

**AMENDED AND RESTATED
DEED OF CONSERVATION EASEMENT**

Flying U Ranch

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

THIS AMENDED AND RESTATED DEED OF CONSERVATION EASEMENT ("Deed") is granted on this 12th day of DEC, 2007, by the KURT J. ULRICH REVOCABLE TRUST ("Grantor"), whose address is c/o Kurt Ulrich, 2860 Black Canyon Rd., Crawford, Colorado 81415, to COLORADO OPEN LANDS, a Colorado non-profit corporation ("Grantee"), whose address is 274 Union Boulevard, Suite 320, Lakewood, Colorado 80228, collectively the "Parties".

RECITALS:

A. **Description of Property.** Grantor is the owner of the fee simple interest in the subject Property which consists of approximately 120 acres of land legally described in **Exhibit A** attached hereto and made part of this Deed ("Existing Conservation Area") and those water rights described in **Exhibit C** attached hereto and made part of this Deed ("Existing Dedicated Water Rights") which are subject to that certain Deed of Conservation Easement recorded on December 7th 2006 at Reception No. 764868 of the records of the Montrose County Clerk and Recorder's office ("First Conservation Easement"). Grantor is also the owner of the fee simple interest in the subject property legally described in **Exhibit A**, which consists of approximately 111.5 acres of land ("New Conservation Area") and additional water rights as further described in **Exhibit C** ("New Dedicated Water Rights"). The Existing Conservation Area and the New Conservation Area, together with existing improvements [as further described in Section 4(A)] and the Existing Dedicated Water Rights and the New Dedicated Water Rights, and mineral rights owned by Grantor, located in Montrose County, State of Colorado shall collectively be known as the "Property".

B. **Amended and Restated Easement.** This Deed grants a new conservation easement to encumber the New Conservation Area which was not encumbered by the First Conservation Easement. The parties intend that this Deed encumber the Property and amend and restate the First Conservation Easement in its entirety. The parties further intend that upon execution and recordation of this Deed the First Conversation Easement will be superseded and replaced in its entirety by this Deed, and will have no further force or effect.

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

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

The Conservation Values of the Property include Open Space values as further described below:

Relatively Natural Habitat [§ 1.170A-14(d)(3)]. The Property contains pinyon-juniper woodlands, sagebrush shrublands, irrigated meadows, dryland meadows, and ponds that provide forage, cover, breeding grounds, and migration corridors for several wildlife species, including species recognized by the state of Colorado or the federal government as threatened, endangered, or of special concern (ferruginous hawk, northern leopard frog, and greater sandhill crane). The Property lies within severe winter range for elk, and between two elk winter concentration areas. The Property and the immediate vicinity also host a considerable population of resident mule deer, especially during winter.

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

Scenic enjoyment. The Property adds to the scenic character of the local rural landscape in which it lies, contains a harmonious variety of shapes and textures, and provides a degree of openness, contrast and variety to the overall landscape. A large portion of the Property is visible to the general public from Gunnison National Forest lands to the east, and from Black Canyon Road, which is the only access to the North Rim unit of Black Canyon National Park. Currently more than 12,000 vehicles per year use this access to the Park. These lands and roads are open to and actively utilized by residents of Delta and Montrose Counties and the State of Colorado.

Agriculture. The Property is currently used for agricultural purposes including irrigated crop production and livestock grazing. The Property features soils recognized by the U.S. Department of Agriculture as "prime farmland if irrigated" and "farmland of statewide importance." Agricultural use is compatible with other land use in the vicinity, as adjacent properties are also used for agricultural production.

Significant public benefit. There is a foreseeable trend of rural subdivision development in the vicinity of the Property in the near future. The City of Montrose lies just 15 miles southwest of the Property, the City of Grand Junction lies 65 miles northwest, Black Canyon National Park lies five miles to the south, and the Town of Crawford lies just four miles northeast. Currently there is significant residential subdivision development pressure in the scenic areas around Crawford and from employees willing to commute to Montrose or Grand Junction, and also from retirees. There is a strong likelihood that

development of the Property would lead to or contribute to degradation of the scenic and natural character of the area. Preservation of the Property will continue to provide an opportunity for the general public to appreciate its scenic values.

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

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

D. **State Policy Concerning Conservation Easements.** C.R.S. §§33-1-101, provides in relevant part that "it is the policy of the state of Colorado that the wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors." C.R.S. §35-3.5-101 states in part that "it is the declared policy of the state of Colorado to conserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products." C.R.S. §§38-30.5-102, provides for the creation of conservation easements to maintain land "in a natural, scenic, or open condition, or for wildlife habitat, or for agricultural, horticultural, wetlands, recreational, forest or other use or condition consistent with the protection of open land . . ."

Other Supporting Government Policy. The Montrose County Master Plan includes the following goals, policies, implementation actions, and maps that support the protection of the Property.

Countywide Policies:

Strengthen and Enhance Agriculture

Policy: Maintain a strong agricultural economy that enhances our rural character and is balanced by compatible land uses.

Implementation Action #2. Identify a variety of development options for those who wish to continue ranching and farming. Initiate an educational program to promote alternative development options, such as clustering, agricultural preservation associations, conservation easements, restrictive covenants, deed restrictions, and other programs.

Open Space Networks and Access to Public Lands

Policy: Support and promote a countywide system of open space and trails.

Policy: Preserve important habitats, scenic views, and natural areas from incompatible development.

Implementation Action #3. Review current zoning ordinances and subdivision standards to identify actions needed to strengthen the protection afforded to environmentally important areas, such as wetlands, riparian areas, river and stream corridors, critical wildlife habitat, and natural drainages. Continue to identify these areas and develop resources and strategies for public preservation and maintenance of these areas.

Mahe/Black Canyon Planning Area Policies:

Relationship with Black Canyon of the Gunnison National Park

Policy: Prepare for any impacts increased visitation at the Black Canyon of the Gunnison National Park may place on the Maher/Black Canyon area.

Implementation Action #2. Preserve the rural character of the approach route to the National Park (Black Canyon Road) and the West Elk Scenic and Historic Byway.

Master Plan Maps:

The Critical Wildlife Habitat Map identifies the Property as being located within a critical habitat area for mule deer.

E. **Documentation of Present Conditions.** The Conservation Values and the characteristics, current use, and status of improvements on and development of the Property as of the date of this Deed are further documented in a "Present Conditions Report," dated November 3, 2007 and prepared by Dawn Reeder of Rare Earth Science LLC, which report is acknowledged as accurate by Grantor and Grantee. The Present Conditions Report has been provided to both parties and will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, the Present Conditions Report is not intended to preclude the use of other evidence to establish the condition of the Property as of the date of this Deed.

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

ACKNOWLEDGEMENT OF INTENT:

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

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

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

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

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

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

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

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

C. To prevent any activity on or use of the Property that is inconsistent with the Purpose of this Easement and, except as limited by Section 7 below, Grantee may require the restoration of such areas or features of the Property that are 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.** Two residential improvements exist on the Property: one residential structure is located within the 3.0-acre "Ranch Auxiliary Housing Area" and one residential structure is located within the 4.87-acre "Ranch Main Housing Area" (the "Existing Residential Improvements"). The locations of the Ranch Auxiliary Housing Area and the Ranch Main Housing

Area are depicted on **Exhibit B** attached hereto and made part of this Deed (the "Housing Areas").

(2) ***Agricultural Improvements.*** One barn exists on the Property at the time granting of this Deed, which barn is located within the Ranch Main Housing Area. Otherwise, there are no agricultural improvements on the Property, except for minor agricultural improvements such as irrigation ditches and pipelines.

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

(1) ***Existing Improvements Construction.***

a. ***Residential Improvements.*** Grantor may maintain, repair, replace, and enlarge the Existing Residential Improvements at their current locations, to a cumulative maximum of 11,000 square feet of Floor Area, without further permission of Grantee. In no case shall any Existing Residential Improvement replaced or enlarged as permitted by this paragraph exceed 7,000 square feet of Floor Area.

(2) ***New Improvements Construction.***

a. ***Residential Improvements.*** Grantor is permitted to locate, maintain, repair and replace new residential appurtenances such as detached garages and sheds, not to exceed 5,000 square feet of cumulative Floor Area, within the Housing Areas without further permission of Grantee.

b. ***Agricultural Improvements.*** The construction of agricultural improvements ("Agricultural Improvements") shall be governed by the following provisions:

(i). Within the Housing Areas. Grantor shall locate all new Agricultural Improvements with a Floor Area greater than 500 square feet within the Housing Areas. Construction of any single Agricultural Improvement with a Floor Area greater than 10,000 square feet is prohibited. The cumulative Floor Area of all Agricultural Improvements within the Housing Areas shall not exceed 25,000 square feet.

(ii). Outside the Housing Areas. New Agricultural Improvements with a Floor Area no greater than 500 square feet or other new minor Agricultural Improvements such as corrals, pipelines, ditches, hayracks, or stock tanks may be constructed anywhere on the Property without permission of Grantee. The construction of any agricultural building other than minor Agricultural Improvements outside the Housing Areas is prohibited.

Grantor may maintain, repair, enlarge and replace Agricultural Improvements in accordance with the standards set forth in this Section 4B(2)b.

c. ***Non-Residential, Non-Agricultural Improvements.***

Grantor reserves the right to construct or place one seasonal cabin ("Cabin") on the Property at a location to be determined, not inconsistent with the preservation and protection of the Conservation Values. The Cabin shall not exceed 500 square feet of Floor Area, and is not intended to be used for continuous occupation.

(3) ***Notification of Construction, Replacement or Enlargement.*** If Residential or Agricultural Improvements are built, replaced, or enlarged in a manner not requiring Grantee's approval as specified in Sections 4B(1) and 4B(2), Grantor shall notify Grantee of the construction, replacement or enlargement so that its records may be updated.

(4) ***Definition of Floor Area.*** For purposes of Sections 4B(1) and 4B(2), Floor Area is defined as all residential or non-residential finished or unfinished space, covered and enclosed within two or more walls, but does not include residential covered or uncovered decks or patios.

(5) ***Other Improvements.***

a. ***Road Construction and Paving.*** Construction, paving or otherwise surfacing of roads, driveways or parking areas within the Housing Areas is permitted. Outside of the Housing Areas no roads or driveways shall be constructed or established except for those existing roads depicted on **Exhibit B**. Said roads shall be no wider than necessary to provide access or to meet local codes for width of access to improvements. Existing roads may be paved or otherwise surfaced provided Grantee first 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 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 within the Housing Areas without restriction. Outside the Housing Areas, Grantor shall install new utility lines or relocate existing utility lines underground in the existing roads depicted on **Exhibit B**. Additional utility lines or the relocation or significant upgrading of existing utility lines may be approved by Grantee if Grantee determines said utility lines are not inconsistent with the preservation and protection of the Conservation Values.

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

5. **Resource Management.** Grantor recognizes the importance of good resource management and stewardship to preserve and protect the Conservation Values. To this end, the following uses of the Property shall be conducted in accordance with the provisions below. In the event Grantee believes any resource management practice(s) are not consistent with the preservation and protection of the Conservation Values, Grantee may request that Grantor and Grantee shall, at Grantor's expense, consult with a mutually agreed upon resource management professional. This professional will provide written recommendations for said resource management practice(s) not inconsistent with the preservation and protection of the Conservation Values.

A. **Agriculture.** All agricultural uses shall be conducted using stewardship and management methods that preserve the natural resources upon which agriculture is based. Long term stewardship and management goals include preserving soil productivity, preventing soil erosion, minimizing invasive species, and avoiding unsustainable livestock grazing practices. The construction and maintenance of agricultural ditches, stock ponds or other agricultural water features is permitted.

B. **Timber.** Timber harvesting is prohibited except as set forth below. On a limited and localized basis, trees may be cut to control insects and disease, to control invasive non-native species, to prevent personal injury and property damage, and for domestic uses on the Property such as firewood and construction of permitted buildings

and fences. Tree thinning activities may take place to maintain the character and nature of the habitat. Other timber harvesting activities shall be conducted in accordance with a forest management plan prepared by a professional forester at Grantor's expense, and approved by Grantee.

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

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

(2) ***Oil, Gas, and Geothermal Resources.*** The exploration, development, mining or other extraction of geothermal resources and hydrocarbons is prohibited. Notwithstanding the foregoing, use of geothermal energy resources for residential purposes within the Housing Areas is permitted.

D. ***Recreation.*** Low-impact recreational uses such as bird watching, hiking, cross-country skiing, hunting and fishing are permitted, provided they are not inconsistent with the preservation and protection of the Conservation Values. These uses are specifically excluded from the Restricted Practices in Section 6D.

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

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

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

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

6. **Restricted Practices.**

A. **Subdivision.** The Property or description of the Property may identify or include one or more legal parcels. Notwithstanding the foregoing, Grantor and Grantee agree that the division or subdivision of the Property into two or more parcels of land is prohibited. However, for agricultural or other non-residential purposes, Grantee may approve a division of the property at its sole discretion.

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. Notwithstanding the foregoing, Grantor and Grantee acknowledge that there is a Right of Way recorded in the real property records of Montrose County, Colorado on January 22, 2001, at Reception No. 670336, which Right of Way is 20 feet wide and is dedicated for underground irrigation water line purposes, including the maintenance thereof, unencumbered by this Deed.

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

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

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

area, corral or other facility for feeding, or from leasing pasture for the grazing of livestock owned by others.

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

G. **Trash.** The dumping or accumulation of any kind of trash, sludge, or refuse on the Property is prohibited, except for farm-related trash and refuse produced on the Property, provided that such dumping or accumulation is not inconsistent with the preservation and protection of the Conservation Values. The storage or accumulation of agricultural products and by-products on the Property is permitted in accordance with all applicable government laws and regulations.

H. **Hazardous Materials.** Grantor may use agri-chemicals on the Property in accordance with all applicable federal, state or local laws. Otherwise, the treatment, permanent storage, disposal or release of hazardous materials on, from or under the Property is prohibited. For the purpose of this Deed, hazardous materials shall mean any hazardous or toxic material or waste that is subject to any federal, state, or local law or regulation. Notwithstanding anything in this Deed to the contrary, this prohibition does not impose any liability on Grantee for hazardous materials, nor does it make Grantee an owner of the Property, nor does it permit or require Grantee to control any use of the Property that may result in the treatment, storage, disposal or release of hazardous materials within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

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

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

7. **Responsibilities of Grantor and Grantee Not Affected.** Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligations of Grantor as owner of the Property. Additionally, unless otherwise specified below, nothing in this Deed shall require Grantor to take any action to restore the condition of the Property after any Act of God or other event over which Grantor had no control. Grantor shall continue to be solely responsible and Grantee shall have no obligation for the upkeep and maintenance of the Property and Grantor understands that nothing in this Deed relieves Grantor of any obligation or restriction on the use of the Property imposed by law. Among other things, this shall apply to:

A. **Taxes.** Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same. If for any reason Grantor fails to pay any taxes, assessments or similar requisite charges, Grantee may pay such taxes, assessments or similar requisite charges, and may bring an action against Grantor to recover all such taxes, assessments and similar charges plus interest thereon at the rate charged delinquent property taxes by the county assessor's office in which the Property is located.

B. **Liability.** Grantor shall indemnify, defend, and hold Grantee and its members, officers, directors, employees, agents, and contractors (collectively, the "Indemnified Parties") harmless from and against any and all loss, damage, cost, or expense, including reasonable attorneys' fees, arising from or in any way related to: (i) injury to or the death of any person, or damage to property, occurring on or about or related to the Property, unless due solely by the willful and wanton act or omission (as defined by C.R.S. 13-21-102(1)(b)) of the Indemnified Parties; (ii) the obligations under this Section 7 or (iii) the presence or release of hazardous materials on, under, or about the Property under Section 6(F) and (iv) the violation or alleged violation of, or other failure to comply with any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and state hazardous waste statutes, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property. Grantee shall indemnify, defend and hold Grantor and its assigns, successors and heirs harmless from and against any and all loss, cost or expense, including reasonable attorney's fees, arising from or in any way related to injury to or death of any person occurring on or about or related to the Property arising out of the Indemnified Parties' actions on the Property.

8. **Enforcement.** Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed and Purposes of this Easement. In those cases where Grantee determines that immediate entry is required to inspect for, prevent, terminate, or mitigate a violation of this Easement, Grantee may enter the Property without advance notice. Grantee may notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall immediately cease the alleged violation and either (a) if necessary, restore or remediate the Property to its condition prior to the violation; (b) provide a written plan for restoration and remediation of the Property acceptable to Grantee; (c) provide written documentation, acceptable to Grantee, that the activity is permitted and is not a violation. If Grantor is unable or unwilling to cease the immediate alleged violation, and comply with (a), (b) or (c) of the previous sentence, both parties agree to resolve the dispute through mediation, or court procedures. At any point in time, the parties may take appropriate legal action including an injunction to stop the alleged violation.

Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit, and attorneys' fees and any costs of restoration necessitated by Grantor's violation of the terms of this Easement, shall be borne by

Grantor. In the event the deciding body determines that Grantee has acted in bad faith in seeking to enforce this Easement, Grantee shall be responsible for Grantor's costs, including costs and expenses of suit, and attorneys' fees. The parties will share equally in the mediation fees. Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including the right to recover any damages for loss of Conservation Values. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and the failure of Grantee to discover a violation or to take action shall not waive any of Grantee's rights, claims or interests in pursuing any such action at a later date.

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

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

11. ***Termination of Easement; Proceeds.*** This Easement may only be terminated or extinguished, whether in whole or in part, by judicial proceedings by a court of competent jurisdiction based upon a joint request of Grantor and Grantee. The total loss of all the Conservation Values on the Property is the only grounds under which this Deed can be terminated.

Grantor and Grantee agree that the granting of this Deed immediately vests Grantee with a property right, and that the fair market value of this Easement is 60% of the full fair market value of the Property just prior to the time of closing (the "Easement Value"). Pursuant to Treasury Regulation § 1.170A-14(g)(6)(ii), Grantor and Grantee further agree that this percentage shall remain constant, so that should the Easement created by this Deed be extinguished, be sold for public use, taken for public use, or terminated in whole or in part, Grantee is entitled to payment of the Easement Value for that portion of the Easement that is terminated.

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

Easement shall terminate (as to such party, but not as to such party's successor, who shall be bound as provided herein) upon a transfer of the party's entire interest in this Easement or the Property, except that liability of such transferring party for act or omissions occurring prior to such transfer shall survive the transfer.

13. ***Change of Circumstance.***

A. ***Economic Value.*** The fact that any use of the Property that is prohibited by this Easement, or any other use as determined to be inconsistent with the Purpose of this Easement, may become economically more valuable than permitted uses has been considered by the Grantor in granting this Easement. It is the intent of both Grantor and Grantee that such circumstances shall not justify the termination or extinguishment of this Easement pursuant to Section 11. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Easement or be considered grounds for its termination or extinguishment pursuant to Section 11.

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

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.

Grantors: Kurt Ulrich
2860 Black Canyon Rd.
Crawford, CO 81415
(970) 921-7177

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

15. ***Liens on the Property.***

A. ***Current Liens.*** There are no current liens on the Property.

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 Section 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 no underground storage tanks located on the Property;

(2) Grantor and the Property are in compliance with all federal state, and local laws, regulations, and requirements applicable to the Property and its use;

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

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

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 State of Colorado, resolving any ambiguities and questions of the validity of specific provisions in favor of maintaining the Purpose of this Deed. Any decisions resolving such ambiguities shall be documented in writing.

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

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

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

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 Montrose County, Colorado, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

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

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

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

GRANTOR:

THE KURT J. ULRICH REVOCABLE TRUST

By: Kurt J. Ulrich, Trustee
Kurt J. Ulrich, Trustee

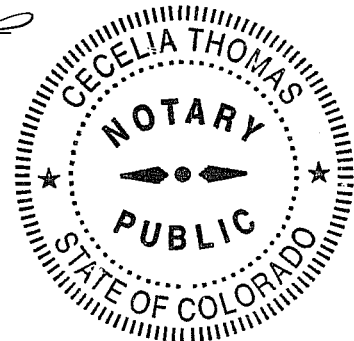
STATE OF COLORADO)
) ss.
COUNTY OF MONTROSE)

The foregoing instrument was acknowledged before me this 17th day of December 2007, by KURT J. ULRICH, TRUSTEE of THE KURT J. ULRICH REVOCABLE TRUST.

Witness my hand and official seal.

My commission expires: 11-21-2008

Cecelia Thomas
Notary Public



GRANTEE:

COLORADO OPEN LANDS,
a Colorado non-profit corporation

By

Daniel E. Pike
Daniel E. Pike, President

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 17th day of December,
2007, by DANIEL E. PIKE as President of Colorado Open Lands, a Colorado non-profit
corporation.

Witness my hand and official seal.

My commission expires: 11-21-2008

Cecelia Thomas
Notary Public

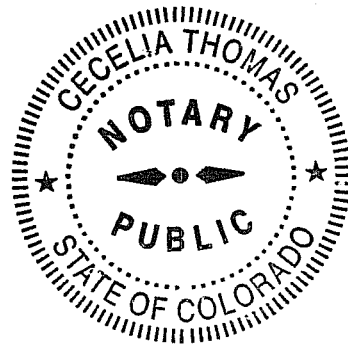


EXHIBIT A

Legal Description of the Property

Existing Conservation Area

Township 51 North, Range 7 West, N.M.P.M.

Section 28: E $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$

County of Montrose,
State of Colorado

Approximately 120 acres

New Conservation Area

Township 51 North, Range 7 West, N.M.P.M.

Section 27: W $\frac{1}{2}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$, excepting therefrom any portion lying within the following described property:

A parcel of land located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$ and within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, Township 51 North, Range 7 West of the New Mexico Principal Meridian, having a description based upon a bearing of S.89°19'23"E. from the section corner common to Sections 21, 22, 27 and 28 (monumented by a witness corner which bears North 25.0 feet from true corner position and being a 1 $\frac{1}{2}$ " alum. cap RLS 1456) to the $\frac{1}{4}$ corner common to Sections 22 and 27 (monumented by a mag nail in asphalt), with all other bearings being relative thereto and being more particularly described as follows:

Beginning at said $\frac{1}{4}$ corner common to Sections 22 and 27 and running thence along the East line of said NE $\frac{1}{4}$ NW $\frac{1}{4}$ S.00°03'55"W. 1325.13 feet to the CN1/16 corner (monumented by a witness corner which bears N.89°26'34"W. 22.50 feet from true corner position and being a 3 $\frac{1}{4}$ " alum. cap PLS 25972); thence along the South line of the N1/2 NW $\frac{1}{4}$ N.89°26'34"W. 1588.75 feet (monumented by a 2" alum. cap PLS 25972); thence N.00°14'05"W. 1328.54 feet (monumented by a witness corner which bears S.00°14'05"E. 17.50 feet from true corner position and being a 2" alum. cap PLS 25972); thence along the section line common to Sections 22 and 27 S.89°19'23"E. 1595.74 feet to the point of beginning, said parcel contains 48.50 Acres, more or less.

County of Montrose
State of Colorado

Approximately 111.5 acres

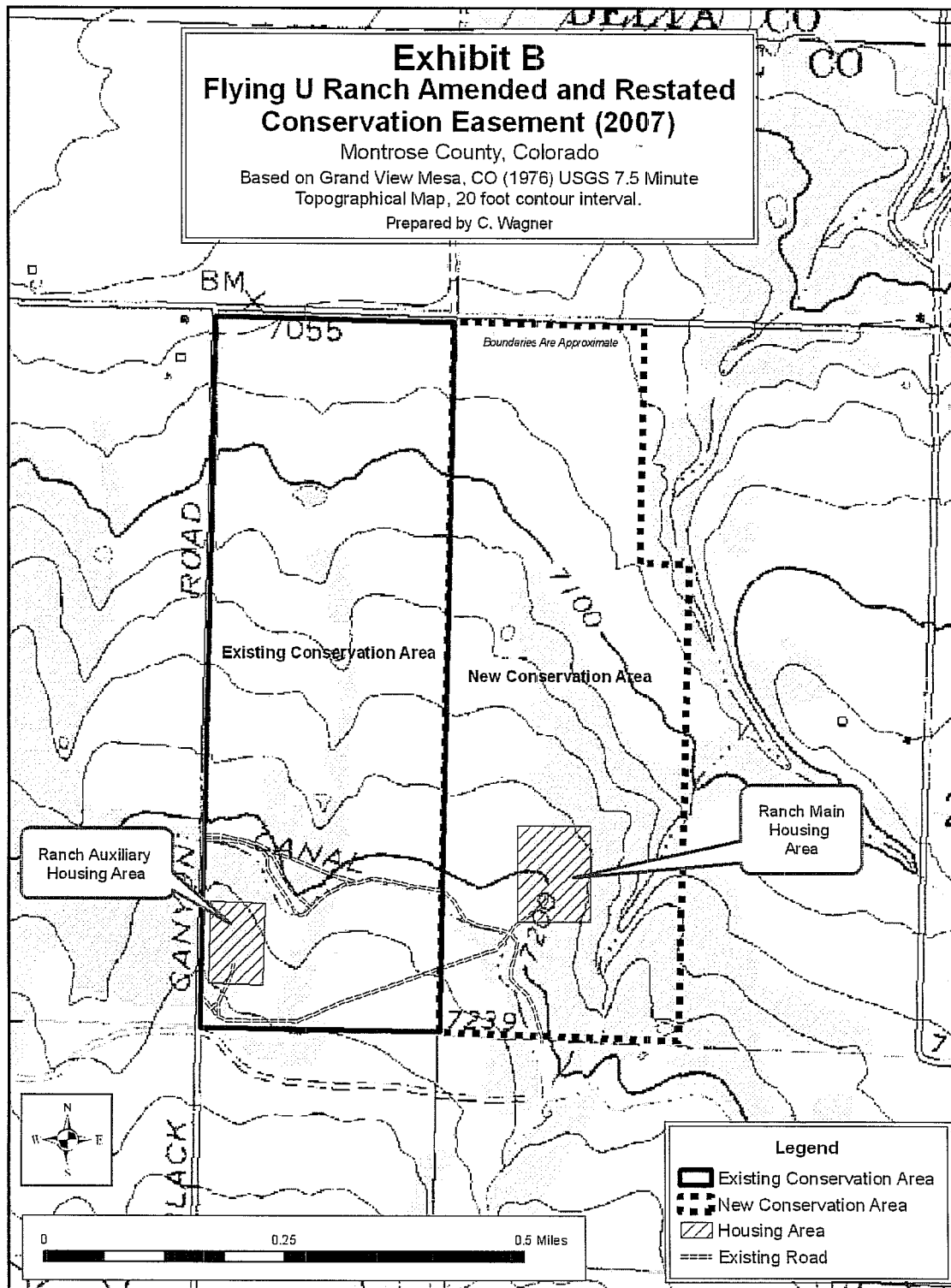


EXHIBIT C

Existing Dedicated Water Rights

2390 shares of the Fruitland Irrigation Company

New Dedicated Water Rights

2650 shares of the Fruitland Irrigation Company

EXHIBIT D

Sample Notice of Transfer of Property

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

Pursuant to Section 10 of the Deed of Conservation Easement recorded (date) under reception number _____, Grantee is hereby notified by Grantor of the transfer of the fee simple interest in the subject Property legally described in **Exhibit A** attached hereto effective [insert date of closing] to [insert name of new Grantor], who can be reached at [insert name, legal address, phone and fax number]. Also pursuant to Section 10 of the aforementioned Deed of Conservation Easement is attached a copy of the new ownership deed.

GRANTOR:

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

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

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

Notary Public

Date: _____