

This example can be used as a starting point to create a policy or other document for your own land trust, but should be altered as necessary to reflect your organization's unique circumstances using guidance found in the *Land Trust Standards and Practices Guidebook* text and corresponding Standards and Practices Curriculum.

Please Note: If you are using this material for accreditation purposes, see also the [Land Trust Accreditation Commission website](#) for additional information. To search for policies from accredited land trusts, insert <<accredited>> along with the search term (e.g., conflict interest policy accredited).

° SAMPLE DEED OF CONSERVATION EASEMENT

Conservation Easements are drafted to address the specific Conservation Values intended for protection and the specific objectives of the Grantor (the landowner) and Grantee (here Colorado Open Lands). This Sample Deed of Conservation Easement may contain elements not applicable to a particular property or to a particular landowner's conservation objectives.

[EASEMENT NAME]

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 day of _____ 200____, by _____, whose address is _____ ("Grantor"), to COLORADO OPEN LANDS, a Colorado non-profit corporation ("Grantee"), whose address is Suite 320, 274 Union Boulevard, Lakewood, CO 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 ___acres of land, together with

Insert as appropriate: existing improvements (as further described in Section 4(A)), water and mineral rights, and grazing or other permits associated with or appurtenant to the Property]

located in _____ 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 Values. [Insert descriptive narrative and identification of Conservation Values addressing the reasons for preservation. See IRS Regs 1.170A-14(d) and the Conservation Values document.] The conservation values set forth in this paragraph may hereinafter be collectively referred to as the “Conservation Values.”

These Conservation Values are of great importance to Grantor, the people of _____ County, Colorado, and the people of the State of Colorado

D. State Policy Concerning Conservation Easements. C.R.S. §§33-1-101, *et seq.*, provides in relevant part that "it is the declared 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." Additionally, C.R.S. §§35-3.5-101, *et seq.*, provides in relevant part that "it is the declared policy of the State of Colorado to conserve, protect, and encourage the development and improvement of agricultural land for the production of feed and other agricultural products." C.R.S. §§38-30.5-101, *et seq.*, provides for the creation of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural ... or other use or condition consistent with the protection of open land having wholesome environmental quality or life-sustaining ecological diversity."

E. Other Supporting Government Policy. [Fill in as appropriate].

F. Documentation of Present Conditions. The Conservation Values and the characteristics, current use, and status of improvements on and development of the Property of the date of this Deed are further documented in a " Present Conditions Report," dated [fill in date], 200__ and prepared by [preparer’s name], 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 present condition of the Property if there is a controversy over its use.

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 which are not inconsistent with the preservation and protection of the Conservation Values as determined by Grantee in its sole discretion and which are not expressly prohibited herein. Nothing in this Deed is intended to compel a specific use of the Property, such as agriculture, other than of 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 on the Property:

(1) **Residential Improvements.** [List and describe the current residential improvements] the location of which is depicted on **Exhibit B** attached hereto and made a part of this Deed.

[Insert as appropriate: The location of the existing Residential Improvements shall be defined as "Existing Building Envelope #__"]

(2) **Agricultural Improvements.** [List and describe the current agricultural improvements] the location of which is depicted on **Exhibit B** attached hereto and made a part of this Deed.

[Insert as appropriate: The location of the existing Agricultural Improvements shall be defined as " Existing Agricultural Building Envelope #__".]

B. **Construction of Improvements.** The construction or reconstruction of any improvement, except those existing on the date of this Deed, is prohibited except as described below. Any other improvements are 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) **Existing Improvements Construction.**

a. **Residential Improvements.** [Insert as appropriate: Grantor may maintain, repair, replace, and enlarge (to a cumulative maximum of _____ square feet of enclosed floor area), the Residential Improvements at their current location without further permission of the Grantee.]

b. **Agricultural Improvements.** [Insert as appropriate: Grantor may maintain, repair, replace, and enlarge (to a cumulative maximum of _____ square feet of enclosed floor area), the Agricultural Improvements at their current location without further permission of the Grantee.]

(2) **New Improvements Construction.**

a. **Residential Improvements.** [Insert as appropriate: Grantor hereby reserves the right to construct or otherwise locate _____ additional single-family residence(s), which residence(s) shall comply with the following standards, (such as building height, materials, design, location and footprint, not to exceed _____ square feet of enclosed floor area) together with associated residential appurtenances such as garages and sheds, all of which will be located within the New Building Envelope #____, as depicted on **Exhibit B** attached hereto and made a part of this Deed. Notwithstanding any of the foregoing, at least thirty (30) days in advance of any proposed construction Grantor shall notify Grantee in writing of such construction and will provide Grantee with documentation and plans necessary to ensure compliance with the standards set forth in this section a. Grantee's written approval shall be given if construction complies, in the sole discretion of Grantee, with the standards set forth in this Section 4B(2)a. Further, Grantor may maintain, repair, enlarge and replace improvements in accordance with the standards set forth in this Section 4B(2)a.]

b. **Agricultural Improvements.** New minor, unenclosed agricultural improvements such as corrals, loafing sheds, hayracks, or stock tanks may be constructed on the Property without permission of Grantee. New agricultural buildings not to exceed _____ square feet of enclosed floor area will be located within the Agricultural Building Envelope as depicted on **Exhibit B** without permission of Grantee. Construction of new agricultural buildings in excess of _____ square feet of enclosed floor area in the Agricultural Building Envelope or the construction of any agricultural building other than minor agricultural improvements outside the Agricultural Building Envelope 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. Further, Grantor may maintain, repair, enlarge and replace improvements in accordance with the standards set forth in this Section 4B(2)b.

(3) **Notification of Replacement or Enlargement.** In the event of replacement or enlargement of Residential or Agricultural Improvements in Sections 4B(1) and 4B(2), Grantor shall notify Grantee so that its records may be updated.

(4) **Definition of Enclosed Floor Area.** For purposes of Sections 4B(1) and 4B(2), enclosed floor area is defined as all finished and unfinished enclosed space.

(5) **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**. The paving or otherwise surfacing of roads or driveways with concrete, asphalt, or any other impervious paving material is prohibited unless 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, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife not inconsistent with the preservation and protection of the Conservation Values without any further permission of Grantee.

c. **Utilities.** Existing utilities may be repaired and replaced in the same location with a similar structure without any further permission of Grantee. Grantor may install new utility lines or relocate existing utility lines provided such new or relocated utility lines shall be installed 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 shall not construct, maintain, or erect any signs or billboards on the Property that are inconsistent with the preservation and protection of the Conservation Values.

e. **[List additional examples, as appropriate, of other permitted, prohibited, or restricted improvements.]**

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.** The Property shall be managed to prevent overgrazing by livestock and soil erosion.

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. Timber harvesting other than the foregoing on the Property shall be conducted in substantial accordance with a forest management plan prepared at Grantor's expense, approved by Grantee, by a professional forester.

C. **Minerals and Other Deposits.** Minerals and other deposits shall be subject to the following provisions. At the time of granting of this Deed, Grantor does not own all or a portion of the mineral rights. For this reason, a mineral remoteness letter has been completed, dated _____, 200___, in compliance with §170(h) of the Internal Revenue Code. Grantor's current or future ownership of mineral rights shall be subject to Sections 1 and 2 below.

(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.** Golf courses are prohibited on the Property. Those low impact recreational uses such as bird watching, hiking, cross country skiing, hunting and fishing not inconsistent with the preservation and protection of the Conservation Values are permitted. Other buildings and facilities for any other public or private recreational use may only be built on the Property in accordance with Section 4.B., and then only in a manner that is consistent with the preservation and protection of the Conservation Values of the Property. These uses are specifically excluded from the Restricted Practices in Section 6. D.

E. **Water Rights.** [Insert either paragraph as appropriate:] The Property subject to this Easement includes any and all decreed and undecreed and 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 _____ 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.

Or

E. Water Rights. The Property subject to this Easement includes certain decreed and undecreed 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. Grantor and Grantee agree that a portion of these water rights (collectively, the "Dedicated Water Rights") must be maintained on the Property to insure the *minimum* level of preservation and protection of the _____ Conservation Values (**name the specific Conservation Values**). The Dedicated Water Rights are described in **Exhibit C** attached hereto and made a part of this deed. The Dedicated 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 from the Property, or change the historic use or point of diversion of the Dedicated Water Rights without the prior written consent of and determination by Grantor that such transfer, encumbrance, sale, lease or other change is not inconsistent with the preservation and protection of the Conservation Values. Water rights appurtenant to the Property that are not Dedicated Water Rights are not subject to this Easement.

If Grantor shall fail to maintain the historic use of the Dedicated 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 Dedicated 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 Dedicated Water Rights. If the Dedicated Water Rights are under threat of abandonment, Grantor shall convey ownership of said Dedicated Water Rights to Grantee and Grantee shall have the right to use the Dedicated Water Rights for beneficial conservation purposes on the Property or elsewhere in _____ County or otherwise consistent with Grantee's mission. In addition, Grantor shall otherwise cooperate with Grantee to help assure the continued use of the Dedicated Water Rights for beneficial conservation purposes.

Or

E. Water Rights. No water rights are associated with or included in the Property subject to this Easement

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. *Water Features.* 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. Notwithstanding the foregoing, the construction and maintenance of agricultural ditches, stock ponds or other agricultural improvements is permitted without further permission from Grantee.

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. The dumping or accumulation of farm-related trash and refuse produced on the Property is permitted, provided it is not inconsistent with the preservation and protection of the Conservation Values. However, this shall not prevent the storage of agricultural products and by-products on the Property 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.** Sod farms, helicopter pads, and airstrips are prohibited.

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 or (b) provide a written plan for restoration and remediation of the Property acceptable to Grantee. If Grantor is unable or unwilling to cease the immediate alleged violation, restore or remediate the Property to its condition prior to the violation or provide a written plan for restoration and remediation of the Property acceptable to Grantee, 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. 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. Grantee shall notify Grantor 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. Said transfer fee shall be waived if the Property is transferred to Grantor's heirs or beneficiaries.

11. **Termination of Easement.** If, at the joint request of Grantor and Grantee, a court with jurisdiction determines that conditions on or surrounding the Property change so much that the Purpose cannot be fulfilled, the court may terminate this Easement. The total loss of all the Conservation Values is the only grounds under which this Deed can be terminated. Upon such termination, Grantee may use the endowment funds associated with this Deed for purposes consistent with Grantee's organizational mission. Grantor and Grantee agree that the granting of this Deed immediately vests Grantee with a property right. 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 right is ____% percent 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. 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).

12. **Perpetual Duration.** This Easement shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies 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 either 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 such 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.

13. **Change of Circumstance.**

A. **Economic Value.** The fact that any use of the Property that is expressly prohibited by this Easement, or any other use as determined to be inconsistent with the Purpose of this Easement, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to uses that are not permitted thereunder, has been considered by the Grantor in granting this Easement. It is the intent of both Grantor and Grantee that any such changes should not be assumed to be circumstances justifying the termination or extinguishment of this Easement pursuant to this section. 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 this section.

B. **Agricultural Value.** In the event Grantee believes that agriculture is no longer a Conservation Value, Grantee may request that Grantor and Grantee shall 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.

14. **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: _____

Phone: _____

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

15. **Liens on the Property.**

A. **Current Liens.** [fill in as appropriate]

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.

16. **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.

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

A. Except as provided in paragraph 15, 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 not now any 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.

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

19. **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 Colorado, resolving any ambiguities and questions of the validity of specific provisions so as to favor 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 the 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 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. Any amendment must be in writing, signed by both parties, and recorded in the official records of _____ County, Colorado.

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

20. **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.

21. **Recording.** The Grantor shall record this Deed in timely fashion in the official records of _____ County, Colorado, and Grantee may re-record it at any time as may be required to preserve its rights 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: _____
(type name here)

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by _____ (*Grantor name*) _____ in his/her individual capacity as a ____ owner of the Property.

Witness my hand and official seal.

My commission expires: _____

Notary Public

GRANTEE:

COLORADO OPEN LANDS,
a Colorado non-profit corporation

By _____
Daniel E. Pike, President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 200__, by Daniel E. Pike as President of Colorado Open Lands, a Colorado non-profit corporation.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Building Envelopes / Map of Property

EXHIBIT C

(Retained) Water Rights

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, 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].

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: _____

° This material is designed to provide accurate, authoritative information in regard to the subject matter covered. It is provided with the understanding that the Land Trust Alliance is not engaged in rendering legal, accounting, or other professional counsel. If legal advice or other expert assistance is required, the services of competent professionals should be sought.