

After Recording Return to:  
Eagle Valley Land Trust  
P.O. Box 3016  
Edwards, CO, 81632

TEAK J SIMUNION 04:01:52PM  
Pg# 27  
REC: \$0.00 DOC: \$

01/17/2012



Any time the Property is transferred by Grantor to any third party, Grantor shall notify Grantee of the transfer pursuant to the requirements of Section 15 of this Easement, and the third party shall pay a fee of 0.5% of the fair market value of the Property to Grantee, except when the transfer is to a governmental entity, in which case this fee shall be waived. This fee is excluded from the prohibition of C.R.S. §38-22-127, for the reasons described in Section 15 herein.

## DEED OF CONSERVATION EASEMENT

### Berry Creek-Miller Ranch Open Space

This Deed of Conservation Easement (the "**Easement**") made as of this 7<sup>th</sup> day of January, 2012, by Eagle County, a governmental entity and political subdivision of the State of Colorado, as distinct from the general public, acting by and through its Board of County Commissioners ("**BOCC**"), having an address at 500 Broadway, Post Office Box 850, Eagle Colorado, 81631-0850 ("**Grantor**"), in favor of the EAGLE VALLEY LAND TRUST, a nonprofit Colorado corporation, having an address of P.O. Box 3016, Edwards, CO, 81632 ("**Grantee**").

The following Exhibits are attached hereto and made a part of this Easement:

- Exhibit A - Legal Description of Property
- Exhibit B - Map of Property
- Exhibit C - Baseline Documentation Report Acknowledgement
- Exhibit D - Notice of Transfer of Property

### RECITALS:

A. Whereas, Grantor is the sole owner in fee simple of approximately 32.533 acres of real property in Eagle County, Colorado, more particularly described in **Exhibit A** and generally depicted on **Exhibit B**, both attached hereto and incorporated herein by this reference (the "**Property**");

B. Whereas, the State of Colorado has recognized the importance of private efforts to conserve land in a natural, scenic, historic, agricultural, or open condition, and for wildlife habitat and other uses consistent with the protection of open land having undisturbed or restored environmental quality, by the enactment of Colorado Revised Statutes (C.R.S.) Sections 38-30.5-101 *et seq.* The conservation purposes of this Easement are recognized by the Colorado Wildlife and Parks and Outdoor Recreation statutes, C.R.S. Sections 33-1-101, *et seq.*, which provide that "it is the policy of the State of Colorado that the wildlife and their environment and the natural, scenic, scientific, and outdoor recreation areas, of this State are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this State and visitors to this State";

C. Whereas, the Property possesses significant ecological, wildlife habitat, scenic, aesthetic, and open space values, is a valuable element of the natural habitat of Eagle County and its ecological, scenic, and aesthetic values, including flora, fauna, and

soils, the maintenance of which habitat helps support wildlife and plant populations and communities including Bald Eagle, Black Bear, Elk, Mountain Lion, and Mule Deer, and is plainly visible to the public from Interstate 70 and Highway 6.

The Conservation Values of the Property include relatively natural habitat, open space, and public access for education or recreation. The Property contains the relatively natural habitat of wetlands, riparian areas that provide food, shelter, breeding ground, and migration corridors for several wildlife species. The Eagle River serves as natural habitat for several species, including American Robins, Hummingbirds, House Wrens, Mottled Sculpins, the Northern Flicker, the Northern Leopard Frog, River Otters, and Brown & Rainbow Trout. The habitat on the Property is also "significant" as required by the Treasury Regulations, as it represents habitat for rare, endangered or threatened species such as Bald Eagles and Peregrine Falcons.

The Property's open space will be preserved for the scenic enjoyment of the general public and will yield a significant public benefit. 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 Interstate 70, Highway 6, and the Eagle River, which are open to and actively utilized by residents of Eagle County and the State of Colorado.

There is a foreseeable trend of intense development in the vicinity of the Property in the near future. The Property is in an increasingly developed area of unincorporated Eagle County where there is a strong likelihood that development of the Property would lead to, or contributes to the 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, which is a significant public benefit. 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.

The Property is available for public low-impact recreational uses such as biking, bird watching, cross-country skiing, fishing, picnicking and hiking.

The conservation values set forth in this paragraph may herein be collectively referred to as the "**Conservation Values**". These Conservation Values are of great importance to Grantor, Grantee, the people of Eagle County and the State of Colorado and are worthy of preservation;

D. Whereas, Grantor intends that the Property be maintained as scenic open space, relatively natural habitat, and used as a passive recreation and educational area for the enjoyment of the public;

E. Whereas, the following local policies and resolutions support the conservation of the Property: The Property and its use are consistent with Eagle County's 2005 Comprehensive Plan which became effective January 18, 2006 and includes policies to protect wildlife areas; maintain and enhance water quality and quantity; protect unique land forms; monitor and control air quality; and require development to be compatible with natural constraints of the land. Further, Resolution 2003-097 establishes that it is the policy of Eagle County to be dedicated to "preserving wildlife habitat, protecting working farms and ranches, conserving scenic landscapes and vistas, and protecting wetlands and floodplains" within and throughout Eagle County;

The voters of the State of Colorado by adoption of Article XXVII to the Constitution of the State of Colorado, the legislature of the State of Colorado by adoption of enabling legislation, and the State Board of the Great Outdoors Colorado Trust Fund, by adopting and administering competitive grants application and rigorous due diligence review processes, have established that it is the policy of the State of Colorado and its people to preserve, protect, enhance and manage the state's wildlife, park, river, trail and open space heritage, to protect critical wildlife habitats through the acquisition of lands, leases or easements, and to acquire and manage unique open space and natural areas of statewide significance.

F. Whereas, the specific Conservation Values, characteristics, current uses, status of improvements, and present condition of the Property are documented in a inventory of the Property, dated 6/17/2011, entitled "Berry Creek – Miller Ranch Open Space Conservation Easement, Baseline Documentation Report", which inventory is on file with Grantor and at the office of Grantee and incorporated by this reference. The inventory consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the condition of the Property at the time of this grant ("**Baseline Documentation Report**"), and which inventory is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant and is not intended to preclude the use of other evidence to establish the condition of the Property if there is a controversy over its use.

G. Whereas, Grantee is a qualified private organization under the terms of C.R.S. Sections 38-30.5-101, *et seq.*, a "qualified organization" within the meaning of Section 170(h)(3) of the Internal Revenue Code of 1986 as amended (the "Code"); a "charitable organization" as described in Section 501(c)(3) of the Code, and a "publicly supported organization" as described in Section 170(b)(1)(A) of the Code, whose primary purpose is to preserve and protect the natural, scenic, agricultural, historical, and open space resources of Eagle County, including the area in which the Property is located, by assisting landowners who wish to protect their land in perpetuity to preserve and conserve natural areas, environmentally significant land, and working landscapes for ecological, scenic, aesthetic, scientific, charitable and educational purposes. Grantee also is a qualified recipient for a conservation easement under C.R.S. §38-30.5-104, and is certified to hold conservation easements for which a state tax credit is claimed by the State of Colorado's Division of Real Estate pursuant to C.R.S. §12-61-720, and Rule A-1 of the Code of Colorado Regulations, *Qualifications for Certification to Hold Conservation Easements*, (4 C.C.R. 725-4, Rule A-1), for the current year. Additionally, at this time Grantee is accredited by the Land Trust Accreditation Commission, a national accreditation program sponsored by the Land Trust Alliance.

#### AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of Colorado and in particular C.R.S. Sections 38-30.5-101, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a perpetual conservation easement in gross ("**Easement**"), and Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the

Conservation Values of the Property for the benefit of this and future generations, subject to, and without affecting, any currently-existing easements, reservations, restrictions, covenants, agreements and rights of way of record and other rights of third parties under Colorado statutory or common law (collectively "Existing Third-Party Easements").

### **1. Purpose**

It is the purpose of this Easement to protect and preserve the Conservation Values of the Property, to assure that the Property will be retained forever predominantly in its natural, scenic, forest, and open space condition, and to prevent any use of the Property that is inconsistent with the preservation and protection of the Conservation Values of the Property. It is Grantor's intent to convey this Easement to Grantee to ensure that the Conservation Values of the Property be preserved and protected forever. It is the parties' intent to permit uses of the Property that are not inconsistent with the preservation and protection of the Property's Conservation Values, as determined by Grantee in its discretion as a land trust accredited by the Land Trust Alliance and certified by the State of Colorado's Division of Real Estate pursuant to C.R.S. 12-61-720, and Rule A-1 of the Code of Colorado Regulations *Qualifications for Certification to Hold Conservation Easements*, (4 C.C.R. 725-4 Rule A-1), as amended. Nothing in this Easement is intended to compel a specific use of the Property other than the preservation and protection of the Property's Conservation Values. This Deed sets forth certain uses and activities that are expressly permitted and consistent with the Purpose, but subject to specified qualifications, conditions, and requirements of, and procedures for, prior notice to or approval of Grantee.

### **2. Baseline Documentation Report**

The parties acknowledge that the Baseline Documentation Report has been prepared, reviewed, and approved by Grantee and Grantor. A copy of the Baseline Documentation Report is on file with both Grantor and Grantee and is by this reference made a part hereof. The parties acknowledge that the Baseline Documentation Report is intended to establish the condition of the Property subject to the Easement as of the date written above (the "**Operative Date**") and that both Grantor and Grantee have acknowledged in a signed statement, a copy of which is attached hereto as **Exhibit C**, that the Baseline Documentation Report accurately represents the condition of the Property on the Operative Date.

The parties agree that, in the event a controversy arises with respect to the condition of the Property as of the Operative Date, or with respect to compliance with or violation of any term or provision of this Easement, the parties shall not be precluded from utilizing all other relevant or material documents, surveys, reports, and other information to determine the condition of the Property as of the Operative Date.

### **3. Rights of Grantee**

To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- 3.1.** To preserve and protect the Conservation Values of the Property;

3.2. To enter upon the Property at any time in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement in accordance with Section 8 including in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement;

3.3. To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, all as more fully set forth herein;

3.4. To place signs on the Property that identify the land as being protected by this Easement, the size, number, and location of which signs are subject to Grantor's reasonable approval.

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 provision of this Easement.

#### **4. Permitted and Prohibited Uses of the Property**

The following uses and practices, though not an exhaustive recital, are consistent with the Easement as subject to specified qualifications, conditions, and requirements of and procedures for prior notice to or approval of Grantee. Procedures for prior approval and notice are listed below in Section 7 herein. Any activity on or use of the Property inconsistent with the preservation and protection of the Conservation Values of the Property is prohibited.

**4.1. Improvements.** Grantor may maintain, repair, enlarge, and replace improvements in accordance with the standards set forth in these subsections and in a manner and with a result that is not inconsistent with the preservation and protection of the Property's Conservation Values. Grantor shall notify Grantee in writing of such construction and provide Grantee with documentation and plans necessary to ensure compliance with the standards set forth in these subsections.

**4.2. Construction of New Buildings and Other Structures.** The construction of any building or other structure on the Property is prohibited, except that one, new, minor unenclosed, improvement such as a gazebo, or open air educational structure may be constructed on the Property. All new structures will comply with all applicable laws, ordinances, and regulations and shall not be taller than 15 feet in height or bear a footprint greater than 500 square feet. Except for Existing Third-Party Easements, agreements and matters of record, no residential, commercial, industrial, or retail improvements shall be permitted on the Property, including but not limited to: communication facilities, telecommunication facilities, or any other facilities, equipment, or material that may be used for telecommunications or to provide such services, including cellular phone signal transmission towers; aircraft facilities or aircraft landing facilities; golf courses; athletic fields; commercial feed lots; meat or poultry processing facilities; waste storage or waste processing facilities; commercial nurseries; sawmills, or logging facilities; agricultural product retail outlets; and other similar agricultural facilities; restaurants; night clubs; campgrounds; trailer park motels, hotels, recreational vehicle facilities; commercial swimming pools, gas stations, or retail outlets or facilities for the manufacture or distribution of any product. For the purposes of this Easement, a

commercial "feed lot" shall be defined as a permanently constructed confined area or facility within which the land is not grazed or cropped annually, for the purpose of engaging in the business of the reception and feeding of livestock for hire.

Benches, picnic tables, and wildlife resistant trash containers may be placed on the Property with the Grantee's approval, not to be unreasonably withheld, provided that their placement must comply with all applicable laws, ordinances, and regulations. Grantor may maintain, repair, and replace these benches, tables and trash containers in accordance with the standards set forth in this Section and in a manner and with a result that is not inconsistent with the preservation and protection of the Property's Conservation Values. Grantor shall notify Grantee in writing of the placement or replacement of any such improvements and provide Grantee with documentation so that it may update its records to reflect the placement or replacement of any new improvements.

**4.3. Subdivision.** The division, subdivision, or *de facto* division of the Property, physically, or by legal process, including partition, or by any other action (including entering into any lease or other agreement) is strictly prohibited. The Property shall be conveyed only in its entirety as a single parcel. Adjustments to boundaries or resulting from boundary disputes shall be excluded herefrom, provided that any such adjustment does not result in a saleable, buildable lot.

**4.4. Utilities.** Except for utility easements in existence prior to the grant of this Easement, or for utility easements created subsequent to the grant of this Easement pursuant to paragraph 4.22 hereof or an exercise of eminent domain, no new utility transmission lines shall be constructed or permitted on the Property except as necessary to service structures permitted on the Property. All new utilities shall be placed underground, unless mutually agreed upon by Grantor and Grantee.

**4.5. Telecommunications Facilities.** Except for telecommunication facilities in existence prior to the grant of this Easement, the erection, construction, installation, relocation, or use of a communication facility, telecommunication facility, network element, telecommunication equipment, or any other equipment or material that may be used for telecommunications or to provide telecommunications services (except for customer premises equipment) as such terms are defined in The Federal Telecommunications Act of 1996, is prohibited.

**4.6. Recreation.** Grantor and Grantee hereby agree that public access to and use of the Property for low-impact recreational uses such as biking, fishing, picnicking, bird watching, cross-country skiing, and hiking, are permitted. The Management Plan shall set forth general guidelines for recreational uses occurring on the Property.

**4.7. Aircraft Facilities.** Grantor shall not construct or erect any aircraft facilities or aircraft landing strips, pads, or facilities on the Property.

**4.8. Roads, Trails, and Paving.** Except as set forth in Existing Third-Party Easements, Grantor shall not construct any new roads, trails or pave any portion of the Property without Grantee's consent, not to be unreasonably withheld, provided that all new roads, trails and paved portions of the property comply with all applicable laws, ordinances, and regulations, and are completed in a manner that is not inconsistent with the preservation and protection of the Property's Conservation Values. Notwithstanding the foregoing, the parties acknowledge that Grantor may extend its regional trail through a portion of the

Property subject to notice and approval as set forth in Section 7 hereof. Grantor may improve existing trails in order to comply with ADA trail guidelines, provided that any improvements comply with all applicable laws, ordinances, and regulations, and are completed in a manner that is not inconsistent with the preservation and protection of the Property's Conservation Values.

**4.9. Off-Road Vehicle Use and Impact.** Grantor shall not use vehicles off of existing roads and travel ways in a manner that may result in erosion or compaction of the Property's soils, detrimental impact on the natural appearance of the land, or interfere with vegetation or natural habitats of those animal species occurring on the Property. Notwithstanding the foregoing, Grantor's use of off-road vehicles may be necessary in forest management, emergency situations, or for protection and enhancement of wildlife habitat, and such limited use by Grantor is therefore expressly permitted, provided that Grantor shall make its best efforts to avoid and minimize uses and impacts of uses that are inconsistent with the preservation and protection of the Conservation Values of the Property. Grantor's use of off-road vehicles, including but not limited to snowmobiles, all terrain vehicles, or other vehicles shall not disturb or result in the harassment of wildlife, and public use of off-road vehicles such as snowmobiles or all-terrain vehicles is prohibited. Public use of off-road vehicles such as snowmobiles or all-terrain vehicles shall be addressed in the Management Plan. Those with Existing Third-Party Easements which allow the use of motorized vehicles, may use motorized vehicles, including without limitation all-terrain vehicles and ranching, agricultural, equipment and construction vehicles (i) on any Roads, and (ii) on any portion of the Property that is not a Road, provided that such vehicles shall be used only for construction and property management purposes, including but not limited to, maintenance of trails, utilities, drainage facilities, water facilities, wildlife ponds, weed control and any ditches on the Property. Notwithstanding the foregoing, Grantor shall have the right to permit motorized access on trails in order to comply with the ADA. Any portion of the Property disturbed due to the use of motor vehicles shall be restored to a condition as close to its original condition as reasonably practicable. Disturbance by Existing Third Party Easement holders shall be governed by the terms of the Existing Third Party Easements or statutory or common law rights and obligations; provided however that Grantor shall not enter into an agreement permitting Existing Third party Easement holders to disturb the Property without requiring restoration of the Property to a condition as close to its original condition as reasonably practicable.

**4.10. Mineral Activities.** Except for Existing Third-Party Easements, at the time of granting the Easement, Grantor owns all the minerals associated with the Property. The exploration, development, mining, or extraction of oil, gas, and other minerals, rock, gravel, coal, peat, soil, or sand found in, on, or under the Property is prohibited except as set forth in Existing Third-Party Easements. The exploration, development, mining or extraction of geothermal resources and hydrocarbons from the Property is prohibited. Grantor shall not transfer, lease, or otherwise separate soil, sand, gravel, rock, or any other mineral substance from the surface of the Property.

**4.11. Signs.** Grantor shall not construct, maintain, or erect any commercial signs or billboards on the Property. Small signage not to exceed 4 square feet is permitted to display and state the name of the owner and Property; that the area is protected by this Easement, the prohibition of any unauthorized entry or use, wildlife and ecological characteristics related to educational opportunities, directional signs, and the

advertisement for the sale of the Property. Signage bearing the name of the conserved Property shall also be permitted, provided that it shall not exceed 20 square feet and is limited to one, and is comprised of natural looking materials.

**4.12. Fences.** Existing fences may be repaired, replaced, and improved on the Property and new fences may be constructed anywhere on the Property for the purpose of management of wildlife, provided that all fences are compliant with then-current Colorado Division of Wildlife standards for fencing to permit migration of wildlife across the Property in a wildlife migration area and are not inconsistent with the preservation and protection of the Conservation Values of the Property. Grantee acknowledges that the Grantor may wish to construct fencing along the ditches located on the Property which fencing will be included in the Management Plan.

**4.13. Trash.** Grantor shall not permanently accumulate, dump, or otherwise dispose of trash, debris, ashes, sawdust, and other non-compostable refuse on the Property. Refuse generated by forest management activities associated with the protection and enhancement of wildlife habitat, is permitted.

**4.14. Hazardous Materials.** The storage, dumping, or other disposal of toxic or hazardous materials or of non-compostable refuse on the Property is prohibited. Notwithstanding anything in this Easement to the contrary, this prohibition does not make Grantee an owner of the Property, nor does it permit Grantee to control any use of the Property by Grantor that may result in the storage, dumping or disposal of hazardous or toxic materials; provided, however, that Grantee may bring action to protect the Conservation Value of the Property, as described in this Easement. (This prohibition does not impose liability on Grantee, nor shall Grantee be construed as having liability as a "responsible party" under CERCLA or similar federal or state statutes.)

**4.15. Water Resources.** Grantor shall not manipulate, divert, dam, pollute, drain, dredge, or otherwise alter the naturally-occurring streams, wetlands, springs, lakes, ponds, or other surface or subsurface water features on the Property in a manner that degrades or destabilizes their natural banks or shorelines, or otherwise is inconsistent with the preservation and protection of the Conservation Values of the Property. The parties acknowledge that the irrigation ditches on the Property provide the water necessary to irrigate significant portions of the Berry Creek/Miller Ranch Planned Unit Development and other property. As a result, Grantor may develop and maintain those water resources on the Property necessary or desirable for irrigation as indicated above, or dictated by any change in water rights, and for wildlife, fisheries, and recreational pursuits conducted thereon including, but not limited to stream bank stabilization and the right to locate, construct, install and maintain pumps, headgates, ditches, wells, and ponds, and to improve the quality and quantity of water available for the purposes permitted herein. Grantor is required to notify Grantee of these activities as set forth in Section 7. The pollution of any surface or sub-surface water on the Property is prohibited.

**4.15.1 Irrigation Ditches.** Notwithstanding anything to the contrary herein, the parties acknowledge the existence of irrigation ditches on the Property which ditches may subject the Property to easements and other rights in Grantor and in third parties under Existing Third-Party Easements and Colorado statutory or common law. Grantor and Existing Third Party Easement holders are permitted the rights under existing easements or Colorado statutory or common law including the right to maintain, clear brush, or



install pumps, wells, and pipes, to transport such ditch water provided that the location of such pipes shall be within the existing ditch easement or right of way.

**4.16. Water Rights.** There are no water rights included in, with, or encumbered by this Easement as necessary to support the Property's Conservation Values.

**4.17. Surface Disturbance.** Unless otherwise set forth herein, Grantor shall not change, disturb, alter, excavate, or impair any watercourse or wetland on the Property. Except as expressly permitted by this Easement, 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.

**4.18. Timber Harvesting.** Grantor may cut or prune trees and brush on the portions of the Property, cut posts and poles for use on the Property, and remove timber to abate disease, insect infestation, mitigate forest fires, and maintain a healthy forest ecosystem. Grantor may remove trees that constitute a hazard to persons, property, and existing roads or ditches. Grantor shall notify Grantee, as set forth in Section 7, of the above activities. Grantor is prohibited from commercially harvesting timber, or cutting trees for any commercial or business purpose on the Property, except that Grantor may sell trees that have been cut due to disease, to prevent spread of disease, or to thin parts of the forest in order to increase the health of the forest ecosystem. Grantor shall not cut or disturb any trees or other vegetation within three hundred (300) feet of any active raptor nest during the nesting season, or remove any crown trees or overstory vegetation within three hundred (300) feet of any active raptor nest at any time. Notwithstanding the foregoing, diseased trees may be cut down and removed during the non-nesting season to abate insect infestations.

**4.19. Weeds and Non-native Species.** Grantor has the responsibility to control weeds in a manner consistent with state laws, subject to the following: (i) all control techniques shall be consistent with the labeled instructions of the application materials to constitute the minimum necessary to control or eradicate the weeds, and not be inconsistent with the preservation and protection of the Conservation Values of the Property; (ii) aerial application of any weed control is prohibited without Grantee's prior written approval; and (iii) biological (insect) control of weeds that is not inconsistent with the preservation and protection of the Conservation Values of the Property shall be permitted as consistent with the purposes of this Easement. Grantor shall not introduce to the Property any non-native plant or animal species

**4.20. Hunting and Fishing.** The public may fish in a manner consistent with state and federal laws and regulations, at levels of intensity which are not detrimental to the wildlife and fishery populations. Grantor shall not itself conduct commercial hunting, outfitting, or guiding on the Property, nor permit any commercial hunting, outfitting, or guide service to operate on the Property.

**4.21. Wildlife Disturbance or Harassment.** Harassment of wildlife by people on foot or in vehicles, or by domestic animals, excluding permitted fishing activities, is prohibited.

**4.22. Easements, Rights of Way or Other Interests.** The conveyance or modification of an easement, right of way, or other similar interest is prohibited without Grantee's approval pursuant to Section 7 (concerning notice and approval) of this Deed.

## **5. Land Management Plan**

Grantor and Grantee have prepared and mutually agreed to a land management plan (the "Management Plan" or the "Plan"), a copy of which will be kept on file in the offices of Grantor and Grantee. The Property shall be operated and managed in accordance with the management issues addressed in the Management Plan or as otherwise set forth in this Deed. If Grantor intends to undertake any activities not expressly permitted by this Deed or addressed in a current management Plan, Grantor shall not undertake such activities until Grantor has first prepared an amended Management Plan. Grantor and Grantee shall review the Management Plan annually at the time of Grantee's monitoring of the Property, and the Plan shall be amended if determined necessary by either Party. Any amendment to the Management Plan shall be approved by Grantee in accordance with Section 7 concerning Grantor's notice and approval.

## **6. Reserved Rights**

Grantor reserves to itself, and to its successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and that are not inconsistent with the protection and preservation of the Conservation Values of the Property.

## **7. Notice and Approval**

**7.1. Notice of Intention to Undertake Certain Permitted Actions.** The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities provided in Section 4 is to afford Grantee an adequate opportunity to review or monitor the proposed activity or use to ensure that it is designed and carried out in a manner that is not inconsistent with the preservation and protection of the Conservation Values of the Property. Whenever notice is required, Grantor shall notify Grantee in writing by certified mail not less than thirty (30) business days prior to the date Grantor intends to undertake the activity or use in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity or use in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the preservation and protection of the Conservation Values of the Property.

**7.2. Grantee's Approval.** Where Grantee's approval is required, as set forth in Section 4, Grantee shall grant or withhold its approval in writing within thirty (30) days of receipt of Grantor's written request therefore which must comply with paragraph 7.1. As part of its determination, Grantee shall consider the proposed manner in which the proposed activity will be conducted, whether it complies with the terms of this Easement, and the likely impact on the Conservation Values. Grantee's approval may be withheld only if Grantee reasonably determines that there is a significant risk that the activity as proposed is not consistent with the Purpose. Grantee may condition its approval on Grantor's acceptance of modifications, which Grantee reasonably determines makes the proposed activity consistent with the Purpose. Grantee may request additional information from Grantor during the thirty (30) day period, and Grantee shall have an additional thirty (30) days from the receipt of such additional information to approve or deny Grantor's request.

in writing. If Grantee does not respond to Grantor's written request within thirty (30) calendar days of receipt, the request shall be deemed denied, provided however, that if Grantee does not respond within thirty (30) calendar days of receipt of Grantor's second request, Grantor's request shall be deemed approved. Grantor shall not engage in the proposed act or use until Grantor receives Grantee's approval in writing (or unless Grantee fails to respond within thirty (30) calendar days after receipt of Grantor's second request) If Grantor disagrees with the decision of Grantee, Grantor may appeal the decision through the mediation process set forth in Section 18.18.

## **8. Grantee's Remedies**

**8.1. Enforcement.** If Grantee finds what it believes is a violation of the terms of this Deed, Grantee shall immediately notify Grantor in writing of the nature of the alleged violation ("Notice of Violation"). Upon receipt of the Notice of Violation, Grantor shall immediately discontinue the activity or use that has caused the alleged violation and shall either: (a) restore the Property to its condition prior to the violation in accordance with a written restoration plan ("Restoration Plan"); (b) provide a written explanation to Grantee of the reason why the alleged violation should be permitted; or (c) when violations are caused by the public or third parties, Grantor shall provide Grantee with a written plan which discusses the nature of the alleged violation and enforcement options and alternatives (also, a "Restoration Plan"). If the condition described in clause (a) or (c) above occurs, the Restoration Plan shall be submitted to Grantee within twenty (20) days after Grantee's receipt of the Notice of Violation, or within a longer time period if so specified by Grantee in the Notice of Violation or agreed to by Grantor and Grantee in writing. If applicable, the Restoration plan shall be approved or disapproved by Grantee in writing within thirty (30) days after its submittal. If Grantee fails to respond in writing within thirty (30) days after Grantor's submittal to Grantee of a Restoration Plan, the Restoration Plan shall be deemed approved. Grantor shall begin restoring the Property, or taking steps to address violations by the public or third parties, in accordance with the Restoration Plan within ten (10) days after it is approved or deemed approved by Grantee and diligently pursue such cure to completion in compliance with the terms of the approved Restoration Plan. If the condition described in clause (b) above occurs, both parties agree to meet within thirty (30) days to resolve this difference. If the parties are unable to resolve the dispute at the meeting, Grantee may, at its discretion, take appropriate legal action and shall be entitled to recover damages including, without limitation, damages for the loss of scenic, aesthetic, recreational or environmental values. If after receipt of the Notice of Violation, Grantor continues the activity or use that cause the alleged violation or if a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may get an injunction to stop it, temporarily or permanently prior the parties meeting and prior to completion of the Restoration Plan. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation, and may order Grantor to pay any restoration costs necessitated by Grantor's violation of the terms of this Deed.

**8.2. Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including without limitation, costs and expenses of suit and reasonable attorneys' fees, costs of necessary supporting documentation, such as land surveys, and any cost of restoration necessitated by Grantor's violation of the

terms of this Easement, shall be borne by Grantor; provided, however, that if Grantor ultimately prevails in a judicial enforcement action, each party shall bear its own costs.

**8.3. Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of Grantor's breach of any term of this Easement shall not be deemed or construed to be waiver by Grantee of such term or of any subsequent breach of the same, or any other term of this Easement, or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy related to Grantor's breach shall impair such right or remedy, or be construed as a waiver.

**8.4. Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription, and any defense available pursuant to C.R.S. §38-41-119.

**8.5. Acts Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring action against Grantor for any injury or damage to, or change in the Property resulting from natural causes, acts of God, or natural acts beyond Grantor's control, including without limitation, fire, flood, storm, and earthquakes, or from injury or damage to, or change in the Property resulting from, any prudent and reasonable action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury or damage to the Property resulting from such causes.

## **9. Access**

Nothing contained herein shall be construed as affording the public access to any portion of the Property. The parties acknowledge that Grantor intends to permit access to the general public in accordance with the terms of this Deed and the Management Plan which may, among other things, include seasonal or other closures of the Property.

## **10. Grantor Responsibilities**

**10.1. Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance, of the Property, including the maintenance of adequate liability insurance coverage and weed control and eradication, and shall furnish Grantee with satisfactory evidence of insurance coverage upon request. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, material furnished to, or obligation incurred by Grantor. Grantor does not waive or intend to waive the limitations of liability which are provided to it under the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et. seq.

**10.2. Taxes.** Grantor is a tax-exempt entity. However, if Grantor or the Property ever become subject to real or personal property taxes or assessments levied against the Property, Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property and shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred

as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

**10.3. Representation and Warranties.** Grantor represents upon information and belief:

A. At the time of executing this Deed, no hazardous substance or toxic waste is currently being treated, stored, used, disposed of, deposited, or transported, in, on or across the Property by Grantor, and Grantor is not aware of any underground storage tanks located on the Property;

B. At the time of executing this Deed, the Property is in compliance with all federal, state, and local laws, regulations and requirements applicable to the Property and its proposed use as open space;

C. At the time of executing this Deed, there is no pending or threatened litigation relating to the Property of which Grantor is aware; and

D. At the time of executing this Deed, no investigations or proceedings 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 of which Grantor is aware.

E. Grantor warrants that Grantor has good and sufficient title to the Property, free from all liens and encumbrances except Existing Third-Party Easements and other interests of record.

**10.4. Control.** Nothing in this Easement shall be construed as giving rise to, in the absence of a judicial decree, any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, And Liability Act of 1980, as amended ("CERCLA"), and any Colorado state law counterpart.

**10.5. 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 affect any existing rights or 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, provided however, that Grantee shall have the right to bring an action at law or in equity for trespass or any other appropriate cause of action against any third party who violates the terms of the Easement. Grantor shall continue to be solely responsible and shall have the 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.

**10.5.1 No Liability.** Grantee shall not be liable for injury or damages occurring on, or arising from, the Property unless due solely to the gross negligence or intentional acts of Grantee. Liability of Grantor, if any, shall not exceed an amount equal to any limits set forth in the Colorado Governmental Immunity Act now existing or as may hereafter be amended, nor confer any rights or benefits on any person or activity not a

party to this Agreement. Grantor does not waive or intend to waive the limitations on liability which are provided to it under the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et. seq

## **11. Extinguishment and Condemnation**

**11.1. Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. If the Easement is extinguished or terminated, whether in whole or in part, Grantee shall be paid proceeds equal to the Proceeds Percentage as defined in paragraph 11.2. Grantee's use of the proceeds shall be in a manner consistent with its conservation Purpose.

In granting this Easement, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. It is the intent of both Grantor and Grantee that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement. In addition, the inability of Grantor, or its heirs, successors, or assigns, to conduct or implement any or all of the uses permitted under the terms of this Easement, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment.

**11.2. Valuation.** This Easement constitutes a real property interest immediately vested in Grantee, which, for the purpose of subsection 11.1, the parties stipulate to have a fair market value of 30% of the full fair market of the Property, which percentage is determined by dividing the value of the Easement at the time of this grant by the fair market value of the Property unencumbered by the Easement at the time of this grant (excluding any increase in value after the date of this grant attributable to improvements made thereafter), and which percentage shall remain constant ("Proceeds Percentage").

**11.3. Condemnation.** Grantor shall notify Grantee immediately of any communication or notice received concerning any proposed taking under the power of eminent domain by public, corporate, quasi-governmental or other authority, or acquisition by such authority through purchase in lieu of the exercise of eminent domain ("Condemnation") affecting the Property, and Grantee shall have the right to participate in any proceeds as a real property interest holder. Grantee may pursue any remedies in law or in equity, including opposition to the Condemnation of the Property. If all or any part of the Property is taken by Condemnation, Grantee shall receive proceeds directly from the authority for any such Condemnation equal to thirty percent of the total proceeds received by Grantor.

**11.4. Application of Proceeds.** Grantee shall use any proceeds received under the circumstances described in this Section 11 in a manner consistent with its conservation mission, which is exemplified by this grant.

## **12. Assignment**

Grantee may assign its rights and obligations under this Easement to an organization that is: (a) a qualified organization at the time of transfer under Section

170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and (b) authorized to acquire and hold conservation easements under Colorado law. As a condition of such transfer, Grantee shall require the transferee to expressly agree, in writing, to carry out and uphold the conservation purposes of this Easement and otherwise assume all of the obligations and liabilities of Grantee set forth herein or created hereby. Grantee shall obtain Grantor's consent (and Eagle County's consent if Eagle County no longer owns the Property) to any such assignment in advance of any proposed transfer. After such transfer, Grantee shall have no further obligation or liability under this Easement except for those obligations or liabilities arising prior to the date of assignment. If Grantee is unable to transfer the Easement to another organization because it is no longer incorporated or functioning in furtherance of its original mission, a court with jurisdiction shall transfer the Easement to another qualified organization having similar purposes, which organization agrees to assume the responsibilities imposed on Grantee by this Easement.

### **13. 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 consistent with the Purpose of this Easement, provided that any amendment have a neutral or beneficial effect on the Property's Conservation Values, as determined by Grantee in its sole discretion. No amendment shall be permitted that shall affect the Easement's perpetual duration, permit uses of the Property inconsistent with the Easement's Purpose or the protection and preservation of the Property's Conservation Values, or affect the status of Grantee under any applicable laws, including C.R.S. Section 38-30.5-101, *et seq.*, or Section 501(c) (3) of the Code, Treasury Regulation 1.501(c) (3)-1(c) (2), or any other regulations promulgated thereunder. No amendment shall be permitted that will confer a private benefit to Grantor or any other individual or entity greater than the benefit to the general public as described by Treasury Regulation Section 1.170A-14(h) (3) (i)), or result in private inurement to a Board member, staff or contract employee of Grantee pursuant to Treasury Regulation 1.501(c) (3)-1(c) (2)). Any amendment shall be approved by Eagle County (if Grantor is not Eagle County). Any amendment to this Easement shall be recorded in the official records of Eagle County, Colorado. Grantor shall pay any and all costs, including staff time and attorney fees associated with any amendment provided that Grantee first provides Grantor with an estimate of such fees.

### **14. Liens on the Property**

**14.1. Subsequent Liens.** No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such borrowing shall be subordinated to this Easement and shall encumber the entire Property.

### **15. Subsequent Transfers**

Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the

Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest in the Property at least twenty (20) days prior to the date of such transfer using the form in **Exhibit D** attached hereto.

Any time the Property is transferred by Grantor to any third party, excluding a government entity, the third party shall pay a transfer fee of 0.5% of the fair market value of the Property to Grantee, as holder of the property interest and right of possession represented by this Easement, to be used for monitoring, stewardship, defense, and enforcement of this Easement or other conservation easements that Grantee holds, or for other purposes consistent with Grantee's own purpose. This fee is excluded from the prohibitions of C.R.S. §38-22-127 because Grantee is a tax-exempt 501(c) (3) organization and the Property is non-residential. This provision is intended to run with the land for the lesser of perpetuity or the duration of the Easement, 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. The failure of Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

If the contribution is not paid to Grantee at the time of sale or transfer as provided herein, the unpaid amount shall bear interest at the rate of eighteen percent (18%) per annum from the date of sale or transfer until paid in full, and shall constitute the personal obligation of the Property's purchaser/owner or recipient, and shall be a lien and security interest on the title to the Property which may be foreclosed by Grantee in the same manner as a mortgage on real property. The Property's delinquent purchaser/owner or recipient shall also be responsible for costs and attorneys' fees incurred by Grantee in collecting said unpaid contribution, whether by efforts short of collection action or foreclosure, collection action in the courts or a foreclosure action.

## **16. Notices**

Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, return receipt requested, postage prepaid, addressed as follows:

EVLT: P.O. Box 3016, Edwards, CO, 81632

EAGLE COUNTY: P.O. BOX 850, 500 Broadway, Eagle, CO 81631

With a copy to: Eagle County Attorney's Office

Post office Box 850, 500 Broadway, Eagle, CO 81631



## 17. Recordation

Grantee shall record this instrument in timely fashion in the official records of Eagle County, Colorado, and may re-record it at any time as may be required to preserve its rights in this Easement.

## 18. General Provisions

**18.1. Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado.

**18.2. Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of the Easement to protect and preserve the Conservation Values of the Property in perpetuity, and the policy and purpose of C.R.S. Sections 38-30.5-101 *et seq.* Any decisions resolving ambiguities shall be documented in writing. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid and ensure continuation of the purposes of the Easement and the preservation and protection of the Conservation Values of the Property shall be favored over any interpretation that would render it invalid. The common law rules of disfavoring restrictions on the use of real property and construing restrictions in favor of the free and unrestricted use of real property shall not apply to interpretations of this Easement or to disputes between the Parties concerning the meaning of particular provisions of this Easement.

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

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

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

**18.6. Joint Obligation.** If more than one owner owns the Property at any time, the obligations imposed by this Easement upon the owners shall be joint and several.

**18.7. Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

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

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

**18.10. Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

**18.11. 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 documents executed in the future affecting this Deed of Conservation Easement.

**18.12. Terms.** The terms "Grantor" and "Grantee", wherever used herein, or any pronoun used in place thereof, shall include, respectively, the above-named Grantor and its personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns. The term "Property", wherever used herein, shall refer to the land described in **Exhibit A**. The terms "Easement" and "Conservation Easement in gross" refer to the immediately vested interest in real property defined by Colorado Revised Statutes §§ 38-30.5-101 *et seq.*

**18.13. Exhibits.** All references to exhibits herein shall incorporate such exhibits by their reference.

**18.14. Development Rights.** Grantor hereby grants to Grantee all development rights except as specifically reserved herein, for the limited purpose of ensuring that such rights are forever terminated and extinguished, and may not be used by Grantor, Grantee, or any other party, either on the Property or transferred off of the Property to any other property adjacent or otherwise. Under no circumstances shall the Property be used as a "remainder parcel" or in any other way for the purpose of calculating or giving credits that result in additional density of development, beyond what is allowed in this Easement, on or off of the Property.

**18.15. No Third Party Enforcement.** This Easement is entered into solely by and between Grantor and Grantee, and as such does not create rights or responsibilities for the enforcement of the terms of this Easement in any third parties, including the public.

**18.16. Environmental Attributes.** Grantor hereby reserves all Environmental Attributes associated with the Property. "Environmental Attributes" shall mean any and all tax or other credits, benefits, renewable energy certificates, emissions reductions, offsets, and allowances (including but not limited to water, riparian, greenhouse gas, beneficial use, and renewable energy), generated from or attributable to the conservation, preservation and management of the Property in accordance with this Easement. Nothing in this section 18.16 shall modify the restrictions imposed by this Deed or otherwise impair the preservation and protection of the Conservation Values.

**18.17. Annual Appropriation.** To the extent that any financial obligation of this Deed is subject to the multiple fiscal year obligations as set forth in of Article 10 of the Colorado Constitution or C.R.S. § 29-1-110, such obligation may be subject to annual appropriation by Grantor. The foregoing is not an agreement or an acknowledgement by either Grantor or Grantee that any financial obligation which could arise pursuant to this Deed would be subject to the requirement that funds for such financial obligation must be

appropriated by Grantor. Nothing in this Deed shall be deemed to be a waiver of any rights that Grantee may have pursuant to C.R.S. § 30-25-104. Nothing in this Section 18.17 shall prevent Grantee from enforcing the Deed in accordance with its terms, despite a failure by Grantor to appropriate funds.

**18.18. Mediation of Disputes Regarding Proposed Activities.** If Grantee denies a request by Grantor for approval pursuant to Section 7 of this Deed, Grantor may appeal Grantee's decision by requesting mediation with Grantee in a written notice to Grantee. Within ten (10) working days of the receipt of such request, the Parties shall select a single, trained, and impartial mediator with experience in conservation easements and other land preservation tools. Mediation shall then proceed in accordance with the following guidelines:

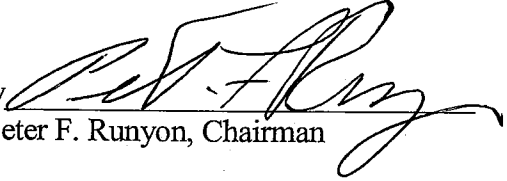
- a. **Purpose.** The purpose of the mediation is to: (i) promote discussion between the Parties; (ii) assist the Parties to develop and exchange pertinent information concerning the issues in dispute; and (iii) assist the Parties to develop proposals which will enable them to arrive at a mutually acceptable resolution of the controversy. The mediation is not intended to result in any express or *de facto* modification or amendment of the terms, conditions, or restrictions of this Easement.
- b. **Participation.** The Parties agree that they will participate in the mediation process in good faith and expeditiously, attending all sessions scheduled by the mediator. Representatives of the Parties with settlement authority will attend mediation sessions as required by the mediator.
- c. **Confidentiality.** All information presented to the mediator shall be deemed confidential and shall be disclosed by the mediator only with the consent of the Parties or their respective counsel. The mediator shall not be subject to subpoena by any Party. No statements made or documents prepared for mediation sessions shall be disclosed in any subsequent proceedings or construed as an admission of a Party in accordance with Colorado Rules of Evidence, Rule 408.
- d. **Time Period.** Neither Party shall be obligated to continue the mediation process beyond a period of sixty (60) days from the date of receipt of the initial request or if the mediator concludes that there is no reasonable likelihood that continuing mediation will result in a mutually agreeable resolution of the dispute.
- e. **Costs of Mediation.** Grantor shall pay all of Grantee's expenses associated with the mediation, including attorneys' fees and consultant fees, except that Grantor and Grantee shall share the cost of the mediator.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

**GRANTOR:**

**COUNTY OF EAGLE, COLORADO, by  
and through its Board of County  
Commissioners**

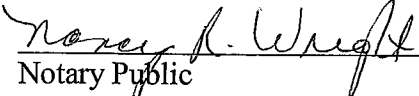
By   
Peter F. Runyon, Chairman

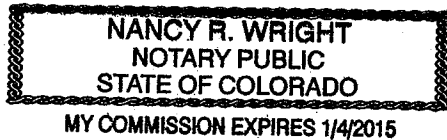
STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF EAGLE                    )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of January, 2012, by Peter F. Runyon as Chairman of the Board of County Commissioners for Eagle County, Colorado.

Witness my hand and official seal.

My commission expires: 1/4/2015

  
Nancy R. Wright  
Notary Public



**GRANTEE:**

**EAGLE VALLEY LAND TRUST,  
a Colorado non-profit corporation**

By *Kara Heide*  
Kara Heide, Executive Director

STATE OF COLORADO           )  
  ) ss.  
COUNTY OF EAGLE         )

The foregoing instrument was acknowledged before me this 17 day of January, 2012, by Kara Heide as Executive Director of Eagle Valley Land Trust, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires: 12-07-2012

*[Signature]*  
Notary Public



**Exhibit A**

**Legal Description of Property**

Engineering Department  
Phone: (970) 328-3560  
FAX: (970) 328-8789  
www.eaglecounty.us



Eagle County  
P.O. Box 850  
500 Broadway  
Eagle, CO 81631

**BERRY CREEK/MILLER RANCH "TRACT J OPEN SPACE"**

EXHIBIT "A"

December 28, 2011

A description of a parcel of land for open space: For Eagle County.

LEGAL DESCRIPTION

That part of TRACT J, BERRY CREEK / MILLER RANCH PLANNED UNIT DEVELOPMENT, a subdivision located in Sections 3, 4, and 5, T5S, R82W of the 6th P.M., recorded June 25, 2002, as Reception No. 799649 of the records of Eagle County, State of Colorado, according to the recorded plat thereof, lying Easterly of the following described line:

COMMENCING at the South Quarter Corner of said Section 4 which the Southeasterly corner of said Section 4 bears South 89 degrees 01 minutes 27 seconds East, 2698.18 feet (Basis of Bearing), thence North 77 degrees 30 minutes 04 seconds East, 2135.51 feet to the Southerly right-of-way line of the Denver Rio Grand Western Railroad; thence North 87 degrees 14 minutes 24 seconds East, 138.75 feet along the Southerly right of way line of said railroad to the Northeasterly corner of an amendment of easements, reservations, restrictions, covenants and rights of way record for TRACTS I AND J, BERRY CREEK / MILLER RANCH recorded March 20, 2003, as Reception No. 827411 to the POINT OF BEGINING of the line to be herein described;

Thence South 46 degrees 26 minutes 13 seconds East, 99.78 feet along the Easterly Line of said document recorded as Reception No. 827411 to an angle point;

Thence continuing along said Easterly Line South 23 degrees 10 minutes 00 seconds East, 108.48 feet to the Southerly property Line of said TRACT J and said described line there terminating.

Area = 32.533 acres, more or less.  
(SEE EXHIBIT "B")

**Exhibit B**  
**Map of Property**





**Exhibit C**

**Baseline Document Report Acknowledgement**

Grantor and Grantee acknowledge that each has read the "Conservation Easement Baseline Documentation Report," dated June 17, 2011, prepared by Rare Earth Science, LLC and that the report accurately reflects the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

EAGLE VALLEY LAND TRUST,

a Colorado non-profit corporation

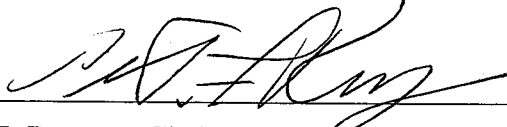
By: 

Kara Heide, Executive Director

Date: 1-17-2012

EAGLE COUNTY, COLORADO

By and through its Board of County Commissioners

By: 

Peter F. Runyon, Chairman

Date: January 17, 2012

## Notice of Transfer of Property

Pursuant to Section 15 of the Deed of Conservation Easement, 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].

By: \_\_\_\_\_  
Title: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_.

My commission expires: \_\_\_\_\_

Notary Public