations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, the undersigned hereby amend the Easement as follows:

1. The acreage of Building Envelope #1 will be decreased from ten acres to five acres and moved to the location depicted on Exhibit B of this First Amendment.

2. The acreage of Building Envelope #2 will be increased from one acre to six acres and moved to the location depicted on Exhibit B of this First Amendment. The rights reserved in and permitted by Section 4(A)(2) of the Easement regarding changes to existing improvements and the construction of new improvements in Building Envelope #2 shall continue to remain in full force and effect.
3. Exhibit C of the Easement is corrected to state that 100% of the Water Rights listed in Exhibit C are encumbered by the Easement. The corrected Exhibit C is attached hereto.
4. In the event of a conflict between the terms and provisions of this First Amendment and the terms and provisions of the Easement, this First Amendment shall govern and control.
5. This First Amendment may be executed in counterparts, each of which shall be an original but all of which when taken together shall constitute one amendment.

IN WITNESS WHEREOF, this First Amendment to Amended and Restated Deed of Conservation Easement Roatcap Ranch 2007 is executed as of the day and year first above written.

GRANTOR:

By Michael McClure
Michael McClure

By Joy M. McClure
Joy M. McClure

STATE OF COLORADO)
COUNTY OF Delta) ss.

The foregoing First Amendment to the Amended and Restated Deed of Conservation Easement Roatcap Ranch 2007 was acknowledged before me this 10th day of February, 2009, by Michael McClure and Joy M. McClure.

Witness my hand and official seal.

My commission expires: 11-5-09

Gail V. Aceto
Notary Public



GRANTEE:

COLORADO OPEN LANDS,
a Colorado non-profit corporation

By *Daniel E. Pike*
Daniel E. Pike
Title: President

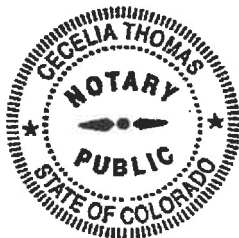
STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing First Amendment to the Amended and Restated Deed of Conservation Easement Roatcap Ranch 2007 was acknowledged before me this 14th day of February 2009, by Daniel E. Pike as President of Colorado Open Lands, a Colorado non-profit corporation.

WITNESS my hand and official seal.

My commission expires: 11-21-2012

Cecelia Thomas
Notary Public



By its signature below, the undersigned acknowledges that it has a deed of trust encumbering the property subject to the Easement and hereby consents to the execution of this First Amendment and confirms the continuing subordination of the lien of its deed of trust recorded January 13, 2006, at Reception No. 599567 in the records of the Clerk and Recorder of Delta County, Colorado, to the Easement, as amended by this First Amendment.

LIENHOLDER
Paonia State Bank

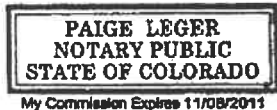
By [Signature]

STATE OF COLORADO)
COUNTY OF Delta) ss.

The foregoing First Amendment to the Amended and Restated Deed of Conservation Easement Roatcap Ranch 2007 was acknowledged before me this 12 day of Feb., 2009, by Kenny Hayward as President of Paonia State Bank.

WITNESS my hand and official seal.

My commission expires: 11/8/11



[Signature]
Notary Public

EXHIBIT A

Legal Description of the Property

Township 13 South, Range 92 West, 6th P.M.

Section 22: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$
Section 27: NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$
S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$
S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$
SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$
NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$
W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$
SW $\frac{1}{4}$ NE $\frac{1}{4}$
NW $\frac{1}{4}$ SE $\frac{1}{4}$
W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$

County of Delta, State of Colorado

Approximately 300 acres.

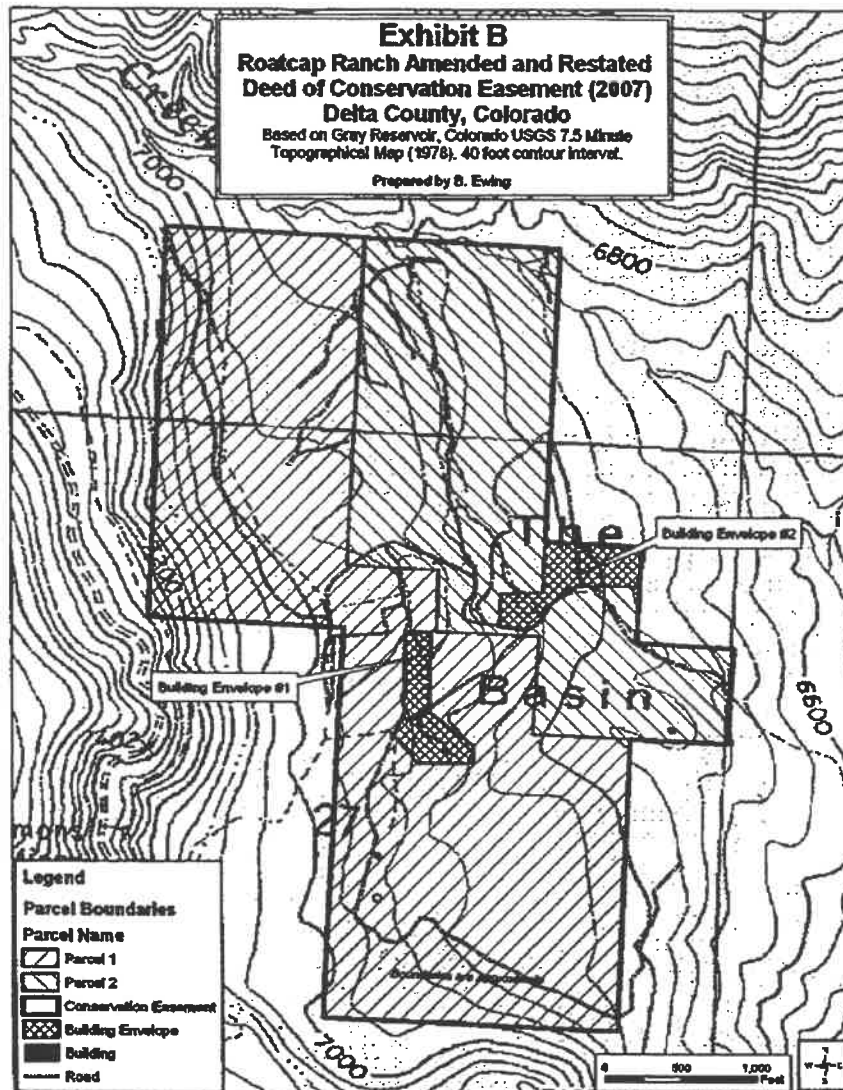


EXHIBIT C

Water Rights

100% of the following water rights:

700 shares of West Reservoir and Canal

340 shares of Oak Mesa Reservoir and Ditch Company

1.33 acre feet of Bypass on Oak Mesa Ditch also known as Goodenough Decree

454.5 af
10.49 cfs

Peter Vought
Joy McClure
Grant Farnsworth

2.33 cfs

1.17 transferred
to Oak Mesa
Ditch from
Goodenough
Ditch
Originally

**AMENDED AND RESTATED
DEED OF CONSERVATION EASEMENT**

ROATCAP RANCH 2007

Any time the Property is transferred by Grantor to any third party, Grantor shall pay a fee of ¼ of 1% of the sale price to Grantee and notify Grantee pursuant to the requirements of Section 10 of this Deed.

THIS DEED OF CONSERVATION EASEMENT ("Deed") is granted on this 21 day of December, 2007, by MICHAEL MCCLURE and JOY M. MCCLURE ("Grantor"), whose address is 38685 Stucker Mesa Road, Hotchkiss, Colorado 81419, to COLORADO OPEN LANDS, a Colorado non-profit corporation ("Grantee"), whose address is 274 Union Boulevard, Suite 320, Lakewood, Colorado 80228 (collectively, the "Parties").

RECITALS:

A. **Description of Property.** Grantor is the owner of the fee simple interest in 150 acres of land, more or less, located in Delta County, Colorado, more particularly described as the existing conservation area ("Existing Conservation Area") in Exhibit A and depicted on Exhibit B, both attached hereto and made a part of this Deed, which is subject to that certain Deed of Conservation Easement recorded on December 20, 2006, at Reception No. 610683 of the records of the Clerk and Recorder of Delta County, Colorado (the "First Conservation Easement"). Grantor is also the owner of the fee simple interest in 150 acres of land, more or less, also located in Delta County, Colorado, more particularly described as the new conservation area ("New Conservation Area") in Exhibit A and depicted on Exhibit B, which is adjacent to the Existing Conservation Area. The Existing Conservation Area and the New Conservation Area shall be collectively known herein as the "Property".

B. **Amended and Restated Easement.** This Deed grants a new conservation easement to encumber the New Conservation Area which was not encumbered by the First Conservation Easement. The Parties intend that this Deed encumber the Property and supersede and replace the First Conservation Easement in its entirety.

C. **Qualified Organization.** Grantee is a "qualified organization," as defined in §170(h) of the Internal Revenue Code and a charitable organization as required under §§38-30.5-104 (2), Colorado Revised Statutes (C.R.S.).

D. **Conservation Purposes.** According to Section 170(h)(4)(A) of the Internal Revenue Code and Section 1.170A-14(d) of the Treasury Regulations, 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 set forth in this Section and referred to hereafter in this Deed are collectively referred to as the "Conservation Values."

The Conservation Values of the Property are as follows:

Relatively Natural Habitat [§ 1.170A-14(d)(3)]. The Property contains piñon-juniper woodlands, mixed mountain shrublands, a wooded riparian corridor, natural and irrigated wet meadows, dryland pastures and several ponds that provide food, shelter, breeding ground, and migration corridors for several wildlife species including bald eagles, sandhill cranes, ferruginous hawks, northern leopard frogs, and northern pocket gophers.

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.

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. A large portion of the Property is visible to the general public from Johnson Road, a Delta County road, and adjacent Bureau of Land Management public lands, which are open to and actively utilized by residents of Delta County and the State of Colorado.

Agriculture. The Property is currently used for agricultural purposes including hay production and sheep grazing. This use is compatible with other land use in the vicinity, as adjacent properties are also used for agricultural purposes.

Significant public benefit. There is a foreseeable trend of intense development in the vicinity of the Property in the near future. The Town of Paonia lies just 5 miles southeast of the Property. Development of scenic properties surrounded by public lands has accelerated in the Grand Mesa area between Paonia, Delta and Grand Junction. There is a strong likelihood that development of the Property would lead to or contribute to degradation of the scenic and natural character of the area. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values.

It should also be noted that the terms of the Easement do not permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land.

These Conservation Values are of great importance to Grantor, Grantee, the residents of Delta County, and the State of Colorado.

E. **State Policy Concerning Conservation Easements.** C.R.S. §§33-1-101, provides in relevant part that "it is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors." C.R.S. §§35-3.5-101 states in part that "it is the declared policy of the state of Colorado to conserve, protect, 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 consistent with the protection of open land . . ."

F. **Other Supporting Government Policy.** The Master Plan of Delta County includes the goals of "preserving the rural character and natural environment, and protecting the unique physical resources of Delta County."

G. **Documentation of Present Conditions.** Pursuant to §1.170A-14(g)(5) of the Treasury Regulations and in order to document the condition of the Property as of the date of this Deed, a report has been prepared by Dawn Reeder of Rare Earth Science, LLC, dated December 5, 2007 ("Present Conditions Report"). The Present Conditions Report contains a natural resources inventory and also documents the Conservation Values and the characteristics, current use, and status of improvements on and development of the Property. The Present Conditions Report is acknowledged by Grantor and Grantee as an accurate representation of the Property at the time of the transfer. The Present Conditions Report has been provided to both parties and will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, the Present Conditions Report is not intended to preclude the use of other evidence to establish the condition of the Property as of the date of this Deed.

H. **Charitable Donation.** Grantor intends to create a conservation easement pursuant to §170(h) of the Internal Revenue Code of 1986 (as amended), §1.170A-14 of the Treasury Regulations, and §38-30.5-101 of the Colorado Revised Statutes, and hereby makes a charitable gift of the property interest conveyed by this Deed to Grantee.

ACKNOWLEDGEMENT OF INTENT:

As a guide to the interpretation of this Deed and administration of the Conservation Easement created by this Deed by future generations, Grantor and Grantee, for themselves, and for their successors and assigns, herein expressly declare their agreement and dedication to the following purpose and intent:

1. **Purpose.** The purpose of this Conservation Easement is to preserve and protect the Conservation Values in perpetuity ("Purpose"). This Purpose is in accordance with §170(h) of the Internal Revenue Code. In order to achieve this Purpose, Grantor intends to convey this Deed to Grantee to ensure that the Conservation Values will be preserved and protected in perpetuity.
2. **Intent.** Subject only to the Purpose set forth above, the intent of the parties is to permit all other uses of the Property that are not inconsistent with the preservation and protection of the Conservation Values, as determined by Grantee in its sole discretion, or that are not expressly prohibited herein. Nothing in this Deed is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation Values.

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

1. **Conveyance of Easement.** Grantor voluntarily grants and conveys to Grantee and Grantee voluntarily accepts, a perpetual Conservation Easement in gross, an immediately vested interest in real property defined by C.R.S. §§38-30.5-101, *et seq.*, and of the nature and character

described in this Deed ("Easement"), for the purpose of preserving and protecting the Conservation Values in perpetuity.

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

A. To preserve and protect the Conservation Values;

B. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is required pursuant to those provisions in Section 8, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and

C. To prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement and, except as limited by Section 7 below, Grantee may require the restoration of such areas or features of the Property that are damaged by an inconsistent activity or use.

Nothing in this Section shall preclude the right of Grantee to enforce the preservation and protection of the Conservation Values or any other provisions of this Deed.

3. **Rights Retained by Grantor.** Grantor retains the right to perform any act not specifically prohibited or restricted by this Easement, provided that such acts and uses are not inconsistent with the preservation and protection of the Conservation Values. These retained rights include, but are not limited to, the retention of the economic viability of the Property.

4. **Property Improvements.** The Parties agree that the current use of and improvements to the Property are not inconsistent with the preservation and protection of the Conservation Values and are permitted. Without limiting the generality of any of the foregoing, Grantor and Grantee hereby acknowledge and agree:

A. **Building Envelopes and Improvements.** At the time of the granting of this Deed, there exist on the Property two building envelopes that contain several residential and agricultural improvements—a ten-acre residential building envelope (hereinafter "Building Envelope #1") and a one-acre agricultural building envelope (hereinafter "Building Envelope #2") (collectively, the "Building Envelopes"). The locations of the Building Envelopes are generally depicted on Exhibit B and more particularly described as follows:

(1) **Building Envelope #1.**

a. **Existing Improvements.** One single-family residence covering approximately 1,600 square feet of Floor Area (defined hereafter); one guest cabin covering approximately 720 square feet of Floor Area; two sheds covering approximately 180 square feet of Floor Area; one loafing shed covering approximately 300 square feet of Floor

Area; and a chicken coop covering approximately 80 square feet of Floor Area.

b. ***Changes to Existing Improvements.*** Grantor may maintain and repair the existing improvements in Building Envelope #1 at their current location without further permission of Grantee. Grantor may replace and enlarge the existing single-family residence at its current location, provided that it does not exceed 1,800 square feet of Floor Area. Grantor may replace and enlarge the other existing improvements at their current location, subject to Section 4B below. Grantor may relocate the existing improvements subject to Section 4B below. Any other action is prohibited unless Grantee determines in its sole discretion that the proposed action is not inconsistent with the preservation and protection of the Conservation Values.

c. ***Construction of New Improvements.*** Grantor hereby reserves the right to construct one additional single-family residence within Building Envelope #1, not to exceed 5,000 square feet of Floor Area. Grantor also reserves the right to construct two barns within Building Envelope #1, neither of which shall exceed 2,000 square feet of Floor Area. Grantor may construct or otherwise locate within Building Envelope #1 any agricultural improvement not exceeding 1,000 square feet of Floor Area without permission of Grantee. The construction or location within Building Envelope #1 of any new agricultural improvement in excess of 1,000 square feet of Floor Area is subject to Section 4B below.

(2) ***Building Envelope #2.***

a. ***Existing Improvements.*** One hay barn covering approximately 750 square feet of Floor Area.

b. ***Changes to Existing Improvements.*** Grantor may maintain and repair the existing improvement in Building Envelope #2 at its current location without further permission of Grantee. Grantor may replace and enlarge the existing improvement at its current location, subject to Section 4B below. Grantor may relocate the existing improvement subject to Section 4B below. Any other change to the existing improvement is prohibited unless Grantee determines in its sole discretion that the proposed change is not inconsistent with the preservation and protection of the Conservation Values.

c. ***Construction of New Improvements.*** The construction or location of any new residential improvement in Building Envelope #2 is prohibited. Grantor may construct or otherwise locate any agricultural improvement not exceeding 1,000 square feet of Floor Area within Building Envelope #2 without permission of Grantee. The construction or location of any new agricultural improvement in excess of 1,000 square

feet of Floor Area is subject to Section 4B below.

B. **General Construction Restrictions and Procedures.** In no case shall any new residential improvement or any reconstructed or replaced residential improvement exceed thirty-five (35) feet in height as defined by local building code ordinance. No single residential improvement shall be greater than 5,000 square feet of Floor Area and no single agricultural improvement shall be greater than 2,000 square feet of Floor Area. The Floor Area of the improvements in Building Envelope #1 shall not exceed a cumulative maximum of 12,000 square feet, and the Floor Area of the improvements in Building Envelope #2 shall not exceed a cumulative maximum of 2,000 square feet.

Prior to the location, construction, replacement or enlargement of any improvement as permitted in this Section 4, Grantor shall request and obtain Grantee's approval pursuant to Sections 17 (Grantor's Notice) and 18 (Grantee's Approval) of this Deed.

C. **Outside of the Building Envelopes.** The construction of residential improvements outside of the Building Envelopes is prohibited. The construction of any major agricultural improvements such as barns, silos, machine shops or similar structures outside of the Building Envelopes is prohibited, unless Grantee in its sole discretion determines that the proposed construction is not inconsistent with the preservation and protection of the Conservation Values. The construction of minor agricultural improvements such as corrals, loafing sheds, hayracks, headgates, ditches, culverts, stock tanks or similar structures is permitted without further permission from Grantee.

D. **Definition of Floor Area.** For purposes of this Section 4, Floor Area is defined as all residential or non-residential finished or unfinished space, covered and enclosed within two or more walls, but does not include residential covered or uncovered decks or patios.

E. **Other Improvements.**

(1) **Road Construction and Paving.** For purposes of this Section, roads shall be defined as any permanent road that is graded, improved or maintained and shall exclude any seasonal unimproved roads that may or may not be depicted on Exhibit B.

a. **Within the Building Envelopes.** Construction, paving or otherwise surfacing of roads or parking areas within the Building Envelopes is permitted.

b. **Outside the Building Envelopes.** No roads shall be constructed or established outside of the Building Envelopes except for those existing or new roads depicted on Exhibit B. Said roads shall be no wider than necessary to provide access or to meet local codes for width of access to Improvements. Said roads may be paved or otherwise surfaced provided that Grantee determines that said surfacing is not inconsistent with the preservation and protection of the Conservation Values, pursuant

to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

(2) **Fences.** Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property, provided that said fences are not inconsistent with the preservation and protection of the Conservation Values.

(3) **Utility Lines.** Existing utility lines may be repaired and replaced in the same location with a similar structure. New utility lines may be installed within the Building Envelopes. Utility lines may be installed outside the Building Envelopes, provided that said utility lines are installed under those roads depicted on Exhibit B. Other utility lines may be constructed or significantly upgraded provided that Grantee determines that said utility lines are not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

(4) **Signs.** Grantor may place and maintain signs on the Property provided that no individual sign exceeds twelve (12) square feet. Larger signs may be permitted provided that Grantee determines that said signs are not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

(5) **Water Features.** At the time of the granting of this Deed, there are ten ponds, numerous irrigation ditches, wet meadows, and a riparian corridor on the Property. Grantor hereby reserves the right to maintain or enlarge the ponds and ditches for agricultural and wildlife purposes, provided that said maintenance or enlargement is not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of 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. In the event Grantee believes any resource management practice(s) are not consistent with the preservation and protection of the Conservation Values, Grantee may request that Grantor and Grantee shall, at Grantor's expense, consult with a mutually agreed upon resource management professional. This professional will provide written recommendations for said resource management practice(s) not inconsistent with the preservation and protection of the Conservation Values.

A. **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, and avoiding unsustainable livestock grazing practices. The construction and maintenance of agricultural ditches, stock ponds, wells or other

agricultural water features is permitted.

B. **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 buildings and fences. Tree thinning activities may take place to maintain the character and nature of the 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 not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

C. **Relatively Natural Habitat.** Major habitat management activities such as removing tamarisk, chaining juniper or sagebrush, constructing ponds and wetlands, and conducting controlled burns may be permitted provided that Grantee determines that said management activities are not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

D. **Minerals and Other Deposits.** Grantor's current and future ownership of mineral rights on or under the Property shall be subject to the following provisions:

(1) **Mining.** The exploration, development, mining or other extraction of minerals, coal, peat, sand, gravel, rock or soil is prohibited.

(2) **Oil, Gas, and Geothermal Resources.** The exploration, development, mining or other extraction of geothermal resources and hydrocarbons is prohibited.

E. **Recreation.** Low-impact recreational uses such as wildlife watching, hiking, cross-country skiing, snowmobiling, snowshoeing, hunting and fishing are permitted, provided they are not inconsistent with the preservation and protection of the Conservation Values. Current and future commercial recreation uses such as guiding and outfitting for hunting and fishing are permitted, provided they are not inconsistent with the preservation and protection of the Conservation Values. All-terrain vehicle use is permitted to support hunting activities. These uses are specifically excluded from the Restricted Practices in Section 6D.

F. **Water Rights.** Pursuant to C.R.S. Section 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 water rights, ditches and ditch rights, ponds, springs and spring rights, reservoir and reservoir rights, wells and groundwater rights, water allotments, units or shares, and any other types of rights, including contracts, permits, easements, and rights-of-way, related to the ownership of water, tributary, non-tributary and not non-tributary, appurtenant to or customarily or historically used or associated with or upon the Property, together with any and all of the rights associated with the historical and

beneficial use of any of the embankments, flumes, headgates, measuring devices or any other structures that are appurtenant to those water rights (collectively, the "Water Rights"). The Water Rights are described in Exhibit C attached hereto and made a part of this Deed.

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, and that Grantee shall continue to maintain their historic use.

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 use or point of diversion of the Water Rights unless Grantee determines that said change is not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed. Grantor shall not construct, or permit others to construct, any new diversion, storage or other water structures upon the Property, shall not develop any conditional water rights for use on the Property, and shall not otherwise undertake any new development of water resources for use on the Property, unless Grantee determines that said action is not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

Protection of Water Rights. Grantor shall cooperate with Grantee to help assure the continued historical use of the Water Rights in order to preserve and protect the Conservation Values. Grantor shall annually report to Grantee the nature and extent of use of the Water Rights during the prior year, which report need not be in writing but shall include copies of any reports submitted to the State or Division Engineer or Water Commissioner. Grantor shall also provide Grantee with a copy of any written notice received by Grantor from any state water official concerning the use or possible abandonment of the Water Rights. If Grantor shall fail to maintain the historic use of the Water Rights upon the Property, or those rights necessary to preserve and protect the Conservation Values, Grantee shall have the right, but not the obligation, to consult with a mutually agreed upon resource management professional as referenced above in this Section.

Abandonment of Water Rights. If the Water Rights appear on the decennial abandonment list or Grantee determines that the Water Rights are otherwise 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 90 days of receipt of said notice from Grantee, Grantee shall, in addition to any other remedies available to Grantee under this Deed or by law, have the right to (1) enter upon the Property and undertake any and all actions reasonably necessary to continue the historical use of the Water Rights; (2) seek removal of the Water Rights from the decennial abandonment list; (3) seek to change the Water Rights to another Permitted Water Use; and (4) convey all or part of the Water Rights to Grantee for continued use on the Property or elsewhere in the North Fork Valley water district or otherwise 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.

Ditch or Reservoir Company. Colorado Revised Statutes §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.

G. **Habitat Improvements.** Habitat improvement and maintenance activities may be permitted upon Grantee's approval and determination that said improvements and activities are not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

6. ***Restricted Practices.***

A. ***Subdivision.*** Grantor hereby reserves the right to subdivide the Property into two separate legal parcels, neither of which may be less than 100 acres. Grantor and Grantee agree that, except as previously provided herein, no further division, 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 permitted. Ownership by joint tenancy or tenancy in common is permitted; provided, however, that Grantor shall not undertake any legal proceeding to partition, subdivide or divide the Property or its ownership in any manner except as provided herein.

B. ***Surface Disturbance.*** Except as permitted within this Deed, any alteration of the surface of the land, including without limitation, the movement, excavation or removal of soil, sand, gravel, rock, peat or sod, that is inconsistent with the preservation and protection of the Conservation Values, is prohibited.

C. ***Existing Water Features.*** Except as permitted within this Deed, alteration, impairment, modification or adverse change in or to existing ponds, wetlands or stream channels that is inconsistent with the preservation and protection of the Conservation Values, is prohibited.

D. ***Commercial or Industrial Activity.*** Commercial or industrial uses of the Property that are inconsistent with the preservation and protection of the Conservation Values are prohibited.

E. ***Feed Lot.*** The establishment or maintenance of a feed lot is prohibited. For purposes of this Deed, "feed lot" is defined as a permanently constructed confined area or facility which is used and maintained continuously and exclusively for purposes of warm-up or fattening large numbers of livestock for market. Nothing in this section shall prevent Grantor from seasonally confining livestock into an area, corral or other

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

F. **Public Access.** Nothing contained herein shall be construed as affording the public other than visual access to any portion of the Property, although Grantor may permit public access to the Property on such terms and conditions as it deems appropriate, provided that such access is not inconsistent with the preservation and protection of the Conservation Values.

G. **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 not inconsistent with the preservation and protection of the Conservation Values. The storage or accumulation of agricultural products and by-products on the Property is permitted in accordance with all applicable government laws and regulations.

H. **Hazardous Materials.** Grantor may use agri-chemicals on the Property in accordance with all applicable federal, state or local laws. Otherwise, the treatment, permanent storage, disposal or release of hazardous materials on, from or under the Property is prohibited. For the purpose of this Deed, hazardous materials shall mean any hazardous or toxic material or waste that is subject to any federal, state, or local law or regulation. Notwithstanding anything in this Deed to the contrary, this prohibition 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 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").

I. **Weed Control.** The Property shall be managed to control noxious weeds to the extent reasonably possible.

J. **Other Restricted Uses.** Golf courses, sod farms, helicopter pads, and airstrips are prohibited. Towers in excess of 35 feet in height are prohibited unless Grantee determines the proposed tower is not inconsistent with the preservation and protection of the Conservation Values, pursuant to Sections 15 (Grantor's Notice) and 16 (Grantee's Approval) of this Deed.

7. **Responsibilities of Grantor and Grantee Not Affected.** Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing 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 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:

A. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same. 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.

B. **Liability.** 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) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, unless due 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 presence or release of hazardous materials on, under, or about the Property under Section 6(F) and (iv) the violation or alleged violation of, or other failure to comply with any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and state hazardous waste statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property. 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. **Enforcement.** Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed and Purposes of this Easement. In those cases where Grantee determines that immediate entry is required to inspect for, prevent, terminate, or mitigate a violation of this Easement, Grantee may enter the Property without advance notice. Grantee may notify Grantor in writing of the nature of the alleged violation. Upon receipt of said notice, Grantor shall immediately cease the alleged violation and either (a) if necessary, restore or remediate the Property to its condition prior to the violation; (b) provide a written plan for restoration and remediation of the Property acceptable to Grantee; (c) provide written documentation, acceptable to Grantee, that the activity is permitted and is not a violation. If Grantor is unable or unwilling to cease the immediate alleged violation, and comply with (a), (b) or (c) of the previous sentence, both parties agree to resolve the dispute through mediation, or court procedures. At any point in time, the parties may take appropriate legal action including an injunction to stop the alleged violation.

Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit, and attorneys' fees and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor. In the event the deciding body determines that Grantee has acted in bad faith in seeking to enforce this Easement, each Party shall be responsible for their own costs. The parties will share equally in the mediation fees. 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. Enforcement of the terms of this Easement 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.

9. **Transfer of Easement.** Grantee shall have the right to transfer this Easement to any public agency or private non-profit organization that, at the time of transfer, is a "qualified organization" under § 170(h) of the U.S. Internal Revenue Code, and under C.R.S. §§38-30.5-101, *et seq.*, and only if the agency or the organization expressly agrees to assume the responsibility imposed on Grantee by this Easement. Grantee shall notify Grantor in advance of any proposed transfers. If Grantee ever ceases to exist or no longer qualifies under federal or state law, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes and that agrees to assume the responsibility.

10. **Transfer of Property.** Any time the Property or a portion thereof is transferred by Grantor to any third party, excluding Grantor's direct descendants, family members, or related parties, Grantor shall pay a fee of $\frac{1}{4}$ of 1% of the purchase price to Grantee as holder of the property interest and right of possession represented by this Deed of Conservation Easement, to be used for the purpose of the defense of conservation easements or for other purposes consistent with Grantee's mission. This provision is intended to run with the land in perpetuity, and to touch and concern the Property burdened by this Easement by providing Grantee a contribution to enable its stewardship, enforcement, and defense of the Easement. Grantor shall notify Grantee in writing within (5) business days after closing using the form in Exhibit C attached hereto and made a part of this Deed. The document of conveyance shall expressly refer to this Deed of Conservation Easement and shall include a copy of the new ownership deed. Said fee shall be waived if the Property is transferred to Grantor's heirs or beneficiaries or if the Property is transferred by Grantor to his direct descendants, family members, or related parties through gift, sale, or conveyance.

11. **Real Property Interest.** The granting of this Deed immediately vests Grantee with a property interest. Grantor and Grantee also agree, as to the value of the Property, an appraisal has been completed that indicates the fair market value of this property interest is fifty-six percent (56%) of the full fair market value of the Property. Pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii), Grantor and Grantee further agree that this percentage shall remain constant.

12. **Termination of Easement.** This Easement may only be terminated or extinguished by judicial proceedings by a court of competent jurisdiction. The total loss of all the Conservation Values on the Property is the only grounds under which this Deed can be terminated. Should this Easement be extinguished, sold for public use, taken for public use, or terminated, whether in whole or in part, Grantee shall be paid proceeds equal to the aforementioned percentage of the fair market value of the Property. Grantee's use of the proceeds shall comply with Treasury Regulation § 1.170A-14(g)(6)(i).

13. **Perpetual Duration.** This Easement shall be a servitude running with the land in perpetuity. The provisions of this Deed that apply to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear; provided, however, that each party's rights and obligations under this

Easement shall terminate (as to such party, but not as to such party's successor, who shall be bound as provided herein) upon a transfer of 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.

14. *Change of Circumstance.*

A. *Economic Value.* The fact that any use of the Property that is prohibited by this Easement, or any other use as determined by Grantee to be inconsistent with the Purpose of this Easement, may become economically more valuable than permitted uses has been considered by Grantor in granting this Easement. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of this Easement pursuant to Section 12. In addition, the inability to carry on any or all of the permitted 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 12.

B. *Agricultural Value.* In the event Grantee believes that agriculture is no longer a Conservation Value, Grantee may request that Grantor and Grantee develop an acceptable plan to ensure appropriate land cover consistent with the preservation and protection of the Conservation Values. The expense of developing and implementing said plan shall be paid for by Grantor.

15. *Grantor's Notice.* Where Grantor's notice is required in this Deed, 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 activity in sufficient detail (i.e. location, size, scope, design, nature) to allow Grantee to evaluate the consistency of the proposed activity with the pertinent terms of this Easement.

16. *Grantee's Approval.* Where Grantee's approval is required in this Deed, Grantee shall grant or withhold its approval in writing within thirty (30) calendar days of receipt of Grantor's written notice thereof. Grantee's decision may be withheld if Grantee is unable to immediately evaluate the proposed action.

17. *Notices.* Any notice that either party is required to give to the other in writing shall be transmitted via fax, U.S. mail, delivery service or served personally to the following addresses which addresses may change from time to time:

Grantor: Michael McClure and Joy M. McClure
38685 Stucker Mesa Rd.
Hotchkiss, CO 81419
(970) 527-7754

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

18. ***Liens on the Property.***

A. ***Current Liens.*** The Property is partial security for a lien held by the Grant Y. Farnsworth Family Limited Liability Partnership via a Deed of Trust, dated February 18, 2004, and recorded as Delta County Reception No. 577985 on March 24, 2004 ("Deed of Trust"). The Property was acquired by, and certain payment obligations under the Deed of Trust were assumed by, Mary E. McCarney, via an Assumption Agreement dated December 17, 2004, and recorded as Delta County Reception No. 586712 on December 21, 2004. The Property was thereafter conveyed to Grantor, subject to the Deed of Trust, via a Warranty Deed dated June 16, 2005, and recorded as Delta County Reception No. 592478 on June 17, 2005. The Deed of Trust is subordinate to this Deed as evidenced by the Subordination Agreement that has been recorded at Delta County Reception No. 621613 on December 21, 2007.

B. ***Subsequent Liens.*** No provisions of this Deed should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing. Any mortgage or lien arising from such a borrowing is subordinate to this Easement.

19. ***No Merger.*** Unless the parties expressly state that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Easement.

20. ***Grantor's Representations and Warranties.***

A. Except as provided in Section 18, Grantor warrants that Grantor 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, and hereby promises to defend title to the Property against all claims that may be made against it by any person claiming by, through, or under Grantor.

B. Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

(1) No hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, deposited, or transported, in, on, or across the Property, and that there are no underground storage tanks located on the Property;

(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;

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

(4) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or

orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use.

21. **Acceptance.** Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed.

22. **General Provisions:**

A. **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.

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

C. **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.

D. **Controlling Law and Interpretation.** This Easement shall be performed and broadly interpreted under the laws of State of Colorado, resolving any ambiguities and questions of the validity of specific provisions in favor of maintaining the Purpose of this Deed. Any decisions resolving such ambiguities shall be documented in writing.

E. **Counterparts.** The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it; all counterparts, when taken together, shall constitute this instrument.

F. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will confer a private benefit to Grantor or any other individual greater than the benefit to the general public (see IRS Reg. 1.170A-14(h)(3)(i)) or result in private inurement for a Board member, staff or contract employee of Grantee (see IRS Reg. 1.501(c)(3)-1(c)(2)), or affect the qualifications of this Easement under any applicable laws. Any amendment must not be inconsistent with the preservation and protection of the Conservation Values and shall not 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 both parties, and recorded in the official records of Delta County, Colorado.

G. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the terms of this Easement and supersedes all prior discussions,

negotiations, understandings, or agreements relating to the terms of this Easement, all of which are merged herein. Upon execution and recordation of this Deed, the First Conservation Easement is hereby amended and restated in its entirety by this Deed, and the First Conservation Easement shall be superseded by this Deed and have no further force or effect.

23. **Development Rights.** Grantor hereby grants to Grantee all development rights except as specifically reserved herein, and the parties agree that such rights are terminated and extinguished.

24. **Recording.** Grantor shall record this Deed in timely fashion in the official records of Delta County, Colorado, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

25. **Third Party Beneficiary.** This Deed is entered into by and between Grantor and Grantee and does not create rights or responsibilities in any third parties.

26. **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 Easement.

27. **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 shall have the right to assess such shareholders, partners or members for any monetary or other obligations set forth in this Easement.

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

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

GRANTOR:

By: Michael McClure
Michael McClure

By: Joy M. McClure
Joy M. McClure

STATE OF COLORADO)
) ss.
COUNTY OF DELTA)

The foregoing instrument was acknowledged before me this 21st day of December,
2007, by MICHAEL McCLURE and JOY M. McCLURE.

Witness my hand and official seal.

My commission expires: 11-5-09



Gail V. Acedo
Notary Public

GRANTEE:

COLORADO OPEN LANDS,
a Colorado non-profit corporation

By 
Daniel E. Pike, President

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 12th day of December,
2007, by Daniel E. Pike as President of Colorado Open Lands, a Colorado non-profit
corporation.

Witness my hand and official seal.

My commission expires: 11-21-2008


Notary Public

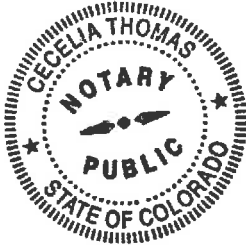


EXHIBIT A

Legal Description of the Property

EXISTING CONSERVATION AREA

Township 13 South, Range 92 West, 6th P.M.

Section 22: SE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$

Section 27: NE $\frac{1}{4}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$

County of Delta, State of Colorado

Approximately 150 acres.

NEW CONSERVATION AREA

Township 13 South, Range 92 West, 6th P.M.

Section 27: S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$
S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$
SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$
NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$
W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$
SW $\frac{1}{4}$ NE $\frac{1}{4}$
NW $\frac{1}{4}$ SE $\frac{1}{4}$
W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$

County of Delta, State of Colorado

Approximately 150 acres.

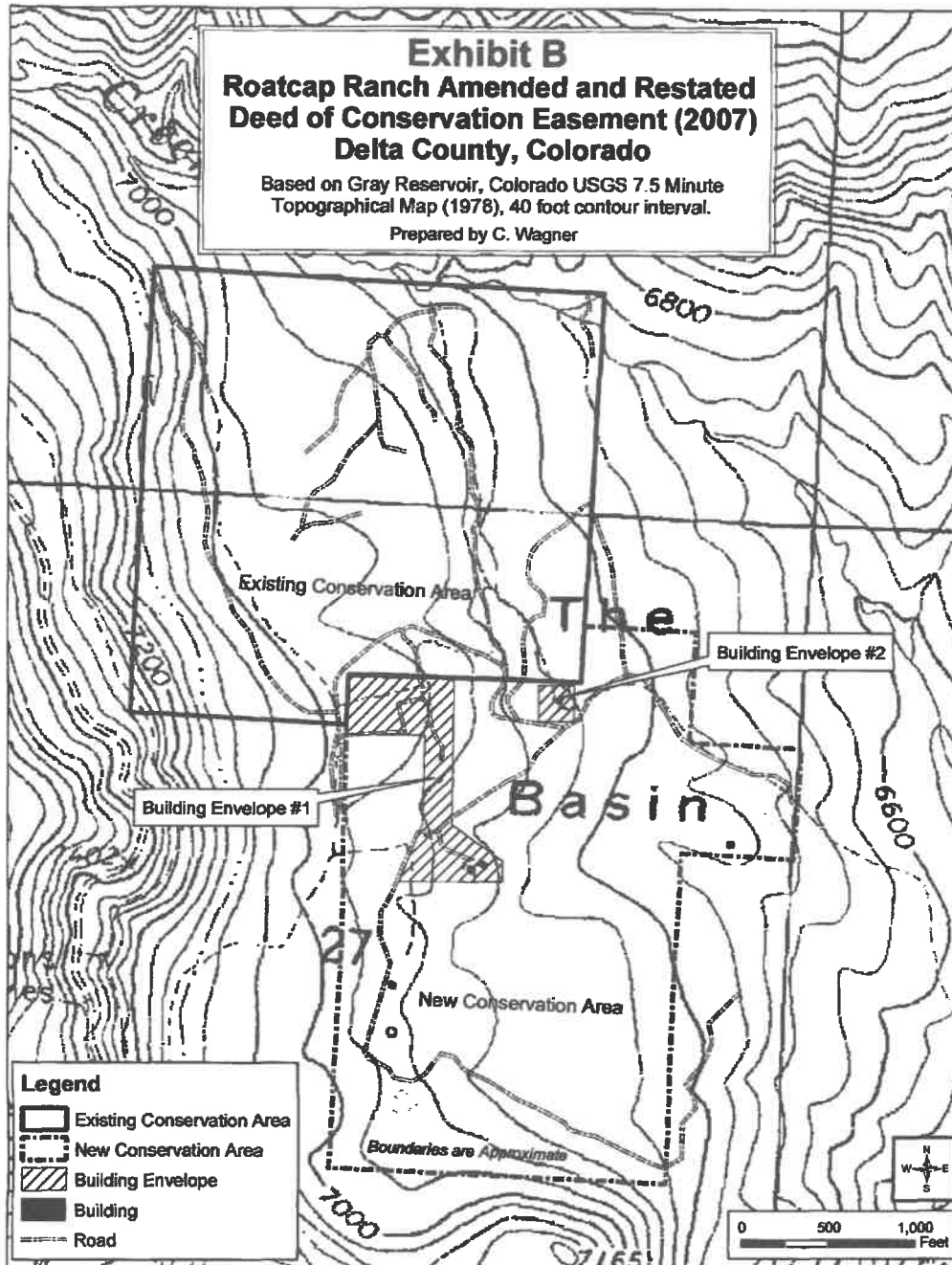


EXHIBIT C

Water Rights

54% of the following water rights:

700 shares of West Reservoir and Canal

340 shares of Oak Mesa Reservoir and Ditch Company

1.33 acre feet of Bypass on Oak Mesa Ditch also known as Goodenough Decree

EXHIBIT D

Sample Notice of Transfer of Property

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

Pursuant to Section 10 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 10 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 _____,
200__, by _____ as _____ of _____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

Date: _____

**AMENDED AND RESTATED
DEED OF CONSERVATION EASEMENT**

Roatcap Ranch

Any time the Property is transferred by Grantor to any third party, Grantor shall pay a transfer fee of $\frac{1}{4}$ of 1% of the sale price to Grantee and notify Grantee pursuant to the requirements of Section 10 of this Deed.

THIS DEED OF CONSERVATION EASEMENT ("Deed") is granted on this 19th day of December, 2006, by MICHAEL MCCLURE and JOY M. MCCLURE ("Grantor"), whose address is 38685 Stucker Mesa Road, Hotchkiss, Colorado 81419, to COLORADO OPEN LANDS, a Colorado non-profit corporation ("Grantee"), whose address is 274 Union Boulevard, Suite 320, Lakewood, Colorado 80228, collectively the "Parties".

RECITALS:

A. Description of Property. Grantor is the owner of the fee simple interest in 80 acres of land, more or less, located in Delta County, Colorado, more particularly described as the existing conservation area ("Existing Conservation Area") in **Exhibit A** and depicted on **Exhibit B**, both attached hereto and made a part of this Deed, which is subject to that certain Deed of Conservation Easement recorded on December 29, 2005, at Reception No. 599071 of the records of the Clerk and Recorder of Delta County, Colorado (the "First Conservation Easement"). Grantor is also the owner of the fee simple interest in 70 acres of land, more or less, also located in Delta County, Colorado, more particularly described as the new conservation area ("New Conservation Area") in **Exhibit A** and depicted on **Exhibit B**, which is adjacent to the Existing Conservation Area. The Existing Conservation Area and the New Conservation Area shall be collectively known herein as the "Property".

B. Amended and Restated Easement. This Deed grants a new conservation easement to encumber the New Conservation Area which was not encumbered by the First Conservation Easement. The Parties intend that this Deed encumber the Property and supercede and replace the First Conservation Easement in its entirety.

C. Qualified Organization. Grantee is a "qualified organization," as defined in §170(h) of the Internal Revenue Code and a charitable organization as required under §§38-30.5-104 (2), Colorado Revised Statutes (C.R.S.).

D. Conservation Purposes. The Conservation Purposes set forth in this paragraph may hereinafter be collectively referred to as the "Conservation Values." According to Section 170(h)(4)(A) of the Internal Revenue Code and Section 1.170A-14(d) of the Treasury Regulations, the Conservation Values of a qualified conservation contribution may be for one or more of the following: to preserve land for outdoor recreation by or education of the general public; to protect relatively natural habitat of fish, wildlife or plants; to preserve open space; and to preserve historically important land or structures.

The Conservation Values of the Property include Relatively Natural Habitat and Open Space as further described below:

Relatively Natural Habitat [§ 1.170A-14(d)(3)]. The Property contains wetlands, riparian areas, irrigated meadows and montane shrublands that provide food, shelter, breeding ground, and migration corridors for several wildlife species. The Property is surrounded by public lands that sustain significant populations of wildlife. The habitat on the Property is also "significant" as defined by the Treasury Regulations, as it represents habitat for rare, endangered or threatened species such as bald eagles, sandhill cranes, ferruginous hawks, northern leopard frogs, and northern pocket gophers.

Open Space [§ 1.170A-14(d)(4)]. The Property qualifies as open space because it will be preserved for the scenic enjoyment of the general public and will yield a significant public benefit.

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. A large portion of the Property is visually accessible to the general public from adjacent Bureau of Land Management public lands, which are open to and actively utilized by residents of Delta County and the State of Colorado.

Agriculture. The Property is currently used for agricultural purposes including irrigated crop production and livestock grazing. This use is compatible with other land use in the vicinity, as adjacent properties are also used for agricultural production.

Significant public benefit. There is a foreseeable trend of development in the vicinity of the Property in the near future. The Town of Paonia lies just 5 miles southeast of the Property. Development of scenic properties surrounded by public lands has accelerated in the Grand Mesa area between Paonia, Delta and Grand Junction. There is a strong likelihood that development of the Property would lead to or contribute to degradation of the scenic and natural character of the area. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values. The protection of the Property is consistent with existing private conservation programs in the area, as evidenced by 80 acres of land directly adjacent to the Property to the west that is already protected by a conservation easement held by Grantee.

It should also be noted that the terms of the Easement do not permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land.

These Conservation Values are of great importance to Grantor, Grantee, the residents of Delta County, and the State of Colorado.

E. **State Policy Concerning Conservation Easements.** C.R.S. §§33-1-101, provides in relevant part that "it is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors." C.R.S. §35-3.5-101 states in part that "it is the declared

policy of the state of Colorado to conserve, protect, 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 Supporting Government Policy.** The Master Plan of Delta County includes the goals of "preserving the rural character and natural environment, and protecting the unique physical resources of Delta County."

G. **Documentation of Present Conditions.** The Conservation Values and the characteristics, current use, and status of improvements on and development of the Property as of the date of this Deed are further documented in a "Present Conditions Report," dated December 2005 and prepared by Dawn Reeder of Rare Earth Science, LLP, and updated on October 27, 2006, which report is acknowledged as accurate by Grantor and Grantee. The Present Conditions Report has been provided to both parties and will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, the Present Conditions Report is not intended to preclude the use of other evidence to establish the condition of the Property as of the date of this Deed.

H. **Charitable Donation.** Grantor intends to create a conservation easement pursuant to §170(h) of the Internal Revenue Code of 1986, as amended; §1.170A-14 of the Treasury Regulations; and §38-30.5-101 of the Colorado Revised Statutes, and hereby makes a charitable gift of the property interest conveyed by this Deed to Grantee.

ACKNOWLEDGEMENT OF INTENT:

As a guide to the interpretation of this Deed and administration of the Conservation Easement ("Easement") created by this Deed by future generations, Grantor and Grantee, for themselves, and for their successors and assigns, herein expressly declare their agreement and dedication to the following purpose and intent:

1. **Purpose.** The purpose (the "Purpose") of this Easement is to preserve and protect in perpetuity the Conservation Values of the Property. This Purpose is in accordance with §170(h) of the Internal Revenue Code. In order to achieve this Purpose, Grantor intends to convey this Deed to Grantee to ensure that the Conservation Values of the Property will be preserved and protected forever.

2. **Intent.** Subject only to the Purpose set forth above, the intent of the parties is to permit all other uses of the Property that are not inconsistent with the preservation and protection of the Conservation Values as determined by Grantee in its sole discretion or that are not expressly prohibited herein. Nothing in this Deed is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation Values.

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

1. **Conveyance of Easement.** Grantor voluntarily grants and conveys to Grantee and Grantee voluntarily accepts, a perpetual Conservation Easement in gross, an immediately vested interest in real property defined by C.R.S. §§38-30.5-101, *et seq.*, and of the nature and character described in this Deed, for the purpose of preserving and protecting the Conservation Values of the Property in perpetuity.

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

A. To preserve and protect the Conservation Values of the Property;

B. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is required pursuant to those provisions in Section 8, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;

C. To prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement and, except as limited by Section 7 below, Grantee may require the restoration of such areas or features of the Property that may be damaged by an inconsistent activity or use; and

Nothing in this Section shall preclude the right of Grantee to enforce the preservation and protection of the Conservation Values of the Property or any other provisions of this Deed.

3. **Rights Retained by Grantor.** Grantor retains the right to perform any act not specifically prohibited or restricted by this Easement. These ownership rights include, but are not limited to, the retention of the economic viability of the Property, provided that such acts and uses are not inconsistent with the preservation and protection of the Conservation Values.

4. **Property Improvements.** The parties agree that the current use of and improvements to the Property are not inconsistent with the preservation and protection of the Conservation Values and are permitted. Without limiting the generality of any of the foregoing, Grantor and Grantee here by acknowledge and agree:

A. **Existing Improvements.** At the time of granting of this Deed, there are no improvements on the Property.

B. **Construction of Improvements.** The construction of improvements is subject to the following provisions. Any other construction is prohibited unless Grantee determines in its sole discretion that the proposed construction is not inconsistent with the preservation and protection of the Conservation Values.

(1) **New Improvements Construction.**

a. **Residential Improvements.** There shall be no new residential improvements constructed on the Property.

b. ***Agricultural Improvements.*** New Agricultural Improvements with a Floor Area of less than 1,000 square feet or other new minor Agricultural Improvements such as corrals, hayracks, or stock tanks may be constructed anywhere on the Property without permission of Grantee. The construction of any agricultural building other than minor Agricultural Improvements is prohibited. Grantor may maintain, repair, enlarge and replace minor Agricultural Improvements without permission from Grantee.

(2) ***Notification of Replacement or Enlargement.*** If Agricultural Improvements are replaced or enlarged, Grantor shall notify Grantee of the replacement or enlargement so that its records may be updated.

(3) ***Definition of Floor Area.*** For purposes of Section 4B(1), Floor Area is defined as all residential or non-residential finished or unfinished space, covered and enclosed within two or more walls, but does not include residential covered or uncovered decks or patios.

(4) ***Other Improvements.***

a. ***Road Construction and Paving.*** No roads or driveways shall be constructed or established except for those existing or new roads or driveways depicted on **Exhibit B**. Said roads or driveways shall be no wider than necessary to provide access or to meet local codes for width of access to improvements. Said roads or driveways may be paved or otherwise surfaced provided Grantee determines that said surfacing is not inconsistent with the preservation and protection of the Conservation Values.

b. ***Fences.*** Existing fences may be repaired and replaced in their current location on the Property. New fences may be built anywhere on the Property, for purposes of reasonable and customary management of livestock and wildlife, without any further permission of Grantee, provided that said fences are not inconsistent with the preservation and protection of the Conservation Values.

c. ***Utilities.*** Grantor shall install new utility lines or relocate existing utility lines underground in the new or existing roads or driveways as depicted on **Exhibit B**. Additional utility lines or the relocation or significant upgrading of existing utility lines may be approved by Grantee if Grantee determines said utility lines are not inconsistent with the preservation and protection of the Conservation Values.

d. ***Signs.*** Signs existing on the Property at the time of execution of this Deed are permitted and may be replaced with signs similar in character. Grantor may construct, maintain, or erect new signs

on the Property provided that said signs are not inconsistent with the preservation and protection of the Conservation Values.

e. **Water Features.** At the time of the granting of this Deed, there are two ponds on the Property. Grantor hereby reserves the right to maintain or enlarge the ponds and ditches for agricultural and wildlife purposes, provided that said maintenance or enlargement is not inconsistent with the preservation and protection of the Conservation Values.

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. In the event Grantee believes any resource management practice(s) are not consistent with the preservation and protection of the Conservation Values, Grantee may request that Grantor and Grantee shall, at Grantor's expense, consult with a mutually agreed upon resource management professional. This professional will provide written recommendations for said resource management practice(s) not inconsistent with the preservation and protection of the Conservation Values.

A. **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, preventing soil erosion, minimizing invasive species, and avoiding unsustainable livestock grazing practices. The construction and maintenance of irrigation ditches, stock ponds or other agricultural water features is permitted. All-terrain vehicle use is permitted where necessary to support agricultural activities.

B. **Timber.** Timber harvesting is prohibited except as set forth below. 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 buildings and fences. Tree thinning activities may take place to maintain the character and nature of the habitat. Other timber harvesting activities shall be conducted in accordance with a forest management plan prepared by a professional forester at Grantor's expense, and approved by Grantee.

C. **Minerals and Other Deposits.** Grantor's current and future ownership of mineral rights on or under the Property shall be subject to the following provisions:

(1) **Mining.** The exploration, development, mining or other extraction of minerals, coal, peat, sand, gravel, rock or soil is prohibited.

(2) **Oil, Gas, and Geothermal Resources.** The exploration, development, mining or other extraction of geothermal resources and hydrocarbons is prohibited.

D. **Recreation.** Low-impact recreational uses such as wildlife watching, hiking, cross-country skiing, snowmobiling, snowshoeing, hunting and fishing are permitted, provided they are not inconsistent with the preservation and protection of the Conservation Values. Current and future commercial recreation uses such as guiding and outfitting for hunting and fishing are permitted, provided they are not inconsistent with the preservation and protection of the Conservation Values. All-terrain vehicle use is permitted to support hunting activities. These uses are specifically excluded from the Restricted Practices in Section 6D.

E. **Water Rights.** The Property subject to this Easement includes any and all decreed and undeclared water rights, ditches and ditch rights, springs and spring rights, reservoir and reservoir rights, wells and groundwater rights, water allotments, units or shares, and any other types of rights related to the ownership of water, tributary, non-tributary and not non-tributary, appurtenant to or customarily or historically used or associated with or upon the Property, together with any and all of the rights associated with the historical and beneficial use of any of the embankments, flumes, headgates, measuring devices or any other structures that are appurtenant to those water rights, along with all easements and rights of way therefor including but not limited to those specifically described in Exhibit C attached hereto and made a part of this Deed (collectively, the "Water Rights"). The Water Rights are beneficially used on the Property as set forth in C.R.S. Section 38-30.5-102. Grantor shall not transfer, encumber, sell, lease or otherwise separate the Water Rights from the Property. Grantor shall not change the historic use or point of diversion of the Water Rights without the prior written consent of, and determination by, Grantee that such change is not inconsistent with the preservation and protection of the Conservation Values.

If Grantor shall fail to maintain the historic use of the Water Rights upon the Property, or those rights necessary to preserve and protect the Conservation Values of the Property, Grantee shall have the right, but not the obligation, to enter upon the Property and undertake any and all actions reasonably necessary to continue the historic use of the Water Rights in order to preserve and protect the Conservation Values of the Property.

Grantor shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights. If the Water Rights are under threat of abandonment, Grantor shall convey ownership of said Water Rights to Grantee and Grantee shall have the right to use said Water Rights for beneficial conservation purposes on the Property or elsewhere in Delta County or otherwise consistent with Grantee's mission. In addition, Grantor shall otherwise cooperate with Grantee to help assure the continued use of the Water Rights for beneficial conservation purposes.

F. **Habitat Improvements.** Habitat improvement and maintenance activities may be permitted upon Grantee's approval and determination that said improvements and activities are not inconsistent with the preservation and protection of the Conservation Values.

6. **Restricted Practices.**

A. **Subdivision.** The Property or description of the Property may identify or

include one or more legal parcels. Notwithstanding the foregoing, Grantor and Grantee agree that the division or subdivision of the Property into two or more parcels of land is prohibited.

B. **Surface Disturbance.** Except as permitted within this Deed, any alteration of the surface of the land, including without limitation; the movement, excavation or removal of soil, sand, gravel, rock, peat or sod, that is inconsistent with the preservation and protection of the Conservation Values, is prohibited.

C. **Existing Water Features.** Except as permitted within this Deed, alteration, impairment, modification or adverse change in or to existing ponds, wetlands or stream channels that is inconsistent with the preservation and protection of the Conservation Values, is prohibited.

D. **Commercial or Industrial Activity.** Commercial or industrial uses inconsistent with the preservation and protection of the Conservation Values of this Deed are prohibited.

E. **Feed Lot.** The establishment or maintenance of a feed lot is prohibited. For purposes of this Deed, "feed lot" is defined as a permanently constructed confined area or facility within which the Property is not grazed or cropped annually, and which is used and maintained continuously and exclusively for purposes of feeding livestock. Nothing in this section shall prevent Grantor from seasonally confining livestock into an area, corral or other facility for feeding, or from leasing pasture for the grazing of livestock owned by others.

F. **Public Access.** Nothing contained herein shall be construed as affording the public access to any portion of the Property, although the Grantor may permit public access to the Property on such terms and conditions as it deems appropriate, provided that such access is not inconsistent with the preservation and protection of the Conservation Values of the Property.

G. **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 not inconsistent with the preservation and protection of the Conservation Values. The storage or accumulation of agricultural products and by-products on the Property is permitted in accordance with all applicable government laws and regulations.

H. **Hazardous Materials.** Grantor may use agri-chemicals on the Property in accordance with all applicable federal, state or local laws. Otherwise, the treatment, permanent storage, disposal or release of hazardous materials on, from or under the Property is prohibited. For the purpose of this Deed, hazardous materials shall mean any hazardous or toxic material or waste that is subject to any federal, state, or local law or regulation. Notwithstanding anything in this Deed to the contrary, this prohibition 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 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").

I. **Weed Control.** The Property shall be managed to control noxious weeds to the extent reasonably possible.

J. **Other Restricted Uses.** Golf courses, sod farms, helicopter pads, and airstrips are prohibited. Towers in excess of 35 feet in height are prohibited unless Grantee determines the proposed tower is not inconsistent with the preservation and protection of the Conservation Values.

7. **Responsibilities of Grantor and Grantee Not Affected.** Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing 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 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:

A. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same. 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.

B. **Liability.** 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) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, unless due 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 7 or (iii) the presence or release of hazardous materials on, under, or about the Property under Section 6(F) and (iv) the violation or alleged violation of, or other failure to comply with any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and state hazardous waste statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property. 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. **Enforcement.** Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed and Purposes of this Easement. In those cases where Grantee determines that immediate entry is required to inspect for, prevent, terminate, or mitigate a violation of this Easement, Grantee may enter the Property without advance notice. Grantee may notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall immediately cease the alleged violation and either (a) if necessary, restore or remediate the Property to its condition prior to the violation; (b) provide a written plan for restoration and remediation of the Property acceptable to Grantee; (c) provide written documentation, acceptable to Grantee, that the activity is permitted and is not a violation. If Grantor is unable or unwilling to cease the immediate alleged violation, and comply with (a), (b) or (c) of the previous sentence, both parties agree to resolve the dispute through mediation, or court procedures. At any point in time, the parties may take appropriate legal action including an injunction to stop the alleged violation.

Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit, and attorneys' fees and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor. In the event the deciding body determines that Grantee has acted in bad faith in seeking to enforce this Easement, each Party shall be responsible for their own costs. The parties will share equally in the mediation fees. 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. Enforcement of the terms of this Easement 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.

9. **Transfer of Easement.** Grantee shall have the right to transfer this Easement to any public agency or private non-profit organization that, at the time of transfer, is a "qualified organization" under § 170(h) of the U.S. Internal Revenue Code, and under C.R.S. §§38-30.5-101, *et seq.*, and only if the agency or the organization expressly agrees to assume the responsibility imposed on Grantee by this Easement. Grantee shall notify Grantor in advance of any proposed transfers. If Grantee ever ceases to exist or no longer qualifies under federal or state law, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes and that agrees to assume the responsibility.

10. **Transfer of Property.** Any time the Property or a portion thereof is transferred by Grantor to any third party, Grantor shall pay a transfer fee of $\frac{1}{4}$ of 1% of the purchase price to Grantee to be used for the purpose of the defense of conservation easements or for other purposes consistent with Grantee's mission. Grantor shall notify Grantee in writing within (5) business days after closing using the form in **Exhibit D** attached hereto. The document of conveyance shall expressly refer to this Deed of Conservation Easement and shall include a copy of the new ownership deed. Said transfer fee shall be waived if the Property is transferred to Grantor's heirs or beneficiaries.

11. **Real Property Interest.** The granting of this Deed immediately vests Grantee with a property interest. Grantor and Grantee also agree, as to the value of the Property, an appraisal has been completed that indicates the fair market value of this property interest is Twenty Nine percent (29%) of the full fair market value of the Property. Pursuant to Treasury

Regulation § 1.170A-14(g)(6)(ii), Grantor and Grantee further agree that this percentage shall remain constant.

12. **Termination of Easement.** This Easement may only be terminated or extinguished by judicial proceedings by a court of competent jurisdiction. The total loss of all the Conservation Values on the Property is the only grounds under which this Deed can be terminated. Should this Easement be extinguished, sold for public use, taken for public use, or terminated, whether in whole or in part, Grantee shall be paid proceeds equal to the aforementioned percentage of the fair market value of the Property. Grantee's use of the proceeds shall comply with Treasury Regulation § 1.170A-14(g)(6)(i).

13. **Perpetual Duration.** This Easement shall be a servitude running with the land in perpetuity. The provisions of this Deed that apply to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear; provided, however, that each party's rights and obligations under this Easement shall terminate (as to such party, but not as to such party's successor, who shall be bound as provided herein) upon a transfer of 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.

14. **Change of Circumstance.**

A. **Economic Value.** The fact that any use of the Property that is prohibited by this Easement, or any other use as determined to be inconsistent with the Purpose of this Easement, may become economically more valuable than permitted uses has been considered by the Grantor in granting this Easement. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of this Easement pursuant to Section 12. In addition, the inability to carry on any or all of the permitted 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 12.

B. **Agricultural Value.** In the event Grantee believes that agriculture is no longer a Conservation Value, Grantee may request that Grantor and Grantee develop an acceptable plan to ensure appropriate land cover consistent with the preservation and protection of the Conservation Values. The expense of developing and implementing said plan shall be paid for by Grantor.

15. **Notices.** As specified herein, any notices required by this Deed shall be sent as appropriate to the following parties or their successors in writing. All parties shall be notified of any change of address.

Grantor: Michael McClure and Joy M. McClure
38685 Stucker Mesa Rd.
Hotchkiss, CO 81419
(970) 527-7754

Grantee: Colorado Open Lands

274 Union Blvd., Suite 320
Lakewood, CO 80228
(303) 988-2373

16. ***Liens on the Property.***

A. ***Current Liens.*** The Property is partial security for a lien held by the Grant Y. Farnsworth Family Limited Liability Limited Partnership via a Deed of Trust, dated February 18, 2004, and recorded as Delta County Reception No. 577985 on March 24, 2004 ("Deed of Trust"). The Property was acquired by, and certain payment obligations under the Deed of Trust were assumed by, Mary E. McCarney, via an Assumption Agreement dated December 17, 2004, and recorded as Delta County Reception No. 586712 on December 21, 2004. The Property was thereafter conveyed to Grantor, subject to the Deed of Trust, via a Warranty Deed dated June 16, 2005, and recorded as Delta County Reception No. 592478 on June 17, 2005. The Deed of Trust is subordinate to this Deed as evidenced by the Subordination attached to this Deed.

B. ***Subsequent Liens.*** No provisions of this Deed should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing. Any mortgage or lien arising from such a borrowing is subordinate to this Easement.

17. ***No Merger.*** Unless the parties expressly state that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Easement.

18. ***Grantor's Representations and Warranties.***

A. Except as provided in Section 16, Grantor warrants that Grantor 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, and hereby promises to defend title to the Property against all claims that may be made against it by any person claiming by, through, or under Grantor.

B. Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

(1) No hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, deposited, or transported, in, on, or across the Property, and that there are no underground storage tanks located on the Property;

(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;

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

(4) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use.

19. **Acceptance.** Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed.

20. **General Provisions:**

A. **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.

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

C. **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.

D. **Controlling Law and Interpretation.** This Easement shall be performed and broadly interpreted under the laws of State of Colorado, resolving any ambiguities and questions of the validity of specific provisions in favor of maintaining the Purpose of this Deed. Any decisions resolving such ambiguities shall be documented in writing.

E. **Counterparts.** The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it; all counterparts, when taken together, shall constitute this instrument.

F. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will confer a private benefit to the Grantor or any other individual greater than the benefit to the general public (see IRS Reg. 1.170A-14(h)(3)(i)) or result in private inurement for a Board member, staff or contract employee of Grantee (see IRS Reg. 1.501(c)(3)-1(c)(2)), or affect the qualifications of this Easement under any applicable laws. Any amendment must not be inconsistent with the preservation and protection of the Conservation Values of the Property and shall not 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 both parties, and recorded in the official records of Delta County, Colorado.

G. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the terms of this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the terms of this Easement, all of which are merged herein. Upon execution and recordation of this Deed, the First Conservation Easement is hereby amended and restated in its entirety by this Deed, and the First Conservation Easement shall have no further force or effect.

21. **Development Rights.** Grantor hereby grants to Grantee all development rights except as specifically reserved herein, and the parties agree that such rights are terminated and extinguished.

22. **Recording.** The Grantor shall record this Deed in timely fashion in the official records of Delta County, Colorado, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

23. **No Third Party Enforcement.** This Deed is entered into by and between Grantor and Grantee and does not create rights or responsibilities for the enforcement of the terms of this Deed in any third parties except as expressly reserved herein.

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

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

GRANTOR:

By: Michael McClure
Michael McClure

By: Joy M. McClure
Joy M. McClure

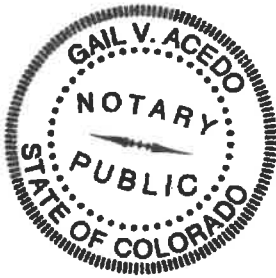
STATE OF COLORADO)
) ss.
COUNTY OF DELTA)

The foregoing instrument was acknowledged before me this 19th day of December, 2006, by MICHAEL McCLURE and JOY M. McCLURE.

Witness my hand and official seal.

My commission expires: 11-5-2009

Gail V. Acedo
Notary Public



GRANTEE:

COLORADO OPEN LANDS,
a Colorado non-profit corporation

By


Daniel E. Pike, President

STATE OF COLORADO

)

) ss.

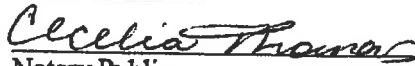
COUNTY OF JEFFERSON

)

The foregoing instrument was acknowledged before me this 14th day of December,
2006, by DANIEL E. PIKE as President of Colorado Open Lands, a Colorado non-profit
corporation.

Witness my hand and official seal.

My commission expires: 11-21-2008


Notary Public

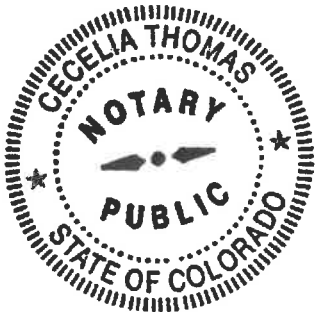


EXHIBIT A

Legal Description of the Property

EXISTING CONSERVATION AREA

Township 13 South, Range 92 West, 6th P.M.

Section 22: SE $\frac{1}{4}$ SW $\frac{1}{4}$
Section 27: NE $\frac{1}{4}$ NW $\frac{1}{4}$

County of Delta, State of Colorado

Approximately 80 acres.

NEW CONSERVATION AREA

Township 13 South, Range 92 West, 6th P.M.

Section 22: SW $\frac{1}{4}$ SE $\frac{1}{4}$
Section 27: N $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$; N $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$

County of Delta, State of Colorado

Approximately 70 acres.


Exhibit B

Roatcap Ranch Conservation Easement Delta County, Colorado

Based on Gray Reservoir (1976) USGS 7.5 Minute
Topographical Map; 40 foot contour intervals.

Existing
conservation
area
(80 acres)

New
conservation
area
(70 acres)

 Approximate Scale 1 inch = 575 feet
ALL LOCATIONS APPROXIMATE

— Gravel road
..... Primitive road or ATV trail

The
Basin.

EXHIBIT C

Water Rights

27% of the following water rights:

700 shares of West Reservoir and Canal

340 shares of Oak Mesa Reservoir and Ditch Company

1.17 cfs Bypass on Oak Mesa Ditch, also known as Goodenough Decree

EXHIBIT D

Sample Notice of Transfer of Property

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

Pursuant to Section 10 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 10 of the aforementioned Deed of Conservation Easement is attached a copy of the new ownership deed.

GRANTOR:

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
200__, by _____ as _____ of _____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

Date: _____

DEED OF CONSERVATION EASEMENT

Roatcap Ranch

Any time the Property is transferred by Grantor to any third party, Grantor shall pay a transfer fee of ¼ of 1% of the sale price to Grantee and notify Grantee pursuant to the requirements of Section 10 of this Deed.

THIS DEED OF CONSERVATION EASEMENT ("Deed") is granted on this 27th day of December, 2005, by MICHAEL MCCLURE and JOY M. MCCLURE ("Grantor"), whose address is 41679 O Road, Paonia, Colorado 81428, to COLORADO OPEN LANDS, a Colorado non-profit corporation ("Grantee"), whose address is 274 Union Boulevard, Suite 320, Lakewood, Colorado 80228, collectively the "Parties".

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**, both attached hereto and made a part of this Deed, which consists of approximately 80 acres of land, together with water rights associated with or appurtenant to the Property, and mineral rights owned by Grantor, located in Delta County, State of Colorado (the "Property").

B. **Qualified Organization.** Grantee is a "qualified organization," as defined in §170(h) of the Internal Revenue Code and a charitable organization as required under §§38-30.5-104 (2), Colorado Revised Statutes (C.R.S.).

C. **Conservation Purposes.** The Conservation Purposes set forth in this paragraph may hereinafter be collectively referred to as the "Conservation Values." According to Section 170(h)(4)(A) of the Internal Revenue Code and Section 1.170A-14(d) of the Treasury Regulations, the Conservation Values of a qualified conservation contribution may be for one or more of the following: to preserve land for outdoor recreation by or education of the general public; to protect relatively natural habitat of fish, wildlife or plants; to preserve open space; and to preserve historically important land or structures.

The Conservation Values of the Property include Relatively Natural Habitat and Open Space as further described below:

Relatively Natural Habitat [§ 1.170A-14(d)(3)]. The Property contains wetlands, riparian areas, irrigated meadows and montane shrublands that provide food, shelter, breeding ground, and migration corridors for several wildlife species. The Property is surrounded by public lands that sustain significant populations of wildlife. The habitat on the Property is also "significant" as defined by the Treasury Regulations, as it represents habitat for rare, endangered or threatened species such as bald eagles, sandhill cranes, ferruginous hawks, northern leopard frogs, and northern pocket gophers.

Open Space [§ 1.170A-14(d)(4)]. The Property qualifies as open space because it will be

preserved for the scenic enjoyment of the general public and will yield a significant public benefit.

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. A large portion of the Property is visually accessible to the general public from adjacent Bureau of Land Management public lands, which are open to and actively utilized by residents of Delta County and the State of Colorado.

Agriculture. The Property is currently used for agricultural purposes including irrigated crop production and livestock grazing. This use is compatible with other land use in the vicinity, as adjacent properties are also used for agricultural production.

Significant public benefit. There is a foreseeable trend of development in the vicinity of the Property in the near future. The Town of Paonia lies just 5 miles southeast of the Property. Development of scenic properties surrounded by public lands has accelerated in the Grand Mesa area between Paonia, Delta and Grand Junction. There is a strong likelihood that development of the Property would lead to or contribute to degradation of the scenic and natural character of the area. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values.

It should also be noted that the terms of the Easement do not permit a degree of intrusion or future development that would interfere with the essential scenic quality of the land.

These Conservation Values are of great importance to Grantor, Grantee, the residents of Delta 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. **Other Supporting Government Policy.** The Master Plan of Delta County includes the goals of "preserving the rural character and natural environment, and protecting the unique physical resources of Delta County."

F. **Documentation of Present Conditions.** The Conservation Values and the characteristics, current use, and status of improvements on and development of the Property as of the date of this Deed are further documented in a "Present Conditions Report," prepared by Dawn Reeder of Rare Earth Science, LLP, which report is acknowledged as accurate by Grantor and Grantee. The Present Conditions Report has been provided to both parties and 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.

G. **Charitable Donation.** Grantor intends to create a conservation easement under C.R.S. §§38-30.5-101, and hereby makes a charitable gift of the property interest conveyed by this Deed to Grantee.

ACKNOWLEDGEMENT OF INTENT:

As a guide to the interpretation of this Deed and administration of the Conservation Easement ("Easement") created by this Deed by future generations, Grantor and Grantee, for themselves, and for their successors and assigns, herein expressly declare their agreement and dedication to the following purpose and intent:

1. **Purpose.** The purpose (the "Purpose") of this Easement is to preserve and protect in perpetuity the Conservation Values of the Property. This Purpose is in accordance with §170(h) of the Internal Revenue Code. In order to achieve this Purpose, Grantor intends to convey this Deed to Grantee to ensure that the Conservation Values of the Property will be preserved and protected forever.

2. **Intent.** Subject only to the Purpose set forth above, the intent of the parties is to permit all other uses of the Property that are not inconsistent with the preservation and protection of the Conservation Values as determined by Grantee in its sole discretion and that are not expressly prohibited herein. Nothing in this Deed is intended to compel a specific use of the Property, such as agriculture, other than the preservation and protection of the Conservation Values.

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

1. **Conveyance of Easement.** Grantor voluntarily grants and conveys to Grantee and Grantee voluntarily accepts, a perpetual Conservation Easement in gross, an immediately vested interest in real property defined by C.R.S. §§38-30.5-101, *et seq.*, and of the nature and character described in this Deed, for the purpose of preserving and protecting the Conservation Values of the Property in perpetuity.

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

A. To preserve and protect the Conservation Values of the Property;

B. To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is required pursuant to those provisions in Section 8, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;

C. To prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement and, except as limited by Section 7 below, Grantee may require the restoration of such areas or features of the Property that may be damaged by an inconsistent activity or use; and

Nothing in this Section shall preclude the right of Grantee to enforce the preservation and protection of the Conservation Values of the Property or any other provisions of this Deed.

3. **Rights Retained by Grantor.** Grantor retains the right to perform any act not specifically prohibited or restricted by this Easement. These ownership rights include, but are not limited to, the retention of the economic viability of the Property, provided that such acts and uses are not inconsistent with the preservation and protection of the Conservation Values.

4. **Property Improvements.** The parties agree that the current use of and improvements to the Property are not inconsistent with the preservation and protection of the Conservation Values and are permitted. Without limiting the generality of any of the foregoing, Grantor and Grantee here by acknowledge and agree:

A. **Existing Improvements.** At the time of granting of this Deed, there are no improvements on the Property.

B. **Construction of Improvements.** The construction of improvements is subject to the following provisions. Any other construction is prohibited unless Grantee determines in its sole discretion that the proposed construction is not inconsistent with the preservation and protection of the Conservation Values.

(1) **New Improvements Construction.**

a. **Residential Improvements.** There shall be no new residential improvements constructed on the Property.

b. **Agricultural Improvements.** New Agricultural Improvements with a Floor Area of less than 1,000 square feet or other new minor Agricultural Improvements such as corrals, hayracks, or stock tanks may be constructed anywhere on the Property without permission of Grantee. The construction of any agricultural building other than minor Agricultural Improvements is prohibited. Grantor may maintain, repair, enlarge and replace minor Agricultural Improvements without permission from Grantee.

(2) **Notification of Replacement or Enlargement.** If Agricultural Improvements are replaced or enlarged, Grantor shall notify Grantee of the replacement or enlargement so that its records may be updated.

(3) **Definition of Floor Area.** For purposes of Section 4B(1), Floor Area is defined as all residential or non-residential finished or unfinished space, covered and enclosed within two or more walls, but does not include residential covered or uncovered decks or patios.

(4) **Other Improvements.**

a. **Road Construction and Paving.** No roads or driveways shall be constructed or established except for those existing or new roads or driveways depicted on **Exhibit B**. Said roads or driveways shall be no wider than necessary to provide access or to meet local codes for width of access to improvements. Said roads or driveways may be paved or otherwise surfaced provided Grantee determines that said surfacing is not inconsistent with the preservation and protection of the Conservation Values.

b. **Fences.** Existing fences may be repaired and replaced in their current location on the Property. New fences may be built anywhere on the Property, for purposes of reasonable and customary management of livestock and wildlife, without any further permission of Grantee, provided that said fences are not inconsistent with the preservation and protection of the Conservation Values.

c. **Utilities.** Grantor shall install new utility lines or relocate existing utility lines underground in the new or existing roads or driveways as depicted on **Exhibit B**. Additional utility lines or the relocation or significant upgrading of existing utility lines may be approved by Grantee if Grantee determines said utility lines are not inconsistent with the preservation and protection of the Conservation Values.

d. **Billboards and Signs.** Signs existing on the Property at the time of execution of this Deed are permitted and may be replaced with signs similar in character. Grantor may construct, maintain, or erect new signs or billboards on the Property provided that said signs or billboards are not inconsistent with the preservation and protection of the Conservation Values.

e. **Water Features.** At the time of the granting of this Deed, there are two ponds on the Property. Grantor hereby reserves the right to maintain or enlarge the ponds and ditches for agricultural and wildlife purposes, provided that said maintenance or enlargement is not inconsistent with the preservation and protection of the Conservation Values.

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. In the event Grantee believes any resource management practice(s) are not consistent with the preservation and protection of the Conservation Values, Grantee may request that Grantor and Grantee shall, at Grantor's expense, consult with a mutually agreed upon resource management professional. This professional will provide written recommendations for said resource

management practice(s) not inconsistent with the preservation and protection of the Conservation Values.

A. **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, preventing soil erosion, minimizing invasive species, and avoiding unsustainable livestock grazing practices. The construction and maintenance of irrigation ditches, stock ponds or other agricultural water features is permitted. All-terrain vehicle use is permitted where necessary to support agricultural activities.

B. **Timber.** Timber harvesting is prohibited except as set forth below. 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 buildings and fences. Tree thinning activities may take place to maintain the character and nature of the habitat. Other timber harvesting activities shall be conducted in accordance with a forest management plan prepared by a professional forester at Grantor's expense, and approved by Grantee.

C. **Minerals and Other Deposits.** Grantor's current and future ownership of mineral rights on or under the Property shall be subject to the following provisions:

(1) **Mining.** The exploration, development, mining or other extraction of minerals, coal, peat, sand, gravel, rock or soil is prohibited.

(2) **Oil, Gas, and Geothermal Resources.** The exploration, development, mining or other extraction of geothermal resources and hydrocarbons is prohibited.

D. **Recreation.** Low-impact recreational uses such as bird watching, hiking, cross-country skiing, snowmobiling, snowshoeing, hunting and fishing are permitted, provided they are not inconsistent with the preservation and protection of the Conservation Values. Current and future commercial recreation uses such as guiding and outfitting for hunting and fishing are permitted, provided they are not inconsistent with the preservation and protection of the Conservation Values. All-terrain vehicle use is permitted to support hunting activities. These uses are specifically excluded from the Restricted Practices in Section 6D.

E. **Water Rights.** The Property subject to this Easement includes any and all decreed and undeclared water rights, ditches and ditch rights, springs and spring rights, reservoir and reservoir rights, wells and groundwater rights, water allotments, units or shares, and any other types of rights related to the ownership of water, tributary, non-tributary and not non-tributary, appurtenant to or customarily or historically used or associated with or upon the Property, together with any and all of the rights associated with the historical and beneficial use of any of the embankments, flumes, headgates, measuring devices or any other structures that are appurtenant to those water rights, along with all easements and rights of way therefor including but not limited to those

specifically described in Exhibit C attached hereto and made a part of this Deed (collectively, the "Water Rights"). The Water Rights are beneficially used on the Property as set forth in C.R.S. Section 38-30.5-102. Grantor shall not transfer, encumber, sell, lease or otherwise separate the Water Rights from the Property. Grantor shall not change the historic use or point of diversion of the Water Rights without the prior written consent of, and determination by, Grantee that such change is not inconsistent with the preservation and protection of the Conservation Values.

If Grantor shall fail to maintain the historic use of the Water Rights upon the Property, or those rights necessary to preserve and protect the Conservation Values of the Property, Grantee shall have the right, but not the obligation, to enter upon the Property and undertake any and all actions reasonably necessary to continue the historic use of the Water Rights in order to preserve and protect the Conservation Values of the Property.

Grantor shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights. If the Water Rights are under threat of abandonment, Grantor shall convey ownership of said Water Rights to Grantee and Grantee shall have the right to use said Water Rights for beneficial conservation purposes on the Property or elsewhere in Delta County or otherwise consistent with Grantee's mission. In addition, Grantor shall otherwise cooperate with Grantee to help assure the continued use of the Water Rights for beneficial conservation purposes.

F. **Habitat Improvements.** Habitat improvement and maintenance activities may be permitted upon Grantee's approval and determination that said improvements and activities are not inconsistent with the preservation and protection of the Conservation Values.

6. **Restricted Practices.**

A. **Subdivision.** The Property or description of the Property may identify or include one or more legal parcels. Notwithstanding the foregoing, Grantor and Grantee agree that the division or subdivision of the Property into two or more parcels of land is prohibited.

B. **Surface Disturbance.** Except as permitted within this Deed, any alteration of the surface of the land, including without limitation, the movement, excavation or removal of soil, sand, gravel, rock, peat or sod, that is inconsistent with the preservation and protection of the Conservation Values, is prohibited.

C. **Existing Water Features.** Except as permitted within this Deed, alteration, impairment, modification or adverse change in or to existing ponds, wetlands or stream channels that is inconsistent with the preservation and protection of the Conservation Values, is prohibited.

D. **Commercial or Industrial Activity.** Commercial or industrial uses inconsistent with the preservation and protection of the Conservation Values of this Deed are prohibited.

E. **Feed Lot.** The establishment or maintenance of a feed lot is prohibited. For purposes of this Deed, "feed lot" is defined as a permanently constructed confined area or facility within which the Property is not grazed or cropped annually, and which is used and maintained continuously and exclusively for purposes of feeding livestock. Nothing in this section shall prevent Grantor from seasonally confining livestock into an area, corral or other facility for feeding, or from leasing pasture for the grazing of livestock owned by others.

F. **Public Access.** Nothing contained herein shall be construed as affording the public access to any portion of the Property, although the Grantor may permit public access to the Property on such terms and conditions as it deems appropriate, provided that such access is not inconsistent with the preservation and protection of the Conservation Values of the Property.

G. **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 not inconsistent with the preservation and protection of the Conservation Values. The storage or accumulation of agricultural products and by-products on the Property is permitted in accordance with all applicable government laws and regulations.

H. **Hazardous Materials.** Grantor may use agri-chemicals on the Property in accordance with all applicable federal, state or local laws. Otherwise, the treatment, permanent storage, disposal or release of hazardous materials on, from or under the Property is prohibited. For the purpose of this Deed, hazardous materials shall mean any hazardous or toxic material or waste that is subject to any federal, state, or local law or regulation. Notwithstanding anything in this Deed to the contrary, this prohibition 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 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").

I. **Weed Control.** The Property shall be managed to control noxious weeds to the extent reasonably possible.

J. **Other Restricted Uses.** Golf courses, sod farms, helicopter pads, and airstrips are prohibited. Towers in excess of 35 feet in height are prohibited unless Grantee determines the proposed tower is not inconsistent with the preservation and protection of the Conservation Values.

7. **Responsibilities of Grantor and Grantee Not Affected.** Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing 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 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:

A. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same. 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.

B. **Liability.** 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) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, unless due 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 7 or (iii) the presence or release of hazardous materials on, under, or about the Property under Section 6(F) and (iv) the violation or alleged violation of, or other failure to comply with any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and state hazardous waste statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property. 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. **Enforcement.** Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed and Purposes of this Easement. In those cases where Grantee determines that immediate entry is required to inspect for, prevent, terminate, or mitigate a violation of this Easement, Grantee may enter the Property without advance notice. Grantee may notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall immediately cease the alleged violation and either (a) if necessary, restore or remediate the Property to its condition prior to the violation; (b) provide a written plan for restoration and remediation of the Property acceptable to Grantee; (c) provide written documentation, acceptable to Grantee, that the activity is permitted and is not a violation. If Grantor is unable or unwilling to cease the immediate alleged violation, and comply with (a), (b) or (c) of the previous sentence, both parties agree to resolve the dispute through mediation, or court procedures. At any point in time, the parties may take appropriate legal action including an injunction to stop the alleged violation.

Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit, and attorneys' fees and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by Grantor. In the event the deciding body determines that Grantee has acted in bad faith in seeking

to enforce this Easement, each Party shall be responsible for their own costs. The parties will share equally in the mediation fees. 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. Enforcement of the terms of this Easement 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.

9. **Transfer of Easement.** Grantee shall have the right to transfer this Easement to any public agency or private non-profit organization that, at the time of transfer, is a "qualified organization" under § 170(h) of the U.S. Internal Revenue Code, and under C.R.S. §§38-30.5-101, *et seq.*, and only if the agency or the organization expressly agrees to assume the responsibility imposed on Grantee by this Easement. Grantee shall notify Grantor in advance of any proposed transfers. If Grantee ever ceases to exist or no longer qualifies under federal or state law, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes and that agrees to assume the responsibility.

10. **Transfer of Property.** Any time the Property or a portion thereof is transferred by Grantor to any third party, Grantor shall pay a transfer fee of $\frac{1}{4}$ of 1% of the purchase price to Grantee to be used for the purpose of the defense of conservation easements or for other purposes consistent with Grantee's mission. Grantor shall notify Grantee in writing within (5) business days after closing using the form in Exhibit D attached hereto. The document of conveyance shall expressly refer to this Deed of Conservation Easement and shall include a copy of the new ownership deed. Said transfer fee shall be waived if the Property is transferred to Grantor's heirs or beneficiaries.

11. **Real Property Interest.** The granting of this Deed immediately vests Grantee with a property interest. Grantor and Grantee also agree, as to the value of the Property, an appraisal has been completed that indicates the fair market value of this property interest is ~~Seventy~~ percent (77 %) of the full fair market value of the Property. Pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii), Grantor and Grantee further agree that this percentage shall remain constant.

12. **Termination of Easement.** This Easement may only be terminated or extinguished by judicial proceedings by a court of competent jurisdiction. The total loss of all the Conservation Values on the Property is the only grounds under which this Deed can be terminated. Should this Easement be extinguished, sold for public use, taken for public use, or terminated, whether in whole or in part, Grantee shall be paid proceeds equal to the aforementioned percentage of the fair market value of the Property. Grantee's use of the proceeds shall comply with Treasury Regulation § 1.170A-14(g)(6)(i).

13. **Perpetual Duration.** This Easement shall be a servitude running with the land in perpetuity. The provisions of this Deed that apply to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear; provided, however, that each party's rights and obligations under this Easement shall terminate (as to such party, but not as to such party's successor, who shall be bound as provided herein) upon a transfer of 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.

14. ***Change of Circumstance.***

A. ***Economic Value.*** The fact that any use of the Property that is prohibited by this Easement, or any other use as determined to be inconsistent with the Purpose of this Easement, may become economically more valuable than permitted uses has been considered by the Grantor in granting this Easement. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of this Easement pursuant to Section 12. In addition, the inability to carry on any or all of the permitted 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 12.

B. ***Agricultural Value.*** In the event Grantee believes that agriculture is no longer a Conservation Value, Grantee may request that Grantor and Grantee develop an acceptable plan to ensure appropriate land cover consistent with the preservation and protection of the Conservation Values. The expense of developing and implementing said plan shall be paid for by Grantor.

15. ***Notices.*** As specified herein, any notices required by this Deed shall be sent as appropriate to the following parties or their successors in writing. All parties shall be notified of any change of address.

Grantor: Michael McClure and Joy M. McClure
41679 O Rd.
Paonia, CO 81428
(970) 527-7754

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

16. ***Liens on the Property.***

A. ***Current Liens.*** The Property is partial security for a lien held by the Grant Y. Farnsworth Family Limited Liability Limited Partnership via a Deed of Trust, dated February 18, 2004, and recorded as Delta County Reception No. 577985 on March 24, 2004 ("Deed of Trust"). The Property was acquired by, and certain payment obligations under the Deed of Trust were assumed by, Mary E. McCarney, via an Assumption Agreement dated December 17, 2004, and recorded as Delta County Reception No. 586712 on December 21, 2004. The Property was thereafter conveyed to Grantor, subject to the Deed of Trust, via a Warranty Deed dated June 16, 2005, and recorded as Delta County Reception No. 592478 on June 17, 2005. The Deed of Trust is subordinate to this Deed as evidenced by the Subordination attached to this Deed.

B. **Subsequent Liens.** No provisions of this Deed should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing. Any mortgage or lien arising from such a borrowing is subordinate to this Easement.

17. **No Merger.** Unless the parties expressly state that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Easement.

18. **Grantor's Representations and Warranties.**

A. Except as provided in Section 16, Grantor warrants that Grantor 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, and hereby promises to defend title to the Property against all claims that may be made against it by any person claiming by, through, or under Grantor.

B. Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

(1) No hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, deposited, or transported, in, on, or across the Property, and that there are no underground storage tanks located on the Property;

(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;

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

(4) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use.

19. **Acceptance.** Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed.

20. **General Provisions:**

A. **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.

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

C. **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.

D. **Controlling Law and Interpretation.** This Easement shall be performed and broadly interpreted under the laws of State of Colorado, resolving any ambiguities and questions of the validity of specific provisions in favor of maintaining the Purpose of this Deed. Any decisions resolving such ambiguities shall be documented in writing.

E. **Counterparts.** The parties may execute this instrument in two or more counterparts which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it; all counterparts, when taken together, shall constitute this instrument.

F. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement; provided that no amendment shall be allowed that will confer a private benefit to the Grantor or any other individual greater than the benefit to the general public (see IRS Reg. 1.170A-14(h)(3)(i)) or result in private inurement for a Board member, staff or contract employee of Grantee (see IRS Reg. 1.501(c)(3)-1(c)(2)), or affect the qualifications of this Easement under any applicable laws. Any amendment must not be inconsistent with the preservation and protection of the Conservation Values of the Property and shall not 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 both parties, and recorded in the official records of Delta County, Colorado.

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

21. **Development Rights.** Grantor hereby grants to Grantee all development rights except as specifically reserved herein, and the parties agree that such rights are terminated and extinguished.

22. **Recording.** The Grantor shall record this Deed in timely fashion in the official records of Delta County, Colorado, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

23. **No Third Party Beneficiary.** This Deed is entered into by and between Grantor and Grantee, and is solely for the benefit of Grantor and Grantee, and their respective successors in interest and assigns, and does not create rights of responsibilities in any third parties.



589071 12/29/2005 01:19P Ann Eddins
14 of 20 R 101.00 D 0.00 Delta Cty, CO Clerk & R.

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

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



599071 12/29/2005 01:19P Ann Eddins
15 of 20 R 101.00 D 0.00 Delta Cty, CO Clerk & R

GRANTOR:

By: Michael McClure
Michael McClure

By: Joy M. McClure
Joy M. McClure

STATE OF COLORADO)
) ss.
COUNTY OF DELTA)

The foregoing instrument was acknowledged before me this 28th day of December,
2005, by MICHAEL McCLURE and JOY M. McCLURE.

Witness my hand and official seal.

My commission expires: 11-5-2009

Gail V. Acedo
Notary Public

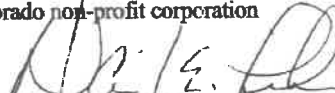




GRANTEE:

COLORADO OPEN LANDS,
a Colorado non-profit corporation

By


Daniel E. Pike, President

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 20th day of December
2005, by DANIEL E. PIKE as President of Colorado Open Lands, a Colorado non-profit
corporation.

Witness my hand and official seal.

My commission expires: 11-21-2008


Notary Public



599071 12/29/2005 01:19P Ann Eddins
17 of 20 R 101.00 D 0.00 Delta Cty, CO Clerk & R

EXHIBIT A

Legal Description of the Property

Township 13 South, Range 92 West, 6th P.M.

Section 22: SE $\frac{1}{4}$ SW $\frac{1}{4}$
Section 27: NE $\frac{1}{4}$ NW $\frac{1}{4}$

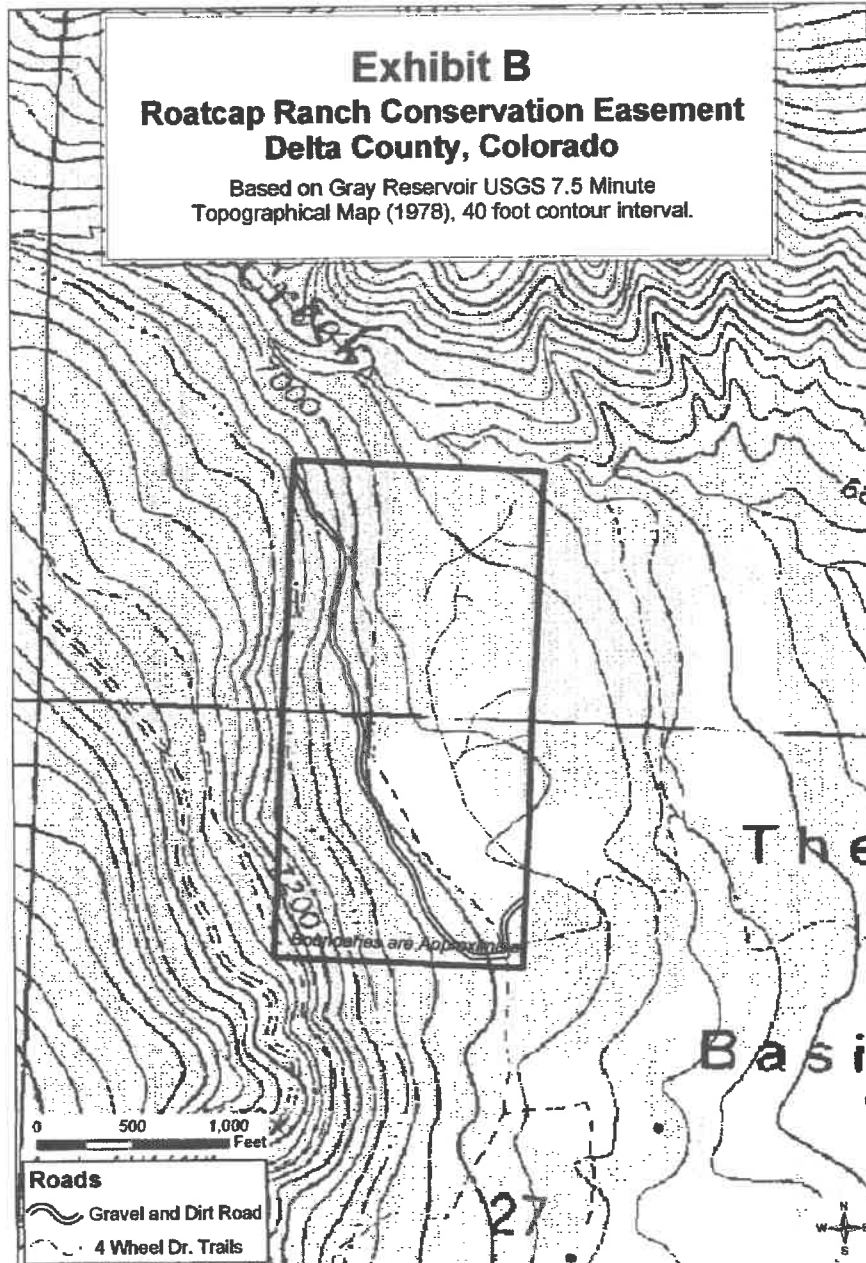
County of Delta,
State of Colorado

Approximately 80.00 acres



599071 12/29/2005 01:19P Ann Eddins

18 of 20 R 101.00 D 0.00 Delta Cty, CO Clerk & R





599071 12/29/2005 01:19P Ann Eddins

19 of 20 R 101.00 D 0.00 Delta Cty. CO Clerk & R

EXHIBIT C

Water Rights

27% of the following water rights:

700 shares of West Reservoir and Canal

340 shares of Oak Mesa Reservoir and Ditch Company

1.33 acre-feet Bypass on Oak Mesa Ditch, also known as Goodenough Decree



599071 12/29/2005 01:19P Ann Eddins
20 of 20 R 101.00 D 0.00 Delta Cty, CO Clerk & R

EXHIBIT D

Sample Notice of Transfer of Property

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

Pursuant to Section 10 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 10 of the aforementioned Deed of Conservation Easement is attached a copy of the new ownership deed.

GRANTOR:

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____ as _____ of _____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

Date: _____