

**DEED OF CONSERVATION EASEMENT LANGUAGE**

**TO THIRD PARTY GRANTEE**  
**HAVING DIVISION OF WILDLIFE FUNDING**

***(NOT INTENDED TO BE EXHAUSTIVE  
OR A COMPLETE CONSERVATION EASEMENT)***

**This language or similar language acceptable to the Division of Wildlife (DOW) will be utilized in the Conservation Easement**

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**[If applicable, notice must be given here that federal funds and/or GOCO funds were used in the acquisition, and in such cases, GOCO or federal review and approval of future land use changes may be required. Notice as follows:]**

NOTICE: THIS CONSERVATION EASEMENT HAS BEEN ACQUIRED IN PART WITH A GRANT FROM THE STATE OF COLORADO ACTING BY AND THROUGH GRANTS AND FUNDS FROM THE COLORADO DIVISION OF WILDLIFE AND WILDLIFE COMMISSION (“DOW” or “CDOW”). THIS CONSERVATION EASEMENT CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS OPEN SPACE AND WILDLIFE HABITAT VALUES. THE DIVISION HAS FOUND THAT THE ADOPTION OF THIS CONSERVATION EASEMENT RESTRICTION IS IN THE PUBLIC INTEREST.

THIS DEED OF CONSERVATION EASEMENT (“Conservation Easement” or “Easement” or “Deed”) is executed this \_\_\_\_\_ day of \_\_\_\_\_. This Conservation Easement is granted for the purpose of forever conserving the open space, scenic resources, agricultural productivity, wildlife habitat, and biological diversity of the \_\_\_\_\_ Property.

**RECITALS**

WHEREAS, the Property is an important part of the open space, agricultural land, and wildlife habitat in \_\_\_\_\_ County. The Property possesses significant open space, scenic qualities, agricultural productivity, wildlife habitat and biological diversity (collectively "Conservation Values") that are important to the Grantor, the people of \_\_\_\_\_ County and the people of Colorado.

WHEREAS, the Property provides relatively natural habitat to a variety of wildlife species.

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained by the continuation of the general land use patterns, including without limitation, those relating to ranching and farming activities existing at the time of the grant of this Conservation Easement and future farming and ranching activities that do not materially impair the Conservation Values of the Property.

The purpose of this Easement (“Purpose”) is to enable the Property to retain, in perpetuity, predominately its open space qualities, agricultural productivity, scenic qualities, wildlife habitat and biological diversity (“Conservation Values”) as evidenced by the Baseline Documentation Report described below, for conservation purposes and for agricultural purposes. This Easement is also intended to prevent any use of the Property which will materially impair or interfere with the Conservation Values.

In order to establish the present condition of the Property's relatively natural habitat, and its wildlife, scenic and open space resources, so as to be able to properly monitor future uses of the Property and assure compliance with the terms hereof, the parties have prepared a Baseline inventory of the Property's relevant features and conditions (the "Report"). The Report may include, but need not be limited to, aerial photographs, topographical maps, wildlife habitat and migration maps, measures of the quality of ground cover on grazing areas, maps indicating the extent of agricultural uses, and botanical and wildlife photographs and reports. The Report shall be completed by the time of closing and signed by all parties to the transaction. The parties hereto acknowledge and agree that in the event a controversy arises with respect to the nature and extent of Grantor's historical and present use or the physical condition of the Property subject to this Easement as of the date thereof, the parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of the controversy.

The Property shall be managed in accordance with a Management Plan, a final copy of which is attached hereto, and incorporated herein, and signed by Grantor, Grantee, and the Colorado Division of Wildlife (the “Division”). The Management Plan shall be reviewed at least every five (5) years and updated if the Grantor, Grantee, and the Division mutually agree that an update is necessary. The Management Plan is enforceable by Grantee and the Division pursuant to Paragraph \_\_\_\_ herein. Grantor and Grantee recognize that the Division has valuable expertise in the management of wildlife and wildlife habitat on the Property and therefore, the Management Plan shall not be updated or otherwise amended without the Division’s written approval.

Unless otherwise specified, no right of access to the general public to any portion of the Property is conveyed by this Conservation Easement.

Grantor intends that DOW have certain rights of inspection and enforcement, as provided for herein.

## **RIGHT OF ENTRY**

The DOW has the right to enter upon the Property at reasonable times in order to evaluate compliance with the terms of this Deed; provided that such entry shall be upon prior reasonable notice to Grantor, which shall typically be no less than forty-eight (48) hours advance notice, and DOW shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

## **RIGHT OF ENFORCEMENT**

Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed. With reasonable advance notice to Grantor (except in the case of any ongoing or imminent violation, in which case such notice is not required), Grantee, Grantee's agents, or DOW may enter the Property for the purpose of inspecting for violations.

If Grantee finds what it believes is a violation, Grantee may at its discretion take appropriate legal action. Upon discovery of any such violation, Grantee shall immediately notify Grantor and DOW in writing of the alleged violation. Except when an ongoing or imminent violation is causing material damage to or could irreversibly diminish or impair the Conservation Values of the Property, Grantee shall give Grantor written notice of the violation and sixty (60) days to correct it, before filing any legal action. If the parties cannot resolve the violation themselves, the parties may mutually agree to an alternative method of dispute resolution, such as mediation. If a court with jurisdiction determines that a violation may exist or has occurred, Grantee may obtain an injunction to stop it, temporarily or permanently, in addition to such other relief as the court deems appropriate. A court may also issue an injunction requiring Grantor to restore the Property to its condition prior to the violation. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorneys' fees. Any failure by Grantee to discover a violation or forbearance by the Grantee to exercise its rights under this Deed in the event of any breach of any term of this Deed by Grantor shall not be deemed or construed to be a waiver by Grantee of such term of any subsequent breach of the same or any other term of this Deed or of any of Grantee's rights under this Deed. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy, or be construed as a waiver. The Grantor hereby waives any defense available to the Grantor pursuant to C.R.S. §38-41-119, or the defense of laches, estoppel, or prescription.

In addition to the above-described right of enforcement of Grantee, DOW shall also have the right to prevent and correct violations of the terms of this Deed as set forth herein.

Where DOW finds what it believes is a non-emergency violation that warrants enforcement, DOW shall notify the Grantee in writing of the nature of the alleged violation. Within thirty (30) days of receipt of this written notice, the Grantee shall advise

DOW in writing whether or not the Grantee intends to undertake enforcement against the Grantor concerning the alleged violation. If the Grantee fails to so advise DOW in writing within said thirty (30) days, or if the Grantee advises DOW in writing that it does not intend to undertake enforcement, then DOW may directly notify Grantor in writing of the nature of the alleged violation, and shall provide a copy of the notice to the Grantee at the same time. Grantor shall have 60 days to correct the violation. If such violation is not corrected, then DOW may proceed with a legal action in accordance with the same terms and conditions applicable to enforcement by the Grantee.

When the DOW finds what it believes is an ongoing or imminent violation that is causing material damage to or could irreversibly diminish or impair the Conservation Values of the Property, DOW may take immediate legal action to address the emergency situation, after having given notice to Grantee.

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*[Note: If federal funds were involved in the purchase of the conservation easement, then failure to comply with the terms of the conservation easement may lead to a determination by the US Fish and Wildlife Service that the DOW had lost “control” of the acquisition (i.e.; it is no longer serving the purpose for which it was acquired), and therefore The US Fish and Wildlife Service would look to the DOW for reimbursement of funds or to provide a suitable replacement property. In this event, DOW may seek repayment from the Grantor and the Grantee.]*